

SENATE BILL REPORT

SHB 1234

As Reported by Senate Committee On:
Law & Justice, March 22, 2023

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: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Eslick, Peterson, Leavitt, Fitzgibbon, Bateman, Walen, Stearns and Pollet).

Brief History: Passed House: 2/8/23, 96-0.

Committee Activity: Law & Justice: 3/09/23, 3/22/23 [DP, w/oRec].

Brief Summary of 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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Valdez and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Torres and Wilson, L..

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: Joe McKittrick (786-7287)

Background: Criminal Liability for Animal Cruelty. A person commits the crime of animal cruelty in the first degree when the person:

- intentionally inflicts substantial pain on, causes physical injury to, or kills an animal by a means that causes 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.

Animal cruelty in the first degree is a class C felony, punishable by imprisonment up to five years, a \$10,000 fine, or both.

A person is guilty of animal cruelty in the second degree 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 risk of substantial bodily harm.

Animal cruelty in the second degree is a gross misdemeanor, punishable by imprisonment up to one year, a \$5,000 fine, or both.

Removal of Animals During an Animal Cruelty Investigation. Law enforcement agencies and local animal care and control agencies may remove an animal to a suitable place for care if the officer has probable cause to believe the owner has violated animal cruelty laws 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 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 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 die as a result of the violation, or if the defendant has a prior conviction under animal cruelty laws. In other cases, the court may order forfeiture 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, unless the person's right is restored sooner.

Petition for Return of Seized Animals. 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 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 any 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 Bill: Removal of Animals During an Animal Cruelty Investigation. If a law enforcement officer or 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 necessary to enter upon the property and remove the animal.

The owner of a seized animal 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. When determining what is suitable placement, the officer must consider the animal's needs including the animal's size, medical needs, and behavioral characteristics. If a seized animal is placed into foster care or with a nonprofit organization, the seizing agency must retain custody of the animal, must ensure the animal receives minimum care, and may distribute the funds of the posted bond to the organization that is authorized to care for the animal. Any authorized person 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 within 14 days of the seizure in an amount sufficient to provide minimum care for each animal seized. 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 the 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 Animals. 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 count from which the animal is 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 the petition by 14 calendar days if the petitioner did not have actual notice of the seizure and the court finds 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. If the court finds probable cause, the court must order the owner to post a bond within 72 hours. If the respondent does not meet the burden of proof, the court may order the animal returned to the owner at no cost to the owner, subject to the conditions of the court.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill rewrites seizure and forfeiture provisions concerning neglected and abused animals. This is different than other forfeiture and seizure provisions in the code. The statute is poorly organized with gaps and ambiguities and is unworkable because animals who are seized often languish in shelters for months or years and do not receive needed care. Some houses receive complaints for many years and law enforcement feels like they cannot touch the home because of the liability of being stuck with the animals. This bill will remove sick, injured, and starving animals from dangerous conditions. It requires that the animal owner post a cost of care bond for the 30-day period during which the proceedings take place, as well as attorney's fees. If the animal is returned to the owner, these costs are refunded. This is important for taking care of our animals.

CON: Animal control can seize animals and take none of the vet care or family's advice afterward. No paperwork is given to the families. This can create distress for children. In one instance, they said they had an affidavit against them for not taking care of a horse, even though the animal's vet said that care was ongoing. People who are mistreating

animals should have them removed, but there are people who have vendettas, and this is not working for veterinarians or the community. Under this bill, people must figure out how to afford a lawyer in order to fight them and that is not fair.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Sarah Hock, Joint Animal Services and the Pet Alliance of WA; Kirsten Gregory, Pasado's Safe Haven; Jessica Garza, Newport Police Department.

CON: Laurene Oates.

Persons Signed In To Testify But Not Testifying: No one.