

# Analysis of Three Animal Cruelty Cases

## 2009 Annual Report



Governor's Commission  
on the  
Humane Treatment of Animals



## Executive Summary

This report analyzed three very different cases of animal cruelty in New Hampshire to examine the current issues related to cruelty reporting by the public, investigation, prosecution, and sentencing of cruelty cases, costs involved and the intent and effectiveness of current N.H. animal cruelty statutes. It also includes an evaluation of 2009 legislation as it relates to animal cruelty.

By using a case study format, the Governor's Commission on the Humane Treatment of Animals was able to isolate issues of concern, break those issues into procedural, logistical and financial issues, and to look at potential solutions for each.

When reviewing each case, there was a great overlap among the issues. There were overlapping procedural issues in the following areas:

- The reporting and investigation of animal cruelty
- The delay in legal proceedings and cost of animal care during that time
- Possible sentencing options for perpetrators of animal cruelty

Additional issues revealed:

- Potential costs of animal care often make agencies and towns reluctant to investigate and prosecute cases
- Difficult logistical complications during the seizure of multiple animals that were both cost and time prohibitive.
- Conflicting/confusing civil and criminal statutes related to animal cruelty (RSA's 644:8 and RSA 435)

When examining solutions to the issues, "education" appeared as the most common thread. Great strides have been made in educating law enforcement through efforts of the New Hampshire Police Standards and Training Council, but it will take time before all departments receive training.

Education of the public on what cruelty is, and on how to report animal cruelty, would allow cruelty cases to be investigated in a timely and professional manner for the greatest benefit of the animal. This issue was addressed in the 2008 Cost Analysis Report. Some simple solutions would be frequent broadcasting of PSA's and publication of newspaper press releases or even paid ads. Another solution would be to support the formation of a coalition to keep the issue in the public's perception. This would require funding.

Education of prosecutors and judges is needed to address the uniqueness of animal cruelty cases (the animal is both victim and evidence) and what are possible sentencing options. The Commission, if charged, could organize an educational conference in the state, but funding and/or sponsorship would need to be obtained.

A solution to address the high cost of animal care in these cases, other than the procurement of a state funding source, which is highly improbable, could be to add a clause to the current cruelty statute allowing bonding (where the owner pays for the care) or relinquishment (if the owner cannot afford to pay) of the animals early in the investigative or judicial process. Although this is a very controversial solution, there are laws in other states that accomplish just that. N.H. law has a procedure where a court order can now be obtained to release evidence from custody prior to the resolution of the criminal case and use photographs in lieu of the originals at trial. Arguably, this process could be used to release animals from protective custody prior to trial. (See Appendix D, RSA 595-A:6). The Commission, if charged, could host meetings of stakeholders with interest in such a law that might lead to drafting legislation directly addressing this issue.

This report is an important follow-up to the Cost Analysis of Animal Cruelty in New Hampshire (2008) and highlights issues in reporting, investigating, seizure and transportation of animals, procuring the funds for animal care and sentencing regarding the crime of cruelty to animals. The report offers potential solutions, though the Governor's Commission is solely an advisory body and is not responsible for their implementation. (See Appendix A for Executive Order)

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## Introduction

The members of the Governor's Commission on the Humane Treatment of Animals, upon the suggestion of Chairperson Patricia Morris, decided to study and analyze three recent cruelty cases, each representing a unique manifestation of cruelty typifying cases that occur in the State of New Hampshire. The Commission was able to obtain and work with warrants, arrest documents, court documents, correspondence between attorneys and, of course, press coverage of these cases. It was felt that these cases, presented properly, and viewed in light of Cost Analysis Report of 2008, would give a realistic picture of animal cruelty issues in the state.

Each case was distilled into an easy-to-follow report in a standardized format. In each case example, no names or identifying features were used as the Commission felt anonymity was important to show that this was an analysis and not a fault finding or promotional report.

The Commission chose a case involving abuse of an individual animal, a case involving neglect of multiple horses, and a case of animal hoarding/neglect with simultaneous alleged child neglect. Each of these received extensive media coverage and public comment during certain aspects of the case. This media coverage emphasizes the fact that N.H. residents are very sensitized and concerned about the issues surrounding animal cruelty.

As requested by the Governor's Office, also included in this report is a summary of the 2009 animal related legislation that the Commission felt was directly related to animal cruelty issues.

N.H. Animal Cruelty Statutes and the Administrative Rules pertaining to RSA 435 Treatment of Horses are included in the Appendix for reference.

Case Studies follow. Statements in quotation marks were taken from official records.

## Animal Cruelty Case 1: Woman Striking Dog

### Background and Timetable

1. On a Saturday in the second week of May 2008, two witnesses saw a woman “striking” and “kicking” her dog.
2. They called to report it to the local humane society, but left a voice message for the humane investigator.
3. The humane investigator retrieved the message on the following Monday, and the witnesses were referred to the local police department.
4. The police department started its investigation of the case, and called the humane society for information about seizing the dog.
5. The police department was concerned about the cost of housing the dog until trial.
6. A felony arrest warrant was issued two weeks later in the first week of June 2008, and the defendant was charged with “negligently acting in an injurious and detrimental manner”. The felony charge was warranted because the police investigation discovered a prior misdemeanor conviction for animal cruelty dating from 1997. This prior conviction made the repeat offense a felony per RSA 644:8 III.
7. The defendant was arrested and released on \$2500 personal recognizance bail.
8. She was brought before the district court with an arraignment date approximately six weeks later, in July of 2008.
9. She waived the probable cause hearing the first week of August, 2008.
10. She was subsequently indicted the first week of November, 2008.
11. The defendant was arraigned in Superior Court in the beginning of December, 2008.
12. When the case was scheduled for trial, the records of the prior conviction could not be located. Though there was a record of the conviction, the records were “officially unavailable” from the District Court, and therefore of limited value to the current case.
13. An information<sup>1</sup> was obtained the second week of July, 2009. The information alleged all the elements of the felony indictment with the exception of the prior conviction. This information reduced the charge to a Class A misdemeanor.
14. At the end of July 2009, the woman pled guilty to the misdemeanor charge. The felony charge was not prosecuted.<sup>2</sup>
15. The sentence was a fine and a suspended jail sentence. The sentence also required her to complete an anger management course and animal handling/husbandry course approved by the New Hampshire Society for the Prevention of Cruelty to Animals

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<sup>1</sup> A complaint filed in the Superior Court by the county attorney for an offense other than a felony. A felony is by indictment.

<sup>2</sup> Not prosecuted

(NHSPCA). If she did not take the courses she would have to surrender her animals and serve the suspended sentence.

16. The dog no longer lives with the woman. She said she gave the dog away.

## Issues of Concern

### **Procedural Issues**

**Reporting Animal Cruelty:** The witnesses did not report the crime to the police initially which delayed the response by several days because of the weekend occurrence.

**Delay in Arrest Warrant:** Two weeks elapsed between the initial complaint and the procurement of an arrest warrant and subsequent arrest. The dog had been in and was allowed to continue to remain in the owner's custody. It is unclear if the investigating officer observed the dog before the arrest warrant was issued.

**Animal Seizure or Protective Custody:** The officer in the initial police investigation made observations of the dog in question and felt that the dog "looked OK",<sup>3</sup> and did not take the dog into custody as allowed under RSA 644:8:IV-a.(a). While this may or may not have been the correct decision in this case, there was no veterinary examination of the dog, or photographic or other documentation of the dog's condition at the time of the initial investigation. This highlights the need for a consistent procedure to be followed in cruelty investigations. As a result of this decision, the animal was left in the care of the alleged abuser. Since, in fact, the dog in this case was both the alleged victim and the evidence, there is a question as to whether this action provided adequate protection for the dog or adequate security of the evidence.

**Misdemeanor Charging Decision:** The word "negligently" was used in the arrest warrant and in the subsequent charge. When a person beats an animal for a specific reason such as a "training" method in this case, it is "purposeful". Choosing to charge this as a "negligent" act resulted in a more lenient sentence since it could not be sustained as a felony charge without the prior criminal conviction. In the contest of this case, the defendant's actions appear to be purposeful and evidence of prior bad acts acknowledged by the defendant could have been admitted at trial.

**Delay in Legal Proceedings and/or Trial:** This case was not disposed of by the court for approximately 14 months, while the dog remained in the possession of the alleged abuser. While RSA 644:IV(a) allows that "Courts shall give cases in which animals have been confiscated

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<sup>3</sup> It unclear when this observation of the animal occurred. It may have been the initial investigation or upon issuing of the arrest warrant.

by an arresting officer priority on the court calendar”, this provision did not apply in this case, as the animal was not seized.

**Record Keeping/Referencing:** The official records for the prior conviction by the court were unable to be located. This proved fatal to the felony level (2<sup>nd</sup> offense) charge in the initial arrest warrant, and contributed to a lesser misdemeanor charge.

**Sentencing:** The court required the defendant to “complete an anger management course and animal handling/husbandry course approved by the NHSPCA.” In fact, no such course exists, which necessarily eliminates the effectiveness of this provision of sentencing.

### **Logistical Issues**

This case did not present any particular logistical problems because the dog was not taken and remained in the care of its alleged abuser. In the absence of further complaints during the 14-month time period of investigation and court proceedings, it could be assumed that there was no need to further examine the dog’s condition. However since there was no forensic examination of the dog at the time of the initial investigation, the dog’s condition at the time of trial 14 months later could be significantly improved; therefore, decreasing the validity of the original claim. Living creatures are not stagnant evidence, so it is therefore vital to properly document conditions at the time of the report of alleged cruelty.

Also of note, at the time of sentencing the dog was no longer living with the owner. Was the dog’s welfare monitored and actually ascertained during the wait for legal proceedings?

### **Financial issues**

**Cost of Animal Care While in Custody:** In this case, one of the factors that apparently influenced the decision not to seize the dog was the estimated shelter cost of \$15 per day for the dog’s care. Given the 14-month duration of this case, this could have resulted in a financial burden to the town’s police department of over \$6,000, which is a significant sum, and which typically becomes the primary portion of restitution commonly commanded in sentencing.

## Potential Solutions

**Public Education:** The public needs to be educated as to how to report an animal cruelty case. Animal cruelty is a crime in the criminal code, and as such should be reported to the police immediately in the first instance. This was referenced in 2008 Cruelty Cost Analysis.<sup>4</sup>

**Cruelty Case Investigation Education:** The agents who may respond to reports of animal cruelty (law enforcement officers, humane Investigators, animal control officers) should receive training to ensure a thorough use of investigatory tools and documentation methods. Unlike cash, automobiles, weapons, or other crime scene articles, an animal should, with proper care, recover from its alleged abuse prior to trial, so it is vital to have proper evidentiary information to successfully prosecute cruelty cases.

N.H. Police Standards and Training Council has realized this need and now includes two hours of Animal Cruelty Education in its Police Academy and a two-day In-Service Training Course available to Law Enforcement Officers and Animal Control Officers. This will, in time, ensure that animal cruelty cases are investigated proficiently.

**Court Record Keeping:** This case does point to a need to look into, with court representatives, possible solutions to prevent the loss of records of prior convictions which may affect the prosecution charging decision. There is no time limitation for cruelty convictions as is often the case for other crimes, and this second offense should have resulted in a felony conviction.

**Funding of the Seizure and Care of Animals Taken Into Custody:** Discussions should take place with stakeholders including the General Court, the Local Government Center, the Department of Agriculture, and licensed humane organizations, on the availability of funds for communities to obtain financial assistance in animal abuse cases. Ideally, concern over the potential cost of housing an animal should not be a primary factor in the assessment of probable cause to allow seizure. It is interesting to note that when an animal is seized for any other reason by law, i.e. rabies quarantine, non-licensing, straying, the owner cannot retrieve the animal until the cost of care has been paid. In the case of a six-month rabies quarantine, the payment is received in advance. In cruelty cases, which often extend much longer than 6 months, no payment for the care of the animal is received by the town or shelter unless the case is won in court.

**Sentencing:** There is a need to provide educational opportunities for judges, prosecutors, probation/parole officers, and law enforcement personnel on possible sentencing options for animal cruelty. Resolution of future cases may need the development of specific counseling targeting this behavior and the creation of public education classes on acceptable animal training and handling methods.

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<sup>4</sup> Cost Analysis of Animal Cruelty 2008 Report, Conclusions and Suggestions p. 15

## **Animal Cruelty Case 2: Multiple Horses with Inadequate Shelter and Care**

### **Background and Timetable**

1. In early September, 2008, a Humane Investigator from an Animal Shelter received report of neglected horses/no shelter/lack of water on the town line. The Investigator transferred the case to the Animal Control Officer of one of the towns to handle and investigate. The Animal Control Officer was not allowed on the property but did notify the owners of the required proper care of horses.
2. In early November 2008, the Investigator received a phone call about horses without shelter at the same property. When he responded to the address, he was met by two N.H. persons (neither were the landowners), armed with firearms. They refused to let the Investigator inspect the property for adequate shelter. He was informed by these two armed men that the shelter was “down back” and that the Investigator was not to step foot on the property. The Investigator left the scene and filed a report with the PD of the town where the horses were held.
3. The Investigator received another call in February 2009 in regards to these horses without shelter. The caller also states the horses, in their opinion, are starving for lack of food and water, and some need medical attention.
4. In response, the Investigator again contacted the town police department and turned case over to them for follow up. A complainant provided the police with additional evidence; she was an informant who worked on the property. Armed with this information, the police believed they had enough evidence to obtain a search warrant. Subsequently, the District Court granted the search warrant.
5. During the first week of March, the police department held a meeting with the following parties: two neighboring town police departments, the State Veterinarian, the Investigator, an Attorney who works with equine rescue and two volunteer civilians (the first is the property owner where the horses were to be transported to and held, and the second, a stable owner to assist in transporting the horses). The parties discussed the police department’s plan to remove the horses. At this point, the police expected they may remove some or all of the twenty eight (28) horses on the property.
6. Soon after, during the same week, the court issued a search warrant. Two veterinarians volunteered their time and examined all of the horses on property. The Veterinarians decided to remove a total of 12 out of 28 horses. Of these twelve horses, six were removed from the property (“seized”) due to lack of adequate shelter and six were seized for health/ medical issues.

7. The animal shelter and civilians relocated these 12 horses and placed them in a secret location in fear the owners may try to retrieve them illegally. The horses were vet-checked and given food and shelter as needed and required.
8. The horses that remained at the property were quarantined pursuant to N.H. law RSA 436. These horses were, as were the 12 seized horses, transported illegally into N.H. from Colorado. The horse owners did not possess interstate health certificates/negative Coggins test, nor did they file them with the N.H. Department of Agriculture, Markets and Food, as required by law. The horses were vaccinated and quarantined at the property for 14 days.
9. Late March 2009, an arrest warrant was issued for the horse owner alleging seventeen (17) counts of abuse in violation of N.H. RSA 435:14 (shelter) and N.H. RSA 644:8 (cruelty). The owner turned herself into the authorities the next day. She was subsequently released on \$5,000.00 personal recognizance bail.
10. At that time the State requested the Court seal the warrant to protect the informant's identity for her personal safety.
11. The prosecution and defense reached an Agreement regarding restitution for the care of the seized horses on the day of the arrest. This Agreement simply reserved the State's right to seek restitution and the defendant's right to contest restitution for the care of the horses during the legal proceedings. This permitted the State to return the horses to the defendant prior to trial.
12. The horses started being returned to the defendant on the last day of March 2009 as a state licensed veterinarian determined some of the seized horses were now healthy and; therefore, ready to be returned to defendant. One horse was returned on March 31, 2009. By mid April 2009, ten more horses were returned to the defendant. Finally, the last horse was returned to defendant in mid July 2009.
13. The total bill to the town for the boarding and medical expenses of the seized horses provided by the shelter was \$10,771.20. However, the owner agreed to provide restitution.
14. A plea agreement was reached between the prosecution and defense: the charges were pled down to two violations of failure to provide shelter. There were no cruelty charges included in the plea.
15. The Prosecution recommended this disposition based on the goals of the sentencing - to ensure proper care for the defendant's horses. In addition, by avoiding a possible two-day trial, significant monies were saved – avoiding the use of judicial resources, state funds, witness expenses, law enforcement time, etc. Approximately 60 hours of prosecutorial time was dedicated to this case. Using former county attorney Rick St.

Hilaire's<sup>5</sup> estimated cost of \$27.60 per hour for prosecution time, this case cost \$1,656.00.

16. Combined with the \$10,771.20 town charges (from the police department budget), the \$1656.00 prosecution, the cost totaled \$12,427. This does not include the costs of the initial investigation, police department hours investigating and pursuing charges against the defendant, or the manpower involved in seizing, transporting and caring for these animals.

## Issues of Concern

### **Procedural issues**

**Reporting Animal Cruelty:** It is important to note that animal cruelty allegations may be handled by a number of different agencies, not all of which are available in all towns. In this case, the initial complaint was received by a humane investigator, of which there are a limited number in the State of N.H. (In N.H., a few Humane Investigators have the police power to investigate relative to the N.H. Animal Cruelty Statutes. Most do not have police powers.) The Investigator chose to turn the case over to the Animal Control Officer (ACO) in one of the towns. (Not all towns have ACO's available to assist in cruelty investigations. Some ACO's are law enforcement officers able to investigate under the criminal code, but most are not.) Ultimately, the local police became involved due to the firearms issues. Again, the local police department became responsible for intervention and investigation. (It should also be noted that the state veterinarian has no police powers related to RSA 644:8)

**Delay in Search Warrant:** Six months elapsed between the date of the initial complaint in September and the final execution of the search warrant on the property in March. Most of this delay was due to lack of probable cause because the horses could not be seen "in plain view" and the owner's refusal to permit law enforcement to enter the property. It is significant to note that RSA 435:14 specifically requires the provision of adequate shelter from November 1<sup>st</sup> to April 15<sup>th</sup>, so in this case 4 of the 6 months of this delay were especially unfortunate for the animals in question.

**Equine Seizure Based on Two Different Statutes:** Equine cases include a specific provision that the determination of probable cause prior to taking of animals be determined by either the State Veterinarian or any licensed veterinarian (RSA 644:8 IV-a.(b)). In this case, the State Veterinarian was involved in the initial discussion prior to the execution of the search warrant, and two local veterinarians were involved in the actual examination of the horses prior to their seizure. While there were 17 alleged violations in the search warrant, the search resulted in the

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<sup>5</sup> See 2008 Cruelty Cost Analysis for reference.

seizure of 12 horses, six under the application of RSA 644:8 and six under the application of RSA 435:14. The documentation of conditions is essential to the evidentiary process, especially due to the differing burden of proof requirements between civil and criminal cases.

The fact that there are two conflicting statutes related to equine neglect is often very confusing and problematic to investigators, prosecutors and judges.<sup>6</sup> For instance, the shelter requirements for horses are stated in RSA 435 and its Administrative Rules. There is no description of shelter for horses in RSA 644:8 although it refers to “acts or omissions injurious or detrimental to the health, safety or welfare of any animal” which would include inadequate shelter.

**Animals Released From Custody Before Case Resolution:** Three weeks elapsed between the time of the search warrant/seizure and the arrest warrant for the owner. During this time that the horses were in protective custody, the total bill to the town had already exceeded \$10,000. After the arrest, a restitution agreement was drafted, to limit the town’s further expense, allowing the horses to be returned to the owner. While the horses had been deemed healthy enough to release as a result of their 3-week recovery period, they were being released back to the care of their alleged abuser prior to trial, and prior to the payment of restitution. The proper procedure in this case would have been to obtain a court order (RSA 595-A:6)<sup>7</sup> for returning the horses with conditions for supervision of their care, or for surrendering the animals into the care of a humane organization. Photographs, videos, veterinary records would have been admissible as secondary evidence in any trial.

**Delay in Legal Proceedings:** The final hearing on this case was not held until October 2009, 11 months after the date of the initial complaint. RSA 644:8 IV-a clearly gives priority to animal cruelty cases in which animals have been confiscated. In this case, most delays were caused by the defense requests for delays which ultimately caused the town to consider a plea agreement to keep down its costs. This case indicates that there may be some question as to whether this “priority” policy is followed by the courts or can be realistically followed by the courts with current demanding case loads and reduced hours.

**Sentencing:** The plea agreement which was reached included two violations of shelter under RSA 435:14, and **no** cruelty charges. Note that RSA 644:8 IV-a states that “the costs, if any, incurred in boarding and treating the animal.....upon a conviction of said person for cruelty to animals, shall be borne by the person so convicted”. While there was a prior Restitution Agreement (discussed above), absent a charge for cruelty, the argument for payment of

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<sup>6</sup> See Appendix B p. ii, and viii for statutes. See Appendix C for RSA 435 Administrative Rules

<sup>7</sup> See Appendix D

restitution is greatly weakened. Furthermore, any subsequent convictions might only be a misdemeanor, and may not result in the forfeiture of any horses the defendant may own.

### **Logistical issues**

**Livestock/Equine Seizures and Transport:** All equine/livestock cruelty cases will have unusual logistical challenges just by virtue of the special requirements needed to deal with the handling and transport of large animals, and the limited space available for the shelter and care of these animals once taken into custody.

A number of volunteers were recruited to provide their own trucks and trailers to load and remove the horses seized at the property. In addition, there was the burden of removing the horses to undisclosed locations to protect them from the threat of being reclaimed illegally.

After the restitution agreement was reached, the horses were returned to the owner, not all at once, but over a period of several months. Again, this represents several trips with trucks and trailers to move the evidence in the case back and forth across the state. During this time, there were also significant legal proceedings arguing about the condition of the horses to evaluate whether they were fit enough to be returned to the owner.

### **Financial Issues**

This case shows how quickly the cost of seizure and rehabilitation of animals can accrue. This cost burden is the responsibility of the town in which the animals are seized, and is usually an unbudgeted expense. As noted above, RSA 644:8 specifically allows the collection of restitution, but this is only upon a conviction for the alleged cruelty. In this particular case, a separate restitution agreement was agreed upon. The owner did pay approximately 30% of the restitution up front; however, the remaining 70% was to be paid back over a 4-year period, leaving the police department with the additional task of reporting non-payments to the court and forcing reallocation of budgets within the town to cover this delayed, or potentially absent, repayment.<sup>8</sup>

## **Potential Solutions**

**Public (Horse Owner) Education:** The defendant in this case was economically unprepared for the magnitude of her horse ownership responsibilities under N.H. law, which unfortunately resulted in the substandard living conditions from which her horses were removed. This is

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<sup>8</sup> RSA 644:8 IV(b) does contain a provision requiring a defendant to post a bond, not to exceed \$2000 per animal, if an animal is retained in custody during an appeal. This is not a lot of protection for a town that is faced with a case of this magnitude.

again an education issue, but an education issue with no real forum for discussion. Perhaps an earlier intervention could have limited some of the problems demonstrated in this case, but this is a societal burden with many complications.

**Temporary Relief Assistance:** A possible solution could be found in some form of public assistance or voluntary assistance that a disadvantaged owner could turn to for temporary relief. The cost of hay and grain is very high. In this case, there were many horses involved which would have been very expensive. However, in tight economic times, all forms of assistance are strained, so this is not a likely solution. However, this could become the forum for education on the costs of properly maintaining horses and other livestock.

**Sentencing:** There is again a need to provide educational opportunities for judges, prosecutors, probation/parole officers, and law enforcement personnel on possible sentencing options for animal cruelty. N.H. Cooperative Extension and the N.H. Horse Council offer literature and classes related to the husbandry of horses and livestock. If consulted, either might develop a course appropriate for rehabilitation of offenders.

**Conflicting Statutes:** In this case, because horses, as opposed to other animals, were involved and seized under two different statutes, the prosecutor had a broad range of choices as far as official charges and plea bargains. If this had been cruelty involving a dog kennel, there would be no option for prosecution except RSA 644:8. Why should animal cruelty and neglect of horses be handled under civil law? While RSA 435 has mandated education on first offense, education is still an option when investigating cases relative to RSA 644:8. Should the penalty for horse neglect be any less than that of other animals? The statutes (644:8 and 435) should be reviewed by the N.H. Attorney General's Office to determine constitutionality and conflicts and propose legislation to clarify the issue. One solution would be to repeal RSA 435:11- 435:16 and incorporate its administrative rules in the criminal code RSA 644:8.

## Addendum

Ten months later, in early January 2010, the owner contacted the humane organization and equine rescue attorney to surrender all of her horses. She had relocated to another town during the summer. The horse owner had lost her job and could no longer afford to keep the horses. In addition, the farm where the horses were boarded was going up for auction on January 15, 2010. The horses all had to find homes in a matter of days.

Another large group of volunteers stepped forward to find suitable homes and again assemble a fleet of trucks and trailers to transport the horses to these new homes.

It is felt by those involved that the initial investigation and proceedings served as a deterrent to the owner trying to keep the horses when she ultimately knew she could not care for them.

## Animal Cruelty Case 3: Multiple Neglected Animals in Household Led to Discovery of Alleged Child Neglect

### Background and Timeline

1. In late June 2009, a reported runaway child, Martha<sup>9</sup>, daughter of the animals' owners, was found by a police officer. In his interview with Martha, the officer included "she has the responsibility for all the household chores, her mother refuses to give her medical attention when she is sick, as a result she has breakdowns and cuts herself, smell is so bad in the house she almost vomits, her ferret was dead on the floor in her room covered with flies".
2. The officer noted in his police report that he smelled cat feces in the interrogation room "the interview room smelt of cat feces after Martha had been in the room for a short time".
3. The officer contacted DCYF, who confirmed Martha had recently told them the same story. (No date was provided for this prior communication between Martha and DCYF).
4. After Martha's statement DCYF removed a second child from the residence. It was determined by DCYF the house was "not fit for human habitation due to the animal feces." Upon entering the home, the police report notes there was feces throughout the home, and in places, 4 inches deep.
5. In early July 2009 the animal owners/parents (defendants) of were arrested for Child Neglect and Cruelty to Animals, both misdemeanors under N.H. RSA 169-C and N.H. RSA 644:8). Each defendant faced 7 counts of animal cruelty; they were released on \$7,000 personal recognizance bail. The court also imposed a bail condition that the defendants were not permitted to own any animals.
6. The defendants agreed with DCYF and the police that the children would temporarily live with relatives.
7. The Town asked the police department to temporarily place 7 dogs, 20 cats, 1 rabbit and 1 bird. The defendants voluntarily decided to surrender the cats (not the dogs). Of the 20 or so feral (wild) cats, only 10 could be captured and removed.
8. The police department phoned the local animal shelter. The dogs went to the animal shelter, the rabbit and bird to another town, however there was no place to put the cats (many were feral and unable to be captured).
9. Other humane societies and shelters were contacted to help temporarily house the cats. Two responded they were already overcrowded and could only take the cats if they could adopt them out to new homes.

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<sup>9</sup> Not her real name.

10. While awaiting the hearing, the Animal Shelter decided to offer the defendants a reduced restitution amount if the defendants would surrender their dogs to the shelter. This offer would allow the shelter to adopt out the animals quickly, limiting their, and the town's, financial obligations. The defendants refused and petitioned the court to transfer the animals to the defendants' relatives.
11. The initial hearing was slated for the first week in October, however there was some "miscommunication" among the attorneys/court and the hearing was rescheduled for mid October.
12. At this hearing, arguments from the defendants and the shelter were heard in the court concerning custody of the dogs.
13. The defendants argued their relatives could temporarily take the dogs. The Court gave the defendants' relatives one week to fill out the applications with the shelter. They would have to go through the adoption/foster process like anyone else. If the applications were not received, the dogs would remain with the shelter. The Court allowed the shelter to testify about temporary care and quality of care the dogs were receiving at the shelter. After the hearing, the family then declined to take custody, leaving custody with the shelter.
14. The December 3, 2009 hearing on animal cruelty was rescheduled due to an attorney scheduling conflict. It was rescheduled for December 9, 2009.
15. A plea agreement was reached: the Defendants were charged with one misdemeanor of animal cruelty under 644-8. The court then awarded custody of the dogs to the local Animal Shelter, and ordered the defendants to pay the shelter restitution in the amount of \$15,000.00.

## Issues of Concern

### **Procedural Issues:**

**Delay and Completeness of the Arrest Warrant:** Animal cruelty was reported by a resident of the house and a dead animal (ferret) described. This evidence was sufficient to establish probable cause for a search warrant which should have included terms such as "all animals, living and unborn, dead or alive". Any dead animals should have had a forensic necropsy to determine cause of death and all live animals a forensic veterinary exam.

**Delay in Legal Proceedings:** The hearing, initially slated for August, was delayed until December. The animals remained in custody at the various shelters during that time.

### **Logistical Issues:**

**Animal Seizure/Protective Custody:** There were multiple animals in this case and even feral cats. The local animal shelter did not have the staff to capture, or the facility to house, all the animals. The animals were split up and sent to multiple locations. Not every animal received a veterinary exam. Some of the feral cats were never captured.

**Sentencing:** This was a hoarding/neglect case yet no limitations were put on future ownership of animals in the defendants' household. It is well known<sup>10</sup> that hoarders have a high recidivism rate. The court should have considered limiting or restricting ownership of future animals and required counseling to be a part of the sentence.

### **Financial Issues:**

By law, the animals should be held until the end of the legal proceedings, and costs build up rapidly with multiple animal seizures. This a consideration when the defense extends or continues a case which only increases the care, custody and control costs for the animals. This has been an issue in all the discussed cases. The use of a court order re: RSA 595-A:6 could have been considered in this case.<sup>11</sup>

## **Potential Solutions**

**Cruelty Case Investigation Education:** The Investigators who may respond to reports of animal cruelty (law enforcement officers, humane Investigators, animal control officers) should receive training to ensure a thorough use of investigatory tools and documentation methods. This was discussed under Case #1.

**Sentencing:** There is a need to provide educational opportunities for judges, prosecutors, probation/parole officers, and law enforcement personnel on possible sentencing options for animal cruelty. Resolution of future cases may need the development of specific counseling targeting this behavior and the creation of public education classes on acceptable animal care, training and handling methods.

## **Addendum**

At this time the Child Neglect Case is sealed. It should be noted that animal cruelty is often linked to other types of human abuse or neglect as was shown in this case.

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<sup>10</sup> (Patronek 2010)

<sup>11</sup> Appendix C

## Summary and Discussion

### Similarities in Procedural Issues in All Cases

**Reporting and Investigation of Animal Cruelty:** There is confusion among the public on how to report animal cruelty and some lack of knowledge among law enforcement on how to proceed with an animal cruelty investigation.

**Delay in Legal Proceedings and Cost of Care:** In all cases, the costs to the seizing agency influenced how the case proceeded rather than the immediate welfare of the animal. In Case 1, the animal was not taken in large part due to the cost of care while waiting for legal proceedings. In Case 2, delays caused the animals to be returned before the case was resolved and contributed to very high restitution fees. In Case 3, delays contributed to exorbitant restitution fees which will unlikely be paid.

**Sentencing:** Prosecutors and judges are not well versed in animal cruelty law and lack opportunities for continuing education in that area. Often sentences, while well intended, are not effective in ensuring the welfare of animals involved in the case or of future animals that may be owned by the defendant(s).

**Other Issues:** Other issues of concern were unique to each case, but presented common themes.

- Towns and investigators are concerned for the welfare of animals but because animals must be removed from the situation and cared for at the expense of the town/investigating agency, they are reluctant to proceed. As with all other criminal cases, there are costs involved, but with veterinary care and housing of multiple animals (legal possessions of the defendants) costs accrue very quickly.
- The difficulty in lining up manpower for taking and transporting animals and the lack of available animal care centers in some areas of the state. There may also be necessary considerations (e.g. human safety, liability, chain of custody) or limitations when using volunteer labor.
- In the case of horses, will a prosecutor choose the law that costs less to the town (RSA 435) or the law that may be best for the welfare of the animals (RSA 644). How does an investigator or prosecutor decide which should be used in a particular case?

### Potential Solutions

**Education:** A public education campaign is needed to alert the public on the signs of animal cruelty and on how to report it. Maybe something could be modeled on the N.H. Coalition Against Sexual and Domestic Violence and grant funding could be sought. Also, if charged by

the Governor, the Commission could assist in the drafting of press releases, PSA's, and ads for release to state newspapers, radio stations, and television stations.

As mentioned in Case 1, New Hampshire Police Standards and Training Council (NHPSTC) is now including a two-hour class in its Police Academy for recruits. This will help in the long run for the police to gain a better understanding of the cruelty statutes and how to effectively enforce them.

NHPSTC is also offering a two-day elective in-service training on animal cruelty each year for law enforcement personnel. This has been well attended by animal control officers and police officers whose responsibilities include animal control, but, by no means, has every town sent a representative. Progress is being made, although slowly.

To date there has been no education approved by the Bar Association for prosecutors and judges concerning the legal issues involving animal cruelty law made available at the state level. (There have been some workshops at national meetings.) Perhaps the N.H. Bar Association could be persuaded to host a continuing education workshop on animal cruelty topics if sponsorship and funding could be obtained. Several members of the Commission have professional connections and can suggest knowledgeable and experienced speakers.

Another practical option would be to suggest that all prosecutors and judges at least be made aware of ***Animal Cruelty Prosecution: Opportunities for Early Response to Crime and Interpersonal Violence***, a publication of **The American Prosecutors Research Institute**. It is now available on the Governor's Commission on the Humane Treatment of Animal's website under *Education and Training*. ([www.humane.nh.gov](http://www.humane.nh.gov))

Another option would be for the Commission to be charged with researching and writing a "best practices" document with resources to be made available to law enforcement, prosecutors and judges.

**Costs for animal care while awaiting adjudication:** The issue of the high cost of animal care was covered in detail in the 2008 Cruelty Cost Analysis. In the current economic climate, the situation has actually worsened. Money-strapped police departments and towns are reluctant to handle cruelty cases during these challenging times.

The Commission could host brainstorming meetings where interested parties could come together to discuss relevant animal cruelty legislation such as , but not limited to a "bonding" or "court order for relinquishment" clause for the cruelty law with RSA 595-A:6 taken into consideration. These types of laws have been established in other states, despite civil liberties claims, and with thoughtful and collaborative crafting by those who know and understand the law, it may be possible to write a bill that may make it through the legislature. A statute such

as this would put the majority of the burden of the care of the animals on the owner from the beginning of the case or allow the animals' ownership to be transferred to the town or humane organization for care and placement in a timely manner.

As has been explained in several of these cases, once an animal has been seized and receives proper care, his/her condition rapidly improves. If the investigation was handled properly, there will be photos, videos, veterinary and lab reports and records to document the condition of the animal at the time of seizure. There is really no need of holding the animal once it is healthy, but usually returning it to the defendant is not in the best interest of the animal. If the court determines the defendant or owner can provide for the daily care of the animal, they should not be allowed to regain custody unless there are provisions for ongoing supervision and education of the owners about proper care.

**Conflicting RSA's:** RSA's 644:8 and 435 need to be examined and changed appropriately so that there is no conflict or confusion. This may include the repeal of the RSA 435 Treatment of Horses statutes with incorporation of its text and Administrative Rules into RSA 644:8.

## Review of 2009 Legislation

The Commission was asked by the Governor's Office to review animal-related legislation and ascertain whether or not it pertained to animal cruelty. Of the twenty-two bills related to animals introduced in the 2009 Session, the Commission felt four were in some way related to animal cruelty issues.

**HB 278 Relative to the penalty for mistreating service animals:** This was to be part of RSA 167-D:9 to include a definition of mistreatment - parts of legislation were using the same terminology as RSA 644:8 - and classify the crime as a Class B Felony. It should be noted that such treatment also comes under the N.H. cruelty law and if "purposeful" intent could be proven it could be a felony. It also added a definition of "service animal" to the current law. This bill was deemed **Inexpedient to Legislate**.

**HB 247 Relative to the assistance of the state veterinarian with the investigation and enforcement of animal abuse laws:** This bill was requested by the state veterinarian and made gender reference corrections and clarifications of the state veterinarian's powers in regard to animal cruelty investigation. It made it clear that the state veterinarian has no powers of arrest and will assist in a secondary capacity regarding cases involving RSA 644:8. This bill was **signed into law** and amended RSA 436:8 to reflect those changes.

**HB 630 Relative to live racing in New Hampshire:** This bill was **retained** and is being discussed in 2010. It will ban live greyhound racing in N.H. in 2010 but allows for simulcast privileges of the tracks currently licensed in the state. The Commission was split on whether it was an issue related to animal cruelty. Some members felt that the bill was instituted and will eventually be successful because those proposing and endorsing the bill are doing so because they showed that racing is cruel to the dogs. Other members felt that greyhound racing has always been legal and the welfare of the dogs has been regulated and the success of this bill is because of a favorable financial arrangement between the tracks and the State Racing and Charitable Gaming Commission.

**HB 220 relative to civil proceedings for forfeiture of animals:** This bill originally contained language that allowed civil proceedings regarding the care and ownership of animals seized in a cruelty case (RSA 644:8) The bill was later modified to clarify a part of RSA 644:8 and was later determined to be **inexpedient to legislate**.

## Commission Members

### COMMISSION MEMBER LIST

<b>NAME</b>	<b>REPRESENTS</b>
Arivella, Joyce	NH Dog Breeders Association
Bourbeau, Joanne	National Humane Organizations
Conley, Christopher	NH Sheriffs' Association
Cook, George	NH Musher's Association
Crawford, Stephen	State Veterinarian
DeVries, Betsi	NH Senate
Ellingwood, Mark	NH Fish & Game Department
Hilton, Barry	Animal Control Officers
Hughes, Michael, Secretary	General Public
Kennedy, James	NH Wildlife Association
Lunak, Michal	UNH Cooperative Extension
Matott, Joyce	American Boarding Kennel Association
McCall, Roni	General Public
Morrell, Susan	Attorney General's Office
Morris, Patricia, Chair	General Public-NH Bar Assn. Member
Munroe, Wendy	NH Veterinary Technician Association
Prendergast, Maureen	Municipal Animal Shelters
Shagoury, Andrew	Police Chiefs Association
Simson, Deb	NH Cat Fanciers
Skinder, Carla	House of Representatives
Sprowl, Steve	NH Federation of Humane Organizations
Vacant	Animal Shelter Boards
Wentzell, Dick	General Public
Zezula, Jerilee	General Public

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# Appendix



# Appendix A: Executive Order Establishing Commission

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
JOHN H. LYNCH, GOVERNOR**

**Executive Order 2006-3**

**An Order Re-Establishing The Governor's Commission On The  
Humane Treatment Of Animals**

**WHEREAS**, domesticated animals provide support, companionship and assistance to many citizens of the State of New Hampshire;

**WHEREAS**, a Governor's Task Force Regarding the Humane Treatment of Animals was established by Executive Order 2004-5;

**WHEREAS**, pursuant to the request of the task force, it is necessary to re-establish a commission in order to clarify its membership and direct its mission;

**WHEREAS**, the provision of proper care for domestic animals is essential;

**WHEREAS**, the prevention of animal abuse is important to the safety and welfare of New Hampshire citizens;

**WHEREAS**, this Executive Order 2006-3 supercedes Executive Order 2004-5;

**NOW, THEREFORE, I, JOHN H. LYNCH, GOVERNOR OF THE STATE OF NEW HAMPSHIRE**, by the authority vested in me by part II, article 41 of the New Hampshire Constitution do hereby order the following:

1. There is established the Governor's Commission on the Humane Treatment of Animals. The Commission shall evaluate animal abuse in New Hampshire; perform a thorough analysis of all statutory and administrative rules; assess State, community and private programs that address animal abuse; and provide recommendations to the Governor on ways to better prevent and address animal abuse in New Hampshire.
2. The Commission shall consist of the following members who shall be appointed by and serve at the pleasure of the Governor.
  - a. A representative from the National Humane Organization
  - b. An Animal Control Officer
  - c. A representative of the Police Chiefs Organization
  - d. A representative of the NH Wildlife Association
  - e. A representative of the NH Federation of Humane Organizations
  - f. A representative of the Fish and Game Department
  - g. A member of the American Boarding Kennel's Association that does business in NH
  - h. The state veterinarian or designee
  - i. A representative of the NH Sheriffs Association
  - j. A State Senator recommended by the Senate President
  - k. A State Representative recommended by the Speaker of the House
  - l. A representative of the Municipal Animal Shelters
  - m. A representative of the Animal Shelter Boards
  - n. A member of the NH Animal Health Technician Association
  - o. 5 members of the general public one of whom is a member of the NH Bar Association
  - p. The Attorney General or designee
  - q. A member of the NH Cat Fanciers Association
  - r. A member of the NH Dog Breeders Association
  - s. A member of the Sled Dog Owners Association
  - t. The Director of the University of New Hampshire Cooperative Extension or designee
3. Executive Order 2004-5 is hereby withdrawn and is replaced by this Executive Order which shall be effective immediately

## Appendix B: N.H. RSA's Related to Cruelty to Animals 2009

### TITLE LXII CRIMINAL CODE

### CHAPTER 644 BREACHES OF THE PEACE AND RELATED OFFENSES

#### 644:8 Cruelty to Animals. –

I. In this section, "cruelty" shall include, but not be limited to, acts or omissions injurious or detrimental to the health, safety or welfare of any animal, including the abandoning of any animal without proper provision for its care, sustenance, protection or shelter.

II. In this section, "animal" means a domestic animal, a household pet or a wild animal in captivity.

II-a. In this section, "shelter" or "necessary shelter" for dogs shall mean any natural or artificial area which provides protection from the direct sunlight and adequate air circulation when that sunlight is likely to cause heat exhaustion of a dog tied or caged outside. Shelter from the weather shall allow the dog to remain clean and dry. Shelter shall be structurally sound and have an area within to afford the dog the ability to stand up, turn around and lie down, and be of proportionate size as to allow the natural body heat of the dog to be retained.

III. A person is guilty of a misdemeanor for a first offense, and of a class B felony for a second or subsequent offense, who:

(a) Without lawful authority negligently deprives or causes to be deprived any animal in his possession or custody necessary care, sustenance or shelter;

(b) Negligently beats, cruelly whips, tortures, mutilates or in any other manner mistreats or causes to be mistreated any animal;

(c) Negligently overdrives, overworks, drives when overloaded, or otherwise abuses or misuses any animal intended for or used for labor;

(d) Negligently transports any animal in his possession or custody in a manner injurious to the health, safety or physical well-being of such animal;

(e) Negligently abandons any animal previously in his possession or custody by causing such animal to be left without supervision or adequate provision for its care, sustenance or shelter;  
or

(f) Otherwise negligently permits or causes any animal in his possession or custody to be subjected to cruelty, inhumane treatment or unnecessary suffering of any kind.

III-a. A person is guilty of a class B felony who purposely beats, cruelly whips, tortures, or mutilates any animal or causes any animal to be beaten, cruelly whipped, tortured, or mutilated.

IV. (a) In addition to being guilty of crimes as provided in paragraphs III and III-a, any person charged with cruelty to animals may have his or her animal confiscated by the arresting officer and, upon said person's conviction of cruelty to animals, the court may dispose of said animal in any manner it decides. Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar. The costs, if any, incurred in boarding and treating the animal, pending disposition of the case, and in disposing of the animal, upon a conviction of said person for cruelty to animals, shall be borne by the person so convicted. In addition, the court may prohibit any person convicted of animal cruelty from having future ownership or custody of other animals for any period of time the court deems reasonable or impose any other reasonable restrictions on the person's future ownership or custody of animals as necessary for the protection of the animals.

(b) If a person convicted of cruelty to animals appeals the conviction and any confiscated animal remains in the custody of the arresting officer or the officer's designee pending disposition of the appeal, in order for the appellant to maintain a future interest in the animal, the trial court may require the appellant to post a bond or other security in an amount not exceeding \$2,000 for each animal in custody for costs expected to be incurred for the board and care of the animal during the appeal. If the conviction is affirmed on appeal, the costs incurred for the board and care of the animal shall be paid to the custodian from the posted security and the balance, if any, returned to the person who posted it.

IV-a. (a) Except as provided in subparagraph (b) any appropriate law enforcement officer, animal control officer, or officer of a duly licensed humane society may take into temporary protective custody any animal when there is probable cause to believe that it has been or is being abused or neglected in violation of paragraphs III or III-a when there is a clear and imminent danger to the animal's health or life and there is not sufficient time to obtain a court order. Such officer shall leave a written notice indicating the type and number of animals taken into protective custody, the name of the officer, the time and date taken, the reason it was taken, the procedure to have the animal returned and any other relevant information. Such notice shall be left at the location where the animal was taken into custody. The officer shall provide for proper care and housing of any animal taken into protective custody under this paragraph. If, after 7 days, the animal has not been returned or claimed, the officer shall petition the municipal or district court seeking either permanent custody or a one-week extension of custody or shall file charges under this section. If a week's extension is granted by the court and after a period of 14 days the animal remains unclaimed, the title and custody of the animal shall rest with the officer on behalf of the officer's department or society. The department or society may dispose of the animal in any lawful and humane manner as if it were the rightful owner. If after 14 days the officer or the officer's department determines that charges should be filed under this section, the officer shall petition the court.

(b) For purposes of subparagraph (a) the investigating officer for livestock, as defined in RSA 427:38, III, <sup>12</sup>shall be accompanied by a veterinarian licensed under RSA 332-B <sup>13</sup>or the state veterinarian who shall set the probable cause criteria for taking the animal or animals.

(c)(1) For purposes of subparagraph (a), for facilities licensed to conduct live running or harness horseracing or live dog racing pursuant to RSA 284<sup>14</sup>, the appropriate law enforcement officer, animal control officer, or officer of a duly licensed humane society shall:

(A) Notify the director of the pari-mutuel commission of the circumstances arising under subparagraph (a);

(B) Enter the grounds of the facility with the director of the pari-mutuel commission or such person designated by the director of the pari-mutuel commission;

(C) Take such horses or dogs into temporary protective custody as determined by the director of the pari-mutuel commission or such person designated by the director of the pari-mutuel commission; and

(D) Comply with subparagraph (a) after taking a horse or dog from a facility licensed pursuant to RSA 284 into temporary protective custody.

(2) This paragraph shall not preempt existing or enforcement authority of the pari-mutuel commission, pursuant to RSA 284 or rules and regulations adopted pursuant to such authority.

V. A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made for services rendered under the provisions of this section or RSA 435:11-16. <sup>15</sup> Such a veterinarian is, therefore, under this paragraph, protected from a lawsuit for his part in an investigation of cruelty to animals.

**Source.** 1971, 518:1. 1975, 460:1. 1979, 23:1. 1981, 575:2. 1982, 8:4. 1983, 231:2. 1985, 72:3. 1989, 57:1. 1994, 234:1-3. 1998, 283:1. 1999, 152:1; 308:1. 2000, 4:1, eff. Feb. 4, 2000. 2008, 240:1, eff. Jan. 1, 2009; 288:1, 2, eff. July 1, 2008.

#### **644:8-a Exhibitions of Fighting Animals. –**

I. No person shall keep, breed, or train any bird, dog, or other animal, with the intent that it or its offspring shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

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<sup>12</sup> **427:38 Definitions.** – As used in this subdivision:

III. "Livestock" shall mean all cattle, goats, sheep, swine, horses or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*cervus elephus canadensis*), fallow deer (*dama dama*), red deer (*cervus elephus*), reindeer (*Rangifer taradus*).

**Source.** 1985, 72:1. 1995, 130:5. 1998, 310:2, eff. Aug. 25, 1998.

<sup>13</sup> N.H. Veterinary Practice Act

<sup>14</sup> Laws pertaining to horse and dog racing

<sup>15</sup> Law related to the Treatment of horses. This section follows.

II. Any person present at any place or building when preparations are being made for an exhibition of such fighting with intent to be present at such exhibition, or present at, aiding in or contributing to, such an exhibition, shall be guilty of a class B felony .

III. All animals so kept, bred, or trained by a person charged with violating the provisions of paragraph I may be seized by the arresting officer, pursuant to RSA 595-A:6<sup>16</sup> and RSA 644:8. Upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian. The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted.

IV. Upon conviction of a violation of this section, all animals used or to be used in training, fighting, or baiting, and all equipment, paraphernalia, and money involved in a violation of this section may be forfeited to the state at the discretion of the court, pursuant to RSA 595-A:6. Proceeds of any such forfeiture shall be used to reimburse local government and state agencies for the costs of prosecution of animal fighting cases. Proceeds which are not needed for such reimbursement shall be deposited in the companion animal neutering fund, established in RSA 437-A:4-a.

V. In addition to other penalties prescribed by law, the court may issue an order prohibiting a person who is convicted of a violation of this section from owning or possessing any animals within the species that is the subject of the conviction, or any animals kept for the purpose of training, fighting, or baiting, for a period of time determined by the court.

**Source.** 1979, 30:1. 2003, 98:1, eff. Jan. 1, 2004. 2008, 326:1, eff. Jan. 1, 2009.

**644:8-aa Animals in Motor Vehicle. –**

I. It shall be cruelty to confine an animal in a motor vehicle or other enclosed space in which the temperature is either so high or so low as to cause serious harm to the animal. "Animal" means a domestic animal, household pet, or wild animal held in captivity.

II. Any person in violation of this section shall be guilty of a misdemeanor as set forth in RSA 644:8.

III. Any law enforcement officer or agent of a licensed humane organization may take action necessary to rescue a confined animal endangered by extreme temperatures, and to remove the threat of further serious harm.

IV. No officer or agent taking action under paragraph III shall be liable for damage reasonably necessary to rescue the confined animal.

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<sup>16</sup> Pertaining to Search Warrants

**Source.** 1981, 575:1, eff. July 7, 1981.

**644:8-b Docking Tail of Horse.** – If any person shall cut the bone of the tail of a horse for the purpose of docking the tail, or shall cause or knowingly permit the same to be done upon the premises of which he is in control, or shall assist in or be present at such cutting, he shall be guilty of a misdemeanor. Written permission from the state veterinarian shall be obtained by a licensed veterinarian to perform surgical operations pursuant to this section. The state veterinarian shall promulgate rules relative to granting authorization for such operation.

**Source.** 1979, 263:1, eff. Aug. 20, 1979.

**644:8-c Animal Use in Science Classes and Science Fairs. –**

I. In this section:

(a) "Animal" means any member of the kingdom of Animalia.

(b) "Vertebrate animal" means any animal belonging to the subphylum Vertebrata of the phylum Chordata, and specifically includes all mammals, fishes, birds, reptiles and amphibians.

II. Live vertebrate animals shall not be used in experiments or observational studies, with the following exceptions:

(a) Observational studies may be made of the normal living patterns of wild animals, in the free living state or in zoological parks, gardens, or aquaria.

(b) Observational studies may be made of the living patterns of vertebrate animals in the classroom.

(c) Observational studies on bird egg embryos are permitted. However, if normal bird embryos are to be allowed to hatch, satisfactory humane consideration shall be made for disposal of the baby birds.

(d) Vertebrate animal cells such as red blood cells or other tissue cells, plasma or serum, or anatomical specimens, such as organs, tissues, or skeletons, may be used in experiments or observational studies.

III. No school principal, administrator or teacher shall allow any live vertebrate animal to be used in any elementary or secondary school, or in any activity associated with such school, such as science fairs, as part of a scientific experiment or procedure in which the health of the animal is interfered with, or in which pain, suffering, or distress is caused. Such experiments and procedures include, but are not limited to, surgery, anesthetization, and the inducement by any means of painful, lethal, or pathological conditions through techniques that include, but are not limited to:

(a) Administration of drugs;

(b) Exposure to pathogens, ionizing radiation, carcinogens, or to toxic or hazardous substances;

(c) Deprivation; or

(d) Electric shock or other distressing stimuli.

IV. All experiments on live vertebrate animals which are not prohibited by this section shall be carried out under the supervision of a competent science teacher who shall be responsible for ensuring that the student has the necessary comprehension for the study to be undertaken.

V. No person shall, in the presence of a pupil in any elementary or secondary school, perform any of the procedures or experiments described in paragraph III or exhibit any vertebrate animal that has been used in such manner. Dissection of any dead animal, or portions thereof, shall be confined to the presence of students engaged in the study to be promoted by the dissections.

VI. Science fair projects originating in other states that do not conform with the provisions of this section shall not be exhibited within the state.

VII. Any live animal kept in any elementary or secondary school shall be housed and cared for in a humane and safe manner and shall be the personal responsibility of the teacher or other adult supervisor of the project or study.

VIII. Ordinary agricultural procedures taught in animal husbandry courses shall not be prohibited by this section.

IX. Any person who violates this section is guilty of a misdemeanor.

**Source.** 1985, 54:1, eff. June 22, 1985.

**644:8-d Maiming or Causing the Death of or Willful Interference With Police Dogs or Horses. –**

I. Whoever willfully tortures, beats, kicks, strikes, mutilates, injures, disables, or otherwise mistreats, or whoever willfully causes the death of a dog or horse owned or employed by or on behalf of a law enforcement agency and whoever knows that such dog or horse is owned or employed by or on behalf of a law enforcement agency shall be guilty of a class B felony.

II. Whoever willfully interferes or attempts to interfere with the lawful performance of a dog or horse owned or employed by or on behalf of a law enforcement agency and whoever knows that such dog or horse is owned or employed by or on behalf of a law enforcement agency shall be guilty of a misdemeanor.

**Source.** 1988, 203:1. 1994, 111:1, eff. Jan. 1, 1995. 1998, 365:1, eff. Jan. 1, 1999.

**644:8-e Willful Interference With Organizations or Projects Involving Animals or With Animal Facilities. –**

I. Whoever willfully causes bodily injury or willfully interferes with any property, including animals or records, used by any organization or project involving animals, or with any animal facility shall be guilty of a class A misdemeanor.

II. Whoever in the course of a violation of paragraph I causes serious bodily injury to another individual or economic loss in excess of \$10,000 shall be guilty of a class B felony, and may be subject to an order of restitution pursuant to RSA 651:63.<sup>17</sup>

III. For the purposes of this section:

(a) "An organization or project involving animals" means:

(1) A commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, education, or testing.

(2) Any lawful competitive animal event, including but not limited to conformation shows or obedience trials, field trials, agility events, hunts, sled races, or training activities.

(3) Any fair or similar event intended to advance the agricultural arts and sciences.

(b) "Animal facilities" means any vehicle, building, structure, research facility, or premises where an animal is kept, handled, housed, exhibited, bred or offered for sale.

(c) "Economic loss" means "economic loss" as defined in RSA 651:62, III.<sup>18</sup>

IV. Nothing in this section shall be construed to restrict any constitutional, statutory, regulatory or common law right.

**Source.** 1993, 170:1, eff. May 24, 1993.

#### **644:8-f Transporting Dogs in Pickup Trucks. –**

I. No person driving a pickup truck shall transport any dog in the back of the vehicle on a public way, unless the space is enclosed or has side and tail racks to a height of at least 46 inches extending vertically from the floor, the dog is cross tethered to the vehicle, the dog is protected by a secured container or cage, or the dog is otherwise protected, in a manner which will prevent the dog from being thrown or from falling or jumping from the vehicle.

II. Notwithstanding paragraph I, this section shall not apply to the following:

(a) A dog being used by a farmer or farm employee while actually engaged in farming activities requiring the services of a dog; or

(b) A hunting dog being used at a hunting site or between hunting sites by a licensed hunter who is in possession of all applicable licenses and permits for the species being pursued during the legal season for such activity.

III. Any person who violates this section shall be guilty of a violation.

**Source.** 1996, 191:1, eff. Jan. 1, 1997.

**644:16 Exposing Poisons. –** If any person shall in any way or place purposely expose an active poison or deadly substance for the destruction of any animal, or for any other purpose except

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<sup>17</sup> Restitution laws

<sup>18</sup> III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense.

the destruction of rats or other vermin in his own building or upon his crops, he shall be guilty of a violation.

**Source.** 1971, 518:1, eff. Nov. 1, 1973.

## **TITLE XL AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY**

### **CHAPTER 435 ANIMAL CARE, BREEDING AND FEED**

#### **Treatment of Horses**

**435:11 Similar Animals.** – The term "horse" as used in this subdivision shall include all members of the equine species.

**Source.** 1985, 72:1, eff. July 1, 1985

**435:12 Proper Care.** – No person shall overdrive, overwork or overload a horse in his or her care. No person shall buy, sell or exchange any horse that is unfit to be used for riding, driving, draft or reproduction purposes, unless it is for rehabilitation or slaughter. No person shall torture, beat, mutilate or abandon any horse, or aid in such abuse, or permit any horse in his or her care to be subject to abuse of any kind.

**Source.** 1985, 72:1, eff. July 1, 1985. 2003, 9:1, eff. April 22, 2003.

**435:13 Proper Feeding.** – All horses shall receive roughage in proportion to their size, age, temperament and amount of work they are required to perform. Grain may also be required when roughage alone will not meet their daily nutritional requirements. All horses shall be fed on a regular daily schedule, and all food shall be clean and free from excessive moisture. All horses shall have available a sufficient quantity of fresh water to maintain hydration.

**Source.** 1985, 72:1, eff. July 1, 1985. 2003, 9:1, eff. April 22, 2003.

**435:14 Shelter Available.** – Horses shall be provided either:

I. An adequately ventilated, dry barn with stalls of sufficient size so that the horse is able to lie down, and shall be provided adequate and suitable exercise in arenas, barn yards, paddocks or pastures; or

II. A roofed shelter, with at least 3 sides from November 1 through April 15, shall be provided for horses kept in paddocks or pastures, and said horses shall not be kept tied but shall be able to move around freely.

**Source.** 1985, 72:1, eff. July 1, 1985. 2003, 9:2, eff. April 22, 2003.

**435:15 Veterinarian Services and Probable Cause Determinations.** –

I. A probable cause determination for seizing horses pursuant to a cruelty investigation shall be

made only by the state veterinarian or a veterinarian licensed under the provisions of RSA 332-B. No seizing or taking of horses shall be made without a probable cause determination.

II. Pursuant to RSA 644:8, V, a veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made for services rendered under the provisions of this subdivision.

**Source.** 1985, 72:1, eff. July 1, 1985. 2003, 9:2, eff. April 22, 2003.

**435:15-a Rulemaking.** – The commissioner shall adopt rules, under RSA 541-A,<sup>19</sup> relative to the care, shelter, and feeding of horses, and the enforcement of this subdivision.

**Source.** 2003, 9:3, eff. April 22, 2003.

**435:16 Penalty.** – Any owner failing to comply with the provisions of this subdivision shall be notified as to the proper care of horses. Upon a second offense, the horse shall be seized and not returned until restitution for the expenses involved in the seizure is made and proof of proper care is given. Upon a third or subsequent offense, the horse shall be permanently seized. Whoever violates the provisions of this subdivision shall be guilty of a violation.

**Source.** 1985, 72:1, eff. July 1, 1985

## **TITLE VII SHERIFFS, CONSTABLES, AND POLICE OFFICERS**

### **CHAPTER 105**

#### **POLICE OFFICERS AND WATCHMEN**

##### **Domestic Animals**

**105:14 Cruelty to Animals.** – Whenever an officer makes an arrest upon view, or upon a warrant for a violation of any provision of RSA 441:4-a,<sup>20</sup> he may take into his possession the animal which is the subject of such cruelty, and if the owner has no knowledge of such taking he shall give him notice forthwith.

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<sup>19</sup> ADMINISTRATIVE PROCEDURE ACT

<sup>20</sup> This law was recodified in 1985 and the reference now is 435:5 Colts Less Than 90 Days Old. –

I. It is unlawful for any person in this state to have in his possession an equine colt that is less than 90 days old that is not being nursed by its dam, unless the colt was born in this state, and its dam has died within this state before the colt became 90 days old.

II. It is unlawful for any person in this state to sell an equine colt that is less than 90 days old that is not being nursed by its dam.

III. If convicted of a violation of this section a person shall be guilty of a misdemeanor.

Source. 1985, 72:1, eff. July 1, 1985.

Most likely there was a broader reference in 1870 when the law was first written.

**Source.** 1870, 4:4. GL 281:29. 1881, 10:1. PS 267:2. PL 382:2. RL 445:2. RSA 575:2. 1973, 532:15, eff. Nov. 1, 1973.

**105:15 Examination, etc.** – Whenever an officer shall take any such animal into his possession, which appears by reason of age, injury or other cause to be disabled for use, said officer shall call upon 3 disinterested citizens, who, under oath, shall examine such animal, and if they shall find such animal to be disabled for use said officer shall at once cause such animal to be killed.

**Source.** 1881, 10:2. PS 267:3. 1897, 22:1. PL 382:3. RL 445:3. RSA 575:3. 1973, 532:15, eff. Nov. 1, 1973.

**105:16 Expenses.** – All expenses incurred under RSA 105:14 and 15 shall be paid by the owner of such animal, and may be collected by an action on the case, or by enforcing a lien upon the animal.

**Source.** 1881, 10:2. PS 267:3. 1897, 22:1. PL 382:4. RL 445:4. RSA 575:4. 1973, 532:15, eff. Nov. 1, 1973

**105:17 Arrest.** – If any person shall be found violating the laws in relation to cruelty to animals he may be arrested and held without warrant, in the same manner as in case of persons found breaking the peace.

**Source.** 1870, 4:4. GL 281:29. PS 267:8. PL 382:12. RL 445:12. RSA 575:12. 1973, 532:15, eff. Nov. 1, 1973.

**105:18 Special Deputies.** – Any officer or agent of any incorporated society for the prevention of cruelty to animals, upon being designated in writing for that purpose by the sheriff of any county in this state, may, within such county, make arrests and bring before any court or magistrate having jurisdiction offenders found violating the provisions of this subdivision.

**Source.** 1870, 4:7. GL 281:32. PS 267:10. PL 382:14. RL 445:14. RSA 575:14. 1973, 532:15, eff. Nov. 1, 1973.

## Appendix C: Administrative Rules RSA 435

### CHAPTER Agr 3700 TREATMENT OF HORSES

Statutory Authority: RSA 435:15-a

#### PART Agr 3701 PURPOSE

Agr 3701.01 Purpose. The purpose of these rules is to assure the adequate treatment of horses, including all other equine species.

[Source](#). #7989, eff 11-21-03

#### PART Agr 3702 DEFINITIONS

Agr 3702.01 Definitions.

(a) "Equine" means horses, asses, mules, donkeys, zebras, ponies or any other caballus species.

(b) "Commissioner" means the commissioner of agriculture, markets and food.

(c) "Exercise" means the performance of physical exertion for improvement or maintaining of health or the correction of physical deformity.

[Source](#). #7989, eff 11-21-03

#### PART Agr 3703 PROPER CARE

Agr 3703.01 Requirements for Proper Care of Equine.

(a) Regular foot care and maintenance shall be provided at least every 8 to 12 weeks.

(b) Regular tooth care and maintenance shall be performed at the recommendation of your veterinarian.

[Source](#). #7989, eff 11-21-03

#### PART Agr 3704 SHELTER AVAILABLE AND EXERCISE

Agr 3704.01 Shelter Requirements.

(a) Barns with stalls shall be:

(1) Structurally sound and maintained in good repair;

- (2) Ventilated by natural means and/or mechanical means of exhaust fans or air conditioners;
  - (3) Structured with natural light;
  - (4) Adequate in size in box stalls for animals to move freely about;
  - (5) Structured with standing stalls that are a minimum of 5 feet wide and 8 feet long for equines over 750 pounds and 4 feet wide by 7 feet long for equines under 750 pounds; and
  - (6) Bedded with dry material to prevent animals from laying in moisture.
- (b) The 3 sided shelters shall be:
- (1) Structurally sound and maintained in good repair; and
  - (2) Adequate in size for all animals in the paddock or pasture to enter at once, including a minimum of 100 square feet per equines over 750 pounds and 50 square feet per equines under 750 pounds.

[Source.](#) #7989, eff 11-21-03

**Agr 3704.02 Exercise Requirements.**

- (a) Adequate and suitable exercise shall be:
- (1) Turning the equine out into an area, paddock, barnyard, or pasture so it can move freely with enough room to run if it desired to do so;
  - (2) Training for riding, racing, driving or any movement that provides physical exertion; or
  - (3) Competition such as, but not limited to, racing, pulling, gymkhana, hunter jumper, endurance, trail riding or any use that requires exertion.
- (b) Exercise shall be limited, prevented or controlled for the purpose of convalescence due to lameness or any condition that requires forced rest.

[Source.](#) #7989, eff 11-21-03

**PART Agr 3705 PROPER FEEDING**

**Agr 3705.01 Feeding Requirements.**

- (a) All equine species shall:

- (1) Receive good quality roughage in proportion to their size, age, temperament and amount of work they are required to perform;
- (2) Receive grain to supplement the roughage to meet daily nutritional requirements;
- (3) Be fed on a regular daily schedule;
- (4) Be fed a diet that is clean and free of excessive moisture;
- (5) Be fed a diet that is free of mold or any type of spoilage; and
- (6) Have a sufficient quantity of fresh water available to maintain hydration.

[Source.](#) #7989, eff 11-21-03

**PART Agr 3706 ENFORCEMENT**

Agr 3706.01 Penalty. Failure to comply with these rules or RSA 435:11-15 shall subject the owner of an equine to the penalty provisions of RSA 435:16.

[Source.](#) #7989, eff 11-21-03

**Appendix**

<b>Provision of the Proposed Rule</b>	<b>Specific State Statute which the Rule is Intended to Implement</b>
Agr 3701	RSA 435:12
Agr 3702	RSA 435:12
Agr 3703	RSA 435:12
Agr 3704	RSA 435:14
Agr 3705	RSA 435:13

## **Appendix D: TITLE LIX, PROCEEDINGS IN CRIMINAL CASES, CHAPTER 595-A, SEARCH WARRANTS**

### **Section 595-A:6**

**595-A:6 Seizure, Custody and Disposition of Articles; Exceptions.** – If an officer in the execution of a search warrant, or by some other authorized method, finds property or articles he is empowered to take, he shall seize and safely keep them under the direction of the court or justice so long as necessary to permit them to be produced or used as evidence in any trial. Upon application by a prosecutor, defendant, or civil claimants, the court, prior to trial or upon an appeal after trial, shall, upon notice to a defendant and hearing, and except for good cause shown, order returned to the rightful owners any stolen, embezzled or fraudulently obtained property, or any other property of evidential value, not constituting contraband. This section shall apply regardless of how possession of the property was obtained by the state. Photographs or other identification or analysis made of the returned property shall be admissible at trial as secondary evidence, in lieu of the originals, for all relevant purposes, including ownership. In the case of unknown, unapprehended defendants, or defendants wilfully absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem to represent the interest of such unknown or absent defendants. The judicial findings on such matters as ownership, identification, chain of possession or value made at such an evidentiary hearing for the restoration of property to the rightful owners shall thereafter be admissible at trial, to be considered with other evidence on the same issues, if any, as may be admitted before the finder of fact. All other property seized in execution of a search warrant or otherwise coming into the hands of the police shall be returned to the owner of the property, or shall be disposed of as the court or justice orders, which may include forfeiture and either sale or destruction as the public interest requires, in the discretion of the court or justice, and in accordance with due process of law. Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith.

**Source.** 1969, 317:1. 1977, 320:1. 1981, 553:9. 1988, 88:3, eff. Jan. 1, 1989.