



December 14, 2022

To: The Honorable Ken Paxton  
Attorney General of Texas  
Via email: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

From: Richard Angelo, Esq.  
Legislative Attorney  
Best Friends Animal Society  
[Richarda@bestfriends.org](mailto:Richarda@bestfriends.org)

Re: Memo re: Opinion Request RQ-0485-KP

### I. Question Presented:

Pursuant to a letter received November 14, 2022 and submitted by Brazoria County Criminal District Attorney Tom Selleck, whether a municipality or local government entity may engage in a “Trap, Neuter, Release” (also called Trap, Neuter, Vaccinate, Return or “TNVR”) program in compliance with Texas Penal Code § 42.092.

### II. Summary:

Municipalities and local government entities which engage in TNVR programs are in compliance with Texas Penal Code § 42.092 regarding illegal abandonment of animals for three reasons: 1) the plain language of § 42.092 does not prohibit the use of TNVR; 2) Texas law vests local governments with the authority to manage animal care and control on a local level within the broad confines of state statute; and 3) the legislative intent behind the adoption of § 42.092 does not prohibit TNVR.

### III. Interested Parties:

Best Friends Animal Society (“Best Friends”) is a leading national animal welfare organization dedicated to saving the lives of dogs and cats in America’s animal shelters. Currently, Best Friends supports public and private animal care, control, sheltering, and rescue programs all across the state of Texas. Our Houston-based program collaborates with area shelters and rescues, businesses, and compassionate residents to support a community-based sheltering model that encourages and empowers the public to be involved with and support all aspects of animal welfare in the community. In addition to our work in Texas, we have similar

regional programs in Atlanta, Los Angeles, Salt Lake City, Northwest Arkansas, and New York City. These are all in addition to our Sanctuary, the nation's largest no-kill animal sanctuary for companion animals, in Kanab, Utah.

Best Friends' extensive investment in Texas community life focuses on providing resources to public and private animal shelters. These resources include grant funding, expert training for animal field and shelter staff at no cost, partnering with local shelters on fiscally responsible programming to reduce intake, improve positive outcomes, enhance community services for all interested Texans, and much more. Best Friends had a significant and sustained physical and financial presence in Houston subsequent to Hurricane Harvey in 2017, providing necessary services for Texans and their companion animals. In fact, since 2016, Best Friends has invested more than \$13 million in the state of Texas through the programs, resources, and training we provide.

In addition to shelter programming and community support, Best Friends employs a team of attorneys and policy analysts with expertise in navigating legal and policy obstacles to empower local governments and their shelters, including many in Texas, to adopt practices and policies to improve positive outcomes for animals and best serve community needs. We provide this assistance and guidance to Texas communities at no charge, with the mutual goal of providing access to industry-standard best animal sheltering policies and practices to the public.

Directly relevant to the subject matter of the current question put to the Attorney General, Best Friends operates several TNVR programs throughout the state in partnership and collaboration with private and government shelters, many at low or no cost to the community. These programs reduce the number of cats local governments pay to trap, hold, and euthanize, thereby improving the health of cats in the community and increasing community engagement with local officials, all while directly serving all members of the public by humanely reducing the outdoor cat population. Through these particular programs (the subject of the current question) we have facilitated or empowered in Texas alone, more than 37,000 cats have been sterilized and vaccinated.

We provide this background on our work and investment in Texas to emphasize our great interest and stake in the subject of the pending opinion with respect to request RQ-0485-KP, relating to the participation of a local government or municipality in a TNVR program. Joining Best Friends in this brief are Petco Love and 19 Texas municipalities, local governments, and

animal care, control, or sheltering organizations, a complete listing of which can be found on the last page of this brief. We appreciate the opportunity to provide input on the issue.

#### IV. Facts:

##### A. Legislative History of § 42.092

The Texas legislature enacted Texas Code § 42.092 in 2007 via HB 2328, and in 2017 enacted nonsubstantive amendments relating to the classification of violations of the statute. The law was motivated by, and is expressly directed at, acts of egregious cruelty to animals that had previously escaped prosecution. Senator Whitmire, senate sponsor of HB 2328, notes that, at the time, the existing law allowed certain acts of violence toward non-livestock animals to go unpunished. See Sen. Whitmire’s Declaration attached hereto as Exhibit A. In his Author’s Statement of Intent, Senator Whitmire began: “The current animal cruelty statute, § 42.09 (Cruelty to Animals), Penal Code, has created a situation in which certain acts of violence toward animals have escaped prosecution.” Committee Report Bill Analysis, Tex. HB 2328 (5/17/2007) attached hereto as Exhibit B, *see also* Senate Criminal Justice Subcommittee Bill Analysis Tex. HB 2328 (5/13/2007) attached hereto as Exhibit C. Senator Whitmire provided specific examples of the acts intended to be targeted and thus banned by his bill, including burning and mutilating live kittens, killing a puppy with a power lawn mower, and staking dogs and leaving them to die without food, water, or shelter. *Id.*

In contrast to the inhumane acts of cruelty that triggered HB 2328’s introduction, the widespread use of TNVR programs has mainly occurred only since § 42.092 was introduced, and there is no evidence of any consideration of such programs at the time of enactment. There have been amendments to the animal cruelty statutes in Texas since 2007 (e.g., to address bestiality and unreasonable restraint of dogs), but despite the spread of TNVR programs around the state, no suggestion has ever been made to classify TNVR programs as unreasonable or unlawful abandonment; no bills have been introduced to ban TNVR as a tool for communities to humanely manage unowned outdoor cat populations; and § 42.092’s proscriptive language has remained unchanged. Since 2007, more and more communities in Texas and across the country have adopted TNVR as a humane alternative to euthanasia for healthy, unowned, outdoor cats. Because performing TNVR is the height of humane volunteerism and the antithesis of animal

cruelty, it has never been considered, nor should it be considered, within the purview of the statute.

In 2007, when this bill was introduced and advancing through the legislature, a survey conducted by Harris Interactive showed that more than 80% of Americans believed it was more humane to leave a cat outside than to have the cat captured and killed.<sup>1</sup> Karyen Chu and Wendy M. Anderson, “U.S. Public Opinion on Humane Treatment of Stray Cats,” Law & Policy Brief (Bethesda, MD: Alley Cat Allies, September 2007). In the years leading up to the bill’s introduction, a myriad of scientific and/or peer reviewed articles were published and made available to legislators to consider when drafting language for HB 2328, many of which are cited in the attached Exhibits B and C. Despite robust conversation amongst the legislators, veterinarians, and animal care, control, and sheltering professionals, the language passed in 2007 remained narrowly focused on closing loopholes that previously allowed torture and egregious abuse to go unpunished.

#### B. What TNVR is

Trap-neuter-vaccinate-return (TNVR) is simple: cats living primarily outside, without apparent signs of ownership, are humanely trapped, carefully checked for evidence of ownership, evaluated by a licensed veterinarian, vaccinated against the rabies virus, spayed or neutered, and returned to where their outdoor homes. Introduced in the early 1990s, TNVR is now common across the U.S. and is used in communities both large and small, both urban and rural. TNVR is the animal care and control industry’s recommended best practice for management of outdoor cats. See Nat’l Animal Care & Control Ass’n Position on Animal Control Intake of Free Roaming Cats (Mar. 2021) attached hereto as Exhibit D. TNVR programs offer animal shelters and their communities a scientifically based, humane alternative to euthanizing the large number of healthy outdoor cats who might otherwise be admitted as strays, which are often more than 75% of most shelters’ feline intake. Only healthy cats are included in TNVR programs; cats in need of extended veterinary care are kept in the shelters and not returned to their outdoor homes.

---

<sup>1</sup> Unfortunately, despite the best efforts of animal shelters to find adoptive homes for the animals who are impounded, it is impossible to adopt out all of the community cats in any location due to the sheer number of those cats in any community.

Cats in TNVR programs are returned to their homes healthier than they were before being trapped. Dr. Kate Hurley, DVM, is one of the world's leading authorities on shelter medicine and TNVR programs. In the attached Exhibit E, she details her experience with TNVR programs and cites research studies, and her experience, showing that cats included in TNVR programs are generally in good overall health, and that in large-scale TNVR programs, frequently fewer than 0.5% of cats admitted are euthanized for serious health concerns. In the attached Exhibit F, Dr. Julie K. Levy, another authority on TNVR and a veterinarian-professor at the University of Florida, summarizes her experience and the studies of TNVR programs and concludes that TNVR programs 1) provide cats with optimal welfare and potential for success; 2) support the cats where they live and thrive; and 3) maintain the connection between the cats and the environment where they are found, including with the people who may be caring for them. The sterilizations provided by TNVR programs provides average longer lives than unsterilized cats. And research shows that community cats are just as healthy as pet cats, with equally low disease rates. *See* Daniel D. Spehar, Peter J. Wolf, The Impact of Return-to-Field and Targeted Trap-Neuter-Return on Feline Intake and Euthanasia at a Municipal Animal Shelter in Jefferson County, Kentucky, *Animals* 2020, 10 (8), 1395; Daniel D. Spehar, Peter J. Wolf, Integrated Return-to-Field and Targeted Trap-Neuter-Vaccinate-Return Programs Result in Reductions of Feline Intake and Euthanasia at Six Municipal Animal Shelters, *Front Vet Sci* 2019, 6 (77); Karen C. Scott, Julie K. Levy, P. Cynda Crawford, Characteristics of Free-Roaming Cats Evaluated in a Trap-Neuter-Return Program, *J. of the Am. Veterinary Med. Ass'n.* 2002, 221 (8), 1136–1138; Julie K. Levy, Natalie M. Isaza, Karen C. Scott, Effect of High-Impact Targeted Trap-Neuter-Return and Adoption of Community Cats on Cat Intake to a Shelter, *The Veterinary J.* 2014, 201 (3), 269–274.

And just as importantly, community cats often do not do well in even the best of shelters, because shelter environments (small cages, barking dogs, excessive noise) are not compatible with most cat-friendly environments. Thus, community cat programs prevent the type of harm inherent in shelter confinement for cats, and promote healthier lives and lifestyles for the cats involved.

In Texas, it is also often the case that cats returned to their outdoor homes are cared for by Good Samaritans in the community or by local businesses or establishments where the cats provide free pest deterrents; and sometimes cats are cared for by multiple community residents

who enjoy the companionship of the outdoor cats. Regardless of the presence of a caregiver, the healthy condition of a cat when examined by the TNVR veterinarian is *prima facie* evidence that the cat is thriving in the environment where it was trapped. Overall, based on all the benefits of community cat programs, and all the downsides to the traditional alternative of capturing and impounding all cats (and euthanizing significant percentages of those cats), veterinarians support community cat programs. And such programs are taught as best practices for all areas, in veterinary school curricula throughout the country.

### C. Many Texas communities actively use TNVR successfully

TNVR is a common tool used by Texas cities, counties, neighborhoods, and individuals to control the population of healthy outdoor cats and to support communities where they are present. Programs are present in these municipalities: Hurst, Houston, San Antonio, Harlingen, Midland, El Paso, Amarillo, Edinburg, McAllen, Baytown, Pasadena, Arlington, Austin, Lubbock, Dallas, Ft Worth, Irving, Grand Prairie, Addison, Garland, Laredo, Temple, San Marcos, and Waco. Texas counties that have adopted TNVR include: Hidalgo, Harris, Willacy, Bexar, Travis, Williamson, Dallas, and Bell. This is not an exhaustive list of all Texas TNVR because while TNVR can be formalized by ordinance, contract, or policy it is often implemented by knowledgeable individual caregivers working to serve their communities and improve the health and welfare of outdoor cats near them.

## V. Legal Discussion

### A. TNVR is allowed under a plain language interpretation of the state statute

The plain language of § 42.092 allows local governments and citizens to participate in TNVR programs because TNVR does not constitute an “unreasonable” abandonment. In fact, under a proper interpretation of the term, no act of “abandonment” ever occurs in TNVR programs so that whatever conduct takes place, those involved never “abandon [an animal] unreasonably,” a fundamental element in establishing the crime of animal abandonment.

In construing a statute, a court’s “primary objective is to determine and give effect to the Legislature’s intent.” Nat’l Liab. & Fire Ins. Co. v. Allen, 15 S.W.3d 525, 527 (Tex. 2000). The court first looks to the plain and common meaning of the statute’s words, taking in any context, and giving the words and context full effect. Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.,

966 S.W.2d 482, 484 (Tex. 1998). If the language is unambiguous, courts interpret the statute pursuant to its plain meaning. State ex rel. State Dep't of Hwys. & Pub. Transp. v. Gonzalez, 82 S.W.3d 322, 327 (Tex. 2002). “Every word in a statute is presumed to have been used for a purpose; and a cardinal rule of statutory construction is that each sentence, clause and word is to be given effect if reasonable and possible.” Perkins v. State, 367 S.W.2d 140, 146 (Tex. 1963). Courts may “consult standard or legal dictionaries in determining the fair, objective meaning of undefined statutory terms, and legal dictionaries to determine the meaning of undefined legal terms.” Watkins v. State, 619 S.W.3d 265 (Tex. Crim. App. 2021). Furthermore, the entirety of the statute should be considered when examining the meaning of its individual parts. See Bridgestone/ Firestone, Inc. v. Glyn-Jones, 878 S.W.2d 132, 133 (Tex. 1994). Finally, the court may consider additional matters in determining the legislature’s intent, such as the objective of the law and the consequences of a particular construction. *See* Tex. Gov’t Code Ann. § 311.023 (Vernon 1998); McIntyre v. Ramirez, 109 S.W.3d 741, 745 (Tex. 2003).

i. **TNVR does not constitute abandonment**

A Texas court reviewing § 42.092 will need to interpret “abandon” on its own because there is no definition of the term in the statute. (§ 42.092 defines “abandon” as “abandoning” an animal.) Therefore, one must apply the case law on statutory construction cited *supra* and must avoid absurd results. Thus, given the Texas rule of construction, the Attorney General should look to the plain meaning of the word “abandon,” which, when applied to animals, naturally includes an intent to subject an animal to harm or suffering, or an expectation that such a result is likely. Merriam-Webster Dictionary’s states that to abandon means “to withdraw protection, support or help from,” or “to give up with the intent of never again claiming a right or interest.” [www.merriam-webster.com/dictionary/abandon#legalDictionary](http://www.merriam-webster.com/dictionary/abandon#legalDictionary) (last visited Dec. 7, 2022). And the Cambridge Dictionary defines it as “to leave a place, thing, or person, usually forever.” [www.dictionary.cambridge.org/us/dictionary/english/abandon](http://www.dictionary.cambridge.org/us/dictionary/english/abandon) (last visited Dec. 7, 2022).

Here, TNVR programs, as established above, do not involve any “withdrawal” of “protection, support or help.” Rather, they involve the *provision* of “protection, support or help,” the opposite of abandonment. Cats involved in a TNVR program receive a veterinary exam to determine their health, followed by vaccination for rabies and surgical sterilization. As such,

TNVR necessarily returns cats to their outdoor homes in a healthier condition than when they were first trapped.

As demonstrated by the experts and scientific studies discussed above, from the veterinary practitioner (and legal) perspective, TNVR meets the needs of individual cats by sterilizing and vaccinating them while also helping to stabilize and reduce community cat populations over time. TNVR provides a humane, industry-accepted way of managing cats, and the return of cats to their outdoor homes consistently provides the best health outcome for them. In other words, TNVR, including returning cats to the outdoors, represents the opposite of the common definition of “abandonment” since the returned cats are supported by the underlying programs.

ii. TNVR does not constitute unreasonable abandonment

While those participating in TNVR therefore do not abandon the cats at all, the crime established in § 42.092 is not to merely abandon an animal, but to “unreasonably abandon” an animal. The statute does not define “unreasonable” and Texas courts have not yet interpreted the term, so we turn, again, to the rules of statutory construction outlined *supra*. In Blanco v. State, the court analyzed the term “unreasonable noise.” Based on a general definition of “noise” as meaning a loud, confused, or senseless outcry, the court found that the statutory term set out “an objective, reasonable man standard.” Blanco v. State, 761 S.W.2d 38, 42 (Tex. App. 1988). The court stated that any statute, save those of strict liability, necessarily involve police discretion for enforcement. Id. As such, the law prohibiting unreasonable noise allowed for some degree of police judgment, which was ascertained by considering the reasonableness of the noise and the demonstrated intent of the violator. Id. In affirming the lower court’s ruling, the appellate court held the defendant knew his conduct was prohibited and chose to violate the statute deliberately. Id. In another examination of the word “unreasonable”, the court in Royalty v. Strange upheld a definition of unreasonableness as “something unnecessary and out of the usual and ordinary way of conducting said business” when examining whether a hog farm’s practices were an unreasonable nuisance to the farm’s neighbor. 220 S.W. 421, 424 (Tex. App. 1920).

Here, Texas legislators passed a bill that made it a crime to “abandon unreasonably,” as opposed to just “abandon”, an animal. As established above, TNVR programs do not include any actionable abandonment under the statute. The added qualifier “unreasonably” makes it even



more obvious that TNVR programs do not come within the coverage of a law prohibiting “unreasonable abandonment.” As described *supra*, TNVR programs improve the cats’ overall health and well-being, and involve the return home of healthy outdoor cats. The peer-reviewed studies cited *supra* show the cats’ health and well-being is enhanced after spaying or neutering and vaccination for rabies. Unlike the defendant in Blanco, municipalities and local governments participating in a TNVR program are not returning animals in deliberate violation of a law, and not acting unreasonably. Rather, the local governments participating in TNVR are doing so as an ordinary way of conducting the business of animal sheltering and welfare. Hundreds of Texas entities, government and otherwise, operate TNVR programs; thousands of TNVR programs operate across the nation. It cannot, thus, be said that TNVR is out of the ordinary way of municipal animal sheltering, care, and control. Nor can it be said, based on peer-reviewed studies, that TNVR runs afoul of a reasonable person standard.

Even if reasonableness were to be considered here, it is evident that, across Texas, local governments which engage in TNVR programs have chosen to do so after deliberation and consideration of many factors, including the welfare of the cats affected. These local governments have examined, debated, and voted to adopt TNVR as a humane outdoor cat management program. These governments concluded that TNVR is reasonable and necessary pursuant to parameters set forth by the program. A local government or municipality that participates in a TNVR program does not, then, “abandon” cats, and surely does not do so unreasonably. From a public policy perspective, the conclusion that TNVR by municipalities is unlawful unreasonable abandonment creates an undesirable slippery slope where individual citizens who act as “Good Samaritans” trap, sterilize, and return cats could be criminals. These Texans, often using their own funds and their own time to help control the unwanted population of outdoor cats, could be criminally prosecuted for their efforts if participation in TNVR is deemed unlawful under § 42.092.

Because TNVR programs do not trigger the basic requirement of “abandonment,” they certainly do not include “unreasonable abandonment” of cats and, as such, are not prohibited by § 42.092. Furthermore, it defies the plain language of the statute and public policy to find that returning a healthy cat to its location after a veterinary exam, sterilization, and vaccination is criminal and cruel unreasonable abandonment of that cat.

## B. Home rule empowers local governments' decisions with respect to TNVR

Texas law vests local governments with broad rulemaking abilities in the best interests of those local governments. Under the grant of authority from article XI, section 5 of the Texas Constitution, “the power of the city to act is as general and broad as is the power of the Legislature to act.” Le Gois v. State, 190 S.W. 724, 725 (Tex. Crim. App. 1916). In other words, “[state] legislation is not required for home rule cities to act.” D. Brooks, *Municipal Law and Practice*, 22 Texas Practice § 1.17. The ability of a municipality or local government entity to engage in a TNVR program is fully within its authority as an exercise of this power.

Both general law and home rule cities are granted implied powers under the Local Government Code, which states that “the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that 1) is for the good government, peace, or order of the municipality; ... and 2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.” Tex. Loc. Gov’t. Code Ann. § 51.001. And directly relevant to the issue raised by the question presented to the Attorney General, the Texas Agriculture Code also charges county governments with the protection of domestic animals from communicable diseases. Tex. Ag. Code Ann. § 161.003(a).

Many Texas jurisdictions have passed ordinances to codify and expressly permit TNVR programs. And as the court held in Gordon v. State, “[a]n ordinance that is inconsistent with state legislation is impermissible. However, the fact that there is state legislation on a particular subject does not automatically preempt that subject from city regulation. Local regulation, ancillary to and in harmony with the state legislation, is acceptable.” 757 S.W.2d 496, 502 (Tex. App. 1988). The test for determining whether the legislature has intended to remove a field of regulation from a home rule city’s authority is whether the state legislature has spoken with “unmistakable clarity” to that effect. See Dallas Merchant’s & Concessionaire’s Assoc. v. City of Dallas, 852 S.W.2d 489, 490-91; City of Beaumont v. Fall, 291 S.W. 202, 206 (Tex. 1927); City of Sweetwater v. Geron, 380 S.W.2d 550, 552 (Tex. 1964).

Here, while the Texas Penal Code establishes broad definitions of cruelty to animals, the Code does not preempt local governments from enacting consistent ordinances regarding the health, safety, and welfare of animals. In fact, Texas Local Control, Health and Safety, and Agriculture Codes expressly vest local governments not just with the authority but with the duty and the obligation to act on health, safety, and welfare concerns regarding animals in their

communities. TNVR programs fit directly in that area delegated to local authorities. And this practice is already occurring, with Texas communities, such as those listed *supra*, enacting ordinances to address health, safety, and welfare concerns surrounding their outdoor cat populations using TNVR programs. These local governments' participation in TNVR programs are lawful, first because TNVR does not involve illegal animal abandonment, and second because Texas legislators clearly outlined and vested express local control, regulation, and governance of locally arising animal issues in these lawmaking bodies. As such, participation of local governments in TNVR programs is, pursuant to Gordon, ancillary to and in harmony with state legislation concerning the welfare of animals and local control of the same. Finally, given the powers granted by the Texas Constitution and case law thereafter, specifically Dallas Merchant's, *supra*, without expressly removing the TNVR from the local governments' home rule authority in § 42.092, the legislature failed to speak "with unmistakable clarity" on the matter. As a result, a local government may elect to participate in a TNVR program and not run afoul of § 42.092.

C. TNVR is consistent with § 42.092's purposes

The legislative intent behind the enactment of § 42.092 supports the adoption of TNVR programs, because the statute was aimed at improving animal health and welfare and at reducing animal suffering, which is exactly what TNVR programs do. The legislative intent behind this 2007 amendment to the Code was to strengthen animal welfare and protections in the state of Texas, not to prevent lifesaving public health initiatives like TNVR.

Texas Government Code § 312.005 states that when interpreting a statute, "a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy." And Texas courts have held that "[t]he plain meaning of the text is the best expression of legislative intent unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results." Molinet v. Kimbrell, 356 S.W.3d 407, 411 (Tex. 2011).

Here, the legislative intent behind § 42.092 to strike out egregious cruelty is clear and it would be "absurd" and "nonsensical" to characterize a program approved by veterinarians, law enforcement, and animal sheltering professionals as being in any way cruel or inhumane. The Author's Statement of Intent of the law makes it clear that the legislature was targeting the most

extreme cruelty, including burning and mutilating live kittens, killing a puppy with a power lawn mower, and staking dogs and leaving them to die without food, water or shelter. *See* Committee Report Bill Analysis, Tex. HB 2328 (5/17/2007), *see also* Senate Criminal Justice Subcommittee Bill Analysis Tex. HB 2328 (5/13/2007). In fact, the focus for lawmakers when drafting this bill and including unowned animals was triggered by the story of a cat who was shot, skinned, and decapitated by Baylor University students – who went unpunished because the cat did not have an identifiable owner. *Id.* The bill author’s declaration, attached hereto as Exhibit A, resolves any remaining confusion about whether the bill was intended to impede lifesaving programs like TNVR, stating “Based upon my knowledge, I believe that Sec. 42.092 of the Texas Penal Code on its face does not prevent, and was never intended to prevent, a municipality or local government from engaging in a TNR program.”

The Texas legislature’s intent in passing § 42.092 was a clear attempt to improve the welfare of animals in the state, safeguarding them from cruelty that previously fell through the legal cracks and went unpunished. TNVR programs are in direct alignment with that intent – they are efforts that are primarily focused on the welfare of animals and the prevention of animal suffering, with an important secondary impact on humans and community health. Notably, in 2017, the American Bar Association approved a resolution urging legislative bodies to adopt uniform laws and policies that allow the implementation and administration of TNVR programs. And more directly on point here, the ABA resolution urged *the interpretation of current laws* to allow TNVR programs to be established and administered. The resolution clarifies that returning cats to their original location, as is common practice in TNVR programs, “should not be deemed ‘abandonment,’ as TNVR programs are deliberately designed to improve the cat’s overall health and well-being; there is certainly no intent to harm the cats which are the subject of TNVR programs.” *See* American Bar Association Resolution 102(B) (2017), attached as Exhibit G. “Only cats determined to be healthy are returned to where they were found” and “the cats’ health and well-being is enhanced after spaying or neutering and vaccination for rabies.” *Id.*

It would be unreasonable to determine the legislature’s intent was to criminalize municipalities’ programs directed at the same goals as the Texas Legislature had when it adopted § 42.092. TNVR programs which elevate health and welfare are the antithesis of cruel or unreasonable abandonment. Analogizing the return of healthy cats to their outdoor homes as

abuse synonymous with running over a puppy with a lawnmower would certainly be an unseemly interpretation of the legislative intent to improve animal welfare in Texas.

**VI. Conclusion:**

In consideration of the plain language reading of the statute, the preference for local government control of local issues not preempted by state statute, and the legislators’ intent in enacting § 42.092, a municipality or local government absolutely may choose to engage in a TNVR program and not run afoul of § 42.092.

**The following organizations join in this brief:**

Petco Love

Luis Quintanilla, Executive Director,  
Humane Society of Harlingen

Deanna Sellers, Executive Director,  
Texas Litter Control

Nicole Hardesty, Shelter Director,  
SPCA Brazoria County

Robert Hanna, City Manager,  
City of Abilene

Salise Shuttlesworth, Founder & Director,  
Friends for Life

Melissa Webber, Director,  
Dallas Animal Services

Faith Wright, Director of Operations  
Palm Valley Animal Society

Joe Stout, President,  
Mid-Cities Community Cats

Melody Hilburn, Executive Director  
PAWS Shelter of Central Texas

Lily Yap, Division Manager,  
Grand Prairie Animal Services

Becky French, Executive Director  
Special Pals Rescue Resource Center

Jordan Craig, Executive Director  
Spay Neuter Network

Sara McComb, Animal Services Manager  
Farmers Branch Animal Services

Jen Stewart, Animal Services Supervisor  
City of Alpine

Valentina Costa & Sarah Plasencia,  
Founders, Athena’s Angels Animal Rescue

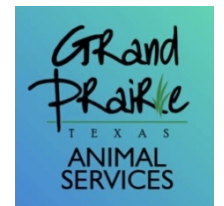
Lauren Foye, President  
Pet Prevent a Litter of Central TX

James Turnage, President  
BARC, The Humane Society

Terry Kebschull, Director  
City of El Paso Animal Services

*Continued on following page*

Londa Knaack, Director  
Grand Prairie Cat Crew



# EXHIBIT

A





# The Senate of The State of Texas

## SENATE COMMITTEES:

Criminal Justice, Chair  
Business & Commerce  
Finance

**Senator John Whitmire**

Dean of the Texas Senate

DISTRICT OFFICE:  
803 Yale Street  
Houston, Texas 77007  
(713) 864-8701  
FAX: (713) 864-5287

CAPITOL OFFICE:  
P.O. Box 12068  
Austin, Texas 78711  
(512) 463-0115  
FAX: (512) 475-3737  
Dial 711 for Relay Calls

March 12, 2022

The Honorable Ken Paxton  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711

Dear General Paxton:

I am aware of the recent request for an Attorney General opinion, RQ-0485-KP, regarding the legality of a Texas municipality or local government engaging in a "trap-neuter-release" ("TNR") program in accordance with Sec. 42.092 of the Texas Penal Code.

As you may recall, I was a Senate Sponsor of House Bill 2328 in 2007, which was eventually passed and codified in Texas Penal Code Sec. 42.092. During that time, I was Chair of the Senate Criminal Justice Committee which heard testimony regarding HB 2328 and its committee substitute. As a result, I am familiar with the language of the bill and Penal Code section, as well as the corresponding intent and history behind the reasoning for introduction and ultimate passage of the bill.

Based upon my knowledge of that process, I believe that Sec. 42.092 of the Texas Penal Code on its face does not prevent, and was never intended to prevent, a municipality or local government from engaging in a TNR program. I also believe the language of the bill accurately effectuates that intent.

The section was added to existing laws at the time to clarify what constitutes cruelty to non-livestock animals in Texas. At the time, the existing law created a situation in which certain acts of violence toward non-livestock animals had escaped prosecution. Specific examples of acts intended to be targeted and banned by the bill were mutilating live kittens; staking dogs and leaving them to die without food, water or shelter; and killing a puppy with a lawn mower.

The section's plain language accurately reflects the bill's intent: to strengthen protections for non-livestock animals in Texas, and not to prevent municipalities and local governments from utilizing programs to address stray animal populations. The language of Sec. 42.092 was crafted to prevent unreasonable abandonment of a non-livestock animal. The term "unreasonably" was included in the statutory language to modify "abandon." This was done specifically to prevent an overly broad interpretation of "abandon" that would potentially undermine the intent of the bill.





Programs such as TNR mentioned in the Attorney General Opinion request exemplify why “unreasonably” was included in the statute. Such programs do not violate the plain language of Sec. 42.092 because they do not constitute *unreasonable* abandonment of cats which are part of the program.

Further, it would undermine the plain language and legislative intent of Sec. 42.092 to find that a healthy cat returned to its outdoor location after a veterinary exam, sterilization and vaccination against rabies is a criminally punishable unreasonable abandonment of that cat. TNR programs protect communities and animals, which is likewise the goal of Sec. 42.092. Criminalizing such programs would run opposite to those goals and contradict the section’s plain language.

I believe that TNR programs engaged in by municipalities and local governments, as referenced in the Attorney General opinion request, are in harmony with state statutes and do not violate the plain language of Sec. 42.092 of the Texas Penal Code.

I appreciate your attention to this matter. Please do not hesitate to contact me for any additional information or clarification.

Sincerely,

A handwritten signature in cursive script that reads "John Whitmire". The signature is written in black ink and is positioned above the printed name.

John Whitmire

# EXHIBIT

## B

## **BILL ANALYSIS**

Senate Research Center  
80R20258 SLO-D

C.S.H.B. 2328  
By: Woolley et al. (Whitmire)  
Criminal Justice  
5/17/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The current animal cruelty statute, Section 42.09 (Cruelty to Animals), Penal Code, has created a situation in which certain acts of violence toward animals have escaped prosecution. Examples of acts which did not result in the punishment of the offender include drowning shelter dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn mower; and staking dogs and leaving them to die without food, water, or shelter.

C.S.H.B. 2328 amends Section 42.09, Penal Code, which applies to livestock animals, and adds Section 42.092, Penal Code, which applies to nonlivestock animals and seeks to address the aforementioned violent and unpunished acts toward animals while preserving longstanding protections to prosecution for persons who fear bodily injury from a dangerous wild animal; or who engage in the acts of bona fide scientific experimentation, hunting, fishing, trapping, regulated wildlife control, farming, animal husbandry, and for certain acts against animals caught in the act of injuring or killing livestock animals.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 42.09, Penal Code, as follows:

Sec. 42.09. New heading: CRUELTY TO LIVESTOCK ANIMALS. (a) Provides that a person commits an offense if the person intentionally or knowingly tortures a livestock animal; fails unreasonably to provide necessary food, water, or care for a livestock animal in the person's custody; abandons unreasonably a livestock animal in the person's custody; transports or confines an animal in a cruel manner; administers poison to certain livestock animals belonging to another without legal authority or the owner's consent; causes one livestock animal to fight with another livestock animal or with an animal defined by Section 42.092; uses a livestock animal as a lure in dog race training or in dog coursing on a racetrack; trips a horse; or seriously overworks an animal. Deletes existing text providing that a person commits an offense if the person intentionally or knowingly fails unreasonably to provide shelter to an animal in the person's custody, kills or seriously injures certain livestock animals, causes one animal to fight with another, or injures certain animals belonging to another without legal authority or the owner's effective consent.

(b) Redesignated from existing Subsection (c). Defines "depredation," "livestock animal," "necessary food, water, or care," and "torture." Redefines "abandon," "cruel manner," and "custody." Deletes existing definitions for "animal" and "necessary food, care, or shelter." Deletes existing text providing that it is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) Redesignated from existing Subsection (d). Provides that an offense under Subsection (a)(2), (3), (4), or (9), rather than Subsection (a)(2), (3), (4), (9) or (10), is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times

under Section 42.092, or one time under this section and one time under Section 42.092. Provides that an offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) Provides that it is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse. Deletes existing Subsection (d) providing that it is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's other animals and that the person killed or injured the animal at the time of this discovery.

(e) Provides that it is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research. Deletes existing text providing that it is a defense to prosecution under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code.

(f) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting, trapping, wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice, rather than farming practice, involving livestock animals. Makes conforming changes. Deletes existing Subsection (i) providing that an offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

**SECTION 2.** Amends Chapter 42, Penal Code, by adding Section 42.092, as follows:

**Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS.** (a) Defines "abandon," "animal," "cruel manner," "custody," "depredation," "livestock animal," "necessary food, water, care, or shelter," and "torture."

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly commits certain acts against animals.

(c) Provides that an offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. Provides that an offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(d) Provides that it is a defense to prosecution under this section that the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code, or the actor was engaged in bona fide experimentation for scientific research.

(e) Provides that it is a defense to prosecution under Subsection (b)(2) or (6) that the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery, or that the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with

electricity transmission of distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(f) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting, trapping, wildlife management, wildlife depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice involving livestock animals.

SECTION 3. Amends Section 54.0407, Family Code, to require the juvenile court to order a child to participate in psychological counseling for a period to be determined by the court if the child is found to have engaged in delinquent conduct constituting an offense under Section 42.09 or 42.092, Penal Code.

SECTION 4. Amends Sections 821.023(a) and (b), Health and Safety Code, as follows:

(a) Provides that a finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 (Petition for Election) that the animal has been cruelly treated.

(b) Provides that a statement of an owner at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 or 42.092, Penal Code.

SECTION 5. Amends Section 801.3585, Occupations Code, to provide that a veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

SECTION 6. Amends Section 1702.283, Occupations Code, to provide that a person who has been convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code, is ineligible for a license as a guard dog company or for registration as a dog trainer and prohibits that person from being employed to work with dogs as a security officer by certain entities.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Provides that this Act does not bar, suspend, create, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this Act defines as an offense, and the civil injury is not merged in the offense.

SECTION 9. Effective date: September 1, 2007.

# EXHIBIT

## C

## **BILL ANALYSIS**

Senate Research Center

H.B. 2328  
By: Woolley et al. (Whitmire)  
Criminal Justice  
5/13/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The current animal cruelty statute, Section 42.09 (Cruelty to Animals), Penal Code, has created a situation in which certain acts of violence toward animals have escaped prosecution. Examples of acts which did not result in the punishment of the offender include drowning shelter dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn mower; and staking dogs and leaving them to die without food, water, or shelter.

H.B. 2328 amends Section 42.09, Penal Code, which applies to livestock animals, and adds Section 42.092, Penal Code, which applies to nonlivestock animals and seeks to address the aforementioned violent and unpunished acts toward animals while preserving longstanding protections to prosecution for persons who fear bodily injury from a dangerous wild animal; or who engage in the acts of bona fide scientific experimentation, hunting, fishing, trapping, regulated wildlife control, farming, animal husbandry, and for certain acts against animals caught in the act of injuring or killing livestock animals.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 42.09, Penal Code, as follows:

Sec. 42.09. New heading: CRUELTY TO LIVESTOCK ANIMALS. (a) Provides that a person commits an offense if the person intentionally or knowingly tortures a livestock animal; fails unreasonably to provide necessary food, water, or care for a livestock animal in the person's custody; abandons unreasonably a livestock animal in the person's custody; administers poison to certain livestock animals belonging to another without legal authority or the owner's consent; causes one livestock animal to fight with another livestock animal or with an animal defined by Section 42.092; or uses a livestock animal as a lure in dog race training or in dog coursing on a racetrack. Deletes existing text providing that a person commits an offense if the person intentionally or knowingly fails unreasonably to provide shelter to an animal in the person's custody, transports or confines an animal in a cruel manner, kills or seriously injures certain livestock animals, causes one animal to fight with another, trips a horse, injures certain animals belonging to another without legal authority or the owner's effective consent, or seriously overworks an animal.

(b) Redesignated from existing Subsection (c). Defines "depredation," "livestock animal," and "necessary food, water, or care." Redefines "abandon" and "custody." Deletes existing definitions for "animal," "cruel manner," "necessary food, care, or shelter," and "trip." Deletes existing text providing that it is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) Redesignated from existing Subsection (d). Provides that an offense under Subsection (a)(2) or (3), rather than Subsection (a)(2), (3), (4), (9), or (10), is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under

Section 42.092, or one time under this section and one time under Section 42.092. Provides that an offense under Subsection (a)(1), (4), (5), or (6) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) Provides that it is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research. Deletes existing Subsection (d) providing that it is a defense to prosecution under Subsection (a)(5) that the killed or injured animal was discovered on the person's property in the act of or immediately after injuring or killing other animals belonging to that person. Deletes existing text providing that it is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse to identify the ownership of the horse or to provide veterinary care to the horse. Deletes existing text providing that it is a defense to prosecution for an offense under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code.

(e) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting, trapping, wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice, rather than farming practice, involving livestock animals. Makes conforming changes. Deletes existing Subsection (i) providing that an offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

SECTION 2. Amends Chapter 42, Penal Code, by adding Section 42.092, as follows:

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) Defines "abandon," "animal," "cruel manner," "custody," "depredation," "livestock animal," and "necessary food, water, care, or shelter."

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly commits certain acts against nonlivestock animals.

(c) Provides that an offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. Provides that an offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(d) Provides that it is a defense to prosecution under this section that the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code, or the actor was engaged in bona fide experimentation for scientific research.

(e) Provides that it is a defense to prosecution under Subsection (b)(2) or (6) that the animal killed or injured by the person was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops.

(f) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting,



trapping, wildlife management, wildlife depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice involving livestock animals.

SECTION 3. Amends Section 54.0407, Family Code, to require the juvenile court to order a child to participate in psychological counseling for a period to be determined by the court if the child is found to have engaged in delinquent conduct constituting an offense under Section 42.09 or 42.092, Penal Code.

SECTION 4. Amends Sections 821.023(a) and (b), Health and Safety Code, as follows:

(a) Provides that a finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 (Petition for Election) that the animal has been cruelly treated.

(b) Provides that a statement of an owner at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 or 42.092, Penal Code.

SECTION 5. Amends Section 801.3585, Occupations Code, to provide that a veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

SECTION 6. Amends Section 1702.283, Occupations Code, to provide that a person who has been convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code, is ineligible for a license as a guard dog company or for registration as a dog trainer and prohibits that person from being employed to work with dogs as a security officer by certain entities.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2007.

# EXHIBIT D



# ANIMAL CONTROL INTAKE OF FREE- ROAMING CATS



Written by NACA



[Announcements](#) | [Blog](#) | [Field Services](#) | [Position Statements](#)



March 22, 2021



# Animal Control Intake of Free-Roaming Cats

It is the position [policy] of the National Animal Care & Control Association that, at every opportunity, officers should [will] work to educate the public regarding humane and responsible co-existence and care of pet and community cats, to include education on the benefits and resources for spay/neuter and vaccination; responsible feeding and management practices for those choosing to care for community cats; and effective methods to humanely deter and exclude animals from homes, structures and targeted areas. It is the position of NACA that indiscriminate pick up or admission of healthy, free-roaming cats, regardless of temperament, for any purpose other than TNR/SNR, **fails to serve commonly held goals of community animal management and protection programs and, as such, is a misuse of time and public funds and should be avoided.**

- **Impoundment of healthy adult cats reduces the likelihood of reuniting families with pets:**

Lost cats are 10-50 times more likely to be reunited with their owners if they stay in the neighborhood of origin than through an animal shelter. In fact, the most successful reunification method for cats is the cat returning home on its own. A family may not consider their free-roaming cat lost until the point when the cat is removed from the neighborhood and transported to a shelter.

- **Impoundment of healthy adult cats may disproportionately impact under-served and marginalized communities**

- Only 16% of participants in a program supporting low income pet owners have ever called or visited an animal



shelter, and only 3% of pets in the same demographic were adopted from a shelter (compared to 30-40% for the general U.S. population), suggesting that impoundment is likely to be a one way journey for pets belonging to low income community members.

- Only ~40 % of people in the lowest income bracket (<\$30,000 annual income) that lost cats were reunited with them, compared to > \$90% reunited for those making \$50,000 or more per year.

- **Impoundment has the potential to increase cat populations**

**and impact:** The haphazard removal of individual cats is not population management. Removal of cats without concurrent control of the food source has been linked to paradoxical increases in cat populations by as much as 200%.

- Kittens pose a greater risk than adult cats for shedding and spreading parasites with wildlife and/or public health implications (e.g. toxoplasmosis, *Toxocara cati*, *Ancylostoma* spp.),
- therefore removing adult cats and destabilizing population age structures further increases risks to the environment.

- **Impoundment fails to resolve the inciting factors for**

**nuisance situations:** if cats are simply impounded, community members may not be motivated to identify and remedy factors such as open garbage containers that may be attracting cats as well as nuisance wildlife. TNR programs that leave cats where they are have been associated with significant reductions in nuisance complaints.

- **Impoundment of healthy free roaming cats reduces capacity to respond to critical community needs:** historically “stray cats” have made up the majority of intake at North American shelters. This can leave shelters overwhelmed, overcrowded and less able to provide appropriate care and outcomes for those animals that do require sheltering (such as sick and injured animals, those whose owners can no longer keep them, and animals that have been neglected or abused).

Impounding healthy cats is not the best way to provide services to these cats and the residents in the area in which the cats are found. NACA advises officers to take proactive steps to divert intake of “stray cats” while offering services that support the goals of community animal management and protection programs:

- Refer the public to local organizations or other staff/programs within the shelter that focus on trap-neuter-return, low-cost spay/neuter clinics, or utilize a return-to-home program within the agency if outside resources are not available or accessible.
- Support ongoing care of community cats with information on best feeding practices, referrals to pet pantries and sources for outdoor cat shelters, etc. to reduce likelihood of future complaints and contribute to the wellbeing of the individual community cats. Feeding bans are not effective strategies for dispersing congregations of cats or mitigating complaints.
- Work with residents to mitigate nuisance complaints, deploying a range of available tools (e.g., humane deterrents) and collaborating with caregivers and local TNR and rescue groups.

Exceptions to this policy should be made to mitigate exigent risk or to alleviate significant nuisance situations that can’t be otherwise remedied (e.g. with counseling/education of caretakers, sterilization and vaccination of cats, use of humane deterrents). These



circumstances are best identified through a managed admission program that includes contact and counseling prior to intake. Staff should be informed and encouraged to use their judgement on a case by case basis. Exceptions may include the following:

- **Evidence of abandonment:** Most cats in good body condition are receiving care, however in some circumstances it may be known that a cat has been recently abandoned, e.g. because it is known that the former owners moved and are not returning to care for the cats, or because the structure where the cat was known to be living was recently destroyed.
- **Evidence of being lost and unable to reunite:** While cats are more likely to return home on their own or through posting in their neighborhood of origin, it may be appropriate to admit a healthy free roaming cat if efforts have already been made to reunite it with the owner (e.g. posting in neighborhood of origin and social media without results; cat has been seen for an extended time without encouragement by feeding).
- **Issues with larger groups:** Large aggregations of cats may be associated with greater nuisance and risks than individual free roaming cats. A multi-faceted approach should be taken in these cases that leads to gradual reduction or elimination of the group, such as: a combination of caretaker education, sterilization and gradual removal to adoption, and relocation to working cat homes.
- **Specific risks identified for wildlife:** Removal may be part of a multi-faceted approach to cat management in protected habitats for sensitive wildlife species. However, even in these cases, ad hoc removal (lethal or non-lethal) has not been demonstrated to be effective and in some cases has led to paradoxical population increases in target areas. Unless new arrivals can be excluded by fencing, removal must be sufficiently intensive and sustained to



outpace new immigration and breeding, the natural consequence of a decrease in population density. Community buy-in is critical for success and a multi-faceted approach is required that includes input from natural resource personnel, animal services staff and cat advocates.

**CONTRIBUTOR CREDIT:** Dr. Kate Hurley

**REFERENCES:**

01. Lord, L.K., et al., Search and identification methods that owners use to find a lost cat. *J Am Vet Med Assoc*, 2007. 230(2): p. 217-20.
02. E. Weiss, M. Slater, L. Lord, et al. Frequency of Lost Dogs and Cats in the United States and the Methods Used to Locate Them. *Animals (Basel)*. 2012 Jun; 2(2): 301-315.
03. Pets For Life 2017 Program Report. 2017. p. 16
04. Hill, et al. Humans and Animal Vulnerability Study.
05. Lazenby, B.T., Mooney, N.J., and Dickman, C.R. (2014). Effects of low-level culling of feral cats in open populations: a case study from the forests of southern Tasmania. *Wildlife Research*, 41, 401-420.
06. Finkler H, Gunther I, and Terkel J. "Behavioral differences between urban feeding groups of neutered and sexually intact free-roaming cats following a trap-neuter-return procedure." *Journal of the American Veterinary Medical Association* 238, no. 9 (2011); 1141-1149.
07. Levy JK, Isaza NM, Scott KC. Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter. *Vet J*. 2014 Sep;201(3):269-74.



08. National Feline Research Council: Feral cat feeding bans: The reasoning, risks, and results, 2020

DOWNLOAD PDF: ANIMAL CONTROL INTAKE OF  
FREE-ROAMING CATS

[← Prev: 2020 NACA Award Receipts](#)

[Next: Animal Control Intake of Healthy Wildlife →](#)



EXHIBIT

E

I, Kate Hurley, DVM, submit the following declaration in support of local governments' ability in Texas to participate in trap neuter vaccinate return programs for outdoor cats and remain in compliance with Sec. 42.092 of the Texas Penal Code.

1. I began my career as a California State Humane Officer in Santa Cruz, California, where I was responsible for assessing people's treatment of animals, and making a determination about whether their conduct violated the animal cruelty laws in California.

2. I subsequently obtained my Doctorate of Veterinary Medicine degree from University of California at Davis' School of Veterinary Medicine/Center for Companion Animal Health. I was the first veterinarian in the world to undertake a residency in the now-widespread field of "Shelter Medicine."

3. I am a member of the Association of Shelter Veterinarians, American Veterinary Medical Association, and the American Association of Feline Practitioners. In 2017, I received the Association of Shelter Veterinarians' Veterinarian of the Year award.

4. Since 2003, I have been the Director of the University of California at Davis' School of Veterinary Medicine/Center for Companion Animal Health's Shelter Medicine Program. The Program covers a wide variety of topics related to shelter medicine and assisting shelters in working with local communities. One area of focus for the Program has always been determining the best way to address the extensive community cat population in California, and across the nation.

5. For over twelve years, one of my main areas of focus and expertise has been the development, review, and approval of humane and effective strategies to manage community cats, and I work with scientists, researchers, legal advisors, and shelter managers nationwide in that regard. I am the co-author of "[The Association of Shelter Veterinarians' Guidelines for Standards of Care in Animal Shelters](#)". In our creation of the best programs for community cats and for the communities they live in, we prioritize the most humane result for the cats and

positive outcomes for cats and communities.

6. I am also the co-founder of the [Million Cat Challenge](#), an international (and the world's largest) feline lifesaving campaign, which was founded in order to “find the right outcome for every cat who comes to a shelter, even if that ‘outcome’ is never being admitted at all.” As part of my daily work and in connection with the Million Cat Challenge, we encourage shelters to create “community cat programs” like those operated across Texas, where healthy cats without evidence of ownership, which includes both unsocialized (commonly called “feral”) and socialized (sometimes called “friendly”) cats are returned to their outdoor homes where they were found, after sterilization, medical evaluation (and, if necessary, non-extensive treatment), vaccination and ear-tipping. (Ear-tipping is a relatively painless process done while the cat is under anesthesia, and represents the universal indication of a community cat that has been sterilized.) I have presented at numerous conferences around the country on this topic, often including law enforcement personnel and attorneys for municipalities engaged in community cat programs.

7. In recent years, an increasing number of shelters have added shelter-based sterilization, vaccination (against the rabies virus and, often, other diseases as well), and return to their methods of free roaming cat management. These sterilization-and-return programs have emerged as the first wide-scale alternative to the unsuccessful shelter-based programs of cat removal that predominated in North American shelters for more than a hundred years, and that have resulted in the euthanasia of tens of millions of cats while failing to reduce the number of homeless and unwanted cats in communities. Under the current animal-welfare and community-minded system, free-roaming outdoor cats in good health are sterilized, vaccinated against infectious diseases, ear-tipped, and returned to the location found. Although originally conceived as an alternative to euthanasia for cats that could not be adopted from shelters, additional benefits of shelter-based return programs have come to light, leading to their expansion to include socialized as well as apparently unsocialized cats. Importantly, when returned to their location of origin, cats in good body condition are likely to continue accessing

whatever food source was available previously, rendering that food unavailable to other intact (i.e., unsterilized) cats in the area and preventing the increased breeding and immigration of cats from surrounding areas that occurs in response to permanent removal of cats who previously lived at the location.

8. The most significant indicator of good health and ability to thrive in any animal, including community cats, is the animal's body condition, including the lack of any visible evidence of illness or injury. When this is combined with a veterinary examination, that animal is getting the best and most informed, professional assessment possible of a cat's ability to thrive in a free-roaming, community setting. Additionally, other less readily observed conditions (e.g., heart murmurs, palpable masses, and oral problems) would be detected when the cat is being prepared for sterilization surgery.

9. The presence of a cat in good body condition is a de facto indicator that a food source is present in the area where the cat was found. Even where no visible group of cats is present, it is likely that other cats are also accessing a freely available food source. Return of one cat through a community cat program can lead to connection with caregivers allowing identification and sterilization of additional cats, magnifying the benefit of such programs.

10. Community cat programs provide great benefits to the community as well as the cats themselves, including reduction in numbers of community cats and decreased predation of wildlife. Conversely, untargeted removal of community cats can lead directly to a destabilization of age and dominance structures, resulting in a paradoxical increase in the number of cats as well as the potential harms experienced or caused by each cat.

11. Contrary to what some might suggest, community cats are, almost always, in good condition and thriving outdoors. As referenced previously, in a study of more than 100,000 community cats (of varying degrees of socialization from friendly to apparently unsocial) examined in spay/neuter clinics in six states, less than 1 percent of the cats were euthanized due to debilitating conditions, trauma, or infectious diseases. (See Wallace, J. L. and J. K. Levy (2006). "Population characteristics of feral cats admitted to seven trap-neuter-return programs in

the United States.” Journal of Feline Medicine & Surgery 8(4): 279-284.) Additionally, in San Jose, California, and Albuquerque, New Mexico, implementation of community cat programs led to a reduction of 29-38% in cats and kittens taken into the shelters and a 20-29% decrease in the number of cats picked up dead on the road, respectively. (Johnson, K. L. and J. Cicirelli (2014). “Study of the effect on shelter cat intakes and euthanasia from a shelter neuter return project of 10,080 cats from March 2010 to June 2014.” PeerJ 2: e646; Spehar, D. D. and P. J. Wolf (2018). “The Impact of an Integrated Program of Return-to-Field and Targeted Trap-Neuter-Return on Feline Intake and Euthanasia at a Municipal Animal Shelter.” Animals (Basel) 8(4).)

12. Assessment of cats’ health, well-being, and ability to thrive outdoors, done by trained shelter staff and a trained shelter veterinarian, are in almost every instance superior to assessments by well-meaning finders and trappers of cats, who are able to perform only a limited evaluation of a cat’s well-being.

13. Programs that involve the capture, sterilization and return of community cats have a longstanding history across the country, including in Texas. These programs, whether done by private individuals or municipalities, are simply designed for cats found healthy in a community and without evidence of ownership, by people who wanted to prevent the cats from reproducing. The degree to which the cat is apparently socialized or not is irrelevant to the inquiry.

14. Fewer than 1 in 3000 free-roaming cats are admitted to North American shelters on a daily basis, so that community cat programs represent the accepted, humane status quo for more than 99% of American community cats. And there is an increasing recognition that community-based care and services like those typically provided by community cat programs are more equitable and humane approaches, as compared to shelter impoundment and what may well be failed attempts at adoption or transfer to rescue groups.

15. Community cat programs provide significant health benefits to the impacted cats by

- a. Sterilizing female cats, which eliminates the stressors and dangers associated with pregnancy and birthing and the burdens and disease transmission

associated with sexual activity, as well as diseases like ovarian and mammary cancer;

- b. Sterilizing male cats, which reduces the incidence of fighting, roaming and nuisance behaviors, and diseases such as testicular cancer;
- c. Virtually eliminating transmission of dangerous and contagious Feline Leukemia Virus and Feline Immunodeficiency Virus;
- d. Providing the cats with a free veterinary examination to look for any hidden problems;
- e. Vaccinating cats and providing protection for years (at least 7 years per studies) and possibly for life against panleukopenia, the most serious infectious disease for free roaming cats;
- f. Increasing body condition score as a result of sterilization, so that a cat that starts out already in good body condition is likely to become even healthier and better able to thrive;
- g. Avoiding impoundment, which can be extremely stressful to cats (especially free-roaming cats) and trigger stress-related diseases and behavior problems which potentially result in euthanasia of cats that entered the shelter healthy.

16. Shelter resources to provide humane care are limited, and it would be impossible in any community to accommodate all of the community cats in a shelter in a way that would not result in euthanasia for many. Community cat programs also increase shelters' ability to provide care for the most needy animal populations seen in shelters. When shelter resources are not overstretched by unregulated intake of healthy free-roaming cats and resultant crowding within the facility, shelters are better able to perform more comprehensive, vital and necessary care, such as

- a. Providing medical attention to sick and injured animals in need of veterinary and caregiver support;
- b. Providing more time and attention to shelter animals who cannot successfully

live outdoors (such as dogs and some cats, including those in poor body condition or with other evidence that they are not thriving) in order to promote their health and well-being and likelihood of adoption;

- c. Protecting and sheltering animal victims of cruelty and neglect;
- d. Rehoming pets whose owners can no longer care for them;
- e. Responding to incidents involving animal attacks and other dangerous animals; and
- f. Mitigating the possibility of the spread of new strains of common diseases in animals as well as zoonotic diseases (i.e., diseases transmitted from cats to humans).

Thus, community cat programs enable shelters to better serve all animals and perform critical functions. This was seen in many regions throughout Texas and the United States as animal admissions to shelters dropped dramatically during the first year of the COVID-19 pandemic. Shelters that previously may have euthanized even mildly ill or injured animals found themselves with the resources to care for these most vulnerable pets. They were also able to provide safe temporary housing for animals in need, whether due to natural disaster, because the owner was sick with COVID-19, or other exigent needs.

17. Community cat programs are also directly endorsed by the National Animal Care and Control Association (NACA), an organization made up of animal law enforcement personnel and other animal care professionals, who are also responsible for determining if such practices violate animal welfare laws. In 2021 NACA released the following position statement:

It is the position of NACA that indiscriminate pick up or admission of healthy, free-roaming cats, regardless of temperament, for any purpose other than [community cat programs], fails to serve commonly held goals of community animal management and protection programs and, as such, is a misuse of time and public funds and should be avoided.



NACA has not raised any concern that community cat programs constitute “abandonment” of the cats involved.

18. My understanding of criminal animal abandonment, based on my experience as a California State Humane Officer as well as discussions with attorneys for multiple jurisdictions in the United States, is that it occurs when a person intentionally or knowingly causes or permits an animal to go without necessary care. If that is the definition adopted in this Opinion, community cat programs would not constitute abandonment. Because these cats have good body conditions and no identifiable serious medical conditions (as determined by a veterinarian), and because this is the most reliable and credible evidence that they are thriving in their outdoor homes, returning them to those homes could not possibly be considered abandonment, but instead would simply be returning them to the place where they were already getting what they need to live healthy lives, now in an even better welfare position due to the health benefits from medical evaluation/treatment, vaccinations, and sterilization. Conversely, preventing community cats from accessing such services by deeming sterilization and return a violation would dramatically decrease the level of care available to these animals.

19. Community cats are at home in their outdoor environments, and so returning them to their homes, after providing them with the attention described above, is functionally the same as returning them to a home environment inside someone’s house. Given that allowing outdoor access for pet cats continues to be the norm in many Texas communities, even a pet cat returned to its home may very soon be outside.

20. Community cat programs provide further health benefits to cats in general as well as the cats directly involved because sterilization decreases reproduction, and therefore decreases the numbers of deaths of kittens, who suffer high mortality from disease, predation and other environmental hazards. These programs also decrease movement of cats from other locations, who may be in danger as they move across habitats and roadways. That is, if cats are removed from community habitats, that opens up space for new community cats from other areas, who

will translocate, and who often will have to traverse dangerous roads or other areas of human habitat to get to the new space. But if cats are not permanently removed, but rather quickly returned, that translocation and dangerous movement will not occur.

21. One of the most easily identified, and most compelling, facts in support of community cat programs is that research has shown there is perhaps no greater tool for reducing euthanasia of cats than utilizing these programs, because they focus on the cats most at risk for shelter euthanasia.

22. Additionally, many cats brought into shelters as community cats may be connected with individuals who do not have the financial wherewithal to bring the cats they care for in for veterinary treatment or sterilization. Although they may not be considered owned in the traditional sense, these cats are often given names, provide valued companionship for their caregivers and are diligently fed (as evidenced by good body condition). Community cat programs provide an extremely valuable community service by getting these animals vaccinated, sterilized, and seen by a veterinarian – something that might never happen otherwise. And it is undisputed that, if Texas shelters kept those cats at their facilities, rather than returning them, there is a very real risk that these cats could get sick, or euthanized, and almost definitely never be returned to their families.

23. Returning lost pets to their homes is a central goal of most shelters. Contrary to the historic assumption that this goal was well served by bringing cats to a shelter facility, leaving healthy cats in place (or returning them to the location where they were found) may actually be a far better means to achieve the end of reunification. Multiple studies have now documented that cats are 10 – 50 times more likely to be reunited with their owners by returning home on their own or being found in the neighborhood of origin than through a call or visit to a shelter (Lord, L. K., T. E. Wittum, A. K. Ferketich, J. A. Funk and P. J. Rajala-Schultz (2007). “Search and identification methods that owners use to find a lost cat.” *J Am Vet Med Assoc* 230(2): 217-220; Slater, M. R., E. Weiss and L. K. Lord (2012). “Frequency of Lost Dogs and Cats in the United States and the Methods Used to Locate Them.” *Animals*(2): 301-315; Huang,

L., M. Coradini, J. Rand, J. Morton, K. Albrecht, B. Wasson and D. Robertson (2018). “Search Methods Used to Locate Missing Cats and Locations Where Missing Cats Are Found.” *Animals (Basel)* 8(1).) This reality is reflected in the fact that only approximately 2% of cats admitted to U.S. shelters are reunited with their owners. (Shelter animals count: the national database. “Animal Sheltering Statistics 2020”. ([https://shelteranimalscount-cms-production.s3.us-east-2.amazonaws.com/SAC\\_2020\\_White\\_Paper\\_FINAL\\_d37c1976a3.pdf](https://shelteranimalscount-cms-production.s3.us-east-2.amazonaws.com/SAC_2020_White_Paper_FINAL_d37c1976a3.pdf) (accessed 9/21/21).)

24. As opposed to the better chances of community cats reuniting with their human families if they are returned to the location where they were found, impoundment of free-roaming cats may disproportionately impact lower-income families, as barriers of transportation, language, cost, or simple lack of awareness of the cultural practice of impounding cats may deter community members from seeking their lost cat at a shelter. This may account, at least in part, for the fact that people earning <\$30,000 per year were only 1/10<sup>th</sup> as likely to find a lost cat as those earning >\$50,000. (Weiss, E., M. R. Slater and L. K. Lord (2012). “Frequency of Lost Dogs and Cats in the United States and the Methods Used to Locate Them.” *Animals*(2): 301-315.)

25. It is an unfortunate but constant fact of life for free-roaming animals in America, whether pets, free-roaming cats, or wildlife, that they may be injured or killed by cars, people, or other animals. I was confronted with this sad reality on a regular basis as a State Humane Officer in the years before community cat programs became widespread. But there is no evidence that removal of cats to shelters reduces those risks, regardless of the outcome of impounded cats. In fact, removing community cats opens up new spaces for young and translocating cats who have an even greater chance of experiencing excess risk from external factors.

26. It is certainly not possible to remove the millions of community cats estimated to be in Texas and deliver them to a positive outcome like adoption. But the sterilization, vaccination, medical evaluation/treatment, and return of community cats substantially *reduces* the risks of them getting harmed or killed, or contracting disease, and so is the best method for

reducing these risks. (Boone, J. D., et al. (2019). “A Long-Term Lens: Cumulative Impacts of Free-Roaming Cat Management Strategy and Intensity on Preventable Cat Mortalities.” Frontiers in Veterinary Science 6.) In fact, as discussed previously, enrollment in a community cat program definitely reduces the chance of injury or death for community cats.

27. In the entire time I have been working in this field (nearly three decades), with involvement and interactions with shelters all over the United States, I have never heard of a single prosecution based on abandonment under Sec. 42.092 of the Texas Penal Code against any group involved in community cat work, including through their return of socialized community cats to their habitats.

I declare that the foregoing is true and correct. Executed this 9th day of December in West Sacramento, California.

A handwritten signature in black ink that reads "K. Hurley". The signature is written in a cursive, flowing style.

Kate Hurley, DVM

EXHIBIT

F

I, Julie Levy, DVM, submit the following declaration in support of local governments' ability in Texas to participate in trap-neuter-vaccinate-return programs for outdoor cats and remain in compliance with Sec. 42.092 of the Texas Penal Code.

1. I am a veterinarian and the Fran Marino Distinguished Endowed Professor of Shelter Medicine Education at the University of Florida, Gainesville, where I focus on the health and welfare of animals in shelters, feline infectious diseases, and humane alternatives for cat population control. I founded Operation Catnip, a nonprofit university-based community cat trap-neuter-return program that has spayed, neutered, and vaccinated more than 85,000 cats in Gainesville since 1998.

2. I obtained my veterinary degree at the University of California, Davis, and my Ph.D in veterinary immunology at the College of Veterinary Medicine, North Carolina State University, Raleigh, North Carolina. Since 1997, I have been on the faculty of the College of Veterinary Medicine at the University of Florida, Gainesville.

3. In 2008, I co-founded Maddie's Shelter Medicine Program at the University of Florida College of Veterinary Medicine, an educational and discovery initiative with a global impact on the care of homeless animals.

4. In 2014, I co-founded the Million Cat Challenge, with Kate Hurley, DVM, a shelter-based campaign to save millions of cats in shelters across North America. The Million Cat Challenge incorporates the use of community cat programs into its best practices suggestions.

5. In 2015, I was awarded the George Fleming Prize for the most meritorious paper published in The Veterinary Journal that year, for my article entitled "Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter."

6. For decades, "friendly," or "socialized," free-roaming cats have been included in "community cat programs" like those used across Texas and rest of the country. These programs

are designed to provide the best welfare for free-roaming cats (community cats), which include all cats found living outdoors who are not obviously owned. I have been involved in such programs since 1985.

7. Between 1985 and 1989, while I was at the University of California, Davis School of Veterinary Medicine, we ran an early community cat program. I then continued this work in Raleigh, North Carolina, while getting my Ph.D at North Carolina State University, College of Veterinary Medicine, beginning in 1994, and I have continued to be involved with this work for my entire career.

8. An extensive body of scientific and data-driven research has been done on these community cat programs, both nationally and internationally. It has shown, among other things, that these programs (1) provide these cats with optimal welfare and potential for success, (2) support these cats where they live and thrive, and (3) maintain a connection between these cats and the environment where they are found, and often to people who they are familiar with, and who live in the same area.

9. I have co-authored and/or advised on many scientific publications on various aspects of community cat programs over the past 36 years, and have consulted on over 100 such programs around the country, including in Texas. The central tenet of every one of these programs is that the cats involved are being provided preventive health services (sterilization and vaccination) by the groups that are running the programs, but that the cats are never owned, or abandoned, by the groups running the programs. And the programs are designed to provide the best chance for a healthy life for the community cats who are returned to the location where they were found.

10. Based on my experience developing, overseeing, and advising on community cat programs, it is my opinion that community cats are never “abandoned” by those engaging in community cat programs, because the cats simply are provided veterinary care, sterilization, and vaccinations, and returned to their outdoor homes, or in proximity to the houses they may frequent.

11. In community cat programs, like those that have been implemented across Texas, each community cat is individually assessed to determine if s/he qualifies for the community cat program. That assessment includes (1) evaluation of body condition and (2) a veterinary examination to determine general health. If the cat qualifies, the cat will be sterilized and returned to the outdoor home where s/he was found.

12. The research has shown that most community cats have one or more people providing them with care – either caregivers in the neighborhood, or houses they actually spend time in. Unsterilized but loved community cats are often found in underserved communities where the cats' owners do not have the financial resources to pay for veterinary care, vaccinations, and sterilization surgeries. For those cats and owners, community cat programs provide a very valuable service to both the cats and the community, by (1) reducing nuisance behaviors of unsterilized cats, (2) stopping reproduction of more cats, and (3) giving the cats the veterinary assessment and important vaccine protection they might otherwise not get.

I declare that the foregoing is true and correct. Executed this 7th day of December in Gainesville, Florida.



---

Julie Levy, DVM



# EXHIBIT G

**AMERICAN BAR ASSOCIATION**  
**TORT TRIAL AND INSURANCE PRACTICE SECTION**  
**REPORT TO THE HOUSE OF DELEGATES**  
**RESOLUTION**

- 1 RESOLVED, That the American Bar Association urges state, local, territorial, and tribal
- 2 legislative bodies and governmental agencies to interpret existing laws and policies, and adopt
- 3 laws and policies, to allow the implementation and administration of trap-neuter-vaccinate-return
- 4 programs for community cats within their jurisdictions so as to promote their effective, efficient,
- 5 and humane management.



## REPORT

### Introduction

It is estimated that there are 74-96 million owned cats<sup>1</sup> and 30-40 million free-roaming<sup>2</sup> (“community”) cats living in the United States. Jurisdictions have struggled to manage the community cat population for decades using a traditional trap-and-remove technique that typically results in killing the cats.<sup>3</sup> This technique has proven inefficient, ineffective, and inhumane. Trap-neuter-vaccinate-return<sup>4</sup> (“TNVR”) is a management technique, introduced in the U.S. in the 1990s, by which community cats are humanely trapped, evaluated, sterilized, by a licensed veterinarian, vaccinated against rabies, ear-tipped to designate they have been sterilized and vaccinated, and returned to their original habitat. Kittens and socialized adults are removed and placed for adoption when possible.<sup>5</sup> In some situations, the returned cats are under the care of a volunteer who feeds, waters, and monitors the cats for illness or injury and for any new arrivals so that they may be trapped, neutered, vaccinated, and returned to their original habitat. TNVR has been recognized as one of the most effective and efficient methods of reducing and controlling the population of community cats, as well as potential disease control.<sup>6</sup> Moreover, there is widespread public support for the use of TNVR to manage community cats.<sup>7</sup> In these times of limited budgets for local animal control shelters, TNVR provides a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

---

<sup>1</sup> ASPCA, *Pet Statistics*, <http://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> (last visited Feb. 19, 2017).

<sup>2</sup> Humane Soc’y of the U.S., *Managing Community Cats: A Guide for Municipal Leaders 4*, [https://www.animalsheltering.org/sites/default/files/content/ca\\_community\\_cat\\_guide\\_updates\\_6\\_15\\_lowres\\_final.pdf](https://www.animalsheltering.org/sites/default/files/content/ca_community_cat_guide_updates_6_15_lowres_final.pdf) (last visited Feb. 19, 2017). Free-roaming, or community cats, are cats whose home is outdoors. Many are unsocialized to humans, while others may be stray, lost or abandoned. *Id.* at 1.

<sup>3</sup> *Taking a Broader View of Cats in the Community: NACA Feral Cat Policy Moves Toward Management*, ANIMAL SHELTERING, Sept./Oct. 2008 at 8, [http://www.aplnj.org/assets/pdf/NACA\\_Interview.pdf](http://www.aplnj.org/assets/pdf/NACA_Interview.pdf) (summarizing interview with Mark Kumpf, National Animal Control Association (NACA) President who referred to the old policy of feral cat “removal” as “capture-and-euthanize”).

<sup>4</sup> Some, primarily opponents, use the term “Release” instead of “Return.” Most TNVR programs are designed to return the cats to their original location. *What is TNVR?*, SPAYING CAP. REGION UNOWNED FERAL FELINES, <http://scruffcats.org/what-is-tnvr/> (last visited Sept. 26, 2016). However, in the event it is impossible to return the cats to their original location, perhaps because of construction or other external threats to the lives of the cats or if the cats pose a serious and actual threat to an endangered species living in the original location, many advocates will opt for “releasing” them to another available location, taking the health of the cats and new environment into account, rather than killing them because they are not able to be “returned.” *See id.*

<sup>5</sup> *See, e.g.,* Julie Levy et al., *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, 222(1) JAVMA 42, 44 (2003) (noting 47% of the 155 cats involved in the TNVR study were adopted over the course of the study), [https://www.avma.org/News/Journals/Collections/Documents/javma\\_222\\_1\\_42.pdf](https://www.avma.org/News/Journals/Collections/Documents/javma_222_1_42.pdf).

<sup>6</sup> *See* Sheilah A. Robertson, *A review of feral cat control*, 10(4) J. FELINE MED. & SURGERY 366–75 (2008).

<sup>7</sup> Peter J. Wolf, *New Study Reveals Widespread Support for Trap-Neuter-Return*, faunalytics, <https://faunalytics.org/new-survey-reveals-widespread-support-for-trap-neuter-return/> (last visited Sept. 26, 2016).

# 102B

Nevertheless, legal challenges to TNVR programs have been raised in various areas of the country due to the inconsistent legal treatment of community cats and TNVR programs by state statutes and local ordinances and policies. While some jurisdictions expressly recognize TNVR in their laws, most do not. In fact, aspects of TNVR programs have been found to violate many traditional criminal and civil statutes creating unnecessary obstacles for the implementation and administration of TNVR programs for private individuals and localities that may find their programs in violation of state law.<sup>8</sup> Consistent interpretation and/or adoption of laws throughout the country that allow for TNVR programs would provide much-needed guidance to state, local, territorial, and tribal government entities, as well as for private entities and individuals, as they seek to manage community cat populations effectively and humanely. By urging support for legal recognition of a community cat management technique that saves government resources, protects public health, respects the lives of community cats as supported by a large majority of the public, and protects wildlife by reducing over time the number of free-roaming cats, the ABA promotes just laws that benefit public and private interests.

TNVR programs are not without opposition. Some avid birders, conservationists, and others oppose TNVR as a management tool for community cats.<sup>9</sup> These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health, and that TNVR programs are ineffective.<sup>10</sup> However, the studies upon which they rely generally are flawed.<sup>11</sup> In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.<sup>12</sup>

## Effectiveness of TNVR Programs

While there is no official count of the number of cats removed from neighborhoods each year, the American Society for the Prevention of Cruelty to Animals (“ASPCA”) estimates that 3.4 million cats enter shelters annually and, of those, 1.4 million are killed.<sup>13</sup> Given the massive numbers of community cats brought into shelters, the method of trapping and killing community cats should be reviewed. Studies have estimated that at least 50% of all community cats must be

---

<sup>8</sup> See e.g. Va. Att’y Gen., Opinion Letter on TNR (July 12, 2013), [http://ag.virginia.gov/files/Opinions/2013/12-100\\_Napier.pdf](http://ag.virginia.gov/files/Opinions/2013/12-100_Napier.pdf), clarified May 4, 2015, <http://4fi8v2446i0sw2rqp2a3fg51.wpengine.netdna-cdn.com/wp-content/uploads/2015/05/Ltr-Norfolk-SPCA-Blizard.pdf> [hereinafter VA Opinion Letter].

<sup>9</sup> See, e.g., Am. Bird Conservancy, *Trap, Neuter, Release*, <https://abcbirds.org/program/cats-indoors/trap-neuter-release/> (last visited Feb. 19, 2017).

<sup>10</sup> See, e.g., PETER P. MARRA & CHRIS SANTELLA, CAT WARS: THE DEVASTATING CONSEQUENCES OF A CUDDLY KILLER (2016); Paul Barrows, *Professional, ethical, and legal dilemmas of trap-neuter-release*, 225(9) JAVMA 1365-69 (2004), [https://www.avma.org/News/Journals/Collections/Documents/javma\\_225\\_9\\_1365.pdf](https://www.avma.org/News/Journals/Collections/Documents/javma_225_9_1365.pdf).

<sup>11</sup> See, e.g., Laurie D. Goldstein, *All Dollars and No Sense: Critique of Dr. Pimentel’s Estimated Economic Impact of Domestic Cat Predation*, 2 MID-ATLANTIC J. ON L. & PUB. POL’Y 153, 158-63 (2013); Written testimony of Peter J. Wolf, Cat Initiatives Analyst, Best Friends Animal Soc’y, to D.C. Councilmember Mary M. Cheh, Chair of Comm. on Transp. & Env’t (Sept. 18, 2015) (discussing the Draft 2015 DDOE WILDLIFE ACTION PLAN) (on file with author).

<sup>12</sup> See, e.g., F.B. Nutter, *Evaluation of a Trap-Neuter-Return Management Program for Feral Cat Colonies: Population Dynamics, Home Ranges, and Potentially Zoonotic Diseases* (2005) (unpublished Ph.D. dissertation, N.C. State University); J.K. Levy et al., *Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter*, 201(3) VETERINARY J. 269-74 (2014), <http://www.sciencedirect.com/science/article/pii/S1090023314001841>.

<sup>13</sup> ASPCA, *supra* note 1.

killed to have any impact on the population and potential subsequent intake into shelters.<sup>14</sup> Since it has been proven to be impossible to catch all community cats in a population, the cats that are not caught and killed continue to reproduce and other cats enter the area vacated by those removed. The trapping and killing of community cats therefore must be sustained on an ongoing basis to simply prevent the population from growing. The more effective, efficient, and humane solution to manage community cats is TNVR.

TNVR has been shown to reduce the number of community cats in areas targeted by these programs.<sup>15</sup> A study conducted in Randolph County, North Carolina, showed a 36% average decrease in population of six community cat colonies due to targeted TNVR efforts.<sup>16</sup> By contrast, three unsterilized colonies involved in the study experienced an average 47% increase over the same period. Once spayed and neutered, the community cats in these targeted colonies no longer reproduce, which effectively curtails the number of community cats in the population.

Additionally, TNVR has been shown to significantly decrease the intake of community cats into local animal shelters and can save the jurisdiction significant expense. For example, one study in Alachua County, Florida documented a 66% decrease in animal shelter intake of community cats from a TNVR program in a targeted ZIP code compared to a 12% decrease elsewhere in the county.<sup>17</sup> Another study, in Orange County, Florida, showed the average cost of impounding and killing a cat was \$139; while the average cost of surgery was \$56.<sup>18</sup> The study also noted that the program in Orange County was a long-term program that spayed and neutered 7,903 community cats over a 6-year period, saving the county an estimated \$656,000. Further, because TNVR, through the sterilization of cats, reduces certain nuisance behaviors by cats, such as roaming for mates, fighting, and urine-spraying, TNVR case studies have documented a significant reduction in nuisance complaint calls to animal control.<sup>19</sup> Thus, TNVR is more efficient, effective, and humane than lethal methods of control.

Finally, TNVR has been increasing in popularity nationwide<sup>20</sup> and worldwide.<sup>21</sup> Further, most all national animal welfare organizations endorse the use of TNVR programs to reduce the

<sup>14</sup> Kate Hurley, *For Community Cats, a Change is Gonna Come*, ANIMAL SHELTERING MAG., Sept.-Oct. 2013, at 27, 27.

<sup>15</sup> See generally Nutter, *supra* note 12; Levy et al., *supra* note 12.

<sup>16</sup> See generally Nutter, *supra* note 12.

<sup>17</sup> See generally Levy et al., *supra* note 12.

<sup>18</sup> Kathy L. Hughes et al., *The Effects of Implementing a Feral Cat Spay/Neuter Program in a Florida County Animal Control Service*, 5(4) J. APPLIED ANIMAL WELFARE SCI. 285-98 (2002).

<sup>19</sup> See Best Friends Animal Soc’y, *How TNR Reduces Nuisance Complaints: What the Research Tells Us*, <http://bestfriends.org/resources/how-tnr-reduces-nuisance-complaints-what-research-tells-us> (last visited Feb. 19, 2017).

<sup>20</sup> Elizabeth Holtz, *Trap-Neuter-Return Ordinances and Policies in the United States: The Future of Animal Control*, ALLEY CAT ALLIES L. AND POL’Y BRIEF 3 (2014), <https://www.alleycat.org/resources/trap-neuter-return-ordinances-and-policies-in-the-united-states-the-future-of-animal-control/> (more than 330 local U.S. governments incorporate TNVR as of 2014).

<sup>21</sup> See Eugenia Natoli et al., *Management of Feral Domestic Cats in the Urban Environment of Rome (Italy)*, 77 PREVENTATIVE VETERINARY MED. 180, 181 (2006); *Trap-Neuter-Return in Seoul*, ANIMAL RESCUE KOREA (Mar. 11, 2013), <http://www.animalrescuekorea.org/articles/trap-neuter-return-in-seoul>; *History of TNR in Hong Kong*, Soc’y for Prevention Cruelty to Animals, <http://www.spca.org.hk/en/animal-birth-control/tnr-trap-neuter-return/history-tnr-hong-kong>, (last visited Feb. 19, 2017); *The Trap, Neuter, Return Program and the Feral Cat Coalition*, Toronto,

# 102B

populations of community cats. These organizations include the ASPCA,<sup>22</sup> The American Humane Association,<sup>23</sup> Best Friends Animal Society,<sup>24</sup> and the Humane Society of the United States.<sup>25</sup> Also in support are the Association of Shelter Veterinarians<sup>26</sup> and the Tufts Center for Animals and Public Policy.<sup>27</sup>

## Community Cats, TNVR and Traditional Animal Control Laws

Domestic cats exist on a wide spectrum of socialization to humans from feral cats, those cats born outdoors with no socialization to humans,<sup>28</sup> to stray cats who once lived in a home but find themselves lost or abandoned by their owner and who are well-socialized, friendly cats. Accurately determining if a free-roaming cat is “feral” or a lost or abandoned pet, however, is full of uncertainty.<sup>29</sup> There is currently no universal method available to accurately categorize any cat as feral or tame.<sup>30</sup> Based upon these uncertainties, this report refers to all free-roaming cats living outdoors as community cats.<sup>31</sup>

Regardless of differing categories of socialization and ownership status, all cats are defined in the Code of Federal Regulations as domestic cats of the species *Felis domesticus*.<sup>32</sup> This domesticated status provides certain legal protection to cats through many state and local animal cruelty provisions.<sup>33</sup>

---

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=6626f1f960745410VgnVCM10000071d60f89RCRD&vgnextchannel=a5bb39220b2c1410VgnVCM10000071d60f89RCRD> (last visited Feb. 19, 2017).

<sup>22</sup> ASPCA, *Position Statement on Community Cats and Community Cat Programs*, <http://www.asPCA.org/about-us/asPCA-policy-and-position-statements/position-statement-community-cats-and-community-cat> (last visited Feb. 19, 2017).

<sup>23</sup> AM HUMANE, *Position Statement, Cat Colonies* (Aug. 26, 2016), <https://www.americanhumane.org/position-statement/cat-colonies/>.

<sup>24</sup> BEST FRIENDS ANIMAL SOC’Y, *Helping Stray Cats: TNR is the Key*, <http://bestfriends.org/our-work/best-friends-advocacy/protecting-community-cats> (last visited Feb. 19, 2017).

<sup>25</sup> HUMANE SOC’Y OF THE U.S., *The HSUS’s Position on Cats*, [http://www.humanesociety.org/animals/cats/facts/cat\\_statement.html](http://www.humanesociety.org/animals/cats/facts/cat_statement.html) (last visited Feb. 19, 2017).

<sup>26</sup> ASS’N OF SHELTER VETERINARIANS, *Trap-Neuter-Return of Free-roaming and Community Cats* (April 2015), <http://www.sheltervet.org/assets/docs/position-statements/trapneuterreturn.pdf>.

<sup>27</sup> Genevieve Rajewski, *Feline Fixers*, TUFTS NOW (June 1, 2011), <http://now.tufts.edu/articles/feline-fixers>.

<sup>28</sup> Alley Cat Allies, *Feral and Stray Cats – An Important Difference*, <http://www.alleycat.org/resources/feral-and-stray-cats-an-important-difference/> (last visited Feb. 19, 2017).

<sup>29</sup> Margaret R. Slater et al., *A Survey of the Methods Used in Shelter and Rescue Programs to Identify Feral and Frightened Pet Cats*, 12(8) J. OF FELINE MED. AND SURGERY 592, 593 (2010).

<sup>30</sup> *Id.*

<sup>31</sup> Some cats who live indoors with their owners are allowed outdoors to free-roam. It is often difficult to distinguish these cats from “community cats” whose home is on the street. These cats are not included in the definition of “community cat.”

<sup>32</sup> 50 C.F.R. §14.4 (2012) (“Domesticated animals includes...*Felis domesticus*...”). Title 50 of the Code of Federal Regulations is entitled “Wildlife and Fisheries” and this provision is defining terms for the laws governing the exportation, importation and transportation of wildlife.

<sup>33</sup> *See, e.g.,* Thurston v. Carter, 92 A. 295, 295-96 (Me. 1914).

Moreover, under common and statutory law, pets—including cats—are considered personal property.<sup>34</sup> Local animal control laws define ownership of cats and impose obligations on all owners. Issues arise when governmental agencies attempt to define cats as “feral” for management or control purposes while disregarding ownership status, anti-cruelty provisions, and public opinion. State laws often authorize local governments to enact laws relative to community cats. This approach has led to drastically disparate treatment of community cats under the law even within the same state.

Traditional ordinances for local animal control departments vary widely in jurisdictions across the country and create problems for community cats. Community cats, as free-roaming cats, frequently are considered “stray” or “at-large” and subject to impoundment by animal control. Many jurisdictions require that an impounded animal be held for a specified period of time—the “stray hold” period—to allow the owner to reclaim the animal. Since the national average of owners reclaiming their cats at the animal control facility is approximately 2%<sup>35</sup>, and most community cats are not, in fact, owned, these cats are very rarely claimed. After the stray hold has expired, unclaimed community cats often are killed by the shelter. Not only does the impoundment of community cats harm the cats, but it is expensive for the jurisdiction to trap, hold and kill the cats, and then dispose of the bodies.

Traditional animal control laws also create serious obstacles for TNVR participants as they may find themselves unwittingly in violation of a number of laws. Specifically, if the TNVR participant is deemed the legal “owner” of the cat, they could be subject to several obligations which may include licensing, pet limits, and at-large or leash laws, making it virtually impossible to perform TNVR activities. Even if not deemed an owner, feeding bans, nuisance laws, and laws prohibiting abandonment, may subject them to civil and/or criminal prosecution. In addition, they may be held liable to third parties if community cats cause such parties harm. Legal recognition of TNVR is needed to protect participants in TNVR programs. These protections should extend to both government and private entities and individuals participating in these programs.

### Ownership and Legal Obligations that Attach

Animal ownership is legally defined in many ways, but a common definition involves keeping or harboring an animal which typically means feeding the animal over a period of time.<sup>36</sup> Such a definition has the mostly unintended consequences of targeting community cat caregivers, as they regularly monitor and feed community cats. The ownership issue becomes even more complex when one considers the number of owned cats who are allowed to roam outdoors and

<sup>34</sup> See, e.g., Van Patten v. City of Binghamton, 137 F.Supp.2d 98, 104 (N.D.N.Y. 2001); Kaufman v. Langhofer, 222 P.3d 272, 274 (Ariz. Ct. App. 2009).

<sup>35</sup> AM. HUMANE, *Animal Shelter Euthanasia*, <http://www.americanhumane.org/fact-sheet/animal-shelter-euthanasia-2/> (last visited Feb. 19, 2017).

<sup>36</sup> See e.g. “Owner— A person . . . who keeps or harbors a dog or cat or knowingly permits a dog or cat to remain on or about any premises occupied by that person.” Am. Veterinary Med. Ass’n, *AVMA Model Dog and Cat Control Ordinance*, <https://www.avma.org/KB/Policies/Documents/avma-model-dog-and-cat-control-ordinance.pdf> (last visited Feb. 19, 2017). Jurisdictions typically define “keeps or harbors” to mean “the act of, or the permitting or sufferance by, an owner or occupant of real property either of feeding or sheltering any domesticated animal on the premises of the occupant or owner thereof.” PRINCE GEORGE’S COUNTY., MD., CODE OF ORDINANCES § 3-101(50)



# 102B

receive handouts from generous neighbors.<sup>37</sup> Under some statutory interpretations, the same cat could be legally owned by several individuals, many of them most likely unaware of their legal ownership status.

Community cat caregivers, who often care for several cats residing together in colonies, if deemed owners, could be criminally and/or civilly liable for violations of a number of laws. For example, some jurisdictions require owners to license their cats<sup>38</sup> and/or limit the number of cats one may own.<sup>39</sup> The community cat caregiver would be seriously burdened to have to license each cat annually, and/or might find herself in violation of a pet limit law. Additionally, some jurisdictions prohibit owners from allowing their cats to run at-large.<sup>40</sup> Because community cats are, by definition, at-large, the community cat caregiver is in violation of this law as well. While these laws may serve useful purposes for true cat owners, they unnecessarily burden community cat caregivers and prohibit the implementation of TNVR programs. Because of these concerns laws defining owner should exempt community cat caregivers, and at-large laws, stray-hold periods, and licensing requirements should exempt ear-tipped community cats.

## Abandonment and Feeding Bans

Even if TNVR participants are not deemed owners, traditional laws still may prohibit TNVR programs. State statutes and often local ordinances contain criminal provisions for “abandonment” of an animal. These provisions create myriad legal issues for administrators of TNVR programs; specifically when jurisdictions interpret the “return” aspect of TNVR to be abandonment.<sup>41</sup> The anti-cruelty laws proscribe conduct, including abandonment, “under circumstances reasonably likely to result in the infliction of unjustifiable pain, or suffering, or cruelty upon [the animal].”<sup>42</sup> A typical definition of “abandon” is “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 . . . .”<sup>43</sup> TNVR programs that return cats to their original location should not be deemed “abandonment.” TNVR programs are deliberately designed to improve the cat’s overall health and well-being thus there is no intent to harm the cats. First, only cats determined to be healthy are returned to where they were found. Further, if the cats were healthy at the time they were trapped there is no reason to believe that returning them to where they were originally found would subject them to pain, suffering, or cruelty. Moreover, the cats’ health and well-being is enhanced after sterilization and vaccination for rabies. Thus, these laws should not be interpreted by government agencies to prevent the “return” portion of TNVR.<sup>44</sup> In fact, for clarity, the abandonment law should expressly exempt TNVR “return” of ear-tipped community cats. The potential of criminal penalties due to varying

---

<sup>37</sup> See Shawn Gorman & Julie Levy, *A Public Policy Toward the Management of Feral Cats*, 2 PIERCE L. REV. 157, 157 (2004) (estimating between 9-12% of households feed strays).

<sup>38</sup> See VA. CODE ANN. §3.2-6524(B), §3.2-6587(A)(2).

<sup>39</sup> See, e.g., PRINCE GEORGE’S COUNTY, MD. CODE § 3-148.01 (“No person may keep or harbor five (5) or more animals larger than a guinea pig or over the age of four months, without first obtaining an animal hobby permit.”).

<sup>40</sup> See, e.g., PRINCE GEORGE’S COUNTY, MD. CODE § 3-135 (“It shall be unlawful for the owner . . . of any animal . . . to permit the animal to run at large.”).

<sup>41</sup> Va. Opinion Letter, *supra* note 8.

<sup>42</sup> *People v. Untiedt*, 42 Cal. App. 3d 550, 554 (Ct. App. 1974).

<sup>43</sup> VA. CODE § 3.2-6500.

<sup>44</sup> Note that many TNVR programs provide care to the cats after they are returned. Clearly, under these programs, the cats have not been abandoned.

interpretations of statutory schemes serve as a significant factor deterring potential caregivers from becoming involved in TNVR programs, thereby worsening a community's "feral cat problem."

Additionally, ordinances are commonly enacted which provide sanctions for the feeding of community cats.<sup>45</sup> Feeding bans cause a real dilemma legally for caregivers. By feeding the community cats they care for, caregivers could be violating such an ordinance, but by adhering to the ordinance they could conceivably find themselves in violation of a cruelty provision, by failing to provide care to those same animals. Further, for those cats who have become dependent on food provided by a caregiver, a feeding ban is inhumane, usually forcing cats to subsist on insufficient resources and/or create a nuisance by rummaging through dumpsters for food. To rectify this, feeding ban laws should be interpreted to exempt ear-tipped community cats.

### Liability to Third-parties

Liability to third-parties also is a concern for most governmental entities, private organizations, and individuals involved in administering and participating in TNVR programs. Under common law, cat owners have no legal duty to keep their cat confined. Thus, if a cat caused harm to another, an owner was held responsible only if they knew the cat was dangerous and was likely to cause harm or damage to another.<sup>46</sup> However, some courts have held a person (whether an owner or not) liable for damages if they did something that caused the cats to be attracted to an area owned by another and the cats did damage to and/or caused a private nuisance that affected the landowner's enjoyment of their property.<sup>47</sup> Moreover, some jurisdictions override the common law and hold owners strictly liable if their cat is "at-large" and causes any damage to a third-party.<sup>48</sup> Potential liability to any TNVR participant may hinge on how active a role they play in the TNVR process and interpretation of applicable statutes and ordinances and may affect their willingness to participate.<sup>49</sup> However, if a TNVR participant is not considered an owner, most third-party claims will fail. Moreover, even in a jurisdiction that may hold a non-owner liable if they find the TNVR participant caused the cats to be present, the TNVR participant may use the jurisdiction's allowance of TNVR as a defense to third-party liability.<sup>50</sup> For third-party

<sup>45</sup> ANAHEIM MUNICIPAL CODE §6.44.1301 (stating that "It shall be unlawful for any person to intentionally provide food, water, or other forms of sustenance to a feral cat or feral cat colony within the boundaries of the City. It is not a violation of this section for any person to feed or shelter feral cats while working with an animal control agency under contract with the City of Anaheim.").

<sup>46</sup> *McElroy v. Carter*, 2006 WL 2805141 at \*5 (Tenn. Ct. App. 2006) (holding that there is no common law legal duty to confine cat generally regarded as domestic animals unlikely to do harm if left to themselves and incapable of constant control).

<sup>47</sup> *Kyles v. Great Oaks Interests*, 2007 WL 495897 (Cal. Ct. App. 2007) (finding that an apartment manager may be liable to landowner for overflowing garbage bins that attracted cats).

<sup>48</sup> *See, e.g.*, PRINCE GEORGE'S COUNTY, MD CODE § 3-135.

<sup>49</sup> In conducting TNVR an "owned" free-roaming cat may be trapped "accidentally." TNVR participants initially check for a microchip delineating the owner of the cat when brought to the clinic so as to sterilizing an "owned" cat without the owner's permission. However, if the cat is not microchipped the cat will likely be vaccinated, sterilized and returned. In this instance TNVR participants should not be held liable to the owner for sterilizing the cat.

<sup>50</sup> *See* Judgment at 4, *Baker v. Kuchler*, No. 29D05-0605-SC-1055 (Ind. Super. Ct., Mar. 2, 2007) (the existence of a Community Cat Ordinance may be used as a "defense" against claims of nuisance or negligence for the damage to property caused by community cats).

# 102B

claims against municipalities that conduct TNVR, the municipality may demonstrate that the TNVR program was adopted for the stated purpose of stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. As such the municipality may argue that the TNVR program is promoting a legitimate government purpose and thus it should not be held liable to third-parties.

In sum, properly implemented TNVR programs serve multiple purposes, including stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. These are all goals worthy of government involvement, and the governmental agency should make these interests and intents clear and remove any unintended legal obstacles that result from a misapplication of traditional animal control laws. Promoting the consistent interpretation and/or drafting of laws related to aspects of TNVR programs will serve to further these interests.

## Opposition to TNVR

TNVR is not without opposition.<sup>51</sup> Certain wildlife and bird advocacy organizations primarily (or solely) concerned with the sustainability of native species and the ecosystem and a small minority of animal welfare organizations<sup>52</sup> oppose the use of TNVR. The conservation groups have attacked its use citing a lack of scientific proof that it works and insisting that lethal methods be used to protect wildlife and public health.<sup>53</sup> Some have argued that feral cats are exotic or invasive species and do not fill an existing niche in the environment and that even well-fed cats significantly impact wildlife.<sup>54</sup> These opponents of TNVR vilify community cats for killing native birds, some of whom are threatened or endangered, citing predation estimates and economic impacts that are derived from flawed science.<sup>55</sup> For example, one widely publicized paper estimates that “cats in the contiguous United States annually kill between 1.3 and 4.0 billion birds.”<sup>56</sup> However, the total number of land birds in the U.S. (not including Hawaii) is estimated at just 3.2 billion,<sup>57</sup> less than the authors’ high-end estimate. The estimates are exaggerated as a result of inaccurate assumptions used in the model from which the estimates are

---

<sup>51</sup> In September 2016, a book entitled *Cat Wars: The Devastating Consequences of a Cuddly Killer* was released by Dr. Peter Marra and Chris Santella. MARRA & SANTELLA, *supra* note 10. In this book, the authors call for the removal of community cats from the outdoors “by any means necessary.” The book has caused a considerable amount of controversy and has received criticism for its failure to recognize the flaws in the reasoning and methods for control of the community cat population. See Katie Lisnik, *Cat Wars? Let’s call a ceasefire*, Animal Sheltering (Sept. 13, 2016), <https://www.animalsheltering.org/blog/cat-wars-lets-call-ceasefire>.

<sup>52</sup> See PETA, *What is PETA’s stance on programs that advocate trapping, spaying, and neutering, and releasing feral cats?*, <http://www.peta.org/about-peta/faq/what-is-petas-stance-on-programs-that-advocate-trapping-spaying-and-neutering-and-releasing-feral-cats/> (last visited Feb. 19, 2017). But see NO KILL ADVOCACY CTR., *The Wild Life of Feral Cats*, 6 No Kill Advoc. 1, 2 (2008), [http://www.friends4life.org/pdf/Feral\\_Fact\\_sheet.pdf](http://www.friends4life.org/pdf/Feral_Fact_sheet.pdf).

<sup>53</sup> See, e.g., Barrows, *supra* note 10, at 1367-8.

<sup>54</sup> See generally Travis Longcore et al., *Critical Assessment of Claims Regarding Management of Feral Cats by Trap-Neuter-Return*, 23(4) CONSERVATION BIOLOGY 887-94 (2009), <http://drupal.wildlife.org/documents/policy/Critical.Assessment.Feral.Cats.Longcore.pdf>.

<sup>55</sup> Vox Felina, *TNR Fact Sheet No. 2: Predation* (Aug. 2012), [http://voxfelina.com/voxfelina/Vox\\_Felina\\_Fact\\_Sheet\\_Predation\\_v\\_1.1.pdf](http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Predation_v_1.1.pdf).

<sup>56</sup> Scott R. Loss et al., *The impact of free-ranging domestic cats on wildlife of the United States*, 4 Nature Comm. No. 1396 at 2 (2013), <http://www.nature.com/articles/ncomms2380>.

<sup>57</sup> Partners in Flight Population Estimates Database (2013), <http://rmbo.org/pifpopestimates/Database.aspx>.

generated.<sup>58</sup> In fact, The Royal Society for the Protection of Birds in the United Kingdom has stated there is no scientific evidence that cat predation has any impact on bird populations in the U.K.<sup>59</sup> They explain that many millions of birds die naturally every year, mainly through starvation, disease, or other forms of predation. There is evidence that cats tend to take weak or sickly birds<sup>60</sup> who would have died in any event thus causing little additional predation. Further, research has shown that declines in bird populations are most commonly caused by habitat change or loss, particularly on farmland.<sup>61</sup>

Although it is true that some cats kill birds and other small mammals, TNVR is designed to *reduce* the number of community cats and thus protect birds and other wildlife. Traditional trap-and-remove techniques have failed to effectively manage the population of community cats. In fact, the only cases where lethal methods of control of community cats have successfully eradicated the population of free-roaming cats are those on small oceanic islands using cruel and hazardous methods. For example, on Marion Island, 115 square miles, it “took 19 years to exterminate approximately 2200 cats—using feline distemper, poisoning, hunting and trapping, and dogs. . . . On Ascension Island, roughly one-third the size of Marion Island, it cost approximately \$1732 per cat to eradicate an estimated 635 cats over 27 months.”<sup>62</sup> However, as noted above, studies of targeted TNVR programs have shown success in reducing the numbers of free-roaming cats, humanely, and at a savings to local jurisdictions.

Opponents also claim that the presence of free-roaming cats creates a public health hazard given the potential for cats to transmit rabies and other diseases.<sup>63</sup> However, these claims too are exaggerated. “Since 1960 only two cases of human rabies have been attributed to cats.”<sup>64</sup> In 2014, 272 cases of rabid cats were reported to the CDC, representing 4.51% of all reported cases, with the number of rabid cats remaining largely unchanged over the past 25 years despite the

---

<sup>58</sup> For example, identifying just a few of the problems, the model (1) inflates the estimate of unowned cats in the U.S. by using the frequently cited values which are not grounded in empirical data; (2) inflates the predation rate of unowned cats by relying on decades-old studies that did not use random-sampling of free-roaming cats but instead focused on hunting cats; (3) uses unproven methods for converting stomach contents of cats to annual predation rates, and (4) assumes that 80–100% of unowned cats successfully hunt birds, again inflated because of a heavy reliance on studies of rural cats, when in fact most unowned cats live in urban areas where they are less reliant on prey. See Written testimony of Peter J. Wolf, *supra* note 11.

<sup>59</sup> Royal Soc’y for Protection of Birds, *Are cats causing bird declines?*, <http://www.rspb.org.uk/get-involved/community-and-advice/garden-advice/unwantedvisitors/cats/birddeclines.aspx> (last visited Feb. 19, 2017).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Vox Felina, *Fact Sheet No. 1: Trap-Neuter-Return* (Aug. 2012)

[http://voxfelina.com/voxfelina/Vox\\_Felina\\_Fact\\_Sheet\\_TNR\\_v\\_1.1.pdf](http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_TNR_v_1.1.pdf).

<sup>63</sup> See, e.g., A.D. Roebing et al., *Rabies Prevention and Management of Cats in the Context of Trap-Neuter-Vaccinate-Release Programmes*, ZOOSES & PUB. HEALTH 1, 4 (2013), <http://abcbirds.org/wp-content/uploads/2015/05/Roebing-et-al.-2013-Rabies-prevention-and-management-of-cats-in-TNVR-programs.pdf>. Cats have also been linked to toxoplasmosis, certain intestinal parasites and flea-borne typhus, yet studies have shown they do not create any serious risk of transmission to humans. See Alley Cat Allies, *Feral Cats and the Public—A Healthy Relationship*, <http://www.alleycat.org/resources/feral-cats-and-the-public-a-healthy-relationship/> (last visited Feb. 19, 2017) [hereinafter *Feral Cats and the Public*].

<sup>64</sup> Vox Felina, *TNR Fact Sheet No. 3: Rabies* (Aug. 2013),

[http://voxfelina.com/voxfelina/Vox\\_Felina\\_Fact\\_Sheet\\_Rabies\\_v\\_1.1.pdf](http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Rabies_v_1.1.pdf) (citing CDC, *Recovery of a Patient from Clinical Rabies—California, 2011*, 61 MORBIDITY & MORTALITY WKLY. REP. 61-64 (2012)).

# 102B

increasing popularity of TNVR.<sup>65</sup> In fact, TNVR programs evaluate cats and return only healthy cats after vaccinating them for rabies, thereby reducing, for years, the risk of rabies in the returned cats.<sup>66</sup> Finally, community cats, many unsocialized to humans, rarely have contact with humans, making disease transmission highly unlikely.<sup>67</sup>

Opponents of TNVR have recently resorted to legal avenues to discredit TNVR. In early 2016, the American Bird Conservancy (“ABC”) filed a lawsuit against the New York Commissioner of Parks, Recreation and Historic Preservation (“Parks”) for violations of the Federal Endangered Species Act (“ESA”).<sup>68</sup> In a case of first impression, ABC claims that Parks is responsible for facilitating and maintaining of community cat colonies on Jones Beach State Park by allowing volunteers to perform TNVR and that these colonies are in close proximity to the nesting areas of piping plovers, which results in the “take” of the piping plovers. Piping plovers are listed as “threatened” under the ESA. Although the amended complaint filed by ABC fails to allege directly that any of the community cats at Jones Beach have harmed any piping plovers in the area, they claim that the mere presence of the cats is a threat to the nesting birds. This lawsuit is currently pending in the Eastern District of New York after the court denied Parks’ motion to dismiss.<sup>69</sup>

## Conclusion

The Tort Trial and Insurance Practice Section urges the adoption of this resolution seeking support for the legal recognition of TNVR as a population management tool for community cats which are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location and urging state, territorial, and local municipal legislative bodies and governmental agencies to adopt and/or interpret existing laws and policies that allow the implementation and administration of such programs for community cats within their jurisdictions. TNVR programs use humane methods to decrease community cat populations and increase public health through increased vaccination at a savings to local jurisdictions.

Respectfully submitted,  
Sam H. Poteet, Jr., Chair  
Tort Trial and Insurance Practice Section  
August 2017

---

<sup>65</sup> Benjamin P. Moore et al., *Rabies Surveillance in the United States during 2014*, 248 JAVMA 777, 784 (Apr. 1, 2016), <http://avmajournals.avma.org/doi/pdfplus/10.2460/javma.248.7.777>.

<sup>66</sup> Vox Felina, *Rabies*, *supra* note 64 (citing veterinarian and community cat expert Dr. Julie Levy).

<sup>67</sup> *Feral Cats and the Public*, *supra* note 63, at 1 (citing Jeffrey Kravetx and Daniel G. Federman, *Cat Associated Zoonoses*, 162 ARCH. INTERN. MED. 1945-52 (2002)).

<sup>68</sup> American Bird Conservancy v. Harvey, Case 2:16-cv-01582 (E.D.N.Y. Mar. 31, 2016).

<sup>69</sup> American Bird Conservancy v. Harvey, Memorandum of Decision & Order, Case 2:16-cv-01582-ADS-AKT (E.D.N.Y. Feb. 6, 2017) (the decision does not address the legality or effectiveness of TNVR).

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Sam Poteet, Chair, Tort Trial and Insurance Practice Section

1. Summary of Recommendation.

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming (“community”) cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats and TNVR by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR programs promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Approval by Submitting Entity.

Approved by the Tort Trial and Insurance Practice Section on April 29, 2017.

3. Has This or a Similar Recommendation Been Submitted to the House or Board Previously?

No.

4. What Existing Association Policies Are Relevant to This Recommendation and How Would They Be Affected by Its Adoption?

Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

None.

# 102B

## 8. Disclosure of Interest. (If applicable.)

Not applicable.

## 9. Referral.

This Report and Resolution is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

## 10. Contact Persons. (Prior to the Meeting)

Joan Schaffner  
Associate Professor of Law  
The George Washington University Law School  
2000 H Street, NW  
Washington, DC 20052  
202-494-0354  
jschaf@law.gwu.edu

Richard Angelo, Jr.  
Legislative Attorney  
Best Friends Animal Society  
10271 Irish Road  
Goodrich, MI 484338  
(248) 202-3152  
richarda@bestfriends.org

## 11. Contact Person. (Who Will Present the Report to the House.)

Robert S. Peck  
Delegate, TIPS  
202/944-2874  
E-mail: Robert.peck@cclfirm.com

Timothy W. Bouch  
Delegate, TIPS  
843/513-1072  
E-Mail: tbouch@leathbouchlaw.com

Michael W. Drumke  
Delegate, TIPS  
312/222-8523  
E-mail: mdrumke@smbtrials.com

## EXECUTIVE SUMMARY

### 1. Summary of the Recommendation

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming (“community”) cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

### 2. Summary of the Issue that the Recommendation Addresses

It is estimated that there are 30-40 million community cats living in the United States. Jurisdictions have struggled to manage the community cat population for many years using a traditional trap-and-remove technique that typically results in killing the cats. This technique has proven ineffective and costly. TNVR is a more effective, efficient, and humane method of control shown to reduce the populations of community cats, reduce the intake of community cats to shelters, reduce the chances of transmission of disease in the communities through vaccination efforts, and reduce complaints to local police and animal control departments regarding nuisance and property destruction. Traditional criminal and civil statutes create unnecessary obstacles for the implementation and administration of TNVR programs.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

If jurisdictions interpret existing laws and policies and/or adopt laws and policies to allow the implementation and administration of TNVR programs, local governments and private entities and individuals will be able to implement such programs without the possible threat of sanction and, in turn, provide a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

### 4. Summary of Minority Views or Opposition Which Have Been Identified

Certain wildlife and bird conservation groups and a very small minority of animal welfare organizations have opposed the use of TNVR programs for the control of community cats. These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health. Moreover, free-roaming cats are subjected to threats such that their lives outdoors result in their pain and suffering. They argue that TNVR is ineffective and all free-roaming cats must be eradicated through trap and remove, e.g. kill,



## 102B

programs. However, the studies upon which they rely generally are flawed. In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.