

VERMONT ANIMAL CRUELTY LAWS

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Introduction

Vermont statutes provide protection for animals against killing, beating, and inhumane confinement. They include basic requirements for shelter, exercise, care, and sanitation. Importantly, though, these cruelty laws are not applicable to agricultural animals. However, there are extensive laws governing the transport of animals and these do apply to agricultural animals. The transport laws include a provision making it illegal to leave an animal in a parked car in unsafe conditions. Furthermore, the law bans animal fighting and extends liability to anyone viewing such fights, and also bans the shooting of birds for amusement. The law also prohibits leaving poison on one's land for the purpose of killing animals, with an exception for pests. The killing of suspected rabid dogs and wolf-hybrids is legal. Additionally, there is a special provision forbidding the sale of dyed chicks. Lastly, there is no specific provision against bestiality, but the statutes prohibiting child sexual abuse define sexual conduct to include bestiality.

Overview of Statutory Provisions

- 1. Penalties:** VT. STAT. ANN. TIT. 6, § 3037; VT. STAT. ANN. TIT. 13, § 353
- 2. Humane and proper treatment of animals:** VT. STAT. ANN. TIT. 13, §§ 351a, 351b & 352
- 3. Affirmative Defense:** VT. STAT. ANN. TIT. 13, § 352b
- 4. Enforcement:** VT. STAT. ANN. TIT. 13, § 354
- 5. Interference with animals:** VT. STAT. ANN. TIT. 13, §§ 355 & 361
- 6. Miscellaneous:** VT. STAT. ANN. TIT. 13, §§ 362 & 363
- 7. Animal Fighting:** VT. STAT. ANN. TIT. 13, § 364
- 8. Euthanasia:** VT. STAT. ANN. TIT. 13, § 371
- 9. Transportation Limitations:** VT. STAT. ANN. TIT. 13, §§ 381, 382, 383, 384, 385, 386 & 387
- 10. Bestiality:** VT. STAT. ANN. TIT. 13, §§ 2821 & 2822
- 11. Domestic Pets or Wolf-Hybrids Attacks:** VT. STAT. ANN. TIT. 20, §§ 3809 & 3545

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1. PENALTIES

VT. STAT. ANN. TIT. 6, § 3073 (2012). Penalties

A person, without the permission of the owner of any such fur-bearing animal, shall not enter the enclosure within which any such fur-bearing animal is kept. No person shall knowingly and wilfully kill, trap, or injure any such fur-bearing animal owned by another person without the consent of the owner. A person who violates a provision of this section shall be fined not more than \$200.00, or be imprisoned for not more than six months, or both.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 353. (2012). Degree of offense; sentencing upon conviction

(a) Penalties.

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

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

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

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

(B) A law enforcement officer shall issue a civil citation to a person who violates subdivision 352(3), (4), or (9) of this title if the person has not been previously adjudicated in violation of this chapter. A person adjudicated in violation of subdivision 352(3), (4), or (9) of this title pursuant to this subdivision shall be assessed a civil penalty of not more than \$500.00. At any time prior to the person admitting the violation and paying the assessed penalty, the state's attorney may withdraw the complaint filed with the judicial bureau and file an information charging a violation of subdivision 352(3), (4), or (9) of this title in the criminal division of the superior court.

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

(1) Forfeit any rights to the animal subjected to cruelty, and to any other animal, except livestock or poultry owned, possessed, or in the custody of the defendant.

(2) Repay the reasonable costs incurred by any person, municipality or agency for providing care for the animal prior to judgment. If the court does not order a defendant to pay all the

applicable costs incurred or orders only partial payment, it shall state on the record the reasons for that action.

(3) Forfeit any future right to own, possess, or care for any animal for a period which the court deems appropriate.

(4) Participate in available animal cruelty prevention programs or educational programs, or both, or obtain psychiatric or psychological counseling, within a reasonable distance from the defendant's residence. If a juvenile is adjudicated delinquent under section 352 or 352a of this title, the court may order the juvenile to undergo a psychiatric or psychological evaluation and to participate in treatment that the court determines to be appropriate after due consideration of the evaluation. The court may impose the costs of such programs or counseling upon the defendant when appropriate.

(5) Permit periodic unannounced visits for a period up to one year by a humane officer to inspect the care and condition of any animal permitted by the court to remain in the care, custody, or possession of the defendant. Such period may be extended by the court upon motion made by the state.

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

Applicable Case Law:

State v. Eldredge, 2006 VT 80, 180 Vt. 278, 910 A.2d 816 (2006).

Facts: Defendant was convicted of cruelty to animals under 13 V.S.A. § 352 and was ordered to repay Humane Society for costs incurred in caring for the animals seized.

Holding: The trial court was not required to make a determination as to defendant's ability to pay costs of providing care to animals, and the order that defendant repay Humane Society \$30,629.38 for costs incurred in caring for animals was not unreasonable. Court based cost decision on 13 V.S.A. § 354(g)(1), which reads, "If the defendant is convicted of criminal charges under this chapter [,] ... the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses."

2. HUMANE AND PROPER TREATMENT OF ANIMALS

VT. STAT. ANN. TIT. 13, § 351a (2012). Purpose of subchapter

The purpose of this subchapter is to prevent cruelty to animals.² In implementing this subchapter, enforcement officers³ are encouraged to educate the public on requirements of the subchapter and, when appropriate, to seek voluntary resolution of violations.

² "Animal" means all living sentient creatures, not human beings.

³ "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, employee or agent, elected animal control officer,

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No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 351b (2012). Scope of subchapter

This subchapter shall not apply to:

- (1) activities regulated by the department of fish and wildlife pursuant to Part 4 of Title 10; scientific research governed by accepted procedural standards subject to review by an institutional animal care and use committee;
- (3) livestock and poultry husbandry practices⁴ for raising, management and use of animals;
- (4) veterinary medical or surgical procedures; and
- (5) the killing of an animal as provided by sections 3809 and 3545 of Title 20.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 352 (2012). Cruelty to animals

A person⁵ commits the crime of cruelty to animals if the person:

- (1) intentionally kills or attempts to kill any animal belonging to another person without first obtaining legal authority or consent of the owner;
- (2) overworks, overloads, tortures,⁶ torments, abandons, administers poison to, cruelly beats or mutilates an animal, or exposes a poison with intent that it be taken by an animal;
- (3) ties, tethers, or restrains an animal, either a pet or livestock,⁷ in a manner that is inhumane or is detrimental to its welfare. Livestock and poultry husbandry practices are exempted;
- (4) deprives an animal which a person owns, possesses or acts as an agent for, of adequate food,⁸ water,⁹ shelter,¹⁰ rest, sanitation,¹¹ or necessary medical attention,¹² or transports an animal in overcrowded vehicles;

animal control officer appointed by the legislative body of a municipality, local board of health officer or agent, or any officer authorized to serve criminal process.

⁴ “Livestock and poultry husbandry practices” means the raising, management and using of animals to provide humans with food, fiber or transportation in a manner consistent with:

- (A) husbandry practices recommended for the species by agricultural colleges and the U.S. Department of Agriculture Extension Service;
- (B) husbandry practices modified for the species to conform to the Vermont environment and terrain; and
- (C) husbandry practices that minimize pain and suffering.

⁵ “Person” means any individual, firm, partnership or corporation, or authorized agent or representative of a person, partnership or corporation.

⁶ “Torture” or “torment” means omission, neglect, or an act by an animal owner or other person, whereby physical pain, suffering or death is caused or permitted to be caused to an animal.

⁷ “Livestock” means cattle, bison, horses, sheep, goats, swine, cervidae, ratites and camelids.

⁸ “Adequate food” means food that is not spoiled or contaminated and is of sufficient quantity and quality to meet the normal daily requirements for the condition and size of the animal and the environment in which it is kept. An animal shall be fed or have food available at least once each day, unless a licensed veterinarian instructs otherwise, or withholding food is in accordance with accepted agricultural or veterinarian practices.

⁹ “Adequate water” means fresh, potable water provided at suitable intervals for the species, and which, in no event, shall exceed 24 hours at any interval. The animal must have access to the water.

¹⁰ “Adequate shelter” means shelter which protects the animal from injury and environmental hazards.

¹¹ “Sanitation” means the maintenance of clean conditions for indoor and outdoor enclosures to minimize health hazards, including periodic cleanings to remove excretions or other waste materials, dirt and trash.

- (5) owns, possesses, keeps or trains an animal engaged in an exhibition of fighting, or possesses, keeps or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control;
- (6) acts as judge or spectator at events of animal fighting or bets or wagers on the outcome of such fight;
- (7) as poundkeeper, officer, agent of a humane society¹³ or as an owner or employee of an establishment for treatment, board or care of an animal, knowingly receives, sells, transfers or otherwise conveys an animal in his or her care for the purpose of research or vivisection;
- (8) intentionally torments or harasses an animal owned or engaged by a police department or public agency of the state or its political subdivisions, or interferes with the lawful performance of a police animal;
- (9) knowingly sells, offers for sale, barter or displays living baby chicks, ducklings or other fowl which have been dyed, colored or otherwise treated so as to impart to them an artificial color, or fails to provide poultry¹⁴ with proper brooder facilities;
- (10) uses a live animal as bait or lure in a race, game or contest, or in training animals in a manner inconsistent with Part 4 of Title 10 or the rules adopted thereunder.

Applicable Case Law:

State v. Gadreault, 171 Vt. 534, 758 A.2d 781 (2000).

Facts: On December 3, 1997, a search of defendant's property revealed three frozen, dead pigs in an unsheltered pen in six inches of liquid manure, and a calf tethered to a fence post that appeared weak and to have difficulty standing. Defendant was arraigned on four counts of cruelty to animals in violation of 13 V.S.A. § 352 (previously 13 V.S.A. § 352(a)). Following a two-day jury trial held in March 1999, defendant was found guilty on three counts. The State charged defendant with violating the following two provisions of the cruelty to animals statute: "A person commits the crime of cruelty to animals if the person: . . .

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

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

Holding: Court ruled that intent is not an element of subsections (3) and (4). Although intent is not an element, "the act or omission must be 'willful,' i.e., deliberate and voluntary, in order to violate even a strict liability provision. That the omission was involuntary, therefore, is a defense available to a person who takes a trip, leaving adequate food and water for his pet, and is unable to return to replenish the provisions because of a storm or other unanticipated or

¹² "Necessary medical attention" shall include but not be limited to medical treatment for illness, injury, disease, excessive parasitism, or malformed or overgrown hoof.

¹³ "Humane society" or "society for prevention of cruelty to animals" means the Vermont Humane Federation, Inc., or its successor, or any incorporated humane society which, through its agents has the lawful authority to interfere with acts of cruelty to animals.

¹⁴ "Poultry" means meat and egg producing chickens, exhibition (fancy) chickens, turkeys, domestic ducks, geese, pheasants, chicken partridge and coturnix quail.

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uncontrollable event. Such a defense would also be available to a person who should own an animal that unexpectedly requires medical attention when he is not present to provide it. A court may, however, as did the court in the instant case, preclude defendant from referring to, or introducing any evidence relating to, his mental capacity or orientation to reality.

***State v. Sylvester*, 112 Vt. 202, 22 A.2d 505 (1941).**

Facts: Defendant shot and killed a neighbor's dog when Defendant came upon the dog attacking Defendant's hens on Defendant's property. Defendant was convicted under 23 P.L. 8570 for openly and without intended secrecy, willfully and maliciously injuring and destroying a dog, the property of another, by shooting.

Holding: Judgment reversed; Defendant did not "maliciously" kill the dog. The words "willfully and maliciously" as here used are to be construed in the same manner that they have been construed in other criminal statutes. The word "willfully" as used means intentionally and by design, and that the word "maliciously" as used has a darker meaning and requires that, to the establishment of the crime, there should be found in addition a deliberate and evil intention on the part of the respondent to wrong and injure the owner of the [dog] by the destruction of his property in wanton and malevolent defiance of the rights of individual ownership. To warrant the killing of a dog for the protection of a domestic animal or fowl, the circumstances must be such as to create a reasonable belief that such killing is necessary to prevent injury to the animal or fowl.

***State v. Kelley*, 86 Vt. 237, 84 A. 861 (1912).**

Facts: Defendant owned a properly licensed dog onto whom he caused to be worn a collar with proper tags. While Defendant was out of town, the dog got loose and was caught by police without wearing the collar. Parties agreed that the collar had been lost by accident and the defendant was unaware.

Holding: Under P.S. 5623-5629, 5635, Defendant held not guilty of "keeping" a dog without a collar.

VT. STAT. ANN. TIT. 13, § 352a. (2012). Aggravated cruelty to animals

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

(1) kills an animal by intentionally causing the animal undue pain or suffering; or intentionally, maliciously, and without just cause tortures, mutilates, or cruelly beats an animal.

No Applicable Case Law.

3. AFFIRMATIVE DEFENSE

VT. STAT. ANN. TIT. 13, § 352b. (2012). Rules; affirmative defense

- (a) An enforcement officer implementing the provisions of section 352 or 352a of this title shall be guided by rules established by the secretary.¹⁵
- (b) Except as provided in subsection (c) of this section, an affirmative defense to prosecution under section 352 or 352a of this title may be raised when:
 - (1) except for vivisection or research under subdivision 352(7) of this title, the defendant was a veterinarian whose conduct conformed to accepted veterinary practice for the area, or was a scientist whose conduct was a part of scientific research governed by accepted procedural standards subject to review by an institutional care and use committee;
 - (2) the defendant's conduct was designed to control or eliminate rodents, ants or other common pests on the defendant's own property;
 - (3) the defendant was a person appropriately licensed to utilize pesticides under chapter 87 of Title 6;
 - (4) the defendant humanely euthanized any animal as a representative of a duly organized humane society, animal shelter or town pound according to rules of this subchapter, or as a veterinarian destroying animals under chapter 193 or sections 3511 and 3513 of Title 20; or
 - (5) a state agency was implementing a rabies control program.
- (c) An affirmative defense to a charge of abandonment under section 352 of this title shall not be recognized where a person abandons an animal at or near an animal shelter or veterinary clinic, farm or other place of shelter, without making reasonable arrangements for the care of the animal.
- (d) The authority to enforce this chapter shall not be construed in a manner inconsistent with the animal control or disease control eradication programs in Title 6, or chapters 191, 193, 194 and 195 of Title 20 or the provisions of Part 4 of Title 10, or the rules adopted thereunder.

No Applicable Case Law.

4. ENFORCEMENT

VT. STAT. ANN. TIT. 13, § 354. (2012). Enforcement; possession of abused animal; searches and seizures; forfeiture

- (a) The secretary of agriculture, food and markets shall be consulted prior to any enforcement action brought pursuant to this chapter which involves livestock and poultry.
- (b) Any humane officer as defined in section 351 of this title may enforce this chapter. As part of an enforcement action, a humane officer may seize an animal being cruelly treated in violation of this chapter.

¹⁵ “Secretary” means the secretary of agriculture, food and markets.

- (1) Voluntary surrender. A humane officer may accept animals voluntarily surrendered by the owner anytime during the cruelty investigation. The humane officer shall have a surrendered animal examined and assessed within 72 hours by a veterinarian licensed to practice in the state of Vermont.
 - (2) Search and seizure using a search warrant. A humane officer having probable cause to believe an animal is being subjected to cruel treatment in violation of this subchapter may apply for a search warrant pursuant to the Rules of Criminal Procedure to authorize the officer to enter the premises where the animal is kept and seize the animal. The application and affidavit for the search warrant shall be reviewed and authorized by an attorney for the state when sought by an officer other than an enforcement officer defined in 23 V.S.A. § 4(11). A veterinarian licensed to practice in Vermont must accompany the humane officer during the execution of the search warrant.
 - (3) Seizure without a search warrant. If the humane officer witnesses a situation in which the humane officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant. The humane officer shall immediately take an animal seized under this subdivision to a licensed veterinarian for medical attention to stabilize the animal's condition and to assess the health of the animal.
- (c) A humane officer shall provide suitable care at a reasonable cost for an animal seized under this section, and have a lien on the animal for all expenses incurred. A humane officer may arrange for the euthanasia of a severely injured, diseased, or suffering animal upon the recommendation of a licensed veterinarian. A humane officer may arrange for euthanasia of an animal seized under this section when the owner is unwilling or unable to provide necessary medical attention required while the animal is in custodial care or when the animal cannot be safely confined under standard housing conditions. An animal not destroyed by euthanasia shall be kept in custodial care until final disposition of the criminal charges except as provided in subsections (d) through (h) of this section. The custodial caregiver shall be responsible for maintaining the records applicable to all animals seized, including identification, residence, location, medical treatment, and disposition of the animals.
- (d) If an animal is seized under this section, the state may institute a civil proceeding for forfeiture of the animal in the territorial unit of the criminal division of the superior court where the offense is alleged to have occurred. The proceeding shall be instituted by a motion for forfeiture, which shall be filed with the court and served upon the animal's owner.
- (e) The court shall set a hearing to be held within 21 days after institution of a forfeiture proceeding under this section. Time limits under this subsection shall not be construed as jurisdictional.
- (f) At the hearing on the motion for forfeiture, the state shall have the burden of establishing by clear and convincing evidence that the animal was subjected to cruelty, neglect or abandonment in violation of section 352 or 352a of this title. The court shall make findings of fact and conclusions of law and shall issue a final order. If the state meets its burden of proof, the motion shall be granted and the court shall order the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title.

(g)(1) If the defendant is convicted of criminal charges under this chapter or if an order of forfeiture is entered against an owner under this section, the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses.

(2) (A) If the defendant is acquitted of criminal charges under this chapter and a civil forfeiture proceeding under this section is not pending, an animal that has been taken into custodial care shall be returned to the defendant unless the state institutes a civil forfeiture proceeding under this section within seven days of the acquittal.

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

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

(h) An order of the criminal division of the superior court under this section may be appealed as a matter of right to the supreme court. The order shall not be stayed pending appeal.

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

(j) It is unlawful for a person to interfere with a humane officer or the secretary of agriculture, food and markets engaged in official duties under this chapter. A person who violates this subsection shall be prosecuted under section 3001 of this title.

Applicable Case Law:

State v. Dufresne, No. 2009-317, 2010 WL 7795316 (Vt. Aug. 24, 2010).

Facts: Defendant owns two dogs. In July 2009, he was charged with two counts of cruelty to animals. Shortly thereafter, the State filed a request for a civil forfeiture order, alleging that defendant deprived the dogs of adequate food, water, sanitation, and/or necessary medical attention in violation of 13 V.S.A. § 352(4). At the hearing, a police officer testified that he went to defendant's home to investigate a burglary that had occurred there. As soon as he entered the home, he noticed a very strong smell of urine and feces. The floor of the home was covered in debris. He also noticed heavy saturation marks on the floor where animals had obviously urinated or defecated, causing the heavy stench. The officer saw a dog, which was filthy, lying on an equally filthy couch. He observed that the dog appeared thin. A second dog was tied up on the porch. Both dogs smelled of urine and feces; their coats were very dirty and one dog's coat was covered in brown flecks. The officer saw no food or water for the animals either inside or outside. The officer was concerned for the animals' wellbeing and he obtained a warrant to seize the animals. The State introduced photographs taken by the officer of defendant's home and the animals. A veterinarian and several other witnesses also testified at the hearing.

Holding: The Court held that the evidence did not support the trial court's conclusion that defendant's dogs were deprived of adequate sanitation. The term "sanitation" is defined by statute as "the maintenance of clean conditions for indoor and outdoor enclosures to minimize health hazards, including periodic cleanings to remove excretions or other waste materials, dirt and trash." 13 V.S.A. § 352(4); § 351(9). The evidence in this case did not show that the dirty and cluttered condition of defendant's home presented a health hazard to the animals. The

veterinarian testified that yeast infections were common in dogs, particularly in long-eared dogs like basset hounds. She stated that she could not tell if the dogs' ears had been cleaned recently or not, and she observed no physical discomfort in the dogs. She did not testify that the dogs' ear conditions were caused by their living conditions, and we find no evidence in the record to support the court's finding in this regard. As to any other potential health hazards, the veterinarian stated that it would be very difficult to know whether an animal would be bothered by living in an environment such as that found in defendant's home. She indicated that urine scald might develop if an animal was lying in urine and could not escape it, but she found no indication of urine scald here. Because there was insufficient evidence to show that the condition of defendant's home presented a health hazard to his dogs, we must reverse the court's decision.

State v. Eldredge, 2006 VT 80, 180 Vt. 278, 910 A.2d 816 (2006).

Facts: Defendant was convicted of cruelty to animals under 13 V.S.A. § 352 and was ordered to repay Humane Society for costs incurred in care of animals seized from her.

Holding: The trial court was not required to make a determination as to defendant's ability to pay costs of providing care to animals, and the order that defendant repay Humane Society \$30,629.38 for costs incurred in caring for animals was not unreasonable. The Court based its decision on costs on 13 V.S.A. § 354(g)(1), which reads, "If the defendant is convicted of criminal charges under this chapter [,] ... the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses.

Holding: The trial court was not required to make determination as to defendant's ability to pay costs of providing care to animals, and the order that defendant repay Humane Society \$30,629.38 for costs incurred in caring for animals was not unreasonable. Court based decision on costs of 13 V.S.A. § 354(g)(1), which reads, "If the defendant is convicted of criminal charges under this chapter [,] ... the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses.

State v. Stevens, 2004 VT 23, 176 Vt. 613, 848 A.2d 330 (2004).

Facts: Police responded to Defendant's home after neighbors called police concerned about conditions of Defendant's dogs in extremely hot weather. Sergeant Stohl and Trooper Gravaltis responded to the call. Stohl introduced herself and explained she was there to check the animals. Appellant stated she knew the police would be coming by, and Stohl responded, "then it shouldn't be a problem." Defendant then went into her house, retrieved the kennel key, and unlocked the door. At no time did Stohl inform defendant she could refuse the inspection, nor did Stohl obtain verbal or written consent to enter the kennel. Inside the kennel, Stohl found nineteen animals. Most of the kennel windows were closed, the fans inside the kennel provided limited air circulation, a strong ammonia smell filled the air, and the outside temperature exceeded ninety degrees. The animals were panting, and the cats and small dogs could not reach their water. After checking the kennel, Stohl asked defendant if there were additional animals inside defendant's home. Defendant told Stohl there were, and Stohl asked if she could see them. Inside defendant's home, Stohl found twenty-four animals kept in padlocked cages in a small room. No windows were open, no fans were inside, many of the animals were without water, the cages were dirty, and a heavy ammonia odor was present. After her inspection of defendant's

kennel and home, Stohl determined the animals required protective custody. Stohl removed most of defendant's animals. Two days later, Stohl returned to defendant's home with a search warrant and seized the remaining animals. Defendant was charged with six counts of cruelty to animals under 13 V.S.A. § 352(4). The State then moved under § 354(d) “for an order requiring [defendant] to forfeit any and all rights in the animal[s] prior to final disposition of the criminal charge.”

Holdings: The Defendant gave consent by her action of going into the house, obtaining the key to the kennel and opening the kennel. Although Stohl's failure to put Defendant on notice of her right to refuse the search is a factor for us to consider, it is merely one factor and not a dispositive one in this case. Additionally, notwithstanding Defendant's consent, the search and seizure was justified by exigent circumstances.

Hegarty v. Addison County Humane Soc., 2004 VT 33, 176 Vt. 405, 848 A.2d 1139 (2004).

Facts: After receiving complaints from neighbors, ACHS's humane officer Paul Meacham began to investigate the health of Defendants' horse, Paka, and the adequacy of her care. Meacham visited the horse several times and discussed the horse's condition with Hegarty (owner), then had a vet out to evaluate the horse. The vet assessed that the horse was in an emaciated condition and was either sick, had poor teeth, or was receiving an inadequate diet. On August 18, 2000, Meacham went to the Hegartys' home and seized Paka. The horse received immediate veterinary care and treatment while in ACHS's custody. Paka was returned approximately twelve days after she was seized. Hegarty sued ACHS for conversion and intentional infliction of emotional distress. Trial court held that the 12 day seizure was *de minimis*.

Holding: The statute explicitly empowers ACHS to seize an animal when the humane officer determines it is necessary to protect its health or safety. The undisputed facts indicate that Meacham reasonably believed that Paka's health was in jeopardy and that immediate action was required to protect her. In doing so, Meacham followed the statutory procedures during and after the seizure. ACHS lawfully seized Paka and thus cannot be held liable for conversion. We agree with the Hegartys that humane officers should, whenever possible, obtain a warrant prior to seizing an animal but, when the circumstances demand it and the statutory procedures are followed, humane officers have the authority to seize animals without a warrant. Even though we find that the Hegartys' property interest in Paka was constitutionally protected, we uphold the trial court's ruling that the Hegartys were not denied due process because under these circumstances the degree of their deprivation was not serious, the procedures underlying the deprivation adequately address the potential for errors, and they could have requested a post-deprivation hearing.

State v. Kornell, 169 Vt. 637, 741 A.2d 290 (1999).

Facts: In July 1993, pursuant to a search warrant, a humane officer accompanied by several police officers seized eighteen dogs, twelve rabbits, and four sheep from defendant's home pursuant to 13 V.S.A. § 354(b)(2) (humane officer having probable cause to believe that animal is being subjected to cruel treatment may apply for search warrant to authorize officer to seize animal). The animals were given over to the care of the local Humane Society and the charges against the Defendant were later dismissed. In March 1994, in response to defendant's motion for return of property, the district court terminated the State's right to retain possession of the

animals, but acknowledged that it was not adjudicating any rights of possession that might exist by virtue of the lien created under § 354. In an action regarding the applicability of the lien, the superior court ruled that because the State did not lawfully seize the animals under § 354, and because the humane society's claim to a lien under § 354 derived from the State's unlawful seizure, defendant was entitled to return of her animals notwithstanding the humane society's claimed lien. Defendant filed a motion in district court to compel return of the property. The court denied the motion for lack of jurisdiction.

Holding: The fact that the superior court later issued a ruling to resolve the issue of whether a lien existed under § 354(c) did not deprive the district court of continuing ancillary jurisdiction over motions seeking to enforce its prior order. Because the State illegally seized the property, it is the State's responsibility to abide by the district court's order and assure that the property is returned. Thus, it is appropriate that the district court exercise its jurisdiction over defendant's motion to compel, which was in effect a motion to enforce the court's earlier order requiring the State to return her property.

5. INTERFERENCE WITH ANIMALS

VT. STAT. ANN. TIT. 13, § 355. (2012). Interference with or cruelty to a guide dog

(a) As used in this section:

(1) "Custody" means the care, control, and maintenance of a dog.

(2) "Guide dog" means a dog, whose status is reasonably identifiable, individually trained to do work or perform tasks for the benefit of an individual with a disability for purposes of guiding an individual with impaired vision, alerting an individual with impaired hearing to the presence of people or sounds, assisting an individual during a seizure, pulling a wheelchair, retrieving items, providing physical support and assistance with balance and stability, and assisting with navigation.

(3) "Notice" means:

(A) a verbal or otherwise communicated warning regarding the behavior of another person and a request that the person stop the behavior; and

(B) a written confirmation submitted to the local law enforcement agency, either by the owner of the guide dog or another person on his or her behalf, which shall include a statement that the warning and request was given and the person's telephone number.

(b) No person shall recklessly injure or cause the death of a guide dog, or recklessly permit a dog he or she owns or has custody of to injure or cause the death of a guide dog. A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$3,000.00, or both.

(c) No person who has received notice or has knowledge that his or her behavior, or the behavior of a dog he or she owns or has custody of, is interfering with the use of a guide dog shall recklessly continue to interfere with the use of a guide dog, or recklessly allow the dog he or she owns or has custody of to continue to interfere with the use of a guide dog, by obstructing, intimidating, or otherwise jeopardizing the safety of the guide dog user or his or her guide dog. A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(d) No person shall recklessly interfere with the use of a guide dog, or recklessly permit a dog he or she owns or has custody of to interfere with a guide dog, by obstructing, intimidating, or otherwise jeopardizing the safety of the guide dog user or his or her guide dog. A person who violates this subsection commits a civil offense and shall be:

(1) for a first offense, fined not more than \$100.00.

(2) for a second or subsequent offense, fined not more than \$250.00.

(e) A violation of subsection (d) of this section shall constitute notice as defined in subdivision (a)(3) of this section.

(f) As provided in section 7043 of this title, restitution shall be considered by the court in any sentencing under this section if the victim has suffered any material loss. Material loss for purposes of this section means uninsured:

(1) veterinary medical expenses;

(2) costs of temporary replacement assistance services, whether provided by a person or guide dog;

(3) replacement value of an equally trained guide dog without any differentiation for the age or experience of the dog;

(4) loss of wages; and

(5) costs and expenses incurred by the person as a result of the injury to the guide dog.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 361. (2012). Interference with domestic animals

A person commits the crime of interference with domestic animals if the person confines or secretes a domestic animal owned by another, with the intention of concealing its identity or the identity of its owner. A person also commits the crime of interference with domestic animals if he or she conceals the fact that the animal is licensed by removing the collar, harness or identification, or defaces a tattoo or brand tag from any licensed animal or other domestic animal owned by another.

Interference with domestic animals shall be punishable by a sentence of imprisonment of not more than one year, or a fine of not more than \$2,000.00, or both.

No Applicable Case Law.

6. MISCELLANEOUS

VT. STAT. ANN. TIT. 13, § 362. (2012). Exposing poison on the land

A person who deposits any poison or substance poisonous to animals on his or her premises or on the premise or buildings of another, with the intent that it be taken by an animal, shall be in violation of subdivision 352(2) of this title. This section shall not apply to control of wild pests, protection of crops from insects, mice, and plant diseases, or the department of fish and wildlife and employees and agents of the state forest service in control of destructive wild animals.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 363. (2012). Shooting birds for amusement

Except for the taking of game pursuant to Title 10, any person who keeps or uses any live bird for release to be shot for amusement or as a test of marksmanship or provides buildings, sheds, yards, rooms, fields, or other areas to be used for such shooting purposes, shall be in violation of subdivision 352(1) of this title.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 365. (2012). Shelter of animals

(a) All livestock and animals which are to be predominantly maintained out-of-doors must be provided with adequate shelter to prevent direct exposure to the elements.

(b) Adequate natural shelter, or a three-sided, roofed building with exposure out of the prevailing wind and of sufficient size to adequately accommodate all livestock maintained out-of-doors shall be provided. The building opening size and height must, at a minimum, extend one foot above the withers of the largest animal housed and must be maintained at that level even with manure and litter build-up. Nothing in this section shall control dairy herd housing facilities, either loose housing, comfort stall or stanchion ties, or other housing under control of the department of agriculture, food and markets. This section shall not apply to any accepted housing or grazing practices for any livestock industry.

(c)(1) A dog, whether chained or penned, shall be provided living space¹⁶ no less than three feet by four feet for 25 pound and smaller dogs, four feet by four feet for 26-35 pound dogs, four feet by five feet for 36-50 pound dogs, five feet by five feet for 51-99 pound dogs, and six feet by five feet for 100 pound and larger dogs.

(2) The specifications required by subdivision (c)(1) of this section shall apply to each dog, regardless of whether the dog is housed individually or with other animals.

(d) A dog or cat confined in a living space shall be permitted outside the cage, crate, or structure for an opportunity of at least one hour of daily exercise, unless otherwise modified or restricted by a licensed veterinarian. Separate space for exercise is not required if an animal's living space is at least three times larger than the minimum requirements set forth in subdivision (c)(1) of this section.

(e) A dog maintained out-of-doors must be provided with suitable housing that assures that the dog is protected from wind and draft, and from excessive sun, rain and other environmental hazards throughout the year.

(f) A dog chained to a shelter must be on a tether chain at least four times the length of the dog as measured from the tip of its nose to the base of its tail, and shall allow the dog access to the shelter.

(g) A cat, over the age of two months, shall be provided minimum living space of nine square feet, provided the primary structure shall be constructed and maintained so as to provide sufficient space to allow the cat to turn about freely, stand, sit, and lie down. Each primary enclosure housing cats must be at least 24 inches high. These specifications shall apply to each cat regardless of whether the cat is housed individually or with other animals.

¹⁶ "Living space" means any cage, crate, or other structure used to confine an animal that serves as its principal, primary housing. Living space does not include a structure, such as a doghouse, in which an animal is not confined, or a cage, crate, or other structure in which the animal is temporarily confined.

(h) Notwithstanding the provisions of this section, animals may be temporarily confined in a space sufficient for them to stand and turn about freely, provided that they are exercised in accordance with accepted agricultural or veterinarian practices, and are provided sufficient food, water, shelter, and proper ventilation.

(i) Failure to comply with this section shall be a violation of subdivision 352(3) or (4) of this title.

(j) Notwithstanding the provisions of this section, an animal may be sheltered, chained, confined, or maintained out-of-doors if doing so is directed by a licensed veterinarian or is in accordance with accepted agricultural or veterinarian practices.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 366. (2012). Prohibited use of animals

- (a) No live animal shall be used as a fund-raising device or award in a contest, lottery, game, or promotion by any person or entity other than at an event recognized by an agricultural or sporting association.¹⁷ An alternative cash prize shall be offered. A person or entity shall not transfer or award an animal without reasonable assurance that the person receiving the animal will provide proper transportation and adequate care.
- (b) No live fowl, turtles, or rabbits under eight weeks of age in lots of less than six shall be offered for sale or sold, displayed or given away.
- (c) No dog, puppy, cat, or kitten shall be offered for sale, sold, displayed or given away on the side of any highway, as defined in 19 V.S.A. § 1, except by the owner or lessor of the abutting land. It shall be an affirmative defense under this subsection that a transaction involving a sale or giving away of a dog, puppy, cat, or kitten was previously arranged by the parties, and the sale or giving away on the side of the highway was only for the convenient transfer of the animal.
- (d) A person who violates this section shall be subject to a fine of not more than \$250.00.

No Applicable Case Law.

7. ANIMAL FIGHTING

VT. STAT. ANN. TIT. 13, § 364. (2012). Animal fights

- (a) A person who participates in a fighting exhibition of animals shall be in violation of subdivisions 352(5) and (6) of this title.
- (b) In addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize any equipment associated with that activity.
- (c) In addition to the imposition of a penalty under this chapter, conviction under this section shall result in forfeiture of all seized fighting animals and equipment. The animals may be destroyed humanely or otherwise disposed of as directed by the court.

¹⁷ “Agricultural or sporting association” means an organization or association determined by the secretary.

Updated as of December 19, 2012

No Applicable Case Law.

8. EUTHANASIA

VT. STAT. ANN. TIT. 13, § 371. (West 2012). Euthanizing animals

- (a) Registered animal shelters may purchase, possess, and administer approved euthanasia solution to euthanize injured, sick, homeless, or unwanted pets and animals in accordance with the rules established by the secretary of agriculture, food and markets under section 3913 of Title 20.
- (b) No person shall euthanize animals for an animal shelter without first completing the certification training program under section 3913 of Title 20, except a Vermont licensed veterinarian and a person in training under such program.

No Applicable Case Law.

9. TRANSPORTATION LIMITATIONS

VT. STAT. ANN. TIT. 13, § 381. (2012). Transportation by railroad; rest and feeding

- (a) A railroad company transporting animals shall not permit them to be confined in cars more than 28 consecutive hours, including the time they have been confined on connecting roads, without unloading them for rest, water and feeding for at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. Animals unloaded shall be properly fed, watered, and sheltered during each rest by the owner, or fed, watered, and sheltered during each rest by the owner or person having custody of the animals. In case of default, the railroad company transporting the animal shall provide feed and watering at the owner's expense. In this case, the company shall have a lien upon the animals for food, care and custody furnished.
- (b) Violation of the 28-hour rule of this section is a violation of subdivision 352(4) of this title.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 382. (2012). Transportation by truck; rest and feeding

- (a) No person shall confine or permit to be confined any animals being transported by truck under his or her orders or control for more than 18 consecutive hours without their removal from the truck for a rest period of not less than four hours. The animals shall be provided with feed and water during this period except when reasonable space, food, and water are provided in the vehicle. Reasonable space for animals and protection from the weather shall be provided in trucks employed commercially in the long distance transportation of animals.

- (b) A person who violates a provision of this section shall be in violation of subdivision 352(4) of this title.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 383. (2012). Shipping of animals

- (a) There shall be separation of livestock species, as defined in section 761 of Title 6, when these animals are transported by either rail or truck.
- (b) Failure to provide such separation shall be a violation of subdivisions 352(3) and (4) of this title.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 384. (2012). Preference of animals as freight

Any private or common carrier operating within this state shall yield to vehicles containing cattle, sheep, swine, equine, or other animals to allow continuous passage in preference to other freight. All vehicles and common carriers loaded with animals at any station shall take precedence over all other freight.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 385. (2012). Transportation on the highway without title documents

- (a) No person, except the owner of cattle being transported or a person acting under written authority of the owner, shall transport cattle on any public highway unless the person has in his or her possession a bill of sale or a memorandum signed by the owner of the cattle and containing the owner's address, the number, breed and ear tag number of the cattle, and the name of the place to which the cattle are to be transported. Any person transporting such cattle shall, on demand, exhibit a bill of sale or memorandum to any state investigator, sheriff, deputy sheriff, constable, police officer, or state police officer.
- (b) Violation of this section shall be punishable by a sentence of imprisonment of not more than 60 days or a fine of not more than \$1,000.00, or both.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 386. (West 2012). Confinement of animals in vehicles

- (a) A person shall not leave an animal unattended in a standing or parked motor vehicle in a manner that would endanger the health or safety of the animal.
- (b) Any humane officer or member of a fire and rescue service may use reasonable force to remove any such animal from a motor vehicle. The officer so removing an animal shall deliver the animal to a humane society, veterinarian or town or municipal pound. If the owner of the animal cannot be found, the officer shall place a written notice in the

vehicle, bearing the name of the officer and the department and address where the animal may be claimed. The owner shall be liable for reasonable expenses, and a lien may be placed on the animal for these expenses. The officer may not be held liable for criminal or civil liability for any damage resulting from actions taken under subsection (a) of this section.

- (c) Failure to comply with subsection (a) of this section is a violation of subdivision 352(3) of this title.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 387. (2012). Transportation of horses; vehicles

- (a) Every vehicle utilized for the transportation of more than seven horses¹⁸ on the highway shall meet the following requirements:
- (1) there shall be at least two doors for loading and unloading, which shall not be on the same side;
 - (2) loading ramps shall be provided if the vertical distance from the floor of the truck to the ground is greater than 15 inches;
 - (3) the interior compartment construction shall be of smooth material with no hazardous, sharp protrusions;
 - (4) there shall be sufficient openings to ensure adequacy of ventilation;
 - (5) partitions shall be placed in compartments having no stalls;
 - (6) doorways shall be of sufficient height to allow safe loading and unloading; and
 - (7) compartment height shall be sufficient to allow clearance of the poll and withers of each horse loaded.
- (b) Vehicles under this section shall have no more than one tier in compartments carrying horses.
- (c) The secretary shall establish rules for compliance with the provisions of this subchapter.
- (d) Failure to comply with this section, or the rules established thereunder, is a violation of subdivision 352(3) of this title.

No Applicable Case Law.

10. BESTIALITY

VT. STAT. ANN. TIT. 13, § 2821 (2012). Definitions

As used in this chapter:

- (1) "Child" means any person under the age of 16 years.
- (2) "Sexual conduct" means any of the following:
 - (A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva or the mouth and the vulva;

¹⁸ "Horse" means the entire family of equidae.

(B) any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;

(C) any intentional touching, not through the clothing, of the genitals, anus or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;

(D) masturbation;

(E) bestiality; or

(F) sadomasochistic abuse for sexual purposes.

(3) "Performance" means:

(A) an event which is photographed, filmed or visually recorded; or

(B) a play, dance or other visual presentation or exhibition before an audience.

(4) "Sexual performance" means any performance or any part of a performance, which includes sexual conduct by a child.

(5) "Promote" means to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.

No Applicable Case Law.

VT. STAT. ANN. TIT. 13, § 2822 (2012). Use of a child in a sexual performance

(a) No person shall, with knowledge of the character and content, promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.

(b) In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained the age of 16; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.

No Applicable Case Law.

11. DOMESTIC PETS OR WOLF-HYBRIDS ATTACKS

VT. STAT. ANN. TIT. 20, § 3809 (2012). Killing a domestic pet or wolf-hybrid which attacks a person or domestic animal.

Nothing in this subchapter shall be construed as preventing any person from killing a suspected rabid domestic pet or wolf-hybrid which attacks a person, another domestic pet or wolf-hybrid or domestic animal. A person so killing such domestic pet or wolf-hybrid shall not be held liable for damages for such killing.

No Applicable Case Law.

VT. STAT. ANN. TIT. 20, § 3545 (2012). Right to kill domestic pets or wolf-hybrids generally.

(a) A person may kill a domestic pet or wolf-hybrid that suddenly assaults him or her or when necessary to discontinue an attack upon the person or another person provided that the attack or assault does not occur while the domestic pet or wolf-hybrid is restrained, within an enclosure containing the domestic pet or wolf-hybrid, or on the premises of the owner.

(b) A domestic pet or wolf-hybrid found wounding, killing or worrying another domestic pet or wolf-hybrid, a domestic animal or fowl may be killed when the attendant circumstances are such that the killing is reasonably necessary to prevent injury to the animal or fowl which is the subject of the attack.

Applicable Case Law

***State v. Sylvester*, 112 Vt. 202, 22 A.2d 505 (1941).**

Facts: Defendant shot and killed a neighbor's dog when Defendant came upon the dog attacking Defendant's hens on Defendant's property. Defendant was convicted under 23 P.L. 8570 for openly and without intended secrecy, willfully and maliciously injuring and destroying a dog, the property of another, by shooting.

Holding: Judgment reversed; Defendant did not "maliciously" kill the dog. The words "willfully and maliciously" as here used are to be construed in the same manner that they have been construed in other criminal statutes. The word "willfully" as used means intentionally and by design, and that the word "maliciously" as used has a darker meaning and requires that, to the establishment of the crime, there should be found in addition a deliberate and evil intention on the part of the respondent to wrong and injure the owner of the [dog] by the destruction of his property in wanton and malevolent defiance of the rights of individual ownership. To warrant the killing of a dog for the protection of a domestic animal or fowl, the circumstances must be such as to create a reasonable belief that such killing is necessary to prevent injury to the animal or fowl.