

# Trying Animal Cases under the Texas Health and Safety Code

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# Dogs that Cause Death or Serious Bodily Injury to a Person

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- This type of hearing is used to determine if a dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. Secs. 822.002 and 822.003, H.S.C.

# Serious Bodily Injury

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- is 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. Sec. 822.001(2), H.S.C.
- means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Sec. 1.07 (46) Texas Penal Code

# Jurisdiction

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- A county, justice, or municipal court has original jurisdiction to hear cases involving a dog attack, bite, or mauling that causes serious bodily injury or death to a person. These hearings are governed by Subchapter A, Chapter 822 of the Health and Safety Code.

# Beginning of the Process

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- 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 injury to, the person as stated in the complaint?

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- If NO - then the judge does not issue the seizure warrant
- If YES - the court must issue a warrant authorizing the animal control authority to seize the dog and impound it in secure and humane conditions until the court orders the disposition of the dog. Sec.002(a)-(b) H.S.C.

# Setting the Hearing

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- The court must set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person.
- The court must give written notice of the time and place of the hearing to the owner of the dog or the person from whom the dog was seized and the person who made the complaint.
- The hearing must be set within 10 days of issuing the warrant.  
Sec.002(a)-(b) H.S.C.

# Who Can Attend the Hearing

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- Any interested person, including the county or city attorney, may present evidence at the hearing. Sec. 822.003(c), H.S.C.

You never know what you'll get



# Standard of Proof

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- It is statutorily unclear whether a “reasonable doubt” or a “preponderance of the evidence” standard should be used in this determination.
  - However, in *Timmons v. Pecorino*, 977 S.W.2d 603, (Tex. Crim. App. 1998), the Court of Criminal Appeals implicitly acknowledged the civil nature of these cases but refused to answer the question for lack of jurisdiction.

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- If the court determines at the hearing that the dog caused the death of a person, the court must order the dog be destroyed. Sec. 822.003(d) H.S.C.

- The dog must be destroyed by a licensed veterinarian, trained animal shelter or humane society personnel, or trained animal control authority personnel. Sec. 822.004 H.S.C.

If the court determines the dog caused serious bodily injury to the person, the court may order the dog be destroyed. Sec. 822.003(e) H.S.C.

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- If the court does not order the dog destroyed 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

# The court may not order the dog to be destroyed if:

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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

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There is no right to appeal a court's determination provided in the subchapter.

# Cruelly Treated Animals

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# HSC Chapter 821. Treatment and Disposition of Animals

## Subchapter B. Disposition of Cruelly Treated Animals



### Subchapter B. Disposition of Cruelly Treated Animals

## § 821.021. Definitions

§ 821.0211. Additional Definition

## § 821.022. Seizure of Cruelly Treated Animal

§ 821.023. Hearing; Order of Disposition or Return of Animal 

§ 821.024. Sale or Disposition of Cruelly Treated Animal 

## § 821.025. Appeal

## § 821.026. Conflict of Laws

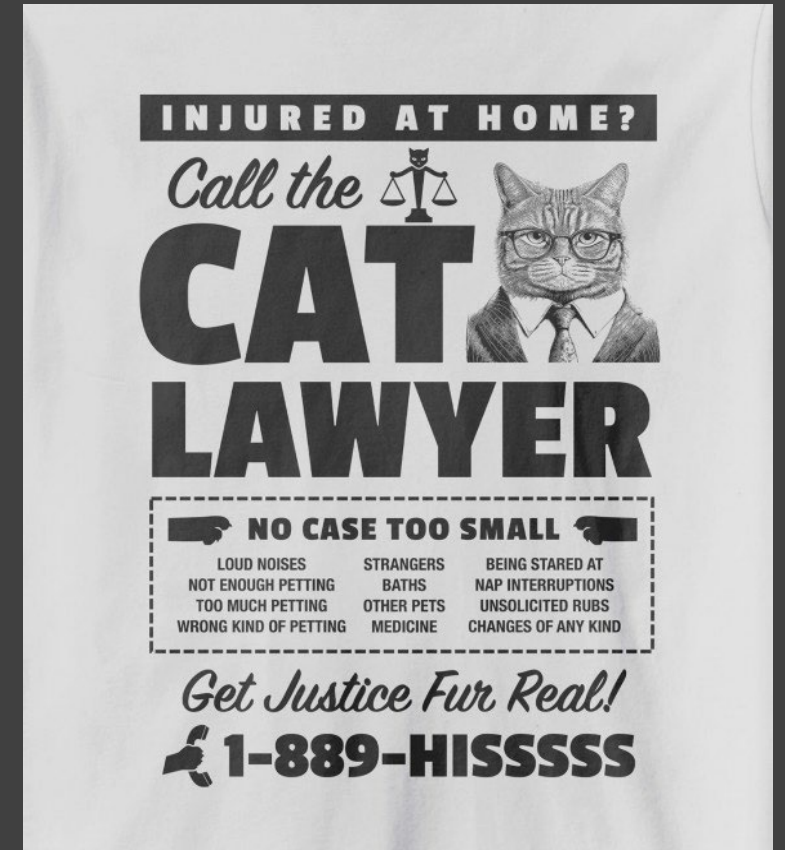


# “Cruelly Treated” Defined

H.S.C. Sec. 821.021(1)

"Cruelly treated" includes . . .

- tortured,
- seriously overworked,
- unreasonably abandoned,
- unreasonably deprived of necessary food, care, or shelter,
- cruelly confined,
- caused to fight with another animal, or
- subjected to conduct prohibited by Section 21.09, Penal Code.





# “Owner” Defined

H.S.C. Sec. 821.0211

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“Owner” includes a Person:

- who OWNS or
- has CUSTODY or
- CONTROL of an animal



# Seizure of Cruelly Treated Animal(s)

H.S.C. Sec. 821.022

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A peace officer or an animal control officer may apply to municipal court in the municipality in which the animal is located or a warrant to seize the animal. HSC 821.022(a).

On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court *shall* issue the warrant and set a time within 10 calendar days for a hearing in the municipal court to determine whether the animal has been or is being cruelly treated.

The officer executing the warrant impounds the animal and must give written notice to the owner of the animal of the time and place of the hearing.

# Hearing to Determine If Animal Cruelly Treated

HSC Sec. 821.023

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Each interested party is entitled an opportunity to present evidence at the hearing.

- NOTE: There is no definition of “interested party.”

A finding in a court of competent jurisdiction that a person is guilty of an offense under Section 21.09, Penal Code (Bestiality), is prima facie evidence that any animal in the person’s possession has been cruelly treated, regardless of whether the animal was subjected to conduct prohibited by the aforementioned section of the Penal Code.



# Hearing to Determine If Animal Cruelly Treated (cont.)

H.S.C. Sec. 821.023



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 be given to a municipal or county animal shelter or a nonprofit animal welfare organization; or
- 3) Order the animal be humanely destroyed if the court decides that the best interests of the animal or the public health and safety would be served by doing so.

# Hearing to Determine If Animal Cruelly Treated (cont.)

HSC Sec. 821.023

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After a cruelty finding, the court shall order the owner to pay all court costs, including costs of:

- The administrative costs of:
  - The investigation
  - Expert witnesses; and,
  - Conducting any public sale ordered by the court; and
- The costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:
  - housing and caring for the impounded animal during the appeal process; and
  - humanely destroying the animal if destruction is ordered by the court.

# Hearing to Determine If Animal Cruelly Treated (cont.)

HSC Sec. 821.023

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After a cruelty finding, the court shall also 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.

When entering the judgment, the court shall set an amount for an appeal bond equal to the sum of the costs ordered under Subsection (3) and the amount of estimated costs under Subsection (e-1).

# Hearing to Determine If Animal Cruelly Treated (cont.)

HSC Sec. 821.023

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The court may order that an animal subject to public sale or given to a municipal or county animal shelter or nonprofit animal welfare organization be spayed or neutered at the cost of the receiving party.

If court does NOT find that the animal's owner has cruelly treated the animal, the court shall order the animal's return to the owner.

# Sale or Disposition of Animal

H.S.C. Sec. 821.024

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Notice of the auction must be posted in a public forum

Bid from former owner of a cruelly treated animal or representative not accepted

Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner. The officer conducting the auction shall pay any excess proceeds to the court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

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 nonprofit animal welfare organization.



# Appeal Process - Jurisdiction

H.S.C .Sec. 821.025

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Owner divested of ownership of an animal under HSC Sec. 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.



# Appeal Process – Perfecting Appeal

## H.S.C. Sec. 821.025(b)

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As a condition of perfecting an appeal, not later than the 10<sup>th</sup> calendar day after the date the order is issued, the owner must file a notice of appeal and a cash or surety bond in an amount determined by the court under HSC. Sec. 821.023 (e-2).

# Appeal Process – Procedural Steps

## H.S.C. Sec. 821.025

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A person filing an appeal is NOT required to file a motion for new trial to perfect an appeal. HSC Sec. 821.025(f).

Not later than the fifth calendar day after the date the notice of appeal and bond is filed, the court shall deliver a copy of the clerk's record to the county court or county court at law to which the appeal is made. HSC Sec. 821.025(c).

Not later than the 10<sup>th</sup> calendar day after the date the county court or county court at law receives the record, the court shall consider the matter *de novo* and dispose of the appeal. A party is entitled to a jury trial on request. HSC Sec. 821.025(d).

The decision of the county court or county court at law under this section is final and may not be further appealed. HSC Sec. 821.025(f)

# Appeal Process – Subject Animal(s)

## H.S.C. Sec. 821.025

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While an appeal under this section is pending, the animal may not be:

- Sold or given away as provided by HSC Secs. 821.023 and 821.024
- Destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.



