

HOUSE BILL REPORT

HB 1234

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the civil forfeiture of animals seized for abuse or neglect.

Brief Description: Concerning the civil forfeiture of animals seized for abuse or neglect.

Sponsors: Representatives Goodman, Eslick, Peterson, Leavitt, Fitzgibbon, Bateman, Walen, Stearns and Pollet.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/25/23, 1/27/23 [DPS].

Brief Summary of Substitute Bill

- Clarifies the authority for law enforcement agencies and local animal care and control agencies to take possession of an abused or neglected animal.
- Authorizes the forfeiture of a seized animal as a matter of law under certain circumstances.
- Establishes a uniform petition process for a civil hearing for the return of a seized animal.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude and Walen.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Matt Sterling (786-7289).

Background:

Animal Cruelty Laws.

The state's law for the prevention of cruelty to animals prohibits certain practices and activities involving animals. Among the law's prohibitions are transporting or confining animals in an unsafe manner, engaging animals in exhibition fighting with other animals, and poisoning animals. In addition, the chapter contains the animal cruelty crimes.

A person commits Animal Cruelty in the first degree, a class C felony, when the person:

- intentionally inflicts substantial pain on, causes physical injury to, or kills an animal by a means that causes undue suffering or while manifesting an extreme indifference to life;
- with criminal negligence, starves, dehydrates, or suffocates an animal, and the animal dies or experiences substantial and unjustifiable physical pain for a period of time sufficient to cause considerable suffering; or
- knowingly engages in certain conduct involving sexual conduct or sexual contact with an animal.

A person is guilty of Animal Cruelty in the second degree, a gross misdemeanor, when the person:

- knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal; or
- takes control, custody, or possession of an animal that was involved in animal fighting and knowingly, recklessly, or with criminal negligence abandons the animal, and as a result of being abandoned, the animal suffers bodily harm or is put at imminent and substantial risk of substantial bodily harm.

Removal of Animals During an Animal Cruelty Investigation.

Law enforcement agencies and local animal care and control agencies may enforce the animal cruelty law. A law enforcement officer or animal control officer may remove an animal to a suitable place for care if the officer has probable cause to believe the owner has violated the animal cruelty law and there is no person who can assume the animal's care.

Written notice of the circumstances of the removal and available legal remedies must be provided to the owner. Fifteen days after removal, the agency that has custody of the animal may allow the adoption of the animal or the destruction of the animal by euthanasia. An owner may prevent the adoption or destruction of the animal by filing a petition for the return of the animal or by posting a bond or security to provide for the animal's care.

Forfeiture of Seized Animals.

When a person is convicted of a criminal violation of the animal cruelty laws, the court must order forfeiture of all animals held by law enforcement or animal control authorities if

any of the animals involved dies as a result of the violation or if the defendant has a prior conviction under the animal cruelty laws. In other cases, the court may order forfeiture of the animal if the animal's treatment was severe and is likely to reoccur. A person convicted of animal cruelty is prohibited from owning, residing with, or caring for any similar animals for a specified period of time, unless the person's right is sooner restored.

Petition for Return of Seized Animal.

An owner of a seized domestic animal must be notified, in writing, of the circumstances of removal and legal remedies. After 15 business days, the agency having custody of the animal may euthanize the animal or find a responsible person to adopt the animal. If no criminal case is filed within 14 business days, the owner may petition the court for the animal's return. An owner may prevent the animal's destruction or adoption by filing a petition for return of the animal or posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of 30 days.

If the owner files a petition for return of the animal, a copy of the petition must be served on the agency that removed the animal and the prosecuting attorney. If the court grants the petition, the animal must be delivered to the owner at no cost. If a criminal action is filed after a petition for return is filed, but before the animal is returned, the petition is joined with the criminal action.

Summary of Substitute Bill:

Removal of Animals During an Animal Cruelty Investigation.

If a law enforcement officer or an animal control officer has probable cause to believe that an animal is in imminent danger, is suffering serious physical injury or infirmity, or needs immediate medical attention, the officer may enter private property without a warrant to render emergency aid to the animal or seize the animal. A law enforcement officer or an animal control officer is not liable for any damages for entry onto private property without a warrant if the officer does not use any more force than is reasonably necessary to enter upon the property and remove the animal.

The owner of a seized animal must be provided with notice of the seizure and the right to petition for immediate return of the animal within 72 hours of the seizure. Specific information requirements for such notice are provided.

An animal seized may be placed into the custody of an animal care and control agency, into foster care, or with a nonprofit humane society, nonprofit animal sanctuary, or nonprofit rescue organization. In determining what is a suitable placement, the officer must consider the animal's needs, medical needs, and behavioral characteristics. If a seized animal is placed into foster care or with a nonprofit animal sanctuary or rescue organization, the seizing agency must retain custody of the animal, has the duty to ensure the animal receives minimum care, and may distribute the funds in the posted bond to the organization that is

authorized to care for the animal.

Any authorized person that is caring for, treating, or attempting to restore an animal to health is not liable for such action.

Forfeiture of Seized Animals.

When an animal is seized, the owner is required to post a bond with the district court in an amount sufficient to provide minimum care for each animal seized within 14 days of the seizure. If an owner fails to post or renew a bond, the owner's interest in the animal is forfeited to the custodial agency by operation of law. If a bond has been posted, subsequent court proceedings shall be given court calendar priority for as long as the animal remains in the custody of the custodial agency.

When an animal is seized from a person prohibited from owning, caring for, possessing, or residing with animals, the animal is immediately and permanently forfeited to the custodial agency and no court action is necessary. If an animal is forfeited to a custodial agency, the agency may place the animal with a new owner. A custodial agency may authorize a veterinarian or veterinary technician licensed in Washington or a certified euthanasia technician to euthanize a seized animal that is severely injured, sick, diseased, or suffering for humane reasons at any time.

Petition for Return of Seized Animal.

A uniform petition for a civil hearing for the immediate return of a seized animal is established. The petition may be filed in the district court of the county from which an animal was seized. An owner's failure to file a written petition within 14 days of the seizure of the animal constitutes a waiver of the right to file a petition and the animal is deemed forfeited to the custodial agency unless a bond has been posted. The court may extend the period to file a petition by an additional 14 calendar days if the petitioner did not have actual notice of the seizure and the court finds that there are compelling circumstances justifying the extension.

Upon receipt of a petition, the court must set a civil hearing on the petition to be conducted within 30 days after the filing of the petition. If the court finds that probable cause exists, the court must order the owner to post a bond within 72 hours. If the respondent does not meet its burden of proof, the court may order the animal returned to the owner at no cost to the owner, subject to conditions set by the court.

Substitute Bill Compared to Original Bill:

The substitute bill:

- clarifies that the legislative intent is that the laws and rules of Washington that are applicable to civil asset forfeiture do not apply to the seizure and forfeiture of animals under the bill;
- authorizes a certified euthanasia technician to perform the euthanasia of seized

- animals;
 - provides a law enforcement officer or animal control agency to exercise discretion and the ability to assess individual animals prior to seizure; and
 - clarifies that no agency or court action is needed for the automatic forfeiture of a seized animal upon the expiration of the deadline for:
 - submitting a petition for the return of a seized animal; or
 - posting or renewing a bond for the care and treatment of a seized animal.
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Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill clarifies the seizure and forfeiture provisions for animals that are abused and neglected. Animal cruelty cases are tricky because the evidence is often alive and it is often unclear what happens to these animals once rescued. Because of the lack of clarity in the law, animals that are seized are languishing in shelters and not getting the care they need. Animals who have suffered violent abuse often must be housed in inappropriate conditions waiting for trials and this causes irreversible damage to the animals and excessive costs for the shelters that care for them. The law is poorly organized and filled with gaps and ambiguities and is not used frequently for fear of litigation. Often there are attempts to use the existing law, but the court process becomes muddled, and the animals remain in legal limbo for over a year. The result is that without a clear and effective forfeiture law, agencies are incentivized to avoid enforcing our animal cruelty laws. This bill provides clarified protocols which is needed because it is often unclear to law enforcement officers about when an animal may be seized and what must happen to the animal once seized. This bill strengthens protections for animals and provides more clarity for owners to get animals back. The seizure of an animal is a civil process and not a criminal process, so it is legitimate to seize animals from owners' suspected abuse. The burden of proof is shifted to the seizing agency which is appropriate because the government should have to prove that there was criminal activity, and the bill provides better notice to the owner. The bill contains a requirement that the owner pays the cost of care bond to care for the animal and prohibits euthanasia after 15 days. The bill would be improved by an amendment to award attorney fees to the animal owner and to refund the cost of care bond to an owner that is successful in having the animal returned.

(Opposed) None.

Persons Testifying: Representative Roger Goodman, prime sponsor; Kirsten Gregory and

Kim Koon, Pasado's Safe Haven; Jessica Garza, Newport Police Department; Sara Penhallegon, Center Valley Animal Rescue; and Hannah Thompson-Garner, Northwest Animal Rights Network.

Persons Signed In To Testify But Not Testifying: None.