

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 135 (Delegate Moon, *et al.*)
 Judiciary

Criminal Law - Cruelty to Animals - Seizure and Removal

This bill (1) requires the removal of a mistreated animal if the owner or custodian (owner/custodian) of the animal is convicted of animal cruelty; (2) requires transfer of ownership of a removed animal to an “impounding agency”; and (3) establishes procedures regarding notices of removal, custody of the removed animal, forfeiture of the animal to the impounding agency, and the return of a removed animal to an owner/custodian. An owner/custodian of a removed animal is liable for the reasonable costs of caring for the animal from the time of seizure or removal until the animal is forfeited to the impounding agency or returned to the owner, and must post a bond for these costs under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$62,800 in FY 2020 only. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	62,800	0	0	0	0
Net Effect	(\$62,800)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government expenditures decrease to the extent that the bill’s provisions defray costs incurred by local government entities that seize and care for confiscated animals. The extent of any such decrease in any given jurisdiction depends on the level of enforcement activity in the jurisdiction.

Small Business Effect: None. Impounding agencies are not small businesses.

Analysis

Bill Summary:

Required Removal of a Mistreated Animal

The bill requires, rather than authorizes, a court to order the removal of a mistreated animal at the time the owner/custodian of the animal is convicted of an act of animal cruelty. Ownership of an animal under court-ordered removal transfers immediately from the convicted owner/custodian to an “impounding agency.” An “impounding agency” is a humane society, a law enforcement agency, or other public agency that has the protection of animals as a function.

Notice of Removal

Upon removal of a mistreated animal, an impounding agency must conspicuously post at the location of removal a notice to the animal’s owner/custodian that includes (1) a description of the animal; (2) the statutory authority and reason for the removal; (3) any administrative remedies available; (4) contact information for the impounding agency; (5) a statement that, if the removal of the animal was justified, the owner/custodian is liable for the reasonable costs for the care of the animal; (6) notice of the right to voluntarily forfeit the animal to the impounding authority; and (7) notice of the right to file a petition for return of the animal within 10 days after the date of the notice in the District Court of the county in which the removal occurred.

If the person with custody of the animal at the time of the removal is not the animal’s owner or if no person has custody of the animal at the time of removal, the impounding agency must make a reasonable attempt to provide notice to the animal’s owner. If the identity of the owner or custodian of the animal cannot be ascertained within 10 days after the removal of the animal, the animal must be considered abandoned and ownership must be transferred to the impounding agency.

Petition for the Return of a Removed Animal

Within 10 days after the seizure or removal of an animal, the owner or custodian of a removed animal may petition the District Court for the return of the animal in the county where the removal occurred. The petition must be served on the impounding agency. If the owner or custodian of the animal fails to file a timely petition, the animal must be considered forfeited to the impounding agency.

The District Court must schedule a hearing within 14 days after the filing of a petition. At the hearing, the District Court must determine by a preponderance of the evidence if the

animal was subject to cruelty. If a preponderance of the evidence is found not to exist, the court must order the animal to be returned to the owner or custodian.

Liability for Costs of Care of a Removed Animal and Bonds for Costs of Care

The owner/custodian of a removed animal is liable for the reasonable costs of caring for the animal from the time of seizure or removal until the animal is forfeited to the impounding agency or returned to the owner/custodian, including costs associated with removing the animal, transporting the animal from the place of removal, providing medical care to the animal, feeding the animal, sheltering the animal and, if necessary, disposing of the animal.

If the court finds that a preponderance of the evidence exists that the animal was subject to cruelty, the District Court must order, if requested by the impounding agency or other agency caring for the animal, the owner/custodian to post a bond for the reasonable costs of care of the animal (using the factors listed above), for a 30-day period. The District Court must determine the amount of the bond based on information provided by the impounding agency or the agency caring for the animal; the amount of the bond may not be based on the owner's or custodian's ability to pay the bond.

If a bond is posted, the District Court must order a new bond in the same amount to be posted in recurring 30-day intervals while any criminal trial or appeal related to the removal of the animal is pending. The impounding agency may draw funds equal to the costs of caring for the animal from the bond during this time.

Failure to pay a bond within 5 days after the original order to post a bond or within 5 days after the expiration of each applicable 30-day period must result in the forfeiture of the animal to the impounding agency. On the final disposition of any related charge under Title 10, Subtitle 6 of the Criminal Law Article (crimes relating to animals), the unused portion of the bond must be returned to the person that posted the bond. If the owner or custodian is found not guilty of all applicable related charges, the owner/custodian must be entitled to a refund of all costs paid in accordance with the bill.

Entry into Private Dwelling

The provisions of the bill do not authorize an officer or an authorized agent of an impounding agency to enter into a private dwelling unless there is probable cause to believe that an act of animal cruelty is being committed or has been committed or to remove a farm animal without the prior recommendation of a veterinarian licensed in the State.

Current Law: If an owner or custodian of an animal is convicted of an act of animal cruelty, the court *may* order the removal of the mistreated animal or any other animal at the time of conviction for the protection of the animal.

Animal Abuse Generally

State law prohibits the intentional abuse or neglect of an animal and specifically prohibits dogfighting, cockfighting, animal cruelty, and possession of the implements of dogfighting under specified circumstances.

These offenses do not include customary and normal veterinary and agricultural husbandry practices, including (1) dehorning, castration, tail docking, and limit feeding; (2) research conducted in accordance with the federal Animal Welfare Act or the federal Health Research Extension Act; (3) activities that may cause unavoidable physical pain to an animal, including food processing, pest elimination, animal training, and hunting, if the person performing the activity uses the most humane method reasonably available; or (4) normal human activities in which the infliction of pain to an animal is purely incidental and unavoidable.

An officer or authorized agent of a humane society, or a police officer or other public official required to protect animals, may seize an animal if necessary to protect the animal from cruelty.

Removal of Mistreated Animals

Under § 10-615 of the Criminal Law Article, if an owner or custodian of an animal is convicted of an act of animal cruelty, the court may order the removal of the animal or any other animal at the time of conviction for the protection of the animal. An officer or authorized agent of a humane society, or a police officer or other public official required to protect animals, may seize an animal if necessary to protect the animal from cruelty.

If an animal is impounded, yarded, or confined without necessary food, water, or proper attention, is subject to cruelty, or is neglected, an officer or authorized agent of a humane society, a police officer, another public official required to protect animals, or any invited and accompanying veterinarian licensed in the State, may (1) enter the place where the animal is located and supply the animal with necessary food, water, and attention or (2) remove the animal if removal is necessary for the health of the animal. A person who enters a place to assist an animal under these circumstances is not liable for the entry. However, a person may not enter into a private dwelling for these purposes and is prohibited from removing a farm animal without the prior recommendation of a veterinarian licensed in the State.

A person who removes an animal under these circumstances must notify the animal's owner or custodian of the removal of the animal and any administrative remedies that may be available to the owner or custodian. If an administrative remedy is not available, the owner or custodian may file a petition for the return of the animal in the District Court of the county in which the removal occurred within 10 days after the removal.

Stray Animals

An animal is considered a stray if (1) an owner or custodian of the animal was notified pursuant to the statutory notice requirements and failed to file a petition within 10 days after removal or (2) the owner or custodian of the animal is unknown and cannot be ascertained by reasonable effort for 20 days.

Definitions

As applied to crimes relating to animals, "cruelty" means the unnecessary or unjustifiable physical pain or suffering caused or allowed by an act, omission, or neglect including torture and torment.

"Humane society" means a society or association incorporated in Maryland for the prevention of cruelty to animals.

Background: According to the Judiciary, there were 914 animal cruelty-related cases filed in the District Court and 394 cases filed in the circuit courts during fiscal 2018.

Chapter 410 of 2017 established the Animal Abuse Emergency Compensation Fund, administered by the Governor's Office of Crime Control and Prevention (GOCCP), to assist in paying costs associated with the removal and care of animals impounded under the State's animal abuse and neglect law. The fund consists primarily of fines levied as a result of conviction of an animal abuse crime and money appropriated in the State budget. GOCCP receives up to \$50,000 each fiscal year from the fund to offset its administrative costs. Chapter 410 of 2017 terminates September 30, 2020.

State Expenditures: General fund expenditures for the Judiciary increase by \$62,817 in fiscal 2020 only for computer reprogramming required as a result of the bill.

The Judiciary may experience additional operational effects as a result of the bill. However, it is anticipated that the Judiciary can handle these additional operational impacts and any caseload increases with existing resources.

The Judiciary advises that it has no information from which to project the number of removals or seizures that may occur as a result of the bill. Implementation of the bill

requires changes to the Judiciary's case management systems, the posting and tracking of multiple bonds, a new process to draw funds from bonds, the potential fielding of multiple requests for disbursement of funds in one case, and an expedited hearing (within 14 days of filing the petition).

The Judiciary notes that the bill does not specify in what form the bond must be paid, and the court is only able to disburse refunds on cash bonds. Also, there is the potential for multiple requests for disbursements during the progression of a case. Furthermore, it is unclear at this time how funds are to be disbursed in a case that has been transferred to another court on appeal.

Additional Information

Prior Introductions: HB 565 of 2018, a similar bill, received a hearing in the House Judiciary Committee, but was later withdrawn.

Cross File: SB 152 (Senator Ready, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Natural Resources; Department of Health; State's Attorneys' Association; Washington and Worcester counties; City of Westminster; Town of Leonardtown; Department of Legislative Services

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md/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510