

What New York Livestock Producers Should Do When a Peace Officer Comes Knocking on Their Barn Door

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This winter, a New York dairyman was confronted by a person identifying himself as an animal control officer. This non-police officer stated that he had received a complaint and asked to receive access to the dairy operation to inspect the cows for potential animal abuse. Since the frequency of these types of incidents are increasing around the country, it is important for New York livestock producers to understand what they should and should not do if a non-police officer asks to inspect the property. In addition, livestock operations should take preemptive steps to help deter the likelihood of being investigated for livestock animal cruelty.

New York Farm Animal Cruelty Law

N.Y. Agri. & Mkts Law § 350 et seq. provides the primary basis for farm animal cruelty law for the state of New York. More specifically, N.Y. Agric. & Markets Law § 353 places misdemeanor liability on a livestock producer who “overdrives, overloads, . . . unjustifiably injures, . . . or deprives any animal of necessary sustenance, food or drink * * *.” New York courts have interpreted the term “sustenance” to include shelter and veterinary care. Felony liability under section 353-a is reserved for animal cruelty which is (i) intended to cause “extreme physical pain” or (ii) “especially depraved or sadistic” (a.k.a. “Buster’s Law”). Livestock producers are rarely prosecuted under section 353-a.

Pursuant to the New York Agriculture & Markets Law, either police officers or duly incorporated animal societies, principally the New York Society Preventing Animal Cruelty (“SPCA”), are able to obtain warrants from a magistrate upon showing “just and reasonable cause” that farm animals are being abused. See N.Y. Agric. & Markets Law §§ 371-72. With this warrant an animal society can search and seize livestock as “peace officers” absent police presence.

There are circumstances where a warrant will not be required by either a police or peace officer; however, for purposes of this article, the discussion is limited to investigations by non-police officers under section 353 for the failure to provide necessary food, water, shelter and veterinary care to livestock. New York livestock owners are best advised to fully cooperate with police officers when asked to see your property. Under section 369, interference with a livestock inspection of “any officer or agent of any duly incorporated society for the prevention of cruelty” is a misdemeanor.

Checklist: What To Do If Confronted By A Peace Officer

Since “peace officers” can search and seize livestock with a valid warrant, New York livestock producers are encouraged to take the following steps to protect their constitutional rights:

1. Ask to Look at the Warrant: If the peace officer does not have a warrant, then this person can be asked to leave. If a livestock producer questions whether or not a warrant is valid, he/she should contact the county sheriff.
2. Take Time to Read the Warrant: The peace officer must allow a property owner to carefully read and understand the warrant.
3. Pay Special Attention to the Scope of the Warrant: For example, if the warrant is for potentially abused dogs in the backyard, the peace officer cannot investigate livestock in the barn (or vice versa).
4. Ask for Identification. A peace officer should provide you with some type of identification that he/she is the person identified on the warrant.
5. Takes Notes During the Livestock Inspection. It is important that New York livestock producers take copious notes during the visit from the peace officer. These notes will be particularly useful if there is prosecution for farm animal cruelty. Livestock owners should write down the time the peace officer came to the property and how long he/she stayed, where the peace officer visited on the property (e.g., where in the barn, which lots), what he/she did, whether he/she had a video camera, and whether the peace officer had a gun or another weapon. Producers should write down whether they noticed any changes/damages to the property (e.g., horses were locked away from access to water, feed pans knocked over). If animals are seized, the number of head, sex, approximate age, and any other type of identification (e.g., ear tag or brand) should be recorded. It is also important to document the condition of the livestock during the visit (e.g., cows/heifers were bawling because they were in heat, goats were hungry because it was an hour before feeding time) and a description of animals that were seized (e.g., approximate body condition score, whether the animals were being treated for disease or showing visual indicators of sickness).
6. Fully Cooperate With the Peace Officer To Investigate Within Scope of the Warrant. If a peace officer has obtained a valid warrant, New York livestock producers are advised to fully cooperate with the inspection. See N.Y. Agric. & Markets Law § 369. However, the county sheriff should be contacted if the peace officer is investigating property outside the scope of the warrant. Producers cannot use force to prohibit a peace officer from continuing his/her investigation.
7. Call Your Attorney. Whether it is to decide if there was an illegal search by a peace officer or help defending a misdemeanor charge for livestock animal cruelty, an attorney should be contacted right away. No livestock owner should negotiate with an animal society (e.g., promise to drop prosecution if seized animals can be kept) without first seeking legal counsel.

Before confronted with this situation, New York livestock owners are encouraged to sit down with their attorney and discuss a “plan” if a police officer or non-police officer visits the

farm to investigate farm animal cruelty. Subsequently, it is recommended that this step-by-step plan be memorialized in an employee handbook and discussed with farm employees and family members on an annual basis to ensure that everyone is on the same page.

Preventative Measures

New York livestock owners are encouraged to take the following proactive steps to help minimize the likelihood of a farm investigation by a peace officer:

1. Document Compliance With Animal Care Recommendations. New York livestock owners should have a good working relationship with Cornell University extension specialists, nutritionists, veterinarians, and other livestock experts. Producers should conduct regular farm visits with these experts to ensure their livestock are properly cared for. These visits, recommendations, and improvements should be documented and will be the best defense against prosecution for farm animal cruelty.
2. Follow Animal Care Guidelines. Producers should enroll in a voluntary farm animal care program through the New York State Department of Agriculture and Markets and/or livestock commodity groups. With the counsel of experts, livestock operations should also develop their own animal care handbook used internally on the farm. Farm employees should be regularly trained on proper animal care and handling.
3. Prohibit Farm Employees from Using Video Cameras. In an employment contract, livestock owners should require employees to agree that they will not bring any recording devices on the farm. Farm employees should not have cellular phones with video/picture capabilities (unless the employee can be completely trusted).
4. Put Your Livestock Operation in the Best Public Light. One of the most powerful ways that New York livestock producers can create a positive brand is to maintain a quality farm website. Any voluntary participation in livestock animal care programs should be highlighted on the website and advertising materials. Google alerts are a great tool to help monitor what is being posted on the Internet about a livestock operation (e.g., discussions about farm animal abuse on blogs or posted YouTube videos). Furthermore, livestock producers should get involved in their community to help educate the local public and build a positive reputation.

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