

# ELR

## NEWS & ANALYSIS

## Time to Feed the Evidence: What to Do With Seized Animals

by Madeline Bernstein and Barry M. Wolf

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*Editors' Summary: Most people agree that unjustified cruelty to animals should be avoided. Consequently, all 50 states and the District of Columbia have laws prohibiting such abuse. Yet when the owner of an animal is suspected of engaging in abuse or neglect, the animal is usually seized or impounded by the state or local authority. This often results in the animal being left in a shelter for a long period of time while the state prepares its case. The authors argue that extended shelter stays are not only unnecessary, but they do not serve in the animal's or the owner's best interest. Instead, they argue that states should adopt laws requiring a quick and final determination of a seized animal's status without reference to any criminal proceedings that may be pending against the animal's owner. This allows the state to immediately place the animal in a safe environment while keeping the integrity of the criminal prosecution intact.*

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### I. Introduction

All 50 states and the District of Columbia<sup>1</sup> have laws on the books prohibiting cruelty to animals.<sup>2</sup> In the great majority of these states, statutes explicitly authorize law enforcement agencies or humane society representatives to seize or impound, i.e., remove from the possession of the owner, any abused or neglected animal even before its owner is con-

victed on an animal cruelty charge.<sup>3</sup> Once an animal is seized, any owner who abused the animal can no longer do so without regaining custody. However, the animal typically enters a state of legal limbo in which it is "temporarily" placed in a shelter where, despite the best efforts of often dedicated caregivers, the animal is exposed to diseases and almost inevitably suffers from a lack of attention. In effect, the animal falls into a black hole from which it might never escape.

Shortening the time seized animals spend in shelters is desirable, but accomplishing this goal will require a change in law (and perhaps a greater commitment of resources) in

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Madeline Bernstein is President of the 127-year-old Los Angeles Society for the Prevention of Cruelty to Animals, recognized as the leading voice, educator, and hope for the animals it protects and the people it serves. She received her J.D. in 1979 from State University of New York at Buffalo, Faculty of Law and Jurisprudence. Barry M. Wolf is an Appellate Specialist Certified by the State Bar of California, Board of Legal Specialization. He received his J.D. in 1976 from Georgetown University Law Center and practices civil appellate law in Los Angeles, California. The authors wish to thank Emily Terrell of Loyola Law School for all her research and editorial assistance.

1. The District of Columbia will hereinafter be referred to as a state.
2. ALA. CODE §13A-11-14 (2004); ALASKA STAT. §11.61.140 (Michie 2004); ARIZ. REV. STAT. ANN. §13-2910 (West 2004); ARK. CODE ANN. §5-62-101 (Michie 2005); CAL. PENAL CODE §597 (West 2005); COLO. REV. STAT. ANN. §18-9-202 (West 2005); CONN. GEN. STAT. §53-247 (2005); DEL. CODE ANN. tit. 11, §1325 (2005); D.C. CODE ANN. §22-1001 (2005); FLA. STAT. ANN. §828.12 (West 2005); GA. CODE ANN. §16-12-4 (Harrison 2004); HAW. REV. STAT. §711-1109 (Michie 2004); IDAHO CODE §25-3504 (Michie 2004); 510 ILL. COMP. STAT. 70/3.02 (2004); IND. CODE §§35-46-3-7 and 35-46-3-12 (2005); IOWA CODE ANN. §§717.2, 717B.2, 717B.3 (West 2005); KAN. STAT. ANN. §21-4310 (2003); KY. REV. STAT. ANN. §525.125, 525.130, 525.135 (Westlaw 2004); LA. REV. STAT. ANN. tit. 14, §102.1 (West 2004); ME. REV. STAT. ANN. tit. 7, §4011 and tit. 17, §1031 (West 2004); MD. CODE ANN., CRIM. LAW §10-604, 10-606 (2005); MASS. GEN. LAWS ch. 272, §77 (2005); MICH. COMP. LAWS ANN. §750.50 (West 2005); MINN. STAT. ANN. §343.21 (West 2005); MISS. CODE ANN. §97-41-1 (2004); MO. ANN. STAT. §§578.009, 578.012 (West 2005); MONT. CODE ANN. §45-8-211 (2003); NEB. REV. STAT. §§28-1009, 28-1010 (2004); NEV. REV. STAT. §574.100

(2004); N.H. REV. STAT. ANN. §644:8 (2004); N.J. STAT. ANN. §§4:22-17, 4:22-18, 4:22-26 (West 2005); N.M. STAT. ANN. §30-18-1 (Michie 2005); N.Y. AGRIC. & MKTS. LAW §§353, 353a (McKinney 2005); N.C. GEN. STAT. §14-360 (2005); N.D. CENT. CODE §36-21.1-02 (2003); OHIO REV. CODE ANN. §§959.13, 959.99, 959.131 (West 2005); OKLA. STAT. ANN. tit. 21, §1685 (West 2005); OR. REV. STAT. §§167.315, 167.320, 167.322, 167.325, 167.330, 167.340 (2003); 18 PA. CONS. STAT. ANN. §5511 (West 2004); R.I. GEN. LAWS §§4-1-2, 4-1-3, 4-1-4, 4-1-5, 4-1-26 (2004); S.C. CODE ANN. §47-1-40 (2004); S.D. CODIFIED LAWS §40-1-27 (Michie 2004); TENN. CODE ANN. §§39-14-202, 39-14-205, 39-14-212 (2005); TEX. PENAL CODE ANN. §42.09 (Vernon 2004); UTAH CODE ANN. §76-9-301 (2004); VT. STAT. ANN. tit. 13, §§352, 352a, 353 (2004); VA. CODE ANN. §3.1-796.122 (2005); WASH. REV. CODE §§16.52.205, 16.52.207 (2005); W. VA. CODE §§19-20-12, 61-8-19 (2005); WIS. STAT. §951.18 (2005); WYO. STAT. ANN. §6-3-203 (Michie 2004). Some states also have statutes targeted to prohibiting animal cruelty in particular situations. *See, e.g.*, NEV. REV. STAT. §574.070 (instigating or witnessing fights between birds or other animals), 574.105 (mistreatment of police animal), 574.107 (mistreatment of dogs used for certain events); WASH. REV. CODE §§16.52.80 (transporting or confining an animal in an unsafe manner). Mississippi's animal cruelty statute has been declared unconstitutional by that state's Supreme Court. *Davis v. State*, 806 So. 2d 1098, 1104 (Miss. 2001).

3. See the appendix to this Article, State Laws Specifically Authorizing Seizure or Forfeiture of Neglected or Abused Animals.

many states. This Article discusses why such changes are needed and proposes a legal mechanism to help implement these changes. Part II provides a brief overview of existing state law pertaining to animal seizure and its aftermath. Part III discusses why animals do not need to be held as evidence of cruelty. Part IV explains why extended shelter stays are bad for animals. And Part V contains recommendations for change.

## II. Statutory Overview

In 44 states, statutes explicitly authorize seizing any and all neglected or abused animals before their owner is convicted on animal cruelty charges.<sup>4</sup> Some of these statutes permit seizure if mistreatment is observed by an officer with authority to seize the animal, while others require a warrant for the seizure or permit the seizure only when the person in charge of the animal is arrested for cruelty offenses. More importantly for the purpose of this Article, the animal's post-seizure treatment also differs in these states.

The great majority of these states authorize forfeiture of the animals under certain circumstances. "Forfeiture" has been defined as "[t]he divestiture of property without compensation."<sup>5</sup> Forfeiture may be either civil or criminal. A civil forfeiture is an "in rem" proceeding in which "property . . . is proceeded against, and by resort to a legal fiction, held guilty and condemned."<sup>6</sup> Civil forfeitures are "designed primarily to confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct."<sup>7</sup> In contrast, criminal forfeiture is "an aspect of punishment imposed following conviction of a substantive criminal offense."<sup>8</sup> State laws authorizing animal forfeiture generally appear to be primarily intended to protect the animal, thereby making them more analogous to child custody laws than to traditional forfeiture statutes.<sup>9</sup> However, this

Article will refer to such laws as forfeiture statutes because animals are still regarded as property under the law.<sup>10</sup>

In 10 states, seized animals can be forfeited *only* after the owner's conviction on cruelty charges.<sup>11</sup> In eight states, seized animals can be forfeited before the owner's conviction on cruelty charges only if the owner fails to post security.<sup>12</sup> In another six states, the seized animal's owner can request a hearing to determine the animal's disposition.<sup>13</sup> Nevada requires notice to the owner and an "opportunity for a hearing."<sup>14</sup> In six states, the seizing, custodial, or prosecuting authority can request a hearing to determine the animal's disposition.<sup>15</sup> In eight states, a hearing *must* be held to determine the animal's disposition.<sup>16</sup>

10. DAVID S. FAVRE & MURRAY LORRING, *ANIMAL LAW* 2 (1983). See also GARY FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* (1995), which states:

Humans are entitled under the laws of property to convey or sell their animals, consume or kill them, use them as collateral, obtain their natural dividends, and exclude others from interfering with an owner's exercise of dominion and control over them. A property owner's treatment of an animal may ostensibly be limited by anticruelty laws, but property rights are paramount in determining the ambit of protection accorded to animals by law.

*Id.* at 24.

4. The pre-conviction seizure of any and all abused or neglected animals is *not* explicitly statutorily authorized in Alabama, Arkansas, Hawaii, New Jersey, North Carolina, North Dakota, or Ohio. ALA. CODE §§13A-11-243, 13A-11-244, 13A-11-245 (allowing seizure of cruelly treated dogs and cats); ARK. CODE ANN. §§5-62-119, 5-62-120, 5-62-124 (allowing seizure of fighting dogs, wrestling bears, and animals in any boat or vehicle who are being treated cruelly); HAW. REV. STAT. §711-1110.5 (permitting courts to order the animal's surrender or forfeiture only following a conviction on animal cruelty charges); N.J. STAT. ANN. §4:22-47 (allowing seizure of animals being transported in a cruel manner or if person in charge of animal is arrested for cruelty and no one else can take the animal); N.C. GEN. STAT. §14-363, 19A-21, 19A-35 (allowing seizure of animals confined in pet shops, kennels, animal shelters, or auction markets being treated cruelly or if person conveying animal in cruel manner is taken into custody); N.D. CENT. CODE §36-21.1-06 (permitting seizure of animals unjustifiably exposed to cold or inclement weather or not properly fed and watered); OHIO REV. CODE ANN. §959.132 (permitting pre-conviction seizure only of companion animals). Alabama enacted a statute permitting the pre-conviction seizure of any and all abused or neglected animals, but it was held unconstitutional for want of a hearing in *Humane Soc'y of Marshall County v. Adams*, 439 So. 2d 150, 153 (Ala. 1983).

5. BLACK'S LAW DICTIONARY 661 (Bryan A. Garner ed., 7th ed., West 1999).

6. *United States v. Ursery*, 518 U.S. 267, 283 (1996).

7. *Id.* at 284.

8. *Libretti v. United States*, 516 U.S. 29, 39 (1995).

9. Some state animal forfeiture laws appear to be intended both to protect the animal and to remove property used for unlawful activity. See, e.g., W. VA. CODE §61-8-23 (2005) (permitting seizure of animals used in exhibition of fighting).

11. The states that authorize pre-conviction seizure of any and all neglected or abused animals but allow forfeiture only after a seized animal's owner is convicted of cruelty are Delaware, Maine, Massachusetts, Nebraska, New Hampshire, Pennsylvania, Rhode Island, Tennessee, Washington, and Wisconsin. See DEL. CODE ANN. tit. 3, §7904; ME. REV. STAT. ANN. tit. 7, §4016, tit. 17, §1031; MASS. GEN. LAWS ch. 272, §77; NEB. REV. STAT. §28-1012; N.H. REV. STAT. ANN. §644.8; 18 PA. CONS. STAT. ANN. §5511; R.I. GEN. LAWS §§4-1-2, 4-19-11; TENN. CODE ANN. §39-14-202; WASH. REV. CODE §§16.52.200; WIS. STAT. §951.18. Maine permits a prosecutor to charge a defendant with the civil violation of cruelty to animals in lieu of charging the defendant under the criminal statutes. ME. REV. STAT. ANN. tit. 7, §4016. New Hampshire provides for an owner's expedited trial on cruelty charges. N.H. REV. STAT. ANN. §644.8. Wisconsin permits the owner to request a hearing before trial in order to attempt to regain possession of the animal. WIS. STAT. §173.22.

12. The states that allow pre-conviction seizure of any and all neglected or abused animals and authorize seized animals to be forfeited before the owner's conviction on cruelty charges if the owner fails to post security are Alaska, Indiana, Louisiana, Michigan, Missouri, New York, Utah, and Wyoming. See ALASKA STAT. §§03.55.130, 11.61.140; IND. CODE §35-46-3-6; LA. STAT. ANN. tit. 14, §102.2; MICH. COMP. LAWS ANN. §750.50; MO. ANN. STAT. §578.018; N.Y. AGRIC. & MKTS. LAW §373; UTAH CODE ANN. §§76-9-301, 76-9-305; WYO. STAT. ANN. §§6-3-203, 11-29-109, 11-29-110. Indiana also permits the owner to request a hearing before trial; if the court finds no probable cause exists to support an animal cruelty charge, the owner regains possession of the animal. IND. CODE §35-46-3-6.

13. The states that allow pre-conviction seizure of any and all neglected or abused animals and permit the seized animal's owner to request a hearing to determine the animal's disposition are California, Georgia, Maryland, Minnesota, Mississippi, and West Virginia. See CAL. PENAL CODE §597.1; GA. CODE ANN. §4-11-9.5; MD. ANN. CODE, CRIM. LAW §§10-615; MINN. STAT. §343.235; MISS. CODE ANN. §97-41-2; W. VA. CODE §7-10-4.

14. NEV. REV. STAT. §574.055.

15. The states that allow pre-conviction seizure of any and all neglected or abused animals and authorize the seizing, custodial, or prosecuting authority to request a hearing to determine the animal's disposition are Arizona, Illinois, Kansas, Montana, Oregon, and Vermont. See ARIZ. REV. STAT. ANN. §11-1029; 510 ILL. COMP. STAT. 70/3.04; KAN. STAT. ANN. §21-4311; MONT. CODE ANN. §27-1-434; OR. REV. STAT. §167.347; VT. STAT. ANN. §354. A ballot measure barring pre-conviction forfeitures may have rendered the Oregon procedure unconstitutional, but the measure has since been held to violate Oregon's constitution. *Lincoln Interagency Narcotics Team v. Kitzhaber*, 188 Or. App. 526, 72 P.3d 967 (Or. Ct. App. 2003), review allowed, 336 Or. 376 (Or. 2004).

The five remaining states in which animals can be seized before their owner is convicted on animal cruelty charges require neither post-conviction forfeiture nor dispositional hearings of all seized animals. South Dakota requires disposition “within a reasonable time,” but does not explicitly provide for a hearing.<sup>17</sup> Idaho law provides that seized animals are cared for until deemed to be in a suitable condition and then returned to the owner on payment of a lien for the animal’s care; if no responsible owner can be found, the animal may be offered for adoption in lieu of destruction.<sup>18</sup> The District of Columbia requires a seized animal to be returned to its owner unless the owner fails to respond to a notice of seizure, take charge of the animal within 20 days, or (presumably) satisfy a lien on the animal for expenses of care.<sup>19</sup> Kentucky provides that animals found on premises where animal fighting occurs are to be “confiscated” and turned over to the animal control officer if there are reasonable grounds to believe that the animals were on the property for the purpose of fighting.<sup>20</sup> Oklahoma does not provide for forfeiture generally, though cocks and dogs used in fighting must be forfeited on conviction, while bears used in wrestling exhibitions and horses used in tripping exhibitions can be forfeited.<sup>21</sup>

Thus, of the 44 jurisdictions where any and all neglected or abused animals can be seized prior to their owner’s conviction on cruelty charges, only eight mandate a dispositional hearing regardless of the parties’ wishes. In the remaining states, an animal’s fate might not be determined until after the criminal trial or upon the happening of some other event, i.e., the owner’s failure to post security. Misdemeanor prosecutions can take weeks to resolve, and felony prosecutions may take months.<sup>22</sup> Therefore, in many states, an animal’s shelter stay can last a nontrivial period of time before its fate is determined. There is no good reason for this.

16. The states that require a hearing to determine a seized animal’s disposition are Colorado, Connecticut, Florida, Iowa, New Mexico, South Carolina, Texas, and Virginia. *See* COLO. REV. STAT. ANN. §35-42-109; CONN. GEN. STAT. §22-329a; FLA. STAT. ANN. §828.073; IOWA CODE ANN. §§717B.4, 717B.5; N.M. STAT. ANN. §§30-18-1.1, 30-18-1.2; S.C. REV. STAT. §47-1-150; TEX. HEALTH & SAFETY CODE ANN. §§821.022, 821.023; VA. CODE ANN. §3.1-796.115. The Iowa statutes cited above cover animals other than livestock, which are covered by a separate statute permitting but not requiring a hearing. IOWA CODE ANN. §717.5 (West 2003). A separate New Mexico statute requires hearings when livestock are seized due to cruelty. N.M. STAT. ANN. §77-18-2 (Westlaw 2004).

17. S.D. CODIFIED LAWS §40-1-34. Because South Dakota’s statute does not provide for a hearing, it may be unconstitutional. *See Humane Soc’y of Marshall County v. Adams*, 439 So. 2d 150, 153 (Ala. 1983).

18. IDAHO CODE §25-3511.

19. D.C. CODE ANN. §22-1004.

20. KY. REV. STAT. ANN. §§436.610.

21. OKLA. STAT. ANN. tit. 21, §1692.7, 1699, 1700.

22. California statistics for fiscal year 2002-2003 showed that 70% of misdemeanor charges took up to 30 days to dispose of after the initial complaint was filed, another 17% were disposed of in the next 60 days, 4% were resolved in the following 30 days, and 9% were not disposed of within 120 days of the initial complaint’s filing. *See* JUDICIAL COUNCIL OF CALIFORNIA, 2004 STATISTICS REPORT 57 (2004), available at <http://www.courtinfo.ca.gov/reference/documents/csr2004.pdf> (last visited July 21, 2005). Ninety percent of felonies took up to a year to resolve after the accused’s first appearance in a court of limited jurisdiction, and 10% were not disposed of within that time. *Id.*

### III. Animals Need Not Be Held as Evidence of Cruelty

Animals are legally classified as property in the United States.<sup>23</sup> However, they do not behave like other property. Most evidence is inanimate, so its condition does not change over time unless someone permits it to degrade or tampers with it. If stored properly and kept secure, an inanimate object will be in precisely the same condition on the day of trial as it was on the day of seizure. Even a homicide victim can be kept in a morgue in order to preclude legally significant changes in the corpse before and during trial. The same is not true of animals, whose condition changes over time regardless of how they are kept. In fact, the very reason for seizing neglected or abused animals is to change their condition by altering their environment. In practice, an animal victim will either be rehabilitated or fail to thrive and be euthanized.

Therefore, it is pointless to require animals to be held for evidentiary purposes until their owner is tried on animal cruelty charges. If an animal has been given proper care and its injuries are not permanent, that animal may bear no more than a passing physical resemblance to the abused or neglected creature that had been seized and brought to a shelter. Surprisingly, Nevada requires animals as well as other implements used in fights among animals to be retained “for the purpose of evidence upon the trial.”<sup>24</sup> All that such a requirement does is provide defense attorneys with a potential argument that animals in good condition at trial must not have been too severely abused after all. In fact, one of this Article’s authors is familiar with a case where the defense attorney attempted to use this very argument. Though the attempt failed, there is no reason to provide such opportunities.

In reality, the best way to provide evidence regarding an animal’s condition at the time of seizure is to thoroughly document that condition by means of photographs, affidavits, and preserve samples of other relevant forensic evidence. As the New York Humane Society states in its manual on investigating animal cruelty:

One of the best pieces of evidence that you can use to document animal cruelty/neglect is photographic evidence. The importance of photographs *cannot* be over-emphasized. Your objective is to show the judge and jury the neglect or cruelty that prompted the complaint and caused you to charge the owner (or person responsible for the care of the animal) with animal cruelty charges.

Animals cannot generally be brought into the court room, and even if they could, their physical condition always will have improved by time the case goes to court. Thus, it is critical that a judge or jury see the poor condition the animals were in on the day they were seized. No amount of verbal testimony can convey the suffering as well as photographs which clearly depict emaciation, injuries, filthy conditions, etc. They validate all the written documents you have accumulated.<sup>25</sup>

23. *See supra* note 9.

24. NEV. REV. STAT. §574.090(3).

25. NEW YORK STATE HUMANE ASS’N, HOW TO INVESTIGATE ANIMAL CRUELTY IN NY STATE—A MANUAL OF PROCEDURES 14 (1996), available at <http://www.nyshumane.org/Manual/manual.pdf> (last visited July 21, 2005) (emphasis in original).

Louisiana state law requires that “[t]he seizing officer shall photograph the animal within 15 days after posting of the notice of seizure and shall cause an affidavit to be prepared in order to document its condition in accordance with R.S. 15:436.2.”<sup>26</sup> That statute allows the animal’s photograph to be admitted regardless of the animal’s availability, and provides that the affidavit documenting the animal’s condition is admissible if two conditions are met: (1) the affidavit is based on personal knowledge and states the basis for such knowledge; and (2) the affidavit is “paraphed” for identification with the photograph.<sup>27</sup> The statute also provides that the affidavit is “prima facie evidence of the condition of the animal alleged to be cruelly treated” and that the defendant can use the animal as part of his defense (if the animal is still available) and can use photographs as well.<sup>28</sup>

Courts reviewing animal cruelty convictions have also recognized the value of evidence documenting an animal’s condition at the time of seizure. In *State v. Babcock*,<sup>29</sup> the court noted that “[t]he photographs and veterinarian records of all the animals are highly relevant evidence because they showed the condition of the animals at or near the time of the alleged offense as well as establishing the necessary mens rea for appellant to be convicted of animal cruelty.”<sup>30</sup> Similarly, in *People v. Rexelle*,<sup>31</sup> the court found that “[t]he overall conditions under which the cats were kept, as shown by the videotape and extensive photographic catalog of the animals, further chronicles the deplorable conditions.”<sup>32</sup> And in *Hampton Animal Shelter, Inc. v. American Society for Prevention of Cruelty to Animals*,<sup>33</sup> the court recognized the power of such evidence, stating:

In light of the affidavits of the veterinarians and animal health technicians who were present during the time in question and the inhumane conditions depicted in the photographs submitted by the defendants, the plaintiff’s contention that all of the animals on its premises were wanted and that none were abandoned is incredible.<sup>34</sup>

Because it is the animal’s condition when seized that matters, not its condition at the time of trial, it simply is not necessary to hold the animal for evidentiary purposes. There is no other possible reason to hold the animal in a shelter for long periods of time. The owner’s interest is not served by doing so, since that interest (whether economic, emotional, or both) is best served by promptly determining the animal’s status. Moreover, as will be discussed in the next part, lengthy shelter stays are not in the animal’s best

interest because they threaten the animal’s physical and psychological health.

#### IV. Why Shelter Stays Harm Animals

The common practice of storing animal victims of cruelty in animal shelters creates heartbreaking consequences because virtually no animal so confined can escape unscathed.<sup>35</sup> Numerous factors create stress and disease transmission in every shelter environment, including the constant introduction of strange animals, inadequate ventilation/design/space, insufficient funds, no shelter medicine expertise, and a lack of genuine human interaction with shelter residents.

The healthiest, most well-adjusted animal instantly becomes at-risk for health, stress, and behavioral problems upon entering a shelter. New surroundings, excessive noise, confinement, grief/separation anxiety, boredom, and finally illness and injury are now the norm for an animal that may have once been a beloved pet. These factors alone will agitate and mentally stress even the healthiest of animals and can increase their blood pressure and heart rate, cause dilated pupils, and create a host of other physical and metabolic changes<sup>36</sup> resulting in a compromised immune system leading to danger of increased physical illness. Add overcrowding, fights, and exposure to new germs (even sometimes epidemics), and the animal can now become physically and mentally debilitated. Such debilitation is visibly manifested as animals hide in cages, lose appetite, bark excessively, become aggressive, chew on themselves, and constantly pace, circle, and sway. The longer the stay, the less likely that even a former pet can be successfully rehabilitated and adopted into a new home. There is no dispute that there is an inverse relationship between the time spent in a shelter environment and the best interests of the animal.

Imagine this same scenario but, instead of a healthy animal, the animal in question has been abused and is now considered evidence. Such animals enter the system malnourished, emaciated, beaten, cut, torn, burned, broken, and in some cases mutilated. They are often placed in an animal shelter pending final disposition of a criminal case against

26. LA. REV. STAT. ANN. tit. 14, §102.2(B)(2).

27. *Id.* tit. 15, §436.2(B)(1) & (2). The term “paraphed,” which is used in this statute, refers to using one document to identify another. *See, e.g., Halley v. Buckley*, 850 So. 2d 950, 951 (La. Ct. App. 2003) (“collateral mortgage note due on demand and payable to the order of ‘myself’ was executed on the same date and paraphed ‘*nevarietur*’ to identify it with the mortgage”).

28. *Id.* tit. 15, §436.2(C) & (D).

29. No. 98-G-2144, 1999 WL 689939 (Ohio Ct. App. Aug. 27, 1999).

30. *Id.* at \*8. This case is unpublished, cannot be cited in Ohio state courts, and may not be citable elsewhere, depending upon court rules.

31. No. F041006, 2003 WL 22229510 (Cal. Ct. App. Sept. 26, 2003).

32. *Id.* at \*4. This case is unpublished, cannot be cited in California state courts, and may not be citable elsewhere, depending upon court rules.

33. 169 A.D.2d 703, 564 N.Y.S.2d 461 (1991).

34. 169 A.D.2d at 703, 564 N.Y.S.2d at 462.

35. The authors in no way intend to give any offense to the conscientious caregivers who work in animal shelters. In fact, seized animals may well be worse off if they are not placed in a shelter. One of the authors has personal knowledge of the problem occurring in a case where the defendant’s assets were seized under bankruptcy law and the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. §§1961-1968). Over 100 exotic animals were listed as “assets” but failed to be fed and cared for by the trustees. The Society for the Prevention of Cruelty to Animals Los Angeles was notified that the “assets” were dying and remedied the situation.

36. Sheila Segurson, DVM, Center for Companion Animal Health, *Stress and Kenneled Pet Behavior: How It Develops and Factors That Cause It*, at <http://www.vetmed.ucdavis.edu/CAAH/Prog-ShelterMed/pdfs/Stress-Environmental%20Enrichment.pdf> (last visited July 27, 2005). Among other things, this outline describes the sympathetic nervous system (SNS), which activates in times of stress. The outline also delineates the physiological changes that occur when the SNS is activated, including:

[P]upillary dilation; increased blood pressure; increased heart rate and contractile force; increased basal metabolism (up to 100%); elevated blood glucose; increased mental activity; increased muscle strength and glycogenolysis; piloerection; a thick, odiferous secretion from apocrine sweat glands; and increased secretion from sweat glands on the footpads.

*Id.* at 2.

their owner. Consequences, of course, are dramatic as the already stressed and often broken-spirited animal is asked to survive in an environment that challenges the healthiest of animals. Add to this the probability that prosecution can be a lengthy procedure, and the outlook for a seized animal becomes grim indeed.

Practices and policies to accommodate this need to store “inanimate” property that eats, sleeps, and dies are few and woefully insufficient. Enrichment programs exist in a few progressive shelters. These are designed to reduce stress and disease for their residents. Enrichment involves human animal interactions, toys to play with, housing remodels that allow for hiding spaces and indoor/outdoor choices, and grouping animals with like temperaments so that they socialize and provide each other tactile comfort. These adjustments require extra efforts in sanitation and disease prevention protocols. Exercise programs where animals are removed from cages and allowed to run, play, and cuddle are effective in reducing stress and anxiety. These require increases in available staff (paid and unpaid) as well as extensive infectious disease protocols, since allowing more contact between animals allows disease to spread more easily. Creating games that the animal can play to retrieve food from a toy or hiding place mentally stimulates the animal as well as increases appetite. Rarely, sedation and antidepressants assist the animals to cope.

Unfortunately, the majority of shelters do *not* have enrichment programs. Many are overcrowded municipal entities that are primarily taking strays off the streets, housing them for a minimum period of time, and then euthanizing them to make space for incoming strays. These shelters very often don't have the funds, the wherewithal, or the staff to worry about animals taken into protective custody or those that are being held as evidence. These animals are, in fact, viewed as taking up much needed cage space. Private, non-profit shelters that also house unwanted animals or animal cruelty victims face similar financial, staff, and disease woes. Many animal shelters, both public and private, lack a staff veterinarian to conduct minimal rounds. The result is that animal cruelty victims can languish for long periods of time.

Foster care is another way to house an animal for a lengthy time period without succumbing to shelter ills. Some municipalities prohibit this for liability reasons and lack of faith in hold-harmless waivers. Many shelters simply do not have such a program in place, or, if they do, the programs are not for these particular animal victims. For example, the Society for the Prevention of Cruelty to Animals Los Angeles has one of the most aggressive enrichment and foster care programs in the nation with over 700 animals in foster homes. The majority of foster parents are those who bottle feed newborn puppies or kittens for a short period of time, usually a couple of weeks, before they are fit for adoption. Many will consider a six- to eight-week assignment for older animals and animals with special needs, e.g., those belonging to victims of domestic violence who are in crisis housing.

Animal cruelty victims are much more difficult and often impossible to foster even under the best of circumstances. These animals require an inordinate amount of time, medical attention, funds, and patience. They are physically ill, demoralized, stressed, and unsocialized as a result of being neglected, beaten, or suffering in silence for a long period of

time. The commitment to foster such a victim can be extensive, i.e., months to years rather than weeks to months. Even the most progressive foster programs have difficulty placing animal cruelty victims.

Moreover, many animal victims are not suitable for foster care. Some have participated in dog fights, become feral in their own backyards, or are extremely aggressive. As such, they pose a risk to the foster parents and pets already living in the home. Skin conditions, parasites, and upper respiratory problems are also contagious to family pets, while some disorders such as ringworm are zoonotic<sup>37</sup> and therefore transmissible to humans as well. There are also concerns that fostering the pet breaks the evidentiary chain of custody that some prosecuting authorities (mistakenly) deem necessary at trial, as well as fear that the foster parent will abscond with or refuse to return the animal to the enforcement agency for trial. One needs a foster parent with time, funds, patience, willingness, no pets, often no children, expertise in handling aggressive animals, and a willingness to do so for a lengthy period of time. Given these requirements, few animal cruelty victims can be fostered.

Ultimately, the disturbing reality is that in many cases animals are rescued from an abusive situation only to languish in a cage in which they will die or become so debilitated that they cannot be adopted but must be euthanized.

## V. Recommendation: Prompt Forfeiture Proceedings

It is clear that animals are a nonstatic property with special needs. It is also clear that there is no legitimate purpose in storing the animal for trial. Therefore, the only remaining reason to retain the “property” is so that it can eventually be returned to its owner. However, the owner's interest—and the animal's interest—is best served by promptly determining the animal's status. In many states, only those defendants who can afford to post bonds and/or pay costs have a real opportunity to keep their animal if acquitted. Most importantly, if the owner has abused the animal, the owner's interest clearly does not outweigh the need to rehabilitate the animal and place it in a new home as quickly as possible.

Unlike their relationship with inanimate property, humans have affirmative responsibilities and mandatory legal obligations toward their pets. Hence, as noted above, all states have statutes designed to prevent animal cruelty and to criminalize such behavior. Affirmative acts such as feeding, watering, and providing veterinary care are mandatory. In addition to intentional acts of cruelty, omissions or failing to act are also punishable. Violating these laws in most states can result in the animal being impounded. In essence, states treat animal ownership as a privilege with inherent duties rather than as an absolute entitlement and reserve the right to intervene and permanently remove the animal for nonfulfillment of these duties.

In a sense, animal ownership can be viewed as something of a hybrid between a licensed activity and child custody. Like the possession of a driver's license, liquor license, or activity permit, animal ownership is a privilege as well as a right. Such privileges are accompanied by affirmative duties and require strict compliance with relevant codes such as observing highway speed limits and not selling liquor to minors. Where such privileges have been abused, they may

37. A zoonotic disease is one that is communicable from animals to humans under natural conditions.

be forfeited, with due process safeguards provided through a forfeiture hearing. Like child custody, animal ownership involves sentient and emotive creatures whose best interests should be considered in determining their futures, and the “best interests of the child” model used in child abuse and foster care matters can be applied. In fact, as with child foster care cases, the Oregon forfeiture statute gives preference to any persons who had prior contact with the animal.<sup>38</sup> Of course, the bond between animals and their owners (rightly or wrongly) is not considered to be as strong as the relationship between parents and children, who are of the same species and generally (though not always) have a “blood” relationship. And many pet adoption, breeder, and pet store contracts specify that the adopter/seller can inspect and repossess the animal if the contract terms are violated. Animal owners, therefore, would not be entitled to the same presumptions or entitlements as parents. Whether or not an animal owner is deemed to be more like a licensee or a parent, prompt forfeiture proceedings are appropriate because storing an animal for a long period of time is not in the animal’s best interest. A forfeited animal becomes the property of the seizing agency who may then *immediately* dispose of it pursuant to the best interests of that animal. The animal, therefore, is in a safe place.

The general objections to forfeiture proceedings do not apply to seized animals. There should be no obstacle to permitting the permanent forfeiture of an animal that has been lawfully seized pursuant to or as a victim of a crime. Seized animals are, after all, the instruments of a crime (armed robbery with vicious dog), contraband (illegal fighting cocks), victims of animal cruelty, or assets. One would not return a weapon or drug stash that was the instrumentality or subject of a criminal prosecution. Nor are there any conflicts of interest, as the seizing agency does not benefit financially or economically in any way by impounding the animal. In most cases the animal is not more valuable than the cost of the investigation and trial preparation, so there is no fear that law enforcement receives a windfall as in cases where cars, yachts, and homes are confiscated.<sup>39</sup> Depriving an animal abuser of his or her pet does not create undue hardship. Double jeopardy does not attach and preclude or negatively impact the criminal case.<sup>40</sup> And hearings safeguard rights and prevent abuses of power.

The fact that an animal’s owner has not yet been convicted of a crime should be immaterial, as proof beyond a

38. OR. REV. STAT. §167.348. In recognition of this unique form of property, Justice Eric Andell states:

Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, mere property. The law should reflect society’s recognition that animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live. In doing so, courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the *only* family members they have.

Bueckner v. Hamel, 886 S.W.2d 368, 377-378 (Tex. Crim. App. 1st Dist. 1994) (Andell, J., concurring).

39. Cecil Greek, *Drug Control and Asset Seizures: A Review of the History of Forfeiture in England and Colonial America*, in DRUGS, CRIME, AND SOCIAL POLICY 109-37 (Thomas Mieczkowski ed., Allyn & Bacon 1992), available at <http://www.fsu.edu/~crimdo/forfeiture.html> (last visited Aug. 5, 2005).

40. People v. Speegle, 53 Cal. App. 4th 1405, 62 Cal. Rptr. 2d 384 (Cal. Ct. App. 1997); United States v. Ursery, 518 U.S. 267 (1996).

reasonable doubt should not be required to remove an animal from an abusive situation under either the licensee or the custodial models of ownership. California law provides that an animal can be forfeited if an *acquitted* defendant fails to prove ownership and the ability to provide required care.<sup>41</sup> Thus, in California at least, forfeiture is not uncommon regardless of conviction or acquittal,<sup>42</sup> so why store the animal?

All of these considerations militate in favor of a prompt civil dispositional hearing. This allows the animals to be placed at the beginning of the case, thereby eliminating the exorbitant costs of maintaining the animals in limbo while keeping the integrity of the criminal prosecution intact. As noted earlier, however, only eight states mandate such a hearing regardless of the parties’ wishes. All states should adopt laws requiring a quick and final determination of a seized animal’s status without reference to any criminal proceedings that may be pending against the animal’s owner.

The pertinent Iowa statutory scheme provides a useful model of a law that accomplishes all of these things. Iowa Code §717B.5 provides that after a “threatened” animal is “rescued,” notice must be given to the owner, and a dispositional hearing must be held pursuant to Iowa Code §717B.4 within 10 days after the rescue.<sup>43</sup> Iowa Code §717B.4 provides that the hearing will be held by a court, and can twice be continued for up to 30 days on petition of the “responsible party.”<sup>44</sup> The hearing is a civil proceeding, and the disposition “shall not be part of” any related criminal proceeding and will not be deemed a criminal penalty.<sup>45</sup>

41. Specifically, California law provides:

In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the release of seizure impounded animals upon a showing the proof of ownership. Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition.

CAL. PENAL CODE §597.1(k).

42. This scenario occurs frequently in animal hoarder cases where a defendant can be acquitted of criminal behavior but will never be allowed to regain possession of the animals. The financial burdens and efforts involved in housing hundreds of animals for one case are huge and extremely challenging for the shelter. It is an interesting aside that the California statute allows forfeiture of all animals belonging to the convicted defendant—even those not abused and without separate due process safeguards for those animals. The law states:

The court may also order as a condition of probation that the convicted person be prohibited from owning, possessing, caring for, or having any contact with animals of any kind and require the convicted person to immediately deliver all animals in her or her possession to a designated public entity for adoption or other lawful disposition, or provide proof to the court that the person no longer has possession, care, or control of any animals.

CAL. PENAL CODE §597.1(k).

One of the authors is familiar with the case of a rabbit hoarder, who upon conviction, was required to surrender her cat that was neither mistreated nor the subject of the cruelty case.

43. IOWA CODE ANN. §717B.5(1-3).

44. *Id.* §717B.4(1) & (1.c).

45. *Id.* §717B.4(2).

If the court determines that the animal “is not a threatened animal,” the animal is returned to its owner. If the court finds the animal is a “threatened animal,” then “the court shall order the local authority to dispose of the threatened animal in any manner deemed appropriate for the welfare of the animal.”<sup>46</sup> The statutory scheme also provides for reimbursement of the local authority that has provided care for the animal.<sup>47</sup> Although Iowa’s statutory scheme may not be adoptable in its entirety in other states, it can serve as a model for them to follow.

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46. *Id.* §717B.4(3).

47. *Id.* §717B.4(3)(a-c).

## **VI. Conclusion**

American society is growing increasingly more sensitive to the concerns of animals. Although there is considerable dispute regarding the extent of protection to which animals are entitled as well as the theoretical basis for that protection, all reasonable people agree with the goal of avoiding unjustified cruelty to animals. Extended shelter stays are harmful to animals and advance no human interest. Therefore, such stays should be avoided by conducting prompt dispositional hearings of seized animals in accordance with the due process rights of the animal’s owner.

**Appendix: State Laws Specifically Authorizing Seizure or Forfeiture of Neglected or Abused Animals**<sup>1</sup>

State & Code Section	Seizure Authorized	Forfeiture Authorized	Time when final animal status determined
Alabama Code §§13A-11-243, 13A-11-244, 13A-11-245	Cruelly treated dogs and cats.	Yes.	Forfeiture required on conviction.
Alaska Statutes §§03.55.110, 03.55.120, 03.55.130, 11.61.140	Yes.	Yes.	Forfeiture can be required on conviction or if owner fails to pay any security required.
Arizona Revised Statutes Annotated §11-1029	Yes.	Yes.	15 days after hearing is requested by seizing officer.
Arkansas Code Annotated §§5-62-101, 5-62-119, 5-62-120, 5-62-124	Fighting dogs, wrestling bears, and animals being treated cruelly in any boat or vehicle.	Yes.	Post-conviction forfeiture possible.
California Penal Code §§597, 597.1(f)	Yes.	Yes.	Notice is provided within 48 hours of seizure; owner has 10 days to ask for a hearing, which must be held within 48 hours after the request. Animal can potentially be held until after the owner's criminal trial.
Colorado Revised Statutes Annotated §35-42-109	Yes.	Yes.	Hearing is to be held "promptly" after seizure.
Connecticut General Statutes §22-329a	Yes.	Yes.	Hearing is held 10 days after finding of a need for temporary custody.
Delaware Code Annotated, Title 3, §7904	Yes.	Yes.	After criminal trial.
District of Columbia Code Annotated §22-1004	Yes.	Yes.	Animal is to be returned to owner within 20 days after notice of seizure unless owner fails to respond to the notice or take charge of the animals within 20 days; owner must satisfy lien for expenses of care.
Florida Statutes Annotated §828.073	Yes.	Yes.	A hearing date must be set within 30 days of a seizure and held within 15 days after the date is set; an order regarding the animal is to be entered within 60 days after the hearing commences.
Georgia Code Annotated §§4-11-9.2, 4-11-9.3, 4-11-9.4, 4-11-9.5, 4-11-9.6	Yes.	Yes.	Notice of impoundment must be given immediately, and an owner can request a hearing within five days of being served with notice. A hearing must be held within 30 days of the request and a decision rendered within 5 business days after the hearing. If the animal was properly seized, it may be forfeited. Otherwise, any animal that was not the object or instrumentality of a crime shall be returned to the owner once costs of care are paid unless the owner was found in a prior administrative or legal action to have failed to provide humane care, committed cruelty, or engaged in dog fighting.
Hawaii Revised Statutes §711-1110.5	No.	Yes.	Forfeiture is permitted on conviction for animal cruelty offenses.
Idaho Code §25-3511	Yes.	Yes.	Seized animals are cared for until deemed to be in a suitable condition and then returned to the owner on payment of a lien for the animal's care; if no responsible owner can be found, the animal may be offered for adoption in lieu of destruction.
Illinois Compiled Statutes Annotated ch. 510, §§70/3.04, 70/16	Yes.	Yes.	State can file a petition for forfeiture within 14 days after seizure; otherwise, animals can be forfeited after conviction.

1. The statutes in this table are current through the dates cited in footnote 1 of the Article. Some states might also permit animals to be seized pursuant to arrest. Certain states may treat animals involved in practices such as dogfighting more protectively. In some states, animals such as livestock may be treated differently than animals deemed pets. Statutes dealing exclusively with the seizure and forfeiture of abandoned or stray animals are not included in this table. Column 4 summarizes statutory language dealing with when disposition of an animal occurs.



**Appendix: State Laws Specifically Authorizing Seizure or Forfeiture of Neglected or Abused Animals (cont.)**

<b>State &amp; Code Section</b>	<b>Seizure Authorized</b>	<b>Forfeiture Authorized</b>	<b>Time when final animal status determined</b>
Indiana Code §35-46-3-6	Yes.	Yes.	Animal can be forfeited upon conviction or if owner fails to post or renew bond to provide for the animal's care; owner can also request a hearing to determine whether probable cause existed for animal's seizure; if there was no probable cause, the animal is returned.
Iowa Code Annotated §§717B.4, 717B.5	Yes.	Yes.	Dispositional proceeding must be initiated within 10 days after an animal is seized, and the matter must be heard within another 10 days. However, the law explicitly provides for two 30-day continuances.
Kansas Statutes Annotated §21-4311	Yes.	Yes.	Animal shelter can petition to either place the seized animal for adoption or euthanize the animal within 20 days after the owner is notified of the seizure; animal can also be forfeited after conviction.
Kentucky Revised Statutes Annotated §436.610	Yes.	Animals present when fighting occurs.	Animals are to be "confiscated" and turned over to the animal control officer if there are reasonable grounds to believe that the animals were on the property for the purpose of fighting.
Louisiana Revised Statutes Annotated §§14:102.2, 14:102.3	Yes.	Yes.	Animal will be kept by a suitable custodian pending the resolution of criminal charges if the owner posts security for costs. Animal can be forfeited if the owner is convicted.
Maine Revised Statutes Annotated, tit. 7, §4016; tit. 17, §§1031, 1034	Yes.	Yes.	Animal can be forfeited after criminal conviction or finding of civil violation.
Maryland Annotated Code, Crim. Law §10-615	Yes.	Yes.	Owner may petition for return 10 days after seizure; animal may be forfeited if owner is convicted.
Massachusetts General Laws ch. 272, §§77, 82, 83	Yes.	Yes.	Person seizing animals must give notice to owner and properly take care of animals for a period not exceeding 60 days. Animal may be forfeited after conviction.
Michigan Compiled Laws Annotated §§750.50, 750.53	Yes.	Yes.	Animal can be forfeited before conviction if the prosecution files a civil action and establishes by a preponderance of the evidence that the animal cruelty laws were violated, and the owner fails to post security to cover costs of care. Post-conviction forfeiture is also possible.
Minnesota Statutes §§343.12, 343.21, 343.22, 343.235, 343.29	Yes.	Yes.	Authority taking custody of the animal must give notice to the owner, who can request a hearing within 20 days of the seizure date. The hearing must be held within five business days of the request, and the owner can regain the animal if it is physically fit and the owner can and will provide the care required by law. An animal can be forfeited following conviction.
Mississippi Code Annotated §97-41-2	Yes.	Yes.	Owner can request a dispositional hearing five days after seizure. The hearing must be held within 14 days and a decision rendered within 21 days of the hearing.
Missouri Code Annotated §§578.018, 578.021	Yes.	Yes.	A dispositional hearing is held within 30 days of seizure unless the owner posts security. An owner guilty of criminal charges forfeits the animal if the court concludes the animal will be subject to further neglect or abuse.
Montana Code Annotated §§27-1-434, 45-8-211	Yes.	Yes.	Prosecution can request a hearing that can result in forfeiture, release to owner, or other outcomes; animal can also be forfeited after conviction.

**Appendix: State Laws Specifically Authorizing Seizure or Forfeiture of Neglected or Abused Animals (cont.)**

State & Code Section	Seizure Authorized	Forfeiture Authorized	Time when final animal status determined
Nebraska Revised Statutes §28-1012	Yes.	Yes.	Animal “involved in a violation” of anti-cruelty statutes shall be subject to “[d]istribution or disposition . . . in such manner as the court may direct.”
Nevada Revised Statutes §§574.055	Yes.	Yes.	After notice and opportunity for a hearing, court may order animal sold at auction, humanely destroyed, or disposed of as seizing officer sees fit.
New Hampshire Revised Statutes Annotated §644.8	Yes.	Yes.	Forfeiture possible after conviction; animal seizure cases have priority on the court calendar.
New Jersey Revised Statutes Annotated §§4:22-26.1, 4:22-50, 4:22-52	If animals are transported in a cruel way or keeper is arrested for cruelty and no one can take the animal.	Yes.	Permits post-conviction forfeiture.
New Mexico Statutes Annotated §30-18-1.1, 30-18-1.2	Yes.	Yes.	Post-seizure hearing to be held within 30 days unless state shows good cause for a delay; animal will be given back to its owner unless it is being cruelly treated or the owner is unable to provide for the animal. Animal can be placed for adoption or destroyed upon conviction.
New York Agriculture & Markets Law §373	Yes.	Yes.	Animal can be forfeited before disposition of charges only if owner fails to post security for expenses.
North Carolina General Statutes §§14-363, 14-363.2, 19A-21, 19A	If animals confined in pet shops, kennels, shelters, or auction markets are treated cruelly or if person conveying animal in a cruel manner is taken into custody.	Yes.	Permits post-conviction forfeiture.
North Dakota Century Code §36-21.1-06	Animals not justifiably exposed to cold or inclement weather or not properly fed and watered.	Animals not justifiably exposed to cold or inclement weather or not properly fed and watered.	The owner must be notified that the animal can be sold or otherwise disposed of within five days of the date of the notice unless the owner redeems the animal.
Ohio Revised Code Annotated §§959.99, 959.132	Only companion animals.	All animals.	Owner of seized animal can request a hearing to be held within 21 days after the request is received. If the court finds no probable cause for seizing the animal, it must be returned to the owner. The animal must also be returned if owner is found not guilty of criminal charges.
Oklahoma Statutes Annotated Title 21 §§1685, 1692.7, 1699, 1700	Yes.	Certain animals.	Upon conviction, fighting dogs and birds are forfeited; wrestling bears and tripped horses can be forfeited.
Oregon Revised Statutes §§167.345, 167.347, 167.350	Yes.	Yes.	County or animal agency can petition to have animal forfeited prior to final disposition of the criminal charge unless security for the costs of caring for the animal is provided. The hearing is to be conducted within 14 days after the petition is filed. A ballot measure barring pre-conviction forfeitures may have rendered this procedure unconstitutional. However, that measure has been held to violate Oregon’s constitution. <i>See Lincoln Interagency Narcotics Team v. Kitzhaber</i> , 188 Or. App. 526, 72 P.3d 967 (Or. Ct. App. 2003), <i>review allowed</i> , 336 Or. 374 (Or. 2004). Post-conviction forfeiture can be ordered.

**Appendix: State Laws Specifically Authorizing Seizure or Forfeiture of Neglected or Abused Animals (cont.)**

<b>State &amp; Code Section</b>	<b>Seizure Authorized</b>	<b>Forfeiture Authorized</b>	<b>Time when final animal status determined</b>
Pennsylvania Consolidated Statutes Annotated, tit. 18, §5511	Yes.	Yes.	Forfeiture can be ordered upon conviction.
Rhode Island Gen Laws §§4-1-2, 4-1-18, 4-1-19, 4-1-22	Yes.	Yes.	Forfeiture can be ordered upon conviction.
South Carolina Code Annotated §§47-1-120, 47-1-150, 47-1-170	Yes.	Yes.	If an animal is seized pursuant to a magistrate's order, a post-seizure hearing is held to determine if the owner can maintain custody of an animal. Forfeiture of animals is required after a conviction for animal cruelty.
South Dakota Codified Laws §§40-1-5, 40-1-34	Yes.	Yes.	Decision regarding impounded animal's disposition must be made within a reasonable time.
Tennessee Code Annotated §§39-14-202, 39-14-210, 39-14-212	Yes.	Yes.	Forfeiture is required upon conviction except upon conviction for aggravated cruelty (which applies only to companion animals), in which case the court has discretion to order forfeiture.
Texas Health & Safety Code §§821.022 and 821.023	Yes.	Yes.	Dispositional hearing is to be held within 10 calendar days of the date a warrant to seize the animal is issued.
Utah Code Annotated §§76-9-301, 76-9-305	Yes.	Yes.	Forfeiture can be ordered upon conviction; a seized animal can also be sold or destroyed "upon proof that the owner has been notified of the lien and the amount due" to the animal's caretaker at least five days previously.
Vermont Statutes Annotated tit. 13, §§353, 354	Yes.	Yes.	State may institute a civil proceeding for forfeiture of the animal, with a hearing to be held within 21 days after institution of the proceeding. Even if no civil proceeding is instituted, post-conviction forfeiture can be ordered.
Virginia Code Annotated §§3.1-796.108, 3.1-796.115, 3.1-796.122	Yes.	Yes.	A hearing to determine whether a seized animal should be returned or forfeited must be held within 10 business days of seizure. Courts can also order companion animals forfeited if their owner is convicted of cruelty.
Washington Revised Code §§16.52.015, 16.52.200	Yes.	Yes.	Animals can (and under some circumstances must) be forfeited after conviction.
West Virginia Code §§7-10-4, 61-8-19	Yes.	Yes.	The owner can request a hearing to determine whether there was probable cause to seize the animal. If there was probable cause, the owner must post bond or forfeit the animal. Forfeiture is mandatory after conviction
Wisconsin Statutes §§173.13, 173.22, 951.18	Yes.	Yes.	Owner can request a hearing to recover a seized animal; animals can be forfeited post-conviction.
Wyoming Statutes Annotated §6-3-203, 11-29-107, 11-29-109, 11-29-110	Yes.	Yes.	Forfeiture can be ordered upon conviction; a seized animal can also be sold if the animal's owner has been given at least five days' notice by the government agency attempting to enforce a lien on the seized animal for expenses of care.