

# ★ IC 35-46-3-6: Impoundment of Animals

Hannah Fisher, *BOAH*



1

## IC 35-46-3-6

- AKA the “bond” statute
- AKA the “pre-conviction forfeiture” statute
- Ultimate goal of code is to overcome barriers to seizing an animal if that is deemed necessary
- Different jurisdictions interpret the statute differently
  - Goals to modify statute to provide clarification
  - We will discuss the majority view and most efficient use



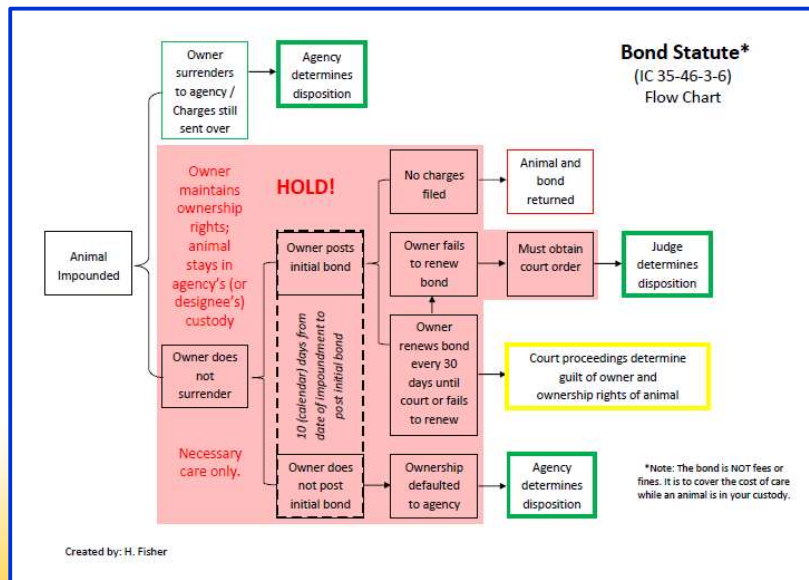
2

# ★ Animal are Property

- IC 35-31.5-2-253 "Property"
  - (a) Except as provided in subsection (c), "property" means anything of value. The term includes:
    - (12) captured or domestic animals, birds, and fish;
- 4<sup>th</sup> amendment implications
- Civil process implications



3



4

## Step 1A: Impound animal

- “Any LEO or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved.”
- ★
- Relevant Case Law
  - Trimble v. State, 842 N.E.2d 798 (Ind. 2006)
  - Baxter v. State, 891 N.E.2d 110 (Ind. Ct. App. 2008)



5

## Trimble v. State

- Trimble was asked by two individuals to care for their dog temporarily
- On multiple occasions, owners saw dog in poor condition and reminded Trimble of proper care
- Trimble sustained head injury and called owner to take him to hospital
- Owner saw dog's poor condition, told his wife, who told her sister, who called LE
- LE went to Trimble's without a warrant and coaxed dog out of doghouse via chain



6

## Trimble v. State, *cont.*

- LE called AC to seize dog because of conditions
- Trial Court denied Trimble's move to suppress evidence
- Convicted
- Court of Appeals reversed upholding that the warrantless search was a violation
- Supreme Court reversed Court of Appeals
  - LE and AC were legally permitted to be on property and dog was in plain view
  - Condition of dog qualified situation as "exigent" ★



7

## Baxter v. State

- Utility worker went to Baxter's property to pick up propane tank and observed dead animals
- Worker reported observations to supervisor and supervisor contacted AC
- AC and LE went to Baxter's *residential* property to make contact
- As they approached the door, they saw emaciated horses
- Baxter's son informed them dead horses were owned by his grandmother



8

## Baxter v. State, *cont.*

- LE and AC seized horses without a warrant
- State charged Baxter with 4 counts of failure to dispose, 13 counts neglect
- Warrantless search and seizure appealed
  - Article 1, Section 11 of the Indiana Constitution; no claim under the Fourth Amendment
- Upheld
  - LE and AC were legally permitted to be on property
  - Condition of live horses, combined with already deceased horses, qualified situation as “exigent” ★



9

## Step 1B: Provide notice?

- ★ • No statutory *requirement*
- Most jurisdictions *do* provide notice as courtesy
  - In person contact
  - Door hanger
  - Notice in mailbox
  - Certified letter
- Consistency is key!
  - Don't notify one owner and not notify another...defense attorney's ammo!



10

## Step 1C: What happens to the animals?

- “Animals are legally classified as property in the US. However, they do not behave like other property. Most evidence is inanimate, so its condition does not change over time unless someone permits it to degrade or tampers with it. The same is not true of animals... In fact, the very reason for seizing neglected or abused animals is to change their condition by altering their environment.” (Bernstein and Wolf, 2005)



11

## Step 1C: What happens to the animals?, *cont.*

- Animal *was* the evidence
- After scene processing, *the pictures, videos, reports, vet records, etc* become the evidence
- Animals will and should change condition due to appropriate care
- Animal care depletes resources and costs money



12

## Step 1C: What happens to the animals?, *cont.*

- Shelter stays cause “health, stress, and behavioral problems” to even the “healthiest, most well-adjusted animal” (Bernstein and Wolf, 2005)
  - And we are typically dealing with unhealthy and/or poorly-adjusted animals...
- 35-46-3-6 accomplishes one of two outcomes:
  - Offsets the costs related to caring for the animal throughout the court proceedings (if bond is posted)
  - Expedites getting the animal into a new, permanent home (if bond is not posted or is not renewed)



13

## Step 2A: Owner to post bond

- “The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded”



14

## Step 2A: Owner to post bond, *cont.*

- Disposition: Sterilized, microchipped, altered, cosmetic change, adopted/rehomed
- 10 days: calendar days
- Amount sufficient: jurisdiction specific
  - No legal guidelines on what defines “sufficient”
  - Compare to nearby jurisdictions
  - Factor in costs such as pre-existing boarding fees, ordinance-set costs for at large animals, animal’s medical condition, etc



15

## Step 2A: Owner to post bond, *cont.*

- “If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred”



16



## Step 2B: Owner to renew bond

- “The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted”
  - Amount should be equal to or less than initial bond



17

## Step 2C: Where does the bond money go?

- Each jurisdiction must determine how the money will be processed
  - Agencies that contract with a shelter facility typically use clerk's office
  - Agencies that impound and shelter typically use their own money line



18

## Step 2C: Where does the bond money go?, *cont.*

- The bond is not a fine or fee. It provides care for the animal
  - “But I could feed my dog for \$.50 / day...”
  - Bond encompasses material costs, veterinary care, facility overhead, staff wages, etc
- ★ Attempts to appeal based on 8th Amendment “excessive fines” have been denied



19

## Step 3: Failure to post/renew bond

- No mention of failure to post initial bond
  - Jurisdictions may terminate ownership on day 11 by default without court order
- “If a bond expires and is not renewed, the animal shelter may determine disposition of the animal, subject to court order”
  - Prosecutors should be pushing for court to terminate ownership!



20

## Step 4: State Veterinarian or Designee ★

- “Whenever charges are filed under this chapter, the court **shall** appoint the state veterinarian under IC 15-17-4-1 or the state veterinarian's designee...”
  - However, BOAH encourages AWOs to have BOAH involvement upon impound (most accurate depiction of animal’s conditions and charges may not be filed immediately)



21

## Step 4: State Veterinarian or Designee, *cont.*



Eric J. Holcomb, Governor  
Bret D. Marsh, DVM, State Veterinarian

### INDIANA STATE BOARD OF ANIMAL HEALTH

Office of the State Veterinarian  
Discovery Hall, Suite 100  
1202 East 38<sup>th</sup> Street  
Indianapolis, IN 46205-2898  
Phone: 317/544-2400

#### Indiana State Veterinarian's Designees for the Purposes of Ind. Code § 35-46-3-6 in Allen County, Indiana

The Indiana State Veterinarian, Bret D. Marsh, D.V.M., for the Indiana State Board of Animal Health makes the following designations:

1. Pursuant to Indiana Code § 35-46-3-6(e) and (f) a court may appoint the state veterinarian or the state veterinarian's designee to:
  - (1) investigate the condition of animals that are implicated in charges filed under Indiana Code §35-46-3 and the circumstances relating to the animal's condition; and
  - (2) make a recommendation to the court regarding confiscation and disposition of the animals under Indiana Code § 35-46-3-6(f).
2. The State Veterinarian recognizes that in some Indiana counties, including Allen County:
  - (a) A relatively large number of people may be charged with violations under Indiana Code § 35-46-3 requiring veterinary resources beyond what Indiana State Board of Animal Health employed veterinarians may reasonably provide in one county;
  - (b) A number of local private veterinary practitioners may be willing and accustomed to working



22

## Step 5: Court Proceedings

- If bond is posted and renewed up until court proceedings, judge makes determination on ownership rights
- ★ • Euthanasia as “destruction of evidence” need not affect case as long as state acted in good faith
  - Thoroughly document condition and veterinary records



23

## Step 5: Court Proceedings, *cont.*

- ★ • Do NOT bring live animals into a courtroom
  - Animal behavior is unpredictable
  - Condition of animal should have improved, thus confusing judge/jury
  - After scene processing, the pictures, videos, reports, vet records, etc become the evidence



24

## Take Aways

- Animals are not inanimate evidence and should not be treated as such
- ACOs/LEOs should be completing thorough documentation of animal's condition upon impoundment
- The act of impounding an animal initiates the 10 day bond period; there are no further requirements or court orders needed



25

## Take Aways, *cont.*

- Failure to post bond within 10 days transfers ownership rights to the impounding agency by default on day 11
- Failure to renew bond requires a court order to terminate ownership rights
- Prosecutors should push for "no owner/no keeper" upon conviction



26

