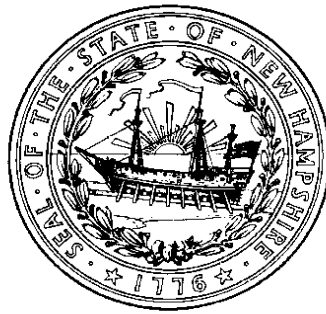


State of New Hampshire



Christopher Sununu, Governor

**Animal Cruelty Investigation and Prosecution:
A User Manual
for
New Hampshire
Law Enforcement
2020**

Governor's Commission on the Humane Treatment of Animals

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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February 8, 2021

It is my pleasure to write a letter in recognition of the comprehensive *Animal Cruelty Investigation and Prosecution: A User Manual for New Hampshire Law Enforcement*. It will prove an invaluable asset to New Hampshire's prosecutors and law enforcement officers as they work to enforce this critical area of the law.

The Manual offers a detailed analysis of the laws governing the ownership and treatment of animals in New Hampshire. And if that were all it offered, it would be an enormous addition to the law enforcement materials available to prosecutors and law enforcement. But the Manual goes far beyond that. It gives practical suggestions for the successful investigation and prosecution of animal cruelty and neglect cases. It also provides an overview of the progress of a criminal case through the courts, with helpful discussions of search warrants, motions to suppress evidence, and potential defenses. It is, in short, an excellent introduction to New Hampshire criminal case investigations and prosecutions.

Moreover, animal cruelty and neglect cases are important not only because of the harm done to the animals involved. The harm to animals certainly warrants thorough investigation and vigorous prosecution. Animals cannot defend themselves against abuse and neglect. It is therefore incumbent upon the law enforcement community to defend the defenseless.

Moreover, animal cruelty cases, as the Manual correctly notes, may be associated with other serious crimes, including domestic violence. The abuse and neglect of animals may be a reflection of mental health issues. In effect, the mistreatment of an animal is serious not only because it places the animal in jeopardy, but because it may be a warning that the abuser has the potential to do additional harm.

As Attorney General, I want to thank everyone who contributed to make this Manual a reality, as it provides prosecutors and law enforcement a resource that will assist them in investigating and prosecuting these crimes.

Sincerely,

A handwritten signature in blue ink, appearing to read "GJM", with a long horizontal flourish extending to the right.

Gordon J. MacDonald
Attorney General

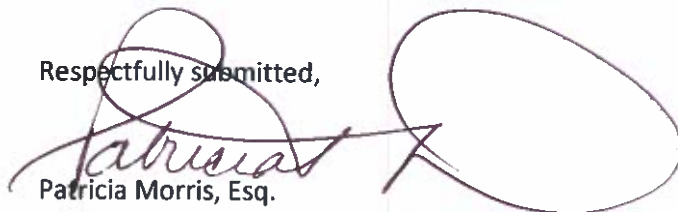
Governor's Commission on the Humane Treatment of Animals

As chair of the Governor's Commission on the Humane Treatment of Animals, I want to thank the Commission for its work on this 2020 Manual to assist law enforcement officers, animal control officers, humane investigators, prosecutors, and all professionals involved in animal cruelty cases. The Manual has been updated from the 2012 edition to reflect many changes in the law and to update some of the investigation material and resources. The Commission also maintains a dynamic website, which provides detailed articles and local resources available to assist in cruelty cases (www.neacha.org/resources). The Commission specifically wishes to thank Attorney Anthony P. Estee for his legal assistance on Section 4 of the Manual which will be very useful for prosecutors.

Animal cruelty cases must be given great importance and receive the resources necessary to investigate and prosecute offenders. Animals are sentient beings and deserve to be treated humanely, pursuant to the laws of New Hampshire. In addition, animal cruelty is an indicator of escalating and often simultaneous criminal activity in other areas that put our communities at risk.

The Commission is honored to be a part of the effort to address and successfully prosecute those individuals who negligently and intentionally injure and/or inflict cruel and inhumane treatment on animals in violation of the laws of New Hampshire.

Respectfully submitted,



Patricia Morris, Esq.

Commission Chair

March 2, 2021



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INTRODUCTION AND PURPOSE

Animal cruelty is a crime against domestic animals, household pets and/or wild animals in captivity found in the New Hampshire Criminal Code. Citizens of New Hampshire, many of whom currently are or have been animal owners, are highly sensitized to the issues surrounding animal cruelty and expect the cruelty laws to be enforced. State law affords animals this protection by deeming animal cruelty a serious crime.

Because law enforcement officers, prosecutors and the judiciary may not be well versed in the New Hampshire cruelty laws or the unique protocols for investigation and prosecution of those laws, the Governor's Commission on the Humane Treatment of Animals has undertaken the task of producing this manual to provide background information about many facets of animal cruelty and provide a user manual for investigation and prosecution of these cases.

While this manual (2012) was in the process of being written, the National District Attorneys Association (NDAA) created The National Center for Prosecution of Animal Abuse (NCPAA). Its purpose mirrors that of this manual:

“To educate and train prosecutors and allied professionals on the effective handling of animal cruelty and neglect cases, including cases involving the co-occurrence of animal abuse and violence to people. NDAA desires to bring greater awareness to the often misunderstood nature of animal maltreatment and how it can interconnect with family violence and contribute to lethality issues for victims of interpersonal violence. With growing awareness by the public to recognize and report animal abuse, combined with increased attention by the media, prosecuting attorneys need the resources to properly address incidents of animal abuse in their community and properly hold offenders accountable.” (1) (Note: Documents cited in this protocol are referenced with a number in parentheses and can be found on page 72 as **Works Cited**.)

While this project is no longer funded, NDAA retains many resources which can be found at <https://ndaa.org/programs/animal-abuse>. As of 2019, the **National Coalition On Violence Against Animals** has been established and provides educational material and data for law enforcement personnel as well as for prosecutors and the judiciary. <https://ncovaa.org/> In addition, <https://www.justiceclearinghouse.com> has a number of animal welfare webinars specifically targeting animal cruelty issues for both investigators and prosecutors.

The framework of this manual will follow as much as possible the formats of the *Model Protocol for Police Response to Domestic Violence Cases* and *Stalking Protocol: A Model for Law Enforcement 2009* as police officers are already familiar with and using those documents. (2) (3) It is expected that police officers will reference the *New Hampshire Attorney General's Law Enforcement Manual, 2020* (hereafter known as **Law Enforcement Manual**) in using this protocol. (4) (Links to these documents in full text are provided in **Appendix C**.) It should also be noted that the term *veterinarian* in this document refers to a veterinarian licensed in New Hampshire under NH RSA 332-B.

Governor’s Commission on the Humane Treatment of Animals

The Governor’s Commission on the Humane Treatment of Animals (the Commission) was first established by Governor Craig Benson in 2004 to “evaluate the extent and causes of animal abuse in New Hampshire; perform a thorough analysis of all statutory administrative rules, and 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. “ (5) The Commission is made up of representatives of animal-related organizations, law enforcement, state agencies, the legislature, law professionals and the public. Each member is appointed by the Governor. The Commission has been reestablished by each succeeding Governor. The specific charges to the Commission, the number of members of the Commission, the organizations represented by the members, and the appointees to the Committee have changed with each subsequent Executive Order. The current Commission was reestablished in 2017 by Governor Chris Sununu and includes representatives the general public, various animal related organizations, the state veterinarian, law enforcement representatives, a NH State Representative, A NH State Senator, a representative of a national humane organization and more. The complete member list can be found at the end of **Section 4** of this Manual. One of the orders for this Commission was to “Maintain a Commission website that includes access to the Commission’s Animal Cruelty Law Enforcement Resources Document.” Toward that end, and with consideration of significant changes in the cruelty law and other animal related criminal laws enacted by the legislature in 2019, the Commission presents the 2020 edition of this **Manual**. The Commission would like to acknowledge the assistance of Attorney Anthony Estee in the editing of **Section 4** and the Glossary.

The Commission, in the course of its duties, has researched and published three significant reports:

Cost Analysis of Animal Cruelty in New Hampshire, 2008 Report; Analysis of Three Animal Cruelty Cases, 2009 Report, and Report on Animal Cruelty Related Criminal Activity in NH 2016-2017. All of these highlighted the need for prevention, public education, law enforcement/prosecution/judicial education, and funding to effectively deal with the issues of animal cruelty in New Hampshire. In addition, in order to effectively understand the impact of animal cruelty in the state, there is a need for accurate, consistent and timely reporting of all cases. (All reports, minutes, and other information can be found on the Commission website www.nh.gov/humane)

This user manual is the latest endeavor by the Commission to provide New Hampshire law enforcement professionals with protocols and guidelines for the investigation and prosecution animal cruelty in New Hampshire.

Structure and Use of the User Manual

Following these introductory pages, the manual is laid out in the following format:

Section 1: Animal Cruelty Laws and Other Issues

This section discusses the New Hampshire animal cruelty law and other laws related to animals in the NH Criminal Code as well as other laws that might be considered in conducting and prosecuting a cruelty investigation. It includes discussions of conflicting issues that may occur between those laws. (The text of the New Hampshire statutes (NH RSAs) related to animal cruelty can be found in **Appendix A** and should be referenced when using this manual.)

There is also a lengthy discussion of animal owner rights. In New Hampshire, animals are property. There is sometimes confusion as to the scope of owners' rights with respect to animal husbandry and care.

This is followed by a brief discussion on the prevention of animal cruelty. This is included to make the reader aware of what preventive measures are in place in the forms of education, intervention, and regulation, and which professional disciplines are involved in the delivery of each.

Section 2: Overview of Types of Animal Cruelty

This section contains a general discussion of the types or manifestations of animal cruelty that may be encountered in New Hampshire. It is background information to give the reader a realistic view of cruelty occurrences.

Section 3: Law Enforcement Protocols

This section contains recommended law enforcement protocols for responding to animal cruelty complaints both in general and in relation to the specific types of cruelty mentioned in **Section 2**.

Section 4: Courtroom Considerations

This section contains information specifically for prosecutors that discusses issues pertinent to their roles.

The four major sections are followed by:

- A list of current **Commission Members**
- References are listed in **Works Cited** found on page 72 in consecutive order of citation. In the text of the manual, each reference is indicated by a unique number in parentheses with the number reused if the reference is cited again later in the document.
- A **Glossary** containing terms and statute references as they pertain to crimes involving animals
- The **Appendices** contain the laws, useful web links, check sheets, lists of New Hampshire courts, and other relatively short documents.

Resources of greater length, illustrations and photographs are available at www.neacha.org/resources (This webpage will be referred to as **Resources** in this Manual)

The **Resources** web page dynamic. It will be amended and revised periodically. The reader should bookmark this site and become familiar with its organization and contents.

Suggestions for Best Use of the Manual

It is best if the reader takes time to read the *complete manual* to fully understand the impact of animal cruelty issues in New Hampshire and to become familiar with its contents. Although there may appear to be redundancy, each section is written as a unit. After initial reading, law enforcement may then use **Section 3** as a guideline to conducting investigations while using **Sections 1 and 2** as resources. Prosecutors will want to refer to **Section 4** in preparing a court case, but will also use **Section 3** when working with investigators and use **Section 1** and **Section 2** when preparing arguments.

SECTION 1: ANIMAL CRUELTY LAWS, OTHER LAWS AND ISSUES

The New Hampshire's animal cruelty statutes can be found under two title sections: **Title LXII, the Criminal Code** and **Title XL, Agriculture Horticulture and Animal Husbandry**. In addition, there are several other animal-related statutes in the **Criminal Code** that also address harm to animals. (See **Appendix A** to find complete text of the applicable NH statutes.) The laws in the **Criminal Code** are typically enforced by law enforcement officers certified by New Hampshire Police Standards and Training Council having jurisdiction where the animal is located or kept unless otherwise provided for in the law. **Title XL**, while not part of the **Criminal Code** has sections related to equine cruelty cases which can be enforced by the local law enforcement agency, animal control officer, state police, and/or sheriff having jurisdiction where the animal is located or kept. In addition, **Chapter 437 of Title XL** establishes standards for the regulation of animal health and requirements for the transfer of animals and birds in New Hampshire.

TITLE LXII: CRIMINAL CODE

NH 644:8 Cruelty to Animals is found in **Chapter 644 Breaches of the Peace and Related Offenses**. NH 644:8 I states “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.

The law uses generally accepted terms and concepts in this definition of cruelty but it does not limit the offense to those terms. While the statute sets forth specific offenses under this law, it does not provide specific criteria or accepted standards as to what is “necessary care, sustenance or shelter” of animals by defining these terms.

NH RSA 644:8, II defines “animal” as “domestic animal, household pet or a wild animal in captivity”. These are generally accepted terms describing animals other than wild animals living in their natural habitat. There is some overlap of meaning in the terms as a household pet is most often a domestic animal or can be a legally owned wild animal in captivity. The definition of “wild animal” and laws pertaining to the welfare of free-living wild animals come under the jurisdiction of the New Hampshire Fish and Game Department in **NH RSA Title XVII, Chapter 207**.

It should be noted that animals, as defined in NH RSA 644:8, II, are considered private property by common law (See generally, *Pinet v. N.H. Fire Ins. Co.*, 100 N.H.346, 348 (1956); *State v. M'Duffie*, 34 N.H. 523, 528 (1857)). This fact complicates the investigation since the owner's rights cannot be violated despite the fact that the animal is both the subject of a crime and the evidence of a crime. (More on owner's rights to be covered in pp. 10-11.)

NH RSA 644:8, II-a defines “shelter” or “necessary shelter” for dogs - the only species where shelter is explicitly required in the criminal code.¹ This section is concerning shelter for dogs living outside or kept outside for long periods of time, not those living in a house or kennel area that are let out frequently during the day and monitored while outside.

NH RSA 644:8, III and III-a define the criminal offenses constituting animal cruelty and the applicable penalties. The investigator may have opinions about the seriousness of an offense, but to ask for a specific penalty, the offense must fall into the correct element as written in the law. For the most part, NH RSA 644:8, III covers “negligent” offenses and NH RSA 644:8, III-a covers “purposeful” offenses.

For those convicted of a crime under NH RSA 644:8, III, the penalty is a misdemeanor for a first offense and a class B felony for a second or subsequent offense. Because there is an enhanced penalty for a second cruelty offense, animal cruelty charges may not be downgraded to a violation by a prosecutor. (NH RSA 625:9, VI) (**Law Enforcement Manual** p. 362.) The dates of the prior convictions are kept in court records permanently.

For those convicted under NH RSA 644:8, III-a, the penalty is a class B felony.

The primary penalty is determined by the *mens rea* (mental state) or intention of the perpetrator as long as the action is prohibited by NH RSA 644:8, III or III-a. (See Culpable Mental States NH RSA 626:2, II, and Glossary.)

NH RSA 644:8, IV (a) allows an officer to confiscate, with a warrant, an animal when a person is charged with cruelty. Effective as of January 2020, any confiscation action is subject to a series of conditions.

- A person charged under this section may petition the court to seek an examination of the confiscated animals by a veterinarian of their choice, at their expense.
- In cases where animals have been confiscated a status hearing shall be heard by the court within 14 days of the confiscation of the animals.
- Any person with proof of ownership or co-ownership who is not a defendant may petition the court for custody of the animal, and the court shall give such person priority for temporary custody of the animal if the court determines it is in the best interest of the animal’s health safety and wellbeing.
- No custodian of an animal confiscated under this section shall spay, neuter, or otherwise alter the animal.
- Upon a conviction for animal cruelty, the court shall give priority to transferring ownership rights to any person with proof of ownership or co-ownership of the animal if it is in the best interest of the animal’s health, safety, and wellbeing.
- The fees to provide confiscated animals with humane care and necessary veterinary services pending disposition of the case upon conviction shall be borne by the person so

¹ See NH RSA 435:14 for shelter requirements for horses in Appendix A, p. xii.

convicted, in accordance with rules adopted by the Department of Agriculture, Markets, and Food.²

In addition, the courts may prohibit any person convicted of a misdemeanor offense from having future ownership, custody of, or be in residence with animals for any period of time the court deems reasonable. The court shall prohibit or limit any person convicted of a felony offense of cruelty or a misdemeanor of felony offense of bestiality from having future ownership or custody of animals for a minimum of 5 years, any animal involved in a violation of court order shall be immediately forfeited, and the person violating said order may be subject to additional fines, contempt of court, or probation violation.

If a person convicted of any offense of cruelty to animals appeals the conviction and if the animal is still in custody, in order for the appellant to retain future ownership interest in the animal the appellant may be required to post a bond or other security not exceeding \$2,000 for each animal in custody, which must be posted to the court within 30 days. If not posted within 30 days, the animals shall be forfeited. If the conviction is affirmed, the costs for board and care of the animals shall be paid to the custodial agency from the posted security, and the balance, if any, shall be returned to the person who posted it.

The authority and rules for setting limits for reasonable daily boarding and care costs confiscated under this section is established in the civil code under RSA 437:9.³

NH RSA 644:8, IV-a (a) can be referred to as the “temporary protective custody” which is similar to an exigent circumstances clause. It allows a law enforcement officer, animal control officer, or officer of a New Hampshire licensed humane society⁴ to take any animal into temporary protective custody when there is probable cause to believe it has been or is being abused or neglected in violation of NH RSA 644:8 III or NH RSA 644:8 III-a, when there is clear and imminent danger to the animal’s health or life, and there is insufficient time to get a court order. The officer is required to leave written notice of the taking, and the officer also assumes responsibility for the proper care and housing of the animal taken into protective custody. If after 7 days the animal has not been returned or claimed, the officer shall petition the court for either a 7-day extension or seek permanent custody. If the extension was granted, after 14 days (total since taking) title and custody rests with the officer. Animal cruelty charges may be filed if appropriate.

NH RSA 644:8, IV–a (b) states that in order to take livestock into custody, the officer must be accompanied by a New Hampshire licensed veterinarian or the state veterinarian who “shall set the probable cause criteria” for the seizure under the temporary protective provisions. In other words, it is the accompanying veterinarian who ultimately determines if there is probable cause

² At the time of this writing the administrative rules have not been written.

³ At the time of this writing, the administrative rules have not been written.

⁴ While “officer of a duly licensed humane society” is not defined in any statutes, it references trained field or humane agents of licensed animal shelters that are humane organizations.

to believe the animal is in imminent danger to its health or life. Livestock definition is in NH RSA 427:38, III.⁵ This is a requirement of NH RSA 644:8,IV-a only.

NH RSA 644:8, IV –a (c)(1) and (2) discuss some additional requirements for temporary protective custody at dog and horse racetracks in New Hampshire. Dog racing is no longer legal in the state, and horse racing is currently not occurring.

NH RSA 644:8, V absolves a New Hampshire licensed veterinarian from criminal or civil liability for any decisions or services rendered in an investigation of animal cruelty.

OTHER CRIMINAL OFFENSES INVOLVING ANIMALS

NH RSA 644:8-a (Exhibitions of Fighting Animals) is a crime that deals with illegal animal fighting in New Hampshire. This law is comprehensive in addressing animal fighting, but it does not preclude charges additionally being brought under RSA 644:8 if warranted.

NH RSA 644:8 –a, I states that “no person shall offer for sale, sell, loan, export, 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.”

The investigating officer must prove the “intent” of the accused in regards to situations where animals are not caught in the act of or obviously involved in fighting. (Illegal animal fighting will be discussed in more detail in **Sections 2 and 3.**)

NH RSA 644:8-a, II provides that any person present at the site of a future “exhibition” (fight), at a fight, or involved in organizing or promoting a fight is also guilty of a class B felony.

NH RSA 644:8-a, III defines “animal fighting paraphernalia” and stipulates that any person who possesses, owns, buys, sells, transfers, or manufactures said animal fighting paraphernalia with the intent to promote or facilitate such fighting is also guilty of a class B felony. This section further enumerates and defines what is considered “animal fighting paraphernalia”.

NH RSA 644:8-a, IV discusses seizure of the fighting animals and states that upon the defendant’s conviction, animals may, “at the discretion of the court,” be destroyed in a humane manner. The costs incurred in boarding the animals and in disposing of the animals shall be borne by the person so convicted. This does not prevent the possibility of conducting temperament evaluations for possible placement of some of the animals.

⁵ **427:38 Definitions.** – As used in this subdivision: RSA 427:38 III. "Livestock" shall include beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules, or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*). Source. 1985, 72:1. 1995, 130:5. 1998, 310:2, eff. Aug. 25, 1998. 2014, 97:1, eff. Aug. 10, 2014. 2017, 145:5, eff. Aug. 15, 2017.

NH RSA 644:8-a, V states that upon conviction all assets seized, including animals, equipment, paraphernalia, and money, may be forfeited to the state at the discretion of the court to reimburse local and state agencies for costs of prosecution. Any proceeds not used to cover prosecution costs shall be deposited in the Companion Animal Neutering Fund. (NH RSA 437-A:4-a)

NH RSA 644:8-a VI limits a person convicted under the animal fighting statute from ownership or possession of animals for a minimum of 5 years along with other conditions.

NH RSA 644:8-aa (Animals in Motor Vehicles) states it is cruelty to confine an animal in a motor vehicle or other enclosed space in which the temperature is either so high or low as to cause serious harm to the animal. Animal is defined as in NH RSA 644:8, II. The penalty is a misdemeanor. Any law enforcement officer or agent of a licensed humane shelter may take action to rescue an animal and will not be held liable for damage reasonably necessary to rescue the confined animal. This is in the statutes primarily for the liability issue. An owner who leaves an animal confined in dangerous conditions may also be charged under NH RSA 644:8 III (g).

NH RSA 644:8-b, c, d, and e relate to specific procedures and incidences such a docking a horse tail, animals in classrooms, interference and maiming of police dogs or horses, and interference with organizations, projects or facilities involving or housing animals.

NH RSA 644:8-f (Transporting Dogs in Pickup Trucks) describes the acceptable (safe) ways to transport a dog in a pickup truck. It includes some working dog exceptions. Those transporting dogs in unsafe ways in a pickup truck are guilty of a violation. (NH RSA 644:8, III (d) applies to other forms of unsafe transportation. This law will be discussed further in **Sections 2 and 3.**)

NH RSA 644:8 –g (Bestiality) defines bestiality acts and the word “animal” (This “animal” definition is significantly different from NH RSA 644:8) It stipulates a penalty of class A misdemeanor for a first offense and class B felony for second offense, imposes a psychological assessment, animal care reimbursement, and pet contact restrictions. In addition, a convicted person must register as a Tier II sex offender, and participate in counseling at their own expense.

Finally, in the Criminal Code, there is a statute **NH RSA 644:16 – Exposing Poisons**, which prohibits purposely exposing poisons for the destruction of an animal. It excludes destruction of vermin on a person’s property. This statute is a violation-level offense, but it is possible if an animal dies in an inhumane manner due to the poisoning, charges could also be brought under NH RSA 644:8 as an act of cruelty.

TITLE XL: AGRICULTURE, HORTICULTURE, AND ANIMAL HUSBANDRY

NH RSA 435:11- 435:16 Treatment of Horses describe the proper care and treatment of horses (all members of the equine species). It reiterates section NH RSA 644:8 as it applies to horses and also describes proper feeding (NH RSA 435:13) and shelter (NH RSA 435:14). No seizure or taking of horses may be made without a probable cause determination by a veterinarian (NH RSA435:15). If probable cause of animal cruelty is determined by a New Hampshire licensed veterinarian, upon a second offense the horse shall be seized and not returned until restitution for the seizure is made and proof of proper care is provided. Upon a third or subsequent offense the horse shall be permanently seized (NH RSA435:16). There are administrative rules (CHAPTER

Agr 3700) that can be enforced under this law. Offenses under these statutes are violation-level. (Note: The Commission has identified a conflict between the penalties for violations of this law with the penalties for violation of NH RSA 644:8. (6))

Complaints under these laws should initially be filed with the local law enforcement agency, animal control officer, state police, or sheriff which has jurisdiction over where the animal is located or kept. If a complaint is filed with a non-profit humane animal shelter, they may do a preliminary investigation but will work with the appropriate law enforcement agency if charges are sought. At the request of the local law enforcement agency, animal control officer, state police, or sheriff, the state veterinarian shall assist in a secondary capacity in subject matter assessment regarding the provisions of and investigating said complaints. (NH RSA 436:8) Seizures under this law are handled via court order.

ADDITIONAL CRUELTY RELATED LAWS

NH RSA 466:40 and 466:40-a (Mutilation Prohibited and Possession of a Cropped Dog) prohibits ear cropping to be done in this state by anyone other than a veterinarian. Anyone in possession of a dog with unhealed, recently cropped ears must have a certificate of cropping signed by a veterinarian. This law is a violation with a fine for a penalty but, depending on the circumstances of the cropping, the case may also be investigated as animal cruelty.

NH RSA 437-B:1 **Cost of Care Fund (Effective July 1, 2020)** establishes a fund under the control of the NH Department of Agriculture Markets and Food that allows arresting officers for cases brought under NH RSA 644:8 and 644:8-a to apply for a reimbursement for pretrial care costs for animals seized until disposition of the case.⁶

Issues

ANIMAL OWNER'S RIGHTS

The legal relationship between animals and people is simple and clear- companion animals are property under the law. A person owns a domestic animal even when that animal is not directly under the person's control. (7) Although treating animals as property affords them, and their owners, some protection in the law, it also limits animals' and owners' rights. There are difficulties in treating animals as property, as they are sentient beings, and are often integral parts of their human families. Nevertheless, general property laws apply to companion animals in both criminal and civil legal proceedings. (8)

In some cases, such as with registered purebred animals, ownership of an animal is supported by registration documentation. It is important to note that it is possible to have multiple owners for a given animal, who may not reside at the same premises. There also might be ownership paperwork for animals adopted from shelters or rescues. For most companion animals, for which the animal owner is not designated in writing, ownership is determined more by association. This

⁶ At the time of this writing, the primary source of funding will come from the registration of animal food products. The procedure for obtaining funds has not yet been established.

association is implied and supported by the action of daily care, feeding, training, transporting or any other activity related to time spent with the animal as well as microchip registration. In performing these animal related duties, an ownership relationship and responsibility is created. In addition to purebred dogs and purebred cats, horses are commonly transferred by means of a written purchase and sales contract that will not only define the ownership of the animal but will also give the animal a declared value. In the specific case of horses, ownership can extend to a wider number of owners in the case of syndication. It is also possible that a horse may have lien holders who have a claim on the value of the horse. In addition, horses may also have a mortality value, if insured.

Valuation of an animal, absent a written contract as discussed above, is a particularly difficult task. (9) The traditional method for assigning a monetary valuation to companion animals is fair market value, which also accounts for “any special value, particular qualities, or capabilities”. (10) The court is free to utilize any reasonable valuation method; however, no matter which method is employed, evidence must appear on the record to support it. The burden is on the parties to present such evidence, although the court may reject any it chooses.

In recent years, courts and the legislature have come to recognize the importance of companion animals to their families and have also begun to realize that companion animals deserve more protection than traditional property law affords them. (7) If a companion animal is wrongfully killed, the owner can usually collect compensation for the cost of the animal. Compensation is based upon the animal’s market value, although courts have sometimes allowed other means to establish value. For example, although purebred animals have a determinable worth, mixed breeds do not. Thus, traditionally, no compensation was required. Some courts have recognized the inadequacy and inconsistency in awarding pet owners only market value for the wrongful death of their pet and have started to award non-economic damages. However, courts are still reluctant to award punitive damages in cases of the wrongful death of a companion animal. (11) If it is shown that the animal has no fair market value, the owner may introduce evidence of a special value. (*Carbasha v. Muslin*, 618 S.E. 2d 368 (W. Va. 2005)).

Standards of property rights have been changing recently as evidenced by the fact that some courts have started to consider the best interests of the animal in divorce cases, which is a standard generally applied to child custody. NH RSA 458:16-a (Property settlement) II-a. Tangible property shall include animals. In such cases, the property settlement shall address the care and ownership of the parties' animals, taking into consideration the animals' wellbeing. Also, persons are able to set up trusts for their companion animal’s care and are able to provide for their animals in wills and in estate planning. (12) (NH RSA 564-B:4-408)

LOSS OF PROPERTY INTEREST IN A COMPANION ANIMAL

As the law gives more recognition to the familial status of animals in today's society, animal shelters,⁷ law enforcement, and prosecutors must be careful to respect the rights of companion animal owners. Thus, shelters, law enforcement officers, and prosecutors must be well informed in the law regarding when the town or organization gains title and ownership in a found or relinquished animal, and what those rights mean.

SURRENDER/TRANSFER

As title-holders, owners of companion animals can transfer that title through several means. Owners can transfer title immediately to a third party by giving an animal as a gift to another person. An owner can give (surrender) an animal to an animal shelter or town, which results in an immediate transfer of title to the shelter or town if the owner shows the intent to relinquish title. In that case, the shelter or town will have both possession and title, and the ability dispose of it, as if it were the animal's rightful owner (NH RSA 437:20).

ABANDONMENT

Loss of property interest also occurs with abandonment. In a situation where an animal is left at a veterinary hospital, kennel, or similar facility, and the owner does not collect their animal and pay for the services within 7 days of discharge date, the animal is deemed abandoned (NH RSA 437:18, IV). At that time, the facility has certain responsibilities it must carry out before it may gain title to the animal. First, there is a general requirement that the facility must contact the owner(s) and notify them that they can obtain the animal by paying for the services. In this case, the abandonment is not a cruelty offense, but a civil offense.

If a stray cat with identification (e.g. tattoo, collar, microchip, ear tag) is brought to an animal shelter facility by a citizen or officer, the facility must keep the cat for 7 days to allow the owner time to locate it after which it is considered abandoned (NH RSA 437:18, IV (d)). A cat without identification does not have to be held for any prescribed period of time.

If a dog is brought into a pound, humane society or shelter without a rabies tag or other identification (stray), that organization has an obligation to keep the animal for the prescribed minimum 7-day period of time, during which time the shelter must make reasonable efforts to find the owner or keeper of the animal, including looking for license tags, tattoos, microchips, or other identifying information (NH RSA 436:107). During this time, the shelter has possession, but not title to the animal. Only the original owner can reclaim the animal, and he/she shall be required

⁷**NH RSA 437:1 I** "Animal Shelter Facility" -means a facility, including the building and the immediate surrounding area, which is used to house or contain animals and which is owned, operated and maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of animals, and also a public pound for the housing of strays or a pound operated by any person, excluding veterinarians, who contracts with a municipality to serve that function.

to pay costs. If the owner does not pay, it is considered a forfeiture of the animal, and the shelter then would have title to the animal. (NH RSA 466:18-a)

An owner can also abandon an animal by leaving it in a public place or uninhabited home. This act demonstrates the owner's refusal to care for the animal. New Hampshire defines that abandonment as an owner's failure to provide proper care, sustenance, protection or shelter (NH RSA 644:8, I). An owner is guilty of a misdemeanor for a first offense and a class B felony for a second or subsequent offense if their actions "negligently deprive any animal in their possession or custody necessary care, sustenance or shelter." (NH RSA 644:8, III (e)) If an owner attempts to reclaim an animal which has been abandoned in this manner, the owner is liable for the costs of treating the animal and may be charged with animal cruelty. If the animal was taken into temporary protective custody, and not claimed for 7 days, the officer shall petition the municipal court or district court seeking either permanent custody or a one-week extension of custody, and may file cruelty charges under NH RSA 644:8, IV-a (a).

CONFISCATION/SEIZURE

Any person charged with cruelty to animals may have their animals confiscated with a warrant by an arresting officer under NH RSA 644:8, III. Upon such person's conviction of cruelty to animals, the court may dispose of said animal in any manner it deems appropriate. (NH RSA 644:8, IV (a))

The seizure of horses is specifically covered under two separate statutes, NH RSA 644:8, IV- a (b) (as livestock) and NH RSA 435:16. Seizure under these statutes is not permitted without a probable cause verification by an accompanying New Hampshire licensed veterinarian. Under NH RSA 435:16, (civil law) an owner failing to comply with the mandated care, feeding, and shelter provisions will receive notification of the proper care requirements. Upon a second offense, the horse or horses 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 or horses are to be permanently seized. (NH RSA 435:16) As mentioned earlier, although NH RSA 435:16 comes under the purview of NHDAMF, they are handled with law enforcement per NH RSA 436:8 (State Veterinarian). Seizures under RSA 435:16 are done with court orders.

TEMPORARY PROTECTIVE CUSTODY

A law enforcement officer as well as an animal control officer, or officer of a duly licensed humane society⁸ may take an animal into temporary protective custody when there is probable cause to believe that it has been abused or neglected, and when there is a clear and imminent danger to the animal's health or life, and there is insufficient time to obtain a court order (NH RSA 644:8, IV- a). (See detailed information in **Section 3**.)

⁸ See footnote 4, pg.7 for clarification.

ADDITIONAL OWNERSHIP RIGHTS

Beyond the mandated provision of proper care, sustenance, protection, or shelter as generally discussed in NH RSA 644:8 and NH RSA 435:15, companion animal and horse owners have the right to train, work, compete, exhibit, and otherwise engage in active pursuits with their companion animals, livestock, and horses unless otherwise prohibited by law. This provision also extends to the owner's right to obtain veterinary services for their animals from licensed veterinarians and other associated animal health providers for such services as dentistry, massage, holistic and other non-traditional therapies that they may seek.

Standards of Animal Care

The acceptable standards of animal care are not written into the cruelty laws in the criminal code except for the shelter requirements for dogs, animals in enclosed spaces when weather is excessively hot or cold, or dogs being transported in pickup trucks. Pet Vendors (NH RSA 437:1 IV) are licensed and must maintain facilities according to administrative rules (CHAPTER Agr 1700) and standards required by The NH department Agriculture Markets and Food. These are basic standards and may be referenced during cruelty investigations.

As mentioned in the owner's rights section, there is wide variation in the way people care for their animals; most of them acceptable for the animal's health and well-being. Minimum standards for the care of certain animal species are covered in other NH RSA's and Administrative Rules overseen by the New Hampshire Department of Agriculture, Markets, and Foods, Division of Animal Industry. (<https://www.agriculture.nh.gov/laws-rules/index.htm>) Additional standards may be found in the federal Animal Welfare Act. *Guidelines for Standards of Care in Animal Shelters*, published by the Association of Animal Shelter Veterinarians, may prove useful in assessing multi-animal cases. These rules and documents might be used as resources for determining minimal standards of care if documentation is needed in a case. (See **Appendix C** and **Resources**.) These documents have not been challenged and validated in New Hampshire criminal courts but have been referenced in other state statutes, courts, and jurisdictions. New Hampshire has not sufficiently developed its animal cruelty "case law" to provide guidance on standards of care. Investigating officers may need to do research and call in expert witnesses to testify as to acceptable standards of care to convince a judge or jury in cases of neglect or inhumane handling.

NH statutes also lack minimum requirements for acceptable grooming and appropriate housing environment. The Tufts Animal Care and Condition Scoring (TACC) system (13) developed for dogs, is used by many communities and has been accepted by some courts. (e.g. Ft. Wayne, IN Municipal Courts) The TACC has sometimes been extrapolated for use in cats. (See **Resources** for a copy of this scoring chart and body scoring procedures for other species including horses and livestock.) The investigator and expert witnesses should be very familiar with these scoring charts as a guide in determining if a seizure is warranted and also be able to testify to their proper use in court.

Prevention of Animal Cruelty

The best solution for addressing animal cruelty is prevention. Most laws are written to be a deterrent, but if people are not familiar with the laws or proper care of animals, education is needed to prevent animal cruelty.

HUMANE EDUCATION

To prevent animal cruelty, various entities educate the public about acceptable standards of care and the level of commitment and costs required in taking care of an animal.

Towards that effort, the Governor's Commission on The Humane Treatment of Animals has compiled an extensive number of brochures that provide guidance relative to a number of differing species. The brochures are helpful in understanding an animal's needs for a safe and healthy life. The brochures may be found at <http://neacha.org/brochures/>.

Purposeful humane education is conducted by humane organizations, classroom teachers, 4-H leaders, organizations such as the National FFA Organization (Future Farmers of America), scouting, and volunteers from veterinary and other animal care professions, as well as responsible breeders and kennel clubs. This education should start early during a child's development and continue throughout school years. Less formal education continues into adulthood through advertising, media, and public events and by animal ownership itself. As owners interact with veterinarians, and other animal care and control professionals regarding the care of their animals, they learn about proper diet, husbandry, preventive health care, legal responsibilities, and more. Humane education should embrace a respect for the world in general and help a person develop empathy for others – human and non-human.

EARLY INTERVENTION AND PREVENTION OF FUTURE CRIMES

An act of animal cruelty, whether committed as a juvenile or an adult, can be a precursor to more violent crime towards humans as well as animals. When such a pattern is recognized early, intervention can be employed to possibly curtail this violent behavior. (14)

The National Link Coalition reports that over the past 35 years, researchers and professionals in a variety of human services and animal welfare disciplines have established significant correlations between animal abuse, child maltreatment, domestic violence, elder abuse and other forms of violence. Mistreating animals is no longer seen as an isolated incident that can be ignored: it is often an indicator or predictor crime and a "red flag" warning sign that other family members in the household may not be safe. (15)

Dr. Randall Lockwood, Senior Vice President for Forensic Sciences and Anti-Cruelty Projects of the ASPCA and an internationally recognized expert on the animal cruelty/human violence connection, has identified a number of risk factors to evaluate a level of dangerousness in an animal abuser who may be at risk of committing violence against others in the future. These factors can be applied in risk and lethality assessments when reviewing case histories. (15)

For the child or adult who has not previously been exposed to the proper care and treatment of animals, intervention could range from attending humane education classes to psychiatric evaluation and therapy. There are those who consciously inflict cruelty on animals, and those who do not understand the consequences of their behavior. The latter could simply be educated on how to take care of their animal(s), or how to find it a better home. The former may be a candidate for therapy in addition to an appropriate penalty.

An intervention program for children must start as early as possible - at the very first sign of any conduct disorder. This is the time period when children are most receptive to enriching and supportive environments. (16) It should be noted that violence towards animals is one of the earliest, if not the earliest, warning sign that a young child might have the potential to become a violent offender. Parents have reported children “hurting animals” as early as 6.5 years old. (17) Studies also reveal that animal abuse and interpersonal violence toward humans share common characteristics such as:

- The victims are living creatures,
- Both have capacity for experiencing pain and distress,
- Each displays physical signs of their pain and distress (with which humans could empathize),
- Both may die as a result of inflicted injuries. (17)

Researchers found that violent, incarcerated men reported higher rates of "substantial cruelty to animals" in childhood (25 percent) than a comparison group of non-incarcerated men (0 percent). A similar difference emerged in a study of assaultive and non-assaultive women offenders where 36 percent of the former group reported cruelty to animals compared with 0 percent of the latter. (17) Without any intervention such children have the propensity to become violent criminals later in life - even more so than those who start their violent behavior as teenagers. (18)

Animal Care and Control Services

The public should no longer think of an animal control officer as the “dog catcher” rounding up strays. Pet owners expect an animal control officer to be professional and polite, and to enforce municipal and state animal laws as well as the cruelty laws. Television shows like “Animal Cops” on Animal Planet have changed the public’s perception of Animal Control and Humane Officers.

By statute, every town is required to provide certain animal control services (NH RSA’s 466:1-c; 635:3, 437:3; 437:22; 436:99), but there is a wide disparity in the actual services provided among municipalities. Some communities require their animal control officers to have law enforcement training as well as animal control training. Professional training is available through many venues. (See Appendix C.) This training, though, is subject to officer availability (many animal control officers are only paid by the call and have other jobs) and budget of the town in which he/she works. The majority of towns in New Hampshire do not have a designated Animal Control Of-

ficer and the activity typically falls to local law enforcement. In communities where animal control officers do not have law enforcement training, the ability to enforce animal cruelty laws is limited by police availability to assist animal control officers.

A town with professional animal care and control services is providing a form of education and early interventions that can, and often does, keep benign ignorance from becoming cruelty. A trained animal control officer patrols, responds to citizen cares and concerns, provides humane education, conducts investigations, and presents animal related information knowledgeably at public meetings and during court proceedings.

REGULATION OF ANIMAL FACILITIES

In addition to the education of individuals to prevent cruelty to animals, certain prevention oversight is required of entities that make their livelihood selling and caring for animals.

The New Hampshire Department of Agriculture, Markets and Foods (NHDAMF), licenses and inspects animal shelters, rescues, pet stores, and commercial kennels. These are defined as Pet Vendors (NH RSA 437:1 IV). The department also is responsible for the regulation of licensed livestock dealers. The primary purpose of NHDAMF livestock regulatory oversight is disease control for the benefit of public health, but there is also the benefit of ensuring that the animals are cared for properly. The statutes regulating these facilities are in NH RSA Chapters 427 and 435 and their associated administrative rules.

Another agency that regulates animal care is the United States Department of Agriculture (USDA) through the federal Animal Welfare Act and other federal laws.

The New Hampshire Fish and Game Department is responsible for responding to concerns related to wildlife.

(*See Appendix C for web links for above referenced statutes and more information related to New Hampshire Department of Agriculture, Markets and Food, USDA and NH Fish and Game Department.*)

SECTION 2: TYPES OF ANIMAL CRUELTY

New Hampshire cruelty offenses are divided into either purposeful or negligent acts.

“Purposeful”⁹ actions are conscious choices to inflict harm on an animal.

“Negligent”¹⁰ actions or omissions of an animal’s care include, but are not limited to failure to provide adequate food, husbandry, safety, and other needs of the animal in a manner that constitutes a gross deviation from the conduct of a reasonable person.

Brief descriptions illustrating the manifestations of cruelty by “type” follow. Detailed information regarding the investigation of many of these types of cruelty follows in **Section 3**.

PURPOSEFUL CRUELTY

Domestic Violence and Violent Crime Links (For investigation recommendations, see **Section 3**)

Acts of animal cruelty are linked to a variety of other crimes, including violence against people, property crimes, drug crimes and disorderly conduct offenses. (14) (19) Reporting, investigating, and prosecuting animal cruelty can help take dangerous criminals off the streets.

If an animal is being abused in a family, it is possible that a child or other family member is also being hurt or threatened. Animal control officers, in the performance of their duties, often have easier access to homes than representatives of other law enforcement and social service agencies. A woman, afraid to report her partner’s abusive behavior toward her, may feel less threatened reporting his cruelty to animals. Likewise, a neighbor of a family in trouble may witness and report the abuse of animals earlier than the abuse of human family members. This may start a dialogue with appropriate agencies that uncovers the perpetrator’s human-directed violence. (14)

Animal cruelty may be a warning sign for at-risk youth, according to the National School Safety Council, the U.S. Department of Education, the American Psychological Association, and the National Crime Prevention Council. (14) (20) A child perpetrating a cruel act on an animal is an indicator that that child may pose a risk to themselves as well as to others. Ongoing longitudinal studies begun in 1987 demonstrate that chronic physical aggression by elementary school boys increases the likelihood they will commit continued physical violence as well as other nonviolent forms of delinquency during adolescence. Animal cruelty is one significant form of physical aggression. (21)

⁹ RSA 626:2, II (a). “Purposely.” A person acts purposely with respect to a material element of an offense when his conscious object is to cause the result or engage in the conduct that comprises the element.

¹⁰ RSA 626:2, II (d) “Negligently.” A person acts negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

Experts agree that the early implementation of prevention and treatment strategies for conduct disorder behaviors, such as animal cruelty, is key to their effectiveness. Some suggest the most strategic point for intervention is in the preschool and early elementary school years. As aggressive children get older, they are less responsive to therapeutic intervention (22) (23).

Beating (See **Section 3**.)

Beating is an act of striking with repeated blows. (NH RSA 644:8, III(b) and III-a) This form of cruelty varies in degree and severity of results. Beating should not be confused with self-defense from a dangerous animal or certain training methods that may resemble beating to an untrained observer.

Sexual Molestation of Animals (See **Section 3**, Animal Sexual Assault/Bestiality)

Note: The discussion that follows is related to NH RSA 644:8. New Hampshire now has a law that specifically addresses bestiality (NH RSA 644:8-g) which is a different law and will be discussed later.

Sexual molestation of animals (as part of what is referred to as zoophilia, bestiality, zooerasty or sodomy) is unnatural sexual conduct of a human toward an animal. This kind of molestation includes a wide range of behaviors such as vaginal, anal, or oral penetration; fondling; oral-genital contact; penetration using an object; and killing or injuring an animal for sexual gratification. Animal sexual molestation may or may not include physical violence other than the sexual violation, and may or may not result in physical injury to the animal. If the animal is harmed or injured during the sexual acts, it is an act of animal cruelty under NH RSA 644:8. In addition, this injury and other acts of molestation are defined in NH RSA 644:8- g as Bestiality. Animal sexual molestation or assault, like rape, is often the eroticization of violence, control, and exploitation. Sometimes people can be coerced by their peers or abusers to perform sex acts on an animal. The sexual molestation of animals can occur in the same households as the sexual molestation of women and children. (24) A child's sexual molestation of an animal may be a warning sign that the child is a victim or witness of physical, sexual or emotional abuse themselves. Sexual molestation of animals is often practiced as a form of pornography. Often the "service" of animals is sold as a form of erotic entertainment. These correlations should be kept in mind when investigating domestic disturbances or sexual assaults where there are/have been animals in the home. (25)

While the molestation of animals is a conscious choice of the offender, the first NH RSA 644:8-g Bestiality offense is a misdemeanor and unless the criminal actions to the animal meet the standards of the list of actions in NH RSA 644:8 III-a, it cannot be charged as a felony offense.

It should be noted that accepted practices for the controlled breeding of animals are considered animal husbandry methods (e.g. artificial insemination, assisted breeding or ejaculation) and are not considered sexual molestation or bestiality.

Animal Fighting (See Section 3 for detailed investigation recommendations.)

Although Animal Fighting is covered under a separate statute in NH, (NH RSA 644:8-a) it is mentioned here as it is purposeful cruelty and a felony offense. Dog fighting is a felony offense in all 50 states and Cockfighting is illegal in all states. In 2014, Federal Law¹¹ 7 U.S. Code Chapter 54 § 2156 - Animal fighting venture prohibition was passed. It prohibits: (a) Sponsoring or exhibiting an animal in an animal fighting venture; (b) Buying, selling, delivering, possessing, training, or transporting animals for participation in animal fighting venture; (c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture; (d) violation of state law; and (e) buying, selling, delivering, or transporting sharp instruments for use in animal fighting venture

Additional species of animals and birds (other than dog or cock) may also be involved in fighting. New Hampshire law defines all animal fighting and acts related to it as felony offenses. (NH RSA 644:8-a.) While animal fighting is not common in New Hampshire, it does occur and animals are bred and trained in NH to go on to fight in other states. It is clandestine and seldom comes to the attention of law enforcement. (See *U.S. v. Kizeart*, 2010 WL 3768023(S.D.ILL) The court discusses the history of dog fighting in the United States. This case may be found on the **Resources** website.)

Dog Fighting

According to humane law enforcement professionals, there are three categories of fighting dog owners:

Professionals: Professionals breed, train, and fight their own dogs on a national/international basis, spending hundreds and thousands of dollars. They use drugs such as antibiotics to fight off infections, steroids to boost the dog's strength, and treadmills and other devices to condition the dogs.

Hobbyists: Hobbyists are small time operators who regularly arrange matches within a certain region and tend to put a greater emphasis on gambling rather than controlled breeding. Their dogs are purchased through classified ads and are entered in matches with little or no prior conditioning. The owners hope to win the purchase price of the dog back through gambling.

Street Fighters: Street fighters are often juveniles or members of gangs that fight their animals as a show of status. Many of the animals are stolen or obtained under false pretenses. Dogs often show signs of physical abuse as they are often hit, stabbed, poked with objects, and even burned to make them mean/aggressive. The dogs are often disposed of after the fight; left in alleys or thrown in dumpsters when they fail to perform.

Common complaints that may be received about possible dog fighting include: (26)

¹¹ Animal Welfare Act

- **Pit bull “hotels”** - Between fights, dogs used for fighting are sometimes harbored in abandoned buildings or by other owners. A complaint may be received about dogs barking in an abandoned building or shed or about pit bull owners who suddenly have a lot of dogs.
- **Organized dog fighting ring** -A complaint may be received that dog fighting is going on in a certain location. Often these complaints originate with former participants who got “burned” by the ring.
- **Unorganized fighting** –Neighbors may complain about an injured dog, or report hearing frequent dog fights in the area. A veterinarian may report that a dog has come in with an ear chewed off and numerous scars. Animal control officers may also become aware of possible fighting when doing dog bite or licensing investigations.

Cock Fighting

Cock fighting (and other types of bird fighting) in New England is often a cultural event that goes unnoticed. Reports usually come from municipal or other agency workers who become aware of the birds while conducting their duties.

Ritualistic Rites Involving Animals (26) (27) (See **Section 3** for investigation recommendations)

Complaints may be received about a mutilated dead animal(s) being found with symbols of cult activity around the body such as satanic symbols, bones, and candles. Voodoo, Santeria, Palo Mayombe, and Brujeria are all religions that practice animal sacrifice- usually involving goats, sheep and chickens. True practitioners of neo-paganism and witchcraft (Wicca) do not perform animal sacrifice. Rites may take place in wooded areas, cemeteries, commercial or residential buildings, or abandoned buildings.

True ritualistic animal cruelty is not that common. It is estimated that only .15% of animal cruelty cases can be categorized as ritualistic. Sometimes what appears to be a ritualistic scene is actually an abandoned campsite. A thorough investigation of evidence is required to determine if a scene is truly related to a cult religion.

There has been some confusion with regard to true cults and their practices and freedom of religion. Individuals have the freedom to practice their religion as they define it; however, they are not permitted to commit criminal acts, or interfere with the rights of others, while in the process. Thus, torturing or mutilating live animals is not permitted because it is a criminal act. If they engage in this behavior, they are subject to prosecution.

NEGLIGENT CRUELTY

Abandoning An Animal

Abandonment of an animal- leaving an animal without food, water or supervision- occurs in a variety of situations. Abandonment cruelty complaints are often received in vacation/resort areas at the end of tourist season, but they can occur anywhere. In difficult economic times, animals

may also be left behind in homes during a forced move and eviction. Animals may often be dropped off in the vicinity of a humane society or farm in hopes that they will be taken in. While abandonment is usually an intentional act, abandonment is not listed in 644:8 III-a as a purposeful offense and must be charged as negligence. (NH RSA 644:8, III (e))

The term “abandonment” is also used when animals are left without payment of a bill at a veterinary hospital, boarding facility, or other animal care center. In that circumstance, it is not a violation of the cruelty law, but a violation of NH RSA 437:19 (Unclaimed and Abandoned Animals). (See also **Section 1, Animal Owner Rights.**)

Multiple Animals Not Cared For (See **Section 3** for investigative suggestions.)

It is not uncommon in New Hampshire to find a person who has multiple animals but cannot provide them with appropriate care. There is a temptation to label these situations as “hoarding”, but each case should be viewed individually. The term “hoarder” is not defined in New Hampshire statutes. “Object” hoarding is considered a psychological disorder¹² and it, as well as animal hoarding, should not be criminalized.

According to the Hoarding of Animal Research Consortium (HARC), (28) animal hoarding was formally defined in the public health literature as meeting all the following criteria:

- Having more than the typical number of companion animals
- Failing to provide even minimal standards of nutrition, sanitation, shelter, and veterinary care, with this neglect often resulting in illness and death from starvation, spread of infectious disease, and untreated injury or medical condition
- Denial of the inability to provide this minimum care and the impact of that failure on the animals, the household, and human occupants of the dwelling
- Persistence, despite this failure, in accumulating and controlling animals

Normally, this type of cruelty case will come to law enforcement’s attention when complaints are received from persons observing thin animals and/or smelling bad odors coming from an individual’s property, or from representatives of other agencies or businesses who have been on the premises.

The investigation may reveal large numbers of animals in extremely poor physical condition. In some cases, they may be lacking food, water, and shelter. In other cases, they may receive some food but they are denied medical care, and as a result, are suffering intensely. Sometimes, all of these conditions are present. In general, the conditions will be filthy and the animals overcrowded.

Neglect (See **Section 3** for investigation recommendations)

Neglect is failure to provide adequate food, water, care, or shelter. (NH RSA 644:8, III (a)) Neglect complaints may be difficult to resolve because the standards of care (other than shelter for

¹² DSM-5, American Psychological Association (2013)

dogs) are not specifically defined in the cruelty laws. An officer must rely on the “standards of a reasonable person” (NH RSA 626:2, II (d)). Determining those reasonable standards may require research and interviewing professionals to establish whether the conduct constitutes negligence.

Neglect sometimes occurs because people acquired an animal on impulse and did not think through the responsibilities involved. (26) Neglect may exist for one or more animals and could be the failure of anyone having contact and responsibility for animals, including an individual person, animal rescue/shelter organization, breeder, pet vendor, or pet shop. The causes vary, but the results are the same: animals not being cared for properly. The way owners respond to intervention will vary from being cooperative to acting hostile.

Irresponsible Breeding

“Animal husbandry” refers to the care and management, such as feeding, breeding, housing and health care, of animals kept by humans. Domestic animals may be kept for personal and commercial purposes and the compliance and enforcement of laws that protect the health and welfare of domestic animals varies accordingly. Depending on the type of animal and its use, federal, state and local laws may provide specific licensure, standards of care, inspection and enforcement provisions. Additionally, some animal breeders may voluntarily be subject to private organization standards.

Responsible breeders of dogs and other animals provide adequately for the animals they raise because they care about their animals and the improvement of the breed. They strive for a reputation for producing healthy, purebred animals. However, these breeders are not immune to animal care concerns and complaints may be received about animals that are not being fed, cared for properly or are not provided with adequate shelter. A breeder may have one or a few animals and be unfamiliar with the standards for breeding and care of the offspring. (26)

Breeding kennels with many animals and multiple breeds operated primarily for profit rather than for good health and breed improvement are often referred to as “puppy mills”,¹³ however there is no legal definition for this in New Hampshire. The housing conditions and care of dogs at these facilities are often substandard. The poor care of the animals may constitute negligent cruelty.

Since the Department of Agriculture Markets and Food (hereafter known as NHDAMF) has licensing enforcement authority over New Hampshire licensed pet vendors (which includes what was previously known as commercial kennels), it should be contacted in conjunction with a cruelty investigation to verify the breeder’s licensing status (or lack thereof) and to check for any previous violations. (NH RSA 437:1)

¹³ The term “puppy mill” was coined by the court in *Avenson v. Zegart*, 577 F. Supp. 958, 960 (U.S.D.Ct., D. Minnesota, 6th Division)(1984): “a dog breeding operation in which the health of the dogs is disregarded in order to maintain a low overhead and maximize profits.”

Shelters and Rescues

"Animal shelter facility" means a facility, including the building and the immediate surrounding area, which is used to house or contain animals and which is owned, operated and maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of animals, and also a public pound for the housing of strays or a pound operated by any person, excluding veterinarians, who contracts with a municipality to serve that function. These facilities are licensed and regulated by NHDAMF as "pet vendors" and that department should be contacted in conjunction with any cruelty complaints and investigations.

Pet Store

A member of the public may call and complain about the conditions that exist at a local pet store. The complaints may range from overcrowded cages to cruel acts. Pet stores are pet vendors and are legal in New Hampshire. Animal care is administratively regulated by the NHDAMF and the USDA. NHDAMF should be contacted for licensing status (or lack thereof) and for any information on possible previous violations. The USDA regulates wholesalers of animals (those supplying pets to retail stores for resale) and should be contacted as well. They also regulate the possession and sale of "pocket pets" such as sugar gliders and hedgehogs.

The pet store is a business and someone's livelihood. Other laws must be considered such as NH RSA 382-A Uniform Commercial Code, and such cases should be investigated very carefully. (26) Often there is a question of who is actually responsible for animal care according to the organizational structure of the business.

As of July 1, 2019, a pet vendor has been statutorily defined as any person, firm, corporation, or other entity that transfers 25 or more dogs, 25 or more cats, 30 or more ferrets, or 50 or more birds, live animals or birds customarily used as household pets to the public, with or without a fee or donation required, and whether or not a physical facility is owned by the licensee in New Hampshire, when transfer to the final owner occurs within New Hampshire, between July 1 and June 30 of each year. Pet vendor also means any person, firm, corporation, or other entity that transfers amphibians, reptiles, fish, or small mammals customarily used as household pets to the public in quantities set in rules adopted by the department, with or without a fee or donation required, and whether or not a physical facility is owned by the licensee in New Hampshire between July 1 and June 30 of each year. Nothing in this paragraph shall be construed to alter or affect the municipal zoning regulations that a pet vendor shall conform with under NH RSA 437:3.

Equine/Livestock Neglect (See **Section 3** for investigation recommendations.)

Some of the most difficult negligent cruelty investigations involve livestock (horses, cows, goats, etc.) because the officer may be unfamiliar with the care and handling of these animals. Also, it is difficult and expensive to find places to keep seized large animals while a case progresses through the court system.

In New Hampshire, the probable cause determination to seize livestock without a warrant must be verified by a New Hampshire licensed veterinarian or the state veterinarian present at the seizure. This portion of the law was enacted to ensure that the judgment to seize was sound and based on the expertise of the veterinarian. (NH RSA 644:8 IV-a (b) and NH RSA 435:15)

Unsafe Transportation (See **Section 3** for recommendations for all transportation related investigations.)

When animals are transported, their owners must ensure that they are transported safely, for their benefit as well as the benefit of the public, and, in some cases, the driver.

NH RSA 644:8, III (d) defines “negligent transportation of animals” as transportation in a manner that is “injurious to the health, safety or physical well-being of such animal.” There are also federal, and equine-specific interstate transportation laws.¹⁴ Negligent transportation is very often difficult to discover and prove unless the animals are seriously injured or the situation can be easily viewed.

Pickup Trucks (A form of unsafe transportation.)

Dogs that are riding in the backs of pickup trucks may appear safe, but they’re in danger and are a hazard to motorists. If the truck hits a bump, or if the operator brakes suddenly or swerves to avoid an obstacle, the dog can easily be thrown from the truck bed and onto the road. This can injure or kill the dog. Also, motorists may cause an accident by swerving to avoid hitting the dog.

New Hampshire has a law that requires that dogs be restrained when riding in the back of pickup trucks and gives several methods of providing restraint. (NH RSA 644:8-f, Transporting Dogs in Pickup Trucks.)

Animals in Motor Vehicles or Other Confined Spaces

Companion animals (usually dogs) often accompany their owners in the car while running errands or travelling. This can cause a serious health problem when the car is parked in direct sunlight and during warm months. The animal may quickly be overcome by heat exhaustion. On a warm and/or sunny day, the temperature in a car can reach 120 degrees Fahrenheit in a matter of

¹⁴ Federal Animal Welfare and Equine Protection Acts.

minutes—even with the windows partially open. (26) (See **Resources** for scientific references on thermal accumulation.)

It is a misdemeanor offense to confine an animal in a car or other enclosed space in conditions when that enclosed environment becomes dangerously hot or cold. (NH RSA 644:8-aa Animals in Motor Vehicles) Officers or humane agents may remove an animal from these dangerous conditions without liability. The owner may be charged under this statute, NH RSA 644:8, or both.

OTHER CONSIDERATIONS – JUVENILE OFFENDERS/OBSERVERS

Children are frequently witnesses to and/or offenders of animal cruelty.

Although this topic was briefly discussed under Purposeful Cruelty, Prevention of Cruelty and Domestic Violence, it is mentioned again because of its common occurrence and importance. Cruelty to animals may be part of the landscape of violence in which youth participate and to which they are exposed. In an ideal world, national data would be available on the yearly incidence of juvenile perpetrated animal cruelty, data which could be used to track trends and serve as a baseline against which the effectiveness of specific interventions could be assessed. The existing national data collection systems in the area of child abuse and neglect illustrate the value of such archival records. (29) Animal cruelty offenses committed by youth in New Hampshire should be charged as delinquent behavior. (NH RSA 169-B)

Violent behavior is multidimensional and multi-determined, and its developmental course is still the subject of concerted research. (30) However, animal cruelty has received insufficient attention—in fact it is sometimes explicitly excluded (31) as one of a number of “red flags,” warning signs, or sentinel behaviors that could help identify youth at risk for perpetrating interpersonal violence (a relation first noted in the psychiatric literature by Pinel (32)) and youth who have themselves been victimized. Addressing cruelty to animals as a significant form of aggressive and antisocial behavior may add one more piece to the puzzle of understanding and preventing youth violence. Retrospective studies show that violent criminals often committed acts of animal cruelty when they were juveniles. (33)

SECTION 3: LAW ENFORCEMENT PROTOCOLS

Note: The reader should refer to the *New Hampshire Attorney General's Law Enforcement Manual 2020 (Law Enforcement Manual)* for generally accepted procedures. See all the protocols here: <https://www.doj.nh.gov/criminal/victim-assistance/protocols.htm> and <https://www.doj.nh.gov/criminal/publications.htm> .

ROLE OF THE DISPATCHER

Officers rely on dispatchers to obtain in as much detail as possible what has and what is occurring throughout a call. Animal cruelty calls should be treated as any other criminal complaint. Whenever possible, and consistent with department policy, the dispatcher should assign an animal control officer with powers of arrest or an animal control officer and a back-up patrol unit.

As with all criminal complaints, information obtained should include:

- The exact nature of the incident, why the caller believes an animal(s) is being abused or neglected; when it happened; whether any person or animal is hurt
- Name, contact information and location of the caller
- Description of the animal(s) involved
- Exact location of the incident with physical description of the property and landmarks
- Precise location and description of the suspect(s)
- Precise location of the animals; where are the animals confined? an apartment? house? barn? pen?
- When was the last time the caller saw the animals?
- Whether firearms or deadly weapons are involved
- Whether there other animals or humans at the location
- Whether the animals are in plain view from a roadside, through a window, or can they be seen from the caller's property
- What were the weather conditions at the time of the abuse or neglect? Was the weather extremely hot or cold?
- The best location to meet the officer

In trying to determine the suspect's state of mind, the callers should be asked if they have knowledge of the suspect's:

- Alcohol and/or other drug use
- Mental illness including depression or dementia

Based on the response to these questions, the dispatcher tries to determine if laws are being violated and the urgency of the situation.

The dispatcher should also determine if there are warrants in effect for the suspect.

If Animal Control calls are kept on record, the dispatcher may also check to see if there were any code violations such as dangerous dogs and the number of dogs licensed for that premise.

When the officer indicates that he or she is in a position to meet with the caller, the dispatcher should instruct the officer where to meet the caller.

ROLE OF THE INVESTIGATOR

Officer Safety

- The parties involved may or may not know animal control or law enforcement is responding. Officers should be prepared for both angry people and unpredictable animals.
- Officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher on arrival.
- If the officer is not comfortable dealing with a particular type of animal (i.e. reptiles, horses), he/she should know who to contact for assistance and bring that person with him/her if necessary.
- Officers should avoid the use of sirens and emergency lights as they may startle or frighten the animals involved.
- Officers should pause outside the location and observe and listen to everything possible in the immediate area. This is necessary for both the officer's safety from the animals and to determine the presence, location, and well-being of the animals.

Beginning an Investigation

- The officer should, if possible, interview the caller and speak to the owner or anyone present at the location where the animals are kept to confirm or dispel the substance of the complaint and to obtain consent to view the animals.
- When an officer investigates an animal cruelty case, he/she should always bring a department camera or use a department issued cell phone. (See **Photographic Evidence** below.)
- The complainant and witnesses' names, addresses, and phone numbers should be recorded for follow-up contact.
- When an officer is investigating an animal related complaint, he/she should make personal observations to determine its validity, from a place where he/she has a right to be carrying out duties. (See **Plain View Doctrine** below) Observations should include:
 - Buildings on the property
 - Sounds coming from the buildings
 - Condition of any animal in plain view on the property
 - Maintenance of the property
 - Odors coming from the property
 - Animals easily observed (Note: The officer should take photographs of them from a location where he/she is not trespassing.)

These observations will provide the officer with an idea of what to expect as to the condition of the animals as well as clues to their location.

Examples:

- 1) Officer is driving up to a person's house to investigate a cruelty complaint, and

sees an animal that appears to be extremely neglected in plain view. He/she can use that observation as evidence in the investigation.

- 2) An owner will not allow an officer on the property to see the animal; however, a neighbor, whose property adjoins the owner's property, allows the officer to observe the animal from there. (If observations confirm the complaint, they can be used in the affidavit with any witness statements to apply for a search warrant.)

If, based on the officer's observations and other information obtained, he/she has probable cause to believe an animal cruelty related crime has occurred; the officer can do the following, depending on the animal's condition:

- Remove the animal immediately if exigent circumstances exist. (Temporary protective custody NH RSA 644:8, IV-a (a))
- Apply for a search warrant and then seize the animals and search for further evidence of cruelty.

If the life of the animal(s) is not in immediate danger, the officer has no right to enter the property without the owner's consent but shall make reasonable efforts to ascertain the well-being of animals present.

The officer should remain until he/she reasonably believes there is no immediate threat to an animal, or an arrest or animal seizure is made and a criminal investigation is begun.

DEFENDANT (SUSPECT/OWNER) INTERACTIONS

When an officer confronts a suspect with an animal cruelty complaint, the suspect's response can range from cooperation to outrage. The officer should be prepared for anything. Law enforcement officials should rely on their training and experience when confronting a suspect who denies wrongdoing. Short of being caught in the act of beating their animal, owners generally will not admit to mistreating or neglecting their animals, or they offer excuses for why it happened. It is important for the officer to remember this when confronting an individual. There may also be more than one person responsible for the abuse or neglect. New Hampshire law permits an officer to charge the crime of accomplice to animal cruelty, even if it is alleged as negligent conduct. (*See State v. Anthony*, 151 N.H. 492 (2004)).

It is also important to document and record all contacts with the defendant/owner. Part of ensuring the animal's safety is to observe the obvious and not so obvious behavior of a defendant. When answering a call for service and/or doing an animal cruelty investigation, officers are encouraged to document the suspect's:

- Body language
- Tone of voice
- Statements/emotions/mood swings
- Whether the defendant appears to be under the influence of alcohol or other drugs.

PHOTOGRAPHIC EVIDENCE (26) (34)

In addition to physical evidence collected at the scene, one of the best pieces of evidence that an officer can use to document animal cruelty/neglect is photographic evidence. Photographs are often the **most important** evidence in the case. The officer's objective is to show the judge and jury the neglect or cruelty that prompted the complaint and caused the owner (or person responsible for the care of the animal) to be charged with animal cruelty. In addition, the use of a bodycam, may show the alleged perpetrator's reaction to the initial investigation or confrontation.

Animals cannot generally be brought into the court room, and even if they could, their physical condition has likely improved by the time the case goes to trial. Thus, it is critical that a judge or jury see the condition the animals were in on the day they were seized. No amount of verbal testimony can convey the situation as well as photographs or video that clearly depict the conditions that lead to the initial investigation. They validate all the written documents that may have been accumulated and corroborate the witnesses' testimony.

Procedure:

The officer should always take a still (35 mm or good quality digital) camera and, if possible, a camcorder when investigating a complaint. Ideally, both should be capable of generating a date and time stamp on the image and video.

Caution: It is important to keep cameras warm in cold weather as their delicate parts may fail if exposed to the cold. In particular, batteries can fail; spare batteries and/or disposable cameras should be available as backup.

It is preferable to use digital cameras over 35mm because the quality of the photograph is known immediately. Polaroid type cameras are not recommended because the photographs fade with time. Regardless of the type of camera used, it is important for the photographs to be authenticated in court. With 35mm, the negatives must be kept as evidence. With digital cameras, the memory cards or sticks may be copied onto a CD. Three CD's should be made – one for the prosecution, one for the defense, one for the officer. The CD may be used to authenticate the photographs in court and the memory cards or sticks re-used.

Photos should be taken in the following sequence and a photo log should be kept of each photograph taken:

- **Introductory photo:** The date, case number, address, and/or other identifying information should be written on an index card, wipe board or plain paper and photographed.
- **Overall view:** General shots of the location of the alleged crime including all buildings.
- **Mid-range Shots:** Showing the areas where the animal was kept and the relationship of objects or lack thereof in the area surrounding the animal.
- **Close-ups:** Photos of the animal(s) including the case and animal ID number.

Animal photos, each with a unique ID on a card held in the view, should include the animal in his living conditions, then individual posed photos showing the entire body of the animal: right and left side, front, back and top views. Photographs should be taken of any obvious lesions, abnormal physical findings, and any evidence found on the body. It is best to include a special photographic scale in most pictures to show dimensions and proximity to physical landmarks.

Clear close-up views should be taken of any pertinent findings. These photographs may need to be enlarged to 8x10 for court so the resolution of the photographs should be one that will not lose the detail with this enlargement. The digital SLR cameras are similar to 35 mm cameras in that they have interchangeable lenses. A macro lens may be used for clear close-ups of tiny lesions measuring 1-2mm. Because fine detail lenses are sensitive to movement, it is recommended that a mini-tripod be used for stability when taking photos. (34)

Normally the officer would take photographs or video tape at the scene; however, if exigent circumstances were involved, and the animal had to be removed immediately to a veterinarian's office, photographs of the animal would be taken at that location.

IMPORTANT: Images of police and others helping at the scene will appear in photographs and video tapes. In cases involving large numbers of animals, many volunteers may be needed. Insist that they maintain a professional image at the scene. Assisting at a scene of animal cruelty is very stressful and people handle that stress in different ways, one of which is telling jokes to ease the stress. Images of people laughing and smiling in photos or video come across as callousness. In court, the defense can contrast this with the crying face of the owner. This could negatively impact the verdict.

The officer should inspect the animals very closely to determine if there is significant visible physical trauma to the animal which photographic representation would clearly and accurately depict.

Any injured areas should be photographed with and without enhancements. In order to show the size of the injury and relative location, a measuring device should be used like a six-inch photographic gray card ruler or ABFO ruler. It is important to keep the measuring device on the same plane as the injury, or in close proximity in order to depict an accurate representation of the injury.

PLAIN VIEW DOCTRINE (FOURTH AMENDMENT) (Law Enforcement Manual pp. 93-95.)

Under the plain view doctrine, an officer may seize an item of evidence without a warrant if the officer is in a place he or she is lawfully entitled to be, the discovery of the evidence must be inadvertent (meaning the officer did not have probable cause to believe the item was there before the search when the officer could have obtained a warrant), and the incriminating nature of the evidence must be immediately apparent. (*State v. Davis*, 149 N.H. 698, 701 (2003)) With respect to the third part of that test, in an animal cruelty case, it must be apparent from observation of the

animal - not handling - that the animal has been subjected to cruelty. The experience and training of the officer is critical to determining the incriminating nature of the evidence. (*State v. Ball*, 124 N.H. 226,235 (1985)) New Hampshire also has an “open fields” doctrine can be used to justify certain observations made outside of a home’s curtilage, for instance livestock in a field. (*State v. Orde*, 161 NH 260 (2010); *State v. Johnson*, 159 NH, 109 (2009))

There are aspects of the plain view doctrine that are important in animal related cases. While an officer is executing a search warrant during an animal-related investigation, if an object that is evidence of criminal activity is found that is not listed in the warrant, that object may be seized and used as evidence. The officer must be in a place authorized by the search warrant, and must search within the scope of the search warrant.

Examples: (26)

- 1) An officer is executing a search warrant to search for and seize evidence of dog fighting. During the course of executing it, he/she comes across some birds that appear to be fighting cocks. He/ she can seize the birds and use them as evidence.¹⁵
- 2) An officer is executing a search warrant to investigate a complaint about dogs barking in a vacant building. He/she comes across objects in plain view that indicate that dog fighting has been taking place there. The officer can seize the objects as evidence.
- 3) The officer is executing a search in a barn looking for an injured horse. During the course of the search, the officer opens the drawer of a file cabinet and finds a photo of the owner beating the horse. The photo could not be used in court because the officer was not looking in a place where he was entitled to look. A person would not look for an injured horse in a drawer.

OBTAINING A SEARCH WARRANT BEFORE CONFRONTING OWNER

When investigating a complaint in which animals are in very poor health or hazardous conditions, the officer should consider when to obtain a warrant. The officer should obtain signed statements attesting to the animals' condition, in addition to making his/her own observations and taking photographs. If it is a situation where the officer anticipates that confronting the owner first will cause the owner to remove the animals before the officer has a chance to obtain a search warrant or the owner is hostile, the officer should consider obtaining the search warrant in advance of confronting the owner.

Any photographs of the animals or their conditions should be submitted along with the search warrant application to support its issuance. The affiant of the search warrant should detail his/her

¹⁵ The evidentiary value of the items must be immediately apparent to the seizing officer, based upon his/her experience and training.

experience and training in the field of animal cruelty to further support a finding of probable cause. The photographs will also be necessary evidence in the case.

Exigent Circumstances (Temporary Protective Custody)

IMPORTANT: If the animal is taken into temporary protective custody, the animal should be examined immediately by a veterinarian or transported to a veterinarian for immediate assessment.

A law enforcement officer, animal control officer, or humane field agent may remove an animal without a warrant if there is probable cause to believe the animal has been abused and there are exigent circumstances. Exigent circumstances exist when an animal may be in danger of losing its life or there is reason there is belief that evidence of the crime may be destroyed. (*State v. Stern*, 150 N.N. 705,709 (2004) Some of these circumstances are implied in NH RSA 644:8, IV-a. (a) and are addressed in detail on p. 49. The investigating officer should be prepared to articulate the basis for finding exigent circumstances. In most cases, with current technology, there is time to obtain a warrant. Seizure with a warrant is always preferable.

Examples of exigent circumstances:

- Animal is severely emaciated and weak.
- Animal has numerous sores on its body, or obvious inflicted injuries, such as gunshot wounds, arrows, etc.
- Animal appears in danger of being overcome with heat exhaustion.
- Animal is whimpering and vomiting, or appears too weak to stand up.
- In a farm related case, involving large animals such as horses or cows, the animals may be too weak to stand.
- A building is on fire or is flooding and an animal is inside.

Police, animal control and humane officers should refer to the **Temporary Protective Custody** section (NH RSA 644:8 IV-a(a)) to remove an animal from such circumstances/conditions.

Animal is easily accessible

If exigent circumstances exist, and the officer can remove the animal this should be done.

- Take the animal to a veterinary office or veterinary emergency clinic. (Phone ahead to the veterinary facility.)
- When the animal is taken to the veterinarian's office, photographs of it should be taken there.
- Written statements should be obtained from the veterinarian and other witnesses documenting the animal's condition.

Animal is not easily accessible: Example in locked car/or behind locked door

If the officer believes exigent circumstances exist, and the animal is not easily accessible, he/she should consider doing the following:

- If there are exigent circumstances involving an animal suffering from heat exhaustion, such as a dog in a hot car, the officer should find a witness if possible, and do whatever is necessary (such as breaking the window) to remove the animal from the circumstances immediately. The officer is not responsible for damage he/she did but is responsible for securing the vehicle afterward. (NH RSA 644:8-aa, IV).
- If the officer can see the animal through the window of a locked building or apartment, or if he/she can't see it, but can see evidence of an injured animal and hear an animal crying in distress behind a closed, locked door, the officer should consider breaking the lock or the door and removing the animal. If possible, he/she should have a neighbor witness the circumstances and sign a statement attesting to the circumstances. If a witness is not available, actions should be documented very carefully. Photos should be taken if possible.

WHEN REMOVAL OF ANIMALS MAY BE DIFFICULT (LARGE NUMBERS OF ANIMALS OR LIVESTOCK)

There may be situations where it is difficult to remove the animals easily i.e. there are too many, they are large farm animals, circus animals, or the officer suspects there may be more animals that are hidden from view.

For information and suggestions on how to handle this situation, see the following sections on Animal Hoarding, p. 29 and Livestock, p. 34.

If the animals are being seized under the temporary protective custody clause, only those in extreme danger of death may be seized. If the condition of the animals is directly related to the situation in which they are being kept, a warrant should be obtained to seize the remainder of the animals not in immediate danger.

Important: In cases where many animals are involved and the condition of the animals varies, it is important to assess the condition of the animals as a population, bearing in mind that every population has a normal distribution of thin, average, and over conditioned animals. Some things to be considered: Is the condition of the animals normally distributed (most average with a few thin and a few overweight)? Is there a medical condition that is causing the poor condition of one or more of the animals? Can claims of any such medical condition be validated by veterinary reports? Are the animals housed in separate areas and handled, fed, or managed differently, which may explain the disparate condition of the animals?

SEARCH AND SEIZURE

Search Warrant Verbiage

There is a particularity requirement for all warrants to detail the places to be searched and the items to be seized. (See Law Enforcement Manual pp. 50-51; *State v. Tucker*, 133 N.H. 204, 206 (1990)) In animal cruelty cases, the wording of a search warrant may be quite different from a conventional search warrant. The officer must remember the animal(s) and all related supplies, equipment, and records can be evidence in a cruelty case and this should be included in the description of evidence being sought. Proof of ownership records and, depending on the case, boarding and care contracts can be especially important. (Different investigations will warrant the search for different items and more will be mentioned under **Specific Investigation Concerns**). Some terms to consider including in the warrant include: (35)

Evidence to be seized:

- All animals living or dead, born or unborn, above or below the ground¹⁶, contained or free roaming, inside or outside
- Trace evidence at the scene or on the animal such as blood, hair, semen
- All cages, crates, containers, or other items or objects that could be used for the confinement or shelter of an animal
- All animal or animal related records written or electronically kept (computers, CD's DVD's, thumb drives) including medical treatment, drugs and other prescribed items, intake or export, sales receipts, food and water bills, proof of ownership documents, care and boarding contracts and agreements, photographs
- Any and all implements for the training, control or transport of animals
- Food, supplies, medications
- Paperwork that ties parties/owners to the location where evidence is found.
- Owner, custodian cell phones and records.

Places to be searched:

- All buildings, barns and outbuildings attached or unattached
- Fenced pasture and gated fields
- All vehicles or trailers used for the transport of animals

People conducting the search:

- Any non-law enforcement personnel who may be assisting in the execution of the warrant should, using best practices, be listed on the warrant if possible. For example, a veterinarian or volunteers helping to transport the animals. **NH RSA 595-A:8 Assistants** – allows an officer executing the search warrant to

¹⁶ Animal burial sites and the remains found there may produce significant evidence.

take suitable assistants to execute the warrant. No one else is allowed to assist in serving that warrant. It is a violation of the Fourth Amendment to bring the press or other unnecessary third parties. (*Wilson v. Lane*, 526 U.S. 603,614 (1999))

STAYING ON THE PROPERTY (26)

The officer should stay on the property for as long as it takes to complete the search and render assistance to the animals. When on the property, the officer must maintain a chain of custody by his/her continuous presence. An officer should be posted on the scene if the investigating officer is forced to leave for a short period of time to get an updated warrant for a new area to search, bring animals for treatment, etc. Once the search warrant is executed, and the officer turns the property over to the owner/occupant, he/she will need a new warrant to re-enter.

TIME TO RETURN WARRANT

According to NH RSA 595-A:7, once the search warrant is issued, it must be executed and returned to the court within seven days, or it becomes invalid.

Completing the Search and Seizure Receipt and Inventory (Returning the Warrant)

Once the officer completes the execution of a search warrant and seizes property, he/she must complete a receipt specifying all of the property that was seized at an individual's property. This includes animals (dead, alive, unborn, and remains) and any related evidence that indicates the animals were neglected or abused on the property.

Details

The receipt must be specific. The type of animal that was seized (dog, cat, pig, etc.), the sex of the animal, the breed (or if it is a mixed breed, indicate the mix), the color, and how many of each were seized. Veterinarians or other expert witnesses will be able to provide this information. As evidence that the animals were neglected or abused on the property, the receipt should contain the veterinarian's sworn statement of each animal's condition as well as the documentation that indicates where the animals are being held. Ideally, each animal should be given a unique identification number and photographed on site.

For property other than animals, the property should be described in detail - the size, the color, and the shape. If, and only if, the officer knows what an item is, its name should be listed. For example, when seizing evidence in a horse neglect case, and the officer comes across an implement that is normally used to clean a horse's hooves (hoof pick), that item should be listed as " 1 hoof pick."

Distribution

- The officer leaves a copy of the receipt with the individual whose property was searched. If the individual is not at home, a copy is left in a prominent place.

- The inventory receipt is filed with the court as soon as possible, but not more than seven days after the issuance of the search warrant. A copy is kept for the officer's records.

ARREST DECISION

An officer may make a warrantless arrest for a misdemeanor offense whenever the crime occurs in the presence of that officer or that officer “has probable cause to believe that the person to be arrested has committed a misdemeanor or violation, and, if not immediately arrested, such person will not be apprehended, will destroy or conceal evidence of the offense, or will cause further personal injury or damage to property.” (NH RSA 594:10 I (a) & (c)). A warrantless arrest for a felony offense is lawful, so long as the arrest is supported by probable cause. (NH RSA 594:10, II). (**Law Enforcement Manual** pp. 243-245) (4)

If the officer has probable cause to believe that a person has committed animal cruelty as defined in NH RSA 644:8, an arrest warrant should be sought because there is a clear judicial preference for arrests made with a warrant, unless exigent circumstances compel a warrantless arrest. (*See Law Enforcement Manual* pp. 229) (4)

An officer is not required to make an arrest as soon as he or she develops probable cause. It is permissible to continue gathering evidence and seek an arrest warrant later.

Miranda Warning

The Miranda warning is required prior to custodial interrogations including custodial interrogations in cruelty investigations. (*See Law Enforcement Manual* p. 192) (4)

Specific Investigation Concerns and Suggestions by Type of Cruelty

In New Hampshire, a citizen should report animal related issues (cruelty and other types of complaints) to the local police department or animal control department and they should be promptly handled depending on the circumstances. If complaints are made to humane organizations or the NHDAMF, there may be a delay as they do not have 24-7 phone service and they will need to work with the appropriate town and department for criminal investigations and arrests. Once a report comes into a police or animal control department, the caller is questioned by the dispatcher and pertinent information may be ascertained before the investigation is begun. Specific concerns related to types of animal cruelty follow:

CASES WITH MULTIPLE ANIMALS (HOARDING) ²⁵

Investigation of large scale animal cruelty cases is often very difficult for many reasons:

1. Number of animals involved
2. Mental state of the owner/keeper
3. Conditions in which the animals are kept

4. Coordination with other agencies for animal seizure, housing and disposition.
5. Financial cost to the town for the investigation, adjudication and animal care.

Anyone involved in the management of a large scale investigation should bear in mind that animal cruelty can occur despite the owner's best intentions. The owner does not acknowledge and, therefore, will not correct the conditions in which the animals are kept. The owner in most large-scale, multiple animal cases is often defined as an animal hoarder. (See **Section 1** for the definition of "animal hoarder" by Hoarding of Animals Research Consortium (28).

Initial complaints may be difficult to validate. Often a hoarder's home is well kept on the outside and the hoarder is very reluctant to let an officer in. The officer may need to seek written statements from complainants and other witnesses who have been in the house to pursue the investigation and obtain a warrant to search the home.

However, once supportive evidence is obtained to secure the necessary search warrants, the officer/town needs to organize and coordinate the seizure. Usually outside agencies (humane societies, rescue groups, veterinarians) need to be contacted for help. At the seizure site, all animals should be triaged for life threatening circumstances, given an individual identification number, photographed and removed to a prearranged safe location. Forensic physical exams should be performed on each animal as soon as possible and forensic necropsy should be performed on each dead or euthanized animal. Depending on circumstances, there may also be a burial location that needs to be excavated for further evidence.

The officer/police department should consider having a release form prepared for the owner to sign to relinquish ownership of the animals to the town. (See **Resources** for example.) This would enable the officers, with input from veterinarians and humane societies, to make immediate decisions on the disposition of the animals. This would save on total costs of seizing and caring for the animals. If a release form is to be signed, there should be at least one witness present who can attest to the voluntariness of the hoarder's agreement to sign. This witness should preferably be a person who works for the town or state in human services or mental health field. The hoarder's ownership of the animals should also be validated. (Sometimes the animals are actually owned by other individuals.)

This release form could also indicate whether cruelty charges are being sought or waived and other stipulations (plea bargains, future animal ownership, board of health requirements, etc.), although these conditions may also be sought as part of the disposition of the case if the animal owner does not agree to these conditions.

Possible Evidence to Note in Multiple Animal Cases

Environmental conditions:

- Lack of a fresh, potable water source and insufficient food
- Overcrowding
- Cages (if used) not cleaned, feces piled up

- Ammonia and other odors from the buildup of animal waste
- Lack of sufficient/adequate shelter appropriate for the weather and time of year
- No floors on cages, only mesh wire; feces falling through on animal below when cages are stacked
- Improper manure storage and disposal
- Improper ventilation
- Flimsy caging, protruding wires/nails

Animals' physical appearance/behavior:

- Body sores/poor coats
- Bloated stomachs
- Missing hair, excessive itching - may indicate mange
- Animal attempts to hide, crouches down, pulls head back if you put your hand near the dog - all signs that may indicate abuse or extreme fear
- Aggressive behavior
- Lethargic behavior
- Lameness
- Ear mites
- Aural (ear) hematoma
- Cloudy eyes (could be fighting or injury from cage wires, etc.)

ILLEGAL ANIMAL FIGHTING NH RSA 644:8-A

General background information on animal fighting is set out in **Section 2**. (Further information and forms and photos related to animal fighting may be found in **Resources**).

Dog Fighting

Note: Dog fighting investigations are very difficult and often dangerous. If an officer becomes aware of a possible dog fighting situation, he/she should consult with agencies that have had experience with such investigations and be prepared to involve many branches of law enforcement. **Resources** contains a list of national and local agencies to consult.

Dog fighting is a “sport” or “contest” in which two dogs, usually pit bulls that are bred, conditioned and trained to fight, are placed in a pit or a small enclosed area to fight each other. Fights can average nearly an hour in length and can last as much as two hours. The fight ends when one of the dogs is no longer willing or able to continue or the owner stops the fight. Dog fighting can take place anywhere-in an alley, a basement, an empty building, or out in the woods.

Dog fighting is an underground activity. It is by invitation only, which makes it nearly impossible to investigate when suspicious activity comes to the attention of law enforcement.

The injuries sustained by dogs participating in a fight are usually severe. Injuries from dog fighting include deep facial and forelimb bites, punctured or broken bones and some turn into fatal wounds. Professional dog fighters usually do not seek medical attention for these animals and often treat the injuries themselves. Veterinarians may see the dogs of hobbyists or street fighters.

Cats, dogs, rabbits and other small animals are often used as “bait” animals during training, and these may be stolen animals or obtained through ads like “free to a good home.” Usually the “bait” animal is killed by the fighting dog after the training is complete to “reward” the dog for good training. Animal control may receive calls about dead animals found in remote areas and should be aware that these animals could be bait animals and an indication of a dog fighting ring in the area.

Participants of organized fighting come from all walks of life but are often involved in other crimes such as gambling, sale and possession of drugs, and possession of weapons. In addition, dog fighters and spectators may have a history of violent and criminal behavior towards people. It is not uncommon for dog fighters or spectators to involve their children. Children are taught that it is acceptable to inflict the cruelties and they learn that dog fighting as an acceptable practice.

Because dog fighting locations (exhibitions) are also venues for many other crimes, an investigation of dog fighting should document any evidence found of drug and weapons crimes, domestic violence, child abuse, and others. This information should be passed on to the appropriate agencies.

When dealing with the crime scene of organized professional fighting, there are often two or more environments to investigate:

1. The primary environment is the fight location and the location where the live dogs are housed.
2. The secondary environments include but are not limited to burial sites, transport vehicles, suspect’s clothing and residence, affiliated training and breeding kennels.

At the scene, each dog should be identified, photographed, examined, triaged for injuries and treated if needed. Each live dog should later receive a thorough forensic exam by a veterinarian. Fighting specific report forms (*See Resources*) should be completed for each dog. In addition, deceased dogs should receive forensic necropsies to document evidence of fighting and cause of death.

When writing a search warrant, in addition to seeking animal cruelty evidence, the investigator needs to include canine blood, fighting paraphernalia, and other specific fighting evidence in the list of evidence to be seized. Some examples include:

Dog fighting paraphernalia (Photos may be found in Resources):

- hanging scales
- jennies (cat mills)
- treadmills
- spring poles
- electrocution cords
- wash tubs
- the pit itself
- rugs
- medications (illegal drugs, human medication)
- “go” (first aid) kits

Other evidence to list:

- pedigrees
- registration papers
- fight records
- electronic technology
- cash
- guns
- calendars
- date books
- business cards
- magazines
- photos
- trace evidence

The officer preparing the affidavit for the warrant should include his/her experience and training in the investigation and prosecution of animal cruelty cases to support this request for search of items typically found at an animal fighting scene. That experience and training can include information contained in this manual and the resources cited throughout.

At the scene, the presence of canine blood or other trace evidence should be documented and samples collected to determine the species and/or sex of the animal it came from. Photos should also be taken to determine blood spatter patterns. This type of evidence may be needed to later prove that actual fighting occurred and that the blood was not a result of other injuries or events. (See **Resources** for information on collecting and processing blood samples.)

Handling of seized dogs

Before a search warrant is executed, arrangements should be made for the housing and care of the seized dogs. Each dog must be housed in a safe and secure cage or pen isolated from view of another dog. Personnel handling these dogs should know about the temperament of fighting dogs. They are generally easy to handle if there are no other dogs around, but are easily aroused and become aggressive in the presence of other dogs. In addition, this location must be kept confidential and secure as fighting dogs are valuable and may be stolen by owners or other fighters.

Cock Fighting

Cockfighting, like dog fighting, is clandestine. Law enforcement is unlikely to discover the location of cock fighting activity. However, a complaint about noisy roosters or someone reporting many birds in an unexpected location such as a house basement may lead to such a discovery.

Cockfighting also involves breeding, training, baiting and fighting. The cocks are placed in a ring to fight and normally have weapons (gaffs) attached to their spurs to inflict more damage to the opponent bird. Animals usually die in the ring from their injuries.

Fighting birds often have combs and wattles cut off, plucked feathers on their chests, and their natural spurs will be blunted. Birds are often tethered by a leg with material that stretches as a form of conditioning the leg muscles.

Paraphernalia associated with cock fighting that can be put on the list of evidence to be seized in the warrant includes: (*See Resources* for photos of some paraphernalia.)

- gaffs (picks or blades)
- drugs (antibiotics, steroids)
- scales
- pit
- magazines
- mitts

The officer preparing the affidavit for the warrant should include his/her experience and training in the investigation and prosecution of animal cruelty cases to support this request for search of items typically found at an animal fighting scene. That experience and training can include information contained in this manual and the resources cited throughout.

As with dog fighting, a veterinarian should be involved to examine the live and dead birds. Housing and care arrangements need to be arranged for the seized birds.

A law change in 2019 expanded the acts in violation of this law to include offering for “sale, sell, loan, export, keep, breed or train any bird, dog or other animal with the intent that it or its offspring shall be engaged in an exhibition of fighting.....” Any of these acts need to be proven beyond a reasonable doubt and may take the investigation to another state or jurisdiction.

The law now also states a person who possesses, owns, buys, sell, transfers or manufactures animal fighting paraphernalia” with the intent that it be used in animal fighting. A definition of paraphernalia is included (NH RSA 64:8-a III (b)).

NH RSA 6448-a III (c) describes how the determination of an object as animal fighting paraphernalia is to be determined by the court and the burden of proof required.

DOMESTIC VIOLENCE AND ANIMAL CRUELTY

As discussed in **Section 2**, there is a documented link between cruelty to animals and domestic violence. Animals are often considered part of people’s families and are sometimes injured or threatened during incidences of domestic violence. If an officer is dispatched to a domestic violence situation, he should be cognizant of animals in the household and those kept outside. As human victims are interviewed, questions should be asked about animal ownership and whether there has been any injury or threatened injury to the animal. If injuries are reported and if the situation permits, the officer should observe the animals for evidence of injury, keeping in mind that human victims are the first priority.

If there is a protective order in effect, the officer should ascertain whether the no contact provisions extend to the animals. Even if there is no protection order, injuring or threatening to injure a person’s pet may constitute an act of stalking in violation of NH RSA 633:3-a, II(a)(6).

If a domestic violence arrest is made, the officer should consider whether there is sufficient evidence to bring an animal cruelty charge as well.

If no domestic violence arrest is made, when the officer is advising the victim of his/her rights, the officers should confidentially mention that emergency plans should be made for the animals either separately or through the local crisis center. If a protective order is sought, the officer should remind the victim to have the animals included in the order.

There are 13 Domestic Violence Crisis Centers in NH with a central crisis Hot Line- 1-866-644-3574. (See **Appendix I**) Many of these shelters have made arrangements with foster homes or animal care centers for clients with animals. These animals should be kept in a safe location away from public view as they may also need protection. (Also, see **Resources** for a list of “Safe Havens” for pets.)

BEATING

If the officer observes an animal being beaten, or has probable cause to believe an animal has been beaten, a warrantless arrest can be made as this is a felony. (NH RSA 594:10, II). The animal can be seized without a warrant (644:8, IV-a(a)) when “there is clear and imminent danger to the animal’s health or life and there is not sufficient time to obtain a court order.” If the animal

is livestock, a veterinarian must examine the animal as he/she “shall set the probable cause criteria for taking the animal(s).”

In most cases, the officer will not have witnessed the act of cruelty. An animal that has been beaten may have marks, welts, or blood on him. He may be limping or whimpering, or doing a combination of these things. Typical bruising is difficult to see on an animal due to body hair and differences in skin blood vessels. In such cases, the officer should, depending on the evidence, take the animal under temporary protective custody or obtain a warrant to seize the animal and other evidence. If it appears the animal was beaten with an object, a warrant should specifically include authorization to search for and seize such object. The animal should be taken to a veterinarian for both care and a forensic physical exam as soon as possible.

JUVENILE INVOLVEMENT

Animal cruelty cases may involve juveniles as perpetrators. In these cases, it is important to try to ascertain their motivation for the animal cruelty acts. Depending on the age of the perpetrator and the motivation, the investigator, prosecutor, and judge should choose an appropriate course of action in the best interest of the juvenile. The animal cruelty act may be an indicator of family dysfunction, (child copying adult behavior he/she has witnessed), a personality disorder, or ignorance among others. (For resources for mental health professionals concerning testing and treatments, see **Resources**)

EQUINE/LIVESTOCK SPECIFIC CASES

While most dispatchers and officers have personal experience with dogs and cats, they often have no practical knowledge of livestock and horses. This fact may make it necessary for an officer to bring along a knowledgeable person to the investigation. NH RSA 644:8-a (b) Temporary Protective Custody requires a licensed veterinarian or the state veterinarian to be present to make probable cause judgments about taking an animal considered livestock. The state veterinarian may be reached at (603) 271-2404 (Website: <https://www.agriculture.nh.gov/index.htm>). To locate a large animal veterinarian licensed in New Hampshire, the officer should contact the Board of Veterinary Medicine by emailing vetboard@oplcnh.gov or phoning (603) 271-9369 (Website <https://www.oplc.nh.gov/veterinary-medicine/>

Complaints regarding livestock may include: (26)

- Animals appear emaciated.
- Animals are lying in a field and cannot stand up.
- Horse(s) have broken from a pasture and are very thin, eating trees and shrubs.
- Animals being kept in filthy conditions.
- Observable hoof problems.

Possible observations indicating cruelty:

- There is no food or grain in sight. Pasture land is chewed down.
- Horse’s stall is filled with manure build-up.

- Animals are infested with lice and scratching themselves to bring relief; hair may be missing in spots.
- No clean, fresh water available.
- No shelter available when needed according to the weather and time of year.
- Horses' hooves may be long or turned up indicating a lack of exercise and other forms of severe neglect.
- Animals may have sores on their bodies.

Appendix C and/or **Resources** contain a listing of resources for background information and organizations and individuals who might be willing to provide assistance with investigations involving livestock and horses.

ANIMAL SEXUAL ASSAULT/ BESTIALITY (NH RSA 644:8-G)

In 2017, **NH RSA 644:8 - g Bestiality** was added to the statutes and will be discussed below. In addition to crimes committed under this statute, certain actions described in that law may also constitute violations of NH RSA 644:8 Cruelty and/or NH RSA 650:2- Obscene Matter if filmed or performed in the presence of others and RSA 632-A Sexual Assault and Related Offenses where animals are classified as "objects.". It may also be a violation of NH RSA 645:1- Indecent Exposure and Lewdness.

Many forms of human perpetrated sexual molestation or assault are harmful to animals because of cruel restraint methods, beating, and subsequent physical injury. This is animal cruelty under NH RSA 644:8 in addition to any violations of NH RSA 644:8-g. Physical signs may include observable traumatic injury to the anus, rectum, or vulvar/vaginal areas. There may be behavioral signs in dogs when the tail or genital areas are touched.

BESTIALITY

Under NH RSA 644:8-g, a person commits bestiality by knowingly¹⁷ committing any of the following acts:

- (a) Engaging in sexual contact or sexual penetration with an animal for the purpose of sexual arousal or gratification.
- (b) Offering or accepting the offer of an animal for consideration with the intent that it be subject to sexual contact or sexual penetration by a human.
- (c) Photographing or filming or distributing such photographs or films, for the purpose of sexual arousal or gratification, of a person engaged in sexual contact or sexual penetration with an animal.

¹⁷NH RSA 626:2 II (b) "Knowingly." A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.

In addition, the definition of animal is different from that of NH RSA 644:8. In RSA 644:8-g, “Animal“ is a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.

The investigation of bestiality, depending on the act, may be very complicated both in evidence collection and in proving the mens rea. In addition, there may be both human and animal victims. Knowledge of DNA collection is very important.

If an officer suspects an animal has had sexual contact with a human, it is important that that animal receive a forensic physical and behavioral exam by a veterinarian as soon as possible. Some of the possible physical evidence of such an assault is fragile and must be gathered quickly before the animal cleans itself, or the bruises and wounds heal.

Because of the complexities of a bestiality investigation, a subject matter Power Point has been created and may be found on the **Resources** webpage.

Warrant writing for the evidence to be collected on a bestiality case will be different from a case related to NH RSA 644:8 and NH RSA 644:8-a. Please refer to the bestiality material in the **Resources** webpage.

ABANDONMENT

In abandonment complaints where an animal is left on a property, it is important for the officer to obtain a sworn statement from the complainant and neighbors, if possible, to establish how long the owner has been gone and/or how long the animal has been left without care, food, and water.

When investigating such a complaint, the officer should announce his/her arrival, knock on all doors, shout out greetings, and look for the owner/occupant while looking for animals. This behavior demonstrates a “good faith” effort in finding the owner/occupant. The officer may then have sufficient evidence to establish probable cause to obtain a search warrant to seize the animal(s).

NEGLECT /FAILURE TO PROVIDE

Neglect of an animal is cruelty in that it involves omission of care, shelter, or sustenance generally deemed necessary for the day to day welfare of the animal. Many times neglect is directly due to lack of observation and daily contact by the owner or keeper. (Dogs with ingrown collars, dogs with mats and maggots, cats with bite wounds and abscesses, frozen water sources, etc.) It is often difficult to prove when a lapse of care becomes neglect. It requires a very thorough investigation with an accurate timeline and review of veterinary and other care related records.

Often, an owner will voluntarily seek veterinary care when the effects of the neglect becomes obvious, in an effort to help the animal. This may be when the neglect is reported to law enforcement by a veterinarian or staff member. The officer investigating such a complaint needs to discuss these issues with the veterinarian(s) and interview the owner to determine if a negligent cruelty complaint is warranted.

UNSAFE TRANSPORTATION AND CONFINEMENT IN MOTOR VEHICLES

It is a violation to transport dogs in the back of pickup trucks unrestrained. (**NH RSA 644:8-f, Transporting Dogs in Pickup Trucks**). Violators should be stopped and ticketed when observed.

Other potentially unsafe modes of transportation (e.g. dogs unrestrained in convertibles or on motorcycles, and livestock unrestrained in pickup trucks) are also readily observable and the driver may be stopped and charged under NH RSA 644:8, III (d) for negligent transportation. An unrestrained animal in a car, interfering with the driver might also fall into this category, but may be difficult to observe and later prove unless it is affecting the operation of the vehicle. In some cases, an owner may confess to an animal “causing an accident.” In such a case, the officer may consider charges under NH RSA 644:8 III, (d) and/or negligent driving under NH RSA 265:79-b.

NH RSA 644:8-aa Animals in Motor Vehicles is a section of law that is meant to serve as a deterrent to owners who travel with their pets during hot or extremely cold weather and as a liability safeguard for appropriate officers (law enforcement officer or agent of a licensed humane organization) who wish to aid an animal in distress. The way that this statute is worded is somewhat confusing because of the statement that the officer “may take action necessary to rescue a confined animal endangered by extreme temperatures, and to remove the threat of further serious harm”. It seems to indicate that the animal must be in dire straits before removing it from the car. It should be also noted that this statute was enacted before NH RSA 644:8 IV-a (temporary protective custody) This statute may also be invoked in removing an animal. If cruelty charges are sought, the officer may bring them under NH 644:8 to avoid confusion.

If an officer is called to the scene of an animal confined in a hot car that is showing distress, and an owner cannot be located quickly, he/she can remove that animal without liability for damage he/she may cause to the vehicle or animal. (NH RSA 644:8-aa, IV)

Signs of heat distress include:

- Extreme rate of panting with tongue hanging way out
- Extreme agitation with panting
- Unresponsiveness

Note: Old animals, very young animals, and animals with short noses (brachycephalic) are more prone to heat stroke and are in danger quickly.

Animals should be removed from the vehicle, offered water, gradually cooled by soaking with cold (not ice) water, and transported to a veterinarian as soon as possible.

If the owner is not present, the car should be secured before leaving the scene with the animal.

After the animal has been safely provided care, the officer should get witness statements as to the time the animal was confined and their observations of the animal's behavior as evidence for owner/keeper.

Thermal measuring devices have not been validated for use in a court of law. *See Resources* for scientific references on how quickly a car will heat up in direct sunlight and an information sheet to leave with owners about the danger of leaving their pet in a hot car.

RITUALISTIC ANIMAL CRUELTY

In cases involving the ritualistic use of animals, the officer must determine the legal ownership of the animal, the cause of death of the animal and whether mutilation was before or after death. (For example, certain cultures will buy or raise and then kill goats to eat as food. They often have a religious ceremony involving body parts. Whether this killing is cruelty depends on how the animal was slaughtered.)

Possible indications of cult involvement: (26)

Mutilation of the animal, including removal of specific body parts (anus, heart, tongue, ears, front teeth and front legs, genitals, etc.). (Note that a forensic necropsy exam is necessary to determine how the animal was killed and if the mutilation was before or after death to prove cruelty.)

- Cages for animals, limbs, lumber, etc. from which animals may have been hung.
- Ligatures (ropes or leather ties) that may have been used to secure the animal.
- Bones or animal parts (such as finger and arm bones, human or animal skulls, feathers, eyes, tongues).
- Absence of blood in the animal.
- Mockery of Christian symbols (inverted cross, vandalized Christian artifacts).
- Use of stolen or vandalized Christian artifacts.
- Unusual drawings or symbols on walls or floors (baphomet - an upside down pentagram often with the head of a goat within, hexagram, pentagram, etc.).
- Non-discernible alphabet.
- Altars, chalices, wands, biblical passages, ceremonial type knives.
- Candles and candle drippings (candles may be in the shape of genitals, or colored black or white.)
- Oils, powders, wax, herbs, incense.
- Dolls (a child's doll burned or tied to a cross, also what is commonly known as a voodoo doll).

- Bowls of powder or colored salt.
- Skulls with or without candles.
- Robes, especially black, white, or scarlet.
- Rooms draped in black or red.
- Books on Satanism, magic rituals, etc.
- Crystal balls or other crude crystals, usually found in unusual forms.
- Pyramids.
- Sea shells.
- Necklaces made of beads, bells or gongs.
- There may be a circle which may or may not contain a pentagram.
- A trail leading from the circle towards water. Search for stakes, etc., used to place animal victims in a spread-eagle position (head towards the water).

Note: Possession of these items alone is not sufficient to establish probable cause of animal cruelty. Possession of these implements and symbols is not a crime.

CAUTION: *An officer should not investigate these cases alone. Gloves should be worn when handling evidence. Some cult practitioners are avid herbalists and use poisons as booby traps. Be aware that poisonous snakes may have been placed in cabinets and drawers to attack those who might be looking for evidence. Other booby traps include: fish hooks hung at eye level, shotguns tied to trip wires, falling bricks and other such setups. (26)*

Temporary Protective Custody

(Exigent Circumstances) NH RSA 644:8, IV–a(a) and (b)

NH RSA 644:8, IV–a(a) outlines procedures for seizing an animal under exigent circumstances, namely “when there is probable cause to believe that the animal has been or is being abused or neglected”, and “there is clear and imminent danger to the animal’s health or life and there is not time to obtain a court order (warrant)”.

- Only “law enforcement officers, animal control officers, or officers of a duly licensed humane society” may enforce this statute.
- If the animals in question are livestock or horses, a New Hampshire licensed veterinarian must be present to determine whether there is probable cause to seize the animal. (NH RSA 644:8,IV-a(b)).

- If animals are taken under this section of the statute and the owner is not present, the seizing officer must leave a readily visible written notice indicating the type and number of animals taken, the officers' name, date and time taken, reason it was taken, the procedure to have it returned and any other relevant information. Although not mentioned in the statute, the same information should be given to the owner in writing even if present at the time of seizure, similar to the inventory provided after executing a search warrant. (NH RSA 644:8,IV-a(a)).
- For any animal seized, the officer (in effect the agency the officer represents) must provide for proper care, including veterinary care, and housing until the case or ownership is resolved.
- Under the statute, if owners do not reclaim or have the animals returned in 7 days, the officer shall petition the court seeking permanent custody or a one-week extension.
- If the one-week extension is granted and the animal still remains unclaimed at the end of that week, the animal becomes the possession of the officer's department or society.
- If circumstances indicate, cruelty charges can be filed during this time period.

Animal Seizure and Disposition

When an animal is seized with a warrant, the animal is considered evidence in the cruelty case. Evidence must remain available until the case is resolved. (NH RSA 595-A:6) The importance of photographs cannot be emphasized enough. Seized animals should be photographed at the time of seizure (preferably before being moved) and periodically throughout their custody. The animal's condition may markedly improve as it is cared for properly waiting adjudication of the case. Documenting this positive change in the animal's condition is powerful evidence that will strengthen a cruelty case.

On occasion, animals may need to be euthanized humanely because of injuries or untreatable disease, injury or pain. This decision should be made by a veterinarian and documented for the court. If there is time, and circumstances permit, a court order should be obtained to prevent a claim that the state improperly disposed of evidence.

If the animals have been relinquished to the agency or, in the case of temporary protective custody, where the animals have become property of the agency, or if the case is prolonged and therefore the custody of the animals is prolonged and where the agency has obtained custody through legal means, the agency should petition the court to release the "living animal" evidence in lieu of photographs and other evidence, pursuant to NH RSA 595-A:6. In this way, costs to the agency will be reduced and the long-term well-being of the animals may be tended to.

If the owner is convicted of animal cruelty, the "court may dispose of said animal in any manner it decides". (NH RSA 644:8, IV (a)). The animal may be returned to the owner, may be humanely euthanized, or its ownership may be transferred. (For transfer definitions and rules, *see* NH RSA 437).

Animal Care in Custody

New Hampshire law does not regulate care standards for animals in custody except to say that it is the seizing officer's responsibility. Best practices recommend that companion animals be housed in licensed animal shelters, licensed town shelters, and facilities that are regulated by the New Hampshire Department of Agriculture, Markets and Foods. Occasionally foster homes, private kennels, and temporary shelters are used.

In the case of livestock and horses, animals are usually sent to private farms or rescues. Most New Hampshire humane organizations do not have the facilities to care for livestock.

Wherever these animals are housed, they need to have proper care and exercise. Since the animals are often evidence in a court case or may be in "safe haven" from domestic violence, they should not be housed in view of the general public, if at all possible. No matter where these animals are housed, the officer's organization is ultimately responsible for their welfare and the costs associated with animal care.

Veterinary Involvement

As has been mentioned, much of the evidence involved in cruelty cases is the animal itself. Animal examination (alive or dead) is always best performed by a licensed veterinarian or, in some instances, an experienced veterinary technician. Police departments and organizations that do cruelty investigations should consider a partnership with a small animal veterinarian and a large animal veterinarian before needing their assistance on a cruelty investigation. The state veterinarian will also act as a resource.

Veterinarians may be considered expert witnesses in a cruelty investigation so any assistance that an officer can give that veterinarian with the case will go a long way toward a successful conclusion. Most veterinarians are in private practice and have had no exposure to forensics. They and their staff may need some guidance from law enforcement regarding standards for evidence collection, chain of custody, report writing and court testimony. (Many resources for veterinarians are available in **Resources** and **Appendix C**.) The veterinarian should be made aware that forensic cases, with the detailed record keeping and possible court appearances, may take a considerable amount of time.

For example, forensic physical exams are more meticulous than typical wellness physical exams because evidence of a crime is being sought in addition to assessing and treating the animal's health. Findings are recorded in much more detail. (*See* sample forms in **Resources**.) Photographs should be taken during the process. Often additional diagnostic tests (radiographs) and laboratory work should be done to determine a possible history of abuse or the presence of disease or toxicity.

Forensic necropsies, too, are more detailed than typical gross necropsies. While a private practice veterinarian is qualified to perform a forensic necropsy, it may be better to have the animal

necropsied by the NH Veterinary Diagnostic Laboratory at UNH, Angell Memorial Animal Hospital in Boston, Tufts Veterinary School, or a veterinarian with forensics training. (*See Resources.*)

“The difference between a necropsy and a forensic necropsy is in its objectives and relevance. In addition to determining the cause of death, the goal is to establish the manner of death (non-accidental, accidental, natural, undetermined), any contributory causes, and the time of death. The forensic necropsy exam is a process of documenting all injuries and the unremarkable findings, interpretation of how the injuries occurred, and the determination or exclusion of other contributory or causative factors. A necropsy should never be performed without investigation findings and crime scene information including photographs of the scene. The environment and husbandry for the animal directly affects the health of the animal and must be analyzed along with physical exam findings. A gross necropsy may be performed by the veterinarian and tissue samples submitted to a pathologist for histopathology and additional testing. Photographs of the necropsy, preliminary necropsy report and crime scene findings should be provided to the pathologist. As with all evidence, the defense has the right for independent examination and testing so all tissue and slides should be retained by the pathologist until the case is concluded.” (36)

The veterinarian should be involved in the case as early as possible either by assisting in the crime scene investigation, determining probable cause for seizures (required for livestock in some cases and recommended for companion animal cases), viewing crime scene photos, performing physical exams, performing forensic necropsies, examining animal related evidence from a crime scene and more. The veterinarian may ask that the investigator get further information from witnesses, take more photos, or collect other evidence such as possible toxins or weapons that may further document the case.

Police departments should remember that veterinarians are, for the most part, self-employed or have a set work week and may be unable to assist when needed. This is why departments need to have good working relations with local veterinary services. Some veterinarians will give municipalities reduced rates or donate their time, but still must charge for supplies, lab work and staff time.

In the same context, private veterinary hospitals are seldom open 24 hours a day, so police departments should be aware of the closest emergency clinic and perhaps make arrangements with that facility for after hours or weekend cases.

Another role of the veterinary hospital might be that of emergency protective custody housing in the case of a domestic violence situation. The law enforcement department should work with the local domestic violence shelter to make sure there is a place for the animals to go in an emergency situation, be it an animal shelter, foster care, veterinary hospital or emergency clinic.

In the reverse, a police department may receive a call from a veterinarian or employee reporting animal cruelty. While New Hampshire veterinarians are not required by law to report cruelty, many do. If the offense is minor, often the veterinarian may attempt to educate the client and not

report the offense. If the veterinarian sees evidence of serious neglect, domestic violence, or purposeful abuse, hoarding, or animal fighting, he /she is likely to report it to the local police department. **Reminder:** Veterinarians have no investigatory or arrest powers and must always work with law enforcement.

Financial Considerations and Restitution

Cruelty cases involving large numbers of animals can become quite costly for the seizing organization. Even cases involving one or two animals that require expensive veterinary care can be a burdensome expense for small towns or organizations. (6) If owners do not or cannot contribute to the cost of care for their animals, towns and organizations can save some resources by securing ownership of the animals as early as possible in the case and working with the courts to allow disposition before the case is completed. Towns and organizations can also look to various rescue organizations for assistance in providing care to the animals.

If the owner is convicted of animal cruelty, the court is authorized to order restitution for the expenditures for the care of the animal. The defendant may be ordered to pay even if donations have been received to offset the costs of the animal's care. (See *State v. Burr*, 147 N.H. 102,104 (2001)). Realistically, this restitution is infrequently paid and the seizing agency is left with the bill. This should not influence whether or not to act on a complaint.

In 2019, NH RSA 437-B:1 **Cost of Care Fund** was added to NH laws. This established a non-lapsing fund in the NH Department of Agriculture, Markets and Food to assist municipalities in covering the costs of care incurred from caring for animals pending the resolution of any action brought under NH RSA 644:8 or NH RSA 644:8-a. As of this writing, the rules and guidelines for requesting these funds have not been established. When they are, they will be posted on the **Resources** webpage.

SECTION 4: PROSECUTION AND COURTROOM CONSIDERATIONS

CASE PREPARATION (37)

A prosecutor's case is only as good as the underlying investigation. In some instances, the evidence as turned over to the prosecutor will not be sufficient to meet the burden of proof at trial. More investigative work may need to be done before the case can move forward successfully. It is not uncommon for the prosecutor to ask the original investigator (or the prosecutor's own investigator) to do follow-up work. This should be done whenever the evidence does not clearly establish the defendant's guilt beyond a reasonable doubt, or when there is the possibility of building an even stronger case for trial. This follow-up could include a canvas of the suspect's neighbors to see if they heard or saw anything that might indicate animal cruelty before or during the incident in question, obtaining veterinary records for that animal, or submitting evidence to a lab for further analysis.

Some cases have been lost or thrown out because the prosecutor alleged an incorrect date on the complaint for the offense. However, the date of the offense is not an element of the crime. (*State v. Meekins*, 127 N.H. 777 (1986)). If faced with such a motion to dismiss, the prosecutor may request to amend the complaint to reflect the correct date or dates. This request should be granted by the court. If it is unclear when the abuse occurred, the complaint can allege that the crime occurred within a short range of time instead of on a specific date. In either case, the prosecutor does not have the burden of proving that the act happened on a precise date, rather the statement must show the offense occurred "on or about the dates alleged." (*State v. Williams*, 137 N.H. 343, 348 (1993)).

Every complaint must allege the appropriate mental state such as "purposely" or "negligently". This is an element of the crime and must be proven beyond a reasonable doubt.

PROCEDURAL ISSUES

Criminal charges are begun by either a complaint or indictment. Typically, felonies are filed in superior court and misdemeanor charges are filed in circuit court. Charges are brought either through a complaint filed by the prosecuting officer, or an indictment issued by a grand jury. No person can be tried for any offense punishable by more than one year in prison unless an indictment has been made or there is a waiver of indictment. When a complaint is filed for such charges requiring an indictment, a judge will rely on the facts alleged in an accompanying affidavit to determine if there is sufficient evidence (probable cause) to support the allegations.

In the animal cruelty statute, a first offense in NH RSA 644:8 III a-h is charged as a misdemeanor. Because the statute does not designate the misdemeanor as a class A or class B, it is presumed to be a class B misdemeanor by default. (*See* NH RSA 625:9 IV(c)). If there is a decision to charge the offense as a class A misdemeanor, thereby creating an ability to seek incarceration, a "Notice of Intent to Seek Class A Misdemeanor Penalties" (N.H. court form # NHJB-2618-D) must be filed at or before arraignment. A second offense may be charged as a class B felony. A class B felony is also charged for purposeful actions detailed in NHRSA 644:8 III-a.

Superior courts have general jurisdiction over all criminal cases. Any case involving Felony level charges must be brought in Superior Court, along with any directly related misdemeanors. See. N.H. RSA 592-B. Circuit courts only have jurisdiction over cases involving misdemeanor, violation - and juvenile delinquency offenses (even if the juvenile is accused of committing a felony level offense). A Defendant convicted of a Violation and/or Class B misdemeanor in Circuit Court may appeal the conviction and any claimed errors directly to the N.H. Supreme Court. A Defendant convicted of a Class A misdemeanor in Circuit Court may appeal the conviction and any claimed errors directly to the N.H. Supreme Court or may opt to appeal the conviction (not claimed errors) to the Superior Court for a *denovo* jury trial (a new trial on all issues). All appeals of convictions and claimed errors from the N. H. Superior Court are filed with the N.H. Supreme Court.

EVIDENTIARY TOOLS

Many times, animal cases benefit from the same forensic tools and procedures as those used in human abuse cases, such as fingerprint or blood analysis, lab testing for possible poisons, detailed professional analysis of crime scene evidence, and so on. In cases where an animal has died, as with humans, it is important to remember that the animal's body should be preserved in a refrigerated environment, preferably not in a freezer, as a freezer will destroy the animal's tissue, making subsequent analysis useless. (See **Resources** for information on laboratory testing.)

VETERINARIANS

As soon as neglect or intentional abuse is suspected, a veterinarian should be brought in by law enforcement to examine the animal (at the scene or as soon as possible after seizure) and make a written report of findings for later use. (Sample report forms may be found in **Resources**.) This will also foreclose the suspect's ability to claim that the animal's condition developed after the animal was seized and not before. Even in cases where the cause of death was apparent, such as a gunshot wound, a definitive cause of death should be obtained by a veterinarian performing a forensic necropsy, to rule out any other possible theories or pre-existing conditions that could cause death (such as cancer). (See **Resources**.)

At the time of trial, veterinarians may be called as factual witnesses to report what they've observed (facts) or as experts to offer an opinion based on the facts. It is possible for a veterinarian to serve both roles. If a veterinarian reports a suspected case of animal cruelty, he/she would be a factual or eye witness and may be also asked to offer an opinion. If a veterinarian examines animals after a seizure, he/she will submit a report describing the results of that examination. A veterinarian or veterinary pathologist might perform a necropsy (animal autopsy) and will write a professional report. Submission of a veterinary bill as evidence must overcome the defendant's hearsay objection. Having the veterinarian, as keeper of the records, testify will overcome that objection. The keeper of the records can testify that the bill is a business record under NH Rule of Evidence 803. Any veterinary statements and medical records submitted in a cruelty case should be detailed and provided in discovery along with the other investigative reports.

In animal cruelty cases, a licensed veterinarian may be needed to provide an expert opinion, but may not have been actively involved in the investigation. Consulting veterinarians should be provided access by the prosecution to all evidence, photographs and reports that may be related to their required testimony. Such consulting veterinarians can then be called upon to address standards of care, interpret veterinary reports, explain the significance of evidence submitted, can explain (or conclude with reasonable degree of medical certainty) the animal's cause of death, discuss the significance animal behavior, describe its injuries, and provide other forensic information to the judge or jury. Veterinary experts can be used to assist the judge and jury in understanding the specifics of a case, such as describing the differences in types and breeds of dog and their physiological responses to acts of cruelty. They can also provide informed estimates of how long the animal would need to be neglected to be in its current condition (such as long hooves on a horse), or if an animal may have suffered pain as a result of its injuries. This testimony will help the court understand the extent of such cruelty in respect to the actual charges brought against the defendant. (*See* NH Rule of Evidence 702.)

Expert Opinion Reports must be provided in discovery in advance of the trial pursuant to the court rules and the rules of evidence. (*See* NH Rule of Criminal Procedure 12, and NH Rule of Evidence 703.)

When a veterinarian is examined at trial, standards of care should be a topic of questioning. For example, in a dog neglect case, the expert should be able to describe the appearance of a healthy animal. In the case of a dog shooting, the veterinarian should establish the facts, i.e. that the dog was shot at close range from the back based upon the trajectory of the bullet or arrow. Testimony as to the pain and suffering, or "torture" caused by the nature of the cruelty should be elicited for the court. Often the defense will call its own expert to testify that the charged conduct was not cruelty, or was not as severe as the prosecution expert portrayed. The prosecutor may depose any expert noticed by the defense as the defense may depose the state's expert. If appropriate, a motion may be filed to exclude any irrelevant or unfounded opinions. (*See* NH RSA 517:13)

VISUAL AIDS

Visual aids are critical in animal cruelty cases as there will obviously be no testimony from the animal victims. For example, it is much more effective to show the jury a photo of debris and biological waste (feces and urine) covering the floor in a hoarding situation than testimony alone. This makes a powerful, lasting impression. Photos can be enlarged for easy viewing by the jurors. Photos must be authenticated by a witness with first-hand knowledge, meaning the witness must be able to identify what is shown in the photo and state that it is an accurate depiction of the scene on a particular date and time. The photos should be dated and initialed by the person taking the photos. Organized and appropriately labeled photos are usually the most effective means of convincing the jury that the crime of animal cruelty was committed. There can never be too many photos in an animal cruelty case. A defendant may decide to plead guilty to the crime after viewing photographs of an abused animal that may be shown in court.

While photos and even videos of the evidence and crime scene are integral parts of the case, other standard evidence remains a must. Such standard evidence might include: the weapon used, blood spattered clothing, comparison of a neglected horse before and after, food bowl caked in feces and x-rays of broken bones, et.al.

Charging and Sentencing Considerations

New Hampshire's animal cruelty statute is found in NH RSA 644-8. (*See Appendix A* for complete document.) Animal cruelty charges are either misdemeanors or felonies. Misdemeanor cruelty is generally for first offense neglect cases (omission). Felony cruelty is for second offense neglect cases. (Because there is an enhanced penalty for a second cruelty offense, animal cruelty charges may not be downgraded to a violation as a form of plea bargaining by a prosecutor.) (NH RSA 625:9 VI)

First offense intentional cruelty (commission) of a specific list of acts constitutes a felony. (NH RSA 644:8, III-a). If a felony case can be proven for intentional cruelty, it should be forwarded to the County Attorney for prosecution. A felony conviction as part of the defendant's criminal history will identify him/her as a violent offender and signal a potential for future offenses.

Of note in the 2019-20 law changes is the requirement for a pretrial status hearing within 14 days of the confiscation of the animals. The purpose of the hearing is to have a practical conversation in front of a judge about the logistics of holding the animals for the duration of court proceedings including veterinary care, behavioral issues and safety concerns as well as the cost of long-term boarding.

When convicted of a misdemeanor, the prosecutor may ask the court to impose specific restrictions on the defendant regarding future animal ownership and custody (prohibition or maximum number permitted) as part the sentence. In the case of a felony offense under NH RSA 644:8 or a misdemeanor or felony offense under NH RSA 644:8-g, the court shall prohibit the convicted person from having future ownership or custody of animals for a minimum of 5 years. (NH RSA 644:8,IV(b)). The prosecutor should also request restitution for the costs of boarding and treating the animal(s) pending disposition of the case and/or for the costs of disposing of the animal regardless if the defendant regains possession of the animal(s). *Id.*

The acceptance of a guilty plea, or a no-contest plea also authorizes the court to impose the appropriate services, counseling and probation terms at sentencing. (38) (NH RSA 651:2). In certain cases, it may be appropriate to agree to continue the case for a period of time during which the defendant completes certain services or counseling and then dismiss the charges upon proof that the defendant completed those requirements.

For example, in cases of animal hoarding, criminal charges are often not brought or are dropped because no harm was intended by the hoarder and the costs of seizing and holding the animals are beyond the means of the town. However, if there is no conviction, the court cannot prevent future harm to animals or ensure that the hoarder obtains mental health treatment. A more prudent course of action for both the defendant and any animals he/she may own in the future is

prosecution with a sentencing goal of mandatory mental health treatment for the hoarder, limiting or prohibiting future ownership of animals, and long term monitoring. (39) The prosecutor should also seek ownership of the animals as early as possible in the case by encouraging voluntary relinquishment, petitioning the court per NH RSA 644:8 IV-a. (a) or NH RSA 595-A:6 (*See* below). Photographs of hoarding case animals and conditions are convincing evidence of the need for permanent competent custody of the neglected animals.

Should the defendant appeal the conviction, New Hampshire law permits the trial court to require said person to post a bond up to \$2,000.00 for each animal in custody within 30 days. If the bond is not posted, the animals shall be forfeited. (NH RSA 644:8, IV (c)). This bond represents the boarding costs anticipated to be incurred during the appeal process. If the conviction is affirmed, the bond is given to the custodian of the animals, and any remaining balance is returned to the defendant. *Id.*

CONSIDERATION OF CUSTODY OF THE ANIMALS

Unique to cruelty cases, the costs to house feed and care for animals pending the trial can be extremely high. With the necessary costs of care for the animals, a six month wait before a trial will result in accruing immense costs. (40) While New Hampshire law requires the defendant to pay these charges upon conviction (NH RSA 644:8, IV(a)(7)), the prosecutor can request the court to release the animals to the owner as a money saving measure, before the case is resolved. However, this may not be in the best interest of the animals.

When animals are seized pursuant to a search warrant, the court may have the authority to dispose of the animals as the public interest requires. NH RSA 595-A:6 sets forth a general rule that, if requested prior to trial or upon an appeal, the court will return the evidence to its rightful owner (which is usually determined by an evidentiary hearing). The exception to this is where good cause is shown why the evidence (animals) should not be returned to the rightful owner. The prosecution may file this motion and ask the court to immediately forfeit the animals to a local animal shelter, thus avoiding care, custody and control costs from rapidly and dramatically increasing throughout case. A defendant may agree to the release of the animal rather than risk the imposition of the costs associated with the care of the animal.

Fairly unique to New Hampshire is the animal cruelty law's temporary protective custody clause. (NH RSA 644: 8, IV-a(a)). This statute provides that when taking an animal into protective custody, the seizing officer must secure proper care for the seized animal. Seven (7) days after the seizure, if the owner has not come forward, the officer can petition the court seeking either permanent custody of the animal, or a one-week extension of custody. If the officer requests a one-week extension, at the end of the 14 days, if the owner has not claimed the animal, ownership will transfer automatically to the officer on behalf of the department. Upon that occurrence, the department may dispose of the animal or transfer custody in any lawful manner. *Id.*

New Hampshire law provides that under RSA NH 644:8, IV(a)(6), upon conviction of cruelty to animals, the Court shall dispose of the confiscated animal in any manner it decides except in a case in which the confiscated animal is owned or co-owned by persons other than the defendant. If the defendant does not have an ownership interest in the confiscated animal, the court shall

give priority to restoring full ownership rights to any person with proof of ownership if the Court determines that such is in the best interest of the animal's health, safety, and wellbeing. The Court can also transfer any interest that the defendant has in the confiscated animal to the remaining owner if the Court determines that such is in the best interest of the animal's health, safety, and wellbeing.

Any person with proof of sole or co-ownership of an animal confiscated, and who is not a defendant or party of interest in the criminal case, may petition the Court for temporary custody of the animal. The Court shall give such person priority for temporary custody of the animal if the Court determines it is in the best interest of the animal's health, safety, and wellbeing. NH RSA 644:8, IV (a)(4).

New Hampshire law also contains a civil provision that addresses the cost of care for the custody of animals. NH RSA 437:18-21. This statute transfers ownership of the animal to the operator of an animal care center (which is defined to include any "veterinary establishment, humane society, boarding kennel or other center providing care and treatment of animals") provided the following conditions are satisfied: the animal care center has notified the owner by certified mail of their intention to treat the animal as abandoned if the owner does not reclaim the animal or pay the charges/fees within seven (7) days after the mailing of the notification. After the 7 day period, the animal care center may dispose of the animal as if it were the animal's rightful owner. It is important to ensure the condition precedent was satisfied: that the owner must have been notified of this abandonment statute prior to taking custody of the animal.

The law also requires that no custodian of an animal confiscated under this section shall spay or neuter or otherwise permanently alter an animal in his or her custody pending final disposition of the Court case unless a treating veterinarian deems such procedure necessary to save the life of the animal. NH RSA 644:8, IV (a)(5).

MULTIPLE COUNTS

In cases involving more than one animal (very common in N.H.), the prosecutor should consider filing one count for each animal victimized or include each specific animal under a particular element of crime for several reasons:

- It more accurately depicts the nature of the case as there may be different material elements of cruelty present in each animal or group of animals.
- It makes the case simpler to prove – if cruelty against four dogs is lumped together into one charge and one dog is found "ok" but the others were not, the case for all four dogs could be dismissed rather than just that one count.
- It limits defenses.
- The defendant is less likely to be successful in a pretrial motion for return of property, since each of the animals are the subject of a specific charge.
- It gives the prosecutor more options in a plea bargain.

Under NH Rule of Criminal Procedure 20(a)(1), related offenses are defined as (1) alleged to have occurred during a single criminal episode; or (2) constitute parts of a common scheme or plan; or (3) alleged to have occurred during separate criminal episodes but logically and factually connected in a manner that does not solely demonstrate that the defendant has a propensity to engage in criminal conduct. Either party can move for joinder of related offenses and they shall be joined unless it is not in the interest of justice. In addition, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if the offenses are known to the prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of the court.

MULTIPLE DEFENDANTS

It is not uncommon to have animal cruelty cases involving multiple defendants. If multiple defendants are identified, they should be charged, and accomplice and/or conspiracy charges should be considered.¹⁸ When multiple defendants are charged together in the same case, they can be consolidated for a trial. However, usually the defense will object to consolidation. If two or more defendants are charged with related offenses as defined in NH Rule of Criminal Procedure 20(a)(1), the court may order joinder of the trials so long as joinder does not violate the constitutional rights or otherwise unduly prejudice any defendant. It can be argued that the consolidation of defendants will result in an economy of time and resources, both for the courts and the prosecutor. (See NH Rule of Criminal Procedure 20 for joinder of offenses.)

INITIAL STATUS HEARING

Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar. NH RSA 644: 8, IV (a)(3). In cases in which animals have been confiscated by an arresting officer or his or her agency, a status hearing shall be held by the Court within 14 days of the confiscation of the animals.

APPEAL ISSUES

Upon a person's conviction of cruelty to animals, absent an appeal, the Court SHALL dispose of the confiscated animal(s) in any manner it decides except in a case in which the confiscated animal is owned in whole or part by persons other than the defendant. If the defendant does not have an ownership interest, the court shall give priority to restoring full ownership rights to any person with proof of ownership if it is in the best interest of the animal's health, safety, and wellbeing. If the confiscated animal is co-owned by the defendant, the court shall give priority to transferring the defendant's interest to the remaining owner or co-owners if the Court determines that such is in the best interest of the animal's health, safety, and wellbeing.

If a person convicted of any offense of cruelty to animals appeals the conviction in an initial de novo or subsequent appeal and any confiscated animal remains in the custody of the arresting officer or agent of the arresting officer, in order for the defendant to maintain a future interest in

¹⁸ The crime of accomplice to negligent cruelty to animal has been upheld in New Hampshire. (*State v. Anthony*, 151 N.H. 492,496 (2004))

the animal, the trial or appellate court, after consideration of the income of the defendant or appellant, may require the defendant or 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 trial, trial de novo, or appeal. Such bond SHALL be posted to the court within 30 days and if not paid, the animals SHALL be forfeited to the arresting officer or agent of the arresting officer. The court may, for good cause, extend this deadline by no more than 15 days.

Writing Criminal Complaints

Law enforcement officers regularly have to decide whether to charge a person with an offense and, if so, which offense. In order to make those decisions, officers need to be able to look at the statutory definition of an offense, understand and identify the required mental state and other elements that must be proven in order to establish a violation of the specific statute at issue. Identifying the appropriate criminal statute that corresponds to the suspect's behavior and properly drafting a complaint will not only avoid legal issues for the prosecutor later in the case, it will guide the officer in the investigation and preparation of the criminal case for trial. Often, there may be more than one statute that could apply to the situation at hand. Officers should not hesitate to contact their local prosecutor or county attorney with questions on charging decisions. Unless otherwise permitted by law, the Court may permit a complaint to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. However, making a practice of having to amend complaints is disfavored and thoughtful drafting early in the case will avoid the need to do so.

Please refer to the **Law Enforcement Manual** Section XXVII for writing criminal complaints. Examples of criminal complaints related to animal cruelty from the 2008 edition have been excerpted and can be found in **Appendix B**.

Common Defenses and Motions

The New Hampshire Revised Statutes Annotated (RSA's), and New Hampshire Rules of Criminal Procedure govern most aspects of criminal procedure and process. Chapters 592-614 of the RSA's govern "Proceedings in Criminal Cases" including arrests, trials, appeals, search warrants, bail, statute of limitations, and charging by indictment, information or complaint. Chapters 625-651:F constitute the criminal code which defines crimes and includes certain practices and procedures. Criminal Offenses also appear in other sections of the NH RSA's.¹⁹

¹⁹ Revised Statutes Annotated: <http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm>)

Rules of Criminal Procedure: <https://www.courts.state.nh.us/rules/crimpro/crimpro-IV-10-17.htm#r15>

It is the State's duty to prove all of the defined elements of an offense beyond a reasonable doubt. Defenses to charged offenses may include affirmative defenses and defenses specifically defined within individual criminal statutes. However, most defenses will revolve around the sufficiency of the State's evidence with respect to one or more elements of the charged offense or the culpability/mental state of the defendant. Affirmative Defenses must be raised by a defendant at least five days prior to trial (N.H. Rule of Criminal Procedure 14) and must be established by the defendant by a preponderance of the evidence (N.H. RSA 626:7). Defenses defined within the criminal code, other than affirmative defenses, must be disproven by the State beyond a reasonable doubt. Any deficiencies in the evidence or investigation, which provide a defense to the charge, may be the subject of motions to suppress or dismiss.

Motion practice can be an important tool for the defense, and for the State, to narrow the scope of issues or evidence available for trial. The defense may also file motions for outright dismissal of a charge or case. Responding to and defending against these motions can require substantial effort and time from State. Pre-trial motions are specifically addressed by NH Rule of Criminal Procedure 15, but are generally rooted in constitutional provisions and rules and principles contained within the NH RSA's, which have in-turn been interpreted by the courts as set forth in applicable case law.

NH Rule of Criminal Procedure 15 specifically considers motions suppress (a.k.a. motions in limine) which seek the exclusion or limitation of the admissibility of evidence intended to be introduced by the State. Motions to suppress should be filed prior to trial, but may be raised orally during trial at the discretion of the court. Motions to dismiss may also be filed and generally seek to exploit defects in charging documents, statutory violations, or the sufficiency of evidence presented. Motions to dismiss may be filed before trial, but most motions to dismiss are generally filed during or after trial or even argued to the bench at the close of the state's case.

Occasionally, attorneys will file motions using antiquated titles or forms. However as long as the motions are requesting appropriate relief of suppression or dismissal motion, they are generally accepted. New Hampshire Courts have long recognized that a good claim or defense will ordinarily not be defeated because the attorney failed to file the proper motion.

MOTION TO DISMISS THE CASE OR INDICTMENT / MOTION FOR DIRECTED VERDICT-JNOV

In modern practice, most dispositive motions are captioned as motions to dismiss. Motions to dismiss may be filed for procedural, statutory, or other technical defects. Motions to dismiss may also be filed based upon the merits or facts with respect to State's lack of evidence supporting one or more elements of the offense. Motions to dismiss for procedural or other technical defects may be filed pre-trial, however most motions to dismiss occur after the commencement of trial (empanelment of jury or swearing in of first witness), which if granted could bar future prosecution due to double jeopardy protections.

Motions to dismiss may be filed seeking to exploit defects in the charging documents, claims of a violation of the statute of limitations, statute a violation of a right to speedy trial, double jeopardy, or may be filed if the complaint fails to set forth all elements of the crime including the mental state. (*See Law Enforcement Manual* pp. 358-372.) A motion to dismiss for lack of

specificity in the charging document for cruelty cases involving a number of animals is a common basis for a motion to dismiss the indictment or complaint. As previously mentioned, a specific complaint for each animal and a broad time span should be drafted to overcome a motion to dismiss. These charges should be consolidated for trial.

Motions to dismiss based upon the substantive merits or facts, with respect to evidence introduced by the State and Defense, occur with regularity during trial. Generally, these motions are filed at the close of the State's presentation and upon completion of the submission of all evidence. There have been cases dismissed because the prosecutor mistakenly failed to present evidence it had available. If certain evidence is not admitted due to error, the case may be reopened prior to verdict, upon a motion, and that evidence may be admitted. *State v. Martineau*, 114 N.H. 552, 559 (1974). The decision whether or not to reopen a criminal case lies within the discretion of the trial court. *State v. Streeter*, 113 N.H. 402, 403, 308 A.2d 535, 536 (1973); *State v. Petkus*, 110 N.H. 394, 398, 269 A.2d 123, 125 (1970); *State v. Comparone*, 110 N.H. 398, 399, 269 A.2d 131, 132 (1970).

Depending upon timing, these motions are considered a motion for directed verdict (during trial), or a JNOV (Judgement notwithstanding the verdict after trial). A motion for directed verdict seeks to establish that the evidence introduced is insufficient to prove one or more elements of the offense, the culpable mental state, or disproving a statutory defense beyond a reasonable doubt. For a directed verdict, which occurs after the commencement of the case but prior to a jury verdict, the court assesses the evidence and all reasonable inferences therefrom in the light most favorable to the State. *See State v. Bemis*, 127 N.H. 490, 491 (1985). Unless the defendant is able to establish that no reasonable trier of fact could have found beyond a reasonable doubt that the defendant committed the crime charged, the conviction must stand. *State v. Martin*, 121 N.H. 1032 (1981). A motion for JNOV is a request to set aside a verdict delivered by a jury of guilty upon one or more charges. A JNOV may be based upon sufficiency of evidence, which utilizes the same standard as directed verdict, or claiming that the verdict is against the weight of the evidence. These may seem like a meaningless distinction in a practical sense but the standards are treated differently in a legal sense. The weight of the evidence is "a determination of the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other." 29A Am.Jur.2d supra § 1430. Thus, in contrast to sufficiency, a verdict conclusively against the weight of the evidence is "one no reasonable jury could return," *Mullin v. Joy*, 145 N.H. 96 (2000). This distinction is important because sufficiency is a question of "whether the state has met its burden of production at trial," while weight is a question of "whether the state has appropriately carried its burden of persuasion." *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541, 549 (1997) (Cook, J., concurring).

MOTION TO SUPPRESS EVIDENCE

In animal cruelty cases, as in other criminal cases, the defense may challenge the validity of the seizure of evidence or the voluntariness of a confession. Although considered non dispositive, motions to suppress often have a dispositive impact upon a case. This is because a successful

motion to suppress may eliminate of key pieces of evidence necessary to prove one or more elements of an offense. The prosecutor has the burden of proving the evidence was legally seized or the confession was voluntary if challenged by defense or questioned by the court.

Generally, evidence is subject to suppression if it is taken in violation of a defendant's constitutional right to be free from unreasonable searches and seizures (4th Amendment) or as a result of a violation of their right against self-incrimination (5th Amendment), and their companion state constitutional provisions. However, it is important to remember that only State action is scrutinized. Therefore, evidence obtained through what may otherwise be considered an unreasonable or unlawful search or seizure conducted by someone other than a State actor may be admissible. This does not apply to searches conducted by a non-state actor but done so at the direction of or on behalf of a State actor. (Note: If a witness who is not a state actor committed any criminal offense (criminal trespass or otherwise) in obtaining this evidence, they may have a 5th amendment issue that could prevent them from testifying. *See State v. Richards*, 129 N.H. 669 (1987)).

Searches and seizures are considered unreasonable unless they are conducted pursuant to a warrant or fall within a recognized exception to the warrant requirement. The State should always seek to obtain a warrant for any search or seizure which is expected to result in criminal charges. A warrant may be obtained if there is probable cause to believe that evidence of a crime will be located in the place or thing to be searched or seized. Absent a valid warrant, the State will be required to establish that the search or seizure occurred pursuant to an exception to the warrant requirement. Common exceptions to the requirement that are likely to be applicable to cruelty cases are:

- Consent – Valid consent must be voluntary, freely, and knowingly given. *State v. Pinder*, 126 N.H. 220 (1985). The State has the burden of proving valid consent by a preponderance of the evidence. *State v. Labarre* 160 N.H. 1 (2010). Consent may be obtained by a person other than the defendant if the third party has authority to grant such consent. Therefore, a co-owner/co-tenant of property may generally grant consent to common areas and property, but not necessarily to the other party's bedroom or personal effects over which they have no authority. A defendant should be notified of the right to refuse the consent. Failure to do so is a significant factor in the assessment of valid consent, however it does not automatically negate otherwise valid consent. Likewise, consent will not generally be invalidated because the State notified the defendant of the State's intention to apply for a search warrant or take other actions if the defendant fails to provide valid consent. The State may inform the defendant of actions the State is entitled to take, although doing so may play a role assessing the validity of valid consent. *State v. Livingston*, 153 N.H. 399 (2006). Consent may also be implied from circumstances other than actual express consent. However, the State should seek explicit consent and not rely upon an unspoken invitation by conduct or others. Written consent is likewise not required but is preferable as it memorializes the permissive nature of the search and can be used to meet the State's burden in objection to a motion to suppress in court. Consent may also be invalidated if it is obtained as a product of an unlawful detention or arrest.

- Plain View – Evidence which is observable from a place where the law enforcement officer is legally permitted to be and the incriminating nature of the evidence is immediately apparent. *State v. Nieves*, 160 N.H. 245 (2010). Generally, it includes the “curtilage” of a home which is the area incident to the normal and customary uses of the residence (yard) but does not include “open fields” which are areas that are not areas incident to the normal uses of the home (fields, woods, etc.). No-trespassing signs or other warnings may play a role in determining the nature of the location. Anything observable from the area used to approach the house (driveway/walkway) is generally accepted as plain view because there is no expectation of privacy in these locations. *See State v. Pinkham*, 141 NH 188 (1996).
- Exigent Circumstances – Based upon the understanding that certain circumstances may eliminate the need for a warrant if “there is a compelling need for official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent danger to life or public safety or create a likelihood that evidence will be destroyed. *State v. Robinson*, 158 NH 792 (2009)”. There is a need for immediate action where getting a warrant is impractical due to the circumstances presented. It is wise to document every reason why a warrant was unable to be obtained to help establish this exception at trial.
- Community Caretaking / Emergency Aid – Community Caretaking exception is generally related to actions by the State for which the primary purpose is providing assistance or protecting persons or property, not the investigation of crimes. May occur due as a result from a request to conduct a “well being” check upon a person. *See State v. Boyle*, 148 N.H. 306 (2002). For the Emergency Aid exception to apply, the State must establish that: (1) there are objectively reasonable grounds to believe there is an emergency at hand and immediate need for assistance for the protection of life or property (2) there is an objectively reasonable basis, approximating to probable cause, to associate the emergency with the area or place to be searched and (3) the search is not motivated by intent to arrest and seize evidence. *See State v. Macelman*, 149 N.H. 795 (2003); *State v. Pseudae*, 154, NH 196 (2006).
- Administrative Searches – Administrative searches of businesses or commercial properties pursuant to a regulatory scheme governing the use of the property or actions of the business may be a valid search without a warrant if regulatory scheme is sufficiently comprehensive to place the business or property owner on notice that the property may be subject to periodic inspections and the discretion of the inspecting officer is limited. *New York v. Burger*, 482 U.S. 691 (1987). This may be applicable to inspections of restaurants, food service, or processing facilities by the local or state health department, inspections of farms, meat processing plants, or animal breeders by a federal or state department of agriculture, or other regulated inspections. In certain circumstances, an administrative search warrant may be required to conduct specified searches not otherwise permitted via the regulatory scheme. If these circumstances arise, the assessment of the probable cause

requirement would be focused the purpose of the administrative search, not toward the probability of finding evidence of a crime. *See State v. Beede*, 119 N.H. 620 (1979). The recognized exceptions to the warrant requirement may also apply to warrantless administrative searches.

- Temporary Protective Custody (NH RSA 644:8 IV-a. (a) allows a law enforcement officer, animal control officer, or humane officer to take an animal from a location when there is probable cause to believe an animal when there is clear and imminent danger to an animal's health or life and there is insufficient time to obtain a warrant. Any animals not in imminent danger and any other search or seizure should not be completed without a warrant. If the probable cause initiating the taking of animals is credible and verifiable, a warrant can be sought at the same time as the endangered animals are being taken.

Another common issue for suppression is whether or not statements made by a defendant are subject to suppression if obtained in violation of the constitutional right against self-incrimination. Generally, these motions stem from the holding of the United States Supreme Court in *Miranda v. Arizona*, and its progeny. In order for *Miranda* to apply, there must be two elements: custody and interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966) *See also State v. Roache*, 148 N.H. 45, 48 (2002). "Custody entitling a defendant to *Miranda* protections requires formal arrest or restraint on freedom of movement of the degree associated with formal arrest. *State v. Jennings*, (2007). "In the absence of formal arrest, we must determine whether a suspect's freedom of movement was sufficiently curtailed by considering how a reasonable person in the suspect's position would have understood the situation." *Id.* Interrogation occurs when there is express questioning or "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police know, or should know, are reasonably likely to elicit an incriminating response . . ." *Rhode Island v. Innis*, 446 U.S. 291, 300-301 (1980). The State has the burden to prove the admissibility of statements beyond a reasonable doubt. Therefore, as with consent, it is wise to provide the *Miranda* warnings, and memorialize them in writing if possible, prior to any questioning of a defendant who has been detained or otherwise had his/her movement curtailed in any significant manner. Understanding that minor detentions such as motor vehicle stops are not "custody" for this purpose, such a stop may transition into "custody" during the course of the stop. The determination of "custody" is fact driven and what may seem like innocuous facts could sway the outcome of the analysis. *See State v. McKenna*, 166 N.H. 671 (2014).

COMPETENCY

Competency is not necessarily a defense, although a defendant may avoid prosecution following a finding of not-competent. Competency may present with more regularity in the animal cruelty context when compared with other criminal offenses due to the nexus between animal cruelty and mental illness. Competency is a legal, and not a medical concept, and a mentally ill individual may still be competent to stand trial. Competency is generally raised

by counsel for the defendant. However, in many misdemeanor animal cruelty cases, the defendant is unrepresented. If the State or Court has a bona fide doubt as to whether or not the defendant is competent, the issue of competency must be addressed.

A defendant has a due process right not to be placed on trial if legally incompetent. *See State v. Veale*, 158 N.H. 6323 (2009); *State v. Gagne*, 129 N.H. 93 (1986). The standard is two-pronged, “First, the defendant must have a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding. Second, the defendant must have factual as well as rational understanding of the proceedings against him.” *State v. Kinde*, 158 N.H. 90, 93 (2008). The State carries the burden of proving both prongs of the test for competency by a preponderance of the evidence. *See State v. Ke Tong Chen*, 148 N.H. 565, 567 (2001).

Once competency is raised, the Court will order an evaluation to be completed by the Department of the Forensic Examiner. The evaluation will outline social, educational, and medical history and should diagnose or identify any mental illness or other mental limitations observed by the examiner. The examiner will provide an opinion regarding competency, and if not competent will also address the issue of restorability and appropriate treatment for such restoration of competency.

Pursuant to N.H. RSA 135:17-a (I): “If, after hearing, the district court or superior court determines that the defendant is not competent to stand trial, the court shall order treatment for the restoration of competency unless it determines, by clear and convincing evidence, that there is no reasonable likelihood that the defendant can be restored to competency through appropriate treatment within 12 months.” Following the 12-month period, a subsequent evaluation and hearing must be held to determine if the Defendant has been restored to competency, however the time may be extended upon a showing of “good cause.” The extension may be appropriate if the Defendant is not complying with treatment or otherwise is frustrating the process, however this would fall squarely within the discretion of the court.

The defendant remains subject to orders and conditions of bail during the period of time which the issue of competency is pending. If the Defendant is ultimately found not-competent, the case is dismissed. If the defendant is found competent, the Case proceeds to trial. A defendant found not-competent may be subject temporary detention pending a determination of whether the individual may be subject to involuntary commitment pursuant to N.H. RSA 135-C:34 or 171-B:2 if found to be dangerous under either standard.

Should a defendant be found mentally incompetent to stand trial, the Court does not have the authority, pursuant to our cruelty statute, to determine the disposition of the animals. Therefore, the animals shall be returned to the owner/defendant (provided the defendant did not surrender them). An avenue to retain custody of the animals, is to pursue a civil action in Superior Court under N.H.’s civil abandonment statute, discussed *infra*. NH RSA 437:18-21. This can be filed as a request for an ex parte order, if the criminal court has ordered the return of the animals. However, by invoking this statute, defendant must be billed for any

fees and charges due for boarding, medical or other care on a monthly basis (via his/her attorney if appropriate), pursuant to NH RSA 437:19's requirements, so that the seven-day period is triggered in which to seek a finding of abandonment.

INSANITY

Insanity is a defense in the State of New Hampshire and the defendant bears the burden of establishing, by clear and convincing evidence, that the insanity caused the criminal act. *See State v. Cegelis*, 138 N.H. 249 (1994); *State v. Plante*, 134 N.H. 456 (1991). If a person is found not guilty by reason of insanity, they will be committed to the secure psychiatric unit pending a hearing on dangerousness pursuant to NH RSA 651:8-b.

The New Hampshire insanity rule is codified in NH RSA 628:2, I. Under the New Hampshire insanity rule, the question of sanity or insanity is one of fact for the jury. It is unique; it is not, as some commentators assert, the equivalent of the so-called Durham Rule.

Cruelty Defense

Animal cruelty cases are similar to some domestic violence cases in that the subject of the crime is unavailable to testify. The case must be built on evidence other than the subject's testimony. Thus, the more evidence obtained, the easier the case is to prove. As already discussed, even with a thorough investigation at the outset, additional follow-up may be necessary. Also important to proving the case, is establishing the defendant's mental state; *mens rea*. Usually just the nature of the intentional abuse proves the necessary mental state. Proof of a second charge of neglect (negligent cruelty) could include evidence that the owner was informed of and educated to the appropriate standards of care upon his first conviction.

Typical defenses for purposeful acts include:

- I wasn't there.
- The animal was attacking me or my family.
- I was training or disciplining the animal.
- I was temporarily insane.
- I didn't mean for this to happen.
- I didn't know.

Effective strategies to counter defense arguments:

The prosecutor may file a motion to admit character evidence by others familiar with the abused animal, showing its peaceful nature and harmless past to rebut any evidence of the animal's aggressive nature presented by the defense. (NH Rule of Evidence 404(a)(2))

The prosecutor may argue that there is no exemption under the statute for cruel methods of training or discipline.

The prosecutor will need witnesses (neighbors or complainants) to prove the accused was at the scene and/or committed the acts.

Neglect cases often involve these common defenses:

- It wasn't my responsibility.
- I cannot afford the animal or its care.
- I am not the owner/keeper.
- The animal came to me that way. I am trying to nurse it back to health.

MOTION FOR BAIL OR PERSONAL RECOGNIZANCE/SENTENCING

To protect the animals pending trial, the prosecutor should ask the court for a “no contact with animals” order as a condition of the defendant’s bail/release. This is more comprehensive than a typical “no possession of animals” bail order, as it prevents the defendant from transferring the animals to a relative or a third party friend. The defendant could also be ordered to post a bond in certain situations (appeals from conviction) to cover the cost of the care of the animal during the appeal (NH RSA 644:8, IV(b)). Finally, if the animals are placed in foster homes or given back to innocent owners, the court may place limitations on contact between the defendant and these providers as part of the bail order.

The prosecutor should consider the following recommendations for conditions on a defendant’s sentence: (38)

- Prohibition on owning/possessing any animals (indefinitely or for specified time period).
- Limiting the number of animals the defendant may have.
- Requiring mandatory visits by an animal control officer, law enforcement officer, humane officer, or perhaps veterinarian to ensure proper care.
- Requiring education and training for the owner.
- Requiring mental health counseling and monitoring in the cases of hoarding.
- Restitution for an expenses of care incurred as a result of the case.

Common Issues That Arise in Prosecution

NEGLECT

Neglect is a vague term in the law. Specifying the acts of neglect is critical to survival of the complaint. Generally, neglect is summed up as the failure to provide adequate water, food, shelter, or veterinary care. The complainant should allege one or more of these acts. New Hampshire also law provides a list of several examples of neglect and a catch-all phrase “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.” (NH RSA 644:8, III (f)) If using this provision, the defendant’s acts should be specified in the complaint.

New Hampshire statutes do define lack of “shelter” as a negligent act. The law specifically defines the requirements for horse shelter (NH RSA 435) and dog shelter. (NH RSA 644-8, II-a) Photos of the “shelter” are the best evidence for the court or jury to understand the unsatisfactory conditions. Again, in proving neglect (be it sustenance or shelter) the key in this assessment is the opinion of the expert - the veterinarian. The veterinarian provides the testimony that water,

food and care were not adequately provided and that the ramifications/results were below the level of care a reasonable person would provide. Some cases may be so egregious that no expert testimony is necessary.

ABANDONMENT

In abandonment cases, it can be difficult to prove who was responsible for the care of the animal. Common defenses are “the animal escaped” or “I hired someone to care for it.” If there is evidence that an owner dropped a dog off in a dumpster, or abandoned a farm leaving livestock behind without food or water, intent to abandon can be proven. To escalate an abandonment charge to a felony, purposeful cruelty (mutilation, beating, torture) must be proved. While the end result may be torture due to starvation or dehydration, the charge requires proof that was the owner’s intent.

NOTE: N.H. also has a civil abandonment law (NH RSA 437:19) which may be used to obtain ownership of animals outside a criminal proceeding. (*See Section 1*)

SUMMARY

Animal cruelty charges can be very challenging to investigate and difficult to prove in court for a variety of reasons. These include:

- There is no crime victim who can testify.
- Cases may be circumstantial.
- The care of seized animal(s) often becomes a financial burden.
- The animals are viewed as evidence because they are property.
- There is need for forensic evidence, which can be expensive.
- The community and media response to cruelty cases is often overwhelming.

In addition, it is difficult to obtain appropriate and meaningful sentences and provide psychological diagnoses and counseling for juveniles and those with mental health issues.

Law enforcement officials throughout the nation have recognized the seriousness of animal cruelty. The Commission hopes that this manual provides the necessary background and information for New Hampshire law enforcement professionals to successfully investigate and prosecute cruelty cases.

**MEMBERS OF THE GOVERNOR'S COMMISSION ON THE
HUMANE TREATMENT OF ANIMALS 2017-2020**

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Cynthia	Collins	Gen Public
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Marga	Coupl	Gen Public
Stephen	Crawford	State Veterinarian
Thomas	DeRosa	Gen Public
Jennifer	Eber	Gen Public
Heather	Faria	NH Federation of Humane Org
Sheila	Johannesen	Animal Control Officers Assn of NH
Gary	Lambert	NH Sportsmen
Patricia	Morris - Chair	Equine Associations
Michael	Moyer	NH Sheriff's Association
Wendy	Munroe	NH Vet Tech Assoc
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Dean	Rondeau	NH Police Chief's Assn
Julia	Seeley - Secretary	National Humane Organization
Tom	Seymour	Gen Public
Steven	Sprowl	Humane Cruelty Investigator
Vacant	Vacant	UNH Coop Extension
Jerilee	Zezula	Gen Public

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GLOSSARY RELATED TO NH ANIMAL CRUELTY LAWS

A

Administrative rules	Rules administered by a state department as allowed by law. NH Animal Health Rules, administered by NHDAMF according to law, may be found at: http://www.gencourt.state.nh.us/rules/agr1700.html
Affiant	n. a person who signs an affidavit and swears to its truth before a notary public or someone authorized to take oaths.
Affidavit	n. 1) any written document in which the signer (affiant) swears under oath before a notary public or someone authorized to take oaths (like a County Clerk), that the statements in the document are true. (For a search/arrest warrant, the affiant must be a police or court officer.)
Animal Shelter	RSA 437:1 I "Animal shelter facility" means a facility, including the building and the immediate surrounding area, which is used to house or contain animals and which is owned, operated and maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of animals, and also a public pound for the housing of strays or a pound operated by any person, excluding veterinarians, who contracts with a municipality to serve that function.
Arresting Officer	see "officer"

B

Bestiality	See RSA 644:8-g
Body Condition Scoring (System) (BCS)	Visual and tactile evaluation of an animal's true body condition. Does not rely on weight as that is arbitrary between animals and breeds.
Breach of the Peace	Any act which disturbs the public or even one person. It can include almost any criminal act causing fear or attempting intimidation, such as displaying a pistol or shouting inappropriately. NH Animal Cruelty Statutes are under Chapter 644 Breaches of the Peace and Related Offenses.

Burden of Proof RSA 625:10 Burden of Proof; No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

C

Civil Law A body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and [Family Law](#); distinct from criminal or public law. It addresses nonviolent circumstances and events that are perceived as presumable wrongs suffered.

Classification of Crimes in New Hampshire

625:9 Classification of Crimes.

I. The provisions of this section govern the classification of every offense, whether defined within this code or by any other statute.

II. Every offense is either a felony, misdemeanor or violation. (a) Felonies and misdemeanors are crimes.

(b) A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

III. A felony is murder or a crime so designated by statute within or outside this code or a crime defined by statute outside of this code where the maximum penalty provided is imprisonment in excess of one year; provided, however, that a crime defined by statute outside of this code is a felony when committed by a corporation or an unincorporated association if the maximum fine therein provided is more than \$200.

(a) Felonies other than murder are either class A felonies or class B felonies when committed by an individual.

(1) Class A felonies are crimes so designated by statute within or outside this code and any crime defined by statute outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of 7 years.

(2) Class B felonies are crimes so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but not in excess of 7 years.

IV. Misdemeanors are either class A misdemeanors or class B misdemeanors when committed by an individual.

(a) A class A misdemeanor is:

(1) Any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment not in excess of one year; or

(b) A class B misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty does not include any term of imprisonment or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a).

(c) Any crime designated within or outside this code as a misdemeanor without specification of the classification shall be presumed to be a class B misdemeanor unless:

(1) An element of the offense involves an "act of violence" or "threat of violence" as defined in paragraph VII;

(2) The state files a notice of intent to seek class A misdemeanor penalties on or before the date of arraignment. Such notice shall be on a form approved in accordance with RSA 490:26-d; or

(3) The misdemeanor charge is filed directly in superior court.

V. A violation is an offense so designated by statute within or outside this code and, except as provided in this paragraph, any offense defined outside of this code for which there is no other penalty provided other than a fine or fine and forfeiture or other civil penalty.

**Placed on File
Without a Finding**

Placed on File Without a Finding is pre-trial resolution of a criminal case in which a defendant's not guilty plea is maintained by the court for a determined probationary period of time (generally 1 -3 years but may be longer or shorter depending on the facts of the case.) During this probationary period the defendant must remain of good behavior and may be subject to any other conditions which may be appropriate. Good behavior is generically defined as not committing any felonies, misdemeanors, or major motor vehicle violations, but the generic definition can be altered to include other unwanted behaviors. In the animal cruelty context behaviors and potential conditions may include not owning animals or being limited to a specified number of animals, improvement of condi-

tions for any owned animals, proof of regular veterinary care, community service, educational programming, obtaining necessary mental health or substance abuse treatment & counseling. A defendant has to waive their right to a speedy trial for the duration of the placed on file period. The State may bring the case back forward via a motion if the Defendant violates any terms or conditions imposed for the placed on file resolution and the case would be scheduled for trial. If the Defendant satisfies all terms and conditions of the placed on file resolution, or the State fails to file a motion within the set period of time, the case is dismissed.

Placed on File With a Finding

Placed on File With a Finding is similar except that the defendant pleads a guilty or no-contest plea but the plea and resulting conviction is not entered upon the record for the determined period of time subject to good behavior and conditions. Upon the expiration of placed on file period, the case would also be dismissed unless the State filed a motion to put the case back on the docket due to a failure of the defendant to comply with the terms of the agreement. The Court may pre-determine a default sentence at the time of the resolution in the event the defendant fails to comply with the terms or may leave sentencing to be addressed only in the event the defendant fails to comply with the terms. In all other respects, the resolution is identical to the Placed on File Without a Finding.

These resolutions are often helpful for defendants with no prior criminal record and wish to take some responsibility without creating a criminal record.

Constitutional Law

Law dealing with governmental powers, civil rights, and civil liberties.

Confiscate

Term used in RSA 644:8 IV(a)(1) to allow animals to be taken when a person is charged with animal cruelty by the arresting officer. As animals are property, a warrant must be issued. (RSA 595 A:1)

Court Order

A decision issued by a court. It can be a simple command--for example, ordering a recalcitrant witness to answer a proper question--or it can be a complicated and reasoned decision made after a hearing, directing that a party either do or refrain from some act. For example, following a hearing, the court may order that evidence gathered by the police not be introduced at trial; or a judge may issue a temporary restraining order. This term usually does not describe the final decision in a case, which most often is called a judgment.

Crime

A type of behavior that is has been defined by the state as a misdemeanor or a felony and generally are deserving of punishment which

usually includes fines and potentially imprisonment. Violation level offenses are non-criminal offenses but still carry the potential for punishment in the form of fines. Crimes and their punishments are defined by Congress and state legislatures. NH crimes are found in the NH Criminal Code TITLE LXII. Ch 625-651.

Criminal Law or Codes

Laws written by Congress and state legislators that make certain behavior (crime) illegal and punishable by fines and/or imprisonment. In order to be found guilty of a criminal law, the prosecution must show that the defendant intended to act as he did. NH Criminal Code TITLE LXII. Ch 625-651.

Culpable Mental States (Intent)

626:2 General Requirements of Culpability.

I. A person is guilty of murder, a felony, or a misdemeanor only if he acts purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense. He may be guilty of a violation without regard to such culpability. When the law defining an offense prescribes the kind of culpability that is sufficient for its commission, without distinguishing among the material elements thereof, such culpability shall apply to all the material elements, unless a contrary purpose plainly appears.

II. The following are culpable mental states:

(a) "Purposely." A person acts purposely with respect to a material element of an offense when his conscious object is to cause the result or engage in the conduct that comprises the element.

(b) "Knowingly." A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.

(c) "Recklessly." A person acts recklessly with respect to a material element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the circumstances known to him, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of having voluntarily engaged in intoxication or hypnosis also acts recklessly with respect thereto.

(d) "Negligently." A person acts negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

D

Department of Agriculture, Markets, and Foods (NHDAMF)

The department of agriculture, markets, and food shall be responsible for the following general functions:

- I. Promoting and regulating agriculture in all its branches. (Animals come in here and the State Veterinarian is in charge of animals.)
- II. Regulating all commercial transactions involving the measurement of weight, distance, volume, or time.
- III. Regulating the quality and grade of agricultural crops and supplies and food products.
- IV. Gathering and disseminating information on agriculture, crop production, market activity, and other subjects consistent with the responsibilities of the department.
- V. Cooperating with other agencies of the state and federal governments, the university of New Hampshire, commodity and consumer groups in the public interest and all who are engaged within this state in any form of agriculture, or its allied vocations, for advice on those activities.
- VI. Conducting such other activities as the statutes shall direct.

Domestic Animals

All animals, including poultry, that are kept or harbored as domesticated animals. (RSA 436:1)

E

Exigent Circumstances

Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the animal that would not require a search warrant.

This is the intent of RSA 644:8 IV-a(a) known as temporary protective custody as far as taking an animal for its welfare.

“Situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search, or seizure, for which probable cause exists, unless they act swiftly and, without seeking prior judicial authorization.” State v. Stern, 150 N.H. 705, 709 (2004).

F

Field Agent

Specially trained agent from a licensed humane animal shelter who assists police in cruelty cases as part of the shelter’s field services.

H

Hyperthermia

Body temperature greatly above normal often due to environmental conditions. Often referred to as heatstroke. Severe hyperthermia is life threatening!

Hypothermia

Lower than normal body temperature usually due to environmental conditions. Often seen in drowning victims and non-acclimated animals left outside without proper shelter in cold wet weather.

I

Ignorance or

RSA 626:3 Effect of Ignorance or Mistake.

Mistake

I. A person is not relieved of criminal liability because he acts under a mistaken belief of fact unless:

(a) The mistake negatives the culpable mental state required for commission of the offense; or

(b) The statute defining the offense expressly provides that such mistake is a defense; or

(c) Such mistake supports a defense of justification as defined in RSA 627.

II. A person is not relieved of criminal liability because he acts under a mistaken belief that his conduct does not, as a matter of law, constitute an offense unless his belief is founded upon a statement of the law contained in a statute or other enactment, or an administrative order or grant of permission, or a judicial decision of a state or federal court, or a written interpretation of the law relating to the offense officially made by a public servant, agency or body legally empowered with authority to administer,

enforce or interpret such law. The defendant must prove a defense arising under this subsection by a preponderance of evidence.

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

Intent See "Culpable Mental States"

J

Judicial Notice

The authority of a judge to accept as facts certain matters which are of common knowledge from sources which guarantee accuracy or are a matter of official record, without the need for evidence establishing the fact. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. Examples of matters given judicial notice are public and court records, tides, times of sunset and sunrise, government rainfall and temperature records, known historic events or the fact that ice melts in the sun. (Ideally acceptable animal husbandry would be common knowledge, but you may need a veterinarian to so testify, JAZ) If the judge is presented with sufficient facts

N.H. Rule of Evidence 201:

(a) Kinds of facts. A court may take judicial notice of a fact. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(b) Kinds of law. A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law, (2) rules of court, (3) regulations of governmental agencies, and (4) ordinances of municipalities and other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

L

Livestock

RSA 427:38 Definitions: (Referenced in RSA 644:8 IV-a(b))

III. "Livestock" shall include beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules, or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).

Source. 1985, 72:1. 1995, 130:5. 1998, 310:2, eff. Aug. 25, 1998. 2014, 97:1, eff. Aug. 10, 2014. 2017, 145:5, eff. Aug. 15, 2017.

Local Law

County codes, city or town codes and ordinances vs. state law.

M

Material Element of Offense

An action that included in the description of the forbidden conduct in the definition of the offense.

N

Negligence

Failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances or taking action which such a reasonable person would not. (See "culpable mental states")

NOLO (nolo contendere, no contest)

A plea by a defendant in a criminal prosecution that without admitting guilt subjects the defendant to conviction as in the case of a guilty plea but that does not bar denial of the truth of the charges in another proceeding (as a civil action based on the same acts) —called also *no contest, non vult contendere*.

The State must be prepared to provide an offer of proof (statement of facts) establishing that there is sufficient evidence for the court to make a finding of guilty.

O

Officer (Powers of Arrest) ARRESTS IN CRIMINAL CASES RSA 594:1 Definitions III. III. "Officer" or "peace officer" is any sheriff or deputy sheriff, mayor or city marshal, constable, police officer or watchman, member of the national guard acting under orders while in active state service ordered by the governor under RSA 110-B:6, certified border patrol agent as defined in RSA 594:26, I, or other person authorized to make arrests in a criminal case.

P

Pet Vender NH RSA 437:1 4: "Pet vendor" means any person, firm, corporation, or other entity that transfers 25 or more dogs, 25 or more cats, 30 or more ferrets, or 50 or more birds, live animals or birds customarily used as household pets to the public, with or without a fee or donation required, and whether or not a physical facility is owned by the licensee in New Hampshire, when transfer to the final owner occurs within New Hampshire, between July 1 and June 30 of each year. Pet vendor also means any person, firm, corporation, or other entity that transfers amphibians, reptiles, fish, or small mammals customarily used as household pets to the public in quantities set in rules adopted by the department, with or without a fee or donation required, and whether or not a physical facility is owned by the licensee in New Hampshire between July 1 and June 30 of each year.

Primary Enclosure Confined area for dogs or cats to sleep or be kept in away from the elements. Examples are dog houses, crates, cages. Often have access to the outdoors as in indoor-outdoor kennels.

Probable Cause The amount and quality of information police must have before they can arrest or search without a warrant or that a judge must have before she will sign a search warrant allowing the police to conduct a search or arrest a suspect. Reliable information must show that it's more likely than not that a crime has occurred and the suspect is involved.

“Probable cause to arrest exists when the arresting officer has knowledge and trustworthy information sufficient to warrant a person of reasonable caution and prudence in believing that the arrestee has committed an offense.” State v. Jaroma, 137 N.H. 562, 567 (1993).

R

**Revised Statutes
Annotated (RSA
or NH RSA)**

Three word term used for NH laws as written in the state law codes. It can be found on line at <http://www.gen-court.state.nh.us/rsa/html/nhtoc.htm>

Annotation refers to the date/passage references below each law.

S

Search Warrant

An order signed by a judge that directs owners of private property to allow the police to enter and search for items named in the warrant. The judge won't issue the warrant unless he/she has been convinced that there is probable cause for the search -- that reliable evidence shows that it's more likely than not that a crime has occurred and that the items sought by the police are connected with it and will be found at the location named in the warrant. In limited situations the police may search without a warrant, but they cannot use what they find at trial if the defense can show that there was no probable cause for the search. NH RSA concerning search warrant: CHAPTER 595-A SEARCH WARRANTS

Seize

RSA 644:8-a IV. (Exhibitions of Fighting Animals) Animals may be seized pursuant to RSA 595-A:6 and RSA 644:8.

**State Veterinar-
ian**

RSA 436:7 Appointment. – The commissioner of agriculture, markets, and food shall, with the approval of the governor and council, appoint a graduate of a veterinary college of recognized standing, who shall have had at least 5 years' experience in the practice of veterinary medicine, including large animal practice, and who shall be known as the state veterinarian and the director of the division of animal industry.

RSA 436:8 Powers. – The state veterinarian, under the direction of the commissioner, shall have all of the powers of the commissioner and shall have general charge of the enforcement of this chapter. Complaints under RSA 644:8, 644:8-a, 644:8-aa and any other law pertaining to the abuse of domestic animals, as defined under RSA 436:1, shall initially be filed with the local law enforcement agency, animal control officer, state police, or sheriff which has jurisdiction over where the animal is located or kept. At the request of the local law enforcement agency, animal control officer, state police, or sheriff, the state veterinarian shall assist in a secondary capacity in enforcing the provisions of and investigating said complaints. In the event the commissioner becomes incapacitated or a vacancy occurs in the office, the state veterinarian shall perform all the duties of that office during any such incapacity or until any such vacancy is filled. The commissioner may direct the state veterinarian to act for

him or her in an official capacity whenever he or she may be absent from his or her duties.

Statutory law

Law passed by a legislative body. In New Hampshire statutory law is kept as RSA's – Revised Statutes Annotated

Subpoena

An order of the court for a witness to appear at a particular time and place to testify and/or produce documents in the control of the witness (if a "subpoena duces tecum"). A subpoena is used to obtain testimony from a witness at both depositions (testimony under oath taken outside of court) and at trial. Subpoenas are usually issued automatically by the court clerk but must be served personally on the party being summoned. Failure to appear as required by the subpoena can be punished as contempt of court if it appears the absence was intentional or without cause.

Summons as it applies to NH Cruelty law

A document issued by the court ordering the accused to appear. May be issued instead of an arrest warrant for misdemeanor violation of the Criminal Code. See RSA 594:14 .

Appendices

Appendix A: NH RSA's Related to Cruelty to Animals
2019-2020

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 or her possession or custody by causing such animal to be left without supervision or adequate provision for its care, sustenance, or shelter;
- (f) Has in his or her 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;
- (g) Sells an equine colt that is less than 90 days old that is not being nursed by its dam; or
- (h) Otherwise negligently permits or causes any animal in his or her 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) (1) Any person charged with animal cruelty under paragraphs III or III-a may have his or her animals confiscated by the arresting officer.

(2) A person charged under this section may petition the court to seek an examination of the animals by a veterinarian licensed under RSA 332-B of his or her choice at the expense of the person charged.

(3) Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar. In cases in which animals have been confiscated by an arresting officer or his or her agency, a status hearing shall be held by the court within 14 days of the confiscation of the animals.

(4) Any person with proof of sole ownership or co-ownership of an animal confiscated by an arresting officer in an animal cruelty case and who is not a defendant or party of interest in the criminal case may petition the court for temporary custody of the animal. The court shall give such person priority for temporary custody of the animal if the court determines it is in the best interest of the animal's health, safety, and wellbeing.

(5) No custodian of an animal confiscated under this section shall spay or neuter or otherwise permanently alter the confiscated animal in his or her custody pending final disposition of the court case unless a treating veterinarian deems such procedure necessary to save the life of the animal.

(6) Upon a person's conviction of cruelty to animals, the court shall dispose of the confiscated animal in any manner it decides except in a case in which the confiscated animal is owned or co-owned by persons other than the defendant. If the defendant does not have an ownership interest in the confiscated animal, the court shall give priority to restoring full ownership rights to any person with proof of ownership if the court determines that such is in the best interest of the animal's health, safety, and wellbeing. If the confiscated animal is co-owned by the defendant, the court shall give priority to transferring the defendant's interest in the property to the remaining owner or co-owners equitably if the court determines that such is in the best interest of the animal's health, safety, and wellbeing.

(7) The costs to provide the confiscated animals with humane care and adequate and necessary veterinary services, 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 accordance with rules adopted by the department of agriculture, markets, and food.

(b) In addition, the court may prohibit any person convicted of a misdemeanor offense of animal cruelty under RSA 644:8, RSA 644:8-aa, RSA 644:8-b, RSA 644:8-c, or RSA 644:8-d, or violation of RSA 644:8-f from having future ownership or custody of, or residing with 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. The court shall prohibit or limit any person convicted of a felony offense of animal cruelty under RSA 644:8 or a misdemeanor or felony offense of bestiality under RSA 644:8-g from having future ownership or custody of other animals for a minimum of 5 years, and may impose any other reasonable restrictions on the person's future ownership or custody of, or residing or having contact with animals as necessary for the protection of the animals. For the purposes of this paragraph, a reasonable restriction on future contact may include limiting a person from engaging in any employment in the care of animals or other similar contact as the court sees fit. Any animal involved in a violation of a court order prohibiting or limiting ownership or custody of animals shall be subject to immediate forfeiture. Any person violating such order may, in addition to being held in criminal contempt of court or subject to a probation violation, be fined in the amount of \$1,000 in any court of competent jurisdiction for each animal held in unlawful ownership or custody.

(c) If a person convicted of any offense of cruelty to animals appeals the conviction in an initial de novo or subsequent appeal and any confiscated animal remains in the custody of the arresting officer, the arresting officer's agency, or the arresting officer's agency's designee pending disposition of the appeal, in order for the defendant or appellant to maintain a future interest in the animal, the trial or appellate court, after consideration of the income of the defendant or appellant, may require the defendant or 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 trial, trial de novo, or appeal. Such bond or security shall be posted to the court within 30 days. If such bond or security is not paid within 30 days after the court orders the bond or security to be posted, the animals shall be forfeited to the arresting officer, the arresting officer's agency, or the arresting officer's agency's designee. The court may, for good cause, extend the deadline by no more than 15 days. If the conviction is affirmed on appeal, the costs incurred for the board and care of the animal, from the date the animal or animals were originally confiscated, shall be paid to the custodial agency from the posted security and the balance, if any, shall be returned to the person who posted it. A court shall order the return of any bond or security upon a court approved agreement of the parties, a finding of not guilty, or the reversal of a conviction, unless it is a reversal with remand for further proceeding.

Effective Date: January 1, 2020.

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, 20 shall be accompanied by a veterinarian licensed under RSA 332-B 21 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 284:22, 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 parimutuel 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.

²⁰ **427:38 Definitions.** – As used in this subdivision:

RSA 427:38 III. "Livestock" shall include beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules, or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).

Source. 1985, 72:1. 1995, 130:5. 1998, 310:2, eff. Aug. 25, 1998. 2014, 97:1, eff. Aug. 10, 2014. 2017, 145:5, eff. Aug. 15, 2017.

²¹ NH Veterinary Practice Act

²² Laws pertaining to horse and dog racing

(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 435:11-16.²³ 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. 2018, 170:1, eff. Jan. 1, 2019, 306:10, eff. Jan. 1, 2020.

644:8-a Exhibitions of Fighting Animals. –

I. No person shall offer for sale, sell, loan, export, 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.

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.(a) Any person who possesses, owns, buys, sells, transfers, or manufactures animal fighting paraphernalia with the intent to engage in or otherwise promote or facilitate such fighting shall be guilty of a class B felony.

(b) For purposes of this section, "animal fighting paraphernalia" means equipment, products, implements, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of animal fighting, and includes, but is not limited to, the following: breaking sticks, cat mills, fighting pits, springpoles, unprescribed anabolic steroids, unprescribed anti-inflammatory steroids, unprescribed antibiotics, treatment supplies or gaffs, slashers, heels, or any other sharp implement designed to be attached in place of the natural spur of a cock or game fowl.

(c) In determining whether an object is animal fighting paraphernalia, the court shall consider any prior convictions under federal or state law relating to animal fighting, the proximity of the object in time and space to the direct violation of this section, direct or circumstantial evidence of the intent of the accused to deliver the object to persons whom he or she knows or should reasonably know intend to use the object to facilitate a violation of this section, oral or written instructions provided with or in the vicinity

²³ Law related to the Treatment of horses. This section follows.

of the object concerning its use, descriptive materials accompanying the object which explain or depict its use, and all other logically relevant factors.

IV. 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 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.

V. 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.

VI. In addition to other penalties prescribed by law, the court shall issue an order prohibiting or limiting a person who is convicted of a violation of this section from owning or possessing any animals for a period not less than 5 years, and may add other reasonable restrictions on future ownership or possession of animals as necessary for the protection of the animals. Any animal involved in a violation of a court order prohibiting or limiting ownership or possession of animals shall be subject to immediate forfeiture. Any person violating such order may, in addition to being held in criminal contempt of court or subject to a probation violation, be fined in the amount of \$1,000 in any court of competent jurisdiction for each animal held in unlawful ownership or possession. For purposes of this section, a reasonable restriction on future ownership or possession may include limiting a person from engaging in any employment in the care of animals or other similar contact as the court sees fit.

Source. 1979, 30:1. 2003, 98:1, eff. Jan. 1, 2004. 2008, 326:1, eff. Jan. 1, 2009. 2019, 295:1, eff. October 27, 2019.

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.

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 651:63.²⁴

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.²⁵

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.

²⁴ Restitution laws

²⁵ III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense.

644:8-g Bestiality.

I. A person commits bestiality by knowingly committing any of the following acts:

(a) Engaging in sexual contact or sexual penetration with an animal for the purpose of sexual arousal or gratification.

(b) Offering or accepting the offer of an animal for consideration with the intent that it be subject to sexual contact or sexual penetration by a human.

(c) Photographing or filming or distributing such photographs or films, for the purpose of sexual arousal or gratification, of a person engaged in sexual contact or sexual penetration with an animal.

II. Any person convicted of a violation of this section shall be guilty of a class A misdemeanor for a first offense and a class B felony for a second or subsequent offense.

III. In addition to any other penalty imposed for a violation of this section, the court shall order that the convicted person:

(a) Submit to a psychological assessment and participate in appropriate counseling at the convicted person's own expense.

(b) Reimburse an animal shelter for any reasonable costs incurred for the care and maintenance of any animal that was taken to the animal shelter as a result of conduct proscribed by this section.

(c) Shall not own, harbor, exercise control over, or reside in the same household with any animal for a period of time deemed reasonable by the court.

IV. This section shall not apply to:

(a) Accepted veterinary medical practices.

(b) Insemination of animals for the purpose of procreation.

(c) Accepted animal husbandry practices that provide care for animals.

V. In this section:

(a) "Animal" means a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.

(b) "Sexual contact" means any act between a person or an animal involving direct physical contact between the genitals or anus of one and the mouth, anus, or other part of the body of the other, or direct physical contact between the genitals of one and the genitals of the other, where such contact can be reasonably construed for the purpose of the person's sexual arousal or gratification.

(c) "Sexual penetration" means any intrusion, however, slight, of any part of the person's or animal's body into the body of the other, or any object manipulated by the person into the body of the animal, where such penetration can be reasonably

construed for the purpose of sexual arousal or gratification. Effective: January 1, 2017

**CHAPTER 651-B
REGISTRATION OF CRIMINAL OFFENDERS**

Section 651-B:1

IX. "Tier II offender" means a sexual offender or offender against children who is required to register pursuant to RSA 651-B:1, V(d) or RSA 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

(a) RSA 169-B:41, II; RSA 632-A:3, I; RSA 632-A:3, II; RSA 632-A:3, IV if the victim was 13 years of age or older but less than 18 years of age; RSA 633:2; RSA 633:3; RSA 639:3, III; RSA 645:1, II; RSA 645:1, III; RSA 645:2; RSA 649-A:3; RSA 649-A:3-a; RSA 649-A:3-b; RSA 649-B:3; RSA 649-B:4; or RSA 650:2, II, or RSA 644:8-g.

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 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, ²⁶ 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

NH RSA 436:8 State Veterinarian, Powers - The state veterinarian, under the direction of the commissioner, shall have all of the powers of the commissioner and shall have general charge of the enforcement of this chapter. **Complaints under RSA 644:8, 644:8-a, 644:8-aa and any other**

²⁶ ADMINISTRATIVE PROCEDURE ACT AGR 3700 Treatment of Horses

law²⁷ pertaining to the abuse of domestic animals, as defined under RSA 436:1, shall initially be filed with the local law enforcement agency, animal control officer, state police, or sheriff which has jurisdiction over where the animal is located or kept. At the request of the local law enforcement agency, animal control officer, state police, or sheriff, the state veterinarian shall assist in a secondary capacity in enforcing the provisions of and investigating said complaints. In the event the commissioner becomes incapacitated or a vacancy occurs in the office, the state veterinarian shall perform all the duties of that office during any such incapacity or until any such vacancy is filled. The commissioner may direct the state veterinarian to act for him or her in an official capacity whenever he or she may be absent from his or her duties.

Source. 1985, 72:1. 1987, 116:1, eff. Jan. 1, 1988. 2009, 123:1, eff. Aug. 21, 2009. 2012, 240:1, eff. June 18, 2012.

TITLE XL AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY CHAPTER 437 Sale of Pets and Unclaimed Animals

437:9 Rulemaking Authority. –

The commissioner may adopt rules, pursuant to RSA 541-A, relative to:

- I. The information required from an applicant for a license as a pet vendor;
- II. The health and sanitation standards to effectuate the purposes of this subdivision;
- III. Information required to be maintained in records of pet vendors regarding identifying features of animals or birds obtained and transferred;
- IV. Notice and hearing on the refusal to issue or the revocation of a license; and
- V. Setting limits for reasonable daily boarding and care costs for animals confiscated under RSA 644:8, IV.
- VI. Any other matter the commissioner may deem necessary to carry out the provisions of this subdivision.

Source. 2017, 156:233, eff. July 1, 2017. 437:9 V.- Effective upon passage

Unclaimed and Abandoned Animals

437:18 Definitions. –

As used in this subdivision, unless the context otherwise requires:

- I. "Animal" means a domestic animal, a household pet, or a wild animal in captivity.
- II. "Owner" means the person having the right of possession of an animal, whether

²⁷ This includes NH RSA 435:12 - 435:14.

such right was acquired by gift, purchase, or other means.

III. "Animal care center" means any veterinary establishment, humane society, boarding kennel, or other center providing care and treatment for animals.

IV. "Abandoned animal" means:

(a) Any animal whose owner neglects or refuses to reclaim it within 7 days after the mailing of the notification provided for in RSA 437:19.

(b) Any animal left in an animal care center by a person unknown or by an owner who, when leaving the animal, gives a false name or false address.

(c) Any ferret in the custody of the animal care center for at least 7 days.

(d) Any cat in the custody of the animal care center for at least 7 days which has a form of positive identification including, but not limited to a tattoo, collar, microchip, eartag, or any other form of identification approved by the commissioner of agriculture, markets, and food pursuant to rules adopted under RSA 466:13-a.

V. "Operator" means the director, manager, veterinarian, or other person charged with the supervision of an animal care center.

Source. 1985, 72:1. 1998, 368:2, eff. Aug. 25, 1998.

437:19 Notice to Owner; Reclaiming of Animals. – The operator of an animal care center having custody of an animal, the owner of which has refused or neglected to reclaim the animal for a period of 7 days, or has refused or neglected to pay the just fees and charges due for boarding, grooming, surgical, medical or other care of the animal for a period of 7 days, shall notify the owner by certified mail of the intention of the operator to treat the animal as an abandoned animal within the meaning of this subdivision if the owner does not reclaim the animal or pay the charges and fees within 7 days after the mailing of the notification. Any cat not licensed in accordance with RSA 466:13-a and which is reclaimed from an animal care center shall be released to the owner only upon proof of a current, valid rabies vaccination or upon being vaccinated against rabies in accordance with RSA 436.

Source. 1985, 72:1. 1998, 368:5, eff. Aug. 25, 1998.

437:20 Disposition of Abandoned Animals. – Ownership of an animal shall vest in the operator of the animal care center having custody thereof upon determination that the animal has been abandoned under the provisions of this subdivision, and the operator may dispose of such abandoned animal in any lawful manner as if he were its rightful owner.

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

437:21 Duty of Operator. – It shall be the duty of the operator of an animal care center, when taking custody of an animal, to advise its owner of the provisions of this subdivision.

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

Cost of Care Fund

437-B:1 Cost of Care Fund.

I. There is established in the department of agriculture, markets, and food a non-lapsing fund to be known as the cost of care fund which shall be kept distinct and separate from all funds. The cost of care fund is established to assist municipalities in covering the costs of care incurred from caring for animals pending the resolution of any action brought for animal cruelty under RSA 644:8 or RSA 644:8-a.

II. The treasurer shall deposit in the cost of care fund court-ordered restitution for care in animal cruelty cases under RSA 644:8 or RSA 644:8-a as specified in paragraph IV

III. The arresting officer or his or her designee may apply to the commissioner of the department of agriculture, markets, and food for a grant from the cost of care fund to reimburse costs incurred caring for animals in animal cruelty cases brought under RSA 644:8 or RSA 644:8-a during pretrial care, for the period between when the animals are seized and until the final disposition of the case. The commissioner of the department of agriculture, markets, and food and the state veterinarian shall review such applications, respond to such applications within 15 days, and distribute no more than \$500,000 per application.

IV. The commissioner shall establish rules under RSA 541-A relative to:

(a) The administration and disbursement of the cost of care fund, including guidelines to ensure that multiple applicants would have equitable access to grants.

(b) The application process by an arresting officer or his or her designee for financial assistance to cover the cost of emergency veterinary treatment.

V. The commissioner may accept private gifts and donations of any kind for the purpose of supporting the cost of animal care which shall be deposited into the cost of care fund.

VI. If a person is convicted of animal cruelty and is ordered by the court to make restitution, the municipality shall report such restitution to the department of agriculture, markets, and food. If the restitution exceeds the costs incurred by the municipality in caring for the seized animals, that excess shall be remitted to the department and shall be deposited into the cost of care fund.

Source. 2019, 346:300, eff. July 1, 2019.

Related Useful/Relevant Laws

NOTE: It is best to consult with prosecutor before considering these laws in conjunction with in an animal cruelty case.

TITLE XII PUBLIC SAFETY AND WELFARE

CHAPTER 173-B PROTECTION OF PERSONS FROM DOMESTIC

Violence

SECTION 173-B:1

173-B:1 Definitions. – In this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner's safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being:

- (a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.
- (b) Criminal threatening as defined in RSA 631:4.
- (c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.
- (d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.
- (e) Destruction of property as defined in RSA 634:1 and RSA 634:2.
- (f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.
- (g) Harassment as defined in RSA 644:4.
- (h) Cruelty to animals as defined in RSA 644:8.

II. "Applicant" means any private, town, city, or regional agency or organization applying for funds under RSA 173-B:16.

III. "Commissioner" means the commissioner of the department of health and human services.

IV. "Contact" means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

V. "Coordinator" means the agency or organization appointed by the commissioner to administer the domestic violence grant program.

VI. "Cross orders for relief" means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

VII. "Deadly weapon" means "deadly weapon" as defined in RSA 625:11, V.

VIII. "Department" means the department of health and human services.

IX. "Domestic violence" means abuse as defined in RSA 173-B:1, I.

X. "Family or household member" means:

(a) Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence.

(b) Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.

XI. "Firearm" means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by force of gunpowder.

XII. "Foreign protective order" means an order enforceable under RSA 173-B:13.

XIII. "Fund" means the special fund for domestic violence programs established by RSA 173-B:15.

XIV. "Grantee" means any private, town, city, or regional agency or organization receiving funds under RSA 173-B:16.

XV. "Intimate partners" means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. "Mutual order for relief" means an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence.

XVII. "Program" means services or facilities provided to domestic violence victims.

Source. 1999, 240:3. 2010, 289:1, eff. Jan. 1, 2011. 2014, 238:1, 2, eff. July 21, 2014.

SECTION 173-B:4

173-B:4 Temporary Relief. –

I. Upon a showing of an immediate and present danger of abuse, the court may enter temporary orders to protect the plaintiff with or without actual notice to defendant. The court may issue such temporary orders by telephone or facsimile. Such telephonically issued orders shall be made by a circuit court judge to a law enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the close of the next regular court business day. Such orders shall be returnable to the circuit court where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such orders. Such hearing shall be held no less than 3 business days and no more than 5 business days after the request is received by the clerk. Such hearings may constitute the final hearing described in RSA 173-B:3, VII. Such temporary relief may direct the defendant to relinquish to a peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order. Other temporary relief may include:

(a) Protective orders:

(1) Restraining the defendant from abusing the plaintiff.

(2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries, medication, clothing, business equipment, and any other items as determined by the court.

(3) Restraining the defendant from withholding items of the plaintiff's personal property which are specified in the order. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

(4) Awarding custody of minor children to either party or, upon actual notice, to the department when it is in the best interest of a child.

(5) Denying the defendant visitation, ordering that visitation shall take place only at a supervised visitation center that uses a metal detection device and has trained security personnel on-site, ordering that visitation shall be supervised, or ordering a specific visitation schedule. Visitation shall only be ordered on an ex parte basis where such order can be entered consistent with the following requirements. In determining whether visitation can be safely ordered, the court shall consider the following factors:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation or by ordering supervised visitation at a center that uses a metal detection device and has trained security personnel on-site.

(C) Whether visitation can be ordered without requiring the plaintiff and defendant to have contact regarding the exchange of children.

(6) Restraining the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or by any family or household member.

(7) Restraining the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.

(8) Restraining the defendant from taking, converting, or damaging property in which the plaintiff may have a legal or equitable interest.

(9) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:4, I, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order.

(10) Granting the petitioner exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the petitioner, defendant, or a minor child in either household, and ordering the defendant to stay away from the animal and forbidding the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

(b) Other relief, including but not limited to:

(1) Awarding to the plaintiff the exclusive use and possession of an automobile, home, and household furniture, if the defendant has the legal duty to support the plaintiff or the plaintiff's minor children, or the plaintiff has contributed to the household expenses. The court shall consider the type and amount of contribution to be a factor.

(2) Restraining the defendant from taking any action which would lead to the disconnection of any and all utilities and services to the parties' household, or the discontinuance of existing business or service contracts, including, but not limited to, mortgage or rental agreements.

II. The defendant may be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing the peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such

firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant and if the court has reason to believe that all such firearms and ammunition and specified deadly weapons have not been relinquished by the defendant.

Source. 1999, 240:3. 2013, 62:4, eff. Jan. 1, 2014. 2014, 107:1, eff. June 11, 2014; 238:3, eff. July 21, 2014.

SECTION 173-B:5

173-B:5 Relief. –

I. A finding of abuse shall mean the defendant represents a credible threat to the safety of the plaintiff. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order. Other relief may include:

(a) Protective orders:

(1) Restraining the defendant from abusing the plaintiff.

(2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and is allowed entry by the plaintiff for the sole purpose of retrieving personal property specified by the court.

(3) Restraining the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or by any family or household member.

(4) Restraining the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.

(5) Restraining the defendant from taking, converting, or damaging property in which the plaintiff may have a legal or equitable interest.

(6) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:5, I, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant.

(7) Granting the petitioner exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the petitioner, defendant, or a minor child in either household, and ordering the defendant to stay away from the animal and forbidding the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

(b) Other relief including, but not limited to:

(1) Granting the plaintiff the exclusive use and possession of the premises and curtilage of the plaintiff's place of residence, unless the defendant exclusively owns or leases and pays for the premises and the defendant has no legal duty to support the plaintiff or minor children on the premises.

(2) Restraining the defendant from withholding items of the plaintiff's per-

sonal property specified by the court. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

(3) Granting to the plaintiff the exclusive right of use and possession of the household furniture, furnishings, or a specific automobile, unless the defendant exclusively owns such personal property and the defendant has no legal duty to support the plaintiff or minor children.

(4) Ordering the defendant to make automobile, insurance, health care, utilities, rent, or mortgage payments.

(5) Awarding temporary custody of the parties' minor children to either party or, where appropriate, to the department, provided that:

(A) Where custody of the parties' minor children with the department may be appropriate, the department shall receive actual notice of the hearing 10 days prior to such hearing provided that, if necessary, such hearing may be continued 10 days to provide the department adequate notice.

(B) The department may move at any time to rescind its custody of the parties' minor children.

(6) Establishing visitation rights with regard to the parties' minor children. The court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children. This may include orders denying visitation, requiring supervised visitation that shall take place only at a visitation center that uses a metal detection device and has trained security personnel on-site, or requiring supervised visitation, where such order can be entered consistent with the following requirements. In determining whether visitation shall be granted, the court shall consider whether visitation can be exercised by the non-custodial parent without risk to the plaintiff's or children's safety. In making such determination, the court shall consider, in addition to any other relevant factors, the following:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation or by ordering supervised visitation at a center that uses a metal detection device and has trained security personnel on-site.

(C) Whether visitation can be ordered without requiring the plaintiff and defendant to have contact regarding the exchange of children.

(7) Directing the defendant to pay financial support to the plaintiff or minor children, unless the defendant has no legal duty to support the plaintiff or minor children.

(8) Directing the abuser to engage in a batterer's intervention program or personal counseling. If available, such intervention and counseling program shall focus on alternatives to aggression. The court shall not direct the plaintiff to engage in joint counseling services with the defendant. Court-ordered and court-referred mediation of cases involving domestic violence shall be prohibited.

(9) Ordering the defendant to pay the plaintiff monetary compensation for losses suffered as a direct result of the abuse which may include, but not be limited to, loss of earnings or support, medical and dental expenses, damage to property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

(10) Ordering the defendant to pay reasonable attorney's fees.

II. The defendant shall be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing a peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant.

III. Reconciliation after a previous order, prior to filing the current action, shall not be grounds for denying or terminating a new or existing protective order. Furthermore, the court shall not deny the plaintiff protective orders based solely on a lapse of time between an act of domestic violence and the filing of a petition, provided that the underlying act presents a credible threat to the plaintiff's current safety.

IV. No order made under this section shall supersede or affect any court order pertaining to the possession of a residence; household furniture; custody of children pursuant to RSA 169-B, 169-C, or 169-D; support or custody made under RSA 458; or custody of children of unwed parents as determined by a circuit court, or title to real or personal property.

V. (a) Mutual orders for relief shall not be granted. A foreign mutual order for relief shall only be granted full faith and credit in New Hampshire if it meets the requirements set out in RSA 173-B:13, VII.

(b) Cross orders for relief may be granted only if:

(1) The court has made specific findings that each party has committed abuse against the other; and

(2) The court cannot determine who is the primary physical aggressor.

VI. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order and thereafter each extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the court. The court shall review the order, and each renewal thereof and shall grant such relief as may be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

VII. Both parties shall be issued written copies of any orders issued by the court, and all orders shall bear the following language: "A willful violation of this order is a crime, as well as contempt of court. Violations of the protective provisions shall result in arrest and may result in imprisonment." Orders shall clearly state how any party can request a further hearing and how the plaintiff may bring a criminal complaint or a petition for contempt if there is a violation of any court order.

VIII. (a) No order issued under this chapter shall be modified other than by the court. Temporary reconciliations shall not revoke an order.

(b) If either party wishes the defendant to be excused from any provisions of

an order of protection, the remedy is to petition the court for modification of such order.

(c) A defendant who is restrained from contacting the plaintiff or entering the premises of the plaintiff is prohibited from doing so even if invited by the plaintiff unless the restraining order has been modified by the court.

(d) This paragraph shall give unequivocal direction to peace officers that orders for protection are to be enforced as written and that no action by a party relieves them of the duty to enforce the order.

VIII-a. Upon issuing an order against a defendant, in which a defendant is restrained from having any contact with the plaintiff, the court shall advise the plaintiff that it would be unwise and possibly unsafe for the plaintiff to contact the defendant. If the plaintiff wishes to contact the defendant for any reason, the court shall advise the plaintiff that such contact be made only after petitioning the court for a modification of the order. In an emergency situation, the plaintiff or plaintiff's family may request that the local police department notify the defendant and the local police may accompany the defendant to a designated location, such as a hospital, if appropriate.

IX. (a) A copy of each protective order issued under this chapter shall be transmitted to the administrative office of the courts by facsimile or computer. An emergency protective order issued telephonically shall be transmitted by telephone or facsimile to the department of safety.

(b) The administrative office of the courts shall enter information regarding the protective orders into the state database which shall be made available to police and sheriff departments statewide. The department of safety shall make available information regarding emergency protective orders issued telephonically to police and sheriff departments statewide.

(c) The administrative office of the courts shall update the database upon expiration or termination of a protective order.

(d) Notwithstanding any other provision of law, the administrative office of the courts or the department of safety, its employees and agents, and law enforcement officials shall not be held criminally or civilly liable for action taken under this chapter or RSA 458:16, provided they are acting in good faith and without gross negligence, and within the scope of their duties and authority.

IX-a. If a criminal records check conducted by the department of safety indicates that a potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to a protective order issued under this chapter, the department of safety shall notify the administrative office of the courts of the denial. The administrative office of the courts shall immediately notify the plaintiff that the defendant has attempted to purchase or obtain a firearm in violation of the protective order.

X. (a) Within 15 days prior to the expiration of the protective orders, the defendant may request, by motion to the court, the return of any and all firearms and ammunition and specified deadly weapons held by the law enforcement agency while the protective order was in effect. Upon receipt of such a motion, the court shall schedule a hearing no later than 15 days after the expiration of the order. The court shall provide written notice to the plaintiff who shall have the right to appear

and be heard, and to the law enforcement agency which has control of the firearms, ammunition, and specified deadly weapons. The scope of the hearing shall be limited to:

(1) Establishing whether the defendant is subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm; and

(2) Under circumstances where the plaintiff has requested an extension of the protective order, whether the plaintiff has established by a preponderance of the evidence that the defendant continues to represent a credible threat to the safety of the plaintiff.

(b) If the court finds that the defendant is not subject to any state or federal law or court order precluding the ownership or possession of firearms, or if the court denies the plaintiff's request to extend the protective order, the court shall issue a written order directing the law enforcement agency to return the requested firearms, ammunition, or deadly weapon to the defendant.

(c) Law enforcement agencies shall not release firearms and ammunition and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the defendant a reasonable fee for the storage of any firearms and ammunition and specified deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms and ammunition and specified deadly weapons. The defendant may make alternative arrangements with a federally licensed firearms dealer for the storage of firearms, at the defendant's own expense, upon approval of the court. Such firearms shall be turned over to the appropriate law enforcement agency for transfer to the storage facility. Retrieval of such firearms shall be through the law enforcement agency responsible for their transfer to the storage facility pursuant to a court order as prescribed in this paragraph.

(d) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

Source. 1999, 240:3. 2000, 230:1. 2001, 189:2. 2004, 206:1. 2005, 284:1. 2006, 214:4. 2013, 62:5, eff. Jan. 1, 2014. 2014, 107:2, eff. June 11, 2014; 238:4, eff. July 21, 2014.

TITLE LIX PROCEEDINGS IN CRIMINAL CASES

NOTE: If live animals were relinquished to a town or humane organization and were still being held as evidence, the following may be considered. It is best to consult with prosecutor before considering these laws in conjunction with in an animal cruelty case.

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 willfully 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.

CHAPTER 595-B ADMINISTRATIVE INSPECTION WARRANTS

SECTION 595-B:1

595-B:1 Definition. – An inspection warrant shall be a written order in the name of the state, signed by a justice, associate justice or special justice of any municipal, district or superior court, directed to an official or employee of a state agency, municipality, or other political subdivision, commanding him to conduct any inspection, testing or sampling required or specifically authorized by state law or administrative rule, or municipal ordinance, code or regulation.

Source. 1981, 533:1. 1987, 342:1. 1991, 231:7, eff. Aug. 9, 1991.

TITLE LXII CRIMINAL CODE

CHAPTER 633
INTERFERENCE WITH FREEDOM

633:3-a Stalking. –

I. A person commits the offense of stalking if such person:

(a) Purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear;

(b) Purposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or

(c) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2 that prohibits contact with a specific individual, purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).

II. As used in this section:

(a) "'Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:

(1) Threatening the safety of the targeted person or an immediate family member.

(2) Following, approaching, or confronting that person, or a member of that person's immediate family.

(3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family.

(4) Causing damage to the person's residence or property or that of a member of the person's immediate family.

(5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member.

(6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family.

(7) Any act of communication, as defined in RSA 644:4, II.

(b) "'Immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

III. For purposes of this section, a person who engages in acts which would constitute stalking after having been advised by a law enforcement officer as defined in RSA 630:1, II that the person's acts were in violation of this chapter, or a

person who has been served with a protective order issued pursuant to paragraph III-a of this section, shall be presumed to have acted knowingly.

III-a. A person who has been the victim of stalking as defined in this section may seek relief by filing a civil petition in the district court or the superior court in the county or district where the plaintiff or defendant resides. Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation thereof shall be the same as those set forth in RSA 173-B.

III-b. The minority of a plaintiff or defendant shall not preclude the court from issuing protective orders under this section.

III-c. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order and thereafter each extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the court. The court shall review the order, and each renewal thereof and shall grant such relief as may be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

III-d. (a) A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

(b) A no-contact provision in a protective order issued pursuant to this section shall not be construed to:

- (1) Prevent contact between counsel for represented parties; or
- (2) Prevent a party from appearing at a scheduled court or administrative hearing; or
- (3) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.

(c) A violation of this paragraph may result in a finding of contempt of court.

IV. In any complaint, information, or indictment brought for the enforcement of

any provision of this statute, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 12 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 12 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section.

VI. (a) Any person convicted of a violation of this section and who has one or more prior stalking convictions in this state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony.

(b) In all other cases, any person who is convicted of a violation of this section shall be guilty of a class A misdemeanor.

VII. If any provision or application of this section or the application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Source. 1993, 173:2. 1994, 101:1. 1997, 242:1, 2, 3, 4. 2000, 151:1, 2. 2002, 62:1; 79:5. 2005, 284:2. 2006, 214:2, eff. July 31, 2006.

CHAPTER 632-A

SEXUAL ASSAULT AND RELATED OFFENSES

Section 632-A:1

632-A:1 Definitions. – In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V. (a) "Sexual penetration" means:

(1) Sexual intercourse; or

(2) Cunnilingus; or

(3) Fellatio; or

(4) Anal intercourse; or

(5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or

(6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or

(7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)-(6) on the actor, on another person, or on himself.

(b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.

(c) "Objects" include animals as defined in RSA 644:8, II.

VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.

Source. 1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3-5. 1994, 185:1. 1998, 240:1. 1999, 177:1. 2008, 334:8, eff. Jan. 1, 2009.

CHAPTER 645 PUBLIC INDECENCY

645:1 Indecent Exposure and Lewdness. –

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

Source. 1971, 518:1. 1992, 254:10. 1993, 297:1. 1999, 321:1, eff. Jan. 1, 2000. 2008, 323:5, eff. Jan. 1, 2009.

CHAPTER 650 OBSCENE MATTER

General Provisions

650:1 Definitions. – In this chapter:

I. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

II. "Knowledge" means general awareness of the nature of the content of the material.

III. "Material" means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

IV. Material is "obscene" if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive; and

(c) It lacks serious literary, artistic, political or scientific value.

V. "Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

VI. "Sexual conduct" means human masturbation, sexual intercourse, actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or **between humans and animals**, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

VII. "Child" means a person under the age of 18.

Source. 1971, 518:1. 1976, 46:3. 1977, 199:3. 1994, 60:1, eff. Jan. 1, 1995.

CHAPTER 651-B REGISTRATION OF CRIMINAL OFFENDERS

Section 651-B:1

IX. "Tier II offender" means a sexual offender or offender against children who is required to register pursuant to RSA 651-B:1, V(d) or RSA 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

(a) RSA 169-B:41, II; RSA 632-A:3, I; RSA 632-A:3, II; RSA 632-A:3, IV if the victim was 13 years of age or older but less than 18 years of age; RSA 633:2; RSA 633:3; RSA 639:3, III; RSA 645:1, II; RSA 645:1, III; RSA 645:2; RSA 649-A:3; RSA 649-A:3-a; RSA 649-A:3-b; RSA 649-B:3; RSA 649-B:4; or RSA 650:2, II, or RSA 644:8-g.

CHAPTER 466 DOGS AND CATS

466:40 Mutilation Prohibited. – Any person who shall crop or cut or cause to be cropped or cut off the whole or any part of the ear of a dog, unless such person is a veterinarian duly registered under the provisions of RSA 332-B and unless such operation is performed while the dog is under an anesthetic, shall be fined not more than \$250.

Source. 1943, 141:1, par. 17-a. RSA 466:40. 1955, 129:1, eff. May 9, 1955.

466:40-a Possession of Cropped Dog. – The possession of a dog with an ear cropped or cut off and with a resulting wound unhealed, confined upon the premises of or in charge or custody of any person, shall be prima facie evidence of a violation of the provisions of RSA 466:40 by the person in control of such premises or the person having charge or custody, unless such person shall have in the person's possession a certificate of cropping signed by a veterinarian duly registered under the provisions of RSA 332-B certifying that the veterinarian performed the operation in accordance with the provisions of RSA 466:40, giving the date of the operation, the name of the owner of the dog and a description of the dog.

Source. 1943, 141:1, par. 17-a. RSA 466:40-a. 1955, 129:1. 1995, 298:23, eff. Jan. 1, 1996.

APPENDIX B: SAMPLE CRUELTY COMPLAINTS

From

New Hampshire Attorney General's Law Enforcement Manual 2008

10. RSA 644:8, Cruelty To Animals

NOTE: Any offense listed under RSA 644:8, III is a misdemeanor for a first offense and a class B felony for a second or subsequent offense. To charge a class B felony offense, the prior conviction(s) must be alleged in the complaint, as shown in the sample complaint below.

a. RSA 644:8, III(a)

without lawful authority, negligently [deprived or caused to be deprived] [any animal in his/her possession or custody] [necessary care, sustenance or shelter].

Sample Complaint-class B felony: *without lawful authority, he negligently deprived his Akita puppy necessary shelter and sustenance by leaving the puppy outside in a fenced yard without shelter or sufficient food, while he was away on vacation. The defendant was previously convicted of cruelty to animals on June 28, 2005 in the Dover District Court.*

Sample Complaint-misdemeanor: *without lawful authority, he negligently deprived his Akita puppy necessary shelter and sustenance by leaving the puppy outside in a fenced yard without shelter or sufficient food, while he was away on vacation.*

b. RSA 644:8, III(b)

negligently [beat, cruelly whipped, tortured, mutilated or in any other manner mistreated or caused to be mistreated] [any animal].

Sample Complaint: *negligently beat a Morgan horse named Shadow by repeatedly hitting the horse with a shovel, while cleaning out the horse's stall.*

c. RSA 644:8, III(c)

negligently [overdrove, overworked, drove when overloaded, or otherwise abused or misused] [any animal intended for or used for labor].

Sample Complaint: *negligently misused his sheepdog, Cotton, an animal intended for or used for labor. He made Cotton herd sheep for 18 hours without a break for food or water.*

d. RSA 644:8, III (d)

negligently [transported any animal in his/her possession or custody] [in a manner injurious to the health, safety or physical well-being of the animal].

Sample Complaint: *negligently transported his son's dog Scruffy, while in his custody, in a manner injurious to the physical well-being of the animal. He transported Scruffy in an open trailer attached to his car, thereby causing the dog to be tossed around the trailer and ultimately ejected onto the road.*

e. RSA 644:8, 111 (e)

negligently [abandoned] [any animal previously in his/her possession or custody] [by causing such animal to be left without supervision or adequate provision for its care, sustenance, or shelter].

Sample Complaint: *negligently abandoned a brown kitten called Sadie, an animal previously in his possession or custody, by leaving Sadie at the town landfill without any food, water or shelter.*

f. RSA 644:8, 111 (f)

negligently permitted or caused any animal in his/her possession or custody] to be subjected to [cruelty, inhumane treatment or unnecessary suffering of any kind].

Sample Complaint: *negligently permitted his rabbit, Cotton, to be subjected to inhumane treatment by allowing his friends to throw lit firecrackers into Cotton's cage.*

g. RSA 644:8, III-a, class B felony

purposely permitted or caused any animal in his/her custody or possession] [to be beaten, cruelly whipped, tortured, or mutilated].

Sample Complaint: *purposely permitted his neighbor, Jeremy Smith, to beat his Cocker Spaniel, Jake, an animal in his custody, by hitting Jake repeatedly with the head of a shovel.*

11. RSA 644:8-aa, Animals In Motor Vehicles

a. RSA 644:8-aa, misdemeanor

[purposely, knowingly, negligently or recklessly] [confined an animal in a motor vehicle OR other enclosed space] [in which the temperature is so high or so low as to cause serious harm to the animal].

Sample Complaint: *recklessly confined a cat in his Chevy Blazer with the windows closed, when the outdoor temperature was 93 degrees. The temperature in the truck became so high that it caused the cat to become seriously dehydrated.*

12. RSA 644:8-f, Transporting A Dog In The Open Back Of A Pickup Truck

a. RSA 644:8-f, violation

transported a dog] [in the back of a vehicle] [on a public way], where the space was not enclosed, did not have side and tail racks at least 46 inches high, and the dog was not cross-tethered to the vehicle, protected by a secure cage or other container, or otherwise protected in a manner that would prevent the dog from being thrown or from falling or jumping from the vehicle], [the dog was not being used by a farmer or farm employee while actually engaged in farming activities requiring the services of a dog], and [the dog was not a hunting dog being used at a hunting site or between hunting sites by a licensed hunter who was in possession of all applicable licenses and permits for the species being pursued during the legal season for such activity].

Sample Complaint: *transported a dog in the back of the Ford F-150 pickup truck on Main Street when none of the protective conditions specified in RSA 644:8-f,I were met and none of the exceptions in RSA 644:8-f, II applied.*

APPENDIX C: WEB-BASED RESOURCE LINKS

NH Law Enforcement Manuals

A comprehensive listing of protocols related to domestic violence, child and elder abuse, stalking and victim assistance programs may be found here: <http://www.doj.nh.gov/criminal/victim-assistance/protocols.htm>

NEW HAMPSHIRE ATTORNEY GENERAL'S LAW ENFORCEMENT MANUAL, 2020

<http://doj.nh.gov/criminal/documents/law-enforcement-manual.pdf>

New Hampshire Department of Agriculture, Markets and Food (NH DAMF)

DIVISION OF ANIMAL INDUSTRY

<https://www.agriculture.nh.gov/divisions/animal-industry/index.htm>

Laws and Rules

<https://www.agriculture.nh.gov/laws-rules/index.htm#animalindustry>

Standards of Care Resources

CHAPTER Agr 3700 TREATMENT OF HORSES http://www.gencourt.state.nh.us/rules/state_agencies/agr3700.html

Lists requirements of shelter and proper care of horses

PART Agr 1702 TRANSFER OF ANIMALS AND BIRDS

http://www.gencourt.state.nh.us/rules/state_agencies/agr1700.html

Lists standards for Pet Venders.

USDA Animal and Plant Health Inspection Services

TITLE 9--ANIMALS AND ANIMAL PRODUCTS

CHAPTER I--ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

Animal Welfare Act contains standards for most animals.

<https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare>

Horses

American Association of Equine Practitioners (AAEP): Welfare Guidelines

http://www.aaep.org/equine_welfare.htm

Livestock

UNH Cooperative Extension: Provides information on accepted husbandry of livestock and horses. It is county based and has specialists on staff.

<https://extension.unh.edu/programs/dairy-livestock-forage-crops>

Anti-Cruelty Resources

ASPCA: Includes resources and tools especially for veterinarians, law enforcement and prosecutors. Included are many sample forms to be used to assemble thorough forensic documentation in animal abuse cases. It also has on line classes in Animal Fighting and Animal Cruelty Investigation.

<http://www.aspcapro.org/disaster-cruelty>

The National Link Coalition: Has online library of resources for Link researchers, human services and animal welfare professionals, community organizers and others interested in The Link between violence to people and violence to animals. <http://www.nationallinkcoalition.org/>

Prosecution Legal Assistance

National Center for Prosecution of Animal Abuse

A program of the National District Attorneys Association (NDAA), created in partnership with the American Society for the Prevention of Cruelty to Animals (ASPCA) and Animal Legal Defense Fund (ALDF) to educate and train prosecutors and allied professionals on the effective handling of animal cruelty and neglect cases, including cases involving the co-occurrence of animal abuse and violence to people.

<https://ndaa.org/programs/animal-abuse/>

Animal Legal Defense Fund: Has law and case database, case studies, and professional support. Many Resources.

<http://aldf.org/index.php>

Animal Legal and Historical Center, Michigan State University College of Law; Comprehensive repository of information about animal law.

<http://www.animallaw.info/>

Get The Edge In Fighting Animal Cruelty Cases - Book by Catherine L. Wolfe, Attorney

“It teaches how to *intelligently* investigate animal cruelty cases, collect the most powerful evidence, and successfully present evidence for a winning result.”

<http://wolfepackpress.org>

Online Animal Cruelty Prevention and Education Class

“Online course designed to inspire change in attitudes and actions toward animals in individuals who have mistreated them. “

<http://www.barceducation.org/>

New Hampshire Fish and Game Department

As the guardian of the state's fish, wildlife, and marine resources, the New Hampshire Fish and Game Department works in partnership with the public to:

- Conserve, manage and protect these resources and their habitats;
- Inform and educate the public about these resources;
- Provide the public with opportunities to use and appreciate these resources.

New Hampshire Fish and Game Department Website

<http://www.wildnh.com>

Current Fish and Game statutes

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XVIII.htm>

Current Fish and Game rules

http://www.gencourt.state.nh.us/rules/state_agencies/fis.html

CHAPTER Fis 800, IMPORTATION, POSSESSION AND USE

http://www.gencourt.state.nh.us/rules/state_agencies/fis800.html

American Veterinary Medical Association

Site has position papers concerning cruelty, various husbandry methods and Euthanasia Guidelines. Also has posters and background information about animals in hot cars and safely transporting pets.

<https://www.avma.org/advocacy/state-and-local-advocacy>

Animal Control Resources

National Animal Care and Control Association

<http://www.nacenet.org/>

New England Animal Control Humane Academy

<http://www.neacha.org/>

Animal Control Officers Association of New Hampshire

<https://www.acoanh.com/>

Statewide Resources

New Hampshire Disaster Animal Response Team

This organization has teams that will assist with multiple animal situations such as hoarding. This is currently being restructured by NH DHHS Emergency Services. Check **Resources** for updated information.

NH Federation of Humane Organizations

<http://www.nhfho.org/index.html>

Handbook of New Hampshire Laws Relating to Animals

http://www.nh.gov/humane/documents/nh_animal_laws.pdf

Governor's Commission on the Humane Treatment of Animals

<http://www.nh.gov/humane/>

Hoarding Resources

The Hoarding of Animal Research Consortium

<http://www.tufts.edu/vet/hoarding/>

APPENDIX D: ANIMAL CRUELTY SEARCH WARRANT **CHECK LIST**

(See New Hampshire Attorney General's Law Enforcement Manual 2020, Section V for detailed information on warrants. This document is also available in **Resources**.)

Check	Probable Cause Elements are Present
	A crime has been committed
	Evidence of a crime exists
	Evidence will be presently found in a location (or on a person)
The Affidavit Contains:	
	Name and qualifications of affiant.
	Specific description of the premises (and/or person) to be searched (physical description and/or photos)
	Specific description of the animals, items and evidence to be seized based on the case*
	Planned use of assistants if known.
	Statement of the reasons supporting the request to search- may cite laws here.
	Separately numbered paragraphs for organization
	The source of and how all information was obtained are identified
	<i>If informant or third party as a source:</i>
	The source is a truthful person
	Basis of knowledge (first hand or other)
	The source has a motive or reason to be truthful
	The information is corroborated by other information
	Labeled and dated photographs if needed
	Signature of the applicant swearing to or affirming the affidavit
	Signature of a person authorized to administer oaths or affirmations
	Date of oath or affirmation

The Warrant Application Form is Completed:	
	Targeted evidence is described in the warrant application
	Any verbal additions to the affidavit or application are put in writing and attached
	Applicant's signature is sworn or affirmed
	Both affidavit and application are presented to a justice

*Terminology may include the following and more: Search for animal evidence: All animals living or dead, born or unborn, above or below the ground, contained or free roaming, inside or outside. All cages, crates, containers, or other items or objects that could be used for the confinement or shelter of an animal. All animal or related to animal records written or electronically kept (computers, CD's DVD's, thumb drives, cell phones)... including medical treatment, drugs and other prescribed items, intake or export, sales receipts, food and water bills, proof of ownership documents, care and boarding contracts and agreements, photographs. Any and all implements for the training, control or transport of animals. Paperwork that ties parties/owners to the location evidence is found. Food, supplies, medications. Places to be searched: All buildings, barns and outbuildings attached or unattached. Fenced pasture and gated fields. All vehicles or trailers used for the transport of animals.

APPENDIX E: ANIMAL CRUELTY INVESTIGATION CASE CHECKLIST

(This document is also available in Resources website)

_____ **Police Department**

I. COMPLAINANT/WITNESSES

- Recorded each complainant/witness's name, address, home and work phone no's.
- Got address and a visual description of the property/location where animal subject is located.
- Got physical description(s) of animal(s) subjects.
- Noted time dispatched, time arrived.
- Noted complainant/witness's relationship to animal and owner/keeper.
- Noted complainant/witness's description of animal cruelty.
- Received a written statement from each complainant/witness.

II. ANIMAL SUBJECT(S)

- If animal(s) was in plain view, appeared to be the subject of cruelty, and did not need emergency medical attention, photos were taken of location, surrounding areas, and the animal(s).
- Statements and photos and other legally available evidence were used to seek a warrant. Warrant was written with specific situation in mind and was thorough.
 - Warrant was executed. Evidence collected. Photos taken.
 - Animals were seized pursuant to a warrant.
- _____
 - Animals were not seized at this time.
- If the animal (s) (not livestock) was in plain view and in need of temporary protective custody (NH RSA 466:8 IV-a. (a)), procedures were followed to take and transport the animal to a veterinarian.
 - Photos were taken of location and animals as appropriate at site and by veterinarian.
- If the animal (livestock) was in plain view and in need of temporary protective custody (NH RSA 466:8IV-a. (b)), a veterinarian was present to determine probable cause to take the animal(s).
 - Photos were taken of location and animals as appropriate at site and by veterinarian.
- If the animal(s) was not in plain view, but statements and visible conditions and situations indicated an animal was being treated cruelly, an affidavit was prepared and a warrant sought. Warrant was written with specific situation in mind and was thorough.
 - Warrant was executed. Evidence collected. Photos taken.
 - Animal(s) seized.
- _____
 - Animal(s) not seized.
 - Best Practice: Veterinarian was involved with decision of seizure of livestock

III. SUSPECT

- Suspect's location was described upon arrival.
- Recorded suspect's name, dob, address, home and work phone numbers.
- Recorded spontaneous statements by suspect.
- Described suspect's emotional condition.
- Documented evidence of alcohol and drug use at the time of cruelty.
- Asked about presence, location, type of firearms and ammunition and other deadly weapons.
- Asked about animal(s) veterinarian and other caregivers (farrier, groomer, etc.).
- If arrested, advised Miranda rights, and asked if s/he wanted to make a statement.
- Received a written or recorded statement from the suspect.
- Obtained a criminal record check.

IV. EVIDENCE

- Recorded the dispatch (911 number) and incident number.
- Obtained call recording.
- Photographed multiple views of animal(s) - alive and dead.
- Photographed crime scene.
- Collected pertinent evidence from both crime scene and case veterinarian.
- Placed animals in a safe, secure location.
 - Kept dead animals refrigerated for necropsy.
- Attached related reports, photos and evidence tags.

APPENDIX F: NEW HAMPSHIRE COUNTY ATTORNEYS

Belknap County Attorney

64 Court Street
Laconia, New Hampshire 03246
(603) 527-5440

Carroll County Attorney

PO Box 218
95 Water Village Road
Ossipee, NH 03864
(603) 539-7769

Cheshire County Attorney

12 Court St.
Keene, New Hampshire 03431
(603) 352-0056

Coos County Attorney

55 School Street, Suite 141
Lancaster, New Hampshire 03584
(603) 788-5559

Grafton County Attorney

3785 Dartmouth College Hwy.
North Haverhill, NH 03774
(603) 787-6968

Hillsborough County Attorney

Northern District

300 Chestnut Street
Manchester, New Hampshire 03101
(603) 627-5605

Hillsborough County Attorney

Southern District

Spring St. Courthouse
30 Spring Street
Nashua, NH 03060
(603) 594-3250

Merrimack County Attorney

4 Court Street
Concord, New Hampshire 03301
(603) 228-0529

Rockingham County Attorney

PO Box 1209
Kingston, New Hampshire 03848
(603) 642-4249

Strafford County Attorney

259 County Farm Rd.
Dover, New Hampshire 03821-0799
(603) 749-2808

Sullivan County Attorney

14 Main Street, Suite 4
Newport, New Hampshire 03773
(603) 863-7950

APPENDIX G: NEW HAMPSHIRE COURT SYSTEM

Superior Court

All Superior Courts have switched to the toll free call center telephone number (1-855-212-1234). This number took the place of the individual court phone numbers. For callers outside the U.S and Canada the number is 1-603-223-0392.

IMPORTANT NOTICE: If your phone is set up to block private numbers, you will need to change the blocking feature or provide a number that will accept calls from the Superior and Circuit Courts.

There are 11 Superior Courts throughout the State of New Hampshire. Each county is represented by one Superior Court, with the exception of Hillsborough County, which has two courts, a northern and southern location. Please see the list below to find Superior Court addresses, clerks, hours and directions by county.

Superior Courts by County:

[Belknap Superior Court](#)

[Hillsborough Superior Court North](#)

[Carroll Superior Court](#)

[Hillsborough Superior Court South](#)

[Cheshire Superior Court](#)

[Merrimack Superior Court](#)

[Coos Superior Court](#)

[Rockingham Superior Court](#)

[Grafton Superior Court](#)

[Strafford Superior Court](#)

[Sullivan Superior Court](#)

The Superior Court Center is the Administrative Office for all the Superior Courts. The address for the Superior Court Center is:

Superior Court Center

45 Chenell Drive, Suite 1
Concord, NH 03301-8541

Superior Court Administrator: Karen A. Gorham, Esq.

Phone: (603) 271-2030

Hours: Mon-Fri, 8:00am to 4:00 pm

Circuit Court

Administrative Judge: Hon. Edwin W. Kelly

Deputy Administrative Judge: Hon. David D. King

Administrator: Kate E. Geraci, Esq.

Administrator: Paula J. Hurley, Esq.

Administrator: Patrick W. Ryan, Esq.

Administrator: Brigette Siff Holmes, Esq.

Circuit Court Districts

<http://www.courts.state.nh.us/circuitcourt/index.htm>

District divisions serve one or more towns. There are 32 District divisions in New Hampshire. Click on links below for district division addresses, judges, clerks, hours, jurisdictions and directions.

Circuit Court Administrative Office

45 Chenell Drive, Suite 2

Concord, NH 03301-8541

Phone: (603) 271-6418

Executive Assistant: Linda J. Cammett

Court Locator New Hampshire [Towns A-L](#)

New Hampshire [Towns M-Z](#)

APPENDIX H: NH SEXUAL ASSAULT, DOMESTIC VIOLENCE AND STALKING SUPPORT SERVICES

NH Statewide Domestic Violence or Stalking Hotline: 1-866-644-3574

NH Statewide Sexual Assault Hotline: 1-800-277-5570

NH Coalition Against Domestic and Sexual Violence

PO Box 353, Concord, NH 03302-0353

603-224-8893 (Office)

General Web Site: www.nhcadsv.org

Animal Abuse Information: www.nhcadsv.org/animalabuse.cfm

The NH Coalition is comprised of 14 member programs throughout the state that provide services to survivors of sexual assault, domestic violence, stalking and sexual harassment. You do not need to be in crisis to call. Services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. The services include:

- Support and information, available in person and through a 24-hour hotline
- Accompaniment, support, and advocacy at local hospitals, courts, and police departments
- Assistance with protective/restraining orders
- Referrals to legal services
- Peer Support Groups
- Access to emergency shelter
- Information and referrals to community programs
- Community and professional outreach and education

The 13 agencies listed below are all member programs of the New Hampshire Coalition Against Domestic and Sexual Violence. They all provide many of the same types of services and crisis lines are available 24/7.

[RESPONSE to Sexual & Domestic Violence](#)

c/o Coos County Family Health Services
54 Willow Street
Berlin, NH 03570
866 662-4220 (crisis line)
603-752-5679 (Berlin office)
603-636-1747 (Groveton office)

[The Support Center at Burch House](#)

P.O. Box 965
Littleton, NH 03561
1-800-774-0544 (crisis line)
603-444-0624 (Littleton office)

[Starting Point: Services for Victims of Domestic and Sexual Violence](#)

P.O. Box 1972
Conway, NH 03818
1-800-336-3795 (crisis line)
603-603-447-2494 (Conway office)
603-539-5506 (Ossipee Office)

[Voices Against Violence](#)

P.O. Box 53
Plymouth, NH 03264
603-536-1659 (crisis line)
603-536-5999 (office)

[WISE](#)

38 Bank Street
Lebanon, NH 03766
1-866-348-WISE (toll-free crisis line)
603-448-5525 (local crisis line)
603-448-5922 (office)

[New Beginnings Without Violence and Abuse](#)

P.O. Box 622
Laconia, NH 03247
1-866-644-3574 (domestic violence)*
1-800-277-5570 (sexual assault)*
603-528-6511 (office)

[Turning Points Network](#) Services) 11 School Street

Claremont, NH 03743
1-800-639-3130 (crisis line)
603-543-0155 (Claremont crisis line)
603-863-4053 (Newport Office)

[Crisis Center of Central New Hampshire](#) (formerly

Rape and Domestic Violence Crisis Center)
P.O. Box 1344
Concord, NH 03302-1344
1-866-841-6229 (crisis line)
603-225-7376 (office)

[Sexual Harassment and Rape Prevention Program](#)

(SHARPP)
UNH - Durham
8 Ballard Street
Wolff House
Durham, NH 03824
1-888-271-SAFE (7233) (crisis line)
603-862-SAFE (7233) (local crisis line)
603-862-3494 (office)

[Haven](#) (Formerly A Safe Place and SASS)

20 International Drive
Suite 300, Pease International Tradeport
Portsmouth, NH 03801
603-994-SAFE (7233) (crisis line)
603-436-4107 (main office business line)

[YWCA Crisis Service](#)

72 Concord St.
Manchester, NH 03101
603-668-2299 (crisis line)
603-625-5785 (Manchester Office)

[Bridges: Domestic & Sexual Violence Support](#)

P.O. Box 217
Nashua, NH 03061-0217
603-883-3044 (crisis line)
603-672-9833 (Milford office)
603-889-0858 (Nashua office)

[Monadnock Center for Violence Prevention](#)

12 Court Street
Keene, NH 03431-3402
603-352-3782 (crisis line)
1-888-511-mvcp (6287) (toll-free hotline)
603-352-3782 (Keene office)
603-209-4015 (Peterborough office)

APPENDIX I: INDEX FOR RESOURCE WEBSITE

This site is updated as material becomes available or laws are changed.

Website Address: <http://www.neacha.org/resources/>

Animal Cruelty Investigation and Prosecution



Resources Topic Index

- [Animal Husbandry](#)
- [Bestiality](#)
- [Forms](#)
- [Hoarding](#)
- [Humane Euthanasia](#)
- [Illegal Animal Fighting](#)
- [Investigation Resources](#)
- [Juvenile Offenders](#)
- [The Link: Cruelty and Violence](#)
- [Miscellaneous](#)
- [Officer Safety](#)
- [Prosecutors and Judges](#)
- [Veterinarians](#)

Animal Care Brochures for owners are linked to the above site or may be found at:

<http://www.neacha.org/brochures/>

Color Trifold	Grayscale
Responsible Pet Ownership	Responsible Pet Ownership
	Pets in Hot Cars
Dog Care	Dog Care
Cat Care	Cat Care
	Horse Care*
	Rabbit Care*
	Bird Care*
Guinea Pig Care	Guinea Pig Care
Mouse Care	Mouse Care
Rat Care	Rat Care
Cattle Care	Cattle Care
Sheep Care	Sheep Care
	Reptile Care (new)
	* updated 2019
Livestock Info from UNH Extension: Weblink	
Factsheets from UNH Extension	
Raising Turkeys	
Poultry Health and Management	
Livestock Housing and Space	
Producing Your Own Eggs	
Raising Broilers	
Horse Keeping	

