

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 80

(Senator Mathias)

Judicial Proceedings

Criminal Law - Animal Abuse - Penalties and Restitution

This bill creates a felony of and increases the penalty for animal abuse or neglect involving 10 or more animals. Violators are guilty of a felony and subject to a maximum penalty of three years imprisonment and/or a fine of \$2,500. As a condition of probation, a court may order a defendant to surrender all animals to the sheriff's department of the county in which the animals are located. The bill also increases the penalty for the existing felony of aggravated animal cruelty from three years to five years imprisonment and authorizes a court to order additional restitution for specified expenses on conviction of misdemeanor or felony animal abuse, including restitution from a delinquent minor and/or the minor's parent.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's increased penalty provisions. The number of individuals convicted under the bill cannot be reliably estimated but is expected to be minimal. Enforcement can otherwise be handled with existing resources.

Local Effect: Minimal increase in local government revenues and expenditures due to the bill's increased penalty provisions. Any impact on circuit court caseloads is likely minimal. Local government expenditures could decrease to the extent the court-ordered payments defray costs incurred by local government entities that care for confiscated animals. Enforcement can be handled with existing resources.

Small Business Effect: Potential meaningful impact to the extent that court-ordered payments defray costs incurred by small businesses that care for confiscated animals.

Analysis

Bill Summary: A person convicted of, or a juvenile found to have committed a delinquent act of, misdemeanor or felony animal abuse or felony animal cruelty may be ordered by a court to pay restitution to a governmental unit, humane society, or other entity or person for the actual value of expenses for housing, shelter, medical expenses, and other related costs reasonably incurred as a result of the violation in addition to restitution that may be awarded under Title 11, Subtitle 6 of the Criminal Procedure Article.

Current Law:

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. These provisions do not apply to lawful hunting or lawful trapping.

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.

Felony 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. As a condition of probation, a court may prohibit a defendant from owning, possessing, or residing with an animal.

Felony 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 the person's

control to be used for dogfighting or for baiting. A person who violates these provisions is guilty of a felony and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

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 removes an animal must notify the animal's owner or custodian of the removal 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. An animal is considered a stray if (1) an owner or custodian of the animal was notified 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 to determine the owner or custodian.

Background: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that, in fiscal 2016, five individuals were convicted of misdemeanor animal abuse or neglect and three individuals were convicted of aggravated animal abuse by the circuit courts.

The Department of Public Safety and Correctional Services advises that, in fiscal 2016, there were 55 probation intakes for animal cruelty violations. On January 1, 2016, the Federal Bureau of Investigation began collecting detailed information on animal cruelty offenses for its comprehensive national crime database. As a specific category in the Uniform Crime Reporting Program, specified animal cruelty offenses can now be tracked over time.

State Fiscal Effect:

Shifting Cases to the Circuit Courts

Changing crimes from misdemeanors to felonies means that (1) generally, such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill may shift an unknown number of cases from the District Court to the circuit courts. However, felony animal abuse cases can be heard in either the District Court or the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for the new felony offense created by the bill.

Penalty Revenues

General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

Costs for the Department of Public Safety and Correctional Services

General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time. The number of people convicted of the proposed felony designation for this crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties

also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Costs for Other State Agencies

While the bill creates a new felony that alters the penalty structure for animal abuse offenses, MSCCSP advises that the bill's changes can be implemented with existing resources. The bill is not anticipated to have a fiscal impact on the Department of Juvenile Services, the Office of Public Defender, or on State prosecutors.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

The bill reduces local government expenditures to the extent the court-ordered payments defray costs incurred by local government entities that care for confiscated animals. The extent of this reduction will vary by county, case, and year.

Additional Comments: The bill authorizes a court to require a defendant charged with animal abuse/neglect and/or animal cruelty, to surrender animals to local sheriffs as a condition of pretrial release. If this provision is construed to require local sheriffs to maintain custody of animals, most of the local governments that provided fiscal information advise that this requirement results in substantial increases in operating costs. However, if the bill's provisions are construed to permit local sheriffs to transfer these

animals to the appropriate local agency responsible for sheltering animals, the bill's provisions could likely be implemented by local governments with existing resources. For purposes of this analysis, it is assumed that local sheriffs are able to transfer the animals to the appropriate local agency with existing resources.

Additional Information

Prior Introductions: SB 393 of 2015 passed the Senate with amendments and a conference committee was appointed, but no further action was taken. Its cross file, HB 362, passed the House with amendments and a conference committee was appointed, but no further action was taken. SB 149 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; U.S. Department of Justice; Department of Legislative Services

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