

Is TNR Abandonment?



Most states define abandonment, in one form or another, as "the leaving of an animal without adequate provisions for the animal's care." The basic premise of feral cat management programs, by contrast, is the opposite: *to provide care for animals already abandoned by someone else.*

Spay/neuter provides for the cat's health, prevents breeding, reduces fighting associated with intact males, and improves the animal's ability to not only survive but thrive (since cats are not roaming looking for mates, fighting, or taking care of kittens). In addition, if particular TNR programs include feeding and fresh water, anti-cruelty laws cannot even be construed as coming into play.

As one prosecutor has noted: Abandonment "is directed at those people who dump their pets and those individuals who move from an area and leave their pets behind. If an animal is returned to the area where it is being fed, it would be a greater injustice to find that these animals had been abandoned so that no action to spay/neuter the animals would be taken by anyone."

Second, abandonment statutes require the person to be the owner or have care and

custody for an indeterminate period of time. This is not present in TNR programs.

The feral cat caretaker would exercise custody only for the purpose of taking the feral cat to the veterinarian, at all times presuming the animal's re-release.

Third, public policy in many states encourages and promotes efforts to reduce the suffering and death of animals, precisely the premise behind TNR programs. State law, for example, declares it "to be the policy of New York State that every feasible humane means of reducing the production of unwanted puppies and kittens be encouraged" despite also having a law prohibiting abandonment, thereby underscoring their consistency with one another.

Finally, any attempt to apply an abandonment statute to a feral cat group would violate the constitution's requirement "that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited." To apply anti-cruelty laws to feral cat caretakers who are helping the cats not only makes no sense, it would violate the constitution on grounds of vagueness.

The actions undertaken by feral cat caretakers do not meet the statutory definition of abandonment. In addition, abandonment presupposes an ownership or possessory interest in the cats which is not present in feral cat rescue programs. Moreover, public policy often supports TNR programs thus underscoring the lack of conflict between TNR programs and abandonment laws. And finally, the application of cruelty law abandonment provisions to a TNR program would appear to be unconstitutional.