

The hayden law: what happens now?

By [Nathan Winograd](#), SF Animal Shelters Examiner
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Over ten years ago, California passed landmark legislation to improve conditions for animals in shelters. That legislation, commonly known as the “Hayden Law” after its legislative sponsor Senator Tom Hayden, made it the official policy of the State that savable animals not be killed. To get there, the law mandated, among other things, that shelters work with rescue groups, provide prompt and necessary veterinary care, treat animals kindly, open either in the evening or on weekends, and give animals surrendered by their families an equal opportunity to find a home. It also increased the holding period and put a premium on adoption. Today, some parts of the Law are in legal limbo after the Governor and Legislature refused to fund Hayden in response to the State’s budget crisis. I talked with one of its chief drafters, UCLA Law Professor Taimie Bryant, about the law and where it stands.

Nathan J. Winograd: First of all, what was the rationale for passing the Hayden Law?

Taimie L. Bryant: State Senator Tom Hayden, from the greater Los Angeles area, wanted to reform animal control shelters around the state. With some notable exceptions, shelters had failed to provide hours the working public can visit the shelters for adoptions or redemptions of their companion animals. They failed to provide adequate lost and found services. They failed to keep records adequate to find pets within the system. They failed to use freely offered microchip scanning services. They failed to provide adequate veterinary health care for many animals. They resisted working with the rescue/adoption community. They failed to raise funds aggressively to promote lifesaving methods to spare the lives of placeable companion animals. They used tax dollars to kill animals they didn’t have to accept in the first place (“owner-relinquished” pets) and to kill animals whose companion humans never even had a chance to locate them. Our shelters had a very bad track record when it comes to adoption. In California in 1997 with a statewide human population of close to 33 million, only 142,385 cats and dogs were adopted from our shelters. The vast majority—576,097—were killed.

NJW: How did the legislation try to change that?

TB: The legislation consolidated and restated some pre-existing lifesaving requirements that shelters may not have known about. It also required, among other things, that animal shelters in California release animals to rescue groups and No Kill shelters instead of killing them; provided incentives for shelters to remain open at least some evening or weekend hours so that working people and families with children in school could get to the shelters to reclaim lost pets or adopt new ones; set a statewide preference for adoption rather than killing; and sought to end the practice where animals surrendered by their “owners,” including healthy and highly adoptable kittens and puppies, were killed within minutes of arriving. It also modestly increased the time shelters were required to hold stray animals before killing them so that lost animals had an opportunity to be reunited with their families.

NJW: What was the response by shelters?

TB: Shelters mired in killing, afraid of public scrutiny, and unwilling to work with rescue groups predictably opposed the measure. In addition to their desire to avoid being held accountable, their main objection was that the law made it illegal to kill an animal if a rescue group or No Kill shelter was willing to guarantee that animal a home through its own adoption program. Opponents said that rescue groups could not be trusted to provide adequate care to animals, but there could have been other reasons for their opposition. As frequent visitors to the shelters, rescuers saw systemic problems and inhumane treatment of animals, but their access to animals was tenuous and many times hinged on not publicly disclosing concerns. Under the Hayden Law, rescue groups’ right to take these animals is no longer legally premised on silence as to shelter practices and violations of the law.

NJW: I would think that municipal agencies and local government would have a lot of political clout. How was the law passed over their objections?

TB: Despite the opposition of shelters and their allies, it made no sense to state legislators that taxpayers were spending money on killing animals when No Kill shelters and other private rescue agencies were willing to spend their own money to save them. Legislators understood that government-funded shelters had few incentives to save lives or money. Ultimately, after the Legislature considered all the information available to them about how our shelters were operating, the proposed reform bill passed with overwhelming bipartisan support—ninety-six to twelve—and the state’s Republican governor signed the measure into law.



State Senator Tom Hayden fought to save the lives of dogs and cats in shelters. State animal control shelters intent on killing fought back. His far reaching 1998 legislation is once again at the center of controversy.

NJW: That sounds like an overwhelming victory. Was it?

TB: Yes and no. Yes, in the sense that there was a legal basis for ensuring that animals would be better cared for, had more opportunities for lifesaving, and rescue groups would have a legal right to these animals. But no, in that shelters were not willing to accept the will of the people of California. Over the next several years, they worked hard to delay implementation and to change some of the provisions in the law. In addition, the County of Los Angeles fought the measure through a regulatory challenge, replete with bloated financial analyses and misleading claims. The County claimed the law would be too expensive to implement, a claim debunked by the California Department of Finance. It claimed that the “longer” holding periods, which would give people a chance to find their lost pets or for the pets to be adopted into new homes, would lead to the increased killing of other animals. That argument was also a red herring: the law did increase the holding period from a paltry seventy-two hours from the time of impound to four days if the shelter was open one evening a week or one weekend day. But when California's holding period was 72 hours, there was only one state with a shorter holding period—Hawaii, with a 48-hour holding period. When California increased the holding period to 4 or 6 days, depending on the hours the shelter was open, it joined the bottom six states in the country in terms of holding periods. By national standards, a holding period of only 4 or 6 days is far from generous.

NJW: As you know, the No Kill Advocacy Center was involved in a lawsuit to enforce Hayden because Los Angeles County shelters were not implementing it. Were other counties implementing the law in good faith?

TB: Unfortunately, while full and vigorous implementation of the Hayden Law could have provided the basis for greater lifesaving success, some shelters refused to implement either the letter or spirit of the law. As a result, the hoped-for lifesaving has had mixed results. Some shelters have begun complying with the Hayden Law either voluntarily or due to litigation. Other shelters have continued killing owner-relinquished animals and other practices in direct violation of the Law.

NJW: What was the regulatory challenge, and what does it mean?

TB: The Hayden Law is in actuality not one, but a collection of different laws spread across different California codes. In 2000, the law was challenged by animal shelters that had opposed passage of the Hayden legislation and favored a traditional kill-oriented model of animal sheltering. The challenge was brought before the Commission on State Mandates (Commission), which is charged with ruling on claims brought by local governments that they are owed reimbursement by the state for following state laws.

Although the California Legislature and the California Department of Finance had concluded that compliance with the Hayden Law would reduce the costs of animal sheltering by saving animals through adoption and owner-redemption, the Commission ruled that some of those laws in the Hayden Law require State reimbursement for costs local governments incur for compliance. (Commission on State Mandates, Statement of Decision, 98-TC-11). For the last several years, the State has been paying local governments to comply. During the recent budget crisis, however, the Governor and the Legislature decided not to provide reimbursement for those parts of the Hayden Law that require State reimbursement. It is important to note that the laws have not been repealed, and will become enforceable when funded in future budgets. But as a result of the current budget, those unfunded laws are unenforceable for the period of time that the current budget is in effect.

NJW: So there are some parts which are not in effect, and other parts which continue to be in effect and fully enforceable?

TB: Yes, not all of the laws enacted as part of the Hayden Law were deemed by the Commission on State Mandates to require State reimbursement. Those parts of the Hayden Law remain in effect regardless of California's budgetary situation because they do not require State reimbursement of local government for compliance costs.

NJW: Which parts are still in effect? In other words, what laws must shelters continue to comply with?

TB: One of the most important is that a shelter still cannot kill an animal if a rescue group or No Kill shelter is willing to save that animal's life. Rather than kill animals, shelters are still required to transfer these animals if those groups request it. In addition, shelters are still not permitted to deny animals to rescue groups based on temperament evaluations or any other criteria beyond the requirement that the groups be recognized as non-profits under the IRS Code Section 501(c)(3).

Shelters still have to provide some types of veterinary care to animals during the holding period and as long as animals are in the shelters, as has been the law in California since 1964. And, while the holding period is back to 72 hours, shelters have to hold all dogs and cats they take in, including feral cats and regardless of whether the animals are “owner surrendered” or stray, for the full 72 hours. In fact, all owner-relinquished animals of any species must be held for the full 72 hours. And in some cases, the holding period is longer than 72 hours, as when animals are seized under the Penal Code or other sections.

NJW: Which parts of the law have been suspended?

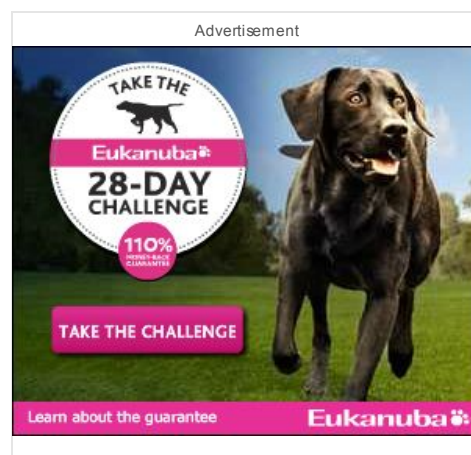
TB: The longer holding periods of 4 or 6 days have been suspended. The holding period for both stray and “owner surrendered” dogs and cats is now 72 hours, unless local law is longer. The holding period for “owner surrendered” animals such as cats, dogs, rabbits and other species is now only 72 hours—the same as stray dogs and cats.

While shelters still have to have reasonable procedures to help reunite lost animals with their families, they don't have to post notices in the shelter. They don't have to temperament test feral cats to make sure they are really feral, even though they still have to hold them for 72 hours.

NJW: Is it your expectation that the suspension is only temporary?

TB: Absolutely. Ultimately, the people of California will insist on reinvigoration of laws that save animal lives through adoption and owner-redemption.

For a copy of Professor Bryant's analysis of what the budget means to specific provisions of the Hayden Law, [click here](#).



Tags: no kill