

What is the Scope of the Duty to Provide Veterinary Care?

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Anyone who has watched Animal Planet's *Animal Precinct* will recognize this familiar scenario: a special investigator from the ASPCA arrives at a defendant's home, discovers a dog with an obvious medical condition, determines that the dog is not receiving what the officer believes to be needed medical care, seizes the dog, takes it to the ASPCA to be treated, and arrests the owner on charges of animal cruelty. *See, e.g., People v. Arroyo*, 777 N.Y.S.2d 836, 846 (N.Y. Crim. Ct. 2004). What these compelling stories do not address, however, is the extent to which such seizures and arrests are supported by the state animal cruelty laws.

Not all state laws require that owners provide their animals with veterinary care. Even when they do, it is by no means clear what level of care is required. Another question left unanswered by these statutes is whether, when an owner does seek care for an animal, there are any instances where her choices for how that animal should be treated can be overridden.

The duty to provide veterinary care, to the extent that it exists, can be

found in animal cruelty statutes. State criminal laws prohibiting cruelty to animals—which includes both abuse and neglect—have provided the primary means in which our legal system has protected animals. Many of these statutes not only prohibit abusive treatment of animals, but they also impose affirmative duties on people who care for animals. California, for example, makes it a misdemeanor for an owner to permit the animal to be without “proper care and attention.” Cal. Penal Code § 597f(a) (West 1999).

Another provision requires animal depositaries to “provide the animals with necessary and prompt veterinary care, nutrition, and shelter, and treat them kindly.” Cal. Civ. Code § 1834 (West Supp. 2009). While the “treat them kindly” provision may be unique to California, laws imposing affirmative duties for proper housing, veterinary care and feeding of animals are becoming increasingly common.

Implicit vs. Explicit Duties to Provide Veterinary Care

The affirmative duty to provide veterinary care can be explicit in the statute's language or it can be interpreted from more general language in the statute. In New York, for example, where *Animal Precinct* is set, there is no explicit language that requires veterinary care. The New York Criminal Court rejected the argument that the affirmative duty to provide “necessary sustenance” includes veterinary care. *Arroyo*, 777 N.Y.S.2d at 842.

Some cases have, however, found a limited duty to provide such care within the statute's prohibition against an “omission or neglect” that causes or permits “unjustifiable physical pain, suffering or death.” *See* N.Y. Agric. & Mkts. Law § 350(2) (McKinney 2004); *People v. Curcio*, 874 N.Y.S.2d 723 (N.Y. Crim. Ct. 2008); *People v. Walsh*, No. 50556(U), slip op., 2008 WL 724724

(N.Y. Crim. Ct. Jan. 3, 2008).

Animal cruelty statutes in Maryland, the District of Columbia and Virginia all contain explicit provisions requiring some level of veterinary care. Maryland's law, for example, prohibits a person with custody of an animal from “unnecessarily fail[ing] to provide the animal with ... necessary veterinary care” Md. Code Ann., Crim. Law § 10-604(a) (5) (LexisNexis Supp. 2009). The District's law contains nearly identical language, though it omits the second “necessary.” *See* D.C. Code § 22-1001(a)(1) (Supp. 2009).

Virginia's law varies in two ways: it does not place the affirmative duty only on the animal's owner or custodian, and it limits the affirmative obligation, with an offense occurring when “[any person] deprives any animal of necessary food, drink, shelter or *emergency* veterinary treatment” Va. Code Ann. § 3.2-6570(A)(ii) 2008) (emphasis added). What is not clear, however, is under what conditions veterinary care would be considered “necessary,” what constitutes an emergency, and in all cases, what level of care might be required. Would an owner, for example, be required to spend money that she might not have on “necessary” veterinary care?

How Much Care is Necessary?

Such lack of guidance was the subject of a recent class action suit challenging the constitutionality of DC's animal cruelty law. Several animal owners joined in challenging the law after their pets were seized, underwent veterinary treatment that the owners considered unnecessary and were not returned to the owners until they agreed to pay for the treatment. *Daskalea v. Washington Humane Society*, 480 F. Supp. 2d 16 (D.D.C. 2007). In the case of two of the plaintiffs, Humane

Society law enforcement officers seized their dogs from parked cars.

According to the complaint, one dog was “forcibly sterilized” against its owner’s will, and the other was only returned to its owner when she “agreed to pay . . . [for] unnecessary medical treatment.” *Id.* at 19 (quoting plaintiffs’ amended complaint). A third dog, which had cancer, was seized from the owner’s home and was not returned until he consented to and agreed to pay for “radical treatment” in the form of “major cancer surgery.” *Id.* (quoting plaintiffs’ amended complaint). In the suit, these owners claimed that the statute was unconstitutionally vague, that it failed to provide sufficient procedural safeguards and that it was enforced arbitrarily. *Id.* at 18.

Addressing these and other issues in the Humane Society’s Motion to Dismiss, the court concluded that neither “unnecessarily” nor “proper” was so indefinite as to make the provision, “unnecessarily fails to provide the [animal] with proper food, drink, . . . veterinary care, shelter, or protection from the weather” unconstitutionally vague. *Id.* at 30, 33 (quoting D.C. Code § 22-1001(a)). It did, however, uphold the plaintiffs’ procedural due process challenge, which was based, in part, on the amount of discretion that the statute gives to Humane Society enforcement officers and the statute’s failure to “prevent involuntary medical treatment.” *Id.* at 31, 36. This case, which is still pending, raises fundamental questions of how much medical care is necessary and who gets to decide. See *Daskalea v. Washington Humane Society*, 577 F. Supp. 2d 82 (D.D.C. 2008) (dismissing plaintiffs’ motion for partial summary judgment).

Several New York cases may give limited guidance as to what level of care might be found “necessary.” New York law, as noted above, does

not contain an explicit requirement for veterinary care, and one court has found that no such duty was implied in the statute’s language. See *People v. Arroyo*, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004). Guided in part by “current standards of morality with respect to pet owners’ duty to provide medical care for their animals,” *id.* at 837, the court found that the statute’s language prohibiting “unjustifiable physical pain” was too vague to criminalize the failure to provide medical care to a pet dog with a large cancerous tumor, and thus granted the defendant’s motion to dismiss. *Id.* at 844.

The court was especially reluctant to read such a duty into the statute when fundamental questions, such as how much care need be provided, remained unanswered. In calling on its legislature to take the lead if there was to be a requirement to provide veterinary care, the *Arroyo* court pointed to statutes in Pennsylvania and Maryland as examples of states where depriving an animal of veterinary care was explicitly made a crime (though the language in neither statute answers the “how much care” question). *Id.* at 845.

In contrast to *Arroyo*, two subsequent decisions found sufficient distinctions to conclude that the same language, “unjustifiable physical pain,” did imply a duty to provide medical care, and the defendants’ motions to dismiss were denied. *People v. Walsh* found that allowing a cat’s tumor to go untreated could violate the cruelty statute, especially where, unlike *Arroyo*, there was a “pattern of neglect.” No. 50556(U), slip op., 2008 WL 724724, at 3–4 (N.Y. Crim. Ct. Jan. 3, 2008). And in contrast to *Arroyo*, where the court’s reluctance to imply a duty to provide medical care was in part based on the recognition that some owners could not afford it, the *Walsh* court suggested that owners unable to finance needed care could

surrender the animals to the ASPCA. *Id.* at 3.

Similarly, in *People v. Curcio*, the defendant’s motion to dismiss was denied where his choice not to have his dog’s tumor treated was alleged to have caused the dog to “suffer needlessly” in violation of the cruelty statute. 874 N.Y.S.2d 723, 731 (N.Y. Crim. Ct. 2008). One of the defendant’s arguments in this case centered on the claim that the statute should not be read to criminalize the failure to provide such extensive and expensive treatment as the ASPCA undertook for his animal. This again raises the fundamental question of how much care is required. See *Id.* at 733.

Even among statutes that require veterinary care, there is little guidance beyond that bare requirement. Recent amendments to Michigan’s statute on crimes against animals give a bit more guidance than most state laws by requiring that animals receive “adequate care,” which includes “veterinary medical attention in order to maintain an animal in a state of good health.” Mich. Comp. Laws Ann. §§ 750.50(1)(a), (2)(a) (West 2004). The final phrase is further defined as “freedom from disease and illness, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal is undergoing appropriate treatment.” *Id.* § 750.50(1)(K). Even with this level of specificity, however, there is much room for debate. What still remains unclear is the extent to which “appropriate treatment” can be a function of the owner’s ability to pay.

Can Owners’ Treatment Choices Ever Be Overridden?

As the DC and New York cases demonstrate, owners who choose no treatment for their animals may be subject to prosecution, especially in states like

Maryland where there is an explicit, affirmative duty to provide veterinary care. What is less clear, however, is the extent to which the *range of treatment options* may be circumscribed by such laws. Treatment choices, including the ultimate choice to euthanize an animal, are sometimes made for economic reasons.

An animal may have a treatable condition, but if its owner cannot afford, or chooses not to spend the money on, the treatment, one option might be having the animal humanely euthanized. While these choices might sometimes be troubling, it would be hard to argue that they run afoul of any state's animal cruelty laws.

Some decisions to euthanize an animal may, however, be so extreme as to warrant intervention. The most problematic reason why euthanasia is chosen in veterinary medicine is often dubbed "convenience euthanasia" because it occurs when the decision seems to be made purely for the convenience of the animal's owners. See Clinton R. Sanders, *Killing with Kindness: Veterinary Euthanasia and the Social Construction of Personhood*, 10 Soc. F. 195 (1995). Bernard Rollin, an ethicist at Colorado State Veterinary School, reports that the request to euthanize healthy animals is the most stressful and "demoralizing part of companion animal practice." Bernard E. Rollin, *An Introduction to Veterinary Medical Ethics: Theory and Cases* 54 (2d ed. 2006).

Some of the real examples of convenience euthanasia that he cites are just horrific: "clients going on vacation and not wanting to pay boarding fees, or clients tired of an adult dog and wanting a puppy, or clients who have redecorated and the dog doesn't match the color scheme" *Id.* at 53–54.

Laws against animal cruelty, particularly those with provisions requiring veterinary care, may provide some

basis for challenging such owner treatment choices. These laws already provide the place where we, as a society, have determined that certain behavior towards animals will not be tolerated, and they could be used to limit these extreme treatment choices by clarifying the provisions that require proper veterinary care. Currently, among the cruelty statutes that explicitly address veterinary care, some specifically exempt owner choices for humane euthanasia.

For example, Nebraska's statute on offenses against animals requires animal caretakers to provide "care as is reasonably necessary for the animal's health," but specifically allows "[h]umane killing . . . upon the owner's request" Neb. Rev. Stat. §§ 28-1008(1), 28-1013(6) (2008). Similarly, Alabama exempts from its cruelty prohibitions "[a]ny owner of a dog or cat who euthanizes the dog or cat for humane purposes." Ala. Code § 13A-11-246(2) (LexisNexis 2005). Unlike Nebraska's and Alabama's laws, statutes in Maryland, D.C. and Virginia do not contain exemptions for owner-requested euthanasia. Maryland's cruelty statute does exempt from its prohibitions "customary and normal veterinary ... practices," Md. Code Ann., Crim. Law § 10-603(1) (LexisNexis 2002), which may or may not include owner-requested euthanasia.

At least one statute does contain language that could support an argument that convenience euthanasia violates anti-cruelty law. Delaware, like a number of other states, requires animal owners to provide "[p]roper veterinary care." Del. Code Ann. tit. 11, § 1325(a)(11) (2007). But, unlike in other states, an animal owner in Delaware is guilty of cruelty when he "unnecessarily kills ... any animal" *Id.* § 1325(b)(4). The statute expands on "unnecessarily" to include killing "if the act is not required to terminate

an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal" *Id.*

This language appears to contain a clear prohibition of killing a healthy animal merely for the owner's convenience ("not required to terminate . . . suffering"), while allowing the flexibility to make such choices to prevent a true financial hardship ("to protect . . . property"). The final clause, despite the unfortunate choice of "disposing," can be read as encouraging owners to find other homes for their unwanted animals or at least to take them to a shelter that will provide better care for them.

The statute also contains an exception for "accepted veterinary practices." *Id.* § 1325(b). While, at first, this exception may appear to sanction the killing of a healthy animal at the owner's request, it more likely allows for input from the veterinary profession—and even for evolving standards—as to what is deemed acceptable. If most veterinarians, as has been reported, truly object to performing convenience euthanasia, then the procedure cannot easily be characterized as an "accepted veterinary practice." If nothing else, such language could certainly support a veterinarian's refusal to comply with an owner's request to euthanize a healthy animal.

One argument against this interpretation is that it raises the question of what happens to the unwanted animals. Some veterinarians reluctantly acquiesce to owner-requested euthanasia of a healthy animal because they cannot take on caring for the animals that the owner no longer wants, and they do not want to be responsible for what may happen to these unwanted animals. Here, again, animal cruelty statutes' penalty provisions provide some useful guidance.

In Delaware, for example, violators of the cruelty prohibitions, including that against unnecessary killing, are prohibited from owning or possessing an animal for five or fifteen years, depending on whether the crime is a felony or a misdemeanor. *See Id.* §§ 1325(c)&(d). A number of other states' cruelty statutes allow courts to require the forfeiture of abused animals or similarly prohibit future ownership of an animal from owners who abuse them. *See, e.g.,* D.C. Code §§ 22-1001(a)(2)(B), (D) (Supp. 2009).

Animals that are removed from abusive owners can be re-homed through shelters or animal rescue groups. Thus, denying an owner the choice to euthanize a healthy animal and then finding another home for the animal is essentially another way of confiscating an animal to protect it from what can be characterized as a form of abuse: viewing that animal as disposable property.

The Delaware statute could serve as a model of how to use cruelty laws to challenge the truly egregious owner choice of euthanizing a healthy animal. The statute's language contains enough leeway to allow owner interests, even financial ones, to trump the animal's interest, while discouraging the killing of a healthy animal when other options exist for the animal. It allows for veterinarians to challenge an owner's choices that go against accepted practices, and it contains provisions to protect animals from being owned by people who would treat them in this way. Criminalizing behavior involving treatment choice through cruelty statutes requires a careful balance. Legislators drafting these statutes need to leave room for other options where euthanasia choices or decisions not to treat ought to be left to the owner's discretion or may be based on their inability to pay for treatment.