



**ANIMAL LEGAL  
DEFENSE FUND**

**BOND-OR-FORFEIT ANIMAL CARE STATUTES  
POSITION STATEMENT**

Animal Legal Defense Fund Position Statement



## INTRODUCTION

**F**ounded in 1979, the Animal Legal Defense Fund (ALDF) is a national nonprofit organization of attorneys specializing in the protection of animals and working to ensure the enforcement of animal protection laws throughout the United States. ALDF staff attorneys work out of offices in five states, helped by over 2,000 volunteer attorneys nationwide who are ALDF members and who work on a pro bono basis. Total contributing membership of the ALDF is over 200,000.

ALDF's Criminal Justice Program operates nation-wide to support legislative efforts to improve animal cruelty laws, produce amicus curiae briefs in cases implicating the position of animals within criminal law, promote legal education in the fields of criminal law and animal law, and provide no-cost prosecution assistance in animal cruelty cases. ALDF possesses a depth of expertise regarding crimes involving animals, including the issues implicated by cost of care and pre-trial forfeiture statutes designed to address the needs of animals who are in state or third-party custody pursuant to potential abandonment, neglect, abuse, or other unlawful animal cruelty.

The Animal Legal Defense Fund recognizes that laws underscoring the responsibility of those who own animals seized pursuant to criminal investigations to pay the costs of the seized animals' reasonable care needs (or allowing owners to avoid doing so by divesting themselves of ownership) are a widely used and integral component of the modern response to animal cruelty cases. Such 'bond-or-forfeit' statutes are constitutionally-compliant mechanisms that strike an equitable balance between owner property interests, the legal obligations and fiscal costs assumed by those providing care to seized animals, and the wellbeing of the animals themselves.

## NECESSITY OF PROVIDING SEIZED ANIMALS WITH MINIMUM CARE

Animals seized pursuant to cruelty cases are fundamentally unlike other forms of property that might be seized during a criminal investigation. Unlike inanimate objects, animals require sustenance, shelter, and medical care. This is all the more so in the cases where the sub-standard treatment animals have been exposed to prior to seizure results in the animals requiring reasonably remedial medical care beyond the minimum the animal would otherwise need.

Notably, declining to provide such care is not an option the party having custody of the animals can avail themselves of. Failure to provide seized animals with necessary care conflicts with the statutory duty to refrain from conduct constituting animal neglect. Simply put, while a seized object may be deposited in an evidence locker pending trial without requiring further attention, doing the same to a seized animal would implicate the responsible agency in committing animal cruelty by failing to provide an animal in their custody with food, water, shelter, and medical care—all necessities for any living creature. By the same token, declining to provide for a seized animal's reasonable care results in an absurd outcome with regard to the original criminal charges that animal was seized pursuant to.

Amongst their other goals, animal cruelty statutes are meant to shield animals from suffering and death; seizing animals only to then cause them to suffer and die by withholding care cannot be the appropriate outcome.

## **HISTORICAL IMPACT OF MINIMUM CARE EXPENSES, & RESPONSIVE CREATION OF BOND-OR-FORFEIT STATUTES**

The unavoidable costs of providing seized animals with care have historically been a challenge for the justice system, both perversely incentivizing animal crimes to go under-investigated and giving rise to further litigation concerning recovery of care costs. In response, legislators have developed legal remedies that ensure seized animals continue to receive necessary care whilst their owners await adjudication of criminal charges—and that costs of that care are appropriately allocated.

The most common of these statutory schemes is ‘bond-or-forfeit.’ Thirty-four states<sup>1</sup> have adopted this legal mechanism, which requires the owner of a seized animal to post security or bond to cover the reasonable costs of caring for that animal. If the owner fails to do so, the animal is forfeited. The logic behind bond-or-forfeit is straightforward. Had the animals not been seized, their owner would have a legal obligation to provide them with certain basic necessities. Meeting this legal obligation, of course, entails commensurate expenses which would fall upon the owner. Bond-or-forfeit statutes simply creates a mechanism whereby the owner provides the agency who is *actually* spending money to provide seized animals with reasonable care with the money the owner themselves would have been spending to provide the animals with those necessities such as food, water, shelter, and medical care. In the alternative, the owner may choose to forfeit the animals by declining to post bond—just as the owners of unseized animals may divest themselves of their legal obligation to provide their animals with care by transferring ownership of the animals to someone else.

## **BOND-OR-FORFEIT IS DISTINCT FROM CRIMINAL PROSECUTION**

Bond-or-forfeit statutes are distinct from criminal prosecution for animal cruelty. In most states, the petitioner (typically the custodian of the seized animal, or the state acting on that custodian’s behalf) does not need to prove, by any standard, that the animals were criminally abused.

This is because bond-or-forfeit provisions are equitable, not punitive. Custodians of animals have certain legal obligations to meet those animals’ minimum needs; this is—as outlined above—all the more so for custodians of seized animals. Requiring an animal’s owner to pay those costs in order to maintain ownership does not constitute punishment. Rather, this amounts to simply ensuring that an animal’s owner pays the necessary costs expended on that animal’s necessary care—no conduct is being punished, nor is any punitive goal

<sup>1</sup> Alaska, Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, Tennessee, Texas (for appeals), Virginia, Washington, West Virginia, Wisconsin, and Wyoming (for cases involving livestock).

implicated. If the owner is unable to afford those necessary costs of care, she should (and under bond-or-forfeit laws, is required to) give up the animal.

## **COURTS HAVE CONSISTENTLY FOUND BOND-OR-FORFEIT STATUTES CONSTITUTIONAL**

While litigation concerning the constitutional legitimacy of bond-or-forfeit statutes is limited,<sup>2</sup> each of the appellate courts who have examined these laws has upheld their constitutionality. These courts have held that bond-or-forfeit is a civil rather than criminal procedure, and that therefore both Fifth Amendment prohibitions on double jeopardy and Sixth Amendment criminal counsel requirements are not implicated. These courts have also noted that bond-or-forfeit is a remedial rather than punitive measure, and that therefore the Fifth Amendment's Takings and Due Process Clauses, the Eighth Amendment's prohibition of excessive fines, and the Fourteenth Amendment's Due Process Clause are likewise inapplicable.

## **BOND-OR-FORFEIT IS DISTINCT FROM TRADITIONAL CIVIL ASSET FORFEITURE**

It is important to realize that while bond-or-forfeit statutes share a superficial similarity with traditional civil asset forfeiture schemes (insofar as the end result is forfeiture of property), bond-or-forfeit is fundamentally distinct in both form and function from the sort of traditional civil asset forfeiture one might see in a drug case.

Traditional civil asset forfeiture is aimed at a wide range of purposes, such as preventing profiteering from illegal behavior, addressing use of property for illegal purposes, allowing abatement of nuisances, and compensating victims. As a result, when the statutes enabling those traditional forfeiture schemes are taken in aggregate, it becomes apparent that a wide range of property is potentially vulnerable to traditional civil asset forfeiture. Moreover, traditional asset forfeiture schemes tend to allow forfeited property or proceeds from selling that property to be retained by the state. This, in turn, has prompted concern that traditional asset forfeiture may result in disproportionate impact on property owners, or may inappropriately incentivize the state to engage in forfeiture.

In contrast, bond-or-forfeit statutes are narrowly focused in both their form and function, serving a fundamentally different purpose, with a fundamentally different result. The purpose of bond-or-forfeit statutes is to ensure that seized animals are provided with the care they require, and that the associated reasonable expenses of that necessary care are borne by the party who owns the animals—assuming that party wishes to continue as their owner. Bond-or-forfeit statutes do not typically allow for seizure of other property, nor do they typically allow for the seized animal's custodian to retain money in excess of the animal's reasonable expenses. As a consequence, the policy and legal concerns that have arisen in reaction to traditional civil asset forfeiture are not applicable to bond-or-forfeit statutes.

<sup>2</sup> Appellate cases considering the issue consist of Washington's *State v. Tarnavsky*, Oregon's *State v. Branstetter*, and Illinois' *People v. Koy*. *State v. Tarnavsky*, 84 Wash. App. 1056 (Washington Appellate 1996); *State v. Branstetter*, 181 Or. App. 57 (Oregon Appellate 2002); *People v. Koy*, 13 N.E.3d 1260 (Illinois Appellate 2014).



The financial impact of bond-or-forfeit statutes on animal owners is precisely proportionate to the care needs of the animals in question; no mechanism incentivizes seizure or forfeiture for its own sake.

Animals are living, sentient beings, not the objects that traditional civil asset forfeiture deals in. Animals must be—and, fortunately, are—treated differently under bond-or-forfeit laws. Bond-or-forfeit statutes are vital tools for ensuring that the custodial obligation to provide animals with care is met, and that enforcement of animal cruelty laws is not blocked by the specter of cost of care being inappropriately borne by nonprofits or the state.