

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0677/P2dn
RCT:cjs:ph

January 8, 2010

This is a redraft of the proposal concerning animals that are taken into custody or withheld from the owner in cases of alleged mistreatment or criminal activity, such as fighting. It is still a preliminary draft because there are a large number of changes from the first draft that must be reviewed. Also, a preliminary draft is not required to have an analysis, allowing it to be finished sooner. I plan to work on an analysis while this version of the draft is being reviewed.

Some of the instructions indicated that current statutes should be renumbered. It is LRB policy, for a number of reasons, to minimize the renumbering of current statutes. We commonly insert new provisions between existing provisions by, for example, creating a subdivision 2m., which would appear between current subdivisions 2. and 3.

The definition of “reasonable grounds to believe” in this draft differs from the proposed definition. I replaced “establish a degree of suspicion” with “are” for two reasons. The first is that it seems logically unnecessary to include that phrase. If given facts and circumstances establish a certain level of suspicion and that level of suspicion is sufficient to justify a reasonable person’s belief, then the facts and circumstances are sufficient to justify a reasonable person’s belief. Also, from my (admittedly limited) research, it appears that the courts have distinguished “suspicion” from “belief” or “reason to believe” in describing the different standards justifying, for example, an investigative stop versus an arrest.

In addition, I omitted the last part of the proposed definition because “reasonable grounds to believe” is used in some situations that do not directly relate to the status or condition of an animal (see proposed s. 173.23 (3) (f) 3., for example). It must be possible to replace a defined term with its definition in each place that the defined term is used. I think that the definition in this draft works in that regard.

I am not certain that the definition of “reasonable grounds to believe,” either as proposed or as drafted, clearly establishes a standard that is “below” probable cause. See *County of Jefferson v. Renz*, 231 Wis 2d. 293, 603 N.W.2d 541 (1999). In her concurrence in that case, Chief Justice Abrahamson discusses the difficulty of providing descriptions of standards such as “probable cause to believe” that help law enforcement officers and courts determine whether sufficient facts exist to justify a particular action. She also opines that there is little difference between the standards

ranging from “reasonable suspicion,” which justifies an investigatory stop, to probable cause to bind a defendant over for trial on a felony charge. I wonder whether it is possible to draft a definition of “reasonable grounds to believe” that would provide more help to humane officers, law enforcement officers, and courts than the term itself provides.

I am uncertain of whether the treatment of s. 173.24 (3) is what is wanted. Under this draft, s. 173.24 (3) applies only when a person has not been found guilty. Section 951.18 (4) (a) applies when a person is found guilty. This draft requires the owner of an animal to pay any outstanding expenses under s. 173.24 (2) if there were reasonable grounds to believe that the owner violated ch. 951. In any other situation in which a person is not found guilty, the county would pay the expenses. Please let me know if something else is wanted.

Please contact me with any questions or redraft instructions.

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