

PROPOSED AMENDMENTS TO S. 237 AS INTRODUCED

February 17, 2014

General Concepts:

- 354(d): Reverts to current language (“may” instead of “shall”) giving the state flexibility (not mandate) to institute civil proceeding. Also amended to provide immunity from civil liability for shelters that house animals as part of a civil or criminal case.
- 354 (e)(1) and (2): Goal is create a summary proceeding that mirrors guidelines in Title 23, 1205 (DUI civil license suspension proceeding); Want a short and decisive proceeding that is not designed to determine criminal liability but rather limit the issues to whether the animal(s) were subjected to cruel treatment.
- 354 (f)(1): Allows prosecutors to use written statements from expert witnesses instead of having to call in live witnesses for the civil trial.
- 354(g)(1)(a): Added to create a vehicle for the collection of repayment costs from convicted offenders to animal care agencies by the Restitution Unit. (Process is meant to *parallel* their process for collecting restitution for victims, without calling it restitution or giving shelters the ability to collect from the restitution fund)
- 354(h): Added to protect shelters from being saddled with care costs if the civil motion determination is appealed. Requires the defendant to post a bond to cover these care costs through the appeal process. Also want to make it clear the shelter can draw their actual costs from the security deposit.

Sec. 1. 13 V.S.A. § 354 is amended to read:

§ 354. ENFORCEMENT; POSSESSION OF ABUSED ANIMAL; SEARCHES AND SEIZURES; FORFEITURE

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(d) If an animal is seized under this section, the ~~state~~State may institute a civil proceeding for forfeiture of the animal in the territorial unit of the ~~criminal division of the superior court~~Criminal Division of the Superior Court where the offense is alleged to have occurred. The proceeding shall be instituted by a motion for forfeiture, which shall be filed with the ~~court~~Court and served upon the animal's owner. In criminal proceedings for a violation of a provision of this chapter, the Court may impose a condition of release ordering an animal seized under this section into the custody of a humane officer pending the filing of a motion for forfeiture. Possession of any animals(s) pursuant to this chapter by any animal care facility or animal shelter pending any investigation of a criminal or civil proceeding shall serve as a legal possession of the animal and shall provide an immunity from any claim against the facility or shelter by a defendant or party claiming ownership to the animal (s) at issue.

(e) The defendant must file an answer to the motion for forfeiture with a request for a final hearing within 10 days of the service of the motion. If the defendant requests a hearing on the merits, t~~The court shall set a final hearing to be held within 21 days after the defendant files an answer and request for hearing~~institution of a forfeiture proceeding under this section.
Time limits under this subsection shall not be construed as jurisdictional.

(1) The issues at the final hearing shall be limited to whether the animal was subjected to cruelty, neglect or abandonment in violation of section 352 or 352a of this title. The defendant's answer shall contain a list of the issues (limited to the issues set forth in this subsection) that the defendant intends to raise at the final hearing. Only evidence that is relevant to an issue listed by the defendant may be raised by the defendant at the final

hearing. The defendant shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible.

(2) If the defendant fails to file a timely answer and request for final hearing, the defendant shall be in default and the court shall order the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title. A motion to reopen a default judgment must be filed in writing with the court no later than 30 days after entry of a default judgment. A default judgment will not be reopened unless good cause is shown.

(f)(1) At the hearing on the motion for forfeiture, the ~~state~~State shall have the burden of establishing by ~~clear and convincing~~ a preponderance of the evidence that the animal was subjected to cruelty, neglect or abandonment in violation of section 352 or 352a of this title.

The ~~court~~Court shall make findings of fact and conclusions of law and shall issue a final order. If the ~~state~~State meets its burden of proof, the motion shall be granted and the ~~court~~Court shall order the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title. Affidavits of law enforcement officers, humane officers, animal control officers, veterinarians, or expert witnesses of either party shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing. The court may allow a party's veterinarian to testify by telephone in lieu of a personal appearance. The Vermont Rules of Evidence are inapplicable except for the rules respecting privilege; evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

f(2) No testimony or other information presented by the defendant in connection with a civil forfeiture proceeding under this section or any information directly or indirectly derived

from such testimony or other information, may be used for any purpose, including impeachment and cross-examination, against the defendant in any criminal case, except a prosecution for perjury or giving a false statement.

(g)(1)(a) If the defendant is convicted of criminal charges under this chapter or if an order of forfeiture is entered against an owner under this section, the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses. When any repayment is ordered under this section, the Restitution Unit is authorized to collect the funds owed by the defendant or owner on behalf of the custodial caregiver in the same manner as restitution is collected pursuant to 13 V.S.A. § 7043. The Court shall make findings with respect to the total amount of all costs incurred by the custodial caregiver.

(b) Every order of repayment under this section shall:

(i) include the defendant's or owner's name, address, and Social Security number;

(ii) include the name, address, and telephone number of the defender's or owner's employer; and

(iii) require the defendant or owner, until his or her repayment obligation is satisfied, to notify the Restitution Unit within 30 days if his or her address or employment changes, including providing the name, address, and telephone number of each new employer.

(2)(A) If the defendant is acquitted of criminal charges under this chapter and a civil forfeiture proceeding under this section is not pending, an animal that has been taken into custodial care shall be returned to the defendant unless the ~~state~~State institutes a civil forfeiture proceeding under this section within seven days of the acquittal.

(B) If the ~~court~~Court rules in favor of the owner in a civil forfeiture proceeding under this section and criminal charges against the owner under this chapter are not pending, an animal that has been taken into custodial care shall be returned to the owner unless the ~~state~~State files criminal charges under this section within seven days after the entry of final judgment.

(C) If an animal is returned to a defendant or owner under this subdivision, the defendant or owner shall not be responsible for the costs of caring for the animal.

(h) An order of the criminal division of the superior court under this section may be appealed as a matter of right to the supreme court. The order shall not be stayed pending appeal.

(1) As a condition of appealing any order under this section, the defendant must, within 72 hours of the filing of the notice of appeal, post a security deposit or bond with the Court clerk in an amount determined by the Court to be sufficient to repay all reasonable costs incurred and anticipated to be incurred for the care of the animal from the date of initial seizure to the date of final disposition of the animal in the criminal or forfeiture action.

When determining the amount of the bond, the Court shall take into consideration all the facts and circumstances of the case, including, but not limited to, the recommendation of the impounding organization having custody and care of the seized animal or animals and the cost of caring for the animal or animals. If security has been posted in accordance with this Section, the impounding agency may draw from the security the actual costs incurred by the agency in caring for the seized animal or animals.

(2) Notwithstanding subdivision (1) of this subsection, the Court may reduce the requirement that the defendant post a security deposit or bond only upon a showing of:

(A) a reasonable likelihood of success on appeal; and

(B) good cause for reducing the bond requirement.

(3) If a security deposit or bond has been posted in accordance with this subsection, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the Court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the animal until the new date of trial.

(4) If a security deposit or bond has been posted in accordance with this section, the custodial caregiver of the animal may draw from that security deposit or bond the actual reasonable costs incurred by the custodial caregiver in caring for the seized animal from the date of initial seizure to the date of final disposition of the animal.

(i) The provisions of this section are in addition to and not in lieu of the provisions of section 353 of this title.

(j) It is unlawful for a person to interfere with a humane officer or the secretary of agriculture, food and markets engaged in official duties under this chapter. A person who violates this subsection shall be prosecuted under section 3001 of this title.

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Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.