

**OVERDRIVING, TORTURING, AND INJURING ANIMALS;  
[FAILURE TO PROVIDE PROPER SUSTENANCE]  
Agriculture and Markets Law § 353  
Committed on or after Nov. 1, 2015  
Revised Jan. 2019<sup>1</sup>**

The (*specify*) count is Overdriving, Torturing and Injuring Animals [Failure to Provide Proper Sustenance].

A person is guilty of: Overdriving, Torturing and Injuring Animals [Failure to Provide Proper Sustenance] when that person

Select appropriate alternative(s):

overdrives, overloads, tortures or cruelly beats or unjustifiably<sup>2</sup> injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another,

[or] deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink,

[or] causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to

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<sup>1</sup> The 2018 revision was for the purpose of including a definition of "animal."

<sup>2</sup> The term "unjustifiable" is not defined. It is said to encompass "exemptions such as slaughtering an animal for human consumption, extermination of pests, ownership branding or tracking, control and stewardship, basic husbandry, and even potentially cosmetic alterations." Jed L. Painter, Practice Commentary to Agriculture & Markets Law § 353. It should also be noted that "unjustifiably" is an element of the crime and thus the People will be required to prove beyond a reasonable doubt that the defendant was not justified. And, if a factual question is raised as to whether the conduct (e.g., hunting) was authorized or prohibited by law, the relevant law may need to be charged to the jury.

be deprived of necessary food or drink,

[or] who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty. <sup>3</sup> [A person “wilfully” engages in conduct when that person is aware that he or she is doing so.<sup>4</sup> ]

The following term(s) used in that definition (has / have) a special meaning:

ANIMAL includes every living creature except a human being.<sup>5</sup>

["Torture" or "cruelty," include every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.<sup>6</sup> ]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, the following element:

That on or about (*specify*), in the County of (*specify*), the defendant, (*specify*):

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<sup>3</sup> The statute defining the instant crime also states: “Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations, involving the use of living animals, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health.”

If applicable and viewed as a defense, then upon it being raised, the court will need to inform the jury of the applicable portion just before instructing the jury on the elements of the offense, and then, add an element: “2. That the defendant was not (specify the applicable portion of the defense).

<sup>4</sup> See *People v. Coe*, 71 N.Y.2d 852 (1988), and William C. Donnino, Practice Commentary to McKinney’s Penal Law § 15.00 on meaning of “wilfully.”

<sup>5</sup> Agriculture and Markets Law § 350(1).

<sup>6</sup> Agriculture and Markets Law § 350(2).

Select appropriate alternative(s):

overdrove, overloaded, tortured or cruelly beat or unjustifiably injured, maimed, mutilated or killed any animal, whether wild or tame, and whether belonging to himself or to another,

[or] deprived any animal of necessary sustenance, food or drink, or neglected or refused to furnish it such sustenance or drink,

[or] caused, procured or permitted any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink,

[or] who wilfully set on foot, instigated, engaged in, or in any way furthered any act of cruelty to any animal, or any act tending to produce such cruelty.

If you find the People have proven beyond a reasonable doubt that element, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt that element, you must find the defendant not guilty of this crime.