

VIRGINIA ANIMAL CRUELTY LAWS

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Introduction

In Virginia, criminal animal protection laws are contained primarily within Title 3.2, the Comprehensive Animal Care laws, which include the state's anti-cruelty and animal fighting provisions. However, there are also other laws related to animal cruelty defined elsewhere within the Code of Virginia. This document lists each animal protection law currently in place and the procedural sections of each law with which officers must comply when enforcing a provision of that law. When available, relevant case law from Virginia follows each law. This summary begins with the basic cruelty to animal statute and moves on to the neglect of companion animals, followed by relative statutes involving abandonment, animal fighting, and sexual assault. The remaining portion of the summary details penalties, punishments, and enforcement.

Overview of Statutory Provisions and Case Law

1. Cruelty to animals: VA. CODE ANN. § 3.2-6570
2. Companion animal neglect: VA. CODE ANN. § 3.2-6503
3. Abandonment: VA. CODE ANN. § 3.2-6504
4. Malicious injury, killing, or poisoning animals owned by another: VA. CODE ANN. § 18.2-144
5. Animal Fighting: VA. CODE ANN. § 3.2-6571
6. Sexual assault: VA. CODE ANN. § 18.2-361
7. Penalties, Punishment, and Enforcement: VA. CODE ANN. §§ 18.2-403, 18.2-10, 18.2-11
8. Seizure of Animals: VA. CODE ANN. §§ 3.1-796.115, 3.2-6569,
9. Reporting Animal Cruelty: VA. CODE ANN. § 3.2-6564-6468

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1. CRUELTY TO ANIMALS

VA. CODE ANN. § 3.2-6570 (2010). Cruelty to animals; penalty

A. Any person who: (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane² injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal,³ whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment;⁴ (iii) sores⁵ any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (v) carries or causes to be carried by any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vi) causes any of the above things, or being the owner⁶ of such animal permits such acts to be done by another is guilty of a Class 1 misdemeanor.

In addition to the penalties provided in this subsection, the court may, in its discretion, require any person convicted of a violation of this subsection to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.

B. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal⁷ of necessary food,

² "Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being." VA. CODE ANN. § 3.2-6500 (2010).

³ "Animal" means any nonhuman vertebrate species except fish . . . For the purposes of § 3.2-6570, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner." VA. CODE ANN. § 3.2-6500 (2010).

⁴ "Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression." VA. CODE ANN. § 3.2-6500 (2010).

⁵ "Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian.

Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2." VA. CODE ANN. § 3.2-6500 (2010).

⁶ "Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal." VA. CODE ANN. § 3.2-6500 (2010).

⁷ "Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any

drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or (v) causes any of the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, is guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this subsection or subsection A.

C. Nothing in this section shall be construed to prohibit the dehorning of cattle conducted in a reasonable and customary manner.

D. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the Code of Virginia, including Title 29.1, or to farming activities as provided under this title or regulations adopted hereunder.

E. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection is a Class 1 misdemeanor. A second or subsequent violation of this subsection is a Class 6 felony.

F. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another; and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, is guilty of a Class 6 felony. If a dog or cat is attacked on its owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this subsection. The provisions of this subsection shall not overrule § 3.2-6540 or 3.2-6552.

G. Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

Applicable Case Law:

***Sullivan v. Commonwealth*, 701 S.E.2d 61, 64, 280 Va. 672 (2010).**

Facts: Sufficient evidence supported the conviction of the president of a horse rescue organization for animal cruelty. The evidence indicated that president failed to provide emergency veterinary treatment for her horse, who was extremely thin, sick, dehydrated, and unable to move off the ground. Two

animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.” VA. CODE ANN. § 3.2-6500 (2010).

veterinarians testified that the horse was in such a condition during a period of 30 to 48 hours before its death that emergency veterinary care was immediately necessary to alleviate suffering, during which time no such treatment was provided. The only veterinary care the horse received came at the behest of a person passing by the property, not the president, and the veterinarian testified that the horse was in serious need of emergency care long before he got there. Appellant did not starve horse of food or drink in violation of the statute. Instead, the horse's illness or some combination of her many illnesses—prevented her from acquiring nourishment from the food and drink that Sullivan gave to her.

Holding: Even if the evidence in the record is insufficient to prove that Sullivan starved the horse of food or water, Sullivan violated the statute for failing to provide the horse with necessary emergency veterinary treatment. Conviction affirmed based on veterinarian testimony that the horse was becoming progressively weaker and emaciated over a period of weeks before she went down.

Sentencing: The court sentenced Sullivan to 12 months in jail, with six months suspended, for a period of 24 months. The court also ordered that the defendant not possess any horses.

Ryan v. Commonwealth No. 1818-05-1, 2006 WL 2050915 (Va. Ct. App. July 25, 2006).

Facts: Defendant lured cat into garage and commanded pit bull to attack cat and used a broom to knock cat off shelves and car parked in garage when cat tried to escape. The pit bull severely mauled cat, there was blood on walls and floor of garage, and defendant made no effort to contact Animal Control to seek attention for badly mutilated cat. Veterinarian also testified that cat's lethal injuries were caused by blunt force trauma and “puncture wounds that entered into the skull above the neck that would appear to be associated with a bite wound.”

Holding: Evidence was sufficient to show that defendant engaged in conduct that directly led to cat's death. The indictment for killing a companion animal was not ambiguous, nor was there a question as to whether defendant's conduct constituted misdemeanor or felony offense. Felony killing of cat required proof that defendant willfully inflicted inhumane injury that directly led to death and was not connected with bona fide scientific or medical experimentation. Conviction sustained for killing a companion animal based on defendant's testimony and the presence of blood on walls of garage. Use of a broom to prevent the cat from escaping the pit bull's attack, which the defendant commanded, engaged in conduct that directly led to the cat's death.

Sentencing: Defendant sentenced to five years imprisonment, with four years and eight months suspended.

Buskey v. Commonwealth, No. 0919-02-1, 2003 WL 1873643 (Va. Ct. App. Apr. 15, 2003).

Facts: Dog was found lethargic, severely emaciated with parasites, minor skin abrasions, and a respiratory infection. Owner found guilty of animal cruelty for “failing to provide the emergency veterinary treatment necessary for this particular case.” Due to the prolonged period in which the worms infested the dog's body, the trial judge concluded: “I can't say that Mr. Buskey failed to provide food and drink or shelter during this time period, but what I can say is that he failed to provide the emergency veterinary treatment necessary for this particular case.” So serious was the dog's parasite problem that the trial judge rejected Buskey's claim that Brutus's condition had deteriorated merely in the time the dog had been missing.

Holding: A rational fact finder could have found that Buskey violated Code § 3.1-796.122(A)(ii), which prohibits a person from depriving “any animal of necessary food, drink, shelter, or emergency medical

treatment.” Conviction affirmed based on veterinarian testimony that the presence of worm eggs in stool indicated that the dog had adult worms in his system for “three months to three weeks.”

Sentencing: The court sentenced Buskey to ninety days in jail, with thirty days suspended.

Lewis v. Commonwealth, No. 2520-92-2, 1994 WL 259286 (Va. Ct. App. June 14, 1994).

Facts: 162 dogs, 26 cats, and 2 birds were seized from appellant's home. Many of these animals died shortly thereafter. Their overall appearance was “atrocious.” Additionally, the evidence established that many of the animal cages had more than one animal in them and were stacked in such a manner that excrement leaked from one cage to another; that the animals lacked adequate food, water, and ventilation; and that the stench from uncleaned urine and feces was overwhelming.

Holding: Conviction of operating a kennel without a special exception and one count of cruelty to animals, in violation of Hanover County Ordinance Title 1, art. 5, § 2.6-1(c) and Code § 3.1-796.122 was affirmed. Appellant's inability to care adequately for a large number of animals was readily apparent from the record in this case and was a reasonable basis for the limitations on ownership and operation of a kennel. Nothing in this record suggested that the limitation on the numbers of animals owned, the inability to operate another kennel without prior court permission, or the restitution amount ordered by the trial court, constitutes an unreasonable condition of the suspended sentence or an abuse of the trial court's discretion. The amount of restitution ordered is supported by the record, which established that the county spent over \$40,000 caring for the animals prior to trial. The judge's award of \$10,000 to the party who sustained the loss required by appellant's illegal actions is clearly a reasonable probationary condition. Conditions of probation frequently involve some forfeiture of an appellant's rights, and if they are reasonably related to the offense proved, such conditions are valid.

Sentencing: The amount of restitution ordered is supported by the record, which established that the county spent over \$40,000 caring for the animals prior to trial. The judge's award of \$10,000 to the party who sustained the loss required by appellant's illegal actions is clearly a reasonable probationary condition. Conditions of probation frequently involve some forfeiture of an appellant's rights, and if they are reasonably related to the offense proved, such conditions are valid.

2. COMPANION ANIMAL NEGLECT

VA. CODE ANN. § 3.2-6503 (2010). Care of animals by owner; penalty

A. Each owner shall provide for each of his companion animals:

1. Adequate feed;⁸
2. Adequate water;⁹

⁸ “Adequate feed’ means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.” VA. CODE ANN. § 3.2-6500 (2010).

⁹ “Adequate water’ means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain

3. Adequate shelter¹⁰ that is properly cleaned;¹¹
4. Adequate space¹² in the primary enclosure¹³ for the particular type of animal depending upon its age, size, species, and weight;
5. Adequate exercise;¹⁴
6. Adequate care, treatment¹⁵, and transportation; and
7. Veterinary care when needed to prevent suffering or disease transmission.

normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.” VA. CODE ANN. § 3.2-6500 (2010).

¹⁰ “Adequate shelter’ means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors: (i) permit the animals' feet to pass through the openings; (ii) sag under the animals' weight; or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.” VA. CODE ANN. § 3.2-6500 (2010).

¹¹ “Properly cleaned’ means that carcasses, debris, food waste, and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the abovementioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.” VA. CODE ANN. § 3.2-6500 (2010).

¹² “Adequate space’ means sufficient space to allow each animal to: (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal; and (ii) interact safely with other animals in the enclosure. When an animal is tethered, “adequate space” means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.” VA. CODE ANN. § 3.2-6500 (2010).

¹³ “Primary enclosure’ means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.” VA. CODE ANN. § 3.2-6500 (2010).

¹⁴ “Adequate exercise’ or ‘exercise’ means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.” VA. CODE ANN. § 3.2-6500 (2010).

¹⁵ “Treatment’ or ‘adequate treatment’ means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.” VA. CODE ANN. § 3.2-6500 (2010).

The provisions of this section shall also apply to every pound, animal shelter,¹⁶ or other releasing agency,¹⁷ and every foster care provider,¹⁸ dealer, pet shop,¹⁹ exhibitor,²⁰ kennel,²¹ groomer,²² and boarding establishment.²³ This section shall not require that animals used as food for other animals be euthanized.

B. Violation of this section is a Class 4 misdemeanor. A second or subsequent violation of subdivision A 1, A 2, A 3, or A 7 is a Class 2 misdemeanor and a second or subsequent violation of subdivision A 4, A 5, or A 6 is a Class 3 misdemeanor.

Applicable Case Law:

***Settle v. Commonwealth*, 692 S.E.2d 641, 56 Va. App. 222 (Va. Ct. App. 2010).**

Facts: Charles E. Settle, Jr. was convicted in a bench trial of two counts of inadequate care by owner of companion animals, pursuant to Code § 3.1-796.68, and one count of dog at large, pursuant to Fauquier County Code §§ 4-22 and 13-1. Witness testimony was sufficient to prove beyond a reasonable doubt that the defendant, who was sitting in court in the witnesses' presence, was the same person with whom the witnesses dealt on numerous occasions.

Holding: Pursuant to Code § 3.1-796.115, all of the dogs at issue were seized from appellant's control and placed in the care of local animal shelters. Additionally, the trial court declared three of the dogs

¹⁶ "Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals." VA. CODE ANN. § 3.2-6500 (2010).

¹⁷ "Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home based rescue, that releases companion animals for adoption." VA. CODE ANN. § 3.2-6500 (2010).

¹⁸ "Foster care provider" means an individual who provides care or rehabilitation for companion animals through an affiliation with a pound, animal shelter, or other releasing agency." VA. CODE ANN. § 3.2-6500 (2010).

¹⁹ "Pet shop" means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public." VA. CODE ANN. § 3.2-6500 (2010).

²⁰ "Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the U.S. Department of Agriculture." VA. CODE ANN. § 3.2-6500 (2010).

²¹ "Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing." VA. CODE ANN. § 3.2-6500 (2010).

²² "Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal." VA. CODE ANN. § 3.2-6500 (2010).

²³ "Boarding establishment" means a place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee." VA. CODE ANN. § 3.2-6500 (2010).

dangerous pursuant to Code § 3.1-796.93:1. Settle was convicted of two counts of inadequate care by an owner, in violation of Virginia Code § 3.1-796.68 and allowing a dog to run at large, in violation of [Va. Code § 3.1-796.128](#). In addition, pursuant to [Code § 3.1-796.115](#), Settle was adjudicated unfit to own a companion animal and his dogs. Three dogs were declared to be “dangerous dogs” under [Code § 3.1-796.93](#). Remaining dogs were ordered forfeited to the Fauquier County SPCA and/or the Middleburg Humane Foundation. Conviction affirmed.

Sentencing: Settle was ordered to pay a total of \$300.00 in fines and \$423.00 court costs. The trial court awarded a monetary judgment pursuant to the Middleburg Humane Foundation in the amount of \$45,261.51.

***Hillman v. Commonwealth*, No. 1211-01-3, 2002 WL 496982 (Va. Ct. App. Apr. 2, 2002).**

Facts: Appellant convicted in trial court for failure to provide care for her animals under Code § 3.1-796.68. Appellant contends her conviction for these offenses in circuit court violated both Code § 19.2–294 and the double jeopardy prohibitions of the United States and Virginia Constitutions.

Holding: Convictions for cruelty to animals in circuit court did not violate Code § 19.2–294 because those convictions occurred as part of the same prosecution as her convictions for failure to provide care for those animals. Appellant’s convictions for cruelty to animals after she already had been convicted for failure to provide care for those animals did not violate double jeopardy prohibitions because the offenses are not the same. The failure to care offense is not included in the cruelty offense.

Sentencing: Individual was convicted of both a Class 4 misdemeanor under Code § 3.1–796.68(A)(7) for the lesser offense of failing to provide “veterinary treatment to prevent disease transmission” **and** a Class 1 misdemeanor under Code § 3.1–796.122(A)(ii) for the greater offense of failing to provide “emergency veterinary treatment.”

VA. CODE ANN. § 3.2-6570.1 (2010). Sale of animals after cruelty or neglect conviction; penalty
Any person who has been convicted of a violation of any law concerning abuse, neglect, or cruelty to animals that sells, offers for sale, or trades any companion animal is guilty of a Class 1 misdemeanor. However, a person may dispose of animals under the provisions of a court order.

No Applicable Case Law

3. ABANDONMENT

VA. CODE ANN. § 3.2-6504 (2010). Abandonment of animal; penalty

No person shall abandon²⁴ or dump²⁵ any animal. Violation of this section is a Class 3 misdemeanor. Nothing in this section shall be construed to prohibit the release of an animal by its owner to a pound,²⁶ animal shelter, or other releasing agency.

No Applicable Case Law

4. MALICIOUS KILLING

VA. CODE ANN. § 18.2-144 (2010). Maiming, killing or poisoning animals, fowl, etc.

Except as otherwise provided for by law, if any person maliciously shoot, stab, wound or otherwise cause bodily injury to, or administer poison to or expose poison with intent that it be taken by, any horse, mule, pony, cattle, swine or other livestock²⁷ of another, with intent to maim, disfigure, disable or kill the same, or if he do any of the foregoing acts to any animal of his own with intent to defraud any insurer thereof, he shall be guilty of a Class 5 felony. If any person do any of the foregoing acts to any fowl or to any companion animal with any of the aforesaid intents, he shall be guilty of a Class 1 misdemeanor, except that any second or subsequent offense shall be a Class 6 felony if the current offense or any previous offense resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this section.

²⁴ "'Abandon' means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of five consecutive days. "Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health." VA. CODE ANN. § 3.2-6500 (2010).

²⁵ "'Dump' means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another." VA. CODE ANN. § 3.2-6500 (2010).

²⁶"'Pound' means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any locality or incorporated society for the prevention of cruelty to animals." VA. CODE ANN. § 3.2-6500 (2010).

²⁷"'Livestock' includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals." VA. CODE ANN. § 3.2-6500 (2010).

Applicable Case Law:

***Ford v. Commonwealth*, 630 S.E.2d 332 (Va. Ct. App. 2006).**

Facts: Defendant admitted he was driving a four-wheel vehicle and saw child witnesses by barn where witnesses and their dogs were playing on the day the dog was shot. Child witness saw defendant shoot a firearm toward the barn, other child witness saw defendant with a firearm right after dog was shot, and both child witnesses were certain the defendant was the man they saw at the barn with the firearm.

Holding: Jury convicted defendant of animal cruelty, specifically malicious killing. Testimony of children, ages 13 and 15 was sufficient evidence to establish animal cruelty on behalf of defendant. Upon finding the defendant guilty, the trial court conducted a separate proceeding “limited to the ascertainment of punishment.” [Code § 19.2-295.1](#); Rule 3A:17.1. During the penalty phase, the jury was instructed as to punishment and counsel made statements and presented evidence relevant to the penalty to be imposed. Commonwealth was allowed to introduce the defendant's prior criminal convictions.

Sentencing: Details of sentencing is unclear from case record, but it appears that D was convicted of Class 1 Misdemeanor for the animal cruelty charge.

***Smith v. Commonwealth*, No. 0492-01-2, 2002 WL 1611519 (Va. Ct. App., July 23, 2002).**

Facts: Appellant shot two dogs that did not belong to him. Trial court refused to allow Smith's counsel to question one of the witnesses regarding the potential civil suit. The evidence presented before the trial court rendered its verdict with regard to Smith proved: 1) the hunting dogs belonging to Gilliam and Collins ran onto the Smith property; 2) shortly thereafter, three gunshots were heard and the dogs went silent; 3) the truck was observed parked with its driver's side alongside the woods, only a few yards from where the bodies of the dogs were found; 4) only the driver's side door was open as the truck was parked next to the woods; 5) the driver then got into the truck, closed the driver's side door and drove the truck toward Gilliam and Collins; 5) Smith was then seen driving the truck, while Mrs. Smith sat in the passenger side; 6) a .22 rifle was found in the truck bed; 7) Smith had a clip of .22 bullets in his pocket; and 8) a .22 bullet matching the rifle was taken from one dog.

Holding: Trial court's error in restricting Smith's right to cross-examination of witness regarding potential civil suit was harmless beyond a reasonable doubt. Prosecutor was not required to prosecute under Code § 18.2-144, but could choose instead to prosecute under Code § 18.2-137, which provides that unlawful destruction on a person's property, real or personal, is a Class 1 misdemeanor. Dogs and cats are personal property under Code § 3.1-796.127

Sentencing: Details of sentencing unclear from case history.

***Slade v. Commonwealth*, No. 2664-98-3, 2000 WL 979938 (Va. Ct. App., July 18, 2000).**

Facts: Slade fired several gunshots at a dog, which sustained several wounds. Slade was charged with violating Danville City Ordinance § 40-3, which makes it unlawful to discharge a firearm within the corporate limits of the city. He was convicted of this offense in general district court.

The grand jury subsequently returned an indictment against Slade. The indictment charged that Slade “did unlawfully and cruelly ill-treat, maim, mutilate, or torture a dog . . . by shooting said dog. At trial, Slade moved to dismiss the indictment, arguing that it violated Code § 19.2-294 because the indictment involved the same act and set of facts that had been the basis of the discharging a firearm conviction.

The circuit court denied the motion and convicted Slade of the cruelty to an animal charge.

Holding: Conviction reversed and dismissed because discharging a firearm and the animal cruelty charges involved the same act and set of facts. Thus, he could not be retried on the same facts

***Willeroy v. Commonwealth*, 27 S.E.2d 211, 181 Va. 779 (1943).**

Facts: Evidence that accused killed dog which charged against chicken wire fence with every prospect of breaking it down, and which had killed the accused's chickens the day before, did not sustain conviction of cruelty and unnecessarily killing a dog.

Holding: When dogs become a public nuisance and menace, ordinary rules of self-defense apply. The owner of a domestic animal or fowl which is placed in jeopardy by the attack of a dog has the right to kill a dog for the protection of his property.

***Winckler v. Commonwealth*, 156 S.E. 364, 155 Va. 1146 (1931).**

Facts: Appellant and his injured cow were attacked or charged by neighbor's cow, but he threw himself against the wall of the stable in time to avoid being injured. The neighbor's cow turned and attacked appellant or his cow again, when he kicked at her 'and threw up his axe which struck her on the side or back. The cow ran off a few steps and fell to the ground. She had a cut or wound near the backbone of considerable size from which she died on that afternoon of the attack. The accused at once sent for the owner of the injured cow and went himself to the home of his landlord to ask that a veterinarian be sent for. He stated that he had no ill will for the neighbors and was not angry with the cow but struck at her to defend himself, or his cow, as he thought that he was in danger of being hurt. In a prosecution for wounding, cutting, etc., a neighbor's cow, an instruction given by the court at the request of the Commonwealth was objected to by the accused on the ground that unlawful intent was an element of the offense charged, and such intent must be proven to sustain a conviction.

Holding: The statute makes the offense consist of an act combined with a particular intent, and that intent cannot be presumed but must be proven. The instruction in question was to the effect that the law presumes a man to intend the natural and probable consequence of his act and if the accused struck the cow with a deadly weapon. The subsequent presumptions that he unlawfully intended to maim, disfigure, and kill the cow constituted error.

***Breedlove v. Hardy*, 110 S.E. 358, 132 Va. 11 (1922).**

Facts: Dogs had been disturbing plaintiff's turkeys every day or two during the whole summer, and one morning, the dogs drove the turkeys over on a neighbor's premises. Plaintiff followed with a gun and found the dogs going after the turkeys, though they had stopped chasing the turkeys when he got close enough to shoot.

Holding: The owner of domestic animals or fowls has the right to defend them from injury, but the extent of such right of defense necessarily depends on whether the right is reasonably exercised, so as to make it lawful and justifiable. While an owner of turkeys had a right to kill dogs, if necessary, in defense of his property, he had no right to kill them wantonly, or if his property could be reasonably protected without such killing. The court reversed judgment for defendant, finding that defendant's act of killing dog while not engaged in the act of "worrying the livestock," was not authorized within the statute.

Sentencing: The actual sentencing is unclear from the record. It may be irrelevant here, given the date of the case.

5. ANIMAL FIGHTING

VA. CODE ANN. § 3.2-6571 (2010). Animal fighting; penalty

A. No person shall knowingly:

1. Promote, prepare for, engage in, or be employed in, the fighting of animals for amusement, sport or gain;
2. Attend an exhibition of the fighting of animals;
3. Authorize or allow any person to undertake any act described in this section on any premises under his charge or control; or
4. Aid or abet any such acts.

Except as provided in subsection B, any person who violates any provision of this subsection is guilty of a Class 1 misdemeanor.

B. Any person who violates any provision of subsection A in combination with one or more of the following is guilty of a Class 6 felony:

1. When a dog is one of the animals;
2. When any device or substance intended to enhance an animal's ability to fight or to inflict injury upon another animal is used, or possessed with intent to use it for such purpose;
3. When money or anything of value is wagered on the result of such fighting;
4. When money or anything of value is paid or received for the admission of a person to a place for animal fighting;
5. When any animal is possessed, owned, trained, transported, or sold with the intent that the animal engage in an exhibition of fighting with another animal; or
6. When he permits or causes a minor to (i) attend an exhibition of the fighting of any animals or (ii) undertake or be involved in any act described in this subsection.

C.1. Any animal control officer, as defined in § 3.2-6500, shall confiscate any animal that he determines has been, is, or is intended to be used in animal fighting and any equipment used in training such animal or used in animal fighting.

2. Upon confiscation of an animal, the animal control officer shall petition the appropriate court for a hearing for a determination of whether the animal has been, is, or is intended to be used in animal fighting. The hearing shall be not more than 10 business days from the date of the confiscation of the animal. If the court finds that the animal has not been used, is not used and is not intended to be used in animal fighting, it shall order the animal released to its owner. However, if the court finds probable cause to believe that the animal has been, is, or is intended to be used in animal fighting, the court shall order the animal forfeited to the locality unless the owner posts bond in surety with the locality in an amount sufficient to compensate the locality for its cost of caring for the animal for a period of nine months. He shall post additional bond for each successive nine-month period until a final determination by the trial court on any criminal charges brought pursuant to subsections A or B.

3. Upon a final determination of guilt by the trial court on criminal charges brought pursuant to subsections A or B, the court shall order that the animal be forfeited to the locality. Upon a final determination of not guilty by the trial court on the underlying criminal charges, a confiscated animal shall be returned to its owner and any bond shall be refunded to him.

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D. Any person convicted of violating any provision of subsection A or B shall be prohibited by the court from possession or ownership of companion animals or cocks.

E. In addition to fines and costs, the court shall order any person who is convicted of a violation of this section to pay all reasonable costs incurred in housing, caring for, or euthanizing any confiscated animal. If the court finds that the actual costs are reasonable, it may order payment of actual costs.

F. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duties. This section shall not prohibit (i) authorized wildlife management activities or hunting, fishing, or trapping authorized under any title of the Code of Virginia or regulations promulgated thereto or (ii) farming activities authorized under Title 3.2 of the Code of Virginia or regulations promulgated thereto.

Applicable Case Law:

***Robinson v. Commonwealth*, No. 0792-10-2, 2011 WL 2802901 (Va. Ct. App., July 19, 2011).**

Facts: Appellant convicted of three felony counts of dog fighting. The raid on Robinson's property turned up syringes, breed charts, photos, videos, a scale and other dogfighting paraphernalia. 12 dogs, including 11 pit bulls were confiscated from the property. 10 of the dogs had to be euthanized.

Robinson was charged with cruelty and dogfighting. Robinson has a prior dog fighting conviction.

Holding: Jury conviction for three felony counts of dogfighting and one misdemeanor for animal cruelty. Trial court did not violate Double Jeopardy clauses of the Federal and State Constitutions when it failed to dismiss two of the three felony indictments.

Sentencing: Robinson was sentenced to 10 years in prison and ordered to pay a \$2,500 fine and \$4,008 in restitution to Richmond Animal Care and Control.

6. SEXUAL ASSAULT

VA. CODE ANN. § 18.2-361 (2010). Crimes against nature; penalty

A. If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony, except as provided in subsection B.

B. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

C. For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child and grandchild includes step-grandchild.

Applicable Case Law:

***Ward v. Commonwealth*, No. 0071-10-2, 2011 WL 780356 (Va. Ct. App., Mar. 8, 2011).**

Facts: Evidence sufficiently corroborated defendant's extrajudicial confession, that he “would stick his finger in the dog's vagina,” to establish the corpus delicti of the offense of carnal knowledge of a brute animal. Defendant was the only person in house and was alone with the dog for each day while his daughter, the dog's owner, was away at work, and daughter testified that during that same time period the dog developed problems with its “anal glands” and demonstrated odd behavioral and eating patterns, but those problems ceased almost immediately after defendant was removed from the house.

Holding: Defendant's digital penetration of dog's vagina constituted “carnal knowledge,” as required to support his conviction for carnal knowledge of a brute animal. Conviction affirmed based on owner’s testimony of dog developing problems with anal glands and change in dog’s behavior when defendant was in the home. Further corroborated by defendant’s admission that he had “done something” by “inappropriately touching” the dog and having the dog lick his own genitalia and anus.

Sentencing: Sentencing is unclear from case record, but it appears that the Defendant was convicted of a Class 6 felony

7. PUNISHMENTS/PENALTIES

VA. CODE ANN. § 18.2-403.1 (2010). Offenses involving animals - Class 1 misdemeanors.

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 1 misdemeanor:

1. Violation of subsection A of § 3.2-6570 pertaining to cruelty to animals, except as provided for second or subsequent violations in that section.
2. Violation of § 3.2-6508 pertaining to transporting animals under certain conditions.
3. Making a false claim or receiving money on a false claim under § 3.2-6553 pertaining to compensation for livestock and poultry killed by dogs.
4. Violation of § 3.2-6518 pertaining to boarding establishments and groomers as defined in § 3.2-6500.

No Applicable Case Law.

VA. CODE ANN. § 18.2-403.2 (2010). Offenses involving animals - Class 3 misdemeanors.

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 3 misdemeanor:

1. Violation of § 3.2-6511 pertaining to the failure of a shopkeeper or pet dealer to provide adequate care to animals.
2. Violation of § 3.2-6509 pertaining to the misrepresentation of an animal's condition by the shopkeeper or pet dealer.
3. Violation of § 3.2-6504 pertaining to the abandonment of animals.
4. Violation of § 3.2-6510 pertaining to the sale of baby fowl.
5. Violation of clause (iii) of subsection A of § 3.2-6570 pertaining to soring horses.
6. Violation of § 3.2-6519 pertaining to notice of consumer remedies required to be supplied by boarding establishments.

No Applicable Case Law.

VA. CODE ANN. § 18.2-403.3 (2010). Offenses involving animals - Class 4 misdemeanors.

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 4 misdemeanor:

1. Violation of § 3.2-6566 pertaining to interference of agents charged with preventing cruelty to animals.
2. Violation of § 3.2-6573 pertaining to shooting pigeons.
3. Violation of § 3.2-6554 pertaining to disposing of the body of a dead companion animal.
4. Violation of ordinances passed pursuant to §§ 3.2-6522 and 3.2-6525 pertaining to rabid dogs and preventing the spread of rabies and the running at large of vicious dogs.
5. Violation of an ordinance passed pursuant to § 3.2-6539 requiring dogs to be on a leash.
6. Failure by any person to secure and exhibit the permits required by § 29.1-422 pertaining to field trails, night trails and foxhounds.
7. Diseased dogs. - For the owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises if such disease is known to the owner.
8. License application. - For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.
9. License tax. - For any dog or cat owner to fail to pay any license tax required by § 3.2- 6503 before February 1 for the year in which it is due. In addition, the court may order confiscation and the proper disposition of the dog or cat.
10. Concealing a dog or cat. - For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.
11. Removing collar and tag. - For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.
12. Violation of § 3.2-6503 pertaining to care of animals by owner.

No Applicable Case Law.

VA. CODE ANN. § 18.2-10 (2010). Punishment for conviction of felony, penalty

The authorized punishments for conviction of a felony are:

- (a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$ 100,000. If the person was under 18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.
- (b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$ 100,000.
- (c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$ 100,000.
- (d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$ 100,000.

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(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$ 2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$ 2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

No Applicable Case Law.

VA. CODE ANN. § 18.2-11 (2010). Punishment for conviction of misdemeanor

The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

(b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.

(c) For Class 3 misdemeanors, a fine of not more than \$500.

(d) For Class 4 misdemeanors, a fine of not more than \$250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

No Applicable Case Law.

8. SEIZURE OF ANIMALS

VA. CODE ANN. § 3.1-796.115 (2010). Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale

A. Any humane investigator,²⁸ law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat²⁹ to its life, safety or health. Before seizing or impounding any agricultural animal, such humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal, provided, however, that the seizure or impoundment of an equine resulting from a violation of subdivision A (iii) or subdivision B (ii) of § 3.1-796.122 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore³⁰ horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation.

The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained. If there is a direct and immediate threat to an agricultural animal, the humane investigator, law enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.

No Applicable Case Law.

²⁸ "Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.2-6558."

²⁹ "Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life."

³⁰ "Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2."

VA. CODE ANN. § 3.2-6569 (2010). Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale

A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. Before seizing or impounding any agricultural animal, such humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal. The seizure or impoundment of an equine resulting from a violation of subsection A (iii) or subsection B (ii) of § 3.2-6570 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation.

The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained. If there is a direct and immediate threat to an agricultural animal, the humane investigator, law enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.

Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the general district court in the city or county where the animal is seized for a hearing. The hearing shall be not more than 10 business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

B. The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall be held.

C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

D. The humane investigator, law-enforcement officer, or animal control officer shall provide for such animal until the court has concluded the hearing. Any locality may require the owner of any animal held pursuant to this subsection for more than thirty days to post a bond in surety with the locality for the amount of the cost of boarding the animal for a period of time set by ordinance, not to exceed nine months. In any locality that has not adopted such an ordinance, a court may order the owner of an animal held pursuant to this subsection for more than 30 days to post a bond in surety with the locality for the amount of the cost of boarding the animal for a period of time not to exceed nine months. The bond shall not be forfeited if the owner is found to be not guilty of the violation. If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in § 3.2-6500, or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation of § 3.2-6571, then the court shall order that the animal be: (a) sold by a local governing body; (b) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the Commonwealth; (c) delivered to any local humane society or shelter, or to any person who is a resident of the county or city where the animal is seized or an adjacent county or city in the Commonwealth and who will pay the required license fee, if any, on such animal; or (d) delivered to the person with a right of property in the animal as provided in subsection E.

E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

F. The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of such care.

G. The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

H. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural

animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals³¹ as evidenced by previous convictions of violating § 3.2-6504 or 3.2-6570. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

I. Any person who is prohibited from owning or possessing animals pursuant to subsection G or H may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

J. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund.

K. Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law enforcement officer, animal control officer, or licensed veterinarian.

Applicable Case Law:

***Settle v. Commonwealth*, 692 S.E.2d 641, 56 Va. App. 222 (Va. Ct. App. 2010).**

Facts: Charles E. Settle, Jr. was convicted in a bench trial of two counts of inadequate care by owner of companion animals, pursuant to Code § 3.1-796.68, and one count of dog at large, pursuant to Fauquier County Code §§ 4-22 and 13-1. Witness testimony was sufficient to prove beyond a reasonable doubt that the defendant, who was sitting in court in the witnesses' presence, was the same person with whom the witnesses dealt on numerous occasions.

Holding: Pursuant to Code § 3.1-796.115, all of the dogs at issue were seized from appellant's control and placed in the care of local animal shelters. Additionally, the trial court declared three of the dogs dangerous pursuant to Code § 3.1-796.93:1. Settle was convicted of two counts of inadequate care by an owner, in violation of Virginia Code § 3.1-796.68 and allowing a dog to run at large, in violation of [Va. Code § 3.1-796.128](#). In addition, pursuant to [Code § 3.1-796.115](#), Settle was adjudicated unfit to own a companion animal and his dogs. Three dogs were declared to be "dangerous dogs" under [Code § 3.1-796.93](#). Remaining dogs were ordered forfeited to the Fauquier County SPCA and/or the Middleburg Humane Foundation. Conviction affirmed.

Sentencing: Settle was ordered to pay a total of \$300.00 in fines and \$423.00 court costs. The trial court awarded a monetary judgment pursuant to the Middleburg Humane Foundation in the amount of \$45,261.51.

³¹ "Agricultural animals" means all livestock and poultry."

9. REPORTING

VA. CODE ANN. § 3.2-6564 (2010). Complaint of suspected violation; investigation

A. Upon receiving a complaint of a suspected violation of this chapter, any ordinance enacted pursuant to this chapter or any law for the protection of domestic animals, any animal control officer, law-enforcement officer, or State Veterinarian's representative may, for the purpose of investigating the allegations of the complaint, enter upon, during business hours, any business premises, including any place where animals or animal records are housed or kept, of any dealer, pet shop, groomer, or boarding establishment. Upon receiving a complaint of a suspected violation of any law or ordinance regarding care or treatment of animals or disposal of dead animals, any humane investigator may, for the purpose of investigating the allegations of the complaint, enter upon, during business hours, any business premises, including any place where animals or animal records are housed or kept, of any dealer, pet shop, groomer, or boarding establishment.

Upon obtaining a warrant as provided for in § 3.2-6568, the law-enforcement officer, animal control officer, State Veterinarian's representative, or humane investigator may enter upon any other premises where the animal or animals described in the complaint are housed or kept. Attorneys for the Commonwealth and law-enforcement officials shall provide such assistance as may be required in the conduct of such investigations.

B. If the investigation discloses that a violation of § 3.2-6503 has occurred, the investigating official shall notify the owner or custodian of the complaint and of what action is necessary to comply with this chapter.

No Applicable Case Law.

VA. CODE ANN. § 3.2-6565 (2010). Impoundment; expenses; lien; disposition of animal

When an animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative finds that an apparent violation of this chapter has rendered an animal in such a condition as to constitute a direct and immediate threat to its life, safety or health that the owner or custodian has failed to remedy, such animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative may impound the animal pursuant to § 3.2-6569 in a facility that will provide the elements of good care as set forth in § 3.2-6503 and shall then proceed to take such steps as are required to dispose of the animal pursuant to § 3.2-6569.

No Applicable Case Law.

VA. CODE ANN. § 3.2-6566 (2010). Preventing cruelty to animals; interference; penalty

Each animal control officer, humane investigator or State Veterinarian's representative shall interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct or resist any humane investigator or State Veterinarian's representative in the

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discharge of his rights, powers, and duties as authorized and prescribed by law is guilty of a Class 4 misdemeanor.

No Applicable Case Law.

VA. CODE ANN. § 3.2-6567 (2010). Enforcement authority

All law-enforcement officers in the Commonwealth and State Veterinarian's representatives shall enforce the provisions of this chapter to the same extent other laws in the Commonwealth are enforced.

No Applicable Case Law

VA. CODE ANN. § 3.2-6568 (2010). Power of search for violations of statutes against cruelty to animals.

When a sworn complaint is made to any proper authority by any animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative that the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in any particular building or place, such authority, if satisfied that there is reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff or police officer, to search the building or place.

No Applicable Case Law