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Animal Hearings in Municipal Courts

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Municipal Judges preside over hearings to determine if animals are a danger to persons or other animals and also to determine if animals are being cruelly treated. Dangerous and cruelly treated animals may be seized under warrant from municipal court and, in some cases, destroyed. These procedures can be unfamiliar territory as the procedures stray from the usual criminal complaint process. Further complicating the issue, many of the statutory procedures changed in the recent legislative session. This session aims to provide municipal judges with necessary guidance in dealing with animal hearings.

By the end of the session, participants will be able to:

1. Define "cruelly-treated" and "dangerous dog" as those terms relate to animal hearings in municipal court;
2. Identify the statutory procedures for both cruelly-treated animals and dangerous dog hearings in municipal court;
3. Discuss the required court actions involved in the lawful seizure of a dangerous dog or cruelly treated animals;
4. Discuss the disposition options available after a court has ruled in a dangerous dog or cruelly-treated animal hearing; and
5. Explain the municipal court's role and limitations in animal-related cases.

Animal Hearings in Municipal Court

I. Applicable Laws, Definitions, and Hearings – Civil Jurisdiction

Health and Safety Code:

- Chapter 821, Subchapter B: Disposition of Cruelly Treated Animals

"Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.

☐ Municipal judge shall sign seizure warrant on showing of probable cause that animal has been or is being cruelly treated
☐ Municipal court hearing to determine whether owner is cruelly treating the animals and determine disposition of animals, which could include destruction
☐ Appeal procedures to county court or county court at law with de novo review and right to jury trial

- Chapter 822, Subchapter A: Dogs that Attack Persons or Are a Danger to Persons

"Dog" means a domesticated animal that is a member of the canine family.

"Serious bodily injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

☐ Municipal judge shall sign seizure warrant on showing of probable cause that dog caused the death of or serious bodily injury to a person
☐ Municipal court hearing to determine whether dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person and determine disposition of dog, which could include destruction
☐ No right to appeal

- Chapter 822, Subchapter D: Dangerous Dogs

"Dog" means a domesticated animal that is a member of the canine family.

"Dangerous dog" means a dog that (A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or (B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

Three Distinct Hearings

▪ Incident of unprovoked attack reported directly to municipal court in city that has adopted Section 822.0422:
☐ Municipal judge shall sign seizure warrant if owner fails to deliver dog to animal control after incident reported
☐ Municipal court hearing to determine if dog is dangerous; may order destruction if owner fails to comply with requirements if found dangerous
☐ Appeal in the manner provided for other cases from same court

▪ Animal control authority has determined dog is dangerous and owner appeals:
☐ Municipal court has appellate review of animal control determination
☐ Appeal of municipal court decision in the manner provided for other cases from the same court

▪ Owner has failed to comply with requirements for owner of a dangerous dog:
☐ Municipal court hearing to determine if owner failed to comply with requirements; may order destruction if owner fails to comply with requirements
☐ Municipal judge shall sign seizure warrant if finds owner failed to comply or deliver dog if not going to comply
☐ Appeal in the manner provided for other cases from the same court

▪ Chapter 822, Subchapter E: Dangerous Wild Animals

"Dangerous wild animal" means: a lion, tiger, ocelot, cougar, leopard, cheetah, jaguar, bobcat, lynx, serval, caracal, hyena, bear, coyote, jackal, baboon, chimpanzee, orangutan, gorilla, or any hybrid of an animal listed in this list.

☐ Municipal court has appellate review of denial, renewal, or revocation of a certificate of registration by animal control
☐ Appeal of municipal court decision to the county court or county court at law

II. Relevant Criminal Laws:

Class C Misdemeanors

☐ Cockfighting - attends as a spectator an exhibition of cockfighting [PC § 42.105]
☐ Unlawful Restraint – enhanceable; penalty goes to the county [HSC § 821.079]
☐ Dogs or coyotes running at large – Up to $100 fine each time dog or coyote runs at large [HSC § 822.012]
☐ Failure to comply with dangerous dog owner requirements, failure to turn dog over to city after incident reported to court, failure to comply with city ordinance requirements for owner of a dangerous dog – enhanceable [HSC § 822.045]
☐ Owning, harboring, having custody or control of a dangerous wild animal without a certificate of registration – offense for each animal and each day [HSC § 822.103(a)]

☐ Failure to display certificate of registration for dangerous wild animal on the premises where animal is kept, failure to file copy with the Department of Health [HSC § 822.106]
☐ Failure to notify animal registration agency within 48 hours of attack on a human by a dangerous wild animal [HSC § 822.110(a)]
☐ Failure to immediately notify animal registration agency and local law enforcement of scape of a dangerous wild animal [HSC § 822.110(b)]
☐ Selling or transferring ownership of a dangerous wild animal to a person who does not have a certificate of registration [HSC § 822.113(b)]

Animal Cruelty Offenses

☐ Cruelty to Livestock Animals – Class A, state jail felony (enhanceable) [PC § 42.09]
☐ Attack on Assistance Animals – Class A, state jail, third degree felony [PC § 42.091]
☐ Cruelty to Nonlivestock Animals – Class A, state jail felony (enhanceable) [PC § 42.092]
☐ Dog Fighting – Class A, state jail felony [PC § 42.10]
☐ Cockfighting – Class A, state jail felony [PC § 42.105]
☐ Unlawful euthanasia – Class B [HSC § 821.056]

Dog Attack Offenses

☐ Attack by Dog [HSC § 822.005]– with criminal negligence, owner fails to secure a dog who makes unprovoked attack causing serious bodily injury [Penal Code definition] or death (not on owner's property) –or- owner knows dog is dangerous and dog makes unprovoked attack causing serious bodily injury [HSC definition] or death (outside secure enclosure where dog is restrained)

- 3rd degree felony if serious bodily injury
- 2nd degree felony if death
- Lots of defenses and loopholes
- Known as Lillian's law
- Dog may be ordered destroyed

"Serious bodily injury" means bodily injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

☐ Attack by Dangerous Dog [HSC § 822.044] – owner of dangerous dog who makes unprovoked attack (outside dog's enclosure) causing bodily injury

- Class C misdemeanor
- Dog may be ordered destroyed

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

III. Trends in Animal Laws Affecting Municipal Courts

- Right to jury trial:

  ☐ Cruelly treated animal hearing: clear right only on appeal from municipal or justice court determination

  ☐ Dog attack hearing: no clear right

  ☐ Dangerous dog hearing: no clear right

- Appeal process:

  ☐ Cruelly treated animal case: clear right to appeal to county court or county court at law; statutes provide detailed appeal process, deadlines, bond amount, etc.

  ☐ Dog attack hearing: no right to appeal

  ☐ Dangerous dog hearing: right to appeal (in the manner provided for the appeal of cases from the municipal, justice, or county court) but no clear process

  ☐ Appeal from denial of dangerous wild animal registration: right to appeal to county court or county court at law but no clear process

- Local regulation:

  ☐ HSC § 822.007 (Dogs that Attack Persons or Are a Danger to Persons): This subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.
  ☐ HSC § 822.047 (Dangerous Dogs): A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions are not breed specific and are more stringent than restrictions provided by this subchapter.
  ☐ HSC § 822.116(b) (Dangerous Wild Animals): This subchapter does not prevent a municipality or county from prohibiting or regulating by ordinance or order the ownership, possession, confinement, or care of a dangerous wild animal.

Cruelly-Treated Animal Hearing Process

BEGINNING THE PROCESS:

(1) Officer applies for seizure warrant → **Question for Judge:** Is there probable cause showing animal has been or is being cruelly treated?

Chapter 821, Subchapter B, Health and Safety Code

NO → **Judge does not issue seizure warrant**

YES → **(2) Judge issues seizure warrant and sets hearing date for within 10 days**

→ **(3) Officer executes seizure warrant, impounds animal, and gives owner notice of hearing**

THE HEARING:

(4) First Question for Court: Did owner cruelly treat the animal?

NO → **Court orders animal be returned to owner**

YES → **(5) Court orders owner divested of ownership of the animal**

(8) Court orders owner to pay court costs, including:
- Administrative costs of
  - investigation
  - expert witnesses
  - conducting any public sale if so ordered*
- Costs incurred by municipal or county animal shelter or nonprofit animal welfare organization in
  - housing/caring for animal during impoundment
  - humanely destroying animal if so ordered*

*this will depend on answer to second question.

(6) Second Question for Court: What happens to the animal?

CHOOSE ONE OF THE 3:

(7a) Order animal sold at public auction
May order animal be spayed/neutered at buyer's cost

(7b) Order animal given to a municipal or county animal shelter or a nonprofit animal welfare organization
May order animal be spayed/neutered at receiver's cost

(7c) Order animal humanely destroyed if in best interest of animal or public health and safety

Post notice of auction → **Conduct public sale**

If animal sells → **Proceeds from sale go first to court costs and any excess returned to former owner**

If animal does not sell → **Use one of the other disposition options**

(9) Third Question for Court: What are the estimated costs likely to be incurred by the municipal or county animal shelter or nonprofit animal welfare organization to house and care for the impounded animal during an appeal process (25 days maximum)?

(10) COURT ENTERS JUDGMENT and sets appeal bond (see back side)

(10) COURT ENTERS JUDGMENT AND SETS AMOUNT OF APPEAL BOND

(11) Fourth Question for Court:

Set the amount of the appeal bond equal to the sum of:

(a) the amount of the court costs ordered under step 8; and
(b) the amount of the estimated costs determined under step 9

**Court may not require a bond in an amount greater than or in addition to this amount*

THE APPEAL:

Owner makes decision whether to appeal

Does owner appeal?

NO

Court shall move forward with ordered disposition from step 7

YES

(12) Owner has 10 calendar days to appeal and file cash or surety bond in set amount

(13) Court then has 5 calendar days to deliver clerk's record to county court or county court at law

(14) County court then has 10 calendar days to consider the appeal

*Appeal is de novo
*Appellant is entitled to jury trial on request

County court decision is FINAL

If owner appeals, animal may not be sold, given away, or destroyed unless necessary to prevent undue pain or suffering during pendency of appeal

Chapter 821, Subchapter B, Health and Safety Code

Cruelly-Treated Animal Hearing Process

Dogs that Attack Persons

Chapter 822, Subchapter A, Health and Safety Code

BEGINNING THE PROCESS:

(1) Any person (including county attorney, city attorney, or peace officer) files sworn complaint with county, justice, or municipal court alleging:
- a dog has caused the death of or serious bodily injury to a person
- by attacking, biting, or mauling the person

↓

Question for Judge:

Is there probable cause to believe the dog caused the death of or serious bodily injury to the person as stated in the complaint?

YES → (2) Judge issues seizure warrant and sets hearing date for not later than 10th day after warrant is issued

Court shall give written notice of hearing date to:
- the owner of the dog or person from whom the dog is seized and
- the person who made the complaint

↓

AT THE HEARING:

Question for Judge:

Did the dog cause the death of the person by attacking, biting, or mauling the person?

YES ↓

Judge shall order dog destroyed

NO ↓

Question for Judge:

Did the dog cause serious bodily injury to the person by attacking, biting, or mauling the person?

YES ↓

Judge may not order the dog destroyed if:

- dog was being used for protection of a person or property, attack occurred in dog's enclosure that was reasonably certain to prevent dog from escaping and provided notice of dog's presence, and injured person was at least 8 years old and was trespassing in the enclosure;
- attack occurred in dog's enclosure, and injured person was at least 8 years old and was trespassing in the enclosure;
- attack occurred while peace officer was using the dog for law enforcement purposes;
- dog was defending a person from assault or property from damage or theft by the injured person; or
- injured person was younger than 8 and occurred in dog's enclosure that was reasonably certain to keep a child from entering

NO ↓

Judge shall order dog released to:
- its owner
- the person from whom dog was seized, or
- any other person authorized to take possession of the dog

NO ↓

Judge does not issue seizure warrant

If none of these circumstances are present, judge may order the dog destroyed

•••••

Presumably, if judge may not or chooses not to order the dog destroyed, dog would have to be released to owner or person from whom the dog was seized.

There is NO right to appeal judge's determination

Dangerous Dogs

3 ways for an owner to learn that he/she is the owner of a dangerous dog, and thus to become subject to requirements.

City/county has adopted ordinance electing to be governed by Section 822.0422:

Any person reports to a county, justice, or municipal court an incident of an unprovoked attack by a dog causing bodily injury or unprovoked acts that would lead a reasonable person to fear a dog will attack and cause bodily injury, both happening outside the dog's reasonably secure enclosure.

Court shall send notice to dog's owner that report has been filed

Owner then has 5 days from receipt of notice to deliver the dog to animal control

OR

If owner fails to deliver the dog after 5 days, court shall issue seizure warrant for the dog

Court shall set hearing to be held not later than 10 days from date dog is seized or delivered and give written notice of the time and place to:

- The dog's owner or person from whom dog was seized, and
- Person who made the complaint

AT THE HEARING:

Question for the Judge:

Is the dog a dangerous dog according to the statutory definition?

YES → Owner learns they are the owner of a dangerous dog and becomes subject to requirements (has 30 days to comply)

NO → Presumably, dog shall be released to owner

Owner may appeal court's determination in the same manner as appeal for other cases from the justice, county or municipal court

Court may order dog remain impounded until court orders disposition after allowing owner a chance to comply

Owner learns of an unprovoked attack by a dog causing bodily injury or unprovoked acts that would lead a reasonable person to fear a dog will attack and cause bodily injury, both happening outside the dog's reasonably secure enclosure.

Owner knows he/she is the owner of a dangerous dog and becomes subject to requirements (has 30 days to comply).

A person reports to animal control an incident of an unprovoked attack by a dog causing bodily injury or unprovoked acts that would lead a reasonable person to fear a dog will attack and cause bodily injury, both happening outside the dog's reasonably secure enclosure.

Animal control investigates and receives sworn statements of witnesses and determines the dog is a dangerous dog. Animal control notifies owner that dog is dangerous.

Owner then has 15 days to appeal the animal control determination to the county, justice, or municipal court.

Owner knows they are the owner of a dangerous dog and becomes subject to requirements (has 30 days to comply).

Owner may appeal court's determination in the same manner as appeal for other cases from the justice, county or municipal court

Any person may file an application with the court alleging that a dog is dangerous and that the owner has failed to comply with the requirements of owning a dangerous dog

Court shall set hearing to be held not later than 10 days from date dog is seized or delivered *[question remains as to how dog is seized/delivered in this type of case]* and give written notice of the time and place to:

- The dog's owner or person from whom dog was seized, and
- Person who made the complaint

AT THE HEARING:

Question for the Judge:

Did the owner fail to comply with the requirements of owning a dangerous dog?

YES → Court shall order dog be seized and allow owner 10 more days to comply.

On 11th day, if no compliance, court shall order dog be destroyed.

Owner may appeal court's determination in the same manner as appeal for other cases from the justice, county or municipal court

NO → Presumably, end of case

Chapter 822, Subchapter D, Health and Safety Code

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K2--What's the Buzz About?

by Cathy Riedel
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K2 is in the news and it's not because there is a breaking story about the world's second highest mountain in the remote south Asian Karakoram Range. No, the buzz is about K2, fake pot.

K2 is a brand name of a synthetic marijuana. It's a blend of "herbs and botanicals" that is treated with chemicals created in laboratories. The synthetic cannabinoids bind to the same neuroreceptors as THC, the psychoactive ingredient in marijuana. This fake marijuana is known by other brand names such as "Spice," "Spice Gold," "Blonde," or "Genie," and it has recently been getting attention as communities acros Texas are becoming aware that there is a substance available for sale to anyone, without age restrictions or regulations of any kind, which can cause the same effects as marijuana. As the clamor for regulation mounts, public officials are recognizing the need to understand what this stuff is.

YK2?

Fake pot first appeared in Europe around 2004 and was sold under the brand name "Spice." The substance was marketed as incense or potpourri and its ingestion mimicked the effects of marijuana. Soon, hospitals in Europe began to report instances where a person appeared with all of the symptoms of marijuana intoxication, but without a positive drug screen for marijuana. Initially, when Spice and similar products were tested, no illegal substances or active ingredients were detected, which could explain the "high" they produced in users. However, in 2008, the herbal blend was tested in Germany. It turned out that the actual herbs listed as the plant ingredients on the package did not show up in the testing; however, the testing did find

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Give the Dog a Bone:
The Criminal and Civil Side of Animal Cruelty

by Katie Tefft
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It is almost impossible to watch television anymore without seeing a heart-wrenching commercial showing faces of abused and abandoned furry friends that need your small monthly donation to survive. Animal rights activist groups, such as PETA (People for the Ethical Treatment of Animals) and the ASPCA (American Society for the Prevention of Cruelty to Animals), have increased campaign efforts to stop animal abuse and raise awareness for this growing problem. Even Bob Barker tried to do his part by encouraging people to "Help control the pet population. Have your pets spayed or neutered."

Whether attributable to increased

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media attention, the economic recession, or just an angrier human race, courts across the United States have seen an increase over the past several years in the number of cases involving cruelty to animals. The most notorious: Michael Vick. Now the star quarterback of the Philadelphia Eagles and self-proclaimed motivational speaker who travels the country talking to youth about his mistakes, Americans remember Michael Vick as a convicted felon who served time in a federal prison for running a dog-fighting ring.

Animal abuse is a crime.

Currently, all 50 states have laws making cruelty to animals a crime, though the severity of the punishment differs greatly. (See the chart on the next page.) Critics of animal laws argue that time and resources are better suited to prosecute violent crimes or crimes in which the victim is human. Animal law scholars and animal rights advocates believe that animal abuse is often a predictor of future violent crime and consider animal abuse a "gateway" behavior.

As a child, Ted Bundy witnessed his grandfather's brutality towards animals. He, in turn, tortured and killed his own pets. He grew up to be a serial rapist and admitted to killing at least 30 women.[1] Numerous other serial killers (i.e., Jeffrey Dahmer, the "Boston Strangler," the "BTK Killer") and many of the notorious school shooters (e.g., Eric Harris and Dylan Klebold, the Columbine shooters) were known to or have admitted to abusing animals as a child. In fact, the FBI considers past animal abuse when profiling serial killers; and child protection and social service agencies, mental health professionals, and educators look at animal abuse as a red flag to identify other violent behaviors and mental disorders.[2]

Recent studies have linked animal abuse to domestic, elderly, and child abuse. Oftentimes, the abused or a child witness to the abuse will take out their rage and frustrations on animals in the home, only further perpetuating the cycle of violence.[3] However, regardless of the rise in literature and studies examining the link between violence against animals and violence against humans, crimes against animals often go unreported and underprosecuted.[4] Animal rights advocates argue that the punishment for those few cases that do result in criminal conviction does not deter future abuse, and does not carry a stigma as do convictions for sex offenses. This belief led Suffolk County, New York to create the first animal abuse registry this past fall. Operating much like the sex offender registries already in place nationwide, the animal abuse registry will require people convicted of cruelty to animals to register or face fines and/or incarceration. The Suffolk County registry will be available to the public online, and supporters of the bill are hoping to introduce additional legislation that will ban registrants from buying or adopting any more pets from shelters, pet shops, or breeders.[5] Other states, including California, Rhode Island, Tennessee, and even Texas, are contemplating similar legislation.

The Criminal Offense: The Penal Code

The Texas Penal Code contains four provisions criminalizing animal cruelty, including Section 42.092: Cruelty to Nonlivestock Animals (meaning any domesticated living creature other than uncaptured wild living creatures or livestock).[6] Though not handled in municipal court, municipal judges should be familiar with the elements of these crimes in their role as magistrates.

Section 42.092 creates an offense if a person intentionally, knowingly, or recklessly:

- Fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;
- Abandons unreasonably an animal in the person's custody;
- Transports or confines an animal in a cruel manner;
- Without the owner's effective consent, causes bodily injury to an animal; or
- Seriously overworks an animal.[7]

Conviction of the offense committed in any of the above ways is a Class A misdemeanor, punishable by a fine not to exceed $4,000 and/or confinement in jail for up to one year. The offense can be enhanced to a state jail felony if the defendant has been previously convicted twice of a Cruelty to Livestock and/or Nonlivestock Animals offense.[8]

If the person intentionally, knowingly, or recklessly:

- Tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;
- Without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;
- Causes one animal to fight with another animal, if either animal is not a dog (think cockfighting); or
- Uses a live animal as a lure in dog race training or in dog coursing on a racetrack,[9]

the offense is punishable on conviction as a state jail felony, carrying a sentence of 180 days to two years confinement in a state jail and possible fine of up to $10,000. It can be enhanced to a felony of the third degree if the defendant has two prior convictions of Cruelty

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U.S. Cruelty Laws Felony Vs. Misdemeanor

Fields used in this chart:
Felony: Whether there are felony provisions for animal cruelty in the specified state.
Year: Year the felony law was enacted, if applicable.
Max. Jail: Maximum amount of jail time allowable by law under the felony provisions.
Max. Fine: Maximum fine allowable by law.
Counseling: Whether state law allows mandatory counseling to be ordered as part of sentencing.
Ban: Whether state law allows for a temporary or permanent ban on animal ownership as part of sentencing.
PPO: Whether state law can include animals in protection orders (pet protective orders).

STATE	FELONY	YEAR	MAX. JAIL	MAX. FINE	COUNSELING	BAN	PPO
Alabama	✓	2000	10 years	$5,000	✗	✗	✗
Alaska	✓		1 years	$10,000	✓	✗	✗
Arizona	✓	1999	1 years	$150,000	✗	✗	✗
Arkansas	✓		1 years	$1,000	✓	✗	✗
California	✓	1988	3 years	$20,000	✓	✗	✓
Colorado	✓	2002	6 years	$500,000	✓	✓	✓
Connecticut	✓	1996	5 years	$5,000	✓	✗	✓
Delaware	✓	1994	3 years	$5,000	✗	✓	✗
D.C.	✓	2001	5 years	$25,000	✗	✗	✗
Florida	✓	1989	5 years	$10,000	✓	✗	✗
Georgia	✓	2000	5 years	$15,000	✓	✗	✗
Hawaii	✓	2007	5 years	$10,000	✗	✗	✗
Idaho	✗		1 years	$9,000	✗	✗	✗
Illinois	✓	1999	5 years	$50,000	✓	✗	✗
Indiana	✓	1998	3 years	$10,000	✓	✗	✗
Iowa	✓	2000	5 years	$75,000	✓	✗	✗
Kansas	✓	2006	1 years	$5,000	✓	✗	✗
Kentucky	✓	2003	5 years	$10,000	✗	✗	✗
Louisiana	✓	1995	10 years	$25,000	✓	✗	✗
Maine	✓	2001	5 years	$10,000	✓	✓	✓
Maryland	✓	2001	3 years	$5,000	✓	✓	✗
Massachusetts	✓	1804	5 years	$2,500	✗	✗	✗
Michigan	✓	1931	4 years	$5,000	✓	✓	✗

Minnesota	✓	2001	4 years	$10,000	✓	✓	✗
Mississippi	✗		6 months	$1,000	✗	✗	✗
Missouri	✓	1994	5 years	$5,000	✗	✗	✗
Montana	✓	1993	2 years	$2,500	✗	✓	✗
Nebraska	✓	2002	5 years	$10,000	✗	✗	✗
Nevada	✓	1999	5 years	$10,000	✓	✗	✓
New Hampshire	✓	1994	7 years	$4,000	✗	✓	✗
New Jersey	✓	2001	5 years	$15,000	✓	✗	✗
New Mexico	✓	1999	18 months	$5,000	✓	✗	✗
New York	✓	1999	2 years	$5,000	✓	✓	✓
North Carolina	✓	1998	6 months	$1,000	✗	✗	✗
North Dakota	✗		1 years	$2,000	✗	✗	✗
Ohio	✓	2002	1 years	$2,000	✓	✗	✗
Oklahoma	✓	1887	5 years	$5,000	✗	✗	✗
Oregon	✓	1995	5 years	$100,000	✓	✗	✗
Pennsylvania	✓	1995	7 years	$15,000	✓	✗	✗
Rhode Island	✓	1896	2 years	$1,000	✓	✗	✗
South Carolina	✓	2000	5 years	$5,000	✗	✗	✗
South Dakota	✗		1 years	$1,000	✗	✗	✗
Tennessee	✓	2001	9 months		✓	✓	✗
Texas	✓	1997	2 years	$10,000	✓	✗	✗
Utah	✓		1 years	$5,000	✓	✗	✗
Vermont	✓	1998	5 years	$7,500	✓	✓	✓
Virginia	✓	1999	5 years	$2,500	✓	✓	✗
Washington	✓	1994	5 years	$10,000	✓	✗	✗
West Virgnia	✓	2003	5 years	$5,000	✓	✓	✗
Wisconsin	✓	1986	5 years	$10,000	✗	✗	✗
Wyoming	✓	2003	2 years	$5,000	✗	✓	✗

Chart reprinted from Pet-Abuse.com and the Animal Abuse Registry Database Administration System, available at: http://www.pet-abuse.com/pages/cruelty_laws.php#ixzz1AD22ZUhU. TMCEC does not warrant the accuracy of the information.

Editor's notes: Section 54.0407 of the Family Code provides that a juvenile court shall order a child found to have engaged in delinquent conduct constituting cruelty to livestock or cruelty to nonlivestock. Animals to participate in psychological counseling. Section 1702.283 of the Occupations Code prohibits a person convicted of cruelty to nonlivestock animals from obtaining a license for a guard dog company or an endorsement as a dog trainer. The person also may not work with dogs as a security officer.

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to Livestock and/or Nonlivestock Animals.[10]

There are several defenses built into the statute: the defendant had a reasonable fear of bodily injury to himself or another; was engaged in scientific research; was acting in the scope of employment as a public servant; or caused the death, serious bodily injury, or bodily injury upon discovery of the animal's destruction to the defendant's property or crops.[11] It is interesting to note that the statute does not create a civil cause of action in tort for damages or enforcement of this section.[12]

Animal cruelty cases usually begin with an investigation by animal control or peace officers. The process for a criminal case alleging animal cruelty will follow the procedures in place for any other Class A misdemeanor or state jail felony offense: the indictment or information for Class A misdemeanor conduct must be presented within two years of the date of the cruel treatment,[13] and the indictment for state jail felony conduct must be presented within three years of the date of the cruel treatment.[14] The purpose behind the criminal statute is to punish the actor. It is a criminal matter; there is a defendant. But the animal or animals – the real victim(s) in the case – are merely evidence. How can law enforcement protect the animal?

The Civil Side: The Health and Safety Code

The Texas Legislature has given municipal and justice courts limited civil jurisdiction in cases involving cruelly-treated animals and dangerous dogs.[15] This article is the first of two parts; part two, to be printed in a later issue of the *The Recorder*, will address dogs that are a danger to humans, as this article will be limited to addressing humans that are a danger to animals.

The Legislature has created two avenues for the State in protecting animals from cruel treatment: criminal prosecution under the Penal Code and the civil remedy contained in the Health and Safety Code.[16] Although statistics on the exact number of these cases just do not exist, media coverage has shed some light on the abundance and intensity of these cruelly-treated animal cases.[17]

According to the Texas Academy of Animal Control Officers (TAACO), 95 percent of animal cruelty cases **stop** at the municipal or justice court level. Put another way, only five percent of animal cruelty cases actually progress to criminal prosecution. This means the overwhelming majority of cruelly-treated animals are protected by municipal and justice courts – and that leads to the biggest difference between the criminal and civil avenues: while the criminal avenue is punitive and exists to punish the actor by imposing a fine or imprisonment, the intent of the cruelly-treated animal provisions in the Health and Safety Code is civil and remedial[18] and aims to protect the animal.

The laws governing cruelly-treated animal hearings in municipal and justice courts are found in just six, rather succinct, statutes in the Health and Safety Code, Subchapter B of Chapter 821. The Health and Safety Code defines cruelly-treated animals as those that are tortured; seriously overworked; unreasonably abandoned; unreasonably deprived of necessary food, care, or shelter; cruelly confined; or caused to fight with another animal.[19] Though not word for word identical, this definition parallels the different ways to commit the criminal offense of animal cruelty found in the Penal Code.

How do these cases come to be heard in municipal (or justice) court and how are they handled?

The Warrant

Section 821.022 provides that "if a peace officer or an [animal control officer] in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal." That application should include a probable cause affidavit, whereas upon the showing of probable cause that the animal has been or is being cruelly treated, the court or magistrate **shall** issue a seizure warrant.

The judge or magistrate shall also set the case for a hearing to be held in the appropriate justice or municipal court to determine whether the animal has been cruelly treated. That hearing must be scheduled within **10 calendar days** of the date the seizure warrant is issued. The peace officer or animal control officer executing the seizure warrant shall then impound the animal (humanely, of course) and give notice to the animal's owner of the time and place of the hearing. It is easiest to include that notice in the seizure warrant itself.

Although, at this stage, only the law enforcement (or animal control) officer and the judge are involved, the clerk may be called to docket the hearing. Clerks: note that this is **not** a criminal case. There is no defendant in the matter, only a respondent. As a civil proceeding, the case should be styled as "In the Matter Of [the animal(s) at issue]" or "In Re [the animal(s)]" and not as "State vs. [owner or animals]."

It is also a good idea for whoever will be representing the city to be involved as well, as it is important to remember the 10-calendar-day deadline. Note that under this civil process, days

are computed by calendar days, and pursuant to the Rules of Civil Procedure. This 10-day "deadline" essentially limits the amount of time the city has to build their case. Prosecutors or city attorneys who will be representing the city would be best to work with law enforcement or animal control before applying for the seizure warrant.

The statutory requirements in Section 821.022 raise some unanswered questions.

First, in an ideal case, the identity of the animal's owner would be clear, and the owner would claim ownership. But what happens when the purported owner denies ownership or the owner cannot be located? To whom should the officer give the required notice? There are no statutory answers as to how to proceed if the owner cannot be located. Some cities proceed with the seizure under city ordinances allowing animal control to impound a stray or at-large animal. However, due process requires that before a person is deprived of property (and animals are still considered property under the law), they must be afforded notice and an opportunity to be heard. Without knowing that notice was given, a court should be hesitant to proceed to hearing. It is clear that until the city is operating under these procedures outlined in Chapter 821, the municipal court should not be involved.

Second, what if the animal is already in the city's custody? Unlike other civil proceedings in municipal court (i.e., dangerous dogs) where the process of getting the animal seized is quite circular, there is no process for getting a cruelly-treated animal case into municipal court without first going through the seizure process. It makes sense to assume that if the animal(s) were already seized, the party with custody of the animal could simply contact the court to set a hearing date and have notice served on the owner. It also seems simple enough that the court just issue the seizure order to be given to the owners, though the physical seizure has already occurred. Either way, it is important that the owner receive notice before the case ever proceeds to hearing.[20]

The Hearing

Assuming that the seizure warrant is properly issued, the animals are properly seized, and the owners are properly notified of the hearing, what should the court expect?

The hearing is to be held in the appropriate municipal or justice court within 10 days of the date the seizure warrant was signed. Again, this means the city has no more than 10 days to prepare for the hearing. The actual hearing is governed by Section 821.023, though the only guidance as to what occurs during the hearing is a position stating that any interested party is entitled to present evidence at the hearing.[21] This would most certainly include the animal's owner, should include the city attorney, peace officer, or animal control officer bringing the case, and could possibly include anyone else. Without more specific guidance, and as the person in control of the court, it is up to the judge to determine who the interested parties are and who may present evidence. As this is a civil matter, there is no requirement that the owner be present at the hearing; the only requirement is that the owner be provided notice of the hearing.

Many of us could recognize when a dog or cat has been cruelly treated in cases of neglect, starvation, or active physical abuse. But how many laypersons – how many of you – could recognize body condition scores for an equine or bovine? How many people really know what a chinchilla or coatimundi should weigh? As this is an area not of the layperson's expertise, these cases will many times require expert testimony from veterinarians or zoologists.

There is no way to predict the time a hearing like this will take. Factors will include the number of witnesses, the number of animals at issue, whether the owner appears, or how the judge answers the questions addressed in the next few paragraphs. It is safe to assume, though, that these hearings are often emotionally charged cases – especially when the owner appears – as the animals are either valued commodities or valued companions.

Unlike a criminal hearing where the trier of facts must determine whether all the elements of the crime have been proved beyond a reasonable doubt, in the civil hearing, the complaining party (the city) must prove by a preponderance of the evidence that the owner cruelly treated the animal according to the definition in Section 821.021.[22] There is no culpable mental state as there is in the criminal offense (where the State must prove the conduct was committed intentionally, knowingly, or recklessly). In this type of hearing, the complaining party (also known as the petitioner) must just prove that more likely than not, the cruel conduct occurred.

There are many debatable questions as to what happens during the hearing.

Do the Rules of Evidence apply? Presumably, yes; when would they not? However, the judge has wide discretion in setting the stage for this type of hearing. Keep in mind the emotional nature of the proceeding and invoke the Rule if there is contradictory testimony expected. Most importantly, make sure there is a bailiff in the courtroom to maintain order and decorum.

Do the Rules of Civil Procedure

apply? Case law makes clear that these matters are civil.[23] However, the Texas Rules of Civil Procedure explicitly apply to justice, county, and district courts, and strictly speaking, do not apply to municipal or corporation (the precursor to municipal) courts.[24] Yet, because the matter is civil, municipal courts could benefit from becoming familiar with the Rules of Civil Procedure to apply those general and justice court-specific rules whenever necessary.

What if the seizure warrant is not served immediately? If the warrant is not executed and notice delivered until the day before the hearing is scheduled, what happens? This is not a search warrant governed by the Code of Criminal Procedure with "expiration dates." However, according to the Rules of Civil Procedure, the court may at any time in its own discretion, order the time period enlarged.[25] This should be considered in the interest of justice when the owner has not had sufficient notice. Judges should be cautious, however, to not grant continuances as a matter of course, as the statute is firm in its 10-day time period, which begs the question as to whether a continuance can even be granted.

But the million-dollar question is: Does the owner have the right to a jury trial? The cruelly-treated animal provisions in Chapter 821 do not explicitly grant the right to trial by jury; it does not even mention the word "trial." It is a hearing, and the decision is made by the "court." On first thought, this would mean there is no right to a jury trial. However, a look at constitutional and case law makes this a more difficult issue.

Article I, Section 15 of the Texas Constitution states: "The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency… ." Legal scholars have posited that Section 15 permits the Legislature to deny the right to trial by jury in cases where no such right existed at common law when the Constitution went into effect.[26] As the civil remedy for cruelly-treated animals did not exist as a suit at common law in 1876, many agree there is no right to a jury trial under the Texas Constitution.

However, according to the Beaumont Court of Appeals in *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996), "restrictions placed on the right to a jury trial will be subjected to the utmost scrutiny."[27] In fact, the Beaumont Court of Appeals held there was a right to a jury trial in a proceeding under Chapter 821, and this is, albeit from an intermediate appellate court, the only directly on-point case under Texas law. The limited case law addressing cruelly-treated animal hearings under Chapter 821 all arise from appeals following a jury trial.[28] There is not, as of yet, any published case law affirming a denial of a jury trial, and there is no definitive decision by the Texas Supreme Court.[29]

Alas, there is no black and white answer to this question that can be given by TMCEC.[30] So let us finally move on to areas with more guidance… .

The Disposition

At the conclusion of the hearing, the court has two options: either find the owner treated the animal cruelly or find the owner did not. If the court finds that the owner has not cruelly treated the animal, the court must order the animal be returned to the owner.[31] If the court finds the owner has cruelly treated the animal, the court shall order that the owner be divested of ownership of the animal and then decide on a disposition. This is not done in a judgment, but in an order.

Upon a finding of cruel treatment, the court shall order one of three things: that the animal be sold at public auction; that the animal be given to a nonprofit animal shelter, pound, or society for the protection of animals; or order the "death penalty" (i.e., that the animal be humanely destroyed - euthanized) if the court can find that is in the best interest of the animal or public health and safety.[32] Finally, upon a finding of cruel treatment, the court shall order the owner to pay all "court costs" including the costs of investigation, expert witnesses, housing and caring for the animal during its impoundment (for the past 10 or so days), conducting any public sale, or humanely destroying the animal.[33] It is important to note that these are not the traditional court costs we know in municipal court. There is no consolidated fee, arrest fee, or security fee, as it is not a criminal matter or conviction. There are no costs to be forwarded to the State Comptroller. Do not confuse these "court costs" with the usual definition, but think of them as the remedial element of the civil process. In that respect, the amount of the costs incurred by the city is something the city attorney, prosecutor, or law enforcement officer should be prepared to present to the court following or at the conclusion of the hearing. The cost of housing and caring for the impounded animal will also be relevant in setting an appeal bond.

If the court orders the animal to be sold or given up, the court may order that the animal be spayed or neutered at the cost of the receiving party.[34] If the court orders the animal be sold at public auction, notice of the auction must be posted on a public bulletin board where other public notices are posted for the county/ municipality.[35] There are no rules for the auction itself, but presumably,

the process should follow that used for other property sold at public sale by a local government. The proceeds from the sale must first be applied to the costs ordered by the court, and any excess proceeds shall be returned to the municipal or justice court to return to the former owner.[36] Funny how a person divested of ownership for cruelly treating an animal could potentially profit from that order! However, the former owner may not bid, himself or through a representative, at the auction.[37]

If the officer conducting the auction is unable to sell the animal, the officer can then resort to one of the other disposition options – giving the animal to a nonprofit shelter, pound, or protection society, or humanely destroying the animal if that is in the animal's and public's best interest.[38]

However, before the animal is given over to a shelter, sold, or destroyed, the owner is entitled to an appeal, and during the pendency of the appeal, the city should take all steps to maintain the status quo. The animal may not be sold or given away, and should only be destroyed to prevent the undue pain or suffering of the animal.[39]

The Appeal

An owner divested of ownership may appeal the order to a county court or county court at law in the county in which the justice or municipal court sits.[40] This is a huge improvement in the law courtesy of Senate Bill 408, which took effect September 1, 2009. Pre-SB 408, an owner divested of ownership could only appeal if the animal was ordered sold at public auction. If the court ordered the animal to be given to a shelter or worse, destroyed, there was no appeal mechanism.[41] Now, an owner divested of ownership, no matter the disposition, can appeal the order, with defined timelines.

Not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and appeal bond to perfect the appeal. The appeal bond amount shall be set by the municipal judge (or justice of the peace) at an amount adequate to cover the estimated expenses that will be incurred by the city (or county) in housing and caring for the impounded animal during the appeal process.[42] This is another reason why it is important to have someone at the hearing that can present evidence on the costs incurred by the city or county.

Not later than the fifth calendar day after the appeal is perfected, the court shall deliver a copy of the court's transcript to the county court or county court at law by which the appeal will be heard.[43] As the statute makes no distinction between courts of record or courts of non-record, the use of the term "transcript" is problematic. Municipal courts of record will have some recording or transcript of the hearing by virtue of being a court of record. However, municipal courts of non-record or justice courts are surely not expected to record this civil hearing at the court's expense. The statute also makes no mention as to who shall bear the expense of producing the transcript. Looking to Texas Rule of Civil Procedure 574 for guidance, when an appeal is perfected from a justice court, the court shall send the original papers in the cause on to the county court.[44] This is similar to what municipal courts of non-record do in an appeal of a criminal conviction. Presumably then, where Section 821.025 mentions transcript, the municipal or justice court shall forward the court's *record* to the county court. Of course, if the court has a transcript or recording of the hearing, that should be forwarded as well.

Finally, not later than the 10th calendar day after the date the county court or county court at law receives the "transcript," the appellate court shall dispose of the appeal.[45] Doing the math, the whole appeal process should take no longer than 25 days (10 from the date of the order plus five from the date the appeal is perfected plus 10 from the date the transcript is received). Again, as the statute makes no distinction between courts of record or non-record, presumably, appeals from a municipal court of record will be based on error in the record, while appeals from municipal courts of non-record or justice courts will be de novo review.

What Section 821.025 does not address is any requirement that a motion for rehearing or new trial be made prior to appeal, as that requirement exists for criminal cases. A reading of Texas Rules of Civil Procedure 571 through 574 (regarding perfecting an appeal, appeal bonds, and duties of the justice court upon an appeal) suggests that no requirement is necessary – dates and duties are dependent on the date of judgment **or** the date a motion for new trial is denied.

The statute does say that the decision of the county court or county court at law is final and may not be further appealed.[46]

Final Thoughts

As previously mentioned, there is scarce case law addressing this civil process for cruelly-treated animals in municipal or justice courts. This may be due to the fact that these cases cannot be appealed out of the county court, so there is little opportunity to get the case to an intermediate appellate court that would publish a decision. What recent case law does exist focuses primarily on the issue of double jeopardy. In a nutshell, case law makes it clear that this procedure is civil in nature, not punitive.[47] Double jeopardy does not bar remedial civil proceedings based on the same offense as a prior

criminal prosecution, or vice versa.[48] Civil proceedings for the same circumstances do not bar criminal prosecution if the civil proceedings are remedial; however, they do if the intent or effect of the civil proceedings is criminally punitive.[49] One appellate court has held, in *State v. Almendarez*, 301 S.W.3d 886 (Tex. App.—Corpus Christi 2009), that there was no proof that the sanctions (i.e., the disposition order) imposed in the justice court "were so punitive either in purpose or effect as to transform the civil action and remedies imposed into a criminal punishment."[50]

Section 821.023 contemplates both a civil hearing and criminal prosecution out of the same cruel treatment, emphasizing the belief that the civil process is a way to protect the abused, while the criminal process is a way to punish the abuser. A conviction for animal cruelty under Section 42.09 or 42.092 of the Penal Code can be introduced at a hearing under the Health and Safety Code and is prima facie evidence that an animal has been cruelly treated. However, the reverse is not true; testimony by an owner at a cruelly-treated animal hearing under the Health and Safety Code is not admissible in a criminal trial under the Penal Code.[51]

On a final note, though there are unanswered questions and holes in the process for conducting a cruelly-treated animal hearing, the Legislature has continually groomed Chapter 821 of the Health and Safety Code, and will hopefully revisit these issues this spring. The media attention surrounding the recent U.S. Global Exotics case out of the Arlington Municipal Court of Record, spawning the largest animal seizure and forfeiture in U.S. history, (of over 26,000 animals) has certainly made its way to the Capitol.

For more on conducting a cruelly-treated animal hearing in municipal court, watch the "Cruelly-Treated Animal Hearing" Webinar On-Demand on the TMCEC Online Learning Center at http://online.tmcec.com, or attend the break-out track at the Regional Judges Program this academic year.

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[1] Cynthia Hodges, "The Link Between Animal Cruelty and Violence Towards People" available at www.cynthiahodges.com/animals/pages/animal_human_violence.pdf (December 2007); National District Attorneys Association "Talking Points: Cruelty to Animals by Children, Serial Killers and Other Violent Criminals" (March 2006). On a side note, Ted Bundy was initially caught and arrested for a traffic violation.

[2] Cynthia Hodges, "The Link Between Animal Cruelty and Violence Towards People," *Supra*.

[3] *Id.*; "The Link Between Animal Cruelty and Interpersonal Violence" available at www.pet-abuse.com/pages/abuse_connection.php#ixzz19ux97QNn; see also National District Attorneys Association "Talking Points: Animal Cruelty and Its Link to Domestic Violence, Child and Elder Abuse" (March 2006); Frank R. Ascione, Ph.D., Claudia V. Weber, M.S., and David S. Wood, "The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered" available at www.vachss.com/guest_dispatches?ascione_1.html.

[4] See the *Baltimore Sun's* Unleashed Blog Poll: "Fighting Animal Cruelty an Uphill Battle Nationally" available at http://weblogs.baltimoresun.com/features/mutts/blog/2010/12/post_72.html.

[5] "Animal Abuse Registry: Suffolk County, NY Creating Nation's First Public Database Tracking Animal Cruelty Offenders" available at www.huffingtonpost.com/2010/10/14/animal-abuse-registry-suf_n_762905.html.

[6] Additionally, Section 42.09 addresses Cruelty to Livestock Animals, Section 42.091 addresses Attack on Assistance Animal, and Section 42.10 criminalizes Dog Fighting.

[7] Sec. 42.092(b)(3), (4), (5), (6), and (9), Penal Code.

[8] Sec. 42.092(c), Penal Code.

[9] Sec. 42.092(b)(1), (2), (7), and (8), Penal Code.

[10] Sec. 42.092(c), Penal Code.

[11] Sec. 42.092(d) and (e), Penal Code.

[12] Sec. 42.092(g), Penal Code. This is not to be confused with the civil remedial process used to protect the animal discussed in the second half of the article.

[13] Art. 12.02(a), Code of Criminal Procedure.

[14] Art. 12.01(7), Code of Criminal Procedure.

[15] See Chapters 821 and 822, Health and Safety Code. See also *Chambers v. Perry*, 2010 Tex. App. LEXIS 2054 (Tex. App.—Dallas March 24, 2010); *Russu v. State*, 2005 Tex. App. LEXIS 3862 (Tex. App.—Houston [1st Dist.] May 19, 2005).

[16] See *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996).

[17] Cruelly-treated animal cases are not reported on the Official Municipal Court Monthly Report to the Office of Court Administration, nor are court costs collected on these cases to result in a report to the Comptroller of Public Accounts.

[18] *State v. Almendarez*, 301 S.W.3d 886 (Tex. App.—Corpus Christi 2009).

[19] Sec. 821.021, Health and Safety Code.

[20] See *Pine v. State*, 921 S.W.2d 866 (Tex. App.—Houston [14th Dist.] 1996) for a rather academic legal discussion of *in rem* forfeiture actions (referring to the disposition provisions under the Health and Safety Code as a civil forfeiture). Note that later cases object to the classification of these proceedings as forfeiture actions.

[21] Sec. 821.023(c), Health and Safety Code.

[22] According to *Black's Law Dictionary, Ninth Edition*, the preponderance of the evidence is "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."

[23] See *Granger v. Folk*, *Supra*; *State v. Almendarez*, *Supra*.

[24] Tex. R. Civ. Pro. 2.

[25] Tex. R. Civ. Pro. 5.

[26] See *Granger v. Folk*, *Supra*; *Johnson v. State*, 267 S.W. 1057 (Tex. Civ. App. 1925).

[27] *Granger v. Folk*, 931 S.W.2d at 393.

[28] See e.g., *Russu v. State*, *Supra* (did not reach the issue of right to a jury trial, though the denial of a jury trial was one of appellant's grounds for appeal); *Keigley v. State*, 2003 Tex. App. LEXIS 7236 (Tex. App.—Dallas August 25, 2003) (owner is entitled to a jury trial in the county court under Chapter 821 of the Health and Safety Code, but in this case, the owner failed to pay the jury fee required under the Rules of Civil Procedure and failed to object to proceeding without a jury); *Granger v. Folk*, *Supra* (court found owner was entitled to jury trial; trial court abused its discretion in granting State's Motion

to Return Defendant's Jury Fee where owner requested a jury trial and paid the jury fee); *Pine v. State*, *Supra* (forfeiture case tried de novo before a jury in county court following justice court's order of forfeiture).

[29] Petition for review was denied by the Texas Supreme Court in *Russu v. State* at 2006 Tex. LEXIS 292 (Tex. Apr. 21, 2006). The *Russu* brief argued that there was a divide amongst the appellate courts as to whether a right to jury trial existed.

[30] However, in the meantime, look at Tex. R. Civ. Pro. 544 (Jury Trial Demanded for Justice Courts).

[31] Sec. 821.023(g), Health and Safety Code.

[32] Sec. 821.023(d), Health and Safety Code.

[33] Sec. 821.023(e), Health and Safety Code.

[34] Sec. 821.023(f), Health and Safety Code.

[35] Sec. 821.024(a), Health and Safety Code.

[36] Sec. 821.024(b), Health and Safety Code.

[37] Sec. 821.024(a), Health and Safety Code.

[38] Sec. 821.024(c), Health and Safety Code.

[39] Sec. 821.025(b), Health and Safety Code.

[40] Sec. 821.025(a), Health and Safety Code.

[41] All of the current case law addressing appeals under Chapter 821 are pre-SB 408. See *Granger v. Folk*, *Supra*; *Pitts v. State*, 918 S.W.2d 4 (Tex. App.—Houston [1st Dist.] 1995).

[42] Sec. 821.025(a), Health and Safety Code.

[43] *Id.*

[44] Texas Rule of Civil Procedure 574 is titled "Transcript."

[45] Sec. 821.025(a), Health and Safety Code.

[46] *Id.*

[47] See e.g., *State v. Almendarez*, *Supra*; *Granger v. Folk*, *Supra*.

[48] *State v. Solar*, 906 S.W.2d 142 (Tex. App.—Fort Worth 1995).

[49] *Rodriguez v. State*, 93 S.W.3d 60 (Tex. Crim. App. 2002).

[50] *State v. Almendarez*, 301 S.W.3d at 895 (addressing all of the Hudson factors to determine that terminating the owner's rights in a filly did not preclude criminal prosecution for animal cruelty).

[51] Sec. 821.023(a) and (b), Health and Safety Code.

From the Prosecutor's Perspective: Lessons Learned from an Animal Cruelty Seizure with More Than 26,000 Animals

by David Johnson
Assistant City Attorney & Deputy Chief Prosecutor
City of Arlington

Most animal cruelty hearings under Health and Safety Code Chapter 821 are short, relatively simple, and have no appeal. But every now and then, you encounter a case that breaks the mold on everything you thought you knew about animal cruelty hearings in municipal court. For the City of Arlington, and for me, that was the U.S. Global Exotics (USGE) case in December 2009.

USGE was an exotic animal import/export business operating out of an industrial warehouse in east Arlington. With the help of a U.S. Fish and Wildlife special agent and an undercover informant, the City of Arlington discovered the horrific treatment and unconscionable neglect suffered by animals at USGE. Animals were left in shipping containers for weeks at a time without food or water. Sick or injured animals were denied necessary medical treatment. Animals were regularly starved so that USGE could save money on food. Cages and habitats were rarely cleaned and became rife with disease.

When Arlington executed an animal cruelty seizure warrant at USGE, there were over 26,000 exotic animals taken. During the ensuing seven-day hearing and the appeal, USGE's attorneys threw every legal argument in the book at Arlington, but we prevailed.

To help ensure successful animal cruelty hearings across Texas, the following are some of Arlington's "Lessons Learned" from this one-of-a-kind case.

(1) City attorneys: Review the seizure warrant before presenting it to the judge. Describe the probable cause for animal cruelty clearly and specifically. If there are multiple animals, list why all of the animals are cruelly treated or how the conditions **as a whole** constitute cruelty to every animal.

(2) Know the proper styling for the case - *In re: name or description of animal*. The styling is not: *State of Texas vs. Owner, City vs. Owner, or In re: Owner*. The proper styling can preempt arguments that the animal cruelty hearing is like a civil lawsuit where parties need to be "joined" and identified in the case styling.

(3) If a business owns the animal(s), send hearing notices to the business' president, vice president, registered agent, or partners.

(4) Call expert witnesses, if needed, such as veterinarians or other animal experts, who can testify about the appearance of healthy and unhealthy animals, what certain animal behavior means, etc.[1]

(5) Arlington found that the Texas Rules of Civil Procedure (TRCP), strictly speaking, do not apply to animal cruelty hearings in **municipal courts**. They only apply to civil actions "in the justice, county, and district courts."[2] However, the TRCP may be amended soon to include municipal courts.

(6) City attorneys: Ask the court for a brief hearing on court costs (restitution) **after** the hearing, upon a finding

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Chasing Our Tails: Problems in the Laws Regarding Dangerous Dogs

By Katie Tefft
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We've all heard the joke about the dog chasing the mailman. But when Fido gets feisty, it's no laughing matter. According to the Centers for Disease Control and Prevention, "man's best friend" bites approximately 4.7 million Americans each year. One in five victims requires medical attention for their injuries, and sadly, an average of 16 people die from dog attacks each year.[1]

This article is Part II in a series about animal issues seen in municipal courts. Part I, printed in the January 2011 issue of *The Recorder*, looked at humans who are a danger to animals and focused on the civil cruelly-treated animal hearing under Chapter 821 of the Health and Safety Code.[2] This part will address dogs that are a danger to humans and will examine the laws of a municipal court's civil jurisdiction over dangerous dog hearings under Chapter 822 of the Health and Safety Code.[3]

An unscientific polling of the TMCEC listservs showed that most municipal courts handling civil animal hearings see dangerous dog cases rather than cruelly-treated animal cases. The volume of these cases, however, is still unknown. Whether your city handles these cases, or they get filed in the county or justice court, it is important for judges, clerks, prosecutors, city attorneys, city officials, animal control officers, and law enforcement officers to understand these dangerous dog proceedings. Unfortunately, the law gives little guidance as to

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Internet Research and Communication by Jurors

By Mark Goodner
Program Attorney & Deputy Counsel, TMCEC

> "We live in an era when access to information is ubiquitous. We are used to having a question cross our mind and checking for the answer. We do it without thinking. And jurors do too."[1]

Thanks to the internet, we no longer have to wait until the 10 o'clock news or the morning paper to find out the score of the big game or the outcome of the election. With a few clicks of the mouse and strokes on the keyboard, we can usually find answers to our queries in mere moments. We are so connected to and through the internet and so accustomed to the immediate access to extensive information

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how a dangerous dog case should be handled by anyone involved. Therefore, this article will discuss what law does exist and attempt to address those areas in which the law could (and should) be expanded.

I. When Dogs Attack

Subchapter A of Chapter 822 of the Health and Safety Code deals with dogs that attack persons or are a danger to persons. Consider this the reactive proceeding, as the case is only heard by a court after the dog has attacked.

A. Getting the Case to Court

Any person, including, but not limited to, the county attorney, the city attorney, or a peace officer, may file with a municipal court, justice court, or county court a sworn complaint[4] alleging that the dog has attacked, bitten, or mauled a person and caused the death of or serious bodily injury to that person. The allegations in the complaint must establish probable cause that the dog caused the death or serious bodily injury. Upon a showing of probable cause, the court shall issue a warrant ordering the animal control authority to seize the dog and provide for the dog's impoundment in secure and humane conditions pending a hearing.[5]

B. The Dog on Trial

The court then sets the time for a hearing on the matter. The law provides that the hearing must be held within 10 days after the date the warrant is issued. The court shall give written notice of the time and place of the hearing to both the dog's owner, or the person from whom the dog was seized, and the person who filed the complaint with the court.[6] As a practical matter, it is helpful to schedule the hearing and put the notice in the actual seizure order/ warrant. Of course, this relies on the animal control authority to deliver the notice at the time of seizure.

It is important to note that the hearing is to be set no later than 10 days from the date the warrant is issued, not from the date the seizure takes place. There is no expiration date on the seizure warrant, but the law simply does not contemplate any lag in the issuance and execution of the seizure warrant. As it is the court's obligation to provide notice to both the animal's owner or caretaker and the complaining party, the court should be mindful of the owner's right to due process.

Presuming the seizure occurs timely and notice is given to all necessary parties, the court should proceed on the hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person.[7] This leads to three questions that must be asked: first, did the dog attack, bite, or maul a person?; second, did the person suffer serious bodily injury or death?;[8] and third, did the attack, bite, or mauling cause serious bodily injury or death? The court is not making a formal determination that the dog is a "dangerous" dog;[9] nor should the court be concerned with determining whether the dog was provoked.

The statutes give little guidance as to how the hearing shall proceed. Any interested party, (i.e., anyone with a dog in the fight - pun intended) may present evidence at the hearing.[10] The owner may hire counsel to represent his or her interest in the dog. The city or county, represented by the city or county attorney, may choose to present evidence. Note that notice need not be given to all interested parties, just to the owner, or person from whom the animal was seized (preferably both), and the complainant. The judge is left to determine who is an interested party and what rules will apply at the hearing.

The Texas Court of Criminal Appeals held in *Timmons v. Pecorino* that although the disposition hearing was held in a municipal court, historically given only criminal jurisdiction, the case to determine disposition of a dangerous dog "cannot be considered criminal," as no person is charged with or convicted of a criminal offense.[11] Thus, the Court of Criminal Appeals has made it clear that dangerous dog hearings under the Health and Safety Code are civil matters.[12] This begs the question: do the Rules of Civil Procedure apply? For that matter, do the Rules of Evidence apply? What burden of proof should apply? In lieu of repeating this discussion here, see these questions addressed in Part I in the January 2011 issue of *The Recorder*. The short answer is, we don't know.

The most daunting question as to how the hearing is handled is whether the owners have the right to a jury trial. Short answer again: we don't know. The statutes say this is a hearing. If the court finds *x*, then the court orders *y*. There is no indication of a right to jury trial. Unlike in the cruelly—treated animal realm, there is no case law that suggests owners have a right to a jury trial; there is very little case law period on dangerous dog hearings. This is a hearing to determine whether the dog caused serious bodily injury or death, not to determine whether the owner did or did not do something. Animal lawyers have claimed that owners should have the right to a jury trial; many agree because animals are property, and the Constitution provides the right to jury trials in property cases. However, the Legislature has not clarified this—neither has the Supreme Court nor Court of Criminal Appeals. This question remains a hotly debated subject.

C. Acquittal or Death Penalty?

Although little is clear as to what happens during the hearing, there is statutory guidance as to what happens at the conclusion of the proceeding. If the court does not find the dog caused death or serious bodily injury, the court **shall** order the dog be released to either the owner, the person from whom the dog was seized, or any person authorized to take possession of the dog.[13] If the court finds that the dog caused the *death* of a person by attacking, biting, or mauling, the court **shall** order the dog destroyed.[14] If the court finds that the dog caused *serious bodily injury* to a person by attacking, biting, or mauling, the court **may** order the dog destroyed.[15] The statute gives no alternative disposition options. As the court has the discretion to order destruction in cases of serious bodily injury, what if the court declines to order destruction? What happens to the dog then? The law does not say, and it does not make sense to use any of the other dispositional orders available under cruelly-treated animal hearings (i.e., give the animal to a nonprofit animal shelter or put it up for auction) as it is the dog that is a danger, not the owner.

There are five instances, however, where the court may **not** order the dog destroyed even if there is a finding that the dog caused serious bodily injury. They are: (1) when the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure reasonably certain to prevent the dog from leaving and with required posted notice, and the victim was at least eight years old and was trespassing; (2) the dog was not being used for the protection of a person or person's property but the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure; (3) the attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes; (4) the dog was defending a person from assault or a person's property from damage or theft by the injured person; or (5) the injured person was younger than eight years old and the attack, bite, or mauling occurred in an enclosure in which the dog was being kept that was reasonably certain to keep a person younger than eight from entering.[16] The statute fails to specify what happens to the dog when one of the exceptions is present. Presumably, the court would order the dog released to either the owner, the person from whom the dog was seized, or any person authorized to take possession of the dog.

If it is determined by the court that the dog shall be destroyed, the destruction must be performed by a licensed veterinarian, personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals, or personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.[17]

A word of caution: these are civil cases. There is no "deferred disposition" option under which a judge can impose reasonable conditions. The judge's authority is clear: order the dog destroyed or order the dog released. There is no room for creativity, and municipal judges lack the authority in these proceedings to enter orders other than those authorized by law, including orders for restitution. Whereas Chapter 821 (cruelly-treated animals) contemplates ordering "court costs" be paid to compensate the city for the cost of housing the animal, Chapter 822 (dangerous dogs) does not. Therefore, judges should not be ordering restitution, payment of medical expenses, or other reasonable conditions on these cases. Nothing in Chapter 822, however, precludes a victim from suing the owner civilly in an appropriate court (i.e., not municipal court) in tort under dog bite laws. These laws also do not preclude a district attorney from filing criminal charges under Section 822.005 against a negligent owner to hold the dog owner responsible.[18]

D. No Right to Appeal the Death Penalty

Dogs that attack, bite, or maul a person and cause serious bodily injury or death are on trial for their lives. These animal hearings are the only time a municipal, justice, or county judge can impose the death penalty. This would lead most people to believe the owners would have a right to appeal the court's destruction determination. However, case law and Attorney General opinions make clear that there is no right to appeal without statutory authority.[19] Nothing in Chapter 822, Subchapter A grants a right to appeal. This means that a court's determination ordering destruction of the dog is final and may not be appealed. Similarly, a court's determination ordering release of the dog may not be appealed by the complainant. As such, there is no need to address in this section whether the hearing should be recorded.

Beware of Dogs that Do Not Cause Death or Serious Bodily Injury

What if the judge agrees that the dog caused bodily injury, but it does not rise to the level of serious bodily injury as defined by Section 822.001? A dog bite that rips a child's jeans and cuts the child's leg may not require medical attention. But, what, then, should happen to the dog? The judge's hands are tied—the judge can only order destruction upon a finding of serious bodily injury or death, not just bodily injury. In this situation, one would need to go through the proper channels to formally declare the dog a "dangerous dog". Thus, let

us turn our attention to Subchapter D, the true Dangerous Dog statutes.

II. Dangerous Dogs

Subchapter D of Chapter 822 of the Health and Safety Code focuses on the determination that a dog is dangerous and imposes requirements for owners of dangerous dogs. Think of this subchapter as the proactive proceedings, as the requirements on owners of dangerous dogs are intended to prevent future dog attacks without jumping to destroy the dog. In many cases, it is the owner on "trial."

Section 822.041(2) defines "dangerous dog" to mean a dog[20] that:

(A) makes an unprovoked attack on a person that causes *bodily injury* and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to *reasonably* believe that the dog will attack and cause bodily injury to that person.[21]

Under Subchapter D, there are three types of hearings that may occur in a municipal, justice, or county court. A word of warning: although these are three distinct proceedings, all rely on the same statutes, which can get confusing. Pay careful attention to the statutory references throughout.

A. Determining the Dog is Dangerous

First Type of Hearing: Municipal Court as Court of Appeals

Section 822.0421 provides that an animal control authority may investigate any report of an incident defined by Section 822.041(2) (unprovoked attack causing bodily injury or unprovoked acts leading a person to reasonably believe the dog will attack and cause bodily injury).[22] Animal control, if it chooses to investigate, should take sworn statements from any witnesses and then determine whether the dog is a dangerous dog (meeting the above definition). If animal control determines the dog is a dangerous dog, the animal control authority shall notify the owner.[23] The owner is then subject to certain requirements under Section 822.042 (see below).

Once an owner is notified that the dog is a dangerous dog, the owner has just 15 days from the date of notification to appeal the determination to a municipal, justice, or county court *of competent jurisdiction*.[24] Many have claimed that this language requires the owner to appeal to a municipal court of record, or conversely, that only a municipal court of record has jurisdiction to hear this type of appeal. The Attorney General, however, has interpreted "court of competent jurisdiction" to refer to territorial jurisdiction. See Tex. Atty. Gen. Op. GA-0660 (2008). Thus, municipal courts, even if not a court of record, have jurisdiction to hear these appeals, assuming the dog resides in the city's territorial limits. If the dog does not reside within the city, presumably, the appeal should go to the appropriate justice court or directly to the county court.

Section 822.0421(b) gives absolutely no guidance on how an appeal is to be handled by the municipal, justice, or county court. Must there even be a hearing? If there is, would the Rules of Civil Procedure apply? Would the Rules of Evidence apply? As this is technically an "appeal," would the Rules of Appellate Procedure apply? What is the standard of review? Is there a right to a jury trial? Or is this more of an administrative appeal in the same vein as red light camera appeals also handled in municipal courts? Short answer yet again: we don't know. There is also nothing in the statute to govern how long the municipal court has to rule on the appeal. There was an attempt, but it appears we will not see any clarification this session in the Legislature to amend these provisions.

We do know that the municipal court cannot refuse to hear the appeal, unless the animal does not reside within the city's limits, and the municipal court cannot transfer the appeal to a justice or county court. It is the owner who gets to determine to which court he wishes to appeal the animal control determination.[25]

If the municipal, justice, or county court affirms animal control's determination, the court should reduce the decision to writing and notify the owner of that fact. This triggers requirements on the owner discussed under Section B below. If the court overrules the animal control authority's determination, the law is silent as to what happens. Presumably, the court would order the dog be released to its owner.

Second Type of Hearing: Municipal Court as Original Determiner

Section 822.0422 allows any person to skip reporting an incident to animal control and instead file a complaint directly with a municipal, justice, or county court for the *court* to then determine whether the dog is a dangerous dog. The hearing provided by this section can only happen in counties with population greater than 2.8 million; in counties in which the commissioners court has entered an order electing to be governed by the section; or in cities

Dangerous Dog Hearings (Chapter 822, Health & Safety Code)

	Dog's Act that is a Danger to Persons		Requirements for Owner of Dangerous Dog / Owner Fails to Act		
	Cause Person's Death	**Cause Serious Bodily Injury to Person**	**Owner Doesn't Comply with Requirements**	**Animal Control Authority Determines Dog is Dangerous**	**822.0422 Adopted**
Subchapter	A	A	D	D	D
Sections	822.002, 822.003	822.002, 822.003	822.042(c), 822.0423	822.0421(b)	822.0422, 822.0423
How proceeding starts:	Anyone files sworn complaint in court	Anyone files sworn complaint in court	Anyone files application in court	Owner appeals animal control determination (within 15 days)	Anyone reports an incident to court
Seize dog before hearing:	If probable cause, yes	If probable cause, yes	Unclear		If owner does not deliver within 5 days, animal control seize
Definitions:	Attacked, bit, or mauled and caused death	Attack, bit, or mauled and caused serious bodily injury (defined in 822.001 as severe bite wound or ripping/tearing of muscle)	Requirements in 822.042(a) and (b)	Attack or unprovoked acts as defined in 822.041	Attack or unprovoked acts as defined in 822.041
Hearing:	Within 10 days of seizure warrant	Within 10 days of seizure warrant	Within 10 days of when dog is delivered by owner or seized	Does not say	Within 10 days of when dog is delivered or seized
Defense:	None	1 of 5 in 822.003(f)	None	None	None
Court Options:	- Must destroy dog - Must release dog	- May destroy dog - May not destroy dog (if have above defense) - Must release dog	- Must release dog if owner complies - Must destroy dog if owner does not comply	- Court affirms determination - Court does not affirm determination	- Must release dog if owner complies - Must destroy dog if owner does not comply
Appeal from Municipal Court:	No right to appeal provided	No right to appeal provided	By owner or one who filed application	By owner	By owner or one who filed application
Application:	State-wide	State-wide	State-wide	State-wide	- County > 2.8 million - County/city adopts

This chart was adapted from materials created by The Honorable Marian Moseley with the Coppell Municipal Court. For a copy of the associated paper "A Protocol for Conducting Dangerous Dog Hearings," visit the TMCEC OLC Webinars on Demand page for the Dangerous Dog Hearings webinar: http://online.tmcec.com.

in which the governing body has by ordinance elected to be governed by the section.[26]

A person may report an incident (unprovoked attack causing bodily injury or unprovoked acts leading a person to reasonably believe the dog will attack and cause bodily injury) directly to a municipal, justice, or county court. The court then sends notice to the owner that a report has been filed. The owner of the dog shall deliver the dog to the animal control authority no later than the fifth day after receiving this notice.[27] If the owner fails to deliver the dog as required, the court in which the report was filed shall issue a warrant ordering the animal control authority to seize the dog and the owner will be held responsible for paying any costs incurred in the seizure.[28] Regardless of whether the owner voluntarily surrenders the dog or animal control has to seize the dog pursuant to a warrant, the animal control authority shall impound the dog in secure and humane conditions until the court orders disposition of the dog.

The court shall set a hearing to determine whether the dog is dangerous. Section 822.0423 requires that the hearing be set no later than 10 days from the date the owner voluntarily delivers the dog to animal control or the date animal control seizes the dog under the warrant.[29] Again, it is the court's responsibility to notify both the owner of the dog, or the person from whom the dog was seizes (preferably both), and the person who made the initial complaint to the court.[30]

Similar to the hearings conducted under Subchapter A, there is little guidance as to how the hearing should be conducted. The same questions still apply, and we still have no clear answers. The court should be mindful of the owner's right to due process; thus, the court should make sure the owner receives the required notice. There is nothing in the statute that requires the owner to actually appear and present evidence, but the law does provide that any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

The court must determine if the dog is a dangerous dog—that the dog either (1) made an unprovoked attack and caused bodily injury outside of its enclosure or (2) committed unprovoked acts outside of its enclosure that could lead the person filing the report to reasonably believe the dog would attack and cause bodily injury to that person. In making the determination, the court should be looking for whether the dog was provoked, whether the acts occurred outside of the dog's enclosure, the stability of the enclosure, whether the dog caused bodily injury, and the reasonableness of the complainant's fears of attack.

If the court does **not** find the dog is dangerous, according to the definition set forth in Section 822.041(2), the court should order the dog released to the owner. If the court determines the dog **is** a dangerous dog, then the court may order animal control to continue to impound the dog until the court orders disposition under Section 822.042 and the dog is either destroyed or returned to the owner. Section 822.042 deals with requirements the owner must follow within 30 days of learning that the dog is dangerous. This provision, then, allows the animal control authority to keep custody of the dog pending the 30 days to see if the owner will comply. The owner shall pay any cost or fee assessed by the city or county related to the seizure, acceptance, impoundment, or later destruction of the dog.[31]

The next section discusses the requirements for an owner of a dangerous dog.

B. Requirements for Dangerous Dog Owners

Section 822.042, referenced above, lays out specific requirements for owners of dangerous dogs. Under Subsection (a), an owner must, not later than the 30th day after learning they are the owner of a dangerous dog:

- Register the dangerous dog with the animal control authority for the area in which the dog is kept (*see Section 822.043 for the laws and requirements on registration, including the $50 annual registration fee*);
- Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure (*see Section 822.041(4) for the definition of secure enclosure*);
- Obtain liability insurance coverage or show financial responsibility in an amount of at least $100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept;[32] and
- Comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

In lieu of complying, the owner may instead deliver the dog to the animal control authority, still by the 30-day deadline.[33]

A person learns that he or she is the owner of a dangerous dog when: (1) the owner knows of an attack causing bodily injury outside of the dog's enclosure or of unprovoked acts outside of the enclosure that lead a person to reasonably fear an attack that could cause bodily injury; (2) the owner receives notice from a municipal, justice, or county court that the court has found the dog dangerous (*see Municipal Court as Original Determiner*); or (3) the

owner is informed by the animal control authority that the dog is dangerous (see earlier description: *First Type of Hearing Municipal Court as Court of Appeals*).[34]

An owner of a dangerous dog who fails to comply with these requirements may be criminally charged with a Class C misdemeanor under Section 822.045.[35] Additionally, the municipal court may determine the owner's failure to comply in the next type of civil hearing.

Third Type of Hearing: Compliance Hearing

Section 822.042(c) provides that any person can apply to a municipal, justice, or county court alleging that an owner of a dangerous dog has failed to comply with the ownership requirements. Often the applicant will be someone in animal control or with the local government, as it would be difficult for anyone else to know the owner had failed to comply (unless of course someone has a bone to pick with the owner—no pun intended this time). Upon the application being filed, the court shall send written notice of the time and place of a hearing to the owner. Herein lies a huge hole in the statutory scheme: it is not clear when the hearing must be scheduled.

Section 822.042(c) contemplates notice and a hearing as provided by Section 822.0423. Section 822.0423 says that upon an application under Section 822.042(c), the court shall set a time for a hearing to determine whether the owner complied with the requirements. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered. The problem: at the time of application, the dog is still in the owner's custody. There is no provision granting a judge the authority to issue a warrant to seize the dog in this situation. In fact, the end result of this type of hearing is a seizure warrant. Given the fact that courts will be chasing their tails (i.e., running in circles) trying to follow the statutory guidelines, courts should schedule the hearing no later than 10 days from the date the application is filed and send written notice of the time and place of the hearing to the owner, or person from whom the dog was seized (preferably both), and the person who filed the application immediately.

Again, there is no guidance for the hearing other than that any interested party is entitled to present evidence. The same questions apply as to what rules to follow and whether the owner is entitled to a jury trial. Section 822.042(c) simply says that if the court finds at the hearing that the owner has failed to comply, the court shall issue a warrant ordering the animal control authority to seize the dog. Thus, the court must find that (1) the owner knew he was the owner of a dangerous dog and (2) that the owner either failed to comply with the requirements or deliver the dog to animal control within 30 days of learning he is the owner of a dangerous dog. If the judge finds the owner knew and failed to comply or deliver the dog, the court shall issue the seizure warrant.[36] The animal control authority shall then seize the dog and provide for its impoundment in secure and humane conditions. The owner shall pay any cost or fee assessed by the city or county related to the seizure, acceptance, impoundment, or later destruction of the dog.[37]

One Last Chance

Once the animal control authority has custody of the dog pursuant to the court's warrant, the owner has 10 more days to comply with the requirements. If the owner has **not** complied with the requirements of Section 822.042(a) by the 11th day after the date the dog is seized by or delivered to the animal control authority, the court shall order the animal control authority to humanely destroy the dog.[38] If the owner **does** comply within those 10 days, the court shall order the animal control authority to return the dog to the owner.[39] The statute goes on to provide that the court may order the dog's destruction if the owner has not been located before the 15th day after the dog's seizure and impoundment.[40]

Criminal Liability for Owning a Dangerous Dog

Section 822.044 creates a Class C misdemeanor offense against an owner of a dangerous dog if the dog makes an unprovoked attack on another person outside of the dog's enclosure and causes bodily injury to the other person. Dogs that cause death or serious bodily injury are handled under Subchapter A, but dogs that attack and cause injury that does not rise to the level of serious bodily injury cannot be destroyed under Subchapter A. If that is the case, and the dog has already been determined a dangerous dog, the city or county can file criminal charges against the owner. If convicted, the court may order the dog destroyed.[41]

C. Right to Appeal the Determination or Noncompliance

Unlike hearings under Subchapter A where there is no right to appeal, decisions under Subchapter D can be appealed. An owner may appeal the municipal, justice, or county court's decision affirming the animal control authority's determination that a dog is dangerous *in the same manner as appeal for other cases from the municipal, justice, or county court.*[42] Likewise, an owner or the person filing the report of an incident or application that the owner has failed to comply may appeal the municipal, justice, or county court's decision that the dog is a dangerous dog or that the owner has failed to comply, respectively, *in the same manner*

as appeal for other cases from the municipal, justice, or county court.[43] The italicized language has caused much consternation amongst the animal law community. The *In re Loban* case, out of the Fort Worth Court of Appeals, highlighted the problem with this language when it found that there was no court to which a decision from a court of record could be appealed.[44] Legislation was filed to resolve this problem, but does not appear to be going anywhere.

In addition to the venue issue, many other issues remain: must the owner follow the Rules of Appellate Procedure? What must be sent up on appeal? Must a record be made in a court of record? If so, who should request one and who should pay for the transcript? Would the appeal be de novo out of a non-record court? If appealing from a decision made by a county court, would the Court of Appeals have to accept that appeal? On appeal, is the appellant entitled to a jury trial? These are just some of the many issues yet to be resolved.

Another missing link: the appeal bond. The cruelly treated animal provisions in Chapter 821 provide for an appeal bond to cover the cost of caring for any animals during the pendency of an appeal, along with strict deadlines for the final determination made by the appellate court (no more than 25 days). There is no mention of an appeal bond anywhere in Chapter 822. There are also no deadlines for the appeal. Therefore, all we know is that owners have a right to appeal, the appeal could last forever, and meanwhile, the dog is in the custody of the animal control authority at the city or county's expense.

Final Observations

The laws addressed in this article all come from Chapter 822 of the Health and Safety Code. Section 822.047 provides that a city or county may enforce additional requirements or restrictions on dangerous dogs so long as they are not specific to a breed and are more stringent than state law.[45] Be sure to consult your city ordinances as well.[46]

Judges (and court staff) should beware: emotions tend to run high in these cases. Judges must learn to balance the desire to protect citizens with the owners' desires to keep their "best friends," and afford owners their due process without being swayed by political preferences.

There were a few animal-related bills introduced this Session that would have greatly affected the municipal court's handling of cruelly-treated animal and dangerous dog hearings. In this dog-eat-dog Legislature, however, these bills appear dead. Part III of this article, which will run in a fall issue of *The Recorder*, will propose ways to clarify this confusing area of law.

For more information log on to TMCEC's OLC and watch Judge Marian Moseley's webinar on Dangerous Dog Hearings. Simply go to http://online.tmcec.com, click on Webinars on Demand, and Dangerous Dog Hearings. You can also download her excellent paper "A Protocol for Conducting Dangerous Dog Hearings."

[1] Centers for Disease Control and Prevention Dog Bite: Fact Sheet available at http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html and Dog Bite Prevention site at http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/biteprevention.html.

[2] Katie Tefft, "Give the Dog a Bone: The Criminal and Civil Side of Animal Cruelty," *The Recorder* 20:2 (January 2011).

[3] This article will not address dogs that are a danger to other dogs, as the only time that situation will appear in municipal court is as a criminal offense under Section 822.012 of the Health and Safety Code. For more on this, consult Subchapter B of Chapter 822.

[4] Note this is not the same as a complaint filed in municipal court as the charging instrument under Chapter 45 of the Code of Criminal Procedure. This complaint is more like the Chapter 15 complaint serving as the probable cause affidavit for an arrest warrant.

[5] Section 822.002, Health and Safety Code. Section 822.001(1) of the Health and Safety Code defines "animal control authority" as the municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

[6] Section 822.003, Health and Safety Code.

[7] *Id.*

[8] Section 822.001(2) of the Health and Safety Code defines "serious bodily injury" as an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment. Note this is a different definition than the one usually used in Section 1.07(46) of the Penal Code.

[9] This is a formal determination made under different circumstances in Subchapter D of Chapter 822 and discussed later in this article.

[10] See "Give the Dog a Bone: The Criminal and Civil Side of Animal Cruelty" in the January 2011 issue of *The Recorder* for a discussion on who may be an interested party.

[11] *Timmons v. Pecorino*, 977 S.W.2d 603 (Tex. Crim. App. 1998). This case involved a hearing to determine the disposition of a dog who bit and caused serious bodily injury to a young girl. Evolving from a municipal court, the owners tried to appeal the destruction order to the Court of Criminal Appeals. The Court held that it had no jurisdiction over the dispute which "remains a civil matter."

[12] Thus these cases should be styled "*In re Dog*" and not as *State of Texas vs. Owner/Dog*. There is no defendant or prosecutor; just a respondent.

[13] Section 822.003(e), Health and Safety Code.

[14] Section 822.003(d), Health and Safety Code.

[15] Section 822.003(e), Health and Safety Code.

[16] Section 822.003(f), Health and Safety Code.

[17] Section 822.004, Health and Safety Code.

[18] See Section 822.005 of the Health and Safety Code, known as Lillian's Law (H.B. 1355, 80th Regular Legislature).

[19] Tex. Atty. Gen. Op. GA-0316 (2005); *In re*

Loban, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008); *Pitts v. State*, 918 S.W.2d 4 (Tex. App.—Houston [14th Dist.] 1995) ("The right of appeal must be expressed in plain and unambiguous language and a statute may not be liberally interpreted to create that right where it does not exist.").

[20] Section 822.041(3) defines "dog" as a domesticated animal that is a member of the canine family.

[21] Section 822.041(2), Health and Safety Code (emphasis added).

[22] "Animal control authority" is defined in Section 822.041(1) to be the same definition discussed under Subchapter A.

[23] Section 822.041(5) defines "owner" as a person who owns or has custody or control of the dog.

[24] Section 822.0421(b), Health and Safety Code (emphasis added).

[25] Tex. Atty. Gen. Op. GA-0660 (2008).

[26] Section 822.0422(a), Health and Safety Code.

[27] Section 822.0422(b), Health and Safety Code. Note that an owner who fails to deliver the dog may be criminally prosecuted under Section 822.045, a Class C misdemeanor.

[28] Section 822.0422(c) and (f), Health and Safety Code.

[29] Section 822.0423(a), Health and Safety Code.

[30] Section 822.0423(b), Health and Safety Code.

[31] Section 822.0422(c) and (f), Health and Safety Code. The governing body of the city or county may prescribe the amount of the fee.

[32] Several judges have commented that it is nearly impossible to obtain this type of insurance in such a high dollar amount in such a short time period (30 days).

[33] Section 822.042(b), Health and Safety Code.

[34] Section 822.042(g), Health and Safety Code.

[35] The offense of failing to comply is a Class C misdemeanor, unless the person has previously been convicted of the failure to comply, in which case it is a Class B misdemeanor.

[36] Nothing in the statute instructs on what to do if the court finds the owner did comply. Presumably, the case would be dismissed, and the dog would never be in the city or county's custody.

[37] Section 822.042(d), Health and Safety Code. The governing body of the city or county may prescribe the amount of the fee.

[38] Section 822.042(e), Health and Safety Code.

[39] *Id.*

[40] Section 822.042(f), Health and Safety Code. One would presume that for the court to have issued the seizure warrant, there had been a hearing and the owner would have received notice of that hearing; thus, it is bothersome to think that the dog would be ordered destroyed without the owner having ever been located.

[41] Section 822.044(c), Health and Safety Code.

[42] Section 822.0421(b), Health and Safety Code (emphasis added).

[43] Section 822.0423(d), Health and Safety Code (emphasis added).

[44] *In re Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008) (The court of appeals concluded that the owner could appeal the decision of the Grapevine Municipal Court of Record affirming the animal control authority's determination that his two dogs were dangerous, pursuant to Section 822.0421, Health and Safety Code. One problem: because the underlying action was not a criminal action, the appellate provision of the Code of Criminal Procedure was not triggered. Furthermore, pursuant to Section 30.00014(a), Government Code, because Tarrant County did have statutory county criminal courts, Tarrant County Court at Law No. 3 did not have jurisdiction over the resident's appeal.).

[45] A person who owns or keeps custody of a dangerous dog commits a Class C misdemeanor offense if the person fails to comply with an applicable city or county regulation pertaining to dangerous dogs. Section 822.045, Health and Safety Code.

[46] See *City of Richardson v. Responsible Dog Owners of Texas*, 794 S.W.2d 17 (Tex. 1990) for a discussion on preemption.

CHANGE FOR FY 12

TMCEC, in order to save funds, will be going digital in FY 12, starting on September 1, 2011. It is absolutely essential that TMCEC have an accurate email address for you. The following items will no longer be sent by U.S. mail, but rather by email:

- Seminar brochures
- Seminar schedules
- Registration reminders
- Confirmation letters
- Agendas
- Hotel Information
- Legal updates
- *The Recorder*
- Notices of New Publications Available/Order Forms

If you are not computer savvy, we suggest that you ask a trusted colleague, clerk, friend, or family member to serve as your email contact. They will need to check your email account on a daily basis. Email accounts are typically made available by the city or court. If your city or court does not provide such a service, you can always get a free Gmail account at *www.google.com* (select gmail, top left hand corner of page).

Judges and clerks will receive a copy of the Academic Schedule in August 2011 that will outline the entire year's programs and the rules and policies about participating in a TMCEC program.

If you have questions or comments, please contact Hope Lochridge, TMCEC Executive Director at hope@tmcec.com or 800.252.3718. Please send your name, title, court, and email address to tmcec@tmcec.com.

AN ACT

relating to the costs associated with proceedings regarding cruelly treated animals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 821.021, Health and Safety Code, is amended to read as follows:

Sec. 821.021. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Cruelly [~~, "cruelly~~] treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.

(2) "Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose:

(A) the prevention of cruelty to animals; or

(B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

(3) "Owner" includes a person who owns or has custody or control of an animal.

SECTION 2. Section 821.023, Health and Safety Code, is amended by amending Subsections (d) and (e) and adding Subsections (e-1), (e-2), (e-3), and (e-4) to read as follows:

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

(1) order a public sale of the animal by auction;

(2) order the animal given to a municipal or county animal shelter or a nonprofit animal welfare organization [~~shelter, pound, or society for the protection of animals~~]; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) After a [~~A~~] court [~~that~~] finds that an animal's owner has cruelly treated the animal, the court shall order the owner to pay all court costs, including:

(1) the administrative costs of:

(A) [~~(1)~~] investigation;

(B) [~~(2)~~] expert witnesses; and

(C) [~~(3) housing and caring for the animal during its impoundment;~~

[~~(4)~~] conducting any public sale ordered by the court; and

(2) the costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:

(A) housing and caring for the animal during its impoundment; and

(B) [~~(5)~~] humanely destroying the animal if destruction is ordered by the court.

(e-1) After a court finds that an animal's owner has cruelly treated the animal, the court shall determine the estimated costs likely to be incurred by a municipal or county animal shelter or a nonprofit animal welfare organization to house and care for the

impounded animal during the appeal process.

(e-2) After making the determination under Subsection (e-1), the court at the time of entering the judgment shall set the amount of bond for an appeal equal to the sum of:

(1) the amount of the court costs ordered under Subsection (e); and

(2) the amount of the estimated costs determined under Subsection (e-1).

(e-3) A court may not require a person to provide a bond in an amount greater than or in addition to the amount determined by the court under Subsection (e-2) to perfect an appeal under Section 821.025.

(e-4) Notwithstanding any other law, the amount of court costs that a court may order under Subsection (e) and the amount of bond that a court determines under Subsection (e-2) are excluded in determining the court's jurisdiction under Subtitle A, Title 2, Government Code.

SECTION 3. Section 821.024(c), Health and Safety Code, is amended to read as follows:

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a municipal or county animal shelter or a nonprofit animal welfare organization [~~shelter, pound, or society for the protection of animals~~].

SECTION 4. Section 821.025, Health and Safety Code, is amended to read as follows:

Sec. 821.025. APPEAL. (a) An owner divested of ownership of an animal under Section 821.023 may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and a cash bond or surety [~~an appeal~~] bond in an amount set [~~determined~~] by the court under Section 821.023(e-2) [~~from which the appeal is taken to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process~~].

(c) Not later than the fifth calendar day after the date the notice of appeal and [~~appeal~~] bond is filed, the court from which the appeal is taken shall deliver a copy of the clerk's record [~~court's transcript~~] to the clerk of the county court or county court at law to which the appeal is made.

(d) Not later than the 10th calendar day after the date the county court or county court at law, as appropriate, receives a copy of the clerk's record [~~transcript~~], the court shall consider the matter de novo and dispose of the appeal. A party to the appeal is entitled to a jury trial on request.

(e) The decision of the county court or county court at law under this section is final and may not be further appealed.

(f) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to

perfect an appeal.

(g) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

(h) [~~(b)~~] While an appeal under this section is pending, the animal may not be:

(1) sold or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

SECTION 5. Subchapter B, Chapter 821, Health and Safety Code, is amended by adding Section 821.026 to read as follows:

Sec. 821.026. CONFLICT OF LAWS. In the event of a conflict between this subchapter and another provision of any other law relating to an appeal of a disposition regarding a cruelly treated animal, including the bond required for that appeal, this subchapter controls.

SECTION 6. The change in law made by this Act applies only to a proceeding commenced under Section 821.023, Health and Safety Code, on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is covered by the law in effect at the time the proceeding is commenced, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

AN ACT

relating to creating an offense for engaging in certain conduct relating to cockfighting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 42, Penal Code, is amended by adding Section 42.105 to read as follows:

Sec. 42.105. COCKFIGHTING. (a) In this section:

(1) "Bridle" means a leather device designed to fit over the head and beak of a cock to prevent the cock from injuring another cock.

(2) "Cock" means the male of any type of domestic fowl.

(3) "Cockfighting" means any situation in which one cock attacks or fights with another cock.

(4) "Gaff" means an artificial steel spur designed to attach to the leg of a cock to replace or supplement the cock's natural spur.

(5) "Slasher" means a steel weapon resembling a curved knife blade designed to attach to the foot of a cock.

(b) A person commits an offense if the person knowingly:

(1) causes a cock to fight with another cock;

(2) participates in the earnings of a cockfight;

(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for cockfighting;

(4) owns or trains a cock with the intent that the cock be used in an exhibition of cockfighting;

(5) manufactures, buys, sells, barters, exchanges, possesses, advertises, or otherwise offers a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting; or

(6) attends as a spectator an exhibition of cockfighting.

(c) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) occurred solely for the purpose of or in support of breeding cocks for poultry shows in which a cock is judged by the cock's physical appearance; or

(2) was incidental to collecting bridles, gaffs, or slashers.

(d) An affirmative defense to prosecution is not available under Subsection (c) if evidence shows that the actor is also engaging in use of the cocks for cockfighting.

(e) It is a defense to prosecution for an offense under this section that:

(1) the actor was engaged in bona fide experimentation for scientific research; or

(2) the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or agriculture practice involving livestock animals.

(f) It is an exception to the application of Subsection (b)(6) that the actor is 15 years of age or younger at the time of the offense.

(g) An offense under Subsection (b)(1) or (2) is a state jail felony. An offense under Subsection (b)(3), (4), or (5) is a Class A misdemeanor. An offense under Subsection (b)(6) is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subdivision.

SECTION 2. This Act takes effect September 1, 2011.