

CHAPTER 102

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 12-1125

BY REPRESENTATIVE(S) Ramirez, Sonnenberg, Brown, Court, Fischer, Kefalas, Liston, Todd, Conti, Kerr J.;
also SENATOR(S) Steadman, Guzman, Tochtrop.

AN ACT**CONCERNING PROCEDURES RELATED TO THE COSTS OF IMPOUNDED ANIMALS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 18-9-202.5 as follows:

18-9-202.5. Impounded animals - costs of impoundment, provision, and care - disposition - procedures - application - definition. (1) (a) (I) The owner or custodian of an animal that has been impounded by an impound agency because of alleged neglect or abuse or because of investigation of charges of cruelty to animals pursuant to section 18-9-202; animal fighting pursuant to section 18-9-204; mistreatment, neglect, or abandonment under article 42 of title 35, C.R.S.; or unlawful ownership of a dangerous dog as described in section 18-9-204.5, may prevent disposition of the animal by an impound agency by ~~posting a bond~~ **FILING A PAYMENT FOR IMPOUNDMENT, CARE, AND PROVISION COSTS** with the court in an amount **DETERMINED BY THE IMPOUND AGENCY TO BE SUFFICIENT TO PROVIDE FOR THE** animal's care and provision at the impound agency for at least thirty days, including the day on which the animal was taken into custody.

(II) **TO THE EXTENT PRACTICABLE, WITHIN SEVENTY-TWO HOURS AFTER AN IMPOUNDMENT DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), UPON REQUEST FROM THE OWNER OR CUSTODIAN OF THE IMPOUNDED ANIMAL, THE IMPOUND AGENCY SHALL ALLOW A LICENSED VETERINARIAN OF THE OWNER'S OR CUSTODIAN'S CHOOSING AND AT HIS OR HER EXPENSE TO EXAMINE THE ANIMAL AT A TIME AND PLACE SELECTED BY THE IMPOUND AGENCY, WHICH EXAMINATION MAY INCLUDE TAKING PHOTOGRAPHS OF THE ANIMAL AND TAKING BIOLOGICAL SAMPLES FOR THE PURPOSE OF DIAGNOSTIC TESTING.**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(b) The owner or custodian of any impounded animal may request a hearing in a court of competent jurisdiction within ten days after impoundment to determine whether the costs associated with the bond are fair and reasonable for the care of and provision for the impounded animal. Such bond shall be filed with the court~~ MUST FILE THE PAYMENT:

(I) Within ten days after the animal is impounded; OR

(II) IF THE OWNER OR CUSTODIAN REQUESTS A HEARING PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (1), IN ACCORDANCE WITH SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF THIS SUBSECTION (1).

(c) (I) WITHIN TEN DAYS AFTER THE DATE OF IMPOUNDMENT, THE OWNER OR CUSTODIAN MAY REQUEST A HEARING IN A CRIMINAL COURT OF COMPETENT JURISDICTION. THE OWNER OR CUSTODIAN MUST PROVIDE NOTICE TO THE DISTRICT ATTORNEY OF HIS OR HER REQUEST FOR A HEARING. IF THE OWNER OR CUSTODIAN REQUESTS A HEARING, THE COURT SHALL HOLD THE HEARING WITHIN TEN DAYS AFTER THE REQUEST IS MADE.

(II) AT THE HEARING, THE COURT SHALL DETERMINE, AS APPROPRIATE:

(A) WHETHER COSTS ASSOCIATED WITH THE IMPOUNDMENT, CARE, AND PROVISION, AS DETERMINED BY THE IMPOUND AGENCY, ARE FAIR AND REASONABLE AND NECESSARY, WHICH COSTS SHALL BE SPECIFICALLY ITEMIZED BY THE IMPOUND AGENCY PRIOR TO THE DATE OF THE HEARING AND SHALL INCLUDE, AT A MINIMUM, AN ACCOUNTING OF THE COSTS OF UPKEEP AND VETERINARY SERVICES;

(B) WHETHER THERE WAS SUFFICIENT PROBABLE CAUSE FOR THE IMPOUNDMENT; AND

(C) IF THE COURT FINDS PROBABLE CAUSE FOR IMPOUNDMENT EXISTED AND THE OWNER OR CUSTODIAN ELECTS NOT TO PAY THE REASONABLE IMPOUNDMENT, CARE, OR PROVISION COSTS TO PREVENT DISPOSITION, RELEASE OF THE ANIMAL TO THE IMPOUND AGENCY FOR DISPOSITION.

(III) A WARRANT ISSUED IN ACCORDANCE WITH C.R.C.P. 41 (b) AUTHORIZING SEIZURE OF THE IMPOUNDED ANIMAL CONSTITUTES PRIMA FACIE EVIDENCE OF SUFFICIENT CAUSE FOR IMPOUNDMENT.

(IV) IF PROBABLE CAUSE IS FOUND AT A HEARING CONDUCTED UNDER THIS PARAGRAPH (c), THE OWNER OR CUSTODIAN SHALL FILE PAYMENT FOR COSTS AT THE HEARING.

(d) At the end of the time for which expenses are covered by ~~the bond~~ AN INITIAL OR ANY SUBSEQUENT IMPOUNDMENT, CARE, AND PROVISION PAYMENT:

(I) If the owner or custodian desires to prevent disposition of the animal, the owner or custodian ~~shall post~~ MUST FILE a new ~~bond~~ PAYMENT with the court within ten days ~~after~~ PRIOR TO the ~~prior bond's~~ PREVIOUS PAYMENT'S expiration. ~~However, if, in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or~~

~~severely diseased past recovery, the animal may be euthanized without a court order.~~

~~(II) At the end of the time for which expenses are covered by the bond~~ IF THE OWNER OR CUSTODIAN HAS NOT TIMELY FILED AN ADDITIONAL PAYMENT FOR IMPOUNDMENT, CARE, AND PROVISION COSTS, the impound agency may determine disposition of the animal unless there is a court order prohibiting such disposition. UNLESS SUBSECTION (4) OF THIS SECTION APPLIES, the owner or custodian ~~shall be~~ IS liable for ~~the cost of~~ ANY ADDITIONAL COSTS FOR the care of, provision for, or disposal of the animal.

(2) (a) FAILURE TO PAY THE IMPOUNDMENT, CARE, AND PROVISION COSTS PURSUANT TO SUBSECTION (1) OF THIS SECTION RESULTS IN THE FORFEITURE OF THE RIGHT TO CONTEST THOSE COSTS AND ANY OWNERSHIP RIGHTS TO THE ANIMAL IN QUESTION.

(b) A dog that is not claimed by its owner within five days after being eligible for release from impoundment for investigation of a charge of unlawful ownership of a dangerous dog as described in section 18-9-204.5 ~~shall be~~ IS deemed abandoned and may be disposed of as the impound agency deems proper.

(c) IF, IN THE OPINION OF A LICENSED VETERINARIAN, AN IMPOUNDED ANIMAL IS EXPERIENCING EXTREME PAIN OR SUFFERING OR IS SEVERELY INJURED PAST RECOVERY, SEVERELY DISABLED PAST RECOVERY, OR SEVERELY DISEASED PAST RECOVERY, THE ANIMAL MAY BE EUTHANIZED WITHOUT A COURT ORDER.

(3) THE COURT SHALL ORDER AN IMPOUND AGENCY TO REFUND TO THE OWNER OR CUSTODIAN ALL IMPOUNDMENT, CARE, AND PROVISION PAYMENTS MADE FOR THE ANIMAL IF, AFTER TRIAL, A JUDGE OR JURY ENTERS OR RETURNS IN FAVOR OF THE OWNER OR CUSTODIAN A VERDICT OF NOT GUILTY FOR ALL CHARGES RELATED TO THE ORIGINAL IMPOUNDMENT OF THE ANIMAL.

~~(c)(f)~~ (4) (a) With respect to the sale of an animal, the proceeds ~~shall~~ ARE first ~~be~~ applied to the costs of the sale and then to the expenses for the care of and provision for the animal DURING IMPOUNDMENT AND THE PENDENCY OF THE SALE, including expenses incurred by the impound agency THAT HAVE NOT BEEN PAID BY THE OWNER OR CUSTODIAN. If the owner of the animal is convicted of cruelty to animals under section 18-9-202, animal fighting under section 18-9-204, or unlawful ownership of a dangerous dog under section 18-9-204.5 or is found by court order to have mistreated, neglected, or abandoned the animal under article 42 of title 35, C.R.S., the remaining proceeds, if any, ~~shall be~~ ARE paid to the impound agency. If the owner of the animal is not convicted of such charges or is not found by court order to have ~~so~~ mistreated, neglected, or abandoned the animal, the IMPOUND AGENCY SHALL PAY OVER THE remaining proceeds, if any, ~~shall be paid over~~ to the owner of the animal.

~~(f)~~ (b) If the impound agency is the department of agriculture, ~~moneys credited to the department of agriculture~~ SHALL TRANSMIT THE MONEYS CREDITED for expenses ~~shall be transmitted to the state treasurer, and credited~~ WHO SHALL CREDIT THEM to the animal protection fund created in section 35-42-113, C.R.S. ~~If the department of agriculture is not the impound agency, moneys for expenses shall be paid to such other impound agency as the court orders.~~

~~(HH)~~ (c) If the owner of the animal cannot be found, THE COURT SHALL PAY any remaining proceeds after all other expenses have been paid ~~shall be paid~~ TO THE IMPOUND AGENCY into the animal protection fund or, if the impound agency is not the department of agriculture, to such other impound agency as the court orders. ~~Any claim for such AN OWNER CLAIMING THE remaining proceeds by the owner of the animal shall be made~~ MUST MAKE THE CLAIM within one year after the payment thereof OF THE PROCEEDS to the impound agency. ~~and, unless~~ A CLAIM NOT so presented to the court ~~shall be~~ IS forever barred unless the court, by proper order made in any case, otherwise decrees. AN IMPOUND AGENCY SHALL PAY TO THE CLAIMANT any refund ordered by court decree. ~~shall be paid to the claimant by the impound agency.~~

~~(IV)~~ (d) At least six days prior to sale of the animal, the impound agency shall provide written notice to the owner, at the owner's last-known address, of the time and place of the sale of the animal.

~~(V)~~ (e) If the owner of the animal is unknown, the impound agency shall ~~cause to be published~~ PUBLISH for one week, in a newspaper of general circulation in the jurisdiction ~~wherein such~~ IN WHICH THE animal ~~is~~ WAS found, notice of sale of the animal, and shall further ~~cause~~ POST notice of the sale of the animal ~~to be posted~~ at a place provided for public notices in the jurisdiction ~~wherein such~~ IN WHICH THE sale will take place, at least five days prior to the sale.

~~(VI)~~ (f) ~~The provisions of This paragraph (c) shall~~ SUBSECTION (4) DOES not apply to the disposition of an animal for a fee by:

~~(A)~~ (I) Adoption of an animal;

~~(B)~~ (II) Release of an animal to a rescue group licensed pursuant to article 80 of title 35, C.R.S.;

~~(C)~~ (III) Release of an animal to another pet animal facility licensed pursuant to article 80 of title 35, C.R.S.; or

~~(D)~~ (IV) Release of an animal to a rehabilitator licensed by the PARKS AND WILDLIFE division ~~of wildlife~~ or the United States fish and wildlife service.

~~(2)~~ (5) For purposes of this section, "impound agency" means ~~an agency, including, but not limited to,~~ an animal shelter as defined in section 35-80-102 (1), C.R.S., ~~and~~ the department of agriculture, created in section 24-1-123, C.R.S., OR ANY OTHER AGENCY that impounds an animal pursuant to ~~the provisions of~~ PARAGRAPH (a) OF subsection (1) of this section or section 18-9-202 (1.8).

(6) THIS SECTION DOES NOT APPLY TO ANIMALS IMPOUNDED SOLELY UNDER ARTICLE 42 OF TITLE 35, C.R.S.

SECTION 2. In Colorado Revised Statutes, 18-9-201, **amend** (2.5) as follows:

18-9-201. Definitions. As used in this section and sections 18-9-201.5, 18-9-202, 18-9-202.5, and 18-9-204.5, unless the context otherwise requires:

(2.5) "Disposal" or "disposition" means adoption of an animal; return of an animal to the owner; sale of an animal under section 18-9-202.5 ~~(1)~~~~(c)~~ (4); release of an animal to a rescue group licensed pursuant to article 80 of title 35, C.R.S.; release of an animal to another pet animal facility licensed pursuant to article 80 of title 35, C.R.S.; or RELEASE OF AN ANIMAL to a rehabilitator licensed by the ~~division of PARKS AND wildlife DIVISION~~ or the United States fish and wildlife service; or euthanasia.

SECTION 3. In Colorado Revised Statutes, 18-9-204.5, **amend** (4) as follows:

18-9-204.5. Unlawful ownership of dangerous dog - legislative declaration - definitions. (4) Upon taking an owner into custody for an alleged violation of this section or the issuing of a summons and complaint to the owner, pursuant to the Colorado rules of criminal procedure and part 1 of article 4 of title 16, C.R.S., the owner's dangerous dog may be taken into custody and placed in a public animal shelter, at the owner's expense, pending final disposition of the charge against the owner. In addition, in the event the court, pursuant to the Colorado rules of criminal procedure and part 1 of article 4 of title 16, C.R.S., sets bail for an owner's release from custody pending final disposition, the court may require, as a condition of bond, that the owner's dangerous dog be placed by an impound agency, as defined in section 18-9-202.5 ~~(2)~~ (5), at the owner's expense in a location selected by the impound agency including a public animal shelter, licensed boarding facility, or veterinarian's clinic, pending final disposition of the alleged violation of this section. The owner ~~shall be~~ IS liable for the total cost of board and care for a dog placed pursuant to this subsection (4).

SECTION 4. In Colorado Revised Statutes, 35-42-113, **amend** (1) as follows:

35-42-113. Animal protection fund - creation. (1) There is hereby created an animal protection fund. Any donations collected for animal protection, any net proceeds from the sale of an animal pursuant to section 18-9-202.5 ~~(1)~~~~(c)~~ (4), C.R.S., and any moneys from restitution ordered for the expenses of the department of agriculture in selling and providing for the care of and provision for ~~animals~~ AN ANIMAL disposed of under the animal cruelty laws in accordance with part 2 of article 9 of title 18, C.R.S., or this article shall be transmitted to the state treasurer, who shall credit the ~~same~~ MONEYS to the animal protection fund. The general assembly shall make annual appropriations from ~~such~~ THAT fund to the department of agriculture to aid in carrying out the purposes of this article; EXCEPT THAT NO such appropriations ~~shall not~~ MAY be made for personal services.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2012; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act apply to animals impounded on or after the applicable effective date of this act.

Approved: April 12, 2012