

Title 17: CRIMES
Chapter 42: ANIMAL WELFARE
Subchapter 2: POSSESSION OF ANIMALS

§1021. Possession of animals

1. Possession. A state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or the commissioner may apply to the District Court or the Superior Court for authorization:

A. To take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has abandoned or cruelly treated it and turn over the animal to the applicant or other suitable person; or [2007, c. 702, §41 (AMD) .]

B. To cause the animal to be disposed of humanely. [1987, c. 383, §4 (NEW) .]

[2007, c. 702, §41 (AMD) .]

2. Notice to owner. If the owner is known, a copy of the application must be served upon the owner with an order of court to appear at a stated time and place to show cause why the animal should not be taken and turned over to the applicant or other suitable person or disposed of humanely.

If the owner can not be found by reasonable diligence, or is out of state although a resident of this State, a copy of the application and order of court must be left at the owner's last and usual place of abode.

If the owner is not known, then the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found, stating the case and circumstances and giving 48 hours notice of the hearing.

[1993, c. 657, §45 (AMD) .]

3. Hearing. If it appears at the hearing that the animal has been cruelly abandoned or cruelly treated by its owner or the animal is maimed, disabled, diseased, dehydrated, malnourished or injured, the court shall:

A. Direct the applicant or other suitable person to take possession of and provide for the animal, order its sale, adoption or placement; [2007, c. 702, §42 (AMD) .]

B. Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful; or [2007, c. 702, §42 (AMD) .]

C. If appropriate, allow the animal to be returned to its owner. [2007, c. 702, §42 (NEW) .]

4. Ex parte order. An ex parte order shall be as follows.

A. A state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or the commissioner may apply to the District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has abandoned or cruelly treated it and turn it over to the applicant or any other suitable person.

An order may be entered ex parte upon findings by the court or justice of the peace that there is a reasonable likelihood that:

(1) The defendant is not subject to the jurisdiction of the court for the purposes of a hearing or the owner cannot be found by reasonable diligence or is out-of-state although a resident of this State, and there is a danger that unless immediate action is taken:

(a) The condition of an injured, overworked, tormented, tortured, abandoned, poisoned or mutilated animal, or animal deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions will be substantially impaired or worsened;

(b) The animal's life will be jeopardized; or

(c) A great degree of medical attention will be necessary to restore the animal to a normal, healthy condition;

(2) There is a clear danger that if the owner or the owner's agent is notified in advance of the issuance of the order of court, as provided in subsection 3, the owner or the owner's agent may remove the animal from the State, conceal it or otherwise make it unavailable;

(3) There is immediate danger that the owner or the owner's agent will kill or injure the animal; or

(4) An animal is being or has been injured, overworked, tormented, tortured, abandoned, poisoned, mutilated, or deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions and, unless an ex parte order issues allowing the applicant to take possession of the animal, the animal will die, its condition will be substantially impaired or worsened or medical attention will be necessary to restore the animal to a normal, healthy condition. [2007, c. 702, §43 (AMD) .]

B. This subsection does not apply to animals currently being well cared for when euthanasia is necessary due to old age or to a person's conduct designed to control or eliminate rodents, ants or other common pests. [1987, c. 383, §4 (NEW) .]

C. On 2 days' notice or such shorter period as the court may prescribe, the applicant who obtained the ex parte order or the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.

The court shall hear and determine the motion, and the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

The moving party shall submit an affidavit setting forth specific facts to substantiate such findings as would serve to modify or dissolve the order. The opposing party shall have the burden of presenting evidence to substantiate the original findings. [2011, c. 559, Pt. A, §15 (AMD).]

[2011, c. 559, Pt. A, §15 (AMD) .]

5. Seizure for observation and examination. Seizure of animals for observation and examination is as follows.

A. Whenever a humane agent, a state veterinarian or a person authorized to make arrests has reason to believe that an animal may be disabled, diseased, dehydrated or malnourished, the humane agent, state veterinarian or person shall apply to the District Court or Superior Court for authorization to take possession of the animal and turn it over to the applicant or other suitable person for examination and observation for a 30-day period. At the end of 30 days, the court must receive a report from the person in possession of the animal and either dissolve the possession order or set the matter for hearing within 30 days. [RR 2013, c. 2, §30 (COR).]

B. If the owner is known, the owner must be advised of the time and place of hearing and asked to show cause why the animal should not be seized permanently or disposed of humanely. [1995, c. 490, §23 (AMD) .]

C. If the court finds at the hearing that the animal is disabled, diseased, dehydrated or malnourished, the court shall:

(1) Declare the animal forfeited and order its sale, adoption or donation; or

(2) Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful. [1987, c. 383, §4 (NEW) .]

[RR 2013, c. 2, §30 (COR) .]

5-A. Seizure by state humane agent or state veterinarian without court order. A state humane agent or a state veterinarian who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of and retain the cruelly treated animal. Upon taking possession of an animal under this section, the humane agent or the state veterinarian shall present the owner with a notice that:

A. States the reason for seizure; [1993, c. 468, §22 (NEW) .]

B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and [1995, c. 490, §24 (AMD) .]

C. Advises the owner of the ensuing court procedure. [1993, c. 468, §22 (NEW) .]

If the owner can not be found, the humane agent or the state veterinarian shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent or the state veterinarian shall contact the animal shelter or shelters used by the municipality in which the animal was found. The humane agent or the state veterinarian shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent or the state veterinarian shall apply to the court for a possession order. Upon good cause shown, the court shall expedite the case and schedule a prehearing conference to take place within 7 days of the seizure. The court shall set a hearing date, and the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The humane agent or the state veterinarian shall arrange care for the animal, including medical treatment, if necessary, pending the hearing.

The humane agent or the state veterinarian shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the hearing that the animal has been abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery. In the case of an expedited hearing, the court shall issue a writ of possession or return the animal to its owner within 30 days of the seizure.

For an expedited hearing, the State, prior to the prehearing conference, shall submit all veterinary records, reports by investigating officers and other relevant records in the State's possession to the court and shall mail or deliver copies of these same reports and records to the owner of the animal.

All veterinary records, seizure reports prepared by humane agents, police reports, witness statements or other written documents are admissible as evidence when the authors of these documents are available for cross-examination at a possession hearing. Oral statements of a witness included in a police report are only admissible if the witness is present at the possession hearing.

[2011, c. 559, Pt. A, §16 (AMD) .]

6. Attachment and enforcement of lien. Attachment and enforcement of liens shall be as follows.

A. Any person taking possession of an animal as provided in this subchapter shall have a lien for expenses as provided in this subsection unless the complaint is dismissed for lack of merit. If the

complaint is dismissed for lack of merit, the board and the municipality where the possession occurred may share in paying the lienor's expenses. [1987, c. 383, §4 (NEW).]

B. Expenses covered by this subsection include expenses reasonably incident to taking an animal into custody such as transportation, food, shelter, veterinary care and expenses of disposing of an animal taken into custody. [1987, c. 383, §4 (NEW).]

C. The lienor may enforce the lien in the same manner as enforcements of liens on personal property pursuant to Title 10, chapter 631. In giving judgment for the lien, the court shall include expenses as set forth in paragraph B, incurred by the lienor from the date of commencement of proceedings to the entry of judgment or final disposition of the animal as ordered by the court.

In the event of the sale of the animal, all expenses incurred in transporting, taking, keeping and caring for the animal shall be deducted from the sale price and the balance, if any, turned over to the owner. [1987, c. 383, §4 (NEW).]

D. The defendant may appeal as in a civil action, but before appeal is allowed, the defendant shall give sufficient security to satisfy the applicant or person taking custody of the animal that he will pay all expenses for its care and support pending appeal. [1987, c. 383, §4 (NEW).]

[1987, c. 383, §4 (NEW) .]

SECTION HISTORY

1987, c. 383, §4 (NEW). 1987, c. 736, §27 (AMD). 1991, c. 779, §§46-48 (AMD). 1993, c. 468, §§21,22 (AMD). 1993, c. 657, §§45,46 (AMD). 1995, c. 490, §§23,24 (AMD). 1997, c. 690, §§62-64 (AMD). 2007, c. 702, §§41-44 (AMD). 2009, c. 573, §1 (AMD). 2011, c. 559, Pt. A, §§15, 16 (AMD). RR 2013, c. 2, §30 (COR).

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