

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 14, 2011

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, territorial, and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner that:

1. Establish effective evidence collection and identification of each animal at the scene of the seizure;
2. Provide prompt and continuing veterinary attention for each animal as warranted by each animal's medical condition;
3. Establish a protocol for humane and appropriate confinement for the animals;
4. Provide that the person who has ownership or control of the animals at the time of the seizure must, consistent with due process requirements, post a reasonable bond or security or, in the alternative, promptly surrender the animals to the custody of the lawful authorities;
5. Utilize a timely process to determine the disposition of the animals and provide for prompt transfer to an appropriate rescue organization or adoptive home with humane euthanization occurring only if an animal's medical or behavioral condition warrants such action or it is determined, after reasonable time and effort have been expended, that no appropriate placement for an animal exists;
6. Provide that the localities and/or organizations caring for the animals be granted restitution for the costs incurred for the care of the animals not covered by a reasonable bond or security by any person who does not promptly surrender such animals.

REPORT

Introduction

Recent seizures of animals have illustrated the challenges faced by authorities dealing with these cases. From high profile cases such as the allegations in the Michael Vick/Bad Newz Kennels case in 2007 and the July 2009 multi-state seizure by federal authorities of hundreds of dogs in the Midwest relating to dog fighting to hoarding and cruelty cases prosecuted by state and local authorities, the seizure of animals occurs on a daily basis. Potential defendants and the animals are benefited when there is an efficient process in place that provides for the humane treatment and disposition of seized animals.

Evidence Collection and Identification of Animals

This recommendation calls for effective evidence collection and identification of each animal at the scene of a seizure. In large-scale seizures multiple agencies and organizations may be involved in the collection of the animals. It can be a chaotic situation and the amount of evidence that must be collected can be overwhelming.¹ It is imperative for the protection of the integrity of any future criminal process and to sustain the applicable burden of proof that the evidence documenting the scene be preserved.² As with any case, the chain of custody of all evidence collected should be maintained.³ Evidence collection at a scene involving animals will mirror other potential crime scenes. For example, photographs and video should be taken at the scene to document the conditions the animals were found in and the animals themselves.⁴ Each animal should be examined to determine whether there is evidence on the animal and to document the animal's condition.⁵ As an example, the body of an animal (including the animal's teeth or nails) can be examined for DNA evidence.⁶ Any scars or injuries on the animal should be documented and the body condition of each animal should be determined.⁷

¹ MELINDA D. MERCK, DVM, VETERINARY FORENSICS: ANIMAL CRUELTY INVESTIGATIONS 21 (2007) (describing animal cruelty crime scenes). In the July 2009 multi-state raids for dog fighting there were twenty-nine crime scenes to process with over 200 animal specialists and volunteers to coordinate. Sara Shepard, *Forensic Veterinarians Help Take a Bite Out of Dogfighting*, GAZETTE-MAIL (Charleston, WV), Aug. 8, 2009, at 9A.

² It is important to note that even if initially the expectation is that any charges may be limited solely to the treatment of the animals, evidence of other crimes may be found at the scene.

³ MERCK, *supra* note 1, at 36.

⁴ MERCK, *supra* note 1, at 21 (describing the types of photographs and video that should be taken at the scene).

⁵ MERCK, *supra* note 1, at 20 (discussing the need to record initial observations as the status of the animal can change after arrival at a veterinary facility).

⁶ MERCK, *supra* note 1, at 66 (discussing the collection and uses of DNA evidence).

⁷ MERCK, *supra* note 1, at 40 (discussing body condition scoring and other aspects of the exam documenting the condition of an animal).

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In investigations involving animals, it is often useful to have a veterinarian assist investigators at the scene. The field of veterinary forensics is developing rapidly, and similar to other potential crime scenes, a veterinarian can determine the time of death of any recently deceased animals, or preserve evidence of any decomposing animals.⁸ The number of professionals that are trained in veterinary forensics is growing with programs such as the Veterinary Forensic Sciences Program at the University of Florida providing on-site as well as on-line training.⁹ Having specially trained personnel is ideal but much of the evidentiary process applicable to other crimes will carry over to crimes involving animals.

Each animal should be identified at the scene in a way that will carry through any future proceedings. Usually this is done through an identification number.¹⁰ The animal can be photographed with the identification number or can be fitted with an identification band (if doing so would not interfere with veterinary treatment or the care of the animal). To avoid confusion, it is best if there is consistent numbering of the animals collected at the scene and carried over upon intake if the animals are being sent to multiple facilities. While it may not be feasible to microchip each animal upon intake, if any animal is transferred outside of the initial intake facility, microchipping can ensure that there is no question that the animal is the one involved in the case.¹¹

Veterinary Attention

This recommendation calls for prompt and continuing veterinary attention for each animal as warranted by each animal's medical condition. As discussed above, ideally a veterinarian will be part of the team on site at the seizure and would participate in the collection of evidence. A veterinarian should also be part of the team to provide immediate veterinary care for any animal in distress on site. It is the responsibility of the authority with custody of the animals to preserve the evidence – which includes the animals themselves.¹² Preserving the evidence includes providing continuing veterinary care to the animal to ensure that the animal's health does not deteriorate while in the custody of the relevant authorities.

⁸ MERCK, *supra* note 1, at 19-30.

⁹ See also International Veterinary Forensic Sciences Association, www.ivfssa.org (last visited April 5, 2010) (describing the association and opportunities for training in veterinary forensics).

¹⁰ Rebecca J. Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 78 (2008) (discussing the use of kennel numbers for official correspondence and court documents and describing how the dogs in the case were provided with a “call name” to distinguish each dog as an individual during the time the dogs were being evaluated prior to final disposition).

¹¹ For example, sixteen dogs that were housed in foster homes before the final judicial order in the Bad Newz Kennels case were microchipped prior to each animal's release from the animal control facilities.

¹² MERCK, *supra* note 1, at 7

The medical condition of an animal can also impact an animal's behavior. Ensuring that animals are maintained in or restored to good health allows for a more accurate determination of an animal's behavioral status.

Humane and Appropriate Confinement

This recommendation calls for humane and appropriate confinement of the animals after the seizure. According to the National Animal Control Association Training Guide usually, after a seizure, the animals will be transported to the seizing officer's animal welfare agency. The animal welfare agency is responsible for the care and treatment of the animals.¹³

The most common places where animals from a mass animal seizure are housed initially include: (a) local and regional humane societies or SPCAs, (b) local and regional animal control and services agencies, (c) other private area animal shelters or rescue organizations, (d) veterinary clinics and hospitals, (e) local fairgrounds, (f) local equestrian centers and ranches, and (f) at the crime scene itself.

Timely transfer of the animals from shelters to foster homes as appropriate is beneficial for the animals. In the Bad Newz Kennels case sixteen of the dogs were transferred from shelters to foster homes after the civil forfeiture process was complete but prior to final disposition of the dogs. It was extremely positive for the dogs to be out of the shelter environment and in homes. The transfer reduced the burden on the Virginia shelters that had been caring for the dogs since the time of the seizure and reports from the foster homes provided valuable information for the guardian/special master who was making a recommendation on the disposition of the dogs.¹⁴

Posting of Bond or Security or Surrender of Animals

This recommendation calls for a more efficient and effective way to treat the property seized in these cases. Animals are by their nature different than guns, money, or property seized as a result of other crimes. Because the property in these cases is a living being, the authorities and the courts must treat them differently. In recent years a number of states, through their legislative processes, instituted bonds or mandatory surrender of the animals in these cases.¹⁵ These new bond provisions were created out of necessity because animals were literally waiting in shelters for one to two years for the trial process to end. The best of these laws ensure that an adequate bond is posted for a reasonable amount of time (nine months). Also, if the person charged does not agree to post the bond, then he or she is required to surrender the animal. In the event the person is found not guilty, they would be reimbursed for the value of the animal seized or the amount of

¹³ NATIONAL ANIMAL CONTROL ASSOCIATION TRAINING GUIDE 6 (John Mays ed. 2009).

¹⁴ Huss, *supra* note 10, at 78-79.

¹⁵ 510 ILL. COMP. STAT. 70/3.04-3.06 & 720 ILL COMP. STAT. 5/26 (2009); VA. CODE. ANN. 3.2-6571 & 3.2-6569 (2009).

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the posted bond.¹⁶ It is imperative that the prosecutors request a bond when the seizure hearing is held.¹⁷

Timely Process to Determine the Disposition of the Animals

This recommendation calls for a timely process to determine the disposition of the animals and for prompt transfer of the animals to an appropriate rescue organization or adoptive home. The judge has the ultimate disposition power. In a recent case U.S. District Judge David Lawson in Detroit granted the Humane Society of Kent County custody of eleven pit bulls seized in a dog-fighting bust, a ruling expected to make the animals eligible for adoption. The decision ended the Eastern District of Michigan's U.S. Attorney's Office bid to euthanize the dogs seized last summer after agents broke up a dog-fighting ring in eastern Michigan.¹⁸

The evaluation of a victim of cruelty is an organic process, one that changes over time. Animals vary widely in their resiliency or sensitivity to stressful or traumatic situations.¹⁹ Behavioral assessment of animals that have been victims of cruelty can serve several purposes. First, such an evaluation helps to provide an overall picture of the animal's health, with an emphasis on determining behavioral health rather than the presence of a specific behavior problem. Such an assessment can be helpful in evaluating the consistency of accounts explaining the animal's injuries. For example, an allegation that a dog was struck or kicked because she responded aggressively when gently petted would be called into question if the animal responded nonaggressively to handling by a variety of people.

Second, such an evaluation can help assess the likelihood that the animal will be able to recover behaviorally, as well as physically, from the effects of abuse. This may be necessary in cases where animals have been seized from an animal hoarder, puppy mill, or dog-fighting situation.

Every effort should be made to place the animals. Humane euthanasia should be a last resort only if the animal's physical or behavioral condition requires such action. If suitable housing for the animals is limited, a behavioral assessment may need to be part of the triage procedure for deciding which animals would benefit most from the limited resources available to rehabilitate and re-home them.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Paul Egan, *Judge Spares Dogs Rescued in Fight Probe*, DET. NEWS, Mar. 10, 2010, at A3.

¹⁹ LESLIE SINCLAIR, DVM et al., FORENSIC EVALUATION OF ANIMAL CRUELTY: A GUIDE FOR VETERINARY AND LAW ENFORCEMENT PROFESSIONALS 68 (2006). *See also* Robert Patrick, *Sweet Success After Dog Raid: Humane Society Expects to Save 60 Percent of Animals Seized in Area*, ST. LOUIS POST DISPATCH, Nov. 26, 2009, at A1 (discussing the results of the evaluation of the dogs seized as part of the July 2009 multi-state raids for dog fighting and the fact that the percentage of dogs expected to be saved is much higher than predicted).

Behavioral evaluations have been used in a myriad of cases including the Bad News Kennels case and the largest dog fighting bust in United States history that occurred in 2009. In the 2009 case teams of animal behavior experts from across the nation assessed more than 500 dogs seized from alleged dog-fighting operations in Missouri, Illinois, Oklahoma, Texas, Mississippi, Iowa, and Nebraska.²⁰

Restitution

This recommendation calls for effective compensation to the localities and/or organizations caring for the seized animals. In many animal cruelty and animal fighting busts the animals are in extremely poor condition at the time of the seizure. The animals must be given proper medical care to maintain them prior to resolution of the case. Many of these animals had never received adequate or any veterinary care. Thus, providing the proper care upon seizure becomes important and costly.²¹ In order for localities and/or organizations to recoup their costs for the daily care and veterinary expenses incurred while maintaining these neglected and abused animals, the prosecutor must ask for restitution at sentencing.²² The restitution should cover the daily expense of caring for the animal at the shelter or other location²³ and also any veterinary expense incurred in treating the animal's injuries.²⁴ If the person has posted a bond, the bond should be

²⁰ *More than 400 Pit Bulls Seized*, WICHITA EAGLE (Kan), July 23, 2009, available at 2009 WLNR 14250021 (discussing the evaluation of the dogs).

²¹ Ian Urbina, *Animal Abuse as Clue to Additional Cruelties*, NEW YORK TIMES, Mar. 18, 2010, at A16 (reporting that the estimated cost of rescuing and caring for 170 dogs from a hoarder's home in Franklin County, Ohio was \$1.2 million); see also *Shelter Seeks Help with Rescued Ribera Dogs*, SANTA FE NEW MEXICAN, June 7, 2009, available at 2009 WLNR 10959246 (reporting that the estimated costs for caring for forty-two dogs rescued from an alleged hoarder would likely exceed \$40,000); Dawn Gagnon, *Animal Care Tops \$50,000*, BANGOR DAILY NEWS, Oct. 3, 2007, at 6 (reporting on the costs of caring for twenty dogs removed from their owner); Anne Paine, *Some Neglected Tennessee Horses Find Greener Pastures*, THE TENNESSEAN (Nashville, TN), Dec. 22, 2009, available at 2009 WLNR 25727798 (reporting the cost of care of eighty rescued horses at \$250,000); Keren Rives, *Man Pleads Guilty to Dog Fighting: Sentences to Two-Year Probation*, TIMES-NEWS (Burlington, NC), Mar. 11, 2010, available at 2010 WLNR 5177388 (reporting on order to pay restitution in the amount of \$16,000 for the costs incurred by the city of Burlington, although the estimated costs incurred to date was \$41,548).

²² VA. CODE ANN. 3.2-6570 (2009).

²³ Christine Clarridge, *600 Rescued Dogs and 80% are Pregnant*, THE SEATTLE TIMES, Jan. 24, 2009, available at 2009 WLNR 1422209 (illustrating that the cost associated with seizures can skyrocket for local shelters charged with caring for the seized animals).

²⁴ Abby Simons, *Shih Tzu Rescue Seeks Public's Help with Dogs*, STAR TRIB. (Minneapolis, MN), Nov. 14, 2009, at 02B (discussing the cost of veterinary care for eight dogs, still remaining at Minneapolis Animal Care and Control, who were seized from an individual charged with misdemeanor animal cruelty).

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ordered to be used in providing the restitution. If the bond does not cover the amount of the restitution, the prosecutor should ask the court to order that full restitution be paid.²⁵

Conclusion

The Tort Trial and Insurance Practice Section urges adoption of this recommendation calling for all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and polices to ensure the humane treatment and timely disposition of seized animals.

Respectfully submitted,
Jennifer Busby, Chair
Tort Trial and Insurance Practice Section
February 2011

²⁵ Carol L. Smith, *Puppy Mill Owner Surrenders Dogs*, BANDERA CO. COURIER (Texas), Dec. 17, 2009, available at http://www.bccourier.com/Archives/News_detail.php?recordID=091217N3 (last visited Apr. 14, 2010) (illustrating that courts may order the total amount of restitution in these cases).

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Jennifer Busby, Chair

1. Summary of Resolution.

This Resolution is intended to address issues arising from the seizure of animals.

2. Approval by Submitting Entity.

Approved by the Council of the Tort Trial and Insurance Practice Section on May 14, 2010.

3. Has This or a Similar Resolution Been Submitted to the House or Board Previously?

No.

4. What Existing Association Policies are Relevant to This Resolution and How Would They Be Affected By Its Adoption?

Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

Animals are being seized each day by governmental authorities. This recommendation provides guidance for the governmental agencies involved to provide a fair, efficient and effective process for dealing with these cases.

6. Status of Legislation. (If applicable.) Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

None.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referral.

This Report and Recommendation will be referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

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10. Contact Persons. (Prior to the Meeting)

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11. Contact Person. (Who Will Present the Report to the House.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution calls for federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies to ensure the humane treatment and efficient disposition of seized animals.

2. Summary of the Issue that the Resolution Addresses

The Resolution is intended to address problems that arise when animals are seized as a result of civil actions or criminal prosecutions. Many jurisdictions do not have procedures and protocols in place in advance of the seizure of the animals which can lead to inefficiencies in the prosecution of these cases and harm to the animals. The animals seized in these cases may be in the temporary custody of the governmental authority for a lengthy period of time prior to the final determination of their legal status.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution sets forth actions that should be taken by governmental entities that will allow them to more efficiently and humanely deal with the seizure of animals.

4. Summary of Minority Views or Opposition Which Have been Identified

No minority or opposing view has been identified.