Issue Analysis: Guilty Until Proven Innocent?

How Latest "Bond-for-Care" Bills Hurt Disadvantaged Dog Owners

The American Kennel Club works hard to support the humane treatment of all dogs and works to ensure that dogs are never kept in circumstances where their needs cannot be met. Anyone *convicted* of animal cruelty should be held accountable, including paying for the costs of caring for the animals they mistreated.

Over the past several years, however, a number of proposals have been introduced in state and local legislative bodies that seek to force those *not proven criminally guilty* for offenses involving animals to be financially responsible for the costs of caring for seized animals—usually payable by securing a bond—while their case is pending. These proposals are commonly proposed as a means of offsetting a community's animal control costs. *Most of these bills also force a defendant to forfeit ownership of their animals if they are unable to pay for the mandated bonds, regardless of whether they are ultimately not found guilty.* The AKC has grave concerns about measures that permanently punish individuals simply because they cannot afford to pay for bonds for the care of and long-term boarding costs for their seized animals while also incurring the significant costs of defending themselves against unfounded charges.

These bills, known as "bond-for-care" bills, focus on amending a body of law generally known as criminal procedure (see sidebar), by addressing the procedures and costs associated with impounding an animal when someone is charged with committing an animal-related offense. The best way to understand why these types of bills should be of great concern to all dog owners is to consider one of the first bond-for-care bills introduced, and understand some of the problems with it.

In 2013, Pennsylvania House Bill 82 originally would have allowed non-governmental "humane societies" to petition courts to require a defendant accused of animal cruelty to pay for the care for the animals seized from them while their case was pending. Costs of basic care would be set at $15 per day per animal seized, while costs for all reasonable medical expenses would also be assessed. Furthermore, if the defendant failed to pay the amount required by the court at any time during the proceedings, their rights would be permanently forfeited, regardless of whether the defendant was eventually found not guilty or the charges against them were dismissed.

This version of House Bill 82 was problematic for several reasons. Defendants would be subjected to a catch-22 situation: either pay extensive costs for someone else to care

WHAT'S *CRIMINAL PROCEDURE?*

Criminal procedure laws detail the process by which the government enforces the substantive criminal codes against a person accused of having committed a crime (i.e., a defendant). The field also attempts to protect the rights of the accused. With "innocent until proven guilty" as a maxim, the rights guaranteed to criminal defendants by both the federal and state constitutions are extensive, and include the guarantee of Due Process.

Due Process is a fundamental tenant of American law. It guarantees that all legal proceedings will be fair and that an individual will be given notice of the proceedings being instituted against her. Perhaps most importantly, a defendant will be afforded an opportunity to be heard before the government acts to take away one's life, liberty, or property.

When law enforcement officials and the court system take action against an individual, they must follow Due Process requirements. For example, law enforcement is constitutionally prohibited from performing unreasonable searches and seizures. Before conducting a search or seizure of a suspect's property, law enforcement personnel must obtain a search warrant from a neutral member of the judicial branch. This helps ensure that a search or seizure action will be legally compliant. Often, the enforcement agent must prove that there is probable cause—that is, a fair probability that evidence of a crime or contraband will be found—to obtain a warrant. (There are exceptions to the warrant requirement, most notably involving instances in which evidence may be destroyed or moved during the time when an enforcement agent would usually attempt to secure a warrant.)

Failure to follow due process requirements can have far-reaching impacts on cases, including the suppression of evidence or even the dismissal of a case.

for their animals while their criminal case was pending—in some cases, these costs could easily reach into the thousands of dollars—or lose ownership rights to their animals. While simultaneously incurring the high costs of defending themselves in the criminal court system, it is likely that paying daily boarding and care costs far greater than what the defendant would ordinarily incur could prove to be an impossible financial burden for many. In cases where a person was found not guilty or charges were dropped, a defendant unable to pay those animal care fees would effectively have had their property permanently taken by the government, with no recourse. In addition to not providing protections for indigent defendants, the bill also did not provide any protections for the interests of co-owners who were not charged with animal cruelty or for owners whose animals were seized while in the care of others (i.e., boarding kennels). Furthermore, those "humane societies" caring for the seized animals were not prohibited from permanently altering the defendant's property or the value of that property by, for example, spaying or neutering the animals.

In the case of Pennsylvania HB 82, subsequent changes were made to the bill as it made its way through the Pennsylvania legislature. These included:

- Preventing humane societies from spaying or neutering the animal during the trial unless the defendant's ownership rights were formally forfeited, the owner surrendered ownership, or the owner consented to the surgery in writing.
- Permitting those humane societies to obtain a written opinion from a licensed veterinarian stating that such a procedure was medically necessary to protect the health of the animal if done in opposition to an owner's wishes.
- Waiving required payment by a defendant if medical records signed by a licensed veterinarian were produced to demonstrate the costs/procedures were not necessary.
- Allowing for reimbursement of all payments if the charges against the defendant were ultimately dismissed.
- Letting cost requirements be waived for indigent defendants with only one animal seized who proved that they were unable to pay the costs required to cover the care of the animal.

While all of these changes were positive, the resulting law remains problematic simply because *owners could lose their animals because they are accused of committing cruelty, not because they are proven guilty of those charges.* This is especially troublesome in light of several recent highly publicized animal seizure cases in Pennsylvania in which animals were permanently taken from their owners because of accusations of animal cruelty that were ultimately proven unfounded.

The AKC is not alone in its belief that the unjustified permanent deprivation of property interests runs afoul of due process requirements. In 2009, U.S. District Court Judge Charles R. Simpson, III, wrote in *Louisville Kennel Club, Inc. v. Louisville/Jefferson County Metro Government* (Civil Action No. 3:07-CV-230-S) that Louisville, Kentucky's seizure bond-for-care requirement was an unconstitutional violation of procedural due process rules. The requirement was similar to the original requirements of Pennsylvania House Bill 82—anyone accused of animal cruelty had to post bond for the care of their seized animals, and failure to do so would have resulted in their forfeiture, regardless of whether or not they were later determined to be innocent. The AKC encourages all policy makers to consider the *Louisville* opinion when drafting proposed bond requirements.

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The American Kennel Club will continue to educate policy makers about these significant concerns with bond-for-care bills. When it comes to animal cruelty cases, an important balance must be struck—on one hand, the criminal justice system must operate to protect animals that have been subjected to cruel treatment; while on the other hand, it is important that procedural guarantees protect an accused person from overreaching governmental enforcement. The AKC believes animal owners should not be permanently or unreasonably deprived of the property interests they have in their animals without first being judged guilty of, or pleading 'no contest' to, animal-related criminal charges.

AMERICAN KENNEL CLUB

Founded in 1884, the American Kennel Club is a non-partisan, not-for-profit purebred dog registry and educational organization dedicated to promoting responsible dog ownership, advocating for dogs as family companions, advancing canine health and well-being, and working to protect the rights of all responsible dog owners.