

CHAPTER 17 ANIMALS

One area of municipal court civil jurisdiction is cases involving animals under the Health and Safety Code. State law provides procedures for the seizure, hearing, and disposition of dogs that are a danger to persons and animals that are cruelly treated; however, there are many lingering questions and uncertainties when it comes to handling these civil cases.

Many municipalities have enacted ordinances regulating these animal cases. Such local ordinances are contemplated in Sections 822.007 and 822.047 of the Health and Safety Code. Cities should be aware of the state laws as well and consider whether ordinances may be preempted by state law.

These checklists only discuss the procedures under state law contained in Chapters 821 and 822 of the Health and Safety Code.

1. Definitions

Checklist 17-1	Script/Notes
<p>“Animal control authority” is a 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.</p>	<p>Secs. 822.001(1) and 822.041(1), H.S.C.</p>
<p>In an incorporated municipality with a population of more than 1,000 that is a county seat of a county with a population of 1,380 or more but less than 1,600, the police department is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.</p>	<p>Secs. 822.0012 and 822.0411, H.S.C.</p>
<p>“Dangerous dog” is a dog that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 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 <input type="checkbox"/> 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. 	<p>Sec. 822.041(2)(A), H.S.C.</p> <p>Sec. 822.041(2)(B), H.S.C.</p>
<p>“Dog” is a domesticated canine.</p>	<p>Sec. 822.041(3), H.S.C.</p>

“Owner” is a person who owns or has custody or control of the dog.

Sec. 822.041(5), H.S.C.

“Secure” means to take steps that a reasonable person would take to ensure a dog remains on the owner’s property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

Sec. 822.001(4), H.S.C.

“Secure enclosure” means a fenced area or structure that is locked; capable of preventing the entry of the general public, including children; capable of preventing the escape or release of a dog; clearly marked as containing a dangerous dog; and in conformance with the requirements for enclosures established by the local animal control authority.

Sec. 822.041(4), H.S.C.

“Serious bodily injury” 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.

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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.

2. Dogs that Cause Death or Serious Bodily Injury to a Person

Checklist 17-2	Script/Notes
<p><input type="checkbox"/> 1. Hearings to Determine if a Dog Has Caused Death or Serious Bodily Injury to a Person.</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Any person including the county attorney, city attorney, or a peace officer, may file a sworn complaint alleging that a dog attack, bite, or mauling caused the death of or serious bodily injury to a person.</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. The complaint must be supported by an affidavit setting forth sufficient facts to establish probable cause to believe that the dog caused death or serious bodily injury by attacking, biting, or mauling a person.</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. When a sworn complaint showing probable cause is filed, 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.</p> <p style="padding-left: 40px;"><input type="checkbox"/> d. 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.</p> <p style="padding-left: 40px;"><input type="checkbox"/> e. The hearing must be set within 10 days of issuing the warrant.</p>	<p>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.</p> <p>Sec. 822.002(a)(1-2), H.S.C. See <i>TMCEC 2024 Forms Book: Affidavit for Warrant to Seize Dog that Caused Serious Bodily Injury or Death.</i></p> <p>Sec. 822.002(a)-(b), H.S.C. See <i>TMCEC 2024 Forms Book: Seizure Warrant for Dog that Caused Serious Bodily Injury or Death.</i></p> <p>Sec. 822.003(b), H.S.C. See <i>TMCEC 2024 Forms Book: Notice of Hearing for Dog that Caused Serious Bodily Injury or Death.</i></p> <p>Sec. 822.003(a), H.S.C.</p>

- f. Any interested person, including the county or city attorney, may present evidence at the hearing.
- g. A “preponderance of evidence” standard may be used to make the required findings.

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.” *Black’s Law Dictionary*.

- h. If the court determines at the hearing that the dog caused the death of a person, the court must order the dog be destroyed.

The dog must be destroyed by a licensed veterinarian, trained animal shelter or humane society personnel, or trained animal control authority personnel.

- i. If the court determines the dog caused serious bodily injury to the person, the court may order the dog be destroyed.

- j. The court may not order the dog to be destroyed if:

- (1) The dog was being used to protect persons or property; the attack, bite, or mauling occurred in a properly marked enclosure in which the dog was being kept that was reasonably certain to prevent the dog from escaping and provided notice of the dog’s presense; and the injured person was at least eight years old and was trespassing in the enclosure;

Sec. 822.003(c), H.S.C.

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.

Sec. 822.003(d), H.S.C.
See *TMCEC 2024 Forms Book: Order: Dog Caused Serious Bodily Injury or Death*.

Sec. 822.004, H.S.C.

Sec. 822.003(e), H.S.C.

Sec. 822.003(f)(1-5), H.S.C.

- (2) The dog was not being used to protect persons or property; 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 old and was trespassing in the enclosure;
 - (3) The dog was being used for law enforcement purposes and the attack, bite, or mauling occurred during an arrest or other law enforcement action;
 - (4) The dog was defending a person from an assault or defending property from damage or theft by the injured person; or
 - (5) The injured person was under eight years of age and the attack, bite, or mauling occurred in a secure enclosure designed to prevent a person under eight years of age from entering.
2. There is no right to appeal a court's determination provided in the subchapter.
3. An owner may face criminal liability if the owner fails, with criminal negligence, to secure the dog, and the dog's unprovoked attack causes serious bodily injury to (3rd degree felony) or the death of (2nd degree felony) a person.

Sec. 822.005, H.S.C
Watson v. State, 369 S.W.3d 865
(Tex.Crim. App. 2012).

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Subchapter A, Chapter 822 of the Health and Safety Code, provides procedures for what to do if a dog attacks and causes death or serious bodily injury. What if the dog causes injury that does not rise to the level of serious bodily injury? The court cannot order a dog be destroyed if it causes just bodily injury to a person unless the dog has been determined to be a “dangerous dog,” as defined in Section 822.041(2) of the Health and Safety Code.

There are three distinct types of hearings dealing with dangerous dogs that can originate in a county, justice, or municipal court. These proceedings are all governed by Subchapter D, Chapter 822 of the Health and Safety Code. 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 under Subchapter D. Sec. 822.047, H.S.C. It is a Class C misdemeanor for a person who owns or has custody or control of a dangerous dog to fail to comply with Section 822.042 or Section 822.0422 (b) or an applicable municipal ordinance relating to dangerous dogs, and a subsequent offense is a Class B misdemeanor. Sec. 822.045, H.S.C.

Note that none of these procedures apply when a dog attacks another animal. There is no municipal court involvement, under state law, when a dog attacks an animal. Sec. 822.013, H.S.C.

3. Dangerous Dogs

Checklist 17-3	Script/Notes
<p><input type="checkbox"/> 1. Appeal from Animal Control Authority Determination that Dog is a Dangerous Dog:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. If a person reports an incident where a dog either:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) 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</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) 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.</p>	<p style="padding-left: 20px;">Sec. 822.0421(a), H.S.C.</p> <p style="padding-left: 20px;">Sec. 822.041(2)(A), H.S.C.</p> <p style="padding-left: 20px;">Sec. 822.041(2)(B), H.S.C.</p>

<p>Then, the animal control authority may investigate the incident and determine if the dog is a “dangerous dog” according to Section 822.041(2), H.S.C. The animal control authority shall notify the owner in writing if the dog is determined to be dangerous.</p>	<p>Sec. 822.0421(a), H.S.C.</p>
<p><input type="checkbox"/> b. Notwithstanding any other law, including a municipal ordinance, an owner may appeal the animal control authority determination to the county, justice, or municipal court of competent jurisdiction within 15 days of being notified of the determination.</p>	<p>Sec. 822.0421(b), H.S.C. There are no statutory procedures for how the municipal court should handle or dispose of the appeal. Tex. Atty. Gen. Opp. GA-0660 (2008) interprets “court of competent jurisdiction” to refer to territorial jurisdiction and not as requiring the municipal court be a court of record.</p>
<p><input type="checkbox"/> c. To file an appeal, the owner must:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) File a notice of appeal with the court; <input type="checkbox"/> (2) Attach a copy of the determination from the animal control authority; and <input type="checkbox"/> (3) Serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service. 	<p>Sec. 822.0421(c), H.S.C.</p>
<p><input type="checkbox"/> d. The owner may appeal the municipal court’s decision under Sec. 822.0421(b), H.S.C., in the manner described by Section 822.0424, H.S.C.</p>	<p>Sec. 822.0421(d), H.S.C.</p>
<p><input type="checkbox"/> e. The court may not order the destruction of a dog during the pendency of an appeal under Sec. 822.0424, H.S.C.</p>	<p>Sec. 822.042(e-1)(2), H.S.C.</p>
<p><input type="checkbox"/> 2. Municipal Court Determination that Dog is a Dangerous Dog:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. If city has not adopted an ordinance electing to be governed by Sec. 822.0422, H.S.C., skip to number 3, as this portion does not apply. 	<p>Sec. 822.042(a), H.S.C.</p>

- b. If city has adopted an ordinance electing to be governed by Sec. 822.0422, H.S.C., any person may report to the court an incident where a dog either:
 - (1) 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
 - (2) 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.
- c. The court must notify the owner that the report has been filed and that the owner has five days from the date they receive the notice of the report being filed to deliver the dog to the animal control authority, which shall provide for secure and humane impoundment of the dog until the court orders disposition.
- d. If the owner fails to deliver the dog, 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. The owner shall pay any cost incurred in seizing the dog.

Sec. 822.0422(b), H.S.C.
See *TMCEC 2024 Forms Book*:
Complaint: Dangerous Dog
Incident.

Sec. 822.0422(b), H.S.C.
See *TMCEC 2024 Forms Book*:
Notice of Dangerous Dog
Complaint Filed.

Sec. 822.0422(c), H.S.C.
See *TMCEC 2024 Forms Book*:
Seizure Warrant for Dangerous
Dog.

An owner who fails to deliver
the dog as required may
be charged with a Class C
misdemeanor (Class B for
subsequent offenses). Sec.
822.045, H.S.C.

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| <p><input type="checkbox"/> e. The court must set a time for a hearing to determine whether the dog is a dangerous dog. 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.</p> | <p>Sec. 822.0423(a)-(b), H.S.C.
See <i>TMCEC 2024 Forms Book: Notice of Dangerous Dog Hearing</i>.</p> |
| <p><input type="checkbox"/> f. The hearing must be set within 10 days of the date the dog is delivered or seized.</p> | <p>Sec. 822.0423(a), H.S.C.</p> |
| <p><input type="checkbox"/> g. Any interested person, including the county or city attorney, may present evidence at the hearing.</p> | <p>Sec. 822.0423(c), H.S.C.</p> |
| <p><input type="checkbox"/> h. A “preponderance of evidence” standard may be used to make the required findings.</p> <p>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.” <i>Black’s Law Dictionary</i>.</p> | |
| <p><input type="checkbox"/> i. At the hearing, the court must determine if the dog is a dangerous dog, according to the definitions in Section 822.041(2), H.S.C.</p> | <p>See <i>TMCEC 2024 Forms Book: Dangerous Dog Judgment</i>.</p> |
| <p><input type="checkbox"/> j. If the court determines the dog is a dangerous dog, the court may order the dog continue to be impounded until the court determines if the owner(s) comply with the requirements in Step 3.</p> | <p>Presumably, if the court declines to find that the dog is a dangerous dog, the court should order the dog be released to the owner or person from whom the dog was seized.</p> |
| <p><input type="checkbox"/> k. The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.</p> | <p>Sec. 822.0423(c-1), H.S.C.</p> |

l. The owner or person who filed the complaint may appeal the municipal court’s decision in the manner provided for the appeal of cases from the municipal court.

Sec. 822.0423(d), H.S.C.
The *In re Loban* case, highlighted a problem when it found that there was no court to which a decision from a court of record could be appealed. *In re Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008, no pet.).

m. The owner shall pay any cost or fee assessed under Sec. 822.042(d), H.S.C., for seizing the dog.

Sec. 822.0422(f), H.S.C.
A city can enter into a contract for the collection of unpaid fines, fees, or court costs in civil cases. Sec. 140.009, L.G.C.

3. Appeal of Municipal Court Dangerous Dog Determination:

Sec. 822.0424, H.S.C.

a. A party to an appeal under Sec. 822.0421(d) or a hearing under Sec. 822.0423, H.S.C., may appeal the decision to a county court or county court at law in the county in which the justice or municipal court is located and is entitled to a jury trial on request.

A decision of a county court or county court at law under this section may be appealed in the same manner as an appeal for any other case in a county court or county court at law. Sec. 822.0424(d), H.S.C.

b. As a condition of perfecting an appeal, not later than the 10th calendar day after the date the decision is issued, the appellant must file a notice of appeal and, if applicable, an appeal bond in the amount determined by the court from which the appeal is taken.

See *TMCEC 2024 Forms Book: Notice of Appeal and Appeal Bond: Dangerous Dog*.

c. 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.

4. Requirements for Owner of Dangerous Dog:

a. The owner learns the dog is a dangerous dog if the owner knows of an attack, receives notice that a court has found the dog to be dangerous, or the owner is informed by the animal control authority that the dog is dangerous.

Sec. 822.042(g), H.S.C.

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| <ul style="list-style-type: none"> <input type="checkbox"/> b. Not later than 30 days after learning that the person is the owner of a dangerous dog, the owner must: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Register the dog with the animal control authority for the area in which the dog is kept; <input type="checkbox"/> (2) Restrain the dog at all times in a secure enclosure or on a leash in the immediate control of the owner; <input type="checkbox"/> (3) Show financial responsibility or obtain liability insurance of at least \$100,000 and provide proof of the insurance to the animal control authority; and <input type="checkbox"/> (4) Comply with any applicable municipal ordinances or county regulations. <input type="checkbox"/> c. If the owner does not comply with the requirements, he or she must deliver the dog to the animal control authority not later than 30 days after learning the dog is a dangerous dog. <input type="checkbox"/> d. The animal control authority must register all dangerous dogs located within its jurisdiction if the owner pays an annual \$50 fee and presents proof of: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Current liability insurance or financial responsibility; <input type="checkbox"/> (2) Current rabies vaccination; and <input type="checkbox"/> (3) The secure enclosure for the dog. <input type="checkbox"/> e. The animal control authority must issue to the owner a registration tag for the dangerous dog, which must be put on the dog's collar. | <p>Sec. 822.042(a)(1), H.S.C.</p> <p>Sec. 822.042(a)(2), H.S.C.</p> <p>Sec. 822.042(a)(3), H.S.C.</p> <p>Sec. 822.042(a)(4), H.S.C.</p> <p>Sec. 822.042(b), H.S.C.</p> <p>Sec. 822.043(a)(2), H.S.C.</p> <p>Sec. 822.043(a)(1)(A), H.S.C.</p> <p>Sec. 822.043(a)(1)(B), H.S.C.</p> <p>Sec. 822.043(a)(1)(C), H.S.C.</p> <p>Sec. 822.043(b)(1), H.S.C.</p> |
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| <ul style="list-style-type: none"> ❑ f. If the owner sells or moves the dog, the owner has 14 days to notify the animal control authority in the new jurisdiction of the dog’s relocation. If the owner presents proof of prior registration and pays a \$25 fee, the new animal control authority must accept the new registration and issue a new tag to be worn on the dog’s collar. | <p>Sec. 822.043(c), H.S.C.</p> |
| <ul style="list-style-type: none"> ❑ g. An owner of a registered dangerous dog must notify the animal control authority of any attacks the dog makes on people. An unprovoked attack by a dangerous dog, outside the dog’s enclosure, causing bodily injury is a Class C misdemeanor offense against the owner. | <p>Secs. 822.043(d) and 822.044, H.S.C. The court may order the dog be destroyed if the owner is convicted. Any order to destroy a dog is stayed for a period of 10 calendar days, during which the dog’s owner may file a notice of appeal. Sec. 822.042(e-1)(1), H.S.C.</p> |
| <ul style="list-style-type: none"> ❑ h. An owner may face criminal liability if the owner knows the dog is a dangerous dog and the dog’s unprovoked attack causes serious bodily injury to (3rd degree felony) or the death of (2nd degree felony) of a person. | <p>Sec. 822.005, H.S.C.</p> |
| <ul style="list-style-type: none"> ❑ 5. Non-compliance Hearing: <ul style="list-style-type: none"> ❑ a. Any person may file an application with the court alleging that a dog is dangerous or that the owner of a dangerous dog has failed to comply with the requirements under Sec. 822.042(a), H.S.C. ❑ b. The court must set a hearing and 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 making the complaint. | <p>Sec. 822.042(c), H.S.C.
See <i>TMCEC 2024 Forms Book</i>:
Application: Dangerous Dog
Owner Failed to Comply.</p> <p>Sec. 822.0423(a)-(b), H.S.C.
See <i>TMCEC 2024 Forms Book</i>:
Notice of Hearing: Owner Failed
to Comply.</p> |

- ☐ c. The hearing should be held not later than 10 days after the dog is seized or delivered.

Sec. 822.0423(a), H.S.C.

There is a contradiction in the methodology for dangerous dog hearings set forth in Chapter 822. Specifically, Section 822.042(c) states that if, “**after notice and hearing**” to determine whether an owner of a dangerous dog has failed to comply with the requirements of Section 822.042(a), H.S.C., the court finds a failure to comply, it shall order the seizure of the dog. However, Section 822.0423(a) states that such a compliance hearing must be held not later than 10 days **after** the seizure. This apparent conflict can be resolved if the dog is seized pursuant to another seizure provision (e.g., a quarantine or dog-at-large ordinance). Otherwise, courts may set the hearing for not later than 10 days from the date the owner is notified.

- ☐ d. At the hearing, any interested party, including the city or county attorney, may present evidence.

Sec. 822.0423(c), H.S.C.

- ☐ e. The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.

Sec. 822.0423(c-1), H.S.C.

- ☐ f. If the court finds a lack of compliance, it shall order the seizure of the dog and impound the animal in secure and humane conditions pending the owner’s compliance. The owner has 10 days to comply with the requirements to own a dangerous dog. If the owner does not comply, on the 11th day after seizure, the court must order the humane destruction of the dog.

Sec. 822.042(e), H.S.C.
 See *TMCEC 2024 Forms Book*:
 Dangerous Dog Judgment:
 Owner Failed to Comply; and
 Seizure Warrant for Dangerous
 Dog: Owner Failed to Comply.

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| <p><input type="checkbox"/> g. If the court orders the seizure of the dog, but is unable to locate the owner, the court may order the humane destruction of the dog 15 days after the date of impoundment.</p> | <p>Sec. 822.042(f), H.S.C.</p> |
| <p><input type="checkbox"/> h. Any order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal.</p> | <p>Sec. 822.042(e-1)(1), H.S.C.</p> |
| <p><input type="checkbox"/> i. The owner is liable for all fees or costs assessed for the seizure, acceptance, impoundment, or destruction of the dog.</p> | <p>Sec. 822.042(d), H.S.C.
A city can enter into a contract for the collection of unpaid fines, fees, or court costs in civil cases. Sec. 140.009, L.G.C.</p> |
| <p><input type="checkbox"/> j. The owner or person filing the action may appeal the municipal court's determination in the manner as described by Sec. 822.0424, H.S.C.</p> | <p>Sec. 822.0423(d), H.S.C.</p> |
| <p><input type="checkbox"/> k. An owner who fails to comply with the requirements of Sec. 822.042, H.S.C., can also be charged with a Class C misdemeanor.</p> | <p>A person may be charged with a Class C misdemeanor for failing to comply with requirements unders Sec. 822.042, Sec. 822.0422(b), H.S.C., or other applicable regulations under an ordinance, and subsequent offenses are Class B misdemeanors. Sec. 822.045, H.S.C.</p> |

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There are two avenues for protecting animals from cruel treatment under state law: criminal prosecution of the actor under the Penal Code, and the civil remedy to remove animals from the owners under Chapter 822 of the Health and Safety Code. These cases can be presented originally to a judge of a justice or municipal court or to a magistrate for a hearing in the justice or municipal court.

4. Disposition of Cruelly Treated Animals

Checklist 17-4	Script/Notes
<p>Definitions:</p> <p>“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, or subject to conduct prohibited by Sec. 21.09, Penal Code.</p> <p>“Magistrate” means any officer as defined in Article 2.09/2A.151, C.C.P., except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts unders Subchapter D, Chapter 24, G.C.</p> <p>“Owner” includes a person who owns or has custody or control of an animal.</p> <p><input type="checkbox"/> 1. Seizure of Cruelly Treated Animal(s):</p> <p style="padding-left: 20px;"><input type="checkbox"/> a A peace officer or an animal control officer may apply to municipal court in the municipality in which the animal is located for a warrant to seize the animal.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. 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.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. 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.</p>	<p>Sec. 821.021(1), H.S.C. Sec. 21.09, P.C., prohibits bestiality.</p> <p>Sec. 821.0211, H.S.C.</p> <p>Sec. 821.021(3), H.S.C.</p> <p>Sec. 821.022, H.S.C.</p> <p>Sec. 821.022(a), H.S.C. See <i>TMCEC 2024 Forms Book: Affidavit for Warrant to Seize Cruelly Treated Animal(s)</i>.</p> <p>Sec. 821.022(b), H.S.C. See <i>TMCEC 2024 Forms Book: Seizure Warrant for Cruelly Treated Animal(s)</i>.</p> <p>Sec. 821.022(c), H.S.C.</p>

2. Hearing to Determine if an Animal has been Cruelly Treated:

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

Sec. 821.023(c), H.S.C.
There is no definition of “interested party.”

Sec. 821.023(a-1), H.S.C.
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 Section 21.09, Penal Code.

b. 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:

Sec. 821.023(d), H.S.C.
See *TMCEC 2024 Forms Book*: Order: Cruelly Treated Animal(s) Hearing.

(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

“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. Sec. 821.021(2), H.S.C.

(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.

c. After 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 costs of:

Sec. 821.023(e), H.S.C.

- (1) the administrative costs of:
 - (A) investigation;
 - (B) expert witnesses; and
 - (C) 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) humanely destroying the animal if destruction is ordered by the court.
- d. After a finding that an 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. When entering the judgment, the court shall set an amount for an appeal bond equal to the sum of the costs ordered under Subsection (e) and the amount of estimated costs under Subsection (e-1).

Sec. 821.023(e-1), H.S.C.

Sec. 821.023(e-2), H.S.C.
 The 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). Sec. 821.023(e-3), H.S.C.

The amount of court costs that a court may order and the amount of bond that a court determines are excluded in determining the court's jurisdiction under the Government Code. Sec. 821.023(e-4), H.S.C.

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| <ul style="list-style-type: none"> <input type="checkbox"/> f. 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. | <p>Sec. 821.023(f), H.S.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> g. The court shall order the animal returned to the owner if the court does not find that the animal’s owner has cruelly treated the animal. | <p>Sec. 821.023(g), H.S.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. Sale or Disposition of Animal: <ul style="list-style-type: none"> <input type="checkbox"/> a. Notice of an auction must be posted on a public bulletin board where other public notices are posted for the county or municipality. <input type="checkbox"/> b. At the auction, a bid by the former owner of a cruelly treated animal or the owner’s representative may not be accepted. <input type="checkbox"/> c. 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. <input type="checkbox"/> d. 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. | <p>Sec. 821.024, H.S.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. Appeal: <ul style="list-style-type: none"> <input type="checkbox"/> a. An owner divested of ownership of an animal under Sec. 821.023, H.S.C., 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. | <p>Sec. 821.025(a), H.S.C.
Notwithstanding any other law, a county court or county court at law has jurisdiction to hear an appeal filed under this section. Sec. 821.025(g), H.S.C.</p> |

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| <p><input type="checkbox"/> 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 or surety bond in an amount determined by the court under Sec. 821.023(e-2), H.S.C.</p> | <p>Sec. 821.025(b), H.S.C.
See <i>TMCEC 2024 Forms Book: Appeal Bond: Cruelly Treated Animal(s) Case.</i></p> |
| <p><input type="checkbox"/> c. A person filing an appeal is not required to file a motion for new trial to perfect an appeal.</p> | <p>Sec. 821.025(f), H.S.C.</p> |
| <p><input type="checkbox"/> d. 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.</p> | <p>Sec. 821.025(c), H.S.C.</p> |
| <p><input type="checkbox"/> e. Not later than the 10th 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.</p> | <p>Sec. 821.025(d), H.S.C.</p> |
| <p><input type="checkbox"/> f. The decision of the county court or county court at law under this section is final and may not be further appealed.</p> | <p>Sec. 821.025(f), H.S.C.</p> |
| <p><input type="checkbox"/> g. While an appeal under this section is pending, the animal may not be:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) sold or given away as provided by Secs. 821.023 and 821.024, H.S.C.; or <input type="checkbox"/> (2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal. | <p>Sec. 821.025(h), H.S.C.</p> |