



**INCORPORATION OF
SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS
AND
HUMANE SOCIETIES IN NEW YORK STATE**

The American Society for the Prevention of Cruelty to Animals (“ASPCA”) plays an important role in the incorporation of societies for the prevention of cruelty to animals and humane societies in the State of New York and also in subsequent amendments to their incorporation certificates.

In New York, societies for the prevention of cruelty to animals are type B not-for-profit corporations pursuant to the New York Not-for-Profit Corporation Law (“NPCL”) Section 201 sub-section (b). **They can have law enforcement authority pursuant to Section 1403 and Criminal Procedure Law Section 2.10 sub-section 7.**

Organizations that are looking to have law enforcement powers can call themselves an SPCA, Humane Society, etc. Organizations that are not looking to have law enforcement powers **may not** refer to themselves as an SPCA. They can call themselves a Humane Society.

Under the NPCL Section 404 sub-section (g), the prior consent of the ASPCA is specifically required for the incorporation of any new society of the prevention of cruelty to animals. The process of incorporating any not-for-profit corporation is complicated and we strongly recommend that it not be undertaken without an attorney representing the incorporator and the new corporation. We also recommend that it be a local attorney near the place of incorporation. Other consents and approvals may also be required. There are specific and important provisions in NPCL Section 1403 which must be observed, and the assistance of counsel is strongly recommended.

Before the ASPCA will consent to the incorporation of an organization that will have law enforcement power, **we need the executed certificate of incorporation and a written explanation, in some detail, covering five points:**

- **funding**
- **programs**
- **training**
- **agent selection**
- **shelter/boarding/veterinary care**

These points are described more fully in a separate document entitled “Summary of ASPCA Criteria For Approval of Status As A Society For The Prevention of Cruelty to Animals in New York State”. The explanation will be carefully reviewed prior to consent. Once the incorporation has been approved by the ASPCA, we will send an approval letter to you.

Organizations not having law enforcement powers

Organizations looking to incorporate and not have law enforcement powers are handled differently. Rather than the incorporators and their attorneys obtaining the “consent” of the ASPCA, **they must obtain a “waiver” of the need for that consent.** In this case, all we need is the certificate of incorporation. The certificate must include the following language in the section describing the powers of the corporation:

Nothing herein shall authorize the corporation directly or indirectly, to engage in or include among its purposes and powers any of the special purposes and powers reserved to societies for the prevention of cruelty to animals under Section 1403 (b) of the Not-for-Profit Corporation Law, or any other statutory provision granting purposes or powers to such societies.

This language indicates that your organization does not wish to become a SPCA and does not wish to have law enforcement powers.

Once the certificate of incorporation has been reviewed and approved by the ASPCA we will send a waiver document to you.

Additional Information:

- There is no fee or charge for the services of the ASPCA in this incorporation process. Contributions are welcome, however, and can be made through our website at <http://www.asPCA.org/Donate.aspx> or by calling us at 212-876-7700, extension 4516.
- In certain cases, the ASPCA may require additional information or further investigation, prior to consenting or waving consent.
- The ASPCA has no role in the incorporation of any business or educational corporations. The ASPCA’s role is limited to New York not-for-profit corporations which are to be societies for the prevention of cruelty to animals or humane societies. **Once incorporation is completed, our special role ceases, other than approving subsequent amendments to incorporation certificates of these organizations. We have no other continuing authority over SPCAs or humane societies except to the extent that our Humane Law Enforcement department enforces the anti cruelty laws in the five counties that comprise New York City.**

- The ASPCA has no role in any incorporation that occurs outside of the State of New York. The ASPCA, incorporated in 1866, was the first society for the prevention of cruelty to animals in America and many other SPCAs were modeled on the ASPCA. However, these other SPCAs are not our “chapters” and are not affiliated with us.

We hope that this information is helpful to you. For additional assistance, we again urge you to seek your own legal counsel. Readers are advised that while we believe this to be accurate as of its preparation date, no representation is made as to subsequent events.



**Application for Approval of Incorporation as a
Society for the Prevention of Cruelty to Animals**

Procedure:

The ASPCA, after reviewing the organization’s response to the following questions, will make a determination of which organization, if any, in a given New York county should receive the ASPCA’s approval for SPCA status. The ASPCA will base its determination on which organization it deems best able to properly exercise the legal authority granted to SPCAs.

PART A

Please provide the names and addresses of all directors, corporate trustees, officers, and/or employees of your proposed organization, to the extent they have been identified at this time.

PART B

Please provide answers to the following for each corporate officer, director, trustee, and employee of your proposed organization.

1. Date of Birth
2. Any prior experience within the animal welfare community. Please be specific and list the dates of associations, position(s) held, organization name(s), address(s), and phone number(s).
3. Any prior experience, education and/or training with animals. Please be specific (e.g. list title of training course, where offered, dates of attendance, etc.)

4. If you have any pets, please list species and quantity.
5. Have you ever been known by any other name? If so, please indicate name(s).
6. Have you ever been fingerprinted for employment or other reasons? If for employment, indicate the agency, firm or organization. Please explain if reason was other than employment?
7. Have you ever been arrested or convicted of animal cruelty?
8. Please provide the names and phone numbers of two references (preferably) from individuals in the animal welfare community or from either your workplace and/or non-relatives who have known you for at least two years.

PART C

Please provide information outlined below on a separate sheet of paper:

1. As an organization with law enforcement power, your organization may investigate animal cruelty. How many peace officers are you planning on having? How many will be full-time and how many will be part-time?
2. Are they already peace officer or police officers? If the answer is yes, please specify which, and detail what courses and trainings they attended, and where.
3. What is the organization's plan for Division of Criminal Justice Services certification, firearms and weapons trainings and on-going trainings that is required of the peace officers? If they are already peace officers, please provide their license number.
4. What title will you use for your peace officers?
5. Will your peace officers carry weapons? If yes, please detail what courses they attended to get firearms training, where they attended the training, and the last annual in-service for their firearms.
6. What types of vehicles will your peace officers be using?

Please provide us with any other information that you deem pertinent to your application, whether it weighs positively or negatively on your application.

**SUMMARY OF ASPCA CRITERIA FOR APPROVAL OF STATUS AS A
SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
IN NEW YORK STATE**

Criteria:

1. **FUNDING** –Please describe and list all funds the organization seeking status as a society for the prevention of cruelty to animals (“SPCA”) has and its plans for obtaining the funding in the future. Please also describe the organization’s plans for use of the funds.
2. **PROGRAM** – The ASPCA needs to be assured that the organization seeking SPCA status has a planned, well thought-out, coherent and workable program for operation. The ASPCA needs to know what the organization’s present programs are and its plans for future programs. This would include general humane society work and SPCA-related activities.
3. **TRAINING** – The ASPCA needs to be assured that the employees of the organization seeking SPCA status have adequate training to properly carry out its functions. In particular, the ASPCA will want to know the extent of law enforcement training that the persons to be designated as agents (peace officers) have, and the plans for obtaining such training or additional training. The ASPCA will also want to know the extent of training in the humane care and handling of animals that the persons to be designated agents (peace officers) have and the plans for obtaining training. In addition, The ASPCA will want to know the extent of training on the humane handling of animals that the other employees of the organization have and the plans for obtaining such training.
4. **AGENT SELECTION** – The ASPCA needs to ascertain what the standards of the organization are for the selection of persons to be designated agents (peace officers) to enforce animal-related laws, and to be assured that these standards are high.
5. **SHELTER/BOARDING/VETERINARY CARE** – The ASPCA needs to be assured that the organization seeking SPCA status has humane means of sheltering the animals that the SPCA’s peace officers seize or otherwise obtain possession of. The ASPCA needs to know exactly what plans the organization has for sheltering these animals of many different species and for providing necessary veterinary care.

Additional Information:

- Your application will be evaluated and approval granted or denied when **all** requested information has been submitted. Failure to provide true, accurate, and complete information for Parts A through C may result in a denial of your application.
- The ASPCA, after reviewing the organization’s response to the above questions and criteria, will determine which organization, if any, in a given county should receive the ASPCA’s approval for SPCA status. The ASPCA will base its determination on which organization it deems best able to properly exercise the legal authority granted to SPCAs.



INFORMATION FROM THE NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW

Reproduced below is the current text of Article 4, Section 401 regarding incorporations and Section 404 (g) regarding the approval and consent needed to incorporate a society for the prevention of cruelty to animals in New York State.

§401. Incorporators

One or more natural persons at least eighteen years of age may act as incorporators of a corporation to be formed under this chapter.

L. 1969, c. 1066, § 1; amended L.1970, c. 847, § 12, both eff. Sept. 1, 1970

§ 404. Approvals and consents

(g) Every certificate of incorporation of a corporation for prevention of cruelty to animals shall have endorsed thereon or annexed thereto the approval of the American Society of the Prevention of Cruelty to Animals, or, if such approval be withheld thirty days after application therefore, a certified copy of an order of justice of the supreme court of the judicial district in which the office of the corporation is to be located, dispensing with such approval, granted upon eight days' notice to such society.

Reproduced below is the current text of Article 14, Section 1403 regarding the incorporation of societies for the prevention of cruelty to animals in the State of New York.

§ 1403. Corporations for the prevention of cruelty

(a) Prohibition of new corporations in certain counties.

(1) A corporation for the prevention of cruelty to animals shall not hereafter be incorporated for the purpose of conducting its operations in the counties of New York, Kings, Queens, Richmond, Rensselaer, or Westchester outside of the city of Yonkers; or in any other county if thereby two or more such corporations would exist in such county except as provided in subparagraph three hereof. Any corporation for the prevention of cruelty to animals may exercise its powers and conduct its operations in any adjacent county in which no such corporation exists until the establishment of such a corporation therein.

(1-a) No corporation for the prevention of cruelty to children, or for the dual purpose of prevention of cruelty to children and cruelty to animals shall be incorporated on or after

November first, nineteen hundred eighty-nine. Any such corporations, incorporated prior to November first, nineteen hundred eighty-nine, may exercise their powers and conduct their operation in any adjacent county in which no such corporations exist until the establishment of such corporations therein prior to November first, nineteen hundred eighty-nine. The Brooklyn society for the prevention of cruelty to children may exercise all its powers in the county of Nassau until a society for the prevention of cruelty to children shall be incorporated prior to November first, nineteen hundred eighty-nine, and located therein, and may exercise all its powers in the county of Suffolk until such a corporation is incorporated prior to November first, nineteen hundred eighty-nine, and located therein.

(2) In addition to the requirements of Section 402, a certificate of incorporation under which an additional corporation is formed in the City of Yonkers must designate such city as the place where its operations are to be conducted.

(3) In any county having a population of one hundred thousand or less, where there is already in existence a corporation duly incorporated for the prevention of cruelty to animals and where it appears that the functions of such corporation are confined to a local area in such county and where it further appears that part of such county is not served by the existing corporation, an application may be made for the incorporation of a second such corporation in such county. If it appears to the satisfaction of the court that such existing corporation does not serve the area from which the application for incorporation of a new corporation is made, the court shall approve the proposed certificate of incorporation.

(b) Special powers.

(1) A corporation formed for the purpose of preventing cruelty to children, when represented by an attorney duly admitted to the practice of law, may prosecute a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law enacted to prevent (i) the abuse, maltreatment or neglect of a child, as those terms are defined in section four hundred twelve of the social services law and section one thousand twelve of the family court act, or (ii) the exploitation of or harm to a child at the hands of an adult that would constitute a violation of article one hundred twenty, one hundred thirty, one hundred thirty-five, two hundred sixty or two hundred sixty-three of the penal law, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(2) A corporation formed for the purpose of preventing cruelty to animals may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting the prevention of cruelty to animals, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(3) A corporation for the prevention of cruelty to children may be appointed guardian of the person of a minor child during its minority by a court of record, or a judge thereof,

and may receive and retain any child at its own expense on commitment by a court or magistrate.

(4) All magistrates, peace officers, acting pursuant to their special duties and police officers shall aid such a corporation, its officers, agents and members in the enforcement of laws enacted to prevent (i) the abuse, maltreatment or neglect of a child, as those terms are defined in section four hundred twelve of the social services law and section one thousand twelve of the family court act, or (ii) the exploitation of or harm to a child at the hands of an adult that would constitute a violation of article one hundred twenty, one hundred thirty, one hundred thirty-five, two hundred sixty or two hundred sixty-three of the penal law, and for the prevention of cruelty to animals.

(c) Type of corporation. A corporation for the prevention of cruelty is a Type B corporation under this chapter.