

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 239
 Judiciary

(Delegate Jackson)

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 \$6,500 in FY 2020; future years reflect annualization and additional registrants. Special fund expenditures increase correspondingly. General fund expenditures increase by \$363,200 in FY 2020 to cover costs not covered with special funds; future years reflect annualization and ongoing costs. Minimal increase in general fund revenues.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
SF Revenue	\$6,500	\$17,300	\$26,000	\$34,600	\$43,300
GF Expenditure	\$363,200	\$80,400	\$79,800	\$79,300	\$78,900
SF Expenditure	\$6,500	\$17,300	\$26,000	\$34,600	\$43,300
Net Effect	(\$363,200)	(\$80,400)	(\$79,800)	(\$79,300)	(\$78,900)

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 a 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 misdemeanor offenses listed below, for (1) 5 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
- Attending a dogfight or cockfight
- Possessing an implement of dogfighting
- Injuring or trapping a carrier pigeon
- Killing of a dog or cat
- Abandoning a domestic animal
- Transfer or coloring of chick
- Unauthorized surgical devocalization of a cat or dog
- Animal abuse or neglect
- Unattended dangerous dog
- Import, offer, or transfer of dangerous animal
- Giving an animal as a prize
- Leaving unattended dog outside by use of restraints
- Unauthorized surgery on a dog
- Sale of puppy or kitten less than 8 weeks of age without its mother
- Poisoning a dog
- A second or subsequent offense of disposal of a domestic animal
- An attempt to commit any of these crimes
- A crime committed in a federal, state, or foreign jurisdiction that if committed in this State, would constitute one of these offenses

Tier II Offenders – Felony

An offender must register, with respect to the felony offense listed below, 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
- Aggravated animal cruelty – cockfighting
- Interfering (tampering) with a race horse
- An attempt to commit any of these crimes
- A crime committed in a federal, state, or foreign jurisdiction that if committed in this State, would constitute one of these offenses

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. As a condition of sentencing, the court may (1) order a person convicted of this crime to undergo and pay for psychological counseling and (2) prohibit a defendant from owning, possessing, or residing with an animal for a specified period of time.

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. As a condition of sentencing, the court may (1) order a person convicted of this crime to undergo and pay for psychological counseling and (2) prohibit a defendant from owning, possessing, or residing with an animal for a specified period of time.

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. As a condition of sentencing, the court may (1) order a person convicted of this crime to undergo and pay for psychological counseling and (2) prohibit a defendant from owning, possessing, or residing with an animal for a specified period of time.

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.

Implement of Dogfighting: A person may not possess an implement of dogfighting, as defined in statute, with the intent to unlawfully use the implement. A violator is guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a \$5,000 maximum fine. As a condition of sentencing, the court may (1) order a person convicted of this crime to undergo and pay for psychological counseling and (2) prohibit a defendant from owning, possessing, or residing with an animal for a specified period of time.

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; (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
- 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) disposal of a domestic animal; (5) injuring or trapping a carrier pigeon; (6) unauthorized surgery on a dog; and (7) 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; 46 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. Chapter 410 of 2017 terminates on September 30, 2020.

DPSCS reports that in fiscal 2018, there were 50 persons under supervision and 7 incarcerated individuals that would qualify for inclusion on the registry created by 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 by the Administrative Office of the Courts (AOC) indicates that from fiscal 2015 through 2017, an average of 1,234 animal abuse violations were adjudicated annually in the District Court. A violation is a charge filed with the court; it is not a conviction, and one person may be associated with multiple violations. AOC did not provide data on the percentage of these violations resulting in a conviction. In addition, this estimate does not include (1) any additional violations heard in the circuit courts; (2) violations of the sodomy and perverted sex act statutes, since complete information to determine which portion of these cases involved animal abuse is unavailable; and (3) violations involving disposal of a domestic animal. 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 total number of 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 to 10 years for a tier I offender and from 10 years to life for a tier II offender. The exact number of those that could be subject to registration is unknown. However, according to the *Maryland Judiciary 2017 Statistical Abstract*, approximately 14% of District Court criminal cases result in a guilty disposition. While this percentage applies to cases (not charges), and one individual can be associated with multiple charges, assuming that 14% of the 1,234 average annual violations result in a conviction, 173 individuals are required to register annually. Based on those assumptions, special fund revenues to the Animal Abuse Registry Fund increase by \$6,488 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. Future year revenues increase by \$8,650 annually, reflecting an additional 173 registrants each year.

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 \$237,698 in fiscal 2020, which accounts for the bill's October 1, 2019 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	\$53,839
Computer Programming Expenses	168,000
Other Operating Expenses/Equipment	<u>15,859</u>
FY 2020 DPSCS Administrative Expenditures	\$237,698

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 \$2,271 in fiscal 2020 to partially cover the cost to establish and administer the registry. The amount retained by DPSCS increases to an estimated \$15,138 by fiscal 2024, which covers approximately 16% 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 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
Registry Costs	\$237,698	\$86,430	\$88,841	\$91,406	\$94,062
Available Special Funds	\$2,271	6,055	9,083	12,110	15,138
Required General Funds	\$235,427	\$80,375	\$79,759	\$79,296	\$78,925

Other Agencies

Administrative Office of the Courts: General fund expenditures for AOC increase by \$127,815 in fiscal 2020 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: Local government expenditures likely increase minimally to accommodate the additional workload for local law enforcement units under the bill. While local jurisdictions are eligible for grants from the State under the bill, it is unlikely that the increase in local costs will be fully offset by grants from the State. As noted above, counties

receive 65% of the revenues deposited in the Maryland Animal Abuse Registry Fund in the form of grants to offset the collection of registration information by county sheriffs. Based on the estimated revenues to the fund, the amount of annual grant funding is projected to total \$4,217 in fiscal 2020, growing to \$28,113 by fiscal 2024. Overall, however, the bill is not expected to significantly affect local government finances.

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

Additional Information

Prior Introductions: HB 1629 of 2018, a similar bill, received an unfavorable report from the House Judiciary Committee. 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.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Humane Society of the United States; Federal Bureau of Investigation; Department of Legislative Services - Office of Legislative Audits

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