

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 578
3 entitled “An act relating to penalties and procedures for animal cruelty
4 offenses” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 351 is amended to read:

8 § 351. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (21) “Sexual conduct” means:

12 (A) any act between a person and animal that involves contact
13 between the mouth, sex organ, or anus of a person and the mouth, sex organ, or
14 anus of an animal; ~~or~~

15 (B) without a bona fide veterinary or animal husbandry purpose, the
16 insertion, however slight, of any part of a person’s body or of any instrument,
17 apparatus, or other object into the vaginal or anal opening of an animal;

18 (C) without a bona fide veterinary or animal husbandry purpose, a
19 person touching or fondling a sex organ or anus of an animal, either directly or
20 through clothing; or

* * *

Sec. 2. 13 V.S.A. § 352 is amended to read:

A person commits the crime of cruelty to animals if the person:

(2) Overworks, overloads, tortures, torments, abandons, administers poison to, cruelly harms or mutilates an animal, or exposes a poison with intent that it be taken by an animal.

1 (3) Ties, tethers, or restrains an animal, either a pet or livestock, in a
2 manner that is inhumane or is detrimental to its welfare. Livestock and poultry
3 husbandry practices are exempted.

4 (4) Deprives an animal that a person owns, possesses, or acts as an agent
5 for of adequate food, water, shelter, rest, sanitation, or necessary medical
6 attention or transports an animal in overcrowded vehicles.

7 (5)(A) Owns, possesses, keeps, or trains an animal engaged in an
8 exhibition of fighting; possesses, keeps, or trains any animal with intent that it
9 be engaged in an exhibition of fighting; or permits any such act to be done on
10 premises under ~~his or her~~ the person's charge or control.

11 (B) Owns, possesses, ships, transports, delivers, or keeps a device,
12 equipment, or implement for the purpose of training or conditioning an animal
13 for participation in animal fighting or enhancing an animal's fighting
14 capability.

15 (6) Acts as judge or spectator at events of animal fighting or bets or
16 wagers on the outcome of such fight.

17 (7) As poundkeeper, officer, or agent of a humane society or as an
18 owner or employee of an establishment for treatment, board, or care of an
19 animal, knowingly receives, sells, transfers, or otherwise conveys an animal in
20 ~~his or her~~ the person's care for the purpose of research or vivisection.

1 (8) Intentionally torments or harasses an animal owned or engaged by a
2 police department or public agency of the State or its political subdivisions or
3 interferes with the lawful performance of a police animal.

4 (9) Knowingly sells, offers for sale, barter, or displays living baby
5 chicks, ducklings, or other fowl that have been dyed, colored, or otherwise
6 treated so as to impart to them an artificial color or fails to provide poultry with
7 proper brooder facilities.

8 (10) Uses a live animal as bait or lure in a race, game, or contest or in
9 training animals in a manner inconsistent with 10 V.S.A. Part 4 or the rules
10 adopted thereunder.

11 (11)(A) Engages in sexual conduct with an animal.

12 (B) Possesses, sells, transfers, purchases, or otherwise obtains an
13 animal with the intent that it be used for sexual conduct.

14 (C) Organizes, promotes, conducts, aids, abets, or participates in as
15 an observer an act involving any sexual conduct with an animal.

16 (D) Causes, aids, or abets another person to engage in sexual conduct
17 with an animal.

18 (E) Permits sexual conduct with an animal to be conducted on
19 premises under ~~his or her~~ the person's charge or control.

20 (F) Advertises, offers, or accepts the offer of an animal with the
21 intent that it be subject to sexual conduct in this State.

1 (G) Knowingly possesses, films, or distributes obscene visual images
2 of sexual conduct with an animal.

3 (12) Possessing, owning, caring for, residing with, having custody of, or
4 working with an animal while the person is prohibited from possessing
5 owning, caring for, having custody of, or working with an animal by a court
6 order issued pursuant to subsection 353(b) of this title.

7 (13) Knowingly refusing to comply with a court order issued pursuant to
8 subdivision (b)(1)(E) to permit periodic unannounced visits by a humane
9 officer.

10 Sec. 3. 13 V.S.A. § 352a is amended to read:

11 § 352a. AGGRAVATED CRUELTY TO ANIMALS

12 A person commits the crime of aggravated cruelty to animals if the person:

13 (1) kills an animal by intentionally causing the animal undue pain or
14 suffering;

15 (2) intentionally, maliciously, and without just cause tortures, mutilates,
16 or cruelly beats an animal; ~~or~~

17 (3) intentionally injures or kills an animal that is in the performance of
18 official duties while under the supervision of a law enforcement officer; or

19 (4)(A) engages in sexual conduct with an animal in the presence of a
20 minor or in which a minor is a participant;

1 (B) possesses, sells, transfers, purchases, or otherwise obtains an
2 animal with the intent that it be used for sexual conduct in the presence of a
3 minor or in which a minor is a participant;

4 (C) organizes, promotes, conducts, aids, abets, or participates in an
5 act involving any sexual conduct with an animal in the presence of a minor or
6 in which a minor is a participant as an observer;

7 (D) causes, aids, or abets another person to engage in sexual conduct
8 with an animal in the presence of a minor or in which the minor is a
9 participant;

10 (E) permits sexual conduct with an animal in the presence of a minor
11 or in which a minor is a participant that is conducted on premises under the
12 person's charge or control; or

13 (F) advertises, offers, or accepts the offer of an animal with the intent
14 that it be subject to sexual conduct in this State in the presence of a minor or in
15 which the minor participates.

16 (G) knowingly possesses, films, or distributes obscene visual images
17 of sexual conduct with an animal in the presence of a minor or in which the
18 minor participates.

19 Sec. 4. 13 V.S.A. § 353 is amended to read:

20 § 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

21 (a) Penalties.

1 (1) Except as provided in subdivision (3), (4), or (5) of this subsection,
2 cruelty to animals under section 352 of this title shall be punishable by a
3 sentence of imprisonment of not more than one year or a fine of not more than
4 \$2,000.00, or both. Second and subsequent convictions shall be punishable by
5 a sentence of imprisonment of not more than two years or a fine of not more
6 than \$5,000.00, or both.

7 (2) Aggravated cruelty under section 352a of this title shall be
8 punishable by a sentence of imprisonment of not more than five years or a fine
9 of not more than \$5,000.00, or both. Second and subsequent offenses shall be
10 punishable by a sentence of imprisonment of not more than ~~ten~~ 10 years or a
11 fine of not more than \$7,500.00, or both.

12 (3) An offense committed under subdivision 352(5) or (6) of this title
13 shall be punishable by a sentence of imprisonment of not more than five years
14 or a fine of not more than \$5,000.00, or both.

15 (4)(A) Except as provided in subdivision (B) of this subdivision (4), a
16 person found in violation of subdivision 352(3), (4), or (9) of this title pursuant
17 to this subdivision (A) shall be imprisoned not more than one year or fined not
18 more than \$2,000.00, or both. Second and subsequent convictions shall be
19 punishable by a sentence of imprisonment of not more than two years or a fine
20 of not more than \$5,000.00, or both.

1 (B) In lieu of a criminal citation or arrest, a law enforcement officer
2 may issue a civil citation to a person who violates subdivision 352(3), (4), or
3 (9) of this title if the person has not been previously adjudicated in violation of
4 this chapter. A person adjudicated in violation of subdivision 352(3), (4), or
5 (9) of this title pursuant to this subdivision (B) shall be assessed a civil penalty
6 of not more than \$500.00. At any time prior to the person admitting the
7 violation and paying the assessed penalty, the State's Attorney may withdraw
8 the complaint filed with the Judicial Bureau and file an information charging a
9 violation of subdivision 352(3), (4), or (9) of this title in the Criminal Division
10 of the Superior Court.

11 (C) Nothing in this subdivision (4) shall be construed to require that a
12 civil citation be issued prior to a criminal charge of violating subdivision
13 352(3), (4), or (9) of this title.

14 (5) A person who violates subdivision 352(1) of this title by
15 intentionally killing or attempting to kill an animal belonging to another or
16 subdivision 352(2) of this title by torturing, administering poison to, or cruelly
17 harming or mutilating an animal shall be imprisoned not more than two years
18 or fined not more than \$5,000.00, or both.

19 (b)(1) In addition to any other sentence the court may impose, the court
20 may require a defendant convicted of a violation under section 352 or 352a of
21 this title to:

1 ~~(1)(A) Forfeit~~ For a first violation, forfeit any rights to the animal
2 subjected to cruelty, and to any other animal, ~~except livestock or poultry~~
3 owned, possessed, residing or domiciled with, or in the custody of the
4 defendant. Livestock or poultry shall not be subject to forfeiture under this
5 subdivision (A) unless the person was convicted of abusing livestock or
6 poultry.

7 ~~(2)(B)~~ Repay the reasonable costs incurred by any person,
8 municipality or agency for providing care for the animal prior to judgment. ~~If~~
9 ~~the court does not order a defendant to pay all the applicable costs incurred or~~
10 ~~orders only partial payment, it shall state on the record the reasons for that~~
11 ~~action.~~

12 ~~(3)(C)(i) Forfeit~~ For a first violation of section 352 of this title, forfeit
13 any future right to own, possess, ~~or~~ care for, reside with, have custody of, or
14 work with any animal for a period ~~that the court deems appropriate~~ of not less
15 than up to five years.

16 (ii) For a first violation of section 352a of this title, forfeit any
17 future right to own, possess, care for, reside with, have custody of, or work
18 with any animal for a period of up to ten years.

19 (iii) A person shall not be required to forfeit any future right to
20 own, possess, ~~or~~ care for, have custody of, or work with livestock or poultry

1 under this subdivision (C) unless the person was convicted of abusing
2 livestock or poultry.

3 ~~(4)(D)(i)~~ Participate in ~~successfully~~ Complete an available animal
4 cruelty prevention programs program that is approved by the Director of
5 Animal Welfare;

6 ~~(ii)~~ or educational programs, or both ~~successfully~~ Complete an
7 animal abuse education accountability program, if any are approved by the
8 Director of Animal Welfare or ; and

9 ~~(iii)~~ obtain undergo a psychiatric or psychological ~~counseling~~
10 evaluation, and, if the screening indicates that therapy is needed, obtain
11 psychiatric, psychological, or mental health treatment with a licensed clinician
12 licensed in the State of Vermont, remotely or within a reasonable distance from
13 the defendant's residence.

14 ~~(iv)~~ The court may impose the costs of programs or counseling
15 ordered pursuant to this subdivision upon the defendant when appropriate.

16 ~~(ii)~~ If a juvenile is adjudicated delinquent under section 352 or
17 352a of this title, the court may order the juvenile to undergo a psychiatric or
18 psychological evaluation and to participate in treatment that the court
19 determines to be appropriate after due consideration of the evaluation a
20 psychological assessment to determine if therapy or treatment is needed. If the
21 screening indicates that therapy is needed, the court may order the juvenile to

1 ~~satisfactorily complete or show substantial progress in completing a therapy~~
2 ~~program with a clinician licensed in the state of Vermont. The court may~~
3 ~~impose the costs of such programs or counseling upon the defendant when~~
4 ~~appropriate.~~

5 (5)(E) Permit periodic unannounced visits ~~for a period up to one year~~ by
6 a humane officer ~~or the Director of Animal Welfare~~ to inspect the care and
7 condition of any animal ~~permitted by the court to remain~~ in the care, custody,
8 or possession of the defendant ~~beginning after the end of the five year~~
9 ~~prohibition to own, possess, or care for an animal for a period as described in~~
10 ~~subdivision (3) of this subsection~~ during the period, and for up to one year after
11 expiration of the period, that the defendant is prohibited from owning,
12 possessing, caring for, residing with, having custody of, or working with an
13 animal by an order issued under pursuant to subdivision (b)(1)(C) or (b)(2) of
14 this section. Such period may be ~~extended~~ ~~modified~~ by the court upon motion
15 made by the State.

16 (F) ~~Be prohibited from working in any capacity that requires the person~~
17 ~~to be in contact with an animal, including at a commercial boarding or training~~
18 ~~establishment, shelter, animal control facility, pet shop, grooming facility,~~
19 ~~commercial breeding service, veterinary hospital or clinic, animal welfare~~
20 ~~society, or any nonprofit organization incorporated for the purpose of~~

1 providing for or promoting the welfare, protection, and humane treatment of
2 animals.

3 (2) In addition to any other sentence the court may impose, the court shall
4 require a defendant convicted of a violation under section 352 or 352a of this
5 title to:

6 (A) For a second or subsequent violation, forfeit any rights to the
7 animal subjected to cruelty, and to any other animal possessed, residing or
8 domiciled with, or in the custody of the defendant. Livestock or poultry shall
9 not be subject to forfeiture under this subdivision (A) unless the person was
10 convicted of abusing livestock or poultry.

11 (B)(i) For a second or subsequent violation of section 352 of this
12 title, forfeit any future right to own, possess, care for, reside with, have custody
13 of, or work with any animal for a period of not less than five years.

14 (ii) For a second or subsequent violation of section 352a of this
15 title, forfeit any future right to own, possess, care for, reside with, have custody
16 of, or work with any animal for a period of not less than ten years.

17 (iii) A person shall not be required to forfeit any future right to
18 own, possess, or care for, have custody of, or work with livestock or poultry
19 under this subdivision (B) unless the person was convicted of abusing
20 livestock or poultry.

1 (c) Upon an order of forfeiture of an animal under this section or section
2 354 of this title, the court shall order custody of the animal remanded to a
3 humane society or other individual deemed appropriate by the court, for further
4 disposition in accordance with accepted practices for humane treatment of
5 animals. A transfer of rights under this section constitutes a transfer of
6 ownership and shall not constitute or authorize any limitation upon the right of
7 the humane society, individual, or other entity, to whom rights are granted to
8 dispose of the animal.

9 (d)(1) A person who is prohibited from owning, possessing, caring for,
10 residing with, having custody of, or working with an animal by an order issued
11 under pursuant to subdivision (b)(1)(C) or (b)(2) of this section may petition
12 the court for an order that the person be relieved from the prohibition imposed
13 by that section. When the petition is filed, the petitioner shall provide notice
14 and a copy of the petition to the office that prosecuted the case, who shall be
15 the respondent in the matter. The petition shall be filed in the Criminal
16 Division of the unit where the offense or the adjudication occurred.

17 (2) The court may grant a petition filed under this section without
18 hearing if neither the State's Attorney nor the Attorney General files an
19 objection within 30 days after receiving notice of the petition or if the
20 petitioner and the respondent stipulate to the granting of the petition.

1 (3) In determining a petition filed under this section, unless the petition
2 is granted pursuant to subdivision (d)(2) of this subsection, the court may
3 consider any relevant factors, including:

4 (A) whether the person committed any subsequent animal cruelty
5 offenses or other criminal offenses;

6 (B) whether the person successfully completed any required
7 conditions of probation; and

8 (C) whether the person participated in successfully completed animal
9 cruelty prevention programs or educational programs, and whether the
10 programs were approved by the Director of Animal Welfare; or and

11 (D) whether the person obtained psychiatric, or psychological, or
12 mental health counseling from a licensed clinician.

13 (4) The court shall grant a petition filed under this section if it finds that
14 the petitioner has demonstrated by a preponderance of the evidence that the
15 interests of justice are no longer served by prohibiting the petitioner from
16 owning, possessing, caring for, residing with, having custody of, or working
17 with an animal.

18 (5) If a petition filed under this section is granted, the court shall vacate
19 the order prohibiting the person from owning, possessing, caring for, residing
20 with, having custody of, or working with an animal.

1 (6) If the court denies the petition, the petitioner may appeal the denial to
2 the Vermont Supreme Court. The appeal shall be on the record.

3 (7) If the court denies a petition filed under this section, no further
4 petition shall be brought for at least two years, unless a shorter duration is
5 authorized by the court.

6 Sec. 5. 13 V.S.A. § 354 is amended to read:

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

9 (a) The Secretary of Agriculture, Food and Markets shall be consulted prior
10 to any enforcement action brought pursuant to this chapter that involves
11 livestock and poultry. Law enforcement may consult with the Secretary in
12 person or by electronic means, and the Secretary shall assist law enforcement
13 in determining whether the practice or animal condition, or both, represent
14 acceptable livestock or poultry husbandry practices. Failure to conduct the
15 consultation shall not be grounds for dismissal of the enforcement action.

16 (b) Any humane officer as defined in section 351 of this title may enforce
17 this chapter. As part of an enforcement action, a humane officer may seize an
18 animal ~~being cruelly treated in violation of this chapter~~ pursuant to this
19 subsection.

20 (1) Voluntary surrender. A humane officer may accept animals
21 voluntarily surrendered by the owner anytime during the cruelty investigation.

1 The humane officer shall have a surrendered animal examined and assessed
2 within 72 hours by a veterinarian licensed to practice in the State of Vermont.

3 (2) Search and seizure using a search warrant. A humane officer having
4 probable cause to believe an animal is being subjected to cruel treatment in
5 violation of this subchapter may apply for a search warrant pursuant to the
6 Vermont Rules of Criminal Procedure to authorize the officer to enter the
7 premises where the animal is kept and seize the animal. The application and
8 affidavit for the search warrant shall be reviewed and authorized by an attorney
9 for the State when sought by an officer other than an enforcement officer
10 defined in 23 V.S.A. § 4(11). A veterinarian licensed to practice in Vermont
11 ~~must shall, if practicable,~~ accompany the humane officer during the execution
12 of the search warrant. Failure to be accompanied by a veterinarian during the
13 execution of the search warrant shall not be grounds for dismissal of the
14 enforcement action.

15 (3) Seizure without a search warrant. If the humane officer witnesses a
16 situation in which the humane officer determines that an animal's life is in
17 jeopardy and immediate action is required to protect the animal's health or
18 safety, the officer may seize the animal without a warrant. The humane officer
19 shall immediately take an animal seized under this subdivision to a licensed
20 veterinarian for medical attention to stabilize the animal's condition and to
21 assess the health of the animal.

1 (c) A humane officer shall provide suitable care at a reasonable cost for an
2 animal seized under this section, and have a lien on the animal for all expenses
3 incurred. A humane officer may arrange for the euthanasia of a severely
4 injured, diseased, or suffering animal upon the recommendation of a licensed
5 veterinarian. A humane officer may arrange for euthanasia of an animal seized
6 under this section when the owner is unwilling or unable to provide necessary
7 medical attention required while the animal is in custodial care or when the
8 animal cannot be safely confined under standard housing conditions. An
9 animal not destroyed by euthanasia shall be kept in custodial care and provided
10 with necessary medical care until final disposition of the criminal charges
11 except as provided in subsections ~~(d) through (h)~~ (d)–(l) of this section. The
12 custodial caregiver shall be responsible for maintaining the records applicable
13 to all animals seized, including identification, residence, location, medical
14 treatment, and disposition of the animals.

15 ~~(d) If an animal is seized under this section, the State may institute a civil~~
16 ~~proceeding for forfeiture of the animal in the territorial unit of the Criminal~~
17 ~~Division of the Superior Court where the offense is alleged to have occurred.~~
18 ~~The proceeding shall be instituted by a motion for forfeiture if a criminal~~
19 ~~charge has been filed or a petition for forfeiture if no criminal charge has been~~
20 ~~filed, which shall be filed with the court and served upon the animal's owner.~~
21 ~~The civil forfeiture proceeding is intended to run independently from any~~

1 ~~criminal prosecution and shall not be delayed pending disposition of any~~
2 ~~criminal proceeding.~~

3 ~~(e)(1) A preliminary hearing shall be held within 21 days of institution of~~
4 ~~the civil forfeiture proceeding. If the defendant requests a hearing on the~~
5 ~~merits, the court shall schedule a final hearing on the merits to be held within~~
6 ~~21 days of the date of the preliminary hearing. Time limits under this~~
7 ~~subsection shall not be construed as jurisdictional.~~

8 ~~(2) If the defendant fails to respond to the notice for preliminary hearing,~~
9 ~~the court shall enter a default judgment ordering the immediate forfeiture of~~
10 ~~the animal in accordance with the provisions of subsection 353(c) of this title.~~
11 ~~A motion to reopen a default judgment shall be filed in writing with the court~~
12 ~~no later than 30 days after entry of a default judgment. A default judgment~~
13 ~~shall not be reopened unless good cause is shown.~~

14 ~~(f)(1) At the hearing on the motion for forfeiture, the State shall have the~~
15 ~~burden of establishing by clear and convincing evidence that the animal was~~
16 ~~subjected to cruelty, neglect, or abandonment in violation of section 352 or~~
17 ~~352a of this title. The court shall make findings of fact and conclusions of law~~
18 ~~and shall issue a final order. If the State meets its burden of proof, the court~~
19 ~~shall order the immediate forfeiture of the animal in accordance with the~~
20 ~~provisions of subsection 353(c) of this title.~~

1 (1) Unless a person claiming a legal interest in the animal requests a
2 forfeiture hearing pursuant to subdivision (3)(A) of this subsection and posts
3 security pursuant to subdivision (3)(B) of this subsection or requests that the
4 security be reduced or waived on the basis of financial hardship, title to an
5 animal seized pursuant to subsection (b) of this section shall be forfeited
6 pursuant to subsection 353(c) of this title 14 days after seizure or, if the person
7 was not present, service, if the procedures of this subsection are followed. The
8 computation of the 14 day period shall include the day on which service is
9 effectuated.

10 (2) The humane officer who seizes an animal pursuant to this section
11 shall give notice of this section at the time of the seizure by delivering a copy
12 of it to a person who is present and claims a legal interest in the animal. Any
13 person who is known to claim a legal interest in the animal who is not present
14 shall be served with the notice as provided for by Rule 4 of the Vermont Rules
15 of Civil Procedure by conspicuously posting it in a prominent and accessible
16 place at the location where the animal is seized. The notice shall include:

17 (A) a description of the animal seized; the authority and purpose for
18 the seizure; the time, place, and circumstances under which the animal was
19 seized; and the contact information for the authority with legal custody of the
20 animal;

1 (B) a statement that any person claiming a legal interest in the animal
2 at the time of seizure may post security and request a forfeiture hearing
3 concerning the seizure and that failure to do so within 14 days following the
4 date of the notice or service seizure will result in forfeiture of title and
5 disposition of the animal;

6 (C) a statement of the amount due as security and how to pay it;

7 (D) a statement that the security required by this section may be
8 reduced or waived by the court on the basis of financial hardship to the
9 defendant; and

10 (E) a form that may be used to request a forfeiture hearing under
11 subdivision (3)(A) of this subsection and a financial hardship exemption under
12 subsection (j) of this section.

13 (3)(A) The court shall hold a forfeiture hearing if a request is made
14 within 14 days after the seizure by a person claiming a legal interest in the
15 animal at the time of the seizure. If the defendant has requested that the
16 security be reduced or waived on the basis of financial hardship, the court shall
17 grant or deny the request at or before the hearing. The hearing shall be held
18 within 30 days after the request, unless the 30-day period is extended by the
19 court for good cause shown, in the territorial unit of the Civil Division of the
20 Superior Court where the offense is alleged to have occurred.

1 (B) A person who requests a forfeiture hearing pursuant to this
2 subdivision (3) of this subsection shall post security in an amount needed to
3 cover food and necessary veterinary care for the animal for an initial 40-day
4 period, with an additional amount equal to the estimated cost of care and
5 keeping of the animal for a subsequent 30-day period due every 30 days
6 thereafter until the owner relinquishes the animal or until the court issues an
7 order of forfeiture. The amount of the security and the payment schedule shall
8 be set in rules adopted by the Director of Animal Welfare pursuant to 20
9 V.S.A. § 3202(e). The security shall be posted within 14 days following the
10 seizure, and the computation of the 14 day period shall include the day on
11 which the animal is seized unless the person requests that the security be
12 reduced or waived by the court on the basis of financial hardship. The court
13 shall collect and transfer the security to the Animal Welfare Fund established
14 pursuant to 20 V.S.A. § 3203.

15 (C) The State shall have the burden of establishing by a
16 preponderance of the evidence that the animal was subjected to cruelty,
17 neglect, or abandonment in violation of section 352 or 352a of this title.
18 Whether the defendant pays the security required by subdivision (d)(3)(B) of
19 this section shall be a relevant factor for the court to consider when
20 determining whether the animal was subjected to neglect. The court shall
21 make findings of fact and conclusions of law and shall issue a final order

1 promptly. The findings shall include the total amount of all costs incurred by
2 the custodial caregiver. If the State meets its burden of proof, the court shall
3 order the immediate forfeiture of the animal, and any offspring of the animal
4 that ~~was~~ **were** born while the animal was in custody, in accordance with the
5 provisions of subsection 353(c) of this title.

6 (D) Notwithstanding subdivision (B) of this subdivision (d)(4) the
7 court may order the animal returned to the petitioner if the court finds by a
8 preponderance of the evidence that the petitioner:

9 (i) is not the defendant in a cruelty case involving the animal;

10 (ii) did not participate in or expressly or impliedly consent to the
11 alleged cruel treatment of the animal;

12 (iii) did not have any express or implied knowledge that the
13 defendant was likely to treat the animal cruelly; and

14 (iv) will provide adequate care to the animal if it is returned,
15 including any immediately necessary veterinary care or follow-up care needed
16 in connection with the reason for seizure.

17 ~~(2)~~(E) Affidavits of law enforcement officers, humane officers,
18 animal control officers, veterinarians, or expert witnesses of either party shall
19 be admissible evidence that may be rebutted by witnesses called by either
20 party. The affidavits shall be delivered to the other party at least five business
21 days prior to the hearing. Upon request of the other party or the court made at

1 least two business days prior to the hearing, the party offering an affidavit shall
2 make the affiant available by telephone at the hearing. The court may allow
3 any witness to testify ~~by telephone~~ remotely in lieu of a personal appearance
4 and shall adopt rules with respect to such testimony.

5 ~~(3)~~(F) No testimony or other information presented by the defendant
6 in connection with a forfeiture proceeding under this section or any
7 information directly or indirectly derived from such testimony or other
8 information may be used for any purpose, including impeachment and cross-
9 examination, against the defendant in any criminal case, except a prosecution
10 for perjury or giving a false statement.

11 (F) The rules of evidence shall apply in the forfeiture hearing unless
12 otherwise provided by this section.

13 (e) If an order of forfeiture is not entered after the hearing, the animal shall
14 be returned to the person claiming an interest in the animal upon payment to
15 the custodial caretaker of all actual costs of care and keeping during the period
16 of impound, including veterinary care, provided that the payment of costs shall
17 not be required if the court finds that there was no reasonable basis for the
18 seizure. If payment of the costs required by this subsection is not made within
19 14 days after the final order, the custodial caretaker's costs, not to exceed the
20 amount of security posted pursuant to subdivision (d)(3)(B) of this section,

1 shall be reimbursed from the Animal Welfare Fund established pursuant to 20
2 V.S.A. § 3203.

3 ~~(g)(1)(f) If the defendant is convicted of criminal charges under this chapter~~
4 ~~or if an order of forfeiture is entered against an owner under this section, the~~
5 security posted pursuant to this section shall be applied to the actual costs
6 incurred by the custodial caretaker in caring and keeping the animal through
7 the date of forfeiture, including food, boarding, and the cost of any veterinary
8 services. Any excess shall be returned to the person who posted the security.
9 The defendant or owner shall be required to repay all reasonable costs incurred
10 by the custodial caregiver for caring for the animal, including veterinary
11 expenses. The Restitution Unit within the Center for Crime Victim Services is
12 authorized to collect the funds owed by the defendant or owner on behalf of
13 the custodial caregiver or a governmental agency that has contracted or paid
14 for custodial care in the same manner as restitution is collected pursuant to
15 section 7043 of this title. The restitution order shall include the information
16 required under subdivision 7043(e)(2)(A) of this title. ~~The court shall make~~
17 ~~findings with respect to the total amount of all costs incurred by the custodial~~
18 ~~caregiver.~~

19 ~~(2)(A) If the defendant is acquitted of criminal charges under this chapter~~
20 ~~and a civil forfeiture proceeding under this section is not pending, an animal~~
21 ~~that has been taken into custodial care shall be returned to the defendant unless~~

1 ~~the State institutes a civil forfeiture proceeding under this section within seven~~
2 ~~business days of the acquittal.~~

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

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

11 ~~(h)(g)(1)~~ A forfeiture order issued under this section may be appealed as a
12 matter of right to the Supreme Court if a notice of appeal is filed within 7 days
13 after the order is issued and the appellant posts security pursuant to subdivision
14 (2) of this subsection. The order shall not be stayed pending appeal.

15 (2) The appellant shall post security in an amount needed to cover food
16 and necessary veterinary care for the animal for an initial 40-day period from
17 the date that the forfeiture order was issued, with an additional amount equal to
18 the estimated cost of care and keeping of the animal for a subsequent 30-day
19 period due every 30 days thereafter until the owner relinquishes the animal or
20 until final disposition of the case. The amount of the security and the payment
21 schedule shall be set in rules adopted by the Director of Animal Welfare

1 pursuant to 20 V.S.A. § 3202(e). The court shall collect and transfer the
2 security to the Animal Welfare Fund established pursuant to 20 V.S.A. § 3203.

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

5 ~~(j)~~(i) It is unlawful for a person to interfere with a humane officer, the
6 Director of Animal Welfare, or the Secretary of Agriculture, Food and Markets
7 engaged in official duties under this chapter. A person who violates this
8 subsection shall be prosecuted under section 3001 of this title.

9 (j) The security required by this section may be reduced or waived by the
10 court on the basis of financial hardship to the defendant.

11 (k) A humane officer or animal shelter or rescue organization shall be
12 immune from civil or criminal liability for seizing or providing care or
13 treatment to an animal in good faith reliance on the provisions of this section.
14 This subsection shall not apply to gross negligence or intentional misconduct
15 by the humane officer or animal shelter or rescue organization.

16 (l) This section shall not be construed to limit or infringe upon any other
17 rights or remedies available under common law or any other provision of law
18 or rule.

19 Sec. 6. 20 V.S.A. § 3202 is amended to read:

20 § 3202. ESTABLISHMENT OF DIVISION OF ANIMAL WELFARE;
21 POWERS AND DUTIES

* * *

(e)(1) The Division of Animal Welfare shall adopt rules pursuant to 3
V.S.A. chapter 25 to:

(A) provide for the receipt and management of security posted in
animal forfeiture proceedings and transferred to the Fund by the court pursuant
to 13 V.S.A. § 354(d)(3)(B) and 13V.S.A. § 354(g)(2), including the amount
of security required; and

(B) make distributions and reimbursements from the Fund for the
purposes authorized by 13 V.S.A. § 354, including payment schedules.

Sec. 7. 20 V.S.A. § 3203 is amended to read:

§ 3203. ANIMAL WELFARE FUND

(a) The Animal Welfare Fund is established within the Department of
Public Safety to fund the expenses incurred by the Division of Animal Welfare
in implementing the requirements of this chapter. The Director of Animal
Welfare shall administer the Fund.

(b) The Fund shall consist of:

(1) 67 percent of the revenue collected from the surcharge assessed
under subsection 3581(f) of this title; ~~and~~

(2) appropriations made by the General Assembly; and

(d) The Director of Animal Welfare shall have the authority to make distributions and reimbursements from the Fund for the purposes authorized by 13 V.S.A. § 354.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2026.

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE