

### **This Chapter Contains:**

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### **Introduction**

Animals are protected by laws at the federal, state, and local level. It is important that animal control officers (ACOs) know these laws and are aware of any changes in them after a legislative session. Some of these changes may be quite noticeable, while others may be very subtle.

It is also important that ACOs continually review their local ordinances, suggesting appropriate updates when possible. Animal control officers need to continue to educate the public, city councils, and local law enforcement about animal abuse to try to prevent it and help prosecute the offenders.

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### Classifications and Types of Cruelty

Animal cruelty can be divided into two categories:

1. Characteristics of **passive cruelty** include:

- ignorance, neglect, or economic hardship;
- failure by an animal owner or custodian to provide sufficient food and water;
- lack of veterinary attention; and
- inadequate shelter.

Examples of passive cruelty may be an owner that fails to provide adequate shelter for their animal, believing that it can survive extremes of heat or cold; inadequate food and water, resulting in malnutrition, starvation, or dehydration of the animal; or unsanitary living conditions that expose the animal to parasites, disease, and injury that is not treated by a veterinarian.

2. Characteristics of **active cruelty** include:

- actions that are intentional and often premeditated;
- animal fighting;
- deliberate infliction of pain; and
- torture.

Beating an animal or intentionally injuring it for breaking rules, digging in the yard, or just for fun are examples of active cruelty. People who intentionally kill animals (especially with the infliction of extreme pain) fall into this category. This should not be confused with euthanasia, which produces a humane and painless death. People commit acts of cruelty for a variety of reasons, none of which should exempt them from prosecution.

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Some common reasons for intentionally abusing an animal are:

- need for power or control;
- ignorance;
- revenge, retaliation or blackmail;
- imitation;
- deviant arousal;
- peer pressure and group membership;\*
- boredom;\* and
- dissonance.\*

\*The last three in the above list tend to surface in adolescent and older teen males and may be indicative of other, more serious sociopathic behavior.

People who abuse or torture animals are at great risk of eventually harming humans. The Humane Society of the United States reports that virtually 100% of the serial killers brought to justice began their careers in crime by abusing animals.

Most complaints of animal cruelty are automatically referred to animal control for investigation; however, cases of intentional cruelty must be investigated by law enforcement officers with the power to arrest violators. Animal control should assist the police or sheriff's officers with the handling and sheltering of the seized animals. Animal abuse usually is an indicator of a criminal lifestyle. Once police understand this connection, they are usually more eager to prosecute these crimes.

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### Dealing with Violators

#### Education

This is the first option for most passive cruelty cases that are investigated. The owner is often merely uninformed about proper animal care and, once educated, is willing to take corrective action. This option may alleviate cruelty without lengthy, costly, and complicated legal proceedings.

#### Prosecution

This is the last option when dealing with passive cruelty cases. This route is taken when the owner is uncooperative and the abuse is unresolved through education efforts. Prosecution is the first option, however, when dealing with active cruelty, as the intentional abuse is often severe and reoccurring. Strong action is necessary to provide a deterrent against future abuses.

#### Surrendering an Animal

If the owner no longer wants the animal or is unable to provide proper care, you should obtain a signed written statement by the owner of surrender to resolve the complaint without seizure or further action. Never threaten or forcefully pressure an owner to surrender an animal.

#### Confiscation of Animal

If possible, always confiscate the animal if it is a victim of active cruelty. Abide by the law authorizing seizure (Texas Health and Safety Code, Chapter 821, Treatment and Disposition of Animals). Clearly document the case in both written and photographic or video format to be used at trial later. Always have law enforcement and a veterinarian present during the seizure to evaluate the animals and to serve as a potential expert witness at a trial.

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### Other Legal Alternatives

Other legal options at your disposal when investigating animal cruelty complaints are:

- on-site impoundment, if no other holding facility exists;
- an injunction prohibiting the keeping of the animal;
- a civil custody hearing (Chapter 821, Subchapter B, Health and Safety Code);  
or
- utilization of zoning and health code violations as a way to start an investigation.

### Basic Investigation Techniques

Animal cruelty investigations are very difficult for one person (or even one department) to do on their own. Most cases are successfully prosecuted when the investigation involves partners from animal welfare, law enforcement, and the veterinary medical community. By sharing duties, a successful prosecution of the violator is much more likely. Productive results are best obtained if an ACO(s) does the initial investigation and then refers the case to law enforcement. Law enforcement would then pursue the criminal violations.

Careful planning is vital to a successful outcome. It is most important that provisions for holding seized animals are made before attempting the seizure, especially when livestock or large numbers of animals are involved. Cruelty investigators should work to develop mutual aid and cooperation agreements with neighboring communities and organizations for this very reason.

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The **common elements** of an investigation are:

- **interview** all suspects, witnesses, and informants;
- **answer** who, what, where, when, and how (the why isn't needed for prosecution)
- **gather** evidence;
- **establish** the person responsible for the cruelty;
- **document** the evidence and your findings with
  - \* **field notes**, which should be completed while on the scene,
  - \* **formal reports**, which are the forms or reports to go in the official file,
  - \* **forms**,
  - \* **photography**, digital/film, and
  - \* **videotaping**;
- **consider** the disposition of the animals;
- **determine** the appropriate action; and
- **conduct** a follow-up investigation or re-inspection.

Note that all documents, photographs, drawings, videos, etc. may be subpoenaed by the court as evidence. It is strongly advised that you not write or make comments on reports or in videotapes that you would not like to hear repeated in court.

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### Evidence and Documentation

The type of evidence collected during an investigation varies and can make or break your case in court depending on what types you have, such as the following:

- **direct** - first-hand knowledge;
- **real** - connected to the crime and can be physically produced in court;
- **demonstrative** - drawings, photographs, videotape, x-rays, etc.;
- **circumstantial** - all evidence other than direct evidence, provided that it logically relates to the crime;
- **opinion** - expert witnesses; and
- **prima facie** - a fact presumed to be true unless disproved by evidence to the contrary.

A case based only on circumstantial evidence is much harder to prove than one that also produces direct or real evidence in court.

The chain of custody is the documentation of everyone who has handled the evidence once it is collected. If the chain is not maintained, a defense attorney may be able to imply that the evidence has been altered, making it inadmissible in a court of law.

Animals make terrible evidence because their conditions improve once removed from the abusive situation. This is why it is so important to document the original condition of animals at the time of seizure with photographs and veterinary medical reports.

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### **Seizure of Animals**

There are both criminal and civil laws addressing animal cruelty in Texas:

- Texas Penal Code, Sections 42.09 and 42.092, Cruelty to Livestock Animals and Cruelty to Nonlivestock Animals; 42.10, Dog Fighting; and 42.105, Cockfighting
- Texas Health and Safety Code, Chapter 821, Subchapter B, Disposition of Cruelly Treated Animals

The text for the laws mentioned above can be found in the “Texas Laws” section of this manual. It is imperative that animal control and police officers thoroughly familiarize themselves with these laws before ever attempting to prosecute a case of animal cruelty.

It is important to note that animals seized as evidence under the Penal Code may have to be held for a very long period of time while the arrested violator’s criminal trial makes its way through the justice system.

Often it is preferable to seize abused animals under the Texas Health and Safety Code, as they carry less of a burden of proof and allow the disposition of the animals within a ten-day period, pending any appeals. An ACO can enforce Chapter 821 (civil law); an arrest is not necessary to have a civil hearing or seize the animal and determine its disposition. There would still be an option for law enforcement to have the violator arrested and taken to criminal trial under the Penal Code.

A resource primer for this procedure may be found on the website of the Texas Humane Legislative Network, [www.thln.org](http://www.thln.org).

There are several considerations when making a decision whether or not to seize animals that are allegedly being cruelly treated.

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- Is the animal actually being treated cruelly as defined in the Texas Penal Code or the Texas Health and Safety Code?
- Is the cruelty active or passive?
- If passive, can the problem be resolved in a reasonable amount of time through education or minor help with resources?
- If active, does the investigator have the resources to hold the animal(s) humanely if seized?
- Is there a veterinarian available who is willing to help and later testify?

### **Safety During Raids**

Illegal animal fighting is a multi-million dollar world-wide industry. Dog fighting is illegal in all fifty states and, along with cockfighting, is a state jail felony in Texas. Watching a dog fight is a Class A Misdemeanor. Illegal animal fighting often involves a very dangerous criminal element, including drug traffickers and criminal gang members.

The investigation and prosecution of these crimes may be extremely dangerous. Whenever investigating animal fighters, law enforcement must be involved without exception. Raids on animal fighters often involve SWAT-type entry teams and other police resources, as many of these criminals are armed and have a large financial stake in their activity.

While investigating ordinary cruelty and neglect cases is acceptable for non-police animal control officers, under no circumstances should illegal animal fighters be investigated or raided without a very strong police presence.