District of Columbia Criminal Animal Protection Laws

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Introduction

Criminal animal protection laws in the District of Columbia consist of the consolidated cruelty statutes in § 22-1001 – 1015 of the DC Code, containing the animal cruelty and animal fighting provisions. § 22-1001 sets forth the definition and penalty for animal cruelty. Prior codifications were 1973 § 22-801 and 1980 § 22-801, designated as such below if applicable. § 22-1013 defines "animal" as including all living and sentient beings with the exception of humans.

The most recent changes were made to the statutes in the Animal Protection Amendment Act of 2008; those changes are designated as such below. § 22-1001 was amended to include court-ordered psychological counseling, psychiatric or psychological evaluation, or participation in animal cruelty prevention or education program for individuals convicted of animal cruelty. § 22-1002.01 added reporting requirements for law enforcement, or child or protective services employees who know of animal cruelty or of the presence of an animal in the home of a person reasonably suspected of child, adult, or animal abuse. § 22-1004(c) granted rulemaking authority to the Mayor to establish a notice and hearing process for owners to contest the seizure, detention, and terms of release and treatment of their animals seized on allegation of cruelty, abandonment, or neglect. § 22-1005 now prohibits animal fighting as a felony.

Washington Humane Society

In Daskalea v. Washington Humane Society, 480 F.Supp.2d 16 (D.D.C. 2007) ("Daskalea I"), the court ruled on a motion to dismiss the Washington Humane Society (WHS) as *non sui juris* and thus not a suable entity since "the plain language of the Washington Humane Society's enabling statute shows that Congress did not authorize it to be sued. *See* Act of June 21, 1870, ch. 135, 16 Stat. 158, §1." Therefore, "the proper defendant for … claims against WHS is the District of Columbia itself…" (subsequent history at Daskalea v. Washington Humane Society, 577 F.Supp.2d 90, 99 (D.D.C. 2008) ("Daskalea II")).

The court in Daskalea I further found that WHS and its employees are state actors, because they perform "traditional, government functions, which constitute 'state action'."[2] It pointed out that under § 22-1006, WHS has the authority to prosecute violations of the animal cruelty law, under § 22-1005 it has the authority to obtain warrants and search private residences, under § 22-1004 it is authorized to seize personal property, and under § 44-1506 to collect fines. The court concludes that "[t]his type of conduct is akin to a State's law

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[1] Claudia Haupt produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Claudia graduated from GWU Law School in 2009.

[2] The court cites the following decisions from other jurisdictions in support: Brunette v. Humane Society of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Tennessee v. Adkisson, 2001 WL 1218570, 2001 Tenn. Crim. App. LEXIS 832 (Tenn. Crim. App. 2001); Studer v. Seneca County Humane Soc'y, 2000 WL 566738, 2000 Ohio App. LEXIS 1974 (Ohio Ct. App. 2000); Putnam County Humane Soc'y v. Woodward, 740 So. 2d 1238 (Fla. Dist. Ct. App. 1999).

enforcement power which may be fairly treated as that of the State itself." (internal citations omitted). For purposes of 28 U.S.C. § 1983, this means that employees of WHS in the instant case acted "under the color of state law." (Id.)

In Daskalea II, the court stated that WHS officers "named in their personal capacities …. may be able to assert a qualified immunity defense."

Division IV. Criminal Law and Procedure and Prisoners.
Title 22. Criminal Offenses and Penalties.
Subtitle I. Criminal Offenses.
Chapter 10. Cruelty to Animals

§ 22-1001. Definition and penalty.

(a)[3](1) Whoever knowingly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly chains, cruelly beats or mutilates, any animal, or knowingly causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly chained, cruelly beaten, or mutilated, and whoever, having the charge or custody of any animal, either as owner or otherwise, knowingly inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding $250, or by both.
(2) The court may order a person convicted of cruelty to animals:
(A) To obtain psychological counseling, psychiatric or psychological evaluation, or to participate in an animal cruelty prevention or education program, and may impose the costs of the program or counseling on the person convicted;
(B) To forfeit any rights in the animal or animals subjected to cruelty;
(C) To repay the reasonable costs incurred prior to judgment by any agency caring for the animal or animals subjected to cruelty; and
(D) Not to own or possess an animal for a specified period of time.
(3) The court may order a child adjudicated delinquent for cruelty to animals to undergo psychiatric or psychological evaluation, to participate in appropriate treatment programs or counseling, and may impose the costs of the program or counseling on the person adjudicated delinquent.

(b) For the purposes of this section, "cruelly chains" means attaching an animal to a stationary object or a pulley by means of a chain, rope, tether, leash, cable, or similar restraint under circumstances that may endanger its health, safety, or well-being. Cruelly chains includes, but is not limited to, the use of a chain, rope, tether, leash, cable or similar restraint that:
(1) Exceeds 1/8 the body weight of the animal;
(2) Causes the animal to choke;
(3) Is too short for the animal to move around or for the animal to urinate or defecate in a separate area from the area where it must eat, drink, or lie down;
(4) Is situated where it can become entangled;
(5) Does not permit the animal access to food, water, shade, dry ground, or shelter; or
(6) Does not permit the animal to escape harm.

[3] As amended by the Animal Protection Amendment Act of 2008.

(c) For the purposes of this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.

(d) Except where the animal is an undomesticated and dangerous animal such as rats, bats, and snakes, and there is a reasonable apprehension of an imminent attack by such animal on that person or another, whoever commits any of the acts or omissions set forth in subsection (a) of this section with the intent to commit serious bodily injury or death to an animal, or whoever, under circumstances manifesting extreme indifference to animal life, commits any of the acts or omissions set forth in subsection (a) of this section which results in serious bodily injury or death to the animal, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment not exceeding 5 years, or by a fine not exceeding $25,000, or both.

DC CASE LAW

Validity

Tuck v. United States, 467 A.2d 727 (D.C. 1983)[4]

Tuck was convicted of cruelty to animals, namely puppies in his pet store. The court rejected his challenge to the statutory definition of "cruelty" as unconstitutionally overbroad and vague. The court found the overbreadth argument frivolous since Tuck had not suggested any sort of constitutionally protected right that may be chilled by enforcement of the statute. Tuck claimed facial vagueness since the statute required citizens to guess the meaning of "unnecessarily" failing to provide "proper" food, drink, shelter, or protection from the weather. The court found that the words "unnecessarily" and "proper" are not so indefinite as to render the provision of the animal cruelty statute unconstitutionally vague. Such words are to be understood in their ordinary sense.[5]

The court also rejected Tuck's claim of vagueness as applied, specifically referring to extensive testimony that the puppies in Tuck's custody were suffering from dehydration, malnutrition, that they were being kept in cages without water, that they were weakened to the point where many were unable to stand up, and that they were desperate in their eagerness for the food placed before them.

Nature and elements of crime

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[4] This decision concerned D.C. Code 1981, § 22-801.

[5] The court cited the following cases from other jurisdictions in support: People v. Allen, 657 P.2d 447, 448 (Colo. 1983)(en banc)(rejecting a vagueness challenge to prosecution under a statute providing for punishment of anyone who, "having the charge and custody of an animal, fails to provide it with proper food, drink, or protection from the weather."); State v. Persons, 46 A.2d 854, 855 (Vt. 1946)("unnecessarily fail[ing] to provide [certain cattle] with proper food and drink" not unconstitutionally vague); Wilkerson v. State, 401 So.2d 1110 (Fla. 1981)("unnecessarily or cruelly beat[ing], mutilate[ing], or kill[ing] any animal" not unconstitutionally vague).

Silver v. United States, 726 A.2d 191 (D.C. 1999)[6]

Silver and Anderson were convicted of cruelty to animals and engaging in animal fighting. Both claimed that the conviction for animal cruelty should merge with the conviction for animal fighting because animal cruelty is a lesser included offense of animal fighting. The court rejected this argument, based on different elements of both offenses. Engaging in animal fighting requires the instigation, promotion, carrying on or attendance at an animal fight and premeditation by the animal's owner or custodian. Cruelty to animals requires no such proof. Thus, a defendant can commit animal fighting by planning and promoting an animal fight without causing harm to an animal. Conversely, cruelty to animals requires the actual infliction of cruelty. Although in many cases, such as this one, conduct which constitutes animal fighting also violates the cruelty statute, each crime requires proof of an element which the other does not. Therefore the underlying offenses do not merge.

Regalado v. United States, 572 A.2d 416 (D.C. 1990)[7]

Regalado challenged his conviction for animal cruelty claiming insufficiency of evidence of specific intent. The appeals court rejected this challenge, stating that § 22-801 "does not designate the *mens rea* (i.e., specific intent, general intent, etc.) necessary for conviction." The trial judge instructed the jury that it was required to find that appellant "willfully" mistreated the puppy;[8] it applied the rationale of the cruelty to children statute requiring a general intent with malice to animals.[9] Although animal cruelty statutes "were not intended to place unreasonable restrictions on infliction of such pain as may be necessary for training or discipline of animal"[10] the court stated that "there is a distinction between discipline and training and a beating or a needless infliction of pain accompanied by a cruel disposition." Thus, the statute "should be interpreted to require proof of specific intent to injure or abuse. The specific intent requirement would offer the animal owner the greatest protection, but the general intent with malice requirement reflects the growing concern in the law for the protection of animals, while at the same time acknowledging that humans have a great deal of discretion with respect to the treatment of their animals."

Tuck v. United States, 477 A.2d 1115 (D.C. 1984)[11]

Humans are "entitled to own animals but is not entitled to torment or cruelly destroy them."

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[6] This decision concerned D.C. Code 1981, § 22-801.

[7] This decision concerned DC Code 1981, § 22-801. See also infra (facts)

[8] Based on the instruction for cruelty to children under D.C. Code § 22-901 (1989 Repl.) which the court in Carson v. United States, 556 A.2d 1076 (D.C. 1989) had held "to be a general intent crime but requiring proof of malice."

[9] The appeals court also discusses the following cases from other jurisdictions: Rushin v. State, 267 S.E.2d 473 (Ga. Ct. App. 1980); In re G, 447 A.2d 493 (Md. 1982); People v. Olary, 160 N.W.2d 348 (Mich. Ct. App. 1968); aff'd 170 N.W.2d 842 (Mich. 1969); State v. Brookshire, 355 S.W.2d 333 (Mo. Ct. App. 1962); Yopp v. State, 54 S.E.2d 505 (Ga. Ct. App. 1949).

[10] The court cited the following decision from another jurisdiciton in support: State v. Fowler, 205 S.E.2d 749 (N.C. 1974).

[11] This decision concerned DC Code 1981, § 22-801.

Jordan v. United States, 269 A.2d 848 (D.C. 1970)[12]

The trial court did not make any finding with respect to the charges against Jordan of inflicting unnecessary cruelty or failing to provide proper food or drink. Jordan could have been convicted of unnecessarily failing to provide the dog with proper food, drink, shelter, or protection from the weather without finding that he inflicted unnecessary cruelty upon the dog.[13]

Carr v. United States, 585 A.2d 158 (D.C. 1991)[14]

Carr was convicted of unnecessarily filing to provide her dog with proper food and drink. She argued that to prove a violation, it was necessary to show, as charged in the information, that she "cruelly beat, tortured, tormented, killed and deprived [her dog] of necessary sustenance."[15] The court rejected this argument, stating "the elements of a charge in an information may be set forth in the conjunctive yet proven in the disjunctive, if that is the extent of the statutory requirement." Thus, only proof of one means of violating the section was required.

Prosecutions and Proceedings

Carr v. United States, 585 A.2d 158 (D.C. 1991)[16]

Carr was convicted of unnecessarily filing to provide her dog with proper food and drink. She was charged with one part of the statute, depriving the animal of necessary sustenance, and convicted under another part of the statute, concerning persons having charge and custody of the animal failing to provide proper food or drink. She argued that since she was charged by information with depriving the animal of necessary sustenance and being convicted for failing to provide proper food or drink, she was "deprived of notice and due process of law."

The appellate court agreed with the trial court's rejection of Carr's motion for judgment of acquittal, stating "it cannot reasonably be argued that there is any significant difference that could have affected the jury's verdict between unnecessarily failing to provide food or drink and depriving the animal of necessary sustenance." Further, "the facts necessary to prove deprivation of necessary sustenance are precisely the same ones needed to prove unnecessary failure to provide proper food or drink." Thus, the appeals court found that Carr did not lack notice of the charge against her; nor could she face further prosecution without violation of the double jeopardy clause. The court found that Carr did not "suffer any

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[12] This decision concerned D.C.C.E. § 22-801

[13] In support, the court cites the following decision from another jurisdiction: Commonwealth v. Curry, 23 N.E. 212 (Mass. 1890).

[14] This decision concerned DC Code 1981, § 22-801.

[15] The prior version read in relevant part: "Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, …. , and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding $250, or by both such fine and imprisonment."

[16] This decision concerned DC Code 1981, § 22-801.

prejudice, let alone prejudice that would entitle her to a judgment of acquittal after the jury's verdict."

Searches and seizures

Tuck v. United States, 467 A.2d 727 (D.C. 1983)

Tuck was convicted of cruelty to animals, namely puppies in his pet store. Initially, he was charged with two violations of D.C. Code § 22-801, inflicting (1) "unnecessary cruelty" on puppies in his custody, and (2) "unnecessarily fail[ing] to provide" the puppies "with proper food, drink, shelter, or protection from the weather." The motions judge declared that the provision of the statute prohibiting "unnecessary cruelty" was unconstitutionally vague, but that the provision dealing with unnecessary failure to provide food, drink, and shelter as not vague.

Tuck argued that the warrant authorized only a search under the "unnecessary cruelty" provision that was ruled unconstitutional, and thus all evidence seized pursuant to the warrant should have been suppressed. The court stated that the warrant authorized the Humane Society to seize "sick dogs." The cruelty investigator's affidavit in support of her application for the warrant stated the puppies were "extremely lethargic, underweight, dull-coated and generally listless." A puppy that an employee of the District of Columbia Animal Control had purchased appeared "stunted, underweight, dull-coated and lethargic," and two veterinarians had reported to her that the puppy was "seriously underweight." Thus, the affidavit recited facts giving probable cause for a warrant supporting the government's effort to prove "that these dogs were sick as a result of their not being given proper food, drink, shelter, and protection from the weather." Declaring part of the statute unconstitutional did not affect the warrant that expressly permitted the seizure of evidence for purposes of prosecution under the provision of the statute that was held constitutional.

Even if the warrant had only supported a seizure of evidence for a prosecution under the "unnecessary cruelty" provision that was later declared unconstitutional, the evidence would still be admissible in a prosecution under the "unnecessary fails" provision of the statute that survives. Evidence obtained under a warrant based on a presumptively valid statute need not be suppressed in a later proceeding, after the statute has been declared unconstitutional, unless the statute itself purported to authorize searches forbidden by the Fourth Amendment. Tuck does not contend that the "unnecessary cruelty" provision allowed the Humane Society to circumvent the Fourth Amendment. Thus, even if the warrant had simply authorized seizure of evidence that appellant had been "unnecessarily cruel" to the puppies, the evidence of 15 dehydrated, emaciated, and weakened puppies could be used against him in a prosecution for "unnecessarily failing" to provide them with proper food, water, and shelter.

Tuck v. United States, 477 A.2d 1115 (D.C. 1984)

Tuck, the proprietor of a pet store, was found guilty of one count of animal cruelty. Upon visit of his store following a citizen's complaint, a cruelty investigator for the Washington Humane Society and an officer of the Metropolitan Police Department found a puppy and a rabbit that appeared to be suffering in extreme heat in an unventilated display window. According to testimony at trial, the temperature on that day reached 103 degrees Fahrenheit. According to the investigator, the two animals were sprawled out on the bottom of their small cages in a semi-dazed condition, panting and covered with heavy salivation.

Tuck complied with the officers' request to remove the puppy from the window, but refused to remove the rabbit, which appeared to be suffering more than the puppy. While the police officer restrained Tuck, the Humane Society officer entered the store window; he testified that a blast of hot air hit him when he opened the door to the window and that the chamber was as hot as a furnace. The rabbit was impounded and examined by a veterinarian, who determined that the rabbit was suffering from heat stroke. Its body temperature reached as high as the thermometer was calibrated (110 degrees Fahrenheit); the veterinarian testified that a rabbit's normal temperature ranges from 99.1 to 102.9 degrees Fahrenheit.

The court upheld the warrantless entry and seizure on grounds of exigency, emphasizing that the animals were in plain view and the officials had probable cause to believe that Tuck had unnecessarily failed to provide the animals with protection from the weather. The court relied on the officer's testimony that a warrant could not have been obtained without imperiling the life of the animal. The court stated that although the exigency involved the protection of animal life rather than human life, the "public interest" in the preservation of life in general and in the prevention of cruelty to animals in particular "require[s] some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search. The delay caused by obtaining a warrant would have frustrated the effective fulfillment of those public interests.

Citing the officer's testimony on her personal observation of the animals in the window and the information communicated to her, the appeals court found that there was a compelling societal need for immediate entry and for seizure, protection and treatment of the rabbit. Thus, the appeals court concluded that the exigencies of the situation mitigated against delay and were of a sufficient proportion to justify proceeding without a warrant.

The court found no indication that failure to obtain a warrant reflected an absence of concern for protecting fourth amendment values. The preventive action was limited to what was necessary, namely to remove the rabbit from the window and provide medical care. Moreover, there was no indication that the officials artificially created the emergency; their entry was motivated by the intent to investigate a genuine emergency and to render assistance. Thus, the appeals court found that in the narrow circumstances of the case the warrantless seizure of the rabbit was objectively reasonable under the fourth amendment.

Admissibility of Evidence

Tuck v. United States, 467 A.2d 727 (D.C. 1983)[17]

Jordan v. United States, 269 A.2d 848 (D.C. 1970)

The appeals court stated that it must first be determined what shelter or protection is necessary for the animal before addressing whether adequate shelter and protection were supplied. There was no expert testimony on the question of necessary shelter or protection in the trial court. The appeals court stated it lacked expertise on the subject of care and handling of dogs, and it assumed the trial court to equally lack expertise. It was stipulated at trial that the witness was a qualified physician. However, the appeals court did not understand the stipulation to qualify the physician as an expert on the care and handling of dogs.

[17] *Supra* page 5-6.

Carr v. United States, 585 A.2d 158 (D.C. 1991)[18]

Carr was convicted of unnecessarily filing to provide her dog with proper food and drink. At trial, a Humane Society officer testified about the veterinarian's statements to her about the condition of Carr's dog, saying that he "felt that … the dog was in extremely poor condition, that she had been deprived of food and water for a very long time, and she felt that this was one of the worst starvation cases that she had seen." Carr challenged the admission of the officer's testimony as a violation of her Confrontation Clause rights and inadmissible hearsay. The appeals court rejected the Confrontation Clause challenge, because the veterinarian testified as a witness and was available for cross-examination. Although the court agreed that the testimony was inadmissible, it found the error harmless. The veterinarian's testimony "was unimpeached and clearly indicated the extreme adverse condition of the dog." The veterinarian described the dog as "near collapse," "emaciated," "dehydrated," "weighing little more than half her estimated normal weight," and she "flatly diagnosed the dog as suffering from starvation." There also was ample opportunity for cross-examination.

Further, the appellate court found that "the trial court did not err in refusing to suppress several inculpatory statements made without Miranda warnings by appellant to Humane Society officers after she invited them into her living room to discuss who they were and what they were doing with the dog. This was not 'custodial interrogation'."

There also was no error in admitting "before and after" photos of the dog even though there was no pre-trial discovery. The appeals court did not find abuse of discretion on the issue of sanctions for failure to comply with discovery. The trial court had extensively inquired into possible prejudice due to the admission and had emphasized defense counsel's knowledge of the existence of the photos.

Finally, the appeal upheld the trial court's exclusion of "photographs depicting two children with puppies from the dog's litter, and appellant holding a puppy, as irrelevant to appellant's case." The appeals court pointed out that the standard of review on appeal would be a showing of grave abuse, in addition, "the court has a duty to exclude confusing and distracting evidence on collateral issues."

Weight and sufficiency of evidence

Shepherd v. United States, 905 A.2d 260 (D.C. 2006)

The court rejected Shepherd's appeal of his conviction of attempted cruelty to animals for insufficiency of the evidence. Following an unprovoked assault on two women and their neighbor walking their dogs, Shepherd tried to kick one of the dogs. Witnesses had testified "that appellant, in a fit of anger, was trying to kick their dog." The court found this to be sufficient to sustain a conviction of attempted cruelty to animals.

Stroman v. United States, 905 A.2d 194 (D.C. 2006), cert. denied, 549 U.S. 967 (2006).

[18] This decision concerned DC Code 1981, § 22-801.

Stroman was convicted of two counts of cruelty to animals; she challenged the sufficiency of the evidence. The court rejected her claim that the government failed to conclusively prove ownership of the dogs.

Asked by a Humane Society officer whether she owned the two pit bulls in her living room, she initially answered in the affirmative but then stated that her son owned the dogs. Stroman and her son testified later that the dogs did not belong to them but rather to a friend of the family. The Humane Society officer noted that the crate in which the dogs were kept also contained trash, newspaper, food or vomit, and fecal matter. The dogs were emaciated and both had several open sores or wounds on their legs and tails. Stroman stated that she thought the dogs were fine and showed the officer that she kept dog food in the house. A veterinarian testified that the dogs were malnourished and that their in juries were likely the result of the dirty conditions in the crate. He also noted that the dogs' poor condition was clearly visible.

The court stated that under D.C. Code § 22-1001, ownership is of no relevance. Stroman had "charge or custody" of the animals. Her admissions to police and possession of the dog crate, located in the center of her living room, and dog food suffice to show "custody" under the statute. Thus, the court found ample proof to sustain the conviction.[19]

Silver v. United States, 726 A.2d 191 (D.C. 1999)[20]

Silver and Anderson were each convicted of cruelty to animals and engaging in animal fighting. On appeal, Silver contended that the evidence was insufficient to support his conviction of animal cruelty.

A police officer observed a dog fight in an alley; "[a]n experienced law enforcement dog handler testified that when he arrived on the scene, Silver's pit bull terrier, Bijou, and Anderson's pit bull terrier, Satan, were fighting in a stockade enclosure in the alley." Silver and Anderson each "had his dog on a leash, and each man was encouraging the animal to fight by yelling, making noise, and telling his dog to 'go get him,' or words to that effect." A "crowd of approximately 20 onlookers" dispersed upon arrival of the officers. While the dogs were both injured in the fight, "some of the injuries may have occurred after the police initially separated them." When police arrived, Anderson threw his dog "over the fence and attempted to escape," but was subdued by the officers who "recovered $215 from his person." The dog "returned to the enclosure and resumed his bout with Bijou." Anderson claimed that he received the money from his girlfriend in order to pay their phone bill. With respect to his dog, "Silver told an officer of the Humane Society, *inter alia*, that he had brought Bijou to the scene to train him 'to attack on command.'" He also claimed not to know why the spectators were present, "but asserted that he 'had a feeling. I didn't know anything for sure. I just had a feeling.'" Moreover, he "presented evidence designed to show that Bijou had been well treated prior to the events of December 30, 1994, and that Bijou was not an abused dog." Although "Anderson testified that the dogs did not fight on Dec 30, 1994, and that there was no arrangement to have them fight," both defendants were found guilty of animal cruelty and engaging in animal fighting.

The trial judge "described [the officer's] testimony as the most comprehensive and convincing. In the judge's view, "the government has established that Mr. Silver set out,

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[19] The court cited the following decisions from other jurisdictions supporting that either ownership or custody can be a predicate for a cruelty conviction: Tiller v. Georgia, 461 S.E.2d 572, 573 (Ga. Ct. App. 1995); State v. Tolliver, 2005 WL 737090, 2005 Tenn. Crim. App. LEXIS 316 (Tenn. Crim. App. 2005).

[20] This decision concerned DC Code 1981 § 22-810.

purposely walked many blocks with his dog, with a second— with a little entourage, to encounter defendant Anderson's dog, [to] just see who was going to be top dog, hoping he would find his dog at home – or expecting to find him at home and they just decided to have at it. It might be their first – it might be their initiation, but it's got to begin some time, and let's have it here." These remarks were made before finding that Silver and Anderson were guilty. The appeals court found that "[t]he judge's finding of guilt indicates that he ultimately drew permissible inferences favorable to the prosecution."

Regalado v. United States, 572 A.2d 416 (D.C. 1990)[21]

Regalado challenged his conviction of cruelty to animals claiming there was insufficient evidence of specific intent. The appeals court held that the statute requires only proof of general intent with malice.

Regalado was seen by his neighbor, who had been alerted by cries of a puppy, beating a puppy, holding it up in the air with one hand and beating it with the other, "hitting it very hard." The neighbor stated that Regalado "was very angry and out of control." Regalado admitted to an arriving Humane Society officer to hitting the puppy, but stated that the injuries to the dog's face were a result of the dog being injured a week earlier by a car. While the Humane Society officer and Regalado tried to untangle the puppy's leash, Regalado slapped the puppy again on the fact, telling the Humane Society officer that this is what he had done. The Humane Society officer removed the puppy; she testified its eye was severely bloodshot and appeared swollen. The veterinarian who treated the dog testified that the injuries were more recent than Regalado claimed and inconsistent with being hit by a car. Rather, the injuries to the face indicated trauma, consistent with being hit in the face.

The court found that the witnesses offered evidence to support a finding of malice. The neighbor described both the effect on the puppy and Regalado's state of mind. The Humane Society officer's reaction to Regalado's demonstration of how he had beaten the puppy supported an inference of discipline crossing over the line to cruelty. The veterinarian's testimony of the extent and nature of the injuries also supported the inference.

Jordan v. United States, 269 A.2d 848 (D.C. 1970)

Jordan was charged with violating § 22-801, D.C. Code (1967); he successfully claimed on appeal that the evidence was insufficient to sustain the conviction. The principal government witness testified having seen a full-grown German shepherd dog tied to an open concrete back porch at Jordan's home with a 3-foot chain. Seeing the dog from a distance of about 40 yards, he thought the dog to be undernourished and apathetic and depressed. In his opinion, there was no adequate shelter. The witness saw the dog at 11:00 am, 2:00 pm and 3:00 pm. The president of the Washington Humane Society and a police officer, who arrived at 3:00 pm and 4:15 pm, respectively, confirmed the physician's testimony and all witnesses testified that the weather was extremely cold that day. A certified copy of the United States Weather Bureau weather report for the day in question indicated that the temperature was 23º at 11:00 am, 28º at 2 pm and 3 pm and 27º at 4 pm. Despite testimony about a lack of food or water, the trial court only referenced that the dog was seen on the porch in unusually cold weather.

[21] This decision concerned DC Code 1981, § 22-801.

The appeals court stated that it must first be determined what shelter or protection is necessary for the animal before addressing whether adequate shelter and protection were supplied. There was no expert testimony on the question of necessary shelter or protection in the trial court. Absent testimony from someone experienced in the care of a dog of this type, though not necessarily a veterinarian, that the shelter or protection from the weather supplied this dog on this occasion would cause the dog to suffer, the appeals court found the evidence insufficient to sustain the conviction.

Tuck v. United States, 477 A.2d 1115 (D.C. 1984)

Following the examination of a rabbit seized from Tuck's pet store, the rabbit was housed at the Humane Society's animal shelter. While housed at the shelter, the rabbit was attacked by a larger rabbit. It sustained severe injuries and officials at the shelter found it necessary to destroy the rabbit. Unaware of the rabbit's destruction, Tuck filed a motion to suppress the rabbit and any evidence obtained from its examination. After he learned of the rabbit's destruction, Tuck filed a motion to dismiss the information for failure of the government to preserve critical evidence. The trial court heard and denied Tuck's motion to dismiss, finding no bad faith or such a degree of negligence on the part of the government to justify a dismissal of the action. The trial court denied Tuck's motion to suppress.

The appeals court found that Tuck's motion to dismiss the motion to dismiss the information on the ground of negligent destruction of evidence was properly denied. The appeals court found the loss of the rabbit was shown to be inadvertent and it disagreed with Tuck's assertion that the presence of a healthy rabbit at trial (over a year after Tuck's arrest) was critical to his defense.

§ 22-1002 Other cruelties to animals.

Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in § 22-1001.

DC CASE LAW

No case law found.

§ 22-1002.01[22]

Sec. 2a. Reporting requirements.
(a)(1) Any law enforcement or child or protective services employee who knows of or has reasonable cause to suspect an animal has been the victim of cruelty, abandonment, or neglect, or observes an animal at the home of a person reasonably suspected of child, adult, or animal abuse, shall provide a report within 2 business days to the Mayor. If the health and welfare of the animal is in immediate danger, the report shall be made within 6 hours.

(2) The report shall include:
(A) The name, title, and contact information of the individual making the report;
(B) The name and contact information, if known, of the owner or custodian of the animal;
(C) The location, along with a description, of where the animal was observed; and
(D) The basis for any suspicion of animal cruelty, abandonment, or neglect, including the date, time, and a description of the observation or incident which led the individual to make the report.

(b) When 2 or more law enforcement or child or protective services employees jointly suspect an animal has been the victim of cruelty, abandonment, or neglect, or jointly observe an animal at the home of a person reasonably suspected of child, adult, or animal abuse, a report may be made by one person by mutual agreement.

(c) No individual who in good faith reports a reasonable suspicion of abuse shall be liable in any civil or criminal action.

(d) Upon receipt of a report, any agency charged with the enforcement of animal cruelty laws shall make reasonable attempts to verify the welfare of the animal.

(e) For the purpose of this section, the terms “reasonable cause to suspect”, “suspect”, “reasonably suspected”, and “reasonable suspicion” mean a basis for reporting facts leading a person of ordinary care and prudence to believe and entertain a reasonable suspicion that criminal activity is occurring or has occurred.

DC CASE LAW

No case law found.

[22] Added by the Animal Protection Amendment Act of 2008.

§ 22-1003. Rest, water and feeding for animals transported by railroad company.

No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than 24 hours, without unloading the same, for rest, water, and feeding, for a period of at least 5 consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which such animals have been confined without such rest on connecting roads from which they are received shall be included; it being the intent of this section to prohibit their continuous confinement beyond the period of 24 hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of said owner or persons in custody thereof. And said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any company, owner, or custodian of such animals who fails to comply with the provisions of this section shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than $1 nor more than $500; provided, however, that when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

DC CASE LAW

No case law found.

§ 22-1004. Arrests without warrant authorized; notice to owner.

(a) Any person found violating the laws in relation to cruelty to animals may be arrested and held without a warrant, in the manner provided by § 44-1505 and the person making an arrest, with or without a warrant, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same; provided, the owner shall take charge of the same within 20 days from the date of said notice. The person making the arrest or the humane officer taking possession of an animal shall have a lien on said animals for the expense of such care and provisions.

(b)(1) A humane officer of the Washington Humane Society may take possession of any animal to protect it from neglect or cruelty. The person taking possession of the animal or animals, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for the animals until the owner shall take charge of the animals; provided that, the owner shall take charge of the animals within 20 days from the date of the notice.
(2) If the owner or custodian of the animal or animals fails to respond after 20 days, the animal or animals shall become the property of the Washington Humane Society and the Washington Humane Society shall have the authority to:
(A) Place the animal or animals up for adoption in a suitable home;

(B) Retain the animal or animals, or
(C) Humanely destroy the animal or animals.

(c)[23](1) The Mayor shall establish by rulemaking a notice and hearing process for the owner of the animal to contest the seizure, detention, and terms of release and treatment of the animal, the allegation of cruelty, abandonment, or neglect, and the imposition of the lien and costs asserted for caring an providing for the animal.

(2) Within 30 days of the effective date of the Animal Protection Amendment Act of 2008, passed on 2nd reading on July 15, 2008 (enrolled version of Bill 17-89), the proposed rules shall be submitted to the Council for a 45-day period of review, excluding weekends, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed rules, by resolution, within the 45-day review period, the rules shall be deemed approved.

DC CASE LAW

Validity

Daskalea v. Washington Humane Society, 480 F.Supp.2d 16 (2007)

The court rejected the challenge to the Animal Protection Act as unconstitutionally vague. Plaintiffs claimed unconstitutional vagueness of the term "neglect" in § 22-1004(b). The court interpreted the term "neglect" in light of § 22-1001(a) as upheld in the 1983 decision in Tuck v. United States.[24]

The court also addressed, on a motion to dismiss, the unconstitutionality of the act "for its complete failure to provide notice and meaningful opportunity for pet owners to contest the seizure, detention, terms of release and treatment of their pets."[25] Addressing the claim of violation of procedural due process, the court first addressed whether there is an asserted property interest and, second, what constitutes due process. Finding that the owners have a property interest in their animals,[26] the court turns to the question what process was due. The court pointed out that § 22-1004 lacked any requirement of a pre-seizure hearing or providing pre-seizure notice; "thus, it appears a Humane Society employee can seize any animal which he or she determines, in his/her individual capacity, is suffering from cruelty or neglect. The animal's owner (or custodian) is not given an opportunity to protest this initial seizure, nor is the owner given a post-seizure opportunity to contest whether the animal was in fact suffering from cruelty or neglect." Moreover, the court emphasized the lien pursuant to § 22-1004(a); these expenses cannot under the statute be contested by the owner. Although § 22-1004(b)(1) requires that WHS "use reasonable diligence to give notice" to the owner after the animal has been seized, the statue does not prescribe the reasonable types of notice.

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[23] Subsection added by the Animal Protection Amendment Act of 2008.

[24] *Supra* page 3.

[25] The Animal Protection Amendment Act of 2008 addressed this issue by adding subsection (c). On January 2, 2009, PR18-0055 ""HEARING PROCEDURES FOR WASHINGTON HUMANE SOCIETY APPROVAL RESOLUTION OF 2009" was introduced in the DC Council pursuant to § 22-1004(c).

[26] The court cited the following case from another jurisdiciton in support: Porter v. DiBlasio, 93 F.3d 301 (7th Cir. 1996).

Moreover, "the statute is completely silent with respect to providing the owner with an opportunity to be heard." The court stated that "[t]he statute does not mandate that the animal owner ever be given an opportunity to contest the seizure or the amount of the lien, even if the Humane Society intends to destroy the animal pursuant to § 22-1004(b)(2)(c)." WHS, in sum, has a very wide authority in enforcing the animal protection law, including discretion to seize animals.[27]

However, "the Court concludes that the District of Columbia must provide an animal owner notice and an opportunity for a hearing prior to permanently terminating an individual's interest in a seized animal. The animal owner must also be given an opportunity to contest the validity of the initial seizure, as well as any costs imposed on the owner." While animal cruelty and neglect may justify immediate seizures, there still must be a "meaningful opportunity to be heard." The court characterized as "perhaps the statute's greatest weakness" that "[w]hile Humane Society officers are authorized to conduct warrantless seizures, there is no requirement that the animal owner ever be given an opportunity to contest the Humane Society's finding of neglect underlying the seizure."[28]

§22-1005. Issuance of search warrants.

When complaint is made by any humane officer of the Washington Humane Society on oath or affirmation, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant, authorizing any marshal, deputy marshal, police officer, or any humane officer of the Washington Humane Society to search such building or place.

DC CASE LAW

Tuck v. United States, 467 A.2d 727 (D.C. 1983)[29]

Tuck v. United States, 477 A.2d 1115 (D.C. 1984)[30]

§ 22-1006. Prosecution of offenders; disposition of fines.

It shall be the duty of all marshals, deputy marshals, police officers, or any humane officer of the Washington Humane Society, to prosecute all violations of the provisions of §§ 22-1001 to 22-1009 and §§ 22-1011, 22-1013, and 22-1014, which shall come to their notice or

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[27] The court cites the following cases from other jurisdictions in support: Anderson v. George, 233 S.E.2d 407 (W.Va. 1977); Jenks v. Stump, 93 P. 17 (Colo. 1907).

[28] The court cites the following cases from other jurisdictions in support: DiCesare v. Stuart, 12 F.3d 973 (10th Cir. 1993); Humane Society of Marshall County v. Adams, 439 So.2d 150 (Ala. 1983); Commonwealth v. Gonzalez, 588 A.2d 528 (Pa. Super. Ct. 1991).

[29] *Supra* page 5-6.

[30] *Supra* page 6-7.

knowledge, and fines and forfeitures collected upon or resulting from the complaint or information of any humane officer of the Washington Humane Society under §§ 22-1001 to 22-1009 and §§ 22-1011, 22-1013, and 22-1014 shall inure and be paid over to said association, in aid of the benevolent objects for which it was incorporated.

DC CASE LAW

No case law found.

§ **22-1007. Impounded animals to be supplied with food and water.**

Any person who shall impound, or cause to be impounded in any pound, any creature, shall supply the same, during such confinement, with a sufficient quantity of good and wholesome food and water; and in default thereof shall, upon conviction, be punished for every such offense in the same manner provided in § 22-1001.

DC CASE LAW

No case law found.

§ 22-1008. Relief of impounded animals.

In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than 12 successive hours, it shall be lawful for any officer of the Washington Humane Society, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which such creature shall be so confined, and supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment thereof.

DC CASE LAW

No case law found.

§ 22-1009. Keeping or using place for fighting or baiting of fowls or animals; arrest without warrant.

Any person or persons who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting of fowls or animals, may be arrested without a warrant, as provided in § 44-1505, and for every such offense be punished in the same manner provided in § 22-1001.

DC CASE LAW

No case law found.

§ 22-1010. Penalty for engaging in cockfighting or animal fighting. [Repealed]

§ 22-1011. Neglect of sick or disabled animals.

If any maimed, sick, infirm, or disabled animal shall fail to receive proper food or shelter from said owner or person in charge of the same for more than 5 consecutive hours, such person shall, for every such offense, be punished in the same manner provided in § 22-1001.

DC CASE LAW

No case law found.

§ 22-1012. Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

(a) A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than 3 hours after he or she receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than $10 nor more than $250, or by imprisonment in jail not more than 180 days, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of 2 reputable citizens called by such officer to view the same in such officer's presence, to be glandered, injured, or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

(b) Nothing contained in §§ 22-1001 to 22-1009, inclusive, and §§ 22-1011 and 22-1309 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society.

DC CASE LAW

No case law found.

§ 22-1013. Definitions.

In §§ 22-1001 to 22-1009, inclusive, and § 22-1011, the word “animals” or “animal” shall be held to include all living and sentient creatures (human beings excepted), and the words “owner,” “persons,” and “whoever” shall be held to include corporations and incorporated companies as well as individuals.

DC CASE LAW

No case law found.

§ 22-1014. Docking tails of horses. [Repealed]

§ 22-1015. Penalty for engaging in animal fighting.

(a)[31] Any person who: (1) organizes, sponsors, conducts, stages, promotes, is employed at, collects an admission fee for, or bets or wagers any money or other valuable consideration on the outcome of an exhibition between two or more animals of fighting, baiting, or causing injury to each other; (2) any person who owns, trains, buys, sells, offers to buy or sell, steals, transports, or possesses any animal with the intent that it engage in any such exhibition; (3) any person who knowingly allows any animal used for such fighting or baiting to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by him; (4) any person who owns, manages, or operates any facility and knowingly allows that facility to be kept or used for the purpose of fighting or baiting any animal; (5) any person who knowingly or recklessly permits any act described in this subsection, to be done on any premises under his or her ownership or control, or who aids or abets that act; or (6) any person who is knowingly present as a spectator at any such exhibition, is guilty of a felony, punishable by a fine of not more than $25,000 or by imprisonment not to exceed 5 years, or both. The court may also impose any penalties listed in section 1(a) of Chapter 106 of the Acts of the Legislative Assembly, approved August 23, 1871 (D.C. Official Code § 22-1001(a)).

[*(b) Any person who is knowingly present at any place or building where preparations are being made for an exhibition described in subsection (a) of this section, or who is knowingly present as a spectator at any such exhibition, or who knowingly or recklessly aids or abets another in such exhibition, is guilty of a misdemeanor, punishable by a fine of not more than $1,000 or by imprisonment not to exceed 180 days, or both.]*[32]

(c) For the purposes of this section, the term:
(1) "Animal" means a vertebrate other than a human, including, but not limited to, dogs and cocks.
(2) "Baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals.
(3) "Fighting" means an organized event wherein there is a display of combat between 2 or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event.

DC CASE LAW

Nature and elements of crime

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[31] Amended by the Animal Protection Amendment Act of 2008.

[32] Repealed by the Animal Protection Amendment Act of 2008.

Silver v. United States, *726 A.2d 191 (D.C. 1999)*[33]

Evidence

Silver v. United States, *726 A.2d 191 (D.C. 1999)*[34]

Silver and Anderson were each convicted of cruelty to animals and engaging in animal fighting. On appeal, Anderson claimed evidentiary insufficiency with respect to his conviction of animal fighting.[35] With respect to Anderson's conviction, the appeals court stated that "the testimony, if credited, demonstrated that Anderson "promoted and carried on a fight between dogs premeditated by the owner in violation of D.C. Code § 22-810. Premeditation may be proved circumstantially, and we agree with the judge, substantially for the reasons stated by him, that the evidence element was sufficient."

[33] *Supra* page 3-4.

[34] This decision concerned D.C. Code 1981 § 22-810.

[35] The facts are set out *supra* page 8-9.