

**Procedures for  
Pursuing  
Animal Abuse Cases**

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## **PROCEDURES FOR PURSUING ANIMAL ABUSE CASES**

### **Introduction**

There are two separate bodies of law dealing with animal abuse. One is the civil law and the other is the criminal law. Civil law is used to obtain custody of animals from their abusers, while criminal law is used to prosecute and punish those abusers.

The Texas civil law is codified in Sections 821.021-821.025 of the Texas Health and Safety Code. A copy of those Sections is attached hereto as **Appendix AA@**.

The Texas criminal law is codified in Section 42.09 of the Texas Penal Code. A copy of that Section is attached hereto as **Appendix AB@**.

Almost always, the first legal action to be taken in an animal abuse case is a civil action to obtain custody of the animal(s) being abused or cruelly treated. Civil actions are much quicker than criminal actions and should be initiated promptly in order to extricate the animal(s) from the abusive environment. Thus, when a report of animal abuse is received, the first action should be to extricate the animal(s) from the abusive environment. This can be done either by convincing the owner to voluntarily release the animal(s) or, failing that, through legal proceedings to force the owner to release the animal(s) to the custody of the applicable humane organization (herein called the "Humane Organization").

### **Civil Proceedings**

The chronological steps of a civil proceeding to require an abusive owner to release custody of the animal(s) are as follows:

1. **Investigation and Documentation.**

When animal abuse is suspected, an investigation should be made by the Humane Organization's cruelty investigator to determine the nature and extent of the abuse. If abuse is found, it must be documented through a written report of the investigator's findings; statements from witnesses; photographs; or other evidence establishing the nature of the abuse and the identity of the abuser. (See Section 821.021 for a definition of animal abuse for purposes of civil actions.)

2. **Application for Seizure Warrant.**

Once evidence has been obtained, it should be presented to a law enforcement officer (such as a police officer, a sheriff or sheriff's deputy, a constable or constable's deputy, etc.) or a municipal animal control officer. Based on the evidence presented, the officer should then be asked to apply for a warrant to seize the animal(s) and remove it(them) from the owner's custody. This is done by having the officer complete and file an Application for Warrant. (See Section 821.022(a)) A copy of a form of Application for Warrant together with instructions for completing the form are attached hereto as **Exhibit 1**. The Application for Warrant should be filed with a justice of the peace court in the precinct in which the owner lives or in which the animal(s) is(are) located. If the animal(s) is(are) located within a city limit, the Application for Warrant may instead be filed with a municipal judge.

3. Issuance of Seizure Warrant.

When the Application for Warrant is filed, it should be presented immediately to the justice of the peace or municipal judge, as the case may be (herein called "Judge") and, at that time, the officer filing the Application for Warrant should ask the Judge to sign a Warrant ordering the seizure of the animal(s). (See Section 821.022(b)) The Warrant will order (and thereby authorize) the officer to seize and remove the animal(s) from the owner's custody and will also set a time and place for a hearing to determine whether the animal(s) has(have) been abused and to determine the future custody or disposition of the animal(s). (See Section 821.022(c)) A copy of a form of Warrant to be presented to the Judge for his signature is attached hereto as **Exhibit 2**. Although the Judge should know how to complete the form, if he does not, instructions for completing the form are included as a part of **Exhibit 2**. When the officer goes before the Judge, have the officer ask the Judge to authorize the Humane Organization to keep and care for the animal pending the custody hearing. (See discussion in paragraph 6 below.)

4. Service of Warrant.

As soon as the Judge signs the Warrant, the officer who applied for the Warrant or any other law enforcement officer can serve the Warrant on the owner and take the animal(s). When the Warrant is served on the owner, the animal(s) should be taken from the owner immediately and kept by the Humane Organization until the custody hearing.

5. Custody and Care of Animal.

When the animal(s) is(are) seized, it(they) should be taken immediately to a veterinarian for examination to determine its(their) physical condition. This is important, not only for the well-being of the animal(s) but also because the veterinarian's testimony will be important in proving the cruelty charges at the custody hearing. After examination, the animal(s) should be given the care recommended by the veterinarian.

6. Custody Hearing.

As stated above, the Warrant will set a date and time for a hearing to determine if there was abuse as charged and whether or not the owner regains custody of the animal(s). (See Section 821.023) The following information and instructions apply to that hearing:

- (a) The hearing must be held within ten (10) days of the date of issuance of the Warrant. As stated above, the Warrant will set forth the date, time and place for the hearing.
- (b) Technically, at the hearing the plaintiff is the State of Texas vs. the owner and the State's case will normally be presented by the District or County Attorney's office. However, since many District and County Attorney's offices are either not interested or too busy to pursue this type of case, arrangements should be made with private attorneys to appear (hopefully on a no-cost voluntary basis) to represent the State at the hearing if the District or County Attorney chooses not to do so. It would be wise to get several private attorneys to volunteer ahead of time to appear at custody hearings, if needed. That way, you will have a list of private attorneys to call on if the District Attorney or County Attorney does not wish to pursue the case. The Humane Organization and the cruelty investigators should do everything possible to assist the attorney presenting the State's case by way of gathering evidence, scheduling witnesses, etc. It is important that a strong, well-prepared case be presented at the hearing in order to assure the best results.
- (c) At the hearing, evidence will be presented by the State and, if he so chooses, by the owner. Based on that evidence, the Judge will then decide whether or not the animal(s) has(have) been Cruelly treated@ (as defined in Section 821.021) and, if so, the Judge will determine the future disposition of the animal(s). As part of its presentation, the State should request the Judge to include in the custody grant of the animal(s) and any offspring so if the animal(s) is(are) pregnant the Judge's order will also cover the animal's offspring.
- (d) If the Judge finds in favor of the State and either orders the animal euthanized or given to a Humane Organization, there is no appeal. If the Judge orders the animal sold at auction, the owner has ten (10) days to file an appeal to the County Court. In this instance, the Humane Organization should attempt to get the owner to waive that appeal so that the animal(s) can be auctioned off immediately; failing that, the Humane Organization should wait until the time for filing an appeal has expired before auctioning off the animal(s) and, in the event an appeal is filed, the Humane Organization should hold the animal(s) pending the outcome of the appeal.

**From the time of the initial investigation through the conclusion of the custody hearing, the cruelty investigator should be assisting the law enforcement officers and attorneys because often times law enforcement officers and attorneys have never handled an animal abuse case and may not know exactly what to do. Also, animal abuse cases often have a low priority with law enforcement officers and attorneys and they need to be encouraged to act promptly.**

### **Criminal Prosecution**

If the situation warrants, the Humane Organization should seek criminal prosecution of the perpetrator. In such cases, you should present all of the facts and evidence to the District or County Attorney's office and file a criminal complaint charging the perpetrator with cruelty to animals in violation of Section 42.09 of the Texas Penal Code which makes cruelty to animals a criminal offense and ask the District Attorney's office or County Attorney's office to prosecute the perpetrator to the fullest extent of the law.

Section 42.09 was recently amended to make certain more aggravated acts of animal cruelty punishable as a state jail felony while other less aggravated acts are still punishable as a Class A misdemeanor. A state jail felony carries a punishment of not less than 180 days or more than two years in the state penitentiary and a fine of up to \$10,000. A Class A misdemeanor carries a penalty of up to one year in the county jail and a fine of up to \$4,000.

Since most District or County Attorney's offices are overworked and probably have (in their opinion) more important cases, you will need to have your facts and evidence in good order and be prepared to insist that the case be prosecuted. Also, you should put public pressure on the District or County Attorney to prosecute the case through the media and through calls and letters from members of the Humane Organization and the public at large. A mail out to the Humane Organization membership detailing the case and requesting them to call and write the District Attorney or County Attorney and demand action will provide tremendous positive results. The Humane Organization is looked upon by the public as the organization responsible for protecting animals and prosecuting cruelty cases and a strong demand from the Humane Organization and its members will definitely get the District Attorney's or County Attorney's attention.

## APPENDIX "A"

### SECTIONS 821.021 - 821.025 TEXAS HEALTH AND SAFETY CODE

#### ▸ **821.021. Definition**

In this subchapter, "cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.

#### ▸ **821.0211. Additional Definition**

In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or masters of statutory probate courts, or judges or masters of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

#### ▸ **821.022. Seizure of Cruelly Treated Animal**

(a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

#### ▸ **821.023. Hearing; Order of Disposition or Return of Animal**

(a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

(1) order a public sale of the animal by auction;

(2) order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) A court that finds that an animal's owner has cruelly treated the animal shall order the owner to pay all court costs, including costs of:

(1) investigation;

(2) expert witnesses;

(3) housing and caring for the animal during its impoundment;

(4) conducting any public sale ordered by the court; and

(5) humanely destroying the animal if destruction is ordered by the court.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

#### ▪ **821.024. Sale or Disposition of Cruelly Treated Animal**

(a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess

proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

▪ **821.025. Appeal**

(a) An owner of an animal ordered sold at public auction as provided in this subchapter may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located. As a condition of perfecting an appeal, the owner must file an appeal bond in an amount determined by the justice or municipal court to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process. The decision of the county court or county court at law may not be further appealed. An owner may not appeal an order:

(1) to give the animal to a nonprofit animal shelter, pound, or society for the protection of animals; or

(2) to humanely destroy the animal.

(b) While an appeal under this section is pending, the animal may not be:

(1) sold or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

## APPENDIX "B"

### SECTION 42.09 TEXAS PENAL CODE

#### '' 42.09. Cruelty to Animals

(a) A person commits an offense if the person intentionally or knowingly:

- (1) tortures an animal;
- (2) fails unreasonably to provide necessary food, care, or shelter for an animal in the person's custody;
- (3) abandons unreasonably an animal in the person's custody;
- (4) transports or confines an animal in a cruel manner;
- (5) kills, seriously injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;
- (6) causes one animal to fight with another;
- (7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack;
- (8) trips a horse;
- (9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or
- (10) seriously overworks an animal.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Necessary food, care, or shelter" includes food, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(6) "Trip" means to use an object to cause a horse to fall or lose its balance.

(d) An offense under Subsection (a)(2), (3), (4), (9), or (10) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section.

(e) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

(f) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

\*(g) An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

\*(g) It is a defense to prosecution for an offense under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

(h) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) use of an animal if that use occurs solely for the purpose of:

(A) fishing, hunting, or trapping; or

(B) wildlife control as regulated by state and federal law; or

(2) animal husbandry or farming practice involving livestock.



**INSTRUCTIONS FOR COMPLETING  
APPLICATION FOR WARRANT**

- [1] Insert the name of the county in which the Justice of the Peace or Municipal Court is located.
- [2] Insert the name of the law enforcement officer applying for the Warrant. This will be the same person who signs the Application as pointed out in [10] below.
- [3] Insert the name of the county in which the officer lives.
- [4] Insert the name of the county in which the animal(s) is/are located.
- [5] Insert a description of the animal(s) which should include, to the extent known, the type of animal(s) (dog, cat, etc.); male or female; breed, if known; color or other distinguishing markings.
- [6] Insert the address or describe the place where the animal(s) is/are located. A street address is preferable; otherwise, any adequate description will do.
- [7] Insert the county in which the animal(s) is/are located.
- [8] Insert the name of the owner of the animal(s).
- [9] Insert all the facts which will support the issuance of the Warrant. The facts do not have to be based on the officer's own knowledge but can be based on statements of others which the officer has either heard or read; pictures the officer has seen, etc. The evidence can be hearsay evidence, but the more reliable the evidence is, the better. Also, any such evidence (i.e., written statements, pictures, memos of interviews) should be carried with you to the judge when you are making the Application for Warrant.
- [10] This is the place where the officer applying for the Warrant will sign.
- [11] The officer's signature must be acknowledged. This can be done either before a Notary Public or a judicial official such as the Justice of the Peace himself. In other words, the Justice of the Peace can take the acknowledgment and also issue the Warrant.



### **INSTRUCTIONS FOR COMPLETING THE WARRANT**

THE WARRANT IS FILLED OUT BY THE JUSTICE OF THE PEACE OR MUNICIPAL JUDGE AND HE SHOULD KNOW HOW TO COMPLETE IT BUT HE MAY NOT AND IF YOU NEED TO ASSIST HIM, THE FOLLOWING IS WHAT SHOULD BE FILLED IN:

- [1] Insert the name of the county in which the court is located.
  - [2] Insert the name of the law enforcement officer filing the Application.
  - [3] Insert the name of the owner.
  - [4] Insert the Justice Court and Precinct number or the Municipal Court, as the case may be.
  - [5] Insert the name of the county (and if a Municipal Court, the name of the city).
  - [6] - [10] Insert the location of the courthouse; the county; the day, month and time for the cruelty hearing. (The Judge will set the date, time and place.)
  - [11] Insert the date the Warrant is signed by the Judge.
  - [12] This is the place where the Judge will sign.
  - [13] Insert the Judge=s title: AJustice of the Peace Precinct \_\_\_\_\_@ or AMunicipal Judge,@ as the case may be.
- \* MAKE SURE A COPY OF THE APPLICATION FOR WARRANT IS ATTACHED TO THE WARRANT.

### **INSTRUCTIONS FOR COMPLETING THE RETURN**

THE RETURN IS FILLED OUT BY THE PEACE OFFICER WHO SERVES THE WARRANT. THE PEACE OFFICER SHOULD KNOW HOW TO COMPLETE THE RETURN BUT, IF NOT, THE FOLLOWING IS WHAT SHOULD BE FILLED IN:

- [1] Insert the date the peace officer served the Warrant and seized the animal(s).
- [2] Insert a description of the animal(s) seized.
- [3] Insert the place the animal(s) was/were seized, preferably a street address but any other accurate description will do.
- [4] Insert the name of the person from whom the animal(s) was/were seized. This will probably be the owner but it may not be. Whoever has custody of the animal(s) when the officer goes to get it/them is the name to be inserted in this blank.
- [5] Insert the name of the person to whom the Warrant was delivered.
- [6] This is where the officer serving the Warrant will sign.
- [7] The signature must be acknowledged before a Notary Public or other judicial officer.