

What to Do When Property Seized in a Criminal Case Lives and Breathes - Protecting Victims of Animal Cruelty

By Penny Conly Ellison

Penny Conly Ellison is an adjunct professor at the University of Pennsylvania Law School, teaching animal law and ethics, and a member of the board of directors of the Pennsylvania SPCA.

It seems that we read every week about a dog fighting ring being busted or an animal hoarder being charged with animal cruelty. Usually, the animals have been seized from abusive or neglectful owners. Do you ever wonder what happens to the animals after that? For them, and the shelters that care for them, it can be just the beginning of the saga. Animals are considered to be property under the law. That means that they remain the legal property of their owners unless and until they voluntarily relinquish their rights in them or a court takes them away. Criminal sentences usually, but not always, provide for the forfeiture of the animals upon a conviction for animal cruelty but that usually occurs months, and sometimes years, after the animals are seized. What happens to them in the meantime? And who pays for their care?

When an owner is charged with violating the animal cruelty laws, whether through neglect or outright abuse, the animals must be held by the local humane society or shelter, awaiting reclaim by their owner in the event of an acquittal or dismissal of the charges. Without legal ownership of the animals, the shelter cannot adopt out animals that are the subject of cruelty cases. The animals must simply wait in kennels or cages at the local shelter where they are housed and cared for until the termination of not only the criminal trial but also any appeals. So, the animals languish for months or years, unable to go to real homes, often deteriorating mentally and physically because of the stress of living confined in a shelter for so long.

This long state of limbo is a hardship not only for the animals but also for the nonprofit and municipal shelters that must expend significant resources caring for what is often a large number of animals for an indefinite period of time. Because of the conditions in which they were kept before they arrived at the shelter, these animals frequently have serious medical needs that are expensive to treat. For example, in one case, the Pennsylvania SPCA seized 32 dogs from one defendant charged with dog fighting and the dogs had to be housed and provided with medical care in the shelter for two years. Animals that have been abused, neglected or used in fighting operations usually require extensive and expensive veterinary care. In the notorious Tiger Ranch case in Allegheny County in 2008, approximately 500 animals were confiscated from a so-called sanctuary, all of them requiring critical, immediate veterinary care. Adding to the expense, the seized animals had to be housed at a separate facility because of quarantine issues and safety concerns. The Pennsylvania SPCA absorbed the costs of their care and the resulting financial burden was over \$2,000,000. The shelter can eventually attempt to collect the cost of caring for the animals from the owner but the process is cumbersome and usually fruitless so it is rarely worth the investment of more time and money. So, the shelter spends huge amounts of money caring for these owned animals that could be put toward their primary mission of aiding stray and abandoned animals.

Persuaded by animal advocates, some states have enacted statutes that address this problem in a way that protects both animal victims and the shelters and humane societies that must care for them while at the same time safeguarding the due process rights of criminal defendants. Pennsylvania House Bill 82, currently under consideration by the Pennsylvania Senate, is one such example. It provides a process whereby a humane society or shelter can petition the court to have owners pay the reasonable costs of care if they want to retain ownership of the animals. This simple mechanism shifts the costs of caring for the animal victims back to the owner who under the law already has the affirmative obligation to provide the animals with adequate food, shelter and veterinary care. At the hearing on the petition, the shelter must prove that the animals were properly seized under 42 Pa. C.S. § 5511 (the animal cruelty statute) and that the costs it seeks are reasonable. Assuming both of those are established, the defendant has the option to pay the costs of care (on a monthly basis) or the animals are deemed to have been abandoned and the shelter is free to make them available for adoption immediately. So, either the cost of care is paid, *in advance*, by the owner or the shelter is free to treat the animals as abandoned and seek foster care or adoptive homes, thus freeing the animals from their cages and freeing shelter space and resources for other stray or abandoned animals.

The main argument made by opponents of “costs of care” legislation is that it allows for forfeiture of property before a defendant is convicted of a crime. A full hearing is required, however, and forfeiture only occurs if the owner is unwilling or unable to pay for their care. The animal cruelty law already imposes on owners the responsibility to provide food, shelter and veterinary care and a court must find that the costs sought by the shelter to do so are reasonable.

A statute providing for cost of care bonds would also allow for greater enforcement of the animal cruelty laws. Many local humane societies are made aware of situations of abuse and neglect and are powerless to take action because they simply lack the funds necessary to provide housing, food and medical care to the all of the animals in need. If they could count on either being paid for the care during the protracted holding period or having the animals relinquished for adoption, they could prosecute many more cases of cruelty and neglect. In addition, the need for prosecutors to agree to plea deals in return for relinquishment of the animal victims would be reduced and the public would finally see the kinds of sentences they believe that animal cruelty cases deserve.