CRIMINAL LIABILITY FOR NEGLECT, ABUSE AND EXPLOITATION OF DOGS

AND OTHER ANIMALS FOR AMUSEMENT OR PROFIT

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The previous article (When Dogs Attack) touched on the civil and criminal liability of dog owners for injuries caused to others (people and animals) when their pets that have known vicious propensities or are found to be dangerous, attack without justification.

The focus of this article is on the criminal liability of owners, caretakers and others who neglect, (e.g. failing to provide sustenance and proper shelter), overwork, abuse, abandon, torture or otherwise subject animals to acts of cruelty (whether isolated or on-going), or go so far as to cause serious injury or death, intentionally or for no good purpose other than perhaps  to satisfy some twisted desire to watch them suffer.

Mahatma Gandhi reportedly said that a nation’s moral compass can be gauged by the way in which its animals are treated, and while most people treat their pets and other animals with love and affection bordering on the familial, there are some who regard (and treat) their animals like slaves and others who subject them to seemingly sadistic acts of cruelty.

In 1997, a 16-year-old boy in Schenectady N.Y. doused a neighbor’s cat with kerosene and set him on fire, rendering the animal virtually unrecognizable and causing it to endure extreme pain until it expired several weeks later. This attack led to the passing of “Buster’s Law” in 1999 which makes it a felony (punishable by up to two years imprisonment, five years probation and/or a $5000.00 fine) for committing AGGRAVATED CRUELTY upon a companion animal (i.e. a pet or domesticated animal).

The teenage offender in that case, to the surprise of probably no one, was later sentenced to 12 years in prison for raping a 12-year-old disabled girl, confirming the belief of many psychologists that childhood acts of cruelty toward  animals can foreshadow a future pattern of violence against vulnerable human beings.

Although the State Legislature has taken some steps to tighten the leash, so to speak, on animal abusers (e.g. proposing and, in some cases, enacting stricter laws and imposing more severe penalties for aggravated abuse [after one offender received only four months in jail for zip-tying a dog, Bella around the neck and beating it with a shovel), New York is only one of thirteen states that does not prosecute animal-related offenses under the Penal Law (save for, perhaps, Criminal Mischief [PL Art.145] intentional or reckless damage to property which pets are considered to be).

Animal cruelty cases are prosecuted in this state under laws dating back to the 1880’s (when animals were often employed as beasts of burden and subject to being overdriven in the course of a hard day’s work), and which were then codified in the Agriculture and Markets Law (AML)  in the mid-1960’s.

Section 353 of the AML (Overdriving, Torturing and Injuring Animals; Failure to Provide Proper Sustenance) makes it a CLASS A MISDEMEANOR to:

OVERDRIVE, OVERLOAD, TORTURE OR CRUELLY BEAT OR  UNJUSTIFIABLY INJURE, MAIM, MUTILATE OR KILL ANY ANIMAL (WILD OR TAME), ...WHETHER BELONGING TO HIM/HERSELF OR TO ANOTHER; OR

DEPRIVE ANY ANIMAL OF NECESSARY SUSTENANCE, FOOD OR DRINK; OR

NEGLECT/REFUSE TO FURNISH IT (WITH) SUCH SUSTENANCE OR DRINK; OR

CAUSE/PROCURE/PERMIT ANY ANIMAL TO BE OVERDRIVEN, OVERLOADED, TORTURED, CRUELLY BEATEN OR UNJUSTIFIABLY INJURED, MAIMED, MUTILATED OR KILLED ; OR

TO BE DEPRIVED OF NECESSARY FOOD OR DRINK; OR

WHO WILLFULLY SETS ON FOOT, INSTIGATES, ENGAGES IN OR IN ANY WAY FURTHERS ANY ACT OF CRUELTY TO ANY ANIMAL, OR ANY ACT TENDING TO PRODUCE SUCH CRUELTY.

This statute, it should be noted, prohibits acts of cruelty (i.e. every act, omission or neglect which cause or permits unjustifiable physical pain, suffering or death), toward ANY ANIMAL (i.e. any living creature other than a human being, AML 350[1]), whether mammal, amphibian or reptile (People Voelker 172 Misc2d 564[NY Crim Ct. Kings County 1997], committed by anyone, whether or not he/she is the owner or caretaker of such animal.

So, if for example, an angry next-door  neighbor slips rat poison into barking Bowser’s  backyard food bowl, causing him to die an agonizing death, that person could be prosecuted under this section, (or perhaps underv AML353-a for intentionally and unjustifiably causing the death of a companion animal, and/or under AML 360 [a Class A misdemeanor] for poisoning an animal).

Section 353 DOES NOT prohibit or otherwise interfere with any PROPERLY CONDUCTED SCIENTIFIC TESTS, EXPERIMENTS OR INVESTIGATIONS, INVOLVING THE USE OF LIVING ANIMALS, PERFORMED OR CONDUCTED IN LABORATORIES/INSTITUTIONS WHICH ARE APPROVED FOR SUCH PURPOSES BY THE STATE COMMISSIONER OF HEALTH. (The ethics and morality [or absence thereof], of using live animals for scientific experiments is beyond the scope of this article).

Acts of NEGLECT (as opposed to intentional infliction of injury or harm), that result in injury to an animal can, as noted above,  subject a person to prosecution under AML 353, whether it involves depriving the animal of sustenance over time, (see People v Arcidicono 79 Misc 2d 242 [App. Term 2d dept 1979]: defendant failed to provide his horse with sufficient food over the course of three months, and was aware of its progressive weight loss); failing to provide adequate shelter from the elements, (see Mudge v State 45 NY Supp 2d 896 [NY Ct of Claims 1944];  allowing horse to live in an open barn, steeped in its own feces and with the only source of water being frozen from the cold); or  overdriving an animal. (see People v O’Rourke 83 Misc2d 175 [Crim Ct City of NY 1975]: requiring lame horse to keep on working without providing medical care).

Unlike AML 353-a (Aggravated Cruelty) which requires INTENTIONAL AND UNJUSTIFIABLE infliction of serious injury or death, section 353 appears only to require that the individual act KNOWINGLY with respect to his/conduct and its foreseeable consequences. (See PL 15.05: A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his/her conduct is of such nature or that such circumstance exists). (See August 2003 on-line article on Animal Cruelty by Stacy Wolf Esq, Senior Director of Legal Services and Anti-Cruelty Training on behalf of the ASPCA).

AGGRAVATED CRUELTY TO ANIMALS (AML 353-a):

1. A person commits aggravated cruelty when, with NO JUSTIFIABLE PURPOSE, he/she INTENTIONALLY KILLS OR CAUSES SERIOUS PHYSICAL INJURY TO A COMPANION ANIMAL (PET OR DOMESTICATED ANIMAL) WITH AGGRAVATED CRUELTY.

Killing or disabling an animal in self-defense or in defense of another (e.g. Robert Redford shooting a charging lion as it closes in on Meryl Streep in Out of Africa) or to put down a rabid dog (e.g. Atticus Finch in To Kill a Mockingbird), would surely qualify as a justifiable purpose, but this statute appears to focus on those who act both intentionally (i.e.  with a conscious objective or purpose to kill or or to cause serious physical injury), and with an evil mind (i.e. with intent to cause EXTREME PHYSICAL PAIN, OR IS CARRIED OUT IN AN ESPECIALLY DEPRAVED OR SADISTIC MANNER), suggesting that some kind of pleasure derived from an the animal’s torment).

Examples might include setting an animal on fire (e.g. Buster the Cat), choking a dog (Bellla) with a twist tie before bagging it and beating it with a shovel, dismembering, crushing, hanging, drowning, boiling or stomping a small  animal (whether with work boots or stiletto heals), or any other macabre method that a warped mind can concoct. The modus operandi need not necessarily be of horror-film quality, however, to support a prosecution under this statute.

As noted in paragraph three of this section, a defendant who is convicted of this offense is subject to sentencing pursuant to PL 55.10(1)(b) (Class E Felony), except that any term of imprisonment shall be a DEFINITE SENTENCE not to exceed TWO YEARS. (For Penal Law felonies, state jail time exposure consists of an indeterminate sentence of between one to three years to one and one third to four years). A defendant could also be sentenced to five years probation, a split sentence of six months in jail plus probation or a fine up to $5000.00.

Pursuant to paragraph two, this statute does not apply to: anyone who is “lawfully engaged in hunting, trapping or fishing per ECL Art. 11, the dispatch of rabid or diseased animals as provided in PHL Art. 21, or the dispatching of animals posing a threat to human safety or to other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by the (State) Commissioner of Health pursuant to (AML 353).

PROVIDING APPROPRIATE SHELTER FOR DOGS LEFT OUTDOORS (AML 353-b):

2(a): Any  person who owns or has custody/control of a dog that is left outdoors (1[c] i.e. in inclement weather without ready access to or the ability to enter, a house, apartment building, office building or any other permanent structure [i.e. having a waterproof roof, being structurally sound with appropriate insulation sufficient to protect the animal from bad weather, sufficient room to move and removal of waste], SUBD.3[b]), SHALL PROVIDE IT WITH SHELTER APPROPRIATE TO ITS BREED, PHYSICAL CONDITION AND THE CLIMATE.

A KNOWING VIOLATION of this section constitutes VIOLATION PUNISHABLE by a FINE of at least $50.00 up to $100.00 for a first offense, and between $100.00 and $200.00 for subsequent offenses.

After 72 hours from the filing of a charge under this section, EACH DAY that a defendant FAILS TO CORRECT the deficiencies in his/her dog’s shelter (and the dog remains outdoors), shall constitute a SEPARATE OFFENSE.

2(b): The court may reduce any fine imposed under this section by the amount the defendant proves he/she has spent providing or repairing a shelter to bring it into compliance, but NOTHING SHALL PREVENT THE SEIZURE OF A DOG FOR A VIOLATION OF THIS SECTION PURSUANT TO THE AUTHORITY GRANTED IN THIS ARTICLE.

3(a): Dogs who are restrained outdoors must be provided with natural or artificial shade to protect them from direct sunlight when such exposure is likely to threaten their health.

4. INADEQUATE SHELTER may be shown by the appearance of the structure itself including size, structural soundness, crowding, healthful environment or by a dog’s physical condition.

5. Upon a finding of a violation of this section, any dog(s) seized that have not been voluntarily surrendered by the owner/custodian (or forfeited by court order), shall be returned to the owner/custodian ONLY UPON PROOF THAT APPROPRIATE SHELTER IS BEING PROVIDED.

ELECTROCUTION OF FUR-BEARING ANIMALS (AML 353-c), CLASS A MISDEMEANOR:

1. NO PERSON SHALL INTENTIONALLY KILL OR STUN A FUR-BEARING ANIMAL (e.g. artic fox, red fox, silver fox, chinchilla, mink, pine marten, muskrat (and those included in ECL 11-1907) by means of an electrical current.

CONFINEMENT OF COMPANION ANIMALS IN VEHICLES/EXTREME TEMPERATURES

(AML 353-d):

1. A person (owner/custodian/other) SHALL NOT CONFINE A COMPANION ANIMAL (PET) IN A MOTOR VEHICLE IN EXTREME HEAT OR COLD WITHOUT PROPER VENTILATION OR OTHER PROTECTION FROM SUCH EXTREME  TEMPERATURES WHERE SUCH CONFINEMENT PLACES THE ANIMAL IN IMMINENT DANGER OF DEATH OR SERIOUS PHYSICAL INJURY DUE TO EXPOSURE TO SUCH EXTREME HEAT OR COLD.

 Pursuant to subdivision five,  a knowing violation of this statute constitutes a VIOLATION punishable by a minimum fine of $50.00 up to a maximum $100.00 for a first offense, and a fine between $100.00 and $250.00 for subsequent offenses.

2. Where the vehicle operator cannot be located, a police officer, peace officer, SPCA officer, EMT, firefighter (including volunteer) may take necessary steps to REMOVE the animal(s) from the vehicle.

3. Enforcement officers etc. listed in paragraph 2 who are directed to a call for assistance for such animal and remove it from a vehicle shall leave  WRITTEN NOTICE on or in the vehicle with their name, agency/department, address and contact information so the owner will know where the animal has been taken.

4. An animal that has been so removed shall, after receiving any necessary emergency veterinary treatment, be delivered to the SPCA in the jurisdiction where it was seized.

6. Enforcement officers etc listed in paragraph 2 SHALL NOT BE HELD CRIMINALLY OR CIVILLY LIABLE for reasonable actions undertaken in good faith to carry out these provisions.

7.This section does not affect any other protections afforded to companion animals under any other provisions of this article.

AML 353-E: COMPANION  ANIMAL  GROOMING FACILITIES/PROHIBITED PRACTICES. (SEE TEXT OF STATUTE).

AML 353-F: COMPANION ANIMAL PIERCING AND TATTOOING PROHIBITED. (SEE TEXT).

AML 355: ABANDONMENT OF ANIMALS:

An owner, possessor or custodian of an animal who abandons it, leaves it in a street/road/public place to die, or who allows such animal, if it becomes disabled, to lie in a street/road/public place for MORE THAN THREE HOURS after receiving notice that it is left disabled is GUILTY OF A MISDEMEANOR PUNISHABLE UP TO ONE YEAR IN JAIL AND/OR A FINE UP TO $1000.00.

AML 356: FAILURE TO PROVIDE PROPER FOOD AND DRINK TO IMPOUNDED ANIMALS:

A person who, having impounded or confined any animal, refuses or neglects to provide such animal during its confinement with a sufficient supply of fresh air, shelter and water is GUILTY OF A MISDEMEANOR punishable up to one year in jail and/or a fine up to $1000.00.

If such animal is confined without necessary food and water for over 12 straight hours, any person may, from time to time, enter any pound and supply theM to the animal during its confinement without liability for entry. Such person may also seek reimbursement for the cost of such supplies from the animal’s owner.

AML 359; CARRYING AN ANIMAL IN A CRUEL MANNER:

1. A person who carries (or causes to be carried in or upon any vessel or vehicle or otherwise), any animal in a cruel or inhuman manner, or so as to produce torture, is GUILTY OF A MISDEMEANOR punishable by up to one year in jail and/or a fine up to $1000.00.

2. See text of statute for liability of railway corporations or owner/agent/consigned of horses, sheep or swine in the course of transport.

AML 359-A TRANSPORTATION OF HORSES:

 (See text of statute for requirements for vehicles used to transport over six horses).

AML 360: POISONING OR ATTEMPTED POISONING OF ANIMALS:

A person who UNJUSTIFIABLY ADMINISTERS ANY POISONOUS OR NOXIOUS DRUG OR SUBSTANCE TO AN ANIMAL (other than a horse, mule or domestic cattle), or who UNJUSTIFIABLY EXPOSES ANY SUCH DRUG/SUBSTANCE WITH INTENT THAT IT SHALL BE TAKEN BY AN ANIMAL, (whether the animal belongs to him or another), is GUILTY OF A MISDEMEANOR PUNISHABLE UP TO ONE YEAR IN JAIL AND/OR A FINE UP TO $1000.00.

If the animal in question is a horse, mule or domestic cattle, a violation of this statute constitutes a FELONY.

AML 361: INTERFERENCE WITH/INJURY TO  CERTAIN DOMESTIC ANIMALS:

It is a FELONY for any person (owner or otherwise),  to WILLFULLY OR UNJUSTIFIABLY INTERFERE WITH, INJURE, DESTROY OR TAMPER WITH, or willfully set on foot, instigate, engage in or further any act by which any HORSE, MULE, DOG OR ANY OTHER DOMESTIC ANIMAL USED FOR RACING, BREEDING OR COMPETITIVE EXHIBITION OF SKILL, BREED OR STAMINA is interfered with, or any act tending to produce such interference, injury, destruction or tampering with such animal.

AML 362: THROWING INJURIOUS SUBSTANCES IN A PUBLIC PLACE:

It is a MISDEMEANOR to willfully THROW, DROP OR PLACE (or to cause such activity) upon any ROAD, HIGHWAY, STREET OR PUBLIC PLACE, ANY GLASS, NAILS, PIECES OF METAL OR OTHER SUBSTANCE WHICH MIGHT WOUND, DISABLE OR INJURE ANY ANIMAL.

AML 363: UNAUTHORIZED POSSESSION OF DOGS: (PRESUMPTIVE LARCENY):

The unauthorized possession of dogs is presumptive evidence of larceny. The unauthorized possession of a dog(s) by anyone not the true owner for over 10 days without notifying either the true owner, local police, state police of such possession constitutes presumptive evidence of larceny.

AML 364: RUNNING HORSES ON A HIGHWAY:

It is a MISDEMEANOR for any person driving any horse-drawn vehicle on a plank road, turnpike or public highway to unjustifiably run the horses or cause/permit them to do so.

AML 365: CLIPPING/CUTTING DOGS’ EARS:

It is a MISDEMEANOR TO CLIP OR CUT (or to procure another person who is not a licensed veterinarian using an anesthetic to cut or clip) the whole or any part of a dog’s ears.

AML 366: STEALING A COMPANION ANIMAL:

It is unlawful (and punishable up to six months in jail and/or a fine up to $1000.00), to:

1. REMOVE (or cause to be removed) the collar I.D. tag or any other identification from any dog, cat or other companion animal (AML 353[5]), or to ENTICE any identified dog, cat or other such companion animal into or out of any house or enclosure for the purpose of REMOVING ITS COLLAR OR I.D. TAG (except with the owner’s permission);

2. To ENTICE, SEIZE OR MOLEST any companion animal while it is being held or led by any person or while it is properly muzzled or wearing a collar with an I.D. tag attached, (except where such action is incidental to the enforcement of some law or regulation);

3, To TRANSPORT any companion animal, not lawfully in his/her possession, for the purpose of KILLING OR SELLING such companion animal.

AML 366-A: REMOVING, SEIZING OR TRANSPORTING DOGS FOR RESEARCH PURPOSES:

It is unlawful (and punishable up to six months in jail and/or a fine up to $500.00), to:

1, REMOVE, SEIZE, TRANSPORT (or to cause such conduct) any dog which belongs to or is licensed to another for the purpose of SALE, BARTER OR TO GIVE AWAY SAID DOG TO A LABORATORY, HOSPITAL RESEARCH INSTITUTE, MEDICAL SCHOOL OR ANY AGENCY/ORGANIZATION ENGAGED IN RESEARCH ACTIVITY WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE OWNER OR LICENSEE.

AML 367: LEAVING THE STATE TO AVOID THE PROVISIONS OF THIS ARTICLE:

Any person who leaves the state to avoid these provisions (or who intends to commit any act out of state which is prohibited by this article), or who intentionally  does any act out of state which would be punishable by these provisions (if done in state), is punishable as if such act was committed within this state.

AML 368: UNLAWFUL OPERATION UPON HORSES’ TAILS:

1.It is unlawful (and punishable up to one year in jail and/or a $500.00 fine), for any person to cut the bone, tissue, muscles or tendons of the tail of any horse, mare or gelding (or to otherwise operate upon it in any manner), for the purpose or with the effect of docking, setting, or otherwise altering the natural carriage of the tail, (or to knowingly permit such procedure to be performed upon the owner’s/lessee’s/proprietor’s/ user’s premises, or to assist or be voluntarily present at such cutting).

2. It is also unlawful to show or exhibit in this state a horse/mare/gelding whose tail has been cut as described above. (See full text of statute regarding veterinarian’s affidavit regarding cutting before 1964 or in a state where such cutting is not prohibited).

AML 369 INTERFERENCE WITH OFFICERS:

It is a misdemeanor (punishable up to one year in jail and/or up to a $1000.00 fine), to interfere with or obstruct any constable, police officer or SPCA officer from discharging his/her law enforcement duties relating to animals.

AML 351: PROHIBITION OF ANIMAL FIGHTING:

One area of animal-related law that has drawn significant attention from both law enforcement and the public involves the raising, training and exploitation of animals (mostly dogs) for fighting for profit (via hosting and/or betting), or amusement. This form of animal abuse was brought into the national spotlight in 2007 when former NFL star (then Atlanta Falcons quarterback), Michael Vick and his partners were arrested and charged federally with operating a large-scale dog-fighting operation on Vick’s 15-acre property (“ Bad Newz Kennels”) in  Smithfield Virginia.

Numerous dogs, (mostly Pit Bull Terriers) were seized (revealing a wide variety of new and old injuries consistent with participation in repetitive fighting), and the investigation revealed that many dogs had also been subjected to torture in one form or another (e.g. hanging, drowning, shocking, slamming and shooting).

What Vick and his cohorts considered to be a sport (reportedly from growing up around dog-fighting), was described as callous and cruel by the judge who sentenced Vick to two years in federal prison for Conspiracy to Operate a Dog-Fighting Enterprise. Vick also ended up filing for bankruptcy in 2008, and his NFL career fizzled after he got out of prison. His property reportedly was converted to a shelter for abused animals.

Pursuant to AML 351(2), any person who engages in animal fighting (defined in subdivision 1 as any fight between dogs [or between cocks, other birds, between bulls, bears or any other animals], or between any such animal and a person, except in rodeo exhibitions), is GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT UP TO FOUR YEARS AND/OR A FINE UP TO $25,000.00.

Proscribed conduct under this section includes: (a) causing any animal to engage in animal fighting for amusement or gain; or

(b) TRAINING any animal under circumstances evincing an INTENT that such animal engage in animal fighting for amusement or gain; or

(c ) BREEDING, SELLING OR OFFERING FOR SALE any animal under circumstances evincing an INTENT that such animal engage in animal fighting; or

(d) PERMITTING any act described above to occur on PREMISES UNDER HIS CONTROL; or

(e) OWNING, POSSESSING OR KEEPING ANY ANIMAL TRAINED TO ENGAGE IN ANIMAL FIGHTING on premises where an exhibition of animal fighting is being conducted under circumstances evincing an INTENT that such animal engage in animal fighting.

3(a) Any person who owns, possesses or keeps any animal under circumstances evincing an IINTENT that such animal engage in animal fighting (subd. 3[b], is guilty of a MISDEMEANOR punishable by up to one year in jail and/or a fine of up to $15000.00.

4(a) Any person who is a KNOWING SPECTATOR who, either having PAID AN ADMISSION FEE OR HAVING MADE A WAGER AT ANY PLACE WHERE AN ANIMAL FIGHTING EXHIBITION IS BEING CONDUCTED (subd. 4[b]), is guilty of a MISDEMEANOR punishable by up to one year in jail and/or a fine up to $1000.00.

5(a) Any SPECTATOR knowingly present at an animal fight exhibition (subd 5[b]), is guilty of a CLASS B MISDEMEANOR punishable by up to three months in jail and/or a fine up to $500.00. If such person was previously convicted of this subdivision (or of violating subd. 4 by paying an admission fee  or betting on an animal fight), within the previous five years, the he/she is guilty of a (CLASS A) MISDEMEANOR punishable by up to one year in jail and/or a fine up to $1000.00.

6. Any person who INTENTIONALLY OWNS, POSSESSES, SELLS, TRANSFERS OR MANUFACTURES ANIMAL FIGHTING PARAPHERNALIA WITH THE INTENT TO ENGAGE IN OR OTHERWISE PROMOTE OR FACILITATE ANIMAL FIGHTING (per subd.1), IS GUILTY OF A CLASS B MISDEMEANOR (punishable by up to 90 days in jail and/or a fine up to $500.00).

If such person was convicted of violating this subdivision within the previous five years, then he/she is guilty of a (CLASS A) MISDEMEANOR (punishable by up to one year in jail and a fine up to $1000.00).

(b). ANIMAL FIGHTING PARAPHERNALIA MEANS: EQUIPMENT, PRODUCTS OR MATERIALS OF ANY KIND THAT ARE USED, INTENDED FOR USE OR DESIGNED FOR USE IN THE TRAINING, PREPARATION, CONDITIONING OR FURTHERANCE OF ANIMAL FIGHTING.

Such paraphernalia includes: i. BREAKING STICKS (designed to release a dog’s grip on another animal or object); ii. a “CAT MILL” (which allows a dog attached to one arm of the device to chase a cat, rabbit or other small animal attached to another arm just out of the dog’s reach); iii.a TREADMILL (which allows the animal to run ad infinitum in place to build up stamina and musculature); iv. a S-RING POLE (which allows a  dog to  bite onto a bit and hang suspended, thereby strengthening its jaw muscles); v. a FIGHTING PIT (consisting of a walled-off or otherwise defined area [e.g. with hay bales], to CONTAIN AN ANIMAL FIGHT; or ANY OTHER INSTRUMENT commonly used in furtherance of pitting animals against each other.

Law enforcement and SPCA officers will often conduct investigations based on tips from informants (whether bettors, spectators or persons otherwise familiar with a suspect’s dog fighting operation). The informant may be brought IN CAMERA (whether to work off a criminal charge or obtain compensation or some other benefit), in support of a search warrant.

If the investigators have sufficient training and/or experience in dog fighting cases, they will explain to the magistrate how the animals (including their breed, shape size, build and evidence of new and old injuries), their confines (e.g. in cages, secured with heavy chains, areas cordoned off with hay or other partitions), and paraphernalia observed at the scene (e.g. spring poles, treadmills, break sticks, vitamin supplements, IV bags [whether for pre-fight nutrition or post-fight medication], lidocaine, dog fighting literature], provide probable cause to believe that such premises are being used to train, house or otherwise keep animals for dog fighting.

If the officers’ own experience is lacking, they are wise to provide a sworn affidavit from an expert in dog fighting and/or from a veterinarian who is familiar with the kinds of injuries that are indicative of sustained and repetitive dog fighting (e.g. multiple new and old injuries from chewed off ears to scarred snouts, wounded necks, abdomens and forelegs that have have obvious bite marks), as opposed to the occasional snaps and bites from neighborhood dogs looking to protect their turf or otherwise assert their dominance.

The defense of those accused of running or participating in an illegal dog-fighting operation commonly involves a constitutional challenge to the search of the suspect’s premises and the seizure of incriminating evidence. In People v Richardson 155 AD3d 1595 (4th dep’t 2017), the Fourth Department upheld the defendant’s convictions for Felony Animal Fighting, Misdemeanor Dog Fighting, finding that the evidence was legally sufficient to support the charges and the verdict was not against the weight of the evidence.

In that case, police entered the defendant’s house upon the consent of his wife who had called to report a burglary-in-progress. Once inside, they noticed four Pit Bulls that were raising a ruckus. After securing the animals, they proceeded to the basement where they observed a wounded dog lying in its own excrement in a cage. They also saw a treadmill that had apparently been modified for dog use, blood on a water heater and paraphernalia (including canine combat literature) indicative of dog fighting.

The officers called in the SPCA and notified their lieutenant who applied for a search warrant. In the meantime, the SPCA officer started searching and taking photographs including shots of the inside of the refrigerator which had various vitamins and supplements for dogs.

The lower court suppressed the SPCA officer’s observations and evidence derived therefrom, but declined the defendant’s invitation to suppress all the evidence as unlawful fruits of the poisonous tree because the dogs, treadmill, the injured animal in a cage, the blood and other paraphernalia were all observed in plain view at a location where  the police had a legal right to be (by virtue of the burglary complaint and  consent to enter), they had lawful access to these items and their incriminating nature was readily apparent. The Appellate Division agreed, citing inter alia People v Woods 93 AD3d 1287 (4th dep’t 2014).

The court also held that it was not unlawful for the police to wait on site (as long as six hours) for the arrival of the signed search warrant before conducting a full-blown search for evidence of dog fighting. (People v Pinckney 90 AD3d 1313 [3d dep’t 2011]). Citing, inter alia,  People v Osorio 34 AD3d 271 (4th dep’t 2006), the court said that securing a dwelling on the basis of probable cause to prevent the destruction or removal of evidence while the search  warrant was being sought did not constitute an unlawful seizure of the dwelling or of items of evidence contained therein. (see also People v Bishop 2018 NY Sip Op. 03265 [4th dep’t 5/17/18].

While Article 690 (.05, .10, .15) of the Criminal Procedure Law permits officers to seize evidence of a crime from a designated location (for use as evidence), AML 375 authorizes officers to take possession of “animals or implements used in fights among animals.” Any officer authorized by law to make arrests (See CPL140.05, .10,.15, .25,.27, AML 371, 372), MAY LAWFULLY TAKE POSSESSION of any animals, implements or other property used or employed, (or about to be used or employed) in the violation of any provision of law relating to fights among animals.

Such officer must give the person in charge of the animals his/her name, address and the time and place of an application under AML 376 which addresses the DISPOSITION OF ANIMALS OR IMPLEMENTS USED IN FIGHTS AMONG ANIMALS.

Under this section, the officer SHALL APPLY TO THE MAGISTRATE before whom the complaint has been made for an order described below  (and shall submit a sworn affidavit stating the name of the offender, the time place and description of the animals/ implements or other property seized, together with the name of the party who claims the animals/implements, if known, and setting forth grounds to support the belief that such animal(s) was/were used in violation of this section).

The officer shall then deliver the animals/implements/other property to the magistrate who shall then, BY WRITTEN ORDER, place them in the custody of a designated officer or other proper person to be kept pending trial or final discharge of the offender. The magistrate shall send a copy of such order to the DISTRICT ATTORNEY .

The designated officer/other person named in the order shall immediately assume custody of the animals/implements/other property and retain them as evidence for trial until conviction or final discharge.

If the offender is convicted, the animals/Implements/other property will be deemed FORFEITED. In the event of an acquittal or final discharge, without conviction, the court shall, upon demand, direct that the animal/implements,/other property be returned to the owner thereof.

The statute does not define “final discharge” but a “final discharge without a conviction” would seem to suggest a dismissal (which has either not been appealed or affirmed on appeal).

AML 371: POWERS OF PEACE OFFICERS:

A police officer or constable MUST, and an SPCA officer MAY issue an APPEARANCE TICKET (per CPL 150.20), SUMMON OR ARREST and bring before a court/magistrate ANY PERSON OFFENDING AGAINST ANY OF THESE PROVISIONS (AML Art 26).

Any such officer may also LAWFULLY INTERFERE to prevent the perpetration of ANY ACT OF CRUELTY UPON ANY ANIMAL IN HIS/HER PRESENCE.

AN SPCA (or other Humane Society officer) may also “prefer a complaint” before any court, tribunal or magistrate with jurisdiction, for the violation of any law relating to or affecting animals and may and may aid in presenting the law and facts before such court in any proceeding.

AML 372: ISSUANCE OF WARRANTS UPON COMPLAINT:

Upon a sworn complaint made to any authorized criminal magistrate which provides reasonable cause to suspect a violation of any of these provisions relating to or affecting animals in any particular building or place, the magistrate shall immediately issue and deliver a WARRANT  to any person authorized by law to make arrests for such offenses, and authorizing such person (presumably a law enforcement officer), to enter and search such building or place, and to arrest any person there present found violating such laws, and to bring such person before the nearest authorized magistrate to be dealt with according to law.

While this section would appear to authorize the entry of a building to make an arrest of a person or persons against whom a complaint has been filed, (and to search the premises for the suspect), a search for evidence would still require a search warrant issued upon probable cause (unless obviously incriminating evidence is observed in plain view during a sweep of the premises for the person named in the arrest warrant).

While New York State, as noted at the outset, is one of only a baker’s dozen of states that do not prosecute animal abusers via the Penal Law, there are obviously plenty of avenues to pursue and punish offenders under the Agriculture and Markets Law for a broad spectrum of misconduct ranging from neglectful deprivation (e.g. of necessary sustenance) to outright depravity resulting in serious injury or death. Knowing those (sometimes obscure) provisions and the conduct that they proscribe and penalize is a good start for practitioners, especially those who take cases in rural jurisdictions or in those jurisdictions where animal fighting is not uncommon.