

Animals in Disasters: Legal Issues



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Animals in Disasters: Legal Issues

- Stacy Wolf, Esq.
- Senior Director, Legislative Services &
- Anti-Cruelty Training
- stacyw@aspca.org

Animals in Disasters: Legal Issues

- Most existing laws do not contemplate disaster situations
- Time will tell if current laws are treated as applicable to disaster and post disaster scenarios
- Still more questions than answers in this evolving area of law
- So, its critical to know existing law which may be all that you've got....

Animals in Disasters: Legal Issues

- Regulation of Animals
- “Animal Control”
 - Misnomer in NYS
 - Ag and Markets, Article 7 = Dog Control Only
 - (but along with Art. 26, does cover treatment/euthanasia/release standards for both dogs and cats)
 - Other provisions regulate cruelty, possession of wild, exotic animals
 - Police Power to regulate animals when public safety is at stake

Animals in Disasters: Legal Issues

Who has Power to Seize Dogs and When? (Ag & Mkts Law sec. 118)

- DCOs, Peace Officers, Police shall seize
 - Unidentified dogs off owner's premises
 - Unlicensed dogs on or off premises
 - Licensed dogs on or off premises if probable cause that "dangerous"
 - Any dog that poses an immediate threat to public safety (commence dangerous dog proceeding)

Animals in Disasters: Legal Issues

- **How long do shelters have to “hold” seized dogs?(sec. 118)**
 - **Unidentified dogs – five days**
 - **local law can set own hold periods but no shorter than 3 days**
 - **Identified dogs**
 - **Personal notice (7 days) or**
 - **Certified mail to owner (9 days)**
 - **Local law can shorten time but where notice by mail, must hold at least 7 days**

Animals in Disasters: Legal Issues

- What Happens after the “Hold” period Expires?(secs. 118, 374)
 - Adoption (rabies, license, spay/neuter law)
 - Euthanasia
 - No “pound seizure”
 - “No liability in damages or otherwise shall be incurred on account of the seizure, euthanization or adoption of any dog pursuant to provisions of this article” (Ag and Mkts sec. 118 (11))

Animals in Disasters: Legal Issues

- Seizure of lost, stray, homeless, abandoned animals (Ag and Mkts law sec. 373(1))
 - **Police, SPCA agent may seize animals found “in any street, road or other public place”**
 - **Police, SPCA agent may seize “in or upon any premises”:**
 - Any animal
 - That for more than 12 successive hours
 - Has been confined/kept in crowded, unhealthy, unsanitary conditions
 - Or not properly cared for
 - Or without necessary sustenance, food or drink
 - Need warrant based on probable cause (373 (2))

Animals in Disasters: Legal Issues

- Can Shelters Euthanize during the hold period?
 - In narrow circumstances (sec. 374)
 - Licensed vet certifies in writing that animal is “so maimed, diseased, disabled or infirm so as to be unfit for any useful purpose” (or two “reputable” citizens called by vet to view in his presence)
 - Or
 - With written consent of owner
 - Otherwise, must hold for 5 days before disposition.

Animals in Disasters: Legal Issues

- How does one “prove” Ownership?
 - Proof of “title to the satisfaction” of the SPCA, Shelter, Humane Society – sec.374 (4)
 - Microchip
 - License
 - ID tag
 - Veterinary treatment records
 - Photographs

Animals in Disaster: Legal Issues

- **When does “ownership” end so that an animal can be legally adopted to someone else?**
 - **Good question**
 - **No clear answer even in non disaster situations**
 - **Statutory hold period (section 374)**
 - **Woods v. Kittykind, 8 Misc.2d 1003A (Sup. Ct. NY County 2005)**
 - **Presumptive Evidence of Larceny -**
 - **Section 363- “Unauthorized possession of a dog or dogs by any person not the true owner, for a period exceeding ten days, without notifying either the owner, the local police authorities, or the superintendent of the state police at Albany, New York, of such possession, shall be presumptive evidence of larceny”**

Animals in Disasters: Legal Issues

- **What can shelters do to protect themselves in case a “true” owner comes forward?**
 - **Conditional Adoption Agreements**
 - **To attempt to provide clarity where the law does not**
 - **Clause in adoption contract in which adopter agrees that upon proof of ownership satisfactory to the adoption agency (within a specified time period), the adopter agrees to relinquish custody of the animal.**
 - **Enforcing such clauses**
 - **Good luck and let me know how it goes.....**

Animals in Disasters: Legal Issues

- Note that everything in the last 11 slides was about SHELTERS, SPCAS and HUMANE SOCIETIES
- NOT About private parties, 501 c 3 rescue groups or anyone else.....
- That is because dog control, holding stray dogs and owner relinquished animals (dogs, cats, etc) are municipal functions covered by article 7

Animals in Disasters: Legal Issues

- **Actions by private persons or organizations are still a gray area**
- **BUT:**
- **Even private people who pick up strays must bring to shelter, notify dco, etc**
- **Otherwise, it could be larceny....**
- **And private parties cannot act as stray “hold” facilities unless they have contracted to do so with a municipality
(And then they must adhere to owner notification, inspection, pound seizure, rabies and licensure upon adoption, spay/neuter laws)**

Animals in Disasters: Legal Issues

- **When can you provide veterinary care to or spay/neuter “disaster” animals?**
 - **Basic Vet care**
 - May be required to avert cruelty under sec. 353 or 12 hour violation under 374
 - **Hold Period**
 - After expiration, municipality/shelter “owns” animal and can spay/neuter
 - Euthanasia
 - Authorized even during hold period when animals are severely ill, injured, etc.

Animals in Disasters: Legal Issues

- Can Veterinarians be sued for providing emergency, free services in disaster situations? (Educ. Law sec. 6705, 6705-a)
 - **Immunity from civil liability when**
 - **Volunteer services (not paid)**
 - **At scene of accident or emergency**
 - **Outside veterinary hospital**
 - **Except where there is gross negligence**

Animals in Disasters: Legal Issues

- **What about volunteers who help non profit groups rescue animals in times of disaster?**
- **Volunteer Protection Act of 1997**
 - Only applies to volunteer assistance
 - Must be “acting within scope of volunteer’s responsibilities”
 - Properly licensed, certified or authorized if required by law
 - Only applies to assistance to 501 c 3 or c 4 non profits
 - Only confers qualified immunity (for claims of negligence)
 - Grossly negligent , willful, reckless behavior is not protected
 - Harm cannot be caused by operation of vehicle, vessel or aircraft where the state requires a license and insurance
 - Law doesn’t protect non profit corporation itself, just volunteers
 - General liability insurance is crucial

Animals in Disasters: Legal Issues

- Volunteer Protection Act- continued
 - **States may:**
 - **Mandate training of volunteers**
 - **Hold organizations liable for acts/omissions of volunteers in same way an employer is liable for acts of employees**
 - **Provide that there is no limit on liability in action brought by state or local government**
 - **Require limit on liability be conditioned on organization carrying insurance in specified amount**

Animals in Disasters: Legal Issues

- Can Veterinarians from other states legally help out in New York during or after a disaster?
 - **(Educ. Law sec. 6705)**
 - **“gratuitous services in cases of emergencies”**
 - **Veterinarians licensed in bordering states can practice “in vicinity of such border” as long as no office within New York State.**

Animals in Disasters: Legal Issues

- What rules apply to bringing animals into New York from other states and sending New York animals to other states?
 - Health Certificate required to bring dogs/cats into state (1NYCRR 65.3)
 - Transporting animals to other states
 - Must comply with receiving state laws re health certificates, quarantine, etc
 - Legislation pending in many states to impose more stringent regulations

Animals in Disasters: Legal Issues

- **When can “rescue” result in criminal sanctions?**
- **Variety of Criminal Laws may apply**
 - **Trespass (Penal Law sec. 140.05)**
 - **Enter or remain unlawfully on premises (without license or privilege)**
 - **Burglary – 140.20-140.30)**
 - **Enter and remain unlawfully in a building with intent to a commit a crime therein**
 - **Criminal Mischief**
 - **Intentionally, recklessly or knowingly damage property of another with no right to do so or any ground to believe such right exists**

Animals in Disasters: Legal Issues

When can “rescue” result in criminal sanctions?

Larceny (155.05)

- With intent to deprive another of property or to appropriate the same to oneself or another, to wrongfully obtain or withhold such property from the owner**
- “Deprived” = withhold permanently or for such an extended period of time that most of the property’s value or benefit is lost, to dispose of property belonging to another under circumstances making it unlikely that the owner will recover it (155.00 (3))**

Animals in Disasters: Legal Issues

- **When can “rescue” result in criminal sanctions?**
 - **Animal Cruelty (Ag and Mkts sec. 353)**
 - **Knowingly deprive an animal in one’s care or custody with necessary food, sustenance or drink**
 - **Permit animal to be deprived of these necessities**
 - **Commit any act in furtherance of such cruelty**

Animals in Disasters: Legal Issues

When can “rescue” result in criminal sanctions?

Abandonment (Ag and Mkts sec. 355)

- **“”abandon” an animal or leave it to die in a public street, road or public place or allow an animal that has become disabled to lie in a public street, road or public place for more than three consecutive hours after receiving notice of the situation**

Animals in Disasters: Legal Issues

- **Does it matter if a ‘rescuer’ didn’t intend to “steal” a pet?**

- **What the defendant thinks matters**

Do you commit larceny when you remove a dog from its home to save it from imminent disaster?

- **Maybe no, if intent was to ‘rescue’ and ‘reunite’**
 - **Maybe yes, if intent was to remove and never return**

Animals in Disasters: Legal Issues

- **What about a shelter that refuses to return an animal to an owner who provides sufficient proof?**
 - **Larceny can include taking property with the intent to return it and later deciding not to do so.**
 - **Also, “larceny by false promise”**
 - » **Obtaining property by promising to perform an act you have no intention of performing**
- **Do you commit abandonment when you leave animals behind in a disaster?**
 - **Need intent to desert**
 - **If animal is abandoned, this may negate larceny claim**

Animals in Disasters: Legal Issues

- **Defenses to Criminal Charges**
- **When does the exigency of the situation excuse otherwise criminal behavior?**
 - **“Necessity”-**
 - **Would a reasonable person believe the defendant’s actions were necessary to avoid a greater harm?**
 - **Was defendant at fault in creating the injury sought to be avoided? (e.g. you can’t use the necessity defense if you are one who placed the animal in the dangerous situation to begin with).**
 - **Does the desirability and urgency of avoiding the threatened injury outweigh the desirability of the injury sought to be prevented by the criminal law defendant is charged with violating?**
 - **(e.g. does the desirability of saving an animal from starvation outweigh the desirability of preventing trespass and larceny?)**
 - **Were there any reasonable alternatives to the defendant’s actions?**

Animals in Disasters: Legal Issues

- **Is the law the same for seizing stray animals as it is for seizing animals that are suspected victims of cruelty?**
 - **No**
 - **Seizure of animals based on criminal law violations is governed by sec. 372, 373 and the CPL.**
 - **Police, peace officers of SPCAs**
 - **With a warrant based on probable cause**
 - **Unless there is an exception to the warrant requirement**

Animals in Disasters: Legal Issues

- Miscellaneous laws
- Neglecting to provide impounded animals with adequate food, water, shelter (Ag and Mkts law sec 356)
 - **Lawful for any person to enter the premises where the animals are impounded and provide food and water**
 - **Immunity from civil/criminal liability**

Animals in Disasters: Legal Issues

- **Animals Running at Large: Threats to Public Safety**
 - Use of force to defend, self, others, property (even deadly force) (Penal Law sec. 35.05)
 - (shooting animal believed to be attacking, threatening)
 - Killing dogs that are chasing, worrying, or attacking livestock with immunity from civil/criminal liability (Ag and Mkts law sec. 121)
 - Permitting/Allowing wild animals/reptiles to roam freely off premises of owner -Class A misdemeanor (Ag and Mkts sec. 370)

Animals in Disasters: Legal Issues

- **New/Pending Laws**
 - **Federal PETS Act**
 - **NYS PETS Act (Exec. Law sec 22(16), 23 (18))**
 - **State and local disaster preparedness plans must include: “utilization and coordination of programs to assist individuals with household pets and service animals following a disaster, with particular attention to means of evacuation, shelter and transportation options**
 - **ABA- “Hold Period” Legislation**

Questions?

