

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1629
 Judiciary

(Delegate Jackson, *et al.*)

Criminal Procedure - Maryland Animal Abuse Registry

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to establish and maintain a central computerized Animal Abuse Registry of persons convicted of specified animal abuse or neglect offenses. Each registrant must pay an annual registration fee of \$50 for specified periods of time depending on whether the underlying violation is a misdemeanor or felony – as classified under the bill – and whether the conviction is a first, second, or subsequent offense. The bill also establishes an Animal Abuse Registry Fund within DPSCS. The fund may be used only for funding the administration of registry laws by county sheriffs and DPSCS.

Fiscal Summary

State Effect: Special fund revenues from registration fees increase by \$23,100 in FY 2019; future years reflect annualization and additional registrants. Special fund expenditures increase correspondingly. General fund expenditures increase by \$308,000 in FY 2019 to cover costs not covered with special funds; future years reflect annualization and ongoing costs. Minimal increase in general fund revenues.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	-	-	-	-	-
SF Revenue	\$23,100	\$61,600	\$92,400	\$123,200	\$154,000
GF Expenditure	\$308,000	\$61,900	\$53,200	\$45,000	\$36,900
SF Expenditure	\$23,100	\$61,600	\$92,400	\$123,200	\$154,000
Net Effect	(\$308,000)	(\$61,900)	(\$53,200)	(\$45,000)	(\$36,900)

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

Local Effect: Minimal increase in county expenditures and revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Registration Requirements: The bill requires an individual to register on an annual basis with the Animal Abuse Registry for varying durations depending on (1) whether the conviction is classified as a tier I offense (misdemeanor) or tier II offense (felony), as specified by the bill, and (2) whether the conviction is a first, second, or subsequent conviction. **Exhibit 1** specifies the required length of time a convicted individual must register under each circumstance.

Exhibit 1 Required Duration of Registration for an Offender under the Bill

Tier I Offenders – Misdemeanor

An offender must register, with respect to the offenses listed below, for (1) five years for a first or second conviction and (2) 10 years for a third or subsequent conviction. The registration period begins on the date of conviction or the date of release from incarceration, whichever is later.

- Unnatural or perverted sex acts with an animal
- Animal abuse or neglect
- Attending a dogfight or cockfight
- Possessing an implement of dogfighting
- Aggravated animal cruelty – cockfighting
- Giving an animal as a prize
- Arrest by a humane officer
- Killing of a dog or cat
- Abandoning a domestic animal
- Sale of puppy or kitten less than 8 weeks of age without its mother
- Transfer or coloring of chick
- Poisoning a dog
- Unattended dangerous dog
- Import, offer, or transfer of dangerous animal
- Injuring or trapping a carrier pigeon
- Leaving unattended dog outside by use of restraints
- Unauthorized surgery on a dog
- Unauthorized surgical devocalization of a cat or dog

Tier II Offenders – Felony

An offender must register for a felony violation (listed below), an attempt to commit a felony violation, or a crime committed in a federal, state, or foreign jurisdiction that, if committed in the State, would constitute such an offense for (1) 10 years for a first conviction and (2) life for a second or subsequent conviction. The registration period begins on the date of conviction or the date of release from incarceration, whichever is later.

- Sodomy involving an animal
- Aggravated animal cruelty
- Aggravated animal cruelty – dogfighting
- Interfering (tampering) with a race horse

Note: The felony and misdemeanor classifications of the bill are for the purpose of the bill’s registration requirements and differ from the existing felony/misdemeanor distinctions in the Criminal Law Article for purposes of establishing penalties, which remain unchanged by the bill.

Source: Department of Legislative Services

A person is convicted for purposes of the bill when the person (1) is found guilty of a listed crime by a jury or judicial officer or (2) enters a plea of guilty or *nolo contendere*.

A person convicted of an animal abuse crime must register with the county sheriff for the county in which the person resides within 7 days after the date that person is sentenced, released, granted probation, or granted a suspended sentence. A convicted person that moves into the State must register within 7 days after the date of establishing temporary or permanent residence or applying for a State driver’s license, whichever is earlier. The registrant must update registry information annually and to reflect any address change within 10 days of the change.

An individual is no longer subject to registration if (1) the individual is no longer a resident of the State; (2) the underlying conviction is reversed, vacated, or set aside; or (3) the individual is pardoned for the underlying conviction.

The Registry: The animal abuse registry must be updated based on information made available to DPSCS and must include the registrant’s name, race, gender, date of birth, residential address, the date and a description of the crime for which registration is required, and a digital image of the registrant, as specified.

The county sheriff must forward all registration information, including the digital image of the registrant, to DPSCS. In addition to any fine, fee, or penalty levied or imposed, each registrant must pay an annual registration fee of \$50. The county sheriff must remit the

annual registration fees collected to the State Treasurer for deposit into the Animal Abuse Registry Fund established by the bill.

The Animal Abuse Registry Fund: The Animal Abuse Registry Fund is a special, continuing, nonlapsing fund that consists of annual registration fees collected from registrants and any money made available from other sources. Investment earnings are paid into the general fund. Up to 65% of the money in the new special fund must be payable to counties to fund the collection of information by the county sheriffs, as required by the bill. Up to 35% of the money in the fund must be payable to DPSCS to fund the registry. The fund is subject to audit by the Office of Legislative Audits (OLA).

Accessibility of Registry Information: Information regarding a tier I offender contained in the registry must be made available, through the Internet, by telephone, by written access, and in person, *only to:*

- a law enforcement agency;
- a humane society;
- an animal shelter;
- an animal breeder; or
- a pet store.

Information regarding a tier II registrant contained in the registry must be made available *to the public* through the Internet, by telephone, by written access, and in person.

Prohibited Activity: The bill prohibits a person subject to registration from knowingly (1) possessing, or otherwise coming into contact with, a domesticated animal while subject to the registration requirement; (2) failing to register with the county sheriff; or (3) failing to provide accurate information when registering. A violator is guilty of a misdemeanor and subject to a maximum fine of \$1,000 and/or one year imprisonment.

Other Changes: The bill *requires* a court to order a defendant convicted of an animal abuse crime to participate in and pay for psychological counseling as a condition of sentencing.

Current Law:

Felony Animal Abuse Offenses

Felony Aggravated Animal Cruelty: A person may not intentionally mutilate, torture, cruelly beat, or cruelly kill an animal or cause or procure such an act. Except in the case of self-defense, a person may not intentionally inflict bodily harm, permanent disability, or death on an animal owned or used by a law enforcement unit. A person who violates these

provisions is guilty of the felony of aggravated cruelty to animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. The court may order a person convicted of this crime to undergo and pay for psychological counseling. As a condition of probation, a court may prohibit a defendant from owning, possessing, or residing with an animal.

Felony Aggravated Animal Cruelty – Dogfighting: A person may not (1) use or allow a dog to be used in a dogfight or for baiting; (2) arrange or conduct a dogfight; (3) possess, own, sell, transport, or train a dog with the intent to use the dog in a dogfight or for baiting; or (4) knowingly allow premises under his or her control to be used for dogfighting or for baiting. A person who violates these provisions is guilty of a felony and is subject to up to three years imprisonment and/or a maximum fine of \$5,000. The court may order a person convicted of this crime to undergo and pay for psychological counseling.

Felony Aggravated Animal Cruelty – Cockfighting: A person may not (1) use or allow the use of a fowl, cock, or other bird to fight with another animal; (2) possess, with an intent to unlawfully use, an implement of cockfighting or any tool designed to enhance a bird's fighting ability or for use in a deliberately conducted fighting event; (3) arrange or conduct an event where a fowl, cock, or other bird fights with another fowl, cock, or other bird; (4) possess, own, sell, transport, or train a bird with the intent to use the fowl, cock, or other bird in a cockfight; or (5) knowingly allow premises under the person's control to be used for a fowl, cock, or other bird to fight with another fowl, cock, or other bird. A person who violates these provisions is guilty of a felony and may receive up to three years imprisonment, and/or a maximum fine of \$5,000. The court may order a person convicted of this crime to undergo and pay for psychological counseling.

Sodomy: A person who is convicted of sodomy is guilty of a felony and subject to a maximum penalty of imprisonment for 10 years.

Malicious Interference with a Race Horse: A person may not (1) willfully and maliciously interfere with, injure, destroy, or tamper with a horse used for racing or breeding or for a competitive exhibition of skill, breed, or stamina; (2) willfully start, instigate, engage in, or further an act that interferes with, injures, destroys, or tampers with a horse used for racing or breeding or for a competitive exhibition of skill, breed, or stamina; or (3) commit an act that tends to interfere with, injure, destroy, or tamper with a horse used for racing or breeding or for a competitive exhibition of skill, breed, or stamina. A person who violates this provision is guilty of a felony and on conviction must receive at least one year imprisonment and up to a maximum of three years imprisonment.

Misdemeanor Animal Abuse Offenses

Attending Dogfights or Cockfights: A person may not knowingly attend a deliberately conducted dogfight as a spectator. A person may not knowingly attend as a spectator a deliberately conducted event that uses a fowl, cock, or other bird to fight with another fowl, cock, or other bird. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500. The court may order a person convicted of this crime to undergo and pay for psychological counseling.

Misdemeanor Animal Abuse/Neglect: A person is prohibited from abusing or neglecting an animal, which consists of overdriving or overloading an animal; depriving an animal of necessary sustenance; inflicting unnecessary suffering or pain on an animal; or causing, procuring, or authorizing such an act. If a person has custody or charge of an animal, as an owner or otherwise, the person is prohibited from unnecessarily failing to provide sufficient nutrition, necessary veterinary care, proper drink, air, space, shelter, or protection from the elements.

A person who violates these provisions is guilty of a misdemeanor and is subject to maximum penalties of 90 days imprisonment and/or a \$1,000 fine. As a condition of sentencing, the court may order a defendant to participate in and pay for psychological counseling. As a condition of probation, a court may prohibit a defendant from owning, possessing, or residing with an animal.

Poisoning Dog: A person may not willfully and maliciously give poison or ground glass to a dog, or expose poison or ground glass, with the intent that a dog ingest it. A violator is guilty of a misdemeanor and subject to a maximum fine of \$100 for each violation.

Abandoning Domestic Animal: A person who owns, possesses, or has custody of a domestic animal may not drop or leave the animal on a road, in a public place, or on private property with the intent to abandon the animal. A violator is guilty of a misdemeanor and subject to a maximum fine of \$100.

Unnatural or Perverted Sexual Practice: A person may not (1) take the sexual organ of another *or of an animal* in the person's mouth; (2) place the person's sexual organ in the mouth of another *or of an animal*; or (3) commit another unnatural or perverted sexual practice with another *or an animal*. A person who violates these provisions is guilty of a misdemeanor and is subject to maximum penalties of 10 years imprisonment and/or a \$1,000 fine.

Importing, Offering for Sale, or Transferring of a Dangerous Animal: A person is prohibited from importing into the State, offering for sale, trading, bartering, possessing, breeding, or exchanging a live fox, skunk, raccoon, bear, caiman, alligator, crocodile, wild

or hybrid of a wild or domesticated dog or cat, as specified, nonhuman primate (including a lemur, monkey, chimpanzee, gorilla, orangutan, marmoset, loris, or tamarin), or a poisonous snake from specified snake families.

The prohibition does not apply to specified (1) circuses; (2) research facilities and exhibitors with licenses under the federal Animal Welfare Act (AWA); (3) an individual who possesses a permit from the Department of Natural Resources, as specified; (4) nonprofit animal sanctuaries; (5) State or local animal control facilities; (6) licensed veterinarians; and (7) nonresident persons travelling through the State, as specified. Violators are guilty of a misdemeanor, punishable by a \$1,000 maximum fine for an individual or a \$10,000 maximum fine for a defendant other than an individual.

Killing of a Dog or Cat: A person may not kill or allow a dog or cat to be killed by use of a decompression chamber, carbon monoxide gas, or curariform drugs. A person who violates this provision is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$500.

Leaving Dogs Outside and Unattended by Use of Restraints: A person may not leave a dog outside and unattended by use of a restraint that:

- unreasonably limits the movement of the dog;
- uses a collar that is made primarily of metal or is not at least as large as the circumference of the dog's neck plus one inch;
- restricts the access of the dog to suitable and sufficient clean water or appropriate shelter;
- is in unsafe or unsanitary conditions; or
- that causes injury to the dog.

A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment up to a maximum of 90 days and/or a fine of up to \$1,000.

Unattended Dangerous Dog: A dog owner may not leave a dangerous dog unattended on the owner's property unless the dog is confined indoors in a securely enclosed and locked pen, or in another structure designed to restrain the dog. In addition, a dangerous dog may not be allowed to leave the owner's property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled. The law specifies what constitutes a dangerous dog and specifies notice requirements that apply to an owner of a dangerous dog or potentially dangerous dog who sells or gives the dog to another. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$2,500.

The Criminal Law Article prohibits additional animal abuse related crimes, including the misdemeanor offenses of (1) giving an animal away as a prize; (2) selling a puppy or kitten younger than eight weeks under specified circumstances; (3) transferring or coloring of a chick; (4) injuring or trapping a carrier pigeon; (5) unauthorized surgery on a dog; and (6) unauthorized devocalization surgery on a cat or dog. Penalties for these violations range from \$10 per violation to one year imprisonment and/or a \$5,000 fine, depending on the specific offense.

State law requires an officer for a humane society who sees an individual committing a misdemeanor crime of animal cruelty to arrest the offender, as specified.

Background: The registry created under the bill is similar to the sex offender registry operated and maintained by DPSCS. In 2016, Tennessee became the first state to have a statewide animal abuse registry; however, several local jurisdictions in Florida, Illinois, and New York also have such registries.

According to the Humane Society of the United States (HSUS), all 50 states have felony provisions for animal cruelty; 40 of the 50 state felony provisions apply to first-time offenses. In 2012, HSUS reported that at least 22 states, the District of Columbia, and the U.S. Virgin Islands have statutes regarding future ownership of animals by individuals convicted of animal cruelty. The statutes range from outright bans on future ownership to authorization for a court to ban future ownership for a certain amount of time.

In January 2016, the Federal Bureau of Investigation's (FBI) National Incident-Based Reporting System began collecting detailed data from participating law enforcement agencies on acts of animal cruelty, including gross neglect, torture, organized abuse, and sexual abuse. Before 2016, crimes that involved animals were lumped into an "All Other Offenses" category in the FBI's Uniform Crime Reporting Program's annual *Crime in the United States* report, a survey of crime data provided by about 18,000 city, county, state, tribal, and federal law enforcement agencies.

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.

DPSCS reports that in fiscal 2017, the Division of Parole and Probation conducted intakes on 71 individuals who would qualify for inclusion on the registry created by the bill (47 tier I offenders and 24 tier II offenders). DPSCS also reports that in fiscal 2017,

1 individual was incarcerated for an offense that would qualify for tier II registration under the bill. The bill also applies to individuals incarcerated in local jail facilities or who were convicted but not sentenced to incarceration or probation by a court.

State Revenues: Information provided this year by the Administrative Office of the Courts (AOC) indicates that over the past three fiscal years, an average of 1,233 animal abuse violations were adjudicated annually in the District Court. Data on the percentage of these violations resulting in a conviction was not available in time for this analysis. In addition, this estimate does not include (1) any additional violations heard in the circuit courts and (2) violations of the sodomy and perverted sex act statutes, since information to determine which portion of these cases involved animal abuse is unavailable. However, the number of offenders that are required to register under the bill due to convictions for these offenses is expected to be a relatively small portion of the number of total violations covered under the bill.

Under the bill, an individual must register annually and pay a \$50 registration fee for various periods of time, ranging from 5 years to 10 years for a tier I offender and from 10 years to life for a tier II offender. The exact number of registrants is unknown. However, *under one set of assumptions*, assuming half of the 1,233 average annual violations result in a conviction, 616 individuals are required to register annually. Accordingly, special fund revenues to the Animal Abuse Registry Fund increase by \$23,100 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. Future year revenues increase by \$30,800 annually, reflecting an additional 616 registrants each year. After five years, revenues decrease, reflecting the expiration of the registration requirement for tier I first-time and second-time offenders.

General fund revenues may increase minimally from investment earnings of the new fund. It is assumed that the bill's penalty provisions do not materially affect State revenues.

State Expenditures:

Administrative Costs for DPSCS, Partially Offset by Registration Fee Revenues

DPSCS administrative expenditures increase by \$235,155 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of establishing an animal abuse registry within DPSCS, which includes a one-time expenditure of \$168,000 in computer programming expenses and the cost of hiring one administrative officer to maintain the registry. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$51,296
Computer Programming Expenses	168,000
Other Operating Expenses/Equipment	<u>15,859</u>
FY 2019 DPCS Administrative Expenditures	\$235,155

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Up to 35% of special fund revenues from registration fees must be provided to DPSCS to fund the establishment and administration of the registry. Accordingly, DPSCS retains up to an estimated \$8,085 in fiscal 2019 to partially cover the cost to establish and administer the registry. The amount retained by DPSCS increases to an estimated \$53,900 by fiscal 2023, which covers approximately 59% of the cost to administer the registry in that year. The following table shows the net effect on general fund expenditures to cover the remaining DPSCS costs not covered by registration fees.

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
Registry Costs	\$235,155	\$83,447	\$85,502	\$88,084	\$90,763
Available Special Funds	8,085	21,560	32,340	43,120	53,900
Required General Funds	\$227,070	\$61,887	\$53,162	\$44,964	\$36,863

Other Agencies

Administrative Office of The Courts: General fund expenditures for AOC increase by \$80,930 in fiscal 2019 only for programming changes to the Judiciary’s case management systems. In addition, AOC reports that the bill may increase caseloads due to the new charges connected with registry-related violations and, as a result, a corresponding increase in initial appearance hearings, bail reviews, and preliminary hearings held in the District Court, which could lead to an increase in the number of felony charges to be adjudicated in the circuit courts. Any such increases in caseloads can be handled with the existing budgeted resources of the courts.

Office of Legislative Audits: Assuming that OLA audits the new special fund as part of its regular audit of DPSCS, it is anticipated that OLA can implement the bill with existing resources.

Local Fiscal Effect: While the bill increases the workload of local law enforcement units, any potential costs are likely to be offset by grants from the State. As noted above, counties receive 65% of the revenues deposited in the Animal Abuse Registry Fund in the form of grants to offset the collection of registration information by county sheriffs. The amount of annual grant funding is projected to total \$15,015 in fiscal 2019, growing to \$100,100

by fiscal 2023. Overall, the bill is not expected to significantly affect local government finances. However, Carroll and Harford counties advise an additional records processor may be needed.

It is assumed that the bill's penalty provisions do not materially affect local government operations or finances.

Additional Information

Prior Introductions: SB 84 of 2017, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. SB 912 of 2014, also a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 301 of 2012, another similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1020, received an unfavorable report by the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City; Allegany, Carroll, Harford, Montgomery, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; The Humane Society of the United States; Federal Bureau of Investigation; *The Washington Post*; Department of Legislative Services

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