



**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**A.259
S.3806**

**M. of A. Paulin
Sen. Ball**

AN ACT to amend the agriculture and markets law, in relation to orders of restitution in certain cases

THIS LEGISLATION IS APPROVED

A.259/S.3806 amends section 373(6) of the New York State Agriculture & Markets Law (“Ag & Mkts Law”) to eliminate the existing requirement that a society for the prevention of cruelty to animals, humane society, pound, animal shelter, or an authorized agent that is given custody of a seized animal (“impounding organization”) petition the court for a security to be used for a seized animal’s care and housing.

The bill provides that, upon arraignment for charges relating to improperly keeping an animal or animal fighting or within a reasonable time after arraignment, a court shall order a hearing to determine whether a person from whom an animal is seized or the animal’s owner should be ordered to post security to cover the reasonable cost of caring for the animal for a minimum of 30 days. The court must set the hearing within ten days of the issuance of its order. At the hearing, the district attorney has the burden of proving that the defendant violated Article 26 of the Ag & Mkts Law by a preponderance of the evidence. Alternatively, the impounding organization has the option of appearing at the hearing and presenting evidence that the defendant violated Article 26.

The bill does not change the way the security may be used. If the court orders the defendant to post a security, the impounding organization is eligible to draw from the security funds to cover the actual costs of the animal’s care including, but not limited to, housing and veterinary services. The court determines the amount of security based on the facts and circumstances of the case and the recommendation of the impounding organization. The court may waive the posting of a security for good cause or require the defendant to post additional security after 30 days pending the resolution of the case. If the person is acquitted or the charges are dismissed, the person is entitled to a full refund of the security.

Roughly a quarter of all states require a person found responsible for animal cruelty to pay for the cost of caring for and housing the abused animals, including California, Connecticut, Idaho, Illinois, Indiana, Kansas, Minnesota, Montana, Nevada, New Hampshire, Rhode Island, Texas,

Vermont, Virginia, Washington, and Wisconsin.¹ Under current New York law, an impounding organization merely has the right to petition the court for an order requiring a person from whom the animal is seized or the animal's owner to post security to cover medical and housing expenses. Even if the impounding organization has the ability to petition the court, the court has the discretion to deny the petition. For the reasons explained below, New York's current law is insufficient to protect animals and can be extremely burdensome to impounding organizations.

The law's current requirement that impounding organizations petition the court for reimbursement of their costs puts a tremendous and unnecessary burden on such organizations which ultimately rely on the public for their funding. According to the sponsor's memo, many impounding organizations are small and do not have access to or funds for legal counsel or are not aware of their right to file a petition. Consequently, they are often forced to cover the costs of caring for the seized animals themselves and may not be willing to accept animals from law enforcement agencies.

The cost of providing housing, food, ameliorative veterinary care, and medicine to an abused or neglected animal can be thousands of dollars and difficult for charitable organizations to fund.² For example, a month's care provided to a starved thoroughbred horse and pony seized from a filthy Glen Cove stable in April 2008 cost approximately \$4,300.³ Some cases involve dozens of animals, compounding costs, such as a recent case on Long Island involving an abusive breeder who kept over 50 dogs in her basement and a 2007 case involving a person who kept a small zoo of 33 animals in her home in Ridge.⁴ And like most litigation, the cases can take months or years to resolve while the animals are kept in custody.⁵

¹ California Penal Code §§ 597(f)(1); 597a; 597e; 597.1(a)-(c); 597.1(f)(1)(E),(4); 597.1(g)(1)(E); 597.1(h),(k); Connecticut Gen. Stat. § 22-329a(g); Idaho Code § 25-3520B; 510 Illinois Comp. Stat. 70/3.06; Indiana Code § 35-46-3-6(c); Kansas Stat. Ann. § 21-4311(c); Minnesota Stat. § 343.23; Montana Code Ann. § 45-8-211(3)(a); Nevada Rev. Stat. §§ 574.100(3); 574.120(2); New Hampshire Rev. Stat. Ann. § 644.8(IV)(a); Rhode Island Gen. Laws § 4-1-22(c); Texas Health & Safety Code Ann. § 821.023(e); Vermont Stat. Ann title 13, § 354(g)(1); Virginia Code Ann § 3.1-796.115(F); Washington Rev. Code §16.52.200(4); Wisconsin Statute § 173.24(3).

² Stephan K. Otto, State Animal Protection Laws – The Next Generation, 11 ANIMAL L. 131 (2005); see also Robert Dodge, And Your Little Dog Too; More and More, Americans Are Buying Drugs for Their Pets in Canada to Save Money, CHARLESTON GAZETTE & DAILY MAIL (Charleston, WV) 3 (Sept. 5, 2004).

³ Sophia Chang, *Glen Cove: Seized animals' health improving*, NEWSDAY (May 21, 2008), available at http://www.newsday.com/news/local/nassau/ny-q5695914may21_0.6048808.story; see also Luis Perez, *Jail time for assault on cats*, NEWSDAY, (Apr. 4, 2008) (veterinary care for cat thrown across room cost \$1,800).

⁴ Bill Mason, *Woman charged with 56 counts of animal cruelty*, NEWSDAY (May 20, 2008), available at http://www.newsday.com/news/local/suffolk/ny-lipup205694223may20_0.3836820.story; Susan Saiter, *Shelter Cares for 19 Dogs Taken from Mastic Home*, NY TIMES (Aug. 5, 2007), available at <http://www.nytimes.com/2007/08/05/nyregion/nyregionspecial2/05topicli.html?scp=23&sq=animal+cruelty&st=nyt>; Jennifer Patterson, *Authorities seize 20 cats, 14 dogs from home*, THE TIMES UNION B4 (Apr. 12, 2008); Joseph Mallia, *Animals rescued from Ridge home*, NEWSDAY A17 (Jan. 1, 2008) (SPCA rescued one great Dane, two Chihuahuas, four ferrets, three red-tailed boa constrictors, two cats, and about 20 rats from a home in Ridge); Marc Parry, *2 face cruelty counts after 23 dogs are rescued*, THE TIMES UNION A6 (Oct. 23, 2007).

⁵ Otto, *supra* note 2; see also Luis Perez, *Man gets 2 years in dog's death; Judge sentences him to the maximum for animal cruelty; owner had set his pet on fire after attack*, NEWSDAY A18 (Jan. 23, 2008) (On January 22, 2008, man sentenced for tying dog to tree, dousing him with gasoline, and setting him on fire seven months prior.).

The proposed law will make it much easier for impounding organizations to obtain reimbursement for the expense of caring for an abused or neglected animal and eliminate the need for them to take affirmative steps to recover funds for the cost of care for the first 30 days. Although a court still retains discretion to deny posting of a bond or security, it can do so only for good cause.

The proposed law will eliminate the need for impounding organizations to petition a court for costs associated with caring for an abused animal, and it will enable these organizations to allocate their funds to the more important task of caring for these animals, rather than being forced to dissipate their funds by financing the petition process. It will make it more likely that such organizations are able to recover their costs. Therefore, the New York City Bar Association supports this bill.

Reissued May 2011