



DO NO HARM ACT

Protecting Animals & People of Conscience



MODEL LEGISLATION BY THE NO KILL ADVOCACY CENTER

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As wrong as it is to talk of animal companions as “property,” there are times when that legal status confers protection for animals, such as under the Fourth Amendment, when none other exists. Dogs and cats, for example, cannot be seized and killed by animal control without a court order or other hearing, because doing so would be a “taking of property” without due process of law. But this legal approach is a limited one because the right belongs to the person, not the animal.* What happens when the interests of the animal and the interest of the animal’s human family collide? In those cases, the animal’s status as property would harm, rather than help.

Recently, for example, a private veterinarian faced disciplinary action for saving a dog’s life. After a family dog started having seizures and the family was unable to afford care, they asked the veterinarian to kill the dog. The veterinarian tried to talk the family out of killing the dog: “In my professional opinion, this was a dog that had years to live and I didn’t want to put the dog down. I was trying to save [her] life.”

The veterinarian indicated that “she discussed other options that could save [the dog]. Surgery, medication, or even ‘do nothing,’ but let the dog live.” When the father “kept repeating that he wanted to put the dog down,” she saved the dog anyway. But since “A pet is legally classified as someone’s property,” she now faces professional sanction, including loss of license to practice veterinary medicine. She shouldn’t.

Killing a healthy or treatable dog (or cat, rabbit, or other animal) should be illegal, regardless of whether the animal is at a shelter, with a private practice veterinarian, or it’s what a family wants. Indeed, one veterinarian has argued that the veterinarian had a duty to save the dog and killing animals like this is what should subject members of her profession to censure. Why? It’s a violation of the veterinarian’s oath to protect animals and prevent suffering: “Veterinarians protect animal life. We do not end it to serve the professed needs of a culture that has not yet become sufficiently enlightened with respect to the welfare of its animals. Until it does, we will not participate in this practice, regardless of what our larger society deems acceptable.” She goes on to argue that a veterinarian who kills healthy animals (and we would argue, treatable animals) “should do so at the risk of losing their license to practice veterinary medicine.” She’s not alone.

In his pioneering research, Dr. Gregory Berns shows striking similarities between humans and dogs in regions of the

brain associated with positive emotions. And this, writes Dr. Berns, “suggests a rethinking of how we treat dogs.”

“[R]ecent rulings by the Supreme Court have included neuroscientific findings that open the door to such a possibility. In two cases, the court ruled that juvenile offenders could not be sentenced to life imprisonment without the possibility of parole. As part of the rulings, the court cited brain-imaging evidence that the human brain was not mature in adolescence. Although this case has nothing to do with dog sentience, the justices opened the door for neuroscience in the courtroom. Perhaps someday we may see a case arguing for a dog’s rights based on brain-imaging findings.”

Accordingly, Dr. Berns posits that neuroscience warrants changes in how we view and treat dogs, namely that the law should not regard dogs as property, but as legal persons, and that killing dogs should be banned “for violating the basic right of self-determination of a person.” In fact, there’s precedent there, too.

Over 30 years ago, California courts invalidated a provision in someone’s will that said an animal was to be killed upon her “owner’s” death. The court (and then the legislature) found that it violated California’s public policy against killing animals who have a place to go just because the animal’s human caretaker requests it. California law also says a shelter can’t kill a dog, cat, rabbit, or other animal when a rescue group offers to save her. It is illegal in Muncie, IN, for a shelter to kill a healthy or treatable dog or cat. And the governor of Maine recently pardoned a dog involved in a death penalty case against that dog, stating that his pardon power under the constitution is not explicitly limited to humans.

Compare a 2003 case where a “court dismissed a couple’s complaint seeking enforcement of a [divorce] settlement agreement that provided for shared custody of a dog... stating that ‘appellant is seeking an arrangement analogous, in law, to a visitation schedule for a table or lamp’ to a new Alaska law that requires “courts to make specific determinations in a final divorce order about companion animals... taking into consideration the well-being of the animal.” As the Oregon Supreme Court recently noted, “As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still...”

* The Fourth Amendment to the U.S. Constitution reads, in relevant part, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” (emphasis added).

Over 100 years ago, a person could torture and kill their own dog or cat because “it” was their property. Today, a dog or cat has a right to be free of such violence. In fact, *she* has a legal right to more: food, water, and shelter. Someday, animals will be entitled to love and attention. And someday still, no one will be able to kill an animal if that animal is not irremediably suffering because to do so will be regarded as a violation of that animals’ right to live.

What about dogs with a bite history?

No one individual should have the right to kill a dog who is otherwise healthy and, likewise, no one individual should feel like they alone should have to make the decision. Policy that acknowledges this not only protects the physical well-being of dogs, it protects the emotional well-being of people. The goals of protecting dogs and people are not mutually exclusive.

There are plenty of examples of progressive shelters who receive dogs brought to them specifically to be killed (what is termed “owner requested euthanasia”) for a “history of aggression.” But instead of being killed, some of these dogs are successfully rehabilitated. Dogs like Sugar who was surrendered to a local shelter because she was “aggressive toward people and other dogs.” She was trained while in the shelter and then placed in foster care for further training and “now trusts humans/new dogs she meets the first time.” She also found a loving, new home with another dog.

Sometimes these dogs are easy to retrain and place because the dog was provoked and is not offensively aggressive. Sometimes it is because there was some other underlying issue, like a medical condition that manifested itself as a behavior/aggressive one and resolving the underlying condition resolves the behavior. Sometimes it is more challenging, involving weeks or months of rehabilitation to get the dog to a point that he or she is safe to place, with the original family not having the patience, desire, resources, knowledge, and/or skill set to do so. Sometimes, the behavior remains but a different person can better handle the dog, so that he or she is not a threat to others. And finally, sometimes, the dog is sent to a long-term environment like a sanctuary where he or she can live out the rest of his/her life.

The point is several-fold. First, if the public can be protected short of killing a dog, we owe that to dogs (we also owe it to them because they have interests independent of their human caretakers). Second, lay people and even li-

censed professionals, such as veterinarians, do not have the skill set to make the determination of prognosis for rehabilitation. Third, they often also get the diagnosis wrong (as in the case of provocation). Sometimes, even trained professionals get both the diagnosis (is it offensive aggression?) and the prognosis for rehabilitation wrong. Fourth, there’s no rigor, no defined terms, no incident evaluation by a team of professionals, and therefore, no due process in the current state of affairs. A recent study, for example, found that “over one-third (36.9%) of dogs originally brought in by their owners to a shelter “for euthanasia” could, upon further evaluation by staff and discussion with owners, be made available for adoption...” It further found that, after assessment, these animals “had medical or behavioral concerns that were amenable to resolution, as opposed to all having terminal health conditions or intractable behavior problems.” In an ideal shelter, a team would evaluate the circumstances of the bite through existing and proven protocols that have reduced killing of behavior dogs to roughly 1/4 of 1%, even while reducing overall dog bites (in one city, serious dog bites were reduced 89% even as behavior killing of dogs declined significantly).

Moreover, why should someone caring for such a dog lack the support they need? This is not just unfair to the dog, it is unfair to the person. Nobody should be in a position where they feel alone and feel like they must make a decision between the life of their dog and the safety of their family, especially as they almost always lack the information and tools needed to properly assess diagnosis, prognosis, and rehabilitation. They should have access to assistance, to a team of professionals which form a safety net that can meet the twin goals of protecting the dog and protecting them. They should not be in a position where they feel that they have nowhere to turn and thus are making a guilt-inducing, heart-wrenching decision to kill an otherwise healthy dog from what is often a place of ignorance as to the dog’s rehabilitative capacity, lack of access to rehabilitative services, or in the event of their failure, a life-affirming alternative placement.

Finally, we’ll always be limited in our understanding and treatment options for dogs in need of behavior rehabilitation if all we do is kill them. In other words, the status quo promises nothing more than a slaughter with no end. We need to increase our understanding of and treatment options for these dogs, something that is precluded by killing.

Legislation making it illegal to kill healthy and treatable animals should be a part of a more comprehensive shelter reform law. (See No Kill Advocacy Center, *The Companion Animal Protection Act*, at nokilladvocacycenter.org.) Otherwise, a person or licensed professional, such as a veterinarian, cannot kill an animal, but a pound can. This is problematic for three reasons. First, the animal still dies. Second, the animal dies in a potentially less compassionate environment. Third, if shelters contract with veterinarians to kill animals, the animal gets caught in a perverse loop: going from veterinarian to the shelter, back to the veterinarian, and then back to the shelter.

MODEL LEGISLATION

DO NO HARM VETERINARY PRACTICES ACT

Sec. 1 The legislature finds and declares as follows:

(a) The City [County or State or Other Political Subdivision] of << >> has a significant interest in exercising its police power to set minimum standards for the humane treatment of companion animals within its borders.

(b) The City has enacted an ordinance specifically making it illegal for animal shelters to kill healthy or treatable animals and to only employ euthanasia after thorough review, exploration of all alternatives, and a determination by a team of trained and experienced professionals that the animal is beyond rehabilitation.

(c) The City has enacted and achieved a No Kill policy in its shelters, proving that animal welfare professionals do not need to and should not be asked to kill animals out of convenience, for behavior, or for management purposes. It would undermine the City's No Kill policy if companion animals who are not suffering and beyond rehabilitation could be killed by others outside of the shelter.

(d) It is the role of licensed and unlicensed animal welfare professionals to protect animal life and promote the human-animal bond and animal welfare professionals of conscience should not be asked to either break those bonds or lose a client.

(e) People should not feel compelled to kill a family pet if they cannot afford needed care. Conversely, living with a family that cannot afford prompt and necessary care should not be a death sentence for an otherwise healthy or treatable animal.

(f) People should have the support they need to make the best possible decision for a companion animal and nobody should be in a position in which they feel alone and must make a decision about the life of an animal, especially as they almost always lack the information and tools needed to properly assess diagnosis, prognosis, and rehabilitation. A recent study, for example, found that "over one-third (36.9%) of dogs originally brought in by their owners to a shelter "for euthanasia" could, upon further evaluation by staff and discussion with owners, be made available for adoption..." It further found that, after assessment, these animals "had medical or behavioral concerns that were amenable to resolution, as opposed to all having terminal. As such, they and the animals should have access to assistance which form a safety net that can meet the twin goals of protecting animals and protecting families.

(g) Barring the killing of dogs, cats, and other animal companions in various contexts is part of a growing trend across the country. Over 30 years ago, California courts invalidated a provision in someone's Will that said an animal was to be killed upon her "owner's" death. The court and the legisla-

ture found that the provision violated public policy against killing animals who have a place to go just because the animal's human caretaker requests it. California and Delaware law also says a shelter can't kill a dog, cat, rabbit, or other animal when a rescue group offers to save her. And it is already illegal in the City of Muncie for a shelter to kill a healthy or treatable dog or cat. As the Oregon Supreme Court recently noted, "As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still..."

Sec. 2(a) No person, licensed medical professional or otherwise, shall perform or cause to be performed the euthanasia or killing by any means of any dog, cat, rabbit, or other animal normally kept as a pet within the City, except when necessary to prevent non-rehabilitatable suffering and then only by a licensed medical professional or in an animal shelter under the authority of a licensed medical professional.

"Non-rehabilitatable suffering" means an animal who has a mortal condition, poor quality of life, and a poor or grave prognosis for being able to live without significant physical pain even with prompt, necessary, and comprehensive veterinary care. Non-rehabilitatable suffering does not include an objectively treatable medical or behavioral condition when the person with care or custody of the animal cannot afford or refuses to pay for prompt and necessary veterinary care, except as follows:

1. An animal shelter may euthanize an animal consistent with the requirements of Ordinance No. << >>.

(b) A person who elects not to pursue necessary veterinary care for a sick or injured animal who needs it where failure to do so would violate laws against neglect or abuse and, notwithstanding this ordinance, the person would otherwise elect euthanasia for the animal, shall instead surrender the animal to an animal shelter or rescue organization for treatment and rehoming or surrender the animal to the veterinarian who may choose to take custody or transfer the animal to an animal shelter or rescue organization for treatment and rehoming or simply refer the person to an animal shelter or rescue organization for treatment and rehoming.

(c) If an animal is killed or euthanized within the City in violation of this chapter, each of the following persons shall be guilty: (1) the person or persons performing the procedure, (2) all persons assisting in the physical performance of the procedure, and (3) the owner, custodian, or animal guardian that ordered the procedure.