

Memorandum Urging Approval

COMMITTEE ON ANIMALS AND THE LAW

Animals #25-GOV

September 21, 2018

S. 4796-A

By: Senator Lanza

A. 62-A

By: M. of A. Paulin

Senate Committee: Agriculture

Assembly Committee: Rules

Effective Date: Immediately

AN ACT to amend the Agriculture and Markets Law, in relation to the proper venue for an impounding organization to file a petition for a security.

LAW & SECTION REFERRED TO: Subdivision 6 of Section 373 of the Agriculture and Markets Law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL**

Section 373 of the Agriculture and Markets Law sets forth the procedures that must be followed in a prosecution for animal cruelty when the animal subjected to cruel or inhumane treatment, or neglect, is taken from its owner. Subdivision 6 permits the SPCA, humane society, pound or animal shelter that has taken possession of an animal in an animal cruelty prosecution to file a petition in court requesting that a security bond be posted by the person from whom the animal has been seized, to pay for the cost of caring for the animal while the criminal charges are pending. The security is intended to cover the organization's cost of providing for the animal, including medical care and board. Since the court action may take months before reaching a final determination, and since many of the animals in these cases are unhealthy or very sick, the cost of caring for them can be substantial. Many humane societies and shelters decline to become involved in these cases because they do not have the financial resources to care for animals that are taken from their owners during the pendency of an animal cruelty prosecution.

The provision for the organization that has taken custody of the animal to obtain reimbursement for their costs in caring for those animals from the owner was included in the law through the security bond, which can be obtained by the organization that has custody of the animal during the pendency of the case. Those provisions have not always worked very well, and there have been a number of attempts in recent years to amend this section of law to make it easier for the organization caring for the animal to obtain a security bond, or to have access to the funds guaranteed by the security.

This bill makes one additional change to that section of law that would eliminate an obstacle that has arisen in certain jurisdictions when the security bond is sought. Since the animal cruelty case is a criminal prosecution, that action would be heard in a criminal court; a petition for security for costs is a civil matter, and should technically be heard in a civil court. Many local jurisdictions have a single court for both civil and criminal matters, but where there are both criminal courts and civil courts, the criminal court having all the information on the animal cruelty charge may decline to rule on a petition for security, or its jurisdiction over the petition may be challenged, and the court often direct that the petition be heard in civil court. This bill would allow the criminal court to rule on the petition for security bond. With this change, the district attorney or organization that is seeking a security bond would be able to file the petition in the criminal court that has jurisdiction over the criminal animal cruelty charge, and has all the information that underlies the need for the security bond. This change is simply a streamlining of the various court actions that are all part of an animal cruelty prosecution when it also involves caring for the animals on which the criminal case is based. The bill does not change the standard for allowing a petition for security to be filed, or the time in which it must be presented to the court.

The process of proceeding with an animal cruelty prosecution can be cumbersome, involving expert witnesses to testify about the condition of the animals involved and organizations to care for the animals, in addition to the prosecutor and the parties charged with the crime. This small change, a streamlining of the legal process, disadvantages no one and allows the petition for security for the cost of care to be heard more quickly and by a court that has knowledge of the underlying charge. The law should be changed as proposed by A.62-A/S.4796-A for the sake of all parties involved in an animal cruelty case, and to ensure that funds would be made available to care for the animals at the heart of any such case.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation and **URGES ITS APPROVAL** by the Governor.