



2009 ASSEMBLY BILL 793

March 2, 2010 – Introduced by Representatives POCAN, BERCEAU, BLACK, BROOKS, HEBL, PASCH and POPE-ROBERTS, cosponsored by Senators RISSER, CARPENTER, ERPENBACH and MILLER. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to repeal* 173.12 (1m) to (3), 173.13 (1) (a) 7., 173.24 (1) and 951.18 (4)
2 (b) 2.; *to renumber* 173.12 (1) and 173.17; *to renumber and amend* 173.22
3 (2), 173.23 (3) (c) and 951.18 (4) (b) 1.; *to amend* 173.12 (title), 173.13 (1) (a) 8.,
4 173.15 (2) (b), 173.21 (1) (a), 173.21 (4), 173.22 (1), 173.22 (3) (a) 1., 173.23 (2),
5 173.23 (3) (a), 173.23 (3) (d), 173.23 (3) (e), 173.23 (5) (b) and (c), 173.23 (6),
6 173.24 (3), 174.13 (3), 968.19, 968.20 (1) (intro.) and 968.20 (2); and *to create*
7 173.01 (4), 173.17 (2), 173.22 (2) (b), 173.23 (1) (e), 173.23 (3) (a) 2m., 173.23 (3)
8 (a) 4., 173.23 (3) (c) 2., 173.23 (3) (dm), 173.23 (3) (f), 173.23 (3) (g), 173.23 (3)
9 (h), 173.23 (3) (i) and 951.17 of the statutes; **relating to:** animals taken into
10 custody.

Analysis by the Legislative Reference Bureau

This bill changes the laws related to animals that are taken into custody on behalf of a city, village, town, or county (political subdivision).

Seizure and withholding of animals

Current law authorizes a humane officer or law enforcement officer to take custody of an animal on behalf of a political subdivision for a number of reasons,

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including that the animal is a stray or that the humane officer or law enforcement officer has reasonable grounds to believe that the animal has been involved in animal fighting or has been mistreated in violation of state law. Under current law, a political subdivision may contract with another person (contractor), such as a humane society, to provide custody and care of animals taken into custody on behalf of the political subdivision.

Under current law, an animal taken into custody must generally be returned to its owner if the owner provides reasonable evidence of ownership, provides for any required licensure and vaccination of the animal, and pays the costs of custody and care of the animal. Under this bill, an owner who wishes to obtain the return of an animal in custody must also arrange to have a microchip implanted in the animal for identification.

Current law authorizes a political subdivision to withhold an animal from its owner if there are reasonable grounds to believe that the owner has mistreated the animal in violation of state law; there are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare; the animal may be used as evidence in a pending prosecution; or a court has ordered the animal withheld for any reason.

If an animal is taken into custody because the animal is alleged to have been involved in fighting, current law requires the animal to be kept in custody pending the resolution of criminal charges relating to the alleged animal fighting. This bill eliminates the provision requiring an animal alleged to have been involved in fighting to be maintained in custody pending the outcome of the charges. Under this bill, the provisions relating to an animal in custody that is believed to have been involved in animal fighting are the same as those relating to an animal believed to have been mistreated in violation of state law.

Petitions seeking return of animals in custody

Under current law, a person claiming that an animal that he or she owns was improperly taken into custody or withheld by or on behalf of a political subdivision may petition a court to order the return of the animal. The court must order the animal returned to the owner unless the court makes one of several specified determinations. One basis for denying a petition is that there are reasonable grounds to believe that the owner has mistreated the animal in violation of state law.

Under this bill, the owner of an animal must file a petition for return of the animal no later than the seventh day after the day on which the animal was taken into custody. The bill requires the owner to serve a copy of the petition on the contractor with custody of the animal as well as on the political subdivision. This bill generally requires the court to hold a hearing on the issue of whether the animal was improperly taken into custody or withheld within 10 days of the filing of the petition.

Other petitions concerning animals in custody

Under current law, a political subdivision may petition a court for an order with respect to an animal taken into custody or withheld from the owner. The political subdivision must notify the owner of the animal when it files a petition. In a petition, a political subdivision may ask the court to provide for payment for the custody and care for the animal, to require the owner to post bond for the costs of custody and care

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for the animal pending the outcome of another court proceeding (such as a criminal case related to the animal), or to authorize the sale, destruction, or other disposal of the animal. The court may grant, modify, or deny petitioned-for relief, after considering the interests of the animal, the owner of the animal, the political subdivision, and the public. If an owner does not comply with an order directed to the owner, the animal is treated as an unclaimed animal, which means that the entity with custody of the animal may dispose of the animal by, for example, releasing it to another person.

This bill allows a contractor with custody of an animal, in addition to a political subdivision, to petition a court for an order with respect to the animal. The bill requires the contractor to notify the owner and the political subdivision when it petitions the court for an order with respect to the animal and to notify the district attorney if it is alleged that the animal was mistreated in violation of state law or was involved in animal fighting. The bill requires a political subdivision to notify a contractor with custody of an animal, in addition to the owner, when it petitions a court for an order with respect to the animal and to notify the district attorney if it is alleged that the animal was mistreated in violation of state law or was involved in animal fighting.

The bill authorizes a political subdivision or contractor that petitions the court for an order with respect to an animal to ask the court to require the owner of the animal to pay funds into the court for the costs of custody and care for the animal pending the outcome of another court proceeding. If the court requires the owner of the animal to pay funds into the court, funds must be periodically disbursed to the person with custody to cover the person's reasonable costs. If the owner does not comply with an order, the animal is treated as an unclaimed animal. The bill also authorizes a political subdivision or contractor to petition a court to release an animal to its owner pending the outcome of another court proceeding, but only if the owner is not alleged to have mistreated the animal in violation of state law or to have violated the law prohibiting animal fighting and only if other specified conditions are satisfied.

The bill generally requires the court to hold a hearing on a petition filed by a political subdivision or contractor within 10 days of the filing of the petition.

Order by criminal court

Under this bill, if there is a case charging mistreatment of an animal in violation of state law or violation of the laws relating to animal fighting and an animal allegedly involved in the violation is in custody under the civil laws described above, the defendant or the district attorney may request the criminal court to order that the animal be retained in custody for a period that is reasonable to allow the collection of evidence relating to the animal. The bill requires the criminal court to provide a copy of such an order to the person with custody of the animal and to any court in which a case is pending under the civil laws described above.

The bill requires a person with custody of an animal and any court in which a case is pending under the civil laws described above to ensure that the animal remains in custody until the end of the period specified in the criminal court's order.

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The ultimate disposition of the animal after the period specified in the order is determined under the civil laws described above.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 173.01 (4) of the statutes is created to read:

2 173.01 **(4)** “Reasonable grounds to believe” means a set of facts and
3 circumstances that in their entirety are sufficient to justify a reasonable person’s
4 belief.

5 **SECTION 2.** 173.12 (title) of the statutes is amended to read:

6 **173.12** (title) **Animal fighting; seizure reporting.**

7 **SECTION 3.** 173.12 (1) of the statutes is renumbered 173.12.

8 **SECTION 4.** 173.12 (1m) to (3) of the statutes are repealed.

9 **SECTION 5.** 173.13 (1) (a) 7. of the statutes is repealed.

10 **SECTION 6.** 173.13 (1) (a) 8. of the statutes is amended to read:

11 173.13 **(1)** (a) 8. An animal mistreated in violation of ch. 951 or involved in a
12 violation of s. 951.08.

13 **SECTION 7.** 173.15 (2) (b) of the statutes is amended to read:

14 173.15 **(2)** (b) Maintain adequate records consistent with s. 173.17 (1).

15 **SECTION 8.** 173.17 of the statutes is renumbered 173.17 (1).

16 **SECTION 9.** 173.17 (2) of the statutes is created to read:

17 173.17 **(2)** A humane officer, law enforcement officer, political subdivision, or
18 person contracting under s. 173.15 (1) is not required to disclose information

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1 concerning a person into whose custody an animal was ultimately released unless
2 ordered to do so by a court.

3 **SECTION 10.** 173.21 (1) (a) of the statutes is amended to read:

4 173.21 **(1)** (a) There are reasonable grounds to believe that the owner has
5 mistreated the animal in violation of ch. 951 or has violated s. 951.08.

6 **SECTION 11.** 173.21 (4) of the statutes is amended to read:

7 173.21 **(4)** RETURN. A political subdivision or person contracting under s.
8 173.15 (1) having custody of an animal withheld under sub. (1) shall release the
9 animal to the owner at the direction of the humane officer or law enforcement officer
10 that took custody of the animal if the requirements of s. 173.23 (1) (a) to (c) and (e)
11 are satisfied.

12 **SECTION 12.** 173.22 (1) of the statutes is amended to read:

13 173.22 **(1)** PETITION. A person claiming that an animal that he or she owns was
14 improperly taken into custody under s. 173.13 (1) (a) 3., 4., 5., 6. or 8. or is wrongfully
15 withheld under s. 173.21 (1) may seek return of the animal by petitioning, no later
16 than the 7th day after the day in which the animal was taken into custody. for an
17 order from the circuit court for the county in which the animal was taken into custody
18 or in which it is held.

19 **SECTION 13.** 173.22 (2) of the statutes is renumbered 173.22 (2) (a) and
20 amended to read:

21 173.22 **(2)** (a) ~~The court~~ A person who files a petition under sub. (1) shall
22 provide notice of a ~~serve a copy of the petition under sub. (1) to,~~ in the manner
23 provided in s. 801.11, upon the humane officer or law enforcement officer who took
24 the animal into custody or ~~to~~ on the political subdivision that withheld the animal
25 and if a person contracting under s. 173.15 (1) has custody of the animal, on that

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1 person. The court shall hold a hearing on the issue of whether the animal was
2 improperly taken into custody or is wrongfully withheld within 10 days of the filing
3 of the petition, except as provided in par. (b).

4 **SECTION 14.** 173.22 (2) (b) of the statutes is created to read:

5 173.22 (2) (b) Upon a showing of good cause by the political subdivision, the
6 person contracting under s. 173.15 (1), or the owner of the animal, the court may
7 extend the date for a hearing under par. (a) beyond 10 days after the filing of the
8 petition. In determining whether to extend the date for a hearing, the court shall
9 consider how delaying the hearing will affect the health, safety, and welfare of the
10 animal.

11 **SECTION 15.** 173.22 (3) (a) 1. of the statutes is amended to read:

12 173.22 (3) (a) 1. There are reasonable grounds to believe that the owner has
13 mistreated the animal in violation of ch. 951 or has violated s. 951.08.

14 **SECTION 16.** 173.23 (1) (e) of the statutes is created to read:

15 173.23 (1) (e) The animal has an implanted microchip for identification or
16 assurance of implantation of a microchip for identification is given by prepayment.

17 **SECTION 17.** 173.23 (2) of the statutes is amended to read:

18 173.23 (2) ANIMALS NOT RETURNED TO OWNER. If an animal in the custody of a
19 political subdivision, other than an animal to which sub. (1m) applies, is not returned
20 to the owner under sub. (1) or (5) (b) or s. ~~173.12 (2)~~, 173.21 (4) or 173.22 or disposed
21 of under sub. (4) or (5) (a) ~~or s. 173.12 (3)~~, it shall be disposed of under a court order
22 under sub. (3) ~~or s. 951.18 (4)~~.

23 **SECTION 18.** 173.23 (3) (a) of the statutes is amended to read:

24 173.23 (3) (a) A political subdivision or person contracting under s. 173.15 (1)
25 may petition the circuit court for an order doing any of the following with respect to

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1 an animal taken into custody by a law enforcement officer or a humane officer or
2 withheld under s. 173.21 (1):

3 1. Providing for payment, directly to the person with custody, for the custody,
4 care, or treatment of the animal.

5 2. Requiring the owner of the animal to post bond or other security for the
6 anticipated costs of custody, care, or treatment of the animal pending the outcome
7 of any other proceeding, as provided in par. (g).

8 3. Authorizing the sale, destruction, or other disposal of the animal.

9 **SECTION 19.** 173.23 (3) (a) 2m. of the statutes is created to read:

10 173.23 **(3)** (a) 2m. Requiring the owner of the animal to pay funds into the court
11 for the costs of custody, care, or treatment of an animal pending the outcome of any
12 other proceeding, as provided in par. (h).

13 **SECTION 20.** 173.23 (3) (a) 4. of the statutes is created to read:

14 173.23 **(3)** (a) 4. If the owner of the animal is not alleged to have mistreated the
15 animal in violation of ch. 951 or to have violated s. 951.08, releasing the animal to
16 the owner of the animal as provided in par. (f) pending the outcome of any other
17 proceeding.

18 **SECTION 21.** 173.23 (3) (c) of the statutes is renumbered 173.23 (3) (c) 1. and
19 amended to read:

20 173.23 **(3)** (c) 1. The A political subdivision that files a petition under par. (a)
21 shall serve a copy of the petition, in the manner provided in s. 801.11, upon the owner
22 of the animal, if known; if a person contracting under s. 173.15 (1) has custody of the
23 animal, upon that person; and, if the animal was taken into custody under s. 173.13
24 (1) (a) 8. or was withheld under s. 173.21 (1) (a) or (c), upon the district attorney and

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1 the person alleged to have committed a violation relating to the animal if that person
2 is not the owner.

3 **SECTION 22.** 173.23 (3) (c) 2. of the statutes is created to read:

4 173.23 (3) (c) 2. A person contracting under s. 173.15 (1) who files a petition
5 under par. (a) shall serve a copy of the petition, in the manner provided in s. 801.11,
6 upon the owner of the animal, if known; upon the political subdivision with which
7 the person contracts under s. 173.15 (1); and, if the animal was taken into custody
8 under s. 173.13 (1) (a) 8. or was withheld under s. 173.21 (1) (a) or (c), upon the district
9 attorney and the person alleged to have committed a violation relating to the animal
10 if that person is not the owner.

11 **SECTION 23.** 173.23 (3) (d) of the statutes is amended to read:

12 173.23 (3) (d) The court shall conduct a hearing on the petition within 10 days
13 of the filing of the petition, except as provided under par. (dm). The petitioner and
14 any person upon whom a copy of the petition was served may appear as a party.

15 **SECTION 24.** 173.23 (3) (dm) of the statutes is created to read:

16 173.23 (3) (dm) If the petitioned–for relief includes the sale, destruction, or
17 other disposal of the animal, the owner of the animal may petition the court for a
18 delay of the hearing for not more than 20 days, conditioned on the owner posting bond
19 or other security or paying funds into the court to cover the anticipated reasonable
20 costs of custody, care, and treatment of the animal.

21 **SECTION 25.** 173.23 (3) (e) of the statutes is amended to read:

22 173.23 (3) (e) The court shall issue its order after hearing and may grant,
23 modify and grant or deny the petitioned–for relief, after considering the interests of
24 the animal, the owner of the animal, the political subdivision, and the public. If an

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1 order was issued under s. 951.17 (1) with respect to the animal, the court shall ensure
2 that the animal remains in custody until the end of the period specified in the order.

3 **SECTION 26.** 173.23 (3) (f) of the statutes is created to read:

4 173.23 (3) (f) 1. The court may release an animal that was taken into custody
5 under 173.13 (1) (a) 8. or was withheld under s. 173.21 (1) (a) or (c) to the owner of
6 the animal, if the owner of the animal is not alleged to have mistreated the animal
7 in violation of ch. 951 or to have violated s. 951.08, and order the owner to provide
8 necessary shelter, care, and treatment, including any necessary veterinary care, to
9 the animal at a specified location pending the outcome of any other proceeding.

10 2. If a court makes an order under subd. 1., it may order the political subdivision
11 that withheld the animal under s. 173.21 (1) or on behalf of whom the animal was
12 taken into custody to have a humane officer or law enforcement officer make regular
13 visits to the location at which the animal is kept to determine whether the animal
14 is receiving necessary care and treatment and to remove the animal to another
15 location if the animal is not receiving necessary care and treatment.

16 3. If a court makes an order under subd. 1.; it shall order the owner of the
17 animal to have a microchip implanted in the animal for identification; order the
18 owner to provide proof of any licensure required by statute or ordinance or to provide
19 assurance of licensure by prepayment; order the owner to provide proof of any
20 vaccination required by statute or ordinance or to provide assurance of vaccination
21 by prepayment; and order the owner to pay the costs incurred by the political
22 subdivision or person contracting under s. 173.15 (1) for shelter, care, and treatment
23 of the animal before the release of the animal to the owner unless the person who
24 incurred the costs waives the payment requirement.

25 **SECTION 27.** 173.23 (3) (g) of the statutes is created to read:

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1 173.23 (3) (g) If a court orders the owner of an animal to post bond or other
2 security for the costs of custody, care, or treatment of an animal pending the outcome
3 of any other proceeding, the court shall do all of the following:

4 1. Order the owner to post bond or other security in the amount necessary to
5 cover the reasonable costs of caring for the animal for a period specified by the court.

6 2. Order that if the other proceeding remains pending and the animal remains
7 in custody, the owner shall post additional bond or other security, at least 10 days
8 before the expiration of a period under subd. 1. or under this subdivision, in the
9 amount necessary to cover the reasonable costs of caring for the animal for an
10 additional period specified by the court.

11 **SECTION 28.** 173.23 (3) (h) of the statutes is created to read:

12 173.23 (3) (h) If a court orders the owner of an animal to pay funds into the court
13 for the costs of custody, care, or treatment of an animal pending the outcome of any
14 other proceeding, the court shall do all of the following:

15 1. Order the owner to pay into the court the amount necessary to cover the
16 reasonable costs of caring for the animal for a period specified by the court.

17 2. Order that if the other proceeding remains pending and the animal remains
18 in custody, the owner shall pay into the court, at least 10 days before the expiration
19 of a period under subd. 1. or under this subdivision, the amount necessary to cover
20 the reasonable costs of caring for the animal for an additional period specified by the
21 court.

22 3. Require the funds to be periodically disbursed to the person with custody of
23 the animal to cover the reasonable costs of providing custody, care, or treatment for
24 the animal.

25 **SECTION 29.** 173.23 (3) (i) of the statutes is created to read:

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1 173.23 (3) (i) Upon the disposition of an animal under this section, the court
2 shall return to the owner any funds paid into the court under this subsection for the
3 custody, care, or treatment of the animal that remain after paying the costs for that
4 custody, care, or treatment.

5 **SECTION 30.** 173.23 (5) (b) and (c) of the statutes are amended to read:

6 173.23 (5) (b) Unless the person issuing the quarantine order directs that the
7 animal be euthanized because it is diseased, at the end of the quarantine period the
8 political subdivision or person contracting under s. 173.15 (1) shall return the animal
9 to its owner if the owner complies with sub. (1) (a) to ~~(d)~~ (e) no later than the 7th day
10 after the day on which the political subdivision or person contracting under s. 173.15
11 (1) demands that the owner claim the animal and pay for its custody, care and
12 treatment.

13 (c) If an owner does not comply with sub. (1) (a) to ~~(d)~~ (e) within the time
14 provided in par. (b), the animal is considered an unclaimed animal under sub. (1m).

15 **SECTION 31.** 173.23 (6) of the statutes is amended to read:

16 173.23 (6) NONCOMPLIANCE BY OWNER. If an owner is ordered under sub. (3) (a)
17 1. to pay, or post bond for the payment of, costs of custody, care or treatment of an
18 animal, and refuses fails to do so upon demand, the animal shall be treated as an
19 unclaimed animal subject to under sub. (1m), subject to any order under s. 951.17 (1).
20 If an owner is ordered under sub. (3) (g) or (h) to post bond or other security or to pay
21 funds into the court for the costs of custody, care, or treatment of an animal and fails
22 to do so within 5 days of the court order or within 5 days before a period ends under
23 sub. (3) (g) 1. or 2. or (h) 1. or 2., the animal shall be treated as an unclaimed animal
24 under sub. (1m), subject to any order under s. 951.17 (1).

25 **SECTION 32.** 173.24 (1) of the statutes is repealed.

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1 **SECTION 33.** 173.24 (3) of the statutes is amended to read:

2 173.24 (3) If the a person alleged to have violated mistreated an animal in
3 violation of ch. 951 or to have violated s. 951.08 is not found guilty of the violation,
4 the person shall be assessed the county shall pay any outstanding expenses under
5 subs. (1) and sub. (2). ~~If the person is not found guilty, the county treasurer shall pay~~
6 ~~the expenses from the general fund of the county.~~

7 **SECTION 34.** 174.13 (3) of the statutes is amended to read:

8 174.13 (3) An officer or pound that has custody of unclaimed dogs shall
9 maintain records as provided under s. 173.17 (1).

10 **SECTION 35.** 951.17 of the statutes is created to read:

11 **951.17 Animals in custody. (1)** If a person is charged with a violation of this
12 chapter and an animal allegedly involved in the violation is in custody under ch. 173,
13 the person or the district attorney may move the court to order that the animal be
14 maintained in custody for a period determined by the court to be reasonable to allow
15 the collection of evidence relating to the animal. In determining the period for which
16 the animal must be maintained in custody, a court granting an order under this
17 subsection shall consider the health, safety, and welfare of the animal.

18 **(2)** A court that issues an order under sub. (1) shall provide a copy of the order
19 to any court in which a proceeding relating to the animal is pending under ch. 173
20 and to the person with custody of the animal.

21 **(3)** The ultimate disposition of the animal after the period specified in the order
22 under sub. (1) shall be determined under ch. 173.

23 **SECTION 36.** 951.18 (4) (b) 1. of the statutes is renumbered 951.18 (4) (b) and
24 amended to read:

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1 951.18 (4) (b) A sentencing court may order that an animal that is not in
2 custody be delivered to the local humane officer or society or the county or municipal
3 pound or to a law enforcement officer if a person commits a crime under this chapter,
4 the person is the owner of the animal that is involved in the crime and the court
5 considers the order to be reasonable and appropriate. A sentencing court may order
6 that an animal be delivered to the department of natural resources, if the animal is
7 a wild animal that is subject to regulation under ch. 169 and the court considers the
8 order to be reasonable and appropriate. The society, pound, officer or department of
9 natural resources shall release the animal to a person other than the owner or
10 dispose of the animal in a proper and humane manner. If the animal is a dog, the
11 release or disposal shall be in accordance with s. 173.23 (1m), ~~except that the fees~~
12 ~~under s. 173.23 (1m) (a) 4. do not apply if the expenses are covered under s. 173.24.~~
13 If the animal is not a dog, the society, pound or officer may charge a fee for the release
14 of the animal.

15 **SECTION 37.** 951.18 (4) (b) 2. of the statutes is repealed.

16 **SECTION 38.** 968.19 of the statutes is amended to read:

17 **968.19 Custody of property seized.** Property Subject to s. 968.20 and ch.
18 173, property seized under a search warrant or validly seized without a warrant shall
19 be safely kept by the officer, who may leave it in the custody of the sheriff and take
20 a receipt therefor, so long as necessary for the purpose of being produced as evidence
21 on any trial.

22 **SECTION 39.** 968.20 (1) (intro.) of the statutes is amended to read:

23 968.20 (1) (intro.) Any person claiming the right to possession of property
24 seized pursuant to a search warrant or seized without a search warrant, except
25 property seized under s. 173.13 (1) (a) 8. or withheld under s. 173.21 (1), may apply

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1 for its return to the circuit court for the county in which the property was seized or
2 where the search warrant was returned. The court shall order such notice as it
3 deems adequate to be given the district attorney and all persons who have or may
4 have an interest in the property and shall hold a hearing to hear all claims to its true
5 ownership. If the right to possession is proved to the court's satisfaction, it shall
6 order the property, other than contraband or property covered under sub. (1m) or (1r)
7 or s. ~~173.12, 173.21 (4), or 968.205~~, returned if:

8 **SECTION 40.** 968.20 (2) of the statutes is amended to read:

9 968.20 (2) Property not required for evidence or use in further investigation,
10 unless contraband or property covered under sub. (1m) or (1r) or s. ~~173.12 or 968.205~~,
11 may be returned by the officer to the person from whom it was seized without the
12 requirement of a hearing.

13 **SECTION 41. Initial applicability.**

14 (1) This act first applies to animals taken into custody on the effective date of
15 this subsection.

16 (END)