

SURVEY OF ILLINOIS LAW: ANIMAL LAW

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I. INTRODUCTION

The area of animal law is a constantly evolving arena, undertaken by different levels of government to reach desired results in the protection and well-being of animals. The State of Illinois is one of the leaders in advancing the rights and interests of animals in the law. The following summary presents some of the most important animal law cases and legislation from 2017 and 2018. Rather than presenting an in-depth analysis of all animal law developments, this article provides a general survey that highlights some of the most significant animal law advancements. This article discusses one of the most significant case decisions to impact animal law in recent years, as well as legislative updates impacting the Animal Control Act, the Humane Care Act, and new legislative statutes created to address new issues. The purpose of this article is to introduce and update practitioners regarding animal law trends and changes in the Illinois legal system.

II. OVERVIEW OF SIGNIFICANT ILLINOIS CASE LAW

There is only one case of note that will be discussed here, but it is a case that has opened the door for significant future development in the area of animal law. In *People v. Robards*, 2018 IL App (3d) 150832, the appellate court writes the term “sentient creature” into Illinois law for the first time,² while also addressing the proper considerations to determine if the State has met its burden of aggravated cruelty to animals under the Humane Care Act, and how intent as a mental state may be demonstrated.³ While this might be one case, its magnitude and impact on the subject of animal law is immense. *Robards* explicitly addressed the Humane Care for Animals Act, creating a

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² *People v. Robards*, 2018 IL App (3d) 150832, ¶ 19, *reh'g denied* (Mar. 28, 2018).

³ *Id.* ¶¶ 13-17.

distinction among the appellate courts, and specifically the opinions in *People v. Lee*, 2015 IL App (1st) 132059, and *People v. Land*, 2011 IL App (1st) 101048.⁴ Under the Humane Care for Animals Act, unlawful cruel treatment occurs when a person “beat[s], cruelly treat[s], torment[s], starve[s], overwork[s] or otherwise abuse[s] any animal.”⁵ Moreover, the Act addresses abandoning an “animal where it may become a public charge or may suffer injury.”⁶

In *Robards*, the defendant moved out of her home in July 2014, but left her dogs at the property until they died in November 2014.⁷ She was the only person caring for the animals and was solely responsible for their care.⁸ The defendant had told her friend, and the landlord of the property she vacated, that she was going to the house every day to see to the dog’s needs.⁹ Despite that claim, there was no water source available anywhere in the house, and the cause of the dogs’ death was determined to be “dehydration and starvation due to a lack of access to water.”¹⁰ The dogs did not have “any disease, infection, parasite, or cancer” as of April 2014 during a veterinary visit, or during a postmortem examination.¹¹ The trial court could therefore infer from the evidence presented that the defendant knew she needed to feed and water her dogs or they would die.¹² “The natural consequence of not feeding or providing water to pets is that they will die, particularly when they are locked in a house without outdoor access.”¹³

The defendant was initially charged with four counts of aggravated cruelty to a companion animal in violation of section 3.02(a) of the Humane Care for Animals Act (510 ILCS 70/3.02(a) (West 2014)).¹⁴ The relevant part of the statute states, “No person may intentionally commit an act that causes a companion animal to suffer serious injury or death.”¹⁵

The case proceeded to a stipulated bench trial solely on the two counts related to the dogs’ deprivation of water.¹⁶ The defendant “stipulated that she ‘was the sole person caring for the dogs, had been caring for them, and was responsible for’” them.¹⁷ She alleged the evidence was not sufficient to

⁴ *Id.* ¶¶ 16-17.

⁵ 510 ILL. COMP. STAT. ANN. 70/3.01(a) (West 2019).

⁶ *Id.* § 70/3.01(b).

⁷ *Robards*, 2018 IL App (3d) 150832, ¶¶ 4-5, 15.

⁸ *Id.* ¶ 15.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* ¶¶ 8-9, 15.

¹² *Id.* ¶ 15.

¹³ *Id.*

¹⁴ *Id.* ¶ 3.

¹⁵ *Id.* ¶ 13 (citing 510 ILL. COMP. STAT. ANN. 70/3.02(a) (West 2014)).

¹⁶ *Robards*, 2018 IL App (3d) 150832, ¶ 12.

¹⁷ *Id.* ¶ 10.

convict.¹⁸ However, the trial court found her guilty on both counts of aggravated cruelty to a companion animal; that she was the party in charge of the care of the dogs; that her actions were intentional; and that it was reasonable to expect her voluntary actions would lead to the dogs' deaths.¹⁹ The trial court sentenced the defendant "to 12 months' probation, with the condition she not care for, own, or provide for any companion animals during that time."²⁰ As a factor in mitigation, the trial court found that the defendant had not caused harm to "another person" under Section 5-5-3.1(a)(1) of the Unified Code of Corrections.²¹ An appeal was filed with the Third District Court of Appeals challenging the sufficiency of the evidence regarding intent to commit the crime of "aggravated cruelty" under the Act.²²

In order to obtain a conviction, the State had to demonstrate "that the defendant (1) intentionally committed the act," and (2) intended serious injury or death to the dogs.²³ The defendant's appeal related solely to whether the State proved she intended to seriously injure or harm the dogs.²⁴

Clarifying intent under the Humane Care for Animals Act, the court noted that rarely is intent proven through direct evidence.²⁵ Nor did the defendant's intent have to be demonstrated through direct evidence.²⁶ Rather, "circumstantial evidence from the surrounding circumstances, the character of the acts, and the nature and seriousness of the injury is often the only way to prove intent."²⁷ Intent is properly and typically inferred from the circumstances, including "the natural and probable consequences" of one's deliberate actions; "the natural consequence of not feeding or providing water to the [dogs] is that they will die."²⁸ Based on the inferences that could be drawn from the circumstantial evidence presented at trial, it followed that the defendant had the requisite intent necessary to be convicted of aggravated cruelty to a companion animal.²⁹

In arguing that the State failed to demonstrate her intent, the defendant cited two cases which had previously addressed the same provision of the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* ¶ 19 (citing 730 ILL. COMP. STAT. ANN. 5/5-5-3.1(a)(1) (West 2014)) (the statute lists as a mitigating factor: "The defendant's criminal conduct neither caused nor threatened serious physical harm to another.").

²² *Robards*, 2018 IL App (3d) 150832, ¶ 12.

²³ *Id.* ¶ 13.

²⁴ *Id.*

²⁵ *Id.* ¶ 14.

²⁶ *Id.*

²⁷ *Id.* (citing *People v. Williams*, 165 Ill. 2d 51, 64, 649 N.E.2d 397 (1995); *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 14).

²⁸ *Id.* ¶ 14-15.

²⁹ *Id.* ¶ 15.

Humane Care Act: *People v. Lee* and *People v. Land*.³⁰ In relying on those cases, she argued that the State was required to demonstrate that “she had prior notice that her conduct was improper” as well as “the length of time the conditions would have had to persist for the dogs to die.”³¹ The Third District rejected this argument, finding that additional information was unnecessary to obtain a conviction under section 3.2(a) of the Humane Care Act.³² Both defendant’s intentional act and the death of the dogs, Walker and Sparky, were proven beyond a reasonable doubt to sustain a conviction.³³

In both *Lee* and *Land*, there had been prior warning that the persisting conditions were improper. In *Lee*, several horses were found on the defendant’s property locked in stalls filled with several feet of petrified manure, with no visible food or water.³⁴ He had been issued a citation one year earlier for the poor condition of the horses.³⁵ In *Land*, the defendant had used a heavy tow chain on her dog’s neck, which became embedded, necessitating his euthanasia.³⁶ Four months prior to the dog’s death, a police officer had told the defendant, when responding to a citizen’s complaint, that the collar was not proper.³⁷ The prior notice given in these cases served as additional evidence but were not elements necessary for a conviction.³⁸ They served as evidence of defendant’s knowledge that their conduct was improper, but the same knowledge could be inferred in this case through circumstantial evidence.³⁹ Additionally, the courts in *Lee* and *Land* noted that inferences could be drawn on the length of time the conditions had persisted.⁴⁰

In *Robards*, defendant’s knowledge that she needed to feed and water the dogs was inferred from the fact that she had told witnesses she was going every day to care for Walker and Sparky.⁴¹ The subsequent state of the dogs, their deaths and postmortem appearance, demonstrated that she failed in that care.⁴² The dogs were emaciated and gaunt, and their deaths from starvation and dehydration were sufficient to infer that they were without food and water for an extended period of time.⁴³ Finally, defendant’s contention that

³⁰ *Id.* ¶ 16 (citing *People v. Lee*, 2015 IL App (1st) 132059; *People v. Land*, 2011 IL App (1st) 101048).

³¹ *Id.*

³² *Robards*, 2018 IL App (3d) 150832, ¶17.

³³ *Id.* ¶¶ 4, 21.

³⁴ *Lee*, 2015 IL App (1st) 132059, ¶¶ 8–11.

³⁵ *Id.* ¶ 32.

³⁶ *People v. Land*, 2011 IL App (1st) 101048, ¶¶ 5, 28.

³⁷ *Robards*, 2018 IL App (3d) 150832 at ¶ 16 (citing *id.* ¶ 27).

³⁸ *Id.* ¶ 17.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

the State had failed to prove a motive was an irrelevant consideration; only her intent was a necessary element.⁴⁴

The trial court found as a factor in mitigation that “defendant’s conduct did not cause or threaten serious physical harm to another person.”⁴⁵ The Third District Court of Appeals took issue with the fact that this factor was ever a consideration during sentencing: “Assuming *arguendo* that the word ‘another’ in section 5–5–3.1(a)(1) refers only to another human being, as opposed to an animal, this mitigating factor should have no application in this case.”⁴⁶ This section of the Humane Care Act, the court explained, addresses aggravated cruelty to a *companion animal*.⁴⁷ No part of the applicable offense addresses human beings, harm to human beings, or a consideration of human beings; either as an element of the offense or factor in aggravation.⁴⁸ Therefore, applying that factor in mitigation made no sense and was improper.⁴⁹ The Third District wrote that the trial court’s application of this factor in mitigation was excusing the act of the defendant because she hadn’t abused or killed a human in addition to the dog.⁵⁰ “While such restraint should be applauded, it does not support a reduced sentence for aggravated cruelty to a companion animal.”⁵¹ The defendant was convicted of a Class 4 felony, which carried a “sentence of up to 3 years imprisonment or up to 30 months’ probation”; she received 12 months’ probation.⁵²

Also of note in this case was the court’s specific mention of the “serious physical harm and death to two *sentient creatures*” in opining the appropriate sentence for the defendant.⁵³ “There can be no doubt that the defendant’s acts caused serious physical harm and death to two sentient creatures that suffered greatly from terminal starvation and dehydration, which the defendant callously inflicted on them.”⁵⁴ The court felt that the defendant should have received a more severe punishment because of the harm done to “two sentient creatures.”⁵⁵

Prior to this case, the term “sentient creature” had not been used by an Illinois case or statute. There is no definition within Black’s Law Dictionary, nor is there a general definition provided for a term beyond “sentient” or “creature” separately in the general dictionary. The general definition of

⁴⁴ *Id.* ¶ 18.

⁴⁵ *Id.* ¶ 19 (quoting 730 ILL. COMP. STAT. ANN. 5/5–4.5–45 (West 2014)).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* (citing 730 ILL. COMP. STAT. ANN. 5/5–4.5–45 (West 2014)).

⁵³ *Id.* (emphasis added).

⁵⁴ *Id.*

⁵⁵ *Id.*

“sentient” is “responsive to or conscious of sense impressions,”⁵⁶ and the general definition of “creature” is “something created either animate or inanimate: such as: a lower animal.”⁵⁷ Thus a “sentient creature” could be said to be an animal, distinct from a human, that nevertheless is responsive to or conscious of sense impressions, such as pain.

The use of the term “sentient creature” could open the door for a recognition that creatures, beyond human beings, are entitled to more protections under the law. This finds support in the court’s explicit disapproval of the trial court’s consideration of a human being in sentencing, noting that the act does not relate to human beings but to animals.⁵⁸

Other countries, like Switzerland and New Zealand, have recognized the existence of sentient beings under the law,⁵⁹ but the United States is slow to acknowledge and use the term sentient creature,⁶⁰ and the court here helps to introduce the term into the legal system. Uniquely, the court used the term as a justification for suggesting the harsher punishment of a defendant who purposefully engaged in actions against sentient creatures.⁶¹ This language could be used in future to further the interest of animal rights. The writing of “sentient creature” in this case therefore has the potential to be the largest contribution long term.

III. OVERVIEW OF SIGNIFICANT ILLINOIS LEGISLATION

In 2017 and 2018, Illinois witnessed some impactful legislation covering animal law. This portion of the article will focus exclusively on legislation enacted during these two years.

⁵⁶ *Sentient*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sentient> (last visited Jan. 3, 2019).

⁵⁷ *Creature*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/creature> (last visited Mar. 14, 2019).

⁵⁸ *Robards*, 2018 IL App (3d) 150832 at ¶ 19.

⁵⁹ *See, e.g.*, Adam P. Karp, *The Animal World Takes a Special Place in Society and Our Courtrooms*, 55 *ADVOC.* 68, 72 (2012) (“[I]n 1992, Switzerland, by constitutional amendment, was the first nation-state to acknowledge that animals were ‘beings,’ and not things.”); Jane Kotzmann & Cassandra Seery, *Dignity in International Human Rights Law: Potential Applicability in Relation to International Recognition of Animal Rights*, 26 *MICH. ST. INT’L. REV.* 1, 39 (2017) (“More recently, in New Zealand, the Animal Welfare Amendment Act (No 2) 2015 was passed which explicitly recognises [sic] that animals are sentient.”); *see also* Peter Sankoff, *The Animal Rights Debate and the Expansion of Public Discourse: Is It Possible for the Law Protecting Animals to Simultaneously Fail and Succeed?* 18 *ANIMAL L.* 281, 301 (2012) (examining New Zealand’s unique legal structure involving the legal status and protections of animals and its effect on public discourse).

⁶⁰ *See, e.g.*, Karp, *supra* note 59.

⁶¹ *See Robards*, 2018 IL App (3d) 150832 at ¶ 19.

A. Legislation 2017

Research Dog and Cat Adoption; “Beagle Bill”: 510 ILCS 93/10: SB 1884: Effective January 1, 2018

Research facilities are now required to make reasonable efforts to offer a dog or cat for adoption if the animal is deemed suitable once testing has been completed.⁶² The practice under the prior regime was to euthanize the cat or dog once the purpose for it at the facility was completed.⁶³ If the animal is deemed to be healthy enough by an attending veterinarian, the facility must now make reasonable efforts to place the dog or cat up for adoption.⁶⁴ Along with this requirement, “a research facility that owns dogs or cats for scientific, educational, or research purposes” is also required to have a research facility adoption policy in place, and must make that policy available online.⁶⁵ The policy must detail the specific steps that will be taken by the facility “to provide for the adoption of [the] dog or cat that is no longer necessary for scientific, educational, or research purposes.”⁶⁶ The policy must also state that it is the opinion of the dog's or cat's attending veterinarian that the animal is suitable for adoption.⁶⁷ “The policy shall apply only to dogs or cats owned by the research facility.”⁶⁸

Unlawful Use of an Elephant in a Traveling Animal Act: Elephant Bill: 720 ILCS 5/48-11: SB 1342: Effective January 1, 2018

It is now a Class A misdemeanor for an individual to knowingly allow the participation of an African or Asian elephant protected under the Endangered Species Act in a traveling act.⁶⁹ The unlawful use of an elephant falls under Section 5 of the Criminal Code of 2012.⁷⁰ This legislation comes at a time where we have seen the retirement of elephants from performing in traveling businesses like the Ringling Brothers and Barnum & Bailey Circus, which retired its elephants in 2015, before ending performances entirely in 2017.⁷¹ A traveling act is defined as “any performance of animals where

⁶² 510 ILL. COMP. STAT. ANN. 93/10 (West 2018).

⁶³ See, e.g., Adrienne Craig, *2017 State Legislative Review*, 24 ANIMAL L. 499, 507 (2018).

⁶⁴ 510 ILL. COMP. STAT. ANN. § 93/10(b), (c) (West 2018).

⁶⁵ *Id.* § 93/10(f).

⁶⁶ *Id.* § 93/5.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 720 ILL. COMP. STAT. ANN. 5/48-11(b), (d) (West 2018).

⁷⁰ *Id.*

⁷¹ Natasha Daly, *Why All of America's Circus Animals Could Soon be Free*, NAT'L GEOGRAPHIC (May 20, 2017), <https://news.nationalgeographic.com/2017/05/wildlife-watch-ringling-circus-animal-welfare-photography/>.

animals are transported to, from, or between locations for the purpose of a performance.”⁷² A performance may be executed in a variety of forms.⁷³ For the purpose of a traveling performance, this includes “an exhibition, public showing, presentation, display, exposition, fair, animal act, circus, ride, trade show, petting zoo, carnival, parade, race, or other similar undertaking in which animals are required to perform tricks, give rides, or participate as accompaniments for entertainment, amusement, or benefit of a live audience.”⁷⁴ This act does not apply to non-mobile or permanent institutions.⁷⁵

Illinois Marriage and Dissolution of Marriage Act: 750 ILCS 5/503(n): SB 1261: Effective January 1, 2018

In the dissolution of a marriage, sometimes the bitterest fights come down to who gets the beloved pet. Now, the trial court can consider what is actually in the well-being of the animal, not just the people, and can split custody time or grant sole ownership of the companion animal if it is determined to be a marital asset.⁷⁶ “[M]arital property’ means all property, including debts and other obligations, acquired by either spouse subsequent to the marriage”, except for listed items under the Act, known as “non-marital property.”⁷⁷

This consideration regarding companion animals is a mandatory requirement on the trial court dealing with a dissolution of marriage.⁷⁸ Again, a companion animal is defined as “an animal that is commonly considered to be, or is considered by the owner to be, a pet.”⁷⁹ Parties in a divorce action may petition for the temporary or permanent allocation of sole or joint ownership of any companion animal.⁸⁰ There is no defined list of factors expressed in the statute as to what the trial court may consider in determining the well-being of the companion animal.⁸¹ Possible considerations for the trial court could be which person does more work in caring for the pet, like feeding, walking, and veterinary care; who spends the most time with the companion animal; does the companion animal appear to have a preference between its owners; who pays for the animal’s needs.

⁷² 720 ILL. COMP. STAT. ANN. 5/48-11(a) (West 2018).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* § 5/48-11(c).

⁷⁶ 750 ILL. COMP. STAT. ANN. 5/503(n) (West 2018).

⁷⁷ *Id.* § 5/503(a).

⁷⁸ *Id.* § 5/503(n).

⁷⁹ 510 ILL. COMP. STAT. ANN. 70/2.01a (West 2018).

⁸⁰ 750 ILL. COMP. STAT. ANN. 5/503(n) (West 2018).

⁸¹ *Id.*

County animal population fund use limitation; Feral Cats: 510 ILCS 5/3.5: SB 0641: Effective January 1, 2018

It is an accepted fact that animal shelters are full of homeless animals. Some of those animals, specifically cats, do not want or need a traditional home. Yet, there is still a need to address the overpopulation of feral cats. A feral cat is “a cat that (i) is born in the wild or is the offspring of an owned or feral cat and is not socialized, (ii) is a formerly owned cat that has been abandoned and is no longer socialized, or (iii) lives on a farm.”⁸² A feral cat is unsocialized and typically fearful of people. Most are content to live outside and away from humans for the course of their lives.

The standard practice is to catch and kill a cat that cannot ever be placed in a traditional home.⁸³ However, that approach is no longer favored, nor has it been proven to be effective in population control.⁸⁴ The new trend to address feral cats is to trap, neuter, and release the cats back where they were found, allowing them to maintain the feline territory without a continued increase in feral cat populations, but ensuring sterilization and health of the animal.⁸⁵

Under the Animal Control Act, the County Animal Population Control Funds may be used for, and are limited to

(1) spay, neuter, vaccinate, or sterilize adopted dogs or cats; (2) spay, neuter, or vaccinate dogs or cats owned by low income county residents who are eligible for the Food Stamp Program or Social Security Disability Benefits Program; or (3) spay, neuter, and vaccinate feral cats in programs recognized by the county or a municipality.⁸⁶

Counties or municipalities can elect to implement programs for the spay/neuter, vaccination and release of feral cats. Once that program is recognized, then the County Animal Population Control Fund may be used to help sterilize and vaccinate.

⁸² 510 ILL. COMP. STAT. ANN. 5/2.11b (West 2018).

⁸³ County of Cook v. Vill. of Bridgeview, 2014 IL App (1st) 122164, ¶ 5.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 510 ILL. COMP. STAT. ANN. 5/3.5 (West 2018).

B. Legislation 2018

Ivory Ban Act; 815 ILCS 357; S.B. 4843; Effective January 1, 2019

The Ivory Ban Act was enacted to compliment federal measures taken in 2016 to address most interstate commerce in ivory⁸⁷ because there was a clear need to tightly regulate commerce in ivory and rhino horn.⁸⁸ The act makes it unlawful for any person to “import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product except as provided this Act.”⁸⁹ “Ivory” means any tooth or tusk composed of ivory from any animal, including, but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product.⁹⁰ There are “reasonable exceptions” under the Act related to antique guns and knives over 100 years old and musical instruments manufactured no later than 1975, where less than 20% of the volume of the item is ivory.⁹¹ This is in addition to bona fide educational or scientific purposes, which are determined by the Department of Natural Resources.⁹²

For a first time offender, violating the ban is considered a business offense and carries “a fine of not less than \$1,000 or an amount equal to 2 times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is great.”⁹³ For a second or subsequent offense, it is a Class A misdemeanor, and carries “a fine of not less than \$5,000 or an amount equal to 2 times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.”⁹⁴ The court orders seizure of the products upon a conviction, and the items are transferred to the Department of Natural Resources for proper disposition.⁹⁵

⁸⁷ 50 C.F.R. § 17.40(e) (“Except for antiques and certain manufactured or handcrafted items containing de minimis quantities of ivory, sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity is prohibited.”).

⁸⁸ *See generally* Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*), 81 Fed. Reg. 36388 (Jun. 06, 2016) (codified at 50 C.F.R. § 17.40(e)) (“In response to an unprecedented increase in poaching of elephants across Africa and the escalation of the illegal trade in ivory” explaining this new rule was promulgated; providing supplementary and background material on the purpose, scope, and, effects of the newly implemented federal ivory ban).

⁸⁹ 815 ILL. COMP. STAT. ANN. 357/10(a) (West 2018).

⁹⁰ *Id.* § 357/5.

⁹¹ *Id.* § 357/12.

⁹² *Id.* § 357/10(f).

⁹³ *Id.* § 357/15(a)(1).

⁹⁴ *Id.* § 357/15(a)(2).

⁹⁵ *Id.* § 357/15(b).

Animal Control Act: “Justice for Buddy” Bill; 510 ILCS 5/2.18b; 510 ILCS 5/15.5; S.B. 2386; Effective January 1, 2019

Known as the “Justice for Buddy” Bill, these new provisions of the Animal Control Act hold dog owners responsible if their dog kills another dog.⁹⁶ Illinois case law has held that the purpose of the Act is “to encourage tight control of animals in order protect the public from harm, because liability is mandated under the Act, the existence of the law serves as an incentive to keep one’s animals from harming others.”⁹⁷ Two sections have been added with this new amendment, Section 2.18(b) and Section 15.5.⁹⁸

Under 510 ILCS 5/2.18b, Illinois now recognizes a “reckless dog owner.”⁹⁹ A “reckless dog owner” is someone who owns a dog that, while anywhere other than on the property of the owner, and without justification, kills another dog in such a manner as to be deemed a “dangerous dog” under the act and then later allows the dog to violate Section 9 (running at large) of the Animal Control Act on two occasions within twelve months of the incident where the dog was deemed dangerous; alternatively, one is a “reckless dog owner” if their dog is involved two incidents within 24 months for which the dog would be deemed “dangerous” under the act.¹⁰⁰

A dangerous dog, under the Animal Control Act, is an individual dog that is anywhere other than the property of the owner or person responsible for the animal that is unmuzzled, unleashed, or unattended by its owners or custodians.¹⁰¹ The dog must behave in a manner that a reasonable person would believe “poses a serious and unjustified imminent threat of serious physical injury or death to a person or a companion animal.”¹⁰² A dangerous dog may also be one that, without justification, bites a person but without causing serious physical injury.¹⁰³ Under the definition, a prior injury resulting from the dog’s aggression or conduct is not necessary to establish a “dangerous dog.”¹⁰⁴ Rather, the focus is on the reasonableness of placing liability on a dog owner who knew or should have known of the dog’s potentially dangerous tendencies.¹⁰⁵

Section 2.18(b) of the Animal Control Act, references section 9, which deals with dogs found running at large in contradiction to the provisions of

⁹⁶ 510 ILL. COMP. STAT. ANN. 5/2.18b (West 2018).

⁹⁷ Hayes v. Adams, 2013 IL App (2d) 120681, ¶ 13 (citing Beggs v. Griffith, 393 Ill. App. 3d 1050, 913 N.E.2d 1230, 1235 (5th Dist. 2009)) (citations and quotations omitted).

⁹⁸ S.B. 2386, 2018 Gen. Assemb., 100th Sess. (Ill. 2018).

⁹⁹ 510 ILL. COMP. STAT. ANN. 5/2.18b (West 2018).

¹⁰⁰ *Id.* § 5/2.18b.

¹⁰¹ *Id.* § 5/2.05(a).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See, e.g.*, Beggs v. Griffith, 393 Ill. App. 3d 1050, 1054, 913 N.E.2d 1230, 1235 (5th Dist. 2009).

¹⁰⁵ *Id.*

the Act. Section 9 provides that these dogs may be impounded or apprehended at the expense of the owner. A second impoundment will result in a mandatory spaying or neutering of the dog, again at the expense of the owner.¹⁰⁶ By creating the definition of a reckless dog owner, the State of Illinois has acknowledged someone whose gross negligence of repeat lack of control of their dogs is themselves a danger, and fixes the blame for the incident and the responsibility on the owner, creating a new concept under the Animal Control Act of irresponsible and negligent ownership.

In accordance with Illinois' acknowledgment of the safety issue that reckless dog owners present, Section 15.5 is in place to deal with the respective complaints and penalties for those whose conduct violate the Act.¹⁰⁷ Under Section 15.5, "The Administrator, State's Attorney, Director, or *any* citizen may file a complaint in a circuit court to determine whether a person is a reckless dog owner."¹⁰⁸ Held to a clear and convincing evidence standard, if the court determines an owner is a reckless dog owner, "the court shall order immediate impoundment and forfeiture of all dogs the reckless dog owner has a property right in."¹⁰⁹ Forfeiture of the dog(s) may be to any licensed shelter, rescue, or sanctuary."¹¹⁰ A reckless dog owner is also prohibited by the court from owning a dog for at least 12 months, not to exceed 36 months, for a first-time determination of a reckless dog owner.¹¹¹ It is a violation for any person to refuse to forfeit a dog when they have been deemed a reckless dog owner and ordered to forfeit the dog.¹¹² The violation carries a public safety fine of \$500 for each dog, and the fee is deposited into the Pet Population Control Fund.¹¹³ Each *day* a person fails to comply with the ordered forfeiture or prohibition of ownership under Section 15.5 is considered a separate offense, meaning that an individual could amass significant fines.¹¹⁴

Contained within Section 15.5, is subsection (a-5), which recognizes that not all dogs are bad, just because the owner was reckless.¹¹⁵ It essentially gives the subject dog(s) a second chance at life. So often it is the humans that are creating the dangerous situations by not properly caring for the dog, but the dog is the one that suffers for the owner's neglect. Section 15.5(a-5)

¹⁰⁶ *Id.* § 5/9.

¹⁰⁷ *Id.* § 5/15.5(a).

¹⁰⁸ *Id.* (emphasis added).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* § 5/15.5(b).

¹¹³ *Id.* (explaining the Pet Population Control Fund is an established special fund in the State treasury used to assist in the sterilization and vaccination of dogs and cats, and to educate the public about the importance of spaying and neutering).

¹¹⁴ *Id.* § 5/15.5(b) (emphasis added).

¹¹⁵ *See id.* § 5/15.5(a-5).

states that the dog's history shall not be considered conclusive of the dog's temperament and qualification for adoption or transfer where they have been deemed owned by a reckless dog owner.¹¹⁶ The dog's temperament is to be independently evaluated by a person qualified to conduct behavioral assessments and, if deemed adoptable, the receiving facility after forfeiture shall make a reasonable attempt to place the dog in another home, transfer the dog to rescue, or place the dog in a sanctuary.¹¹⁷

Illinois Exposure Provision: 510 ILCS 70/3.01(c): HB 4191: Effective January 1, 2019

The Illinois Exposure Provision falls under the Humane Care for Animals Act. Illinois passed its Exposure Provision in 2016, but quickly realized that a gap in the law had rescuers hesitating.¹¹⁸ Conditions such as hypothermia and frostbite can pose a risk to pets left in cars during cold winter months, while hyperthermia may be of concern during summer.

The exposure provision, 3.01(c), refers to a life-threatening situation to a companion animal for a prolonged period of time in extreme heat or cold temperatures.¹¹⁹ A companion animal is defined as “an animal that is commonly considered to be, or is considered by the owner to be, a pet.”¹²⁰ Although the list is not limited to the following species, common companion animals are canines, felines, and equines.¹²¹ Under the Act, the prolonged period of time of extreme heat or cold must result “in injury to or death of the animal; or hypothermia, hyperthermia, frostbite,” or similar associated ailment diagnosed by a veterinarian.¹²²

A previously unaddressed provision of Illinois' animal care law caused police officers to hesitate before taking steps to rescue suffering dogs or cats.¹²³ The provision clarifies the right of law enforcement to take custody of abandoned or lost dogs or cats that appear to be suffering from exposure to extreme heat, cold or other associated condition, without penalty.¹²⁴

Section 70/3.01(c-10) specifies that law enforcement may take immediate temporary custody of a dog or cat whose life is threatened by

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See Alex Ruppenthal, *Revised Law Frees Police in Illinois to Rescue Suffering Cats and Dogs*, WTTW CHI. PUB. MEDIA (Aug. 14, 2018, 3:35 PM), <https://news.wttw.com/2018/08/14/revised-law-frees-police-illinois-rescue-suffering-cats-and-dogs>.

¹¹⁹ 510 ILL. COMP. STAT. ANN. 70/3.01(c) (West 2018).

¹²⁰ *Id.* § 70/2.01(a).

¹²¹ *Id.*

¹²² *Id.* § 70/3.01(c)(1)-(2).

¹²³ See Ruppenthal, *supra* note 79.

¹²⁴ 510 ILL. COMP. STAT. ANN. 70/3.01(c-10) (West 2018).

exposure –be it hypothermia (cold) or hyperthermia (hot).¹²⁵ Officers are given civil immunity for the removal of the animal from a very hot or very cold condition.¹²⁶ Local law enforcement officers may take temporary custody of a cat or dog they believe to be in a life-threatening situation due to extreme conditions, and shall attempt to contact the owner of the companion animal.¹²⁷ This new provision expands law enforcement’s ability to proactively address cruel treatment of pets. The act also requires that law enforcement officers taking temporary custody of a cat or dog seek emergency veterinary care as soon as possible.¹²⁸ The owner of the pet will be held responsible for any costs associated with providing care.¹²⁹

Shelter Medicine Act: 510 ILCS 92/: SB 2313: Effective August 10, 2018

The Shelter Medicine Act is an amendment to the Illinois Public Health and Safety Animal Population Control Act.¹³⁰ The University of Illinois College of Veterinary Medicine now directs the Shelter Medicine Program.¹³¹ Funding for this program comes from the Pet Population Control Fund.¹³²

The Pet Population Control Fund is a special fund in the State treasury specifically to be used for the sterilization and vaccination of dogs and cats.¹³³ Money generated from Pet Friendly license plates in Illinois under Section 3-653 of the Illinois Vehicle Code and from voluntary contributions is kept in the Fund.¹³⁴ In addition to sterilizing and vaccinating dogs and cats, funding is to go to “promote the sterilization program, to educate the public about the importance of spay and neuter, and for reasonable administrative and personnel costs related to the Fund.”¹³⁵

Previously the Department of Public Health administered the Shelter Medicine Program.¹³⁶ Now, sterilization procedures may be performed by a University of Illinois veterinarian or supervised veterinary student.¹³⁷ A co-

¹²⁵ *Id.*

¹²⁶ *Id.* § 70/3.06(b).

¹²⁷ *Id.* § 70/3.01(c-10).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See generally* Act effective Aug. 10, 2018, 2018 Ill. Laws P.A. 100-0787 (amending 510 ILL. COMP. STAT. 92/).

¹³¹ 510 ILL. COMP. STAT. ANN. 92/10 (West 2018).

¹³² *Id.*

¹³³ *Id.* § 92/45.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Shelter Medicine Program to Benefit from Illinois License Plate Sales*, UNIV. ILL. URBANA-CHAMPAIGN: C. VETERINARY MED. (Oct. 30, 2018), <https://vetmed.illinois.edu/shelter-medicine-program-to-benefit-from-illinois-license-plate-sales/>.

¹³⁷ 510 ILL. COMP. STAT. ANN. 92/30 (West 2018).

pay for eligible participants to have a dog or cat sterilized and vaccinated is \$15.00.¹³⁸ Through this program, Illinois is better able to protect public health and also ensure healthier animals. Animals that fall under the sterilization program are feral cats, adopted dogs or cats, and the pets of low-income families. Low-income families can “participate in the program at a reduced rate if the owner signs a consent form certifying that he or she is the owner of the dog or cat or is authorized by the eligible owner to present the dog or cat for the procedure,” and presents proof of eligibility.¹³⁹ Illinois residents who manage “a feral cat colony and humanely trap the cats for spay or neuter and return the cats back to the colony are “eligible to participate in the program provided the trap, sterilize, and return program is recognized by the municipality or by the county, if it is located in an unincorporated area.”¹⁴⁰

Animal Control Facilities –Licenses and Permits: 225 ILCS 605/2: SB 2380: Effective January 1, 2019

There are now new reporting requirements for Animal Control Facilities. Animal Control Facilities under the act must now comply with the Shelter Transparency Bill. An animal control facility in Illinois is “any facility operated by or under contract for the State, county, or any municipal corporation or political subdivision of the State for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs, cats, and other animals.”¹⁴¹ These facilities also include veterinary hospitals or clinics, which perform these same services.¹⁴²

The Shelter’s Transparency Bill provides for heightened reporting requirements for the State’s licensed shelters and rescues.¹⁴³ Shelters are now required to report the source of the animal and detail on its placement or transfer, in addition to the existing requirements that the shelter report the species, adoption, any deceased, euthanized, reclaims, and end inventory.¹⁴⁴ All of this data is to be published on Department of Agriculture’s website.¹⁴⁵ The Department, beginning by December 31, 2020, “shall post on its website the name of each licensed animal control facility or animal shelter and all the reported intake and outcome statistics required under paragraphs (1) and (2)

¹³⁸ *Id.* § 92/25.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* § 605/2.

¹⁴² *Id.*

¹⁴³ *Id.* § 605/7.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* § 605/7.1.

of Section 7 of this Act.”¹⁴⁶ Every December 31 of each year thereafter the Department will continue to report the updated information.¹⁴⁷

In order to obtain a renewal license, the applicants have to include, among other things, their “beginning inventory and intake and outcome statistics from the previous calendar year.”¹⁴⁸ The statistics shall include the total number of animals taken in, divided by species and categorized by: surrendered by owner; stray; impounded other than stray; confiscated under the Humane Care for Animals Act; transfer from other licensees within the State; transferred into or imported from out of the State; transferred into or imported from outside the country; and born in shelter or animal control facility.¹⁴⁹ Placement of the animals taken in, divided into species, is also to be reported.¹⁵⁰ The data is to be include placement by: reclamation by an owner; adopted or sold; euthanized; euthanized per request of the owner; died in custody; transferred to another licensee; transferred to an out-of-State nonprofit agency; animals missing, stolen, or escaped; animals released in field after trap, neuter, release; and end inventory of animals at the shelter at the end of the last day of the year.¹⁵¹

The new legislation aims to increase the lives of dogs, cats, and other animals within animal control facilities and animal shelters. It also helps establish a central location for reporting data in the State of Illinois, which can then be used for public information and research.

Police Service Dog Protection Act: 510 ILCS 83/: HB 1671: Effective January 1, 2019

Illinois took measures to better protect its four-legged police members. The Police Service Dog Protection Act now requires every law enforcement agency/handler of police dogs to provide an annual medical examination by licensed vet and vaccinate the dog against rabies prior to the dog beginning police service.¹⁵² In addition, vehicles that transport police dogs must be equipped with a heat sensor monitor in the vehicle that will send an audible and visual notification remotely to the responsible police enforcement officer, or the 24-hour law enforcement dispatch center if the temperature in the vehicle reaches 85 degrees.¹⁵³ The vehicle shall have a safety mechanism to reduce the interior temperature of the vehicle to protect the police dog.¹⁵⁴

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* § 605/7.

¹⁴⁹ *Id.* § 605/7(1)(A)-(H).

¹⁵⁰ *Id.* § 605/7(2)(A)-(J).

¹⁵¹ *Id.*

¹⁵² 510 ILL. COMP. STAT. ANN. 83/10 (West 2018).

¹⁵³ *Id.* § 83/15(2).

¹⁵⁴ *Id.* § 83/15(3).

IV. CONCLUSION

The last two years have had a significant impact in the arena of animal law. Not only has the legislature demonstrated a willingness and dedication to the continued advancement of animal protections, but the judiciary has continued the furtherance of animal rights interests with a no-nonsense and practical decision. As a recognized leader of animal law, the State of Illinois will hopefully only continue its forward motion to ensure the better care and protection of its sentient creatures.

