

Live Animals as Evidence

When animals are held as evidence for prolonged legal proceedings there are significant negative consequences for the animals and the organizations involved. Animals are legally considered property in every US state, Canadian province and territory. However, the law also recognizes that animals are different from other types of property and gives them limited legal protections. The scope of protection varies by jurisdiction and animal type, with cats and dogs typically receiving the most protection (e.g., requirements for adequate care and appropriate housing). The law generally allows for animals to be seized when there is sufficient evidence of cruelty. The expense and expertise involved in seizing, evaluating, caring for, and housing animal victims of cruelty throughout the entirety of the legal process can represent daunting obstacles which disincentivize investigation of cases and enforcement of anti-cruelty laws. Unlike inanimate objects, housing and caring for animal victims for lengthy periods cause crowding in animal shelters, compromise animal welfare, and strain community resources including staff, finances, and facilities.

A variety of stakeholders play a role in these cases including law enforcement agencies, prosecutors, courts, local governments, animal shelters, veterinarians, behaviorists, animal industry professionals, community members and pet owners (ASPCA 2023). Ongoing challenges to expeditious animal cruelty investigations include inadequate financial resources, a lack of understanding of animal cruelty case law among law enforcement professionals, a lack of recognition of the impact of long-term holds on animal victims and animal shelters, a lack of urgency in prosecuting cases, and confusing, outdated, and disjointed animal laws (NACA 2023).

The ASV supports laws, policies and practices to ensure humane and expeditious handling of live animals as evidence in legal cases:

1. **Planning and case selection.** Prior to seizure, a careful and thorough plan should be established that incorporates legal, medical and animal care components and, when possible, employs an incremental and measured approach. For instance, in some cases (e.g. neglect due to lack of access to care or resources), seizure of animals may not be the most humane approach. Alternative interventions may include provision of resources such as food or medical care and establishing a long-term care plan with caretakers.
2. **Timely collection of evidence.** Relevant evidence from live animals must be collected as early as possible; this includes prior to and at the time of seizure, upon intake to a shelter or other facility, and/or during treatment.
3. **Thorough documentation of evidence.** Documentation of evidence (e.g., quality photographs of the animals and their living environment, veterinary exams, detailed medical records, scene investigation findings) is the most important component in successfully prosecuting cases (Lockwood et al 2019). The documentation of the animal's condition, not the animal itself, serves as the key evidence in a criminal case. Prolonged holds in no way preserve a live animal's evidentiary value and are detrimental to the animal's well-being (ASPCA 2023).

4. **Establishment of timelines by the prosecution and/or the court.** Cases where live animals are evidence and custody is contested should be prioritized. Prosecutors should provide formal notification establishing a specific time frame for the defense to request access to seized animals by their own experts. This may require seeking a court order.
5. **Use of pre-conviction disposition laws.** Pre-conviction disposition laws are designed to help defray the cost of housing and caring for animals seized in connection with an investigation, to shorten legal hold times, and to expedite the outcome process. A voluntary surrender of animals can allow for immediate placement once medically and behaviorally appropriate. In some states, early disposition (pre-conviction forfeiture) may be ordered before the conclusion of a criminal trial.
6. **Recognition of shelters as short-term stay facilities.** All organizations have limited capacity for care (ASV 2022). Animal shelters are designed to provide short-term housing. A lengthy hold in a shelter setting has been shown to negatively impact the behavioral and psychological health of an animal and increases the risk of infectious disease, thereby reducing the chances of a positive outcome (Cussen, Schoville, and Reid 2022). Likewise, shelter staff can be put at risk for physical and emotional injury as animals suffer behavioral deterioration. Policies should be developed to support hold times no greater than two weeks in a shelter and should include other options, such as the use of foster homes.
7. **Minimization of hold times.** Animals should not be held for any longer than is absolutely necessary. Even when animals held as evidence are housed in foster care, other shelter and community animals may be denied resources directed toward those involved in prolonged case proceedings.
8. **Pathway planning.** A humane outcome should be prioritized as it is for all other animals entering shelters (ASV 2022). Although legal holds may extend the time in care, efficient pathway planning can decrease length of stay for these animals. In circumstances where animals have a poor quality of life and suffering cannot be alleviated, euthanasia may be the only humane option. An efficient process should be established that allows for euthanasia in these instances.
9. **Financial support for animal care.** Housing and caring for animals that have been victims of cruelty can be costly, especially when animals have been seriously harmed or ill, or where there are large numbers of animals. Typically, law enforcement agencies and animal shelters are not resourced to cover this cost, nor is restitution from the original owner likely. Because holding evidence in a criminal case is a government responsibility, shelters should be enabled to seek funding from jurisdictions and other sources to cover the cost of care. Sheltering agencies should document all expenses (e.g., invoices, staffing and overtime expenses) associated with care as this may increase the chance of a successful restitution hearing.
10. **Judgments in absentia.** When defendants or other interested parties have received adequate notice but have chosen not to respond or attend court proceedings, proceedings should be expedited in their absence to safeguard the welfare of animal victims.
11. **Internal assessment and training.** Agencies should conduct regular reviews of their protocols and procedures, including all stages from case planning to settlement, in order to optimize their response. Training on applicable cruelty law and procedure should be required for law enforcement officers, prosecutors, and judges (ASPCA 2023).

- 12. Community-level response.** A local or regional interagency task force should be established and meet regularly to discuss case management, refinement of approaches, and opportunities for training. These partnerships will strengthen communication and relationships across agencies and enable more efficient handling and resolution of cases.

Establishing a clear and effective legal process that appropriately allocates costs and considers the welfare of animals seized in cruelty cases is essential.

Definitions

Restitution - a person convicted of animal cruelty or animal fighting can be required, as part of his or her sentence, to pay the cost of caring for the animals seized in the case or who were victims of the criminal acts.

References

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