

# Unconventional Wisdom

Every issue we look at a bit of traditional animal sheltering “dogma” and analyze it to see if it is true. We also offer a No Kill alternative - what we call “No Kill Know How” to give a different perspective oriented toward preserving and protecting life. If we accept responsibility for the dogs and cats in our shelter instead of hiding behind conventional wisdom, we are better suited to meet the challenges involved with saving lives.

## OVERCOMING FEAR OF LIABILITY

### Conventional Wisdom:

No Kill programs like Trap-Neuter-Return (TNR) for feral cats, foster care, and trying to rehabilitate dogs with behavior programs increase a shelter’s liability.



### No Kill Know How:

Across the country, shelter directors who cling to outdated models of sheltering (“catch and kill”) often claim that implementing lifesaving programs like TNR or foster care will unreasonably expose their shelter to liability. But the most comprehensive studies and long-term results at progressive shelters contradict these assertions.

In fact, several studies show that a TNR program actually improves public health and safety (See *TNR: An ACO’s Perspective*, No Kill Sheltering, November/December 2005.) In addition, many shelters foster hundreds of animals every year without liability. The San Francisco SPCA and animal control in Tompkins County, for example, each foster between 600 and 1,000 dogs and cats every year, including dogs with behavior problems, and have never been the defendant in a related lawsuit.

For years, animal control shelters and local governments have claimed that leash laws were vital to protecting public safety. These arguments were—and still are—used to oppose the creation of off-leash dog parks. But a national study which looked at the issue found a correlation between the number of off-leash dog parks and a lower per capita dog bite rate. In other words, the greater the number of these parks, the lower the number of dog bites per capita. Integrating animals into society increases the likelihood that these animals will develop appropriate social behaviors. Isolating them in homes and in yards increases their risk of anti-social actions like biting.

In the end, the benefits of lifesaving outweigh the risks of liability. But even the most risk averse agencies can implement these programs, while reducing exposure to liability. While completely eliminating risk in any endeavor is unrealistic (all businesses and agencies face risk), risk can—and should—be mitigated by both municipalities and shelters. In the context of animal sheltering, there are several avenues for doing so. And while there are no guarantees, the following can go a long way to calming even the most lawsuit-averse administrator.

## Contracting Away Liability

Any contract for services should include both a hold harmless provision and the requirement of indemnification, giving whoever performs the actions all the risk and protecting a municipality or agency from liability. A sample provision is as follows:

*Provider agrees to indemnify, defend and hold the County, its officers, agents, employees and volunteers free and harmless from any and all claims, liabilities and losses, including claims for death or personal injury, arising out of or connected with alleged negligence or willful misconduct in the performance of this Agreement. This provision applies to all acts and omissions of the Provider while performing pursuant to this Agreement. During the term of the Agreement, Provider agrees to maintain commercial general liability and automobile insurance in such amount and in such form as required by County for persons or businesses providing professional services.*

## Protection Through Insurance

All shelters should maintain a broad commercial general liability insurance policy with a standard minimum limit of \$1,000,000. A general liability policy for animal shelters protects shelters from injuries, bites, and other accidents.

## A Fair and Thoughtful Temperament Protocol

Shelters should employ a fair and comprehensive temperament testing protocol to prevent the adoption of vicious dogs while simultaneously preventing the killing of shy or scared dogs who are not a public safety threat. (See *Temperament Testing in the Age of No Kill*, No Kill Sheltering, January/February, 2005.)

## Transferring Animals, Transferring Risk

When working with rescue groups and other agencies, a shelter should transfer ownership of animals to private rescue or other shelters, and allow the provider to then adopt the animals to the public, thereby transferring all liability for adoptions to these agencies.

## Waiving Liability

Shelters should require volunteers, foster parents and

adopters to sign waivers of liability. Standard waivers are available from other shelters, on the internet, or from a local attorney.

## There Ought to be a Law

Statutory protection in the form of immunity from civil lawsuits exists in some states, and is a further opportunity to reduce liability risk. (See, for example, New York State Agriculture & Markets Law, Article 7, Section 118, Subpart 11, "No liability in damages or otherwise shall be incurred on account of the seizure, euthanization or adoption of any dog pursuant to the provisions of this article." See also, NYS Ag & Mkts Law, Article 26, Section 4, which states, in relevant part, "In lieu of such destruction or redemption, such society may

in its discretion lawfully and without liability deliver such animal for adoption to an individual other than the owner after the time for redemption has expired.")

There are many other ways to manage risk, including adequate training and advising individuals of possible risks so that they cannot claim "surprise" or lack of knowledge. For example, train your volunteers how to work with animals, while advising them of the risks, and have them sign an acknowledgment. A person

who engages in an activity knowing the risks can be said to "assume" the risk much like individuals who play organized sports assume the risk of injury.

A thorough and thoughtful risk and benefit analysis that takes liability into account can be developed to allow lifesaving to increase in a community, without overexposing a shelter to potential litigation.

Once such an evaluation is done, shelters will discover that opposing TNR, refusing to foster animals, or killing dogs for fear of liability is unreasonable. All businesses and agencies deal with risk management and liability issues, and the mere fact of risk should not derail a community's commitment to No Kill principles, programs and services.

**All agencies deal with risk. The mere fact of risk should not derail a community's or shelter's commitment to No Kill principles, programs and services.**