

## Key Points-Washtenaw County Legal Mandate Regarding Animals

### 1. Washtenaw County's General Legal Duty

- Dog Law of 1919 (MCLA 287.261 et seq)
- County Treasurer oversees the licensing of individual dogs and kennels (MCLA 287.265-270)
- County Sheriff has the duty to kill unlicensed dogs (MCLA 287.277) (This provision has been softened over the years so that an unlicensed dog that does not pose an immediate threat must first be kept for a period of time by the County before it may be destroyed. This means that the County must maintain or contract with another entity to maintain a dog pound to hold stray/unlicensed dogs for a period of time. See Youngblood v Jackson County, 28 Mich App 361 (1970)
- No mandate in the Dog Law indicating how long a county must hold a stray or unlicensed dog before it may be euthanized
- Use of Dogs and Cats for Research Act (MCLA 287.381 et seq), however, indicates, in part, that a county operating a dog pound must hold a dog without a collar, license or other evidence of ownership for 4 days; dogs with such evidence of ownership must be held for 7 days (MCLA 287.388) This has commonly been accepted as the waiting period for stray animals in Michigan.
- County may, if it chooses, pass an ordinance to create an animal control agency. The ordinance shall provide for animal control programs, personnel and necessary expenses incurred in animal control. A county animal control agency created pursuant to ordinance does not have jurisdiction in those areas of the county where a city, village or township has passed its own animal control ordinance. (MCLA 287.289a)
- An animal control program established by ordinance could address the handling of other stray animals other than dogs and provide for an animal control shelter to house such animals.
- Definition of "Animal Control Shelter" "A facility operated by a county, city, village or township to impound and care for animals found in streets or otherwise at large contrary to any ordinance of the county, city, village or township or state law." (MCLA 750.50(d))
- Washtenaw County has never adopted an animal control ordinance; as such, its general legal mandate is to handle stray dogs, it is not, however, generally responsible for stray cats, raccoons or any other species of stray animal. As such, it is more precise to state that the County is responsible for operating a dog pound, not the more broader animal control shelter.

### 2. Specific Laws other than the Dog Law and a County's Responsibility Under Those Laws

- **Dangerous Animals Act** (MCLA 287.321 et seq) Under this Act, a dangerous animal may be ordered by a court to be placed in an animal control authority, an incorporated humane society, a licensed veterinarian or a boarding kennel at the owner's option

- pending the outcome of the legal proceeding involving that animal. The owner, however, not the County or Humane Society is financially responsible for the boarding of the animal during this period. (MCLA 287.322(2)).
- **Criminal Dog Fighting Act (MCLA 750.49).** An animal used in a fighting ring shall be confiscated as contraband by a law enforcement officer and taken to a local humane society or other animal welfare agency. (MCLA 750.49(16)) Note that the duty is charged to a law enforcement officer, not specifically to the Sheriff or his/her deputies.
    - Similar to the Dangerous Animal Act, expenses incurred in connection with the housing, care, upkeep or euthanasia of the animal by a humane society or other animal welfare agency shall be assessed against the owner of the animal, not the county or a humane society.
  - **Crimes against Animals, Cruel Treatment, Abandonment, Failure to Provide Adequate Care (MCLA 750.50)**
    - MCLA 750.53 provides, in part, that when any person is arrested for violating animal cruelty charges under MCLA 750.50, “it shall be the duty of the person making the arrest to seize all animals and fowls found in the keeping or custody of the person arrested...and the person making such seizure shall cause such animals or fowls to be at once delivered to a pound master of the city, village or township...and it shall be the duty of such pound master to receive such animals or fowls, and to hold the same and proceed in regard to them in all respects as provided by law in other cases of animals impounded.” Interestingly, this section does not mention a county pound master; however, since the seizure of the animals and/or fowls involves the enforcement of the criminal laws of the state, I believe the county would be generally responsible for the cost to hold these animals/fowls, unless the specific criminal statute involved places the burden of paying for such boarding costs on another party such as the Dog Fighting Act, referenced above which plainly states that all expenses for boarding the animal are the responsibility of that animal’s owner.
    - A close review of MCLA 750.50 also reveals that an animal which is being held as part of a criminal animal cruelty case does not necessarily have to be held by the Humane Society or animal protection shelter for the duration of the trial. Section (3) of MCLA 750.50 provides a process whereby the county prosecutor may file a civil action before the disposition of the criminal case seeking the forfeiture of the animal or animals to the Humane Society or other entity holding such animals. According to this section, the court must hold a hearing on this civil action within 14 days of the filing of the action by the prosecutor. The prosecutor must establish by a preponderance of the evidence (51%) that the animal in question has suffered the cruelty as alleged in the criminal complaint. If the court agrees with the prosecutor’s motion, it shall order the immediate forfeiture of the animal to the animal control shelter or animal protection shelter unless within 72 hours of the court’s decision, the animal’s owner submits to the court clerk enough cash or other security sufficient to repay all costs incurred in boarding the animal and all costs anticipated to be incurred in boarding the animal from the date of impoundment to the date of trial. Simply put, under this process, the

ownership of the animal may be transferred from the owner to the shelter holding the animal or alternatively, the owner must pay for all the costs to keep that animal at the boarding facility through trial. In either case, the county would not be responsible for boarding such animals through the entire trial process in a cruelty case.

- In addition, MCLA 750.50(8) also provides that as part of sentencing for a conviction for animal cruelty, “the court may order the defendant to pay the costs of the care, housing and veterinary medical care for the animal, as applicable. If the court does not order a defendant to pay all of the applicable costs listed in this subsection, or orders only partial payment of these costs, the court shall state on the record the reason for that action.” While this section does not mandate that the defendant/owner upon conviction pay for the cost of boarding an animal during the trial process, it is clear that a judge is encouraged to assess such costs against the defendant or to explain in his/her order why such costs are not being assessed.
- **Killing, Torturing, Mutilating, Maiming or Disfiguring Animals (MCLA 750.50b)**
  - MCLA 750.50b is similar to MCLA 750.50 in that the prosecutor has the ability to file a civil action to forfeit the animal to an animal control or protection shelter. Likewise, it contains identical language to MCLA 750.50 giving the court the power to assess boarding and all related costs for the animal to the animal’s owner and instructing the judge to indicate on the record any reasons why he/she is not ordering the owner to pay such charges.
  - MCLA 750.52 simply states that it is the duty of all law enforcement personnel, including sheriff’s deputies, constables, policemen and public officers to arrest and prosecute all persons who they have knowledge of violating the animal cruelty laws. This section also states that it is a misdemeanor for a law enforcement individual to neglect this duty. Again, the duty here is placed on all law enforcement personnel, not just the county sheriff or his deputies.
- **Public Health Responsibilities**
  - Primarily involves suspected rabies cases. If a stray dog, cat or ferret is suspected of having contact with a rabid wild animal but still appears healthy, it is to be held for the statutory period (4 days if there’s a collar or other indicia of ownership on the animal or 7 days if there is no evidence of ownership). Alternatively, these animals may be held for the general 10 day observation period. If any animal, whether a stray or not is showing symptoms of rabies, it must be euthanized and tested. If an owned animal appears healthy but the owner no longer wants the animal, it is to be euthanized and tested. Conversely, if the owner wishes to keep the animal and it appears to be healthy, it must be confined for 10 days to determine if symptoms of rabies will appear. The above stated time periods are consistent with Michigan law as published by the Michigan Department of Community Health.

## Summary

The County is responsible for the housing of stray dogs under the Dog Law of 1919. The County must pay for those dogs to be boarded for the statutory holding period of 4 days if the dog has a collar, license or other indicia of ownership or 7 days if it does not have such evidence of ownership. After this holding period, the dog could be euthanized and the county would have no further responsibility for the animal.

The County has no similar financial responsibility for other stray animals. While a county may, by ordinance, create an animal control agency to address the handling of these other species, Washtenaw County has never adopted such an ordinance and thus is not generally responsible for these animals.

The County has no financial responsibility for animals boarded under the Dangerous Animal or Fighting Dog laws as they acts specifically allocate the cost of boarding any animals under those laws, to the animal's owner.

The County would have financial responsibility to pay for animals boarded under the general animal cruelty law found in MCLA 750.49-53. However, the two main sections involving animal cruelty, MCLA 750.50 and MCLA 750.50b both provide a process for the animal to be forfeited to the animal control or protection shelter. In addition, each of these acts encourages judges to assess boarding costs against the animal's owner.

Finally, under the Public Health Code, the county would be responsible for holding certain animals suspected of having come into contact with a rabid animal for a period of time up to 10 days depending upon whether the animal was a stray, had indicia of ownership etc.

Source: Washtenaw County Corporate Counsel

H: general/hshvpoints