

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 877

(Senator Waldstreicher)

Judicial Proceedings

Criminal Law - Animal Cruelty - Petition for Costs for Care of Seized Animal

This bill establishes procedures for an officer or authorized agent of a humane society, or a police officer or other public official required to protect animals, to petition the District Court to order the owner or custodian of an animal that has been seized to protect it from cruelty or for its health, to pay for the reasonable costs of caring for the animal. The bill also modifies existing provisions authorizing the removal or seizure of an animal to protect it from cruelty or for its health.

Fiscal Summary

State Effect: General fund expenditures increase by \$12,700 in FY 2023 only. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	12,700	0	0	0	0
Net Effect	(\$12,700)	\$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 court-ordered payments defray costs incurred by local government entities that care for seized animals. Local revenues are not directly affected.

Small Business Effect: None.

Analysis

Bill Summary:

Modification of Existing Removal/Seizure Provisions

Under provisions allowing for the removal or seizure of an animal to protect it from cruelty or for its health – by an officer or authorized agent of a humane society, or a police officer or other public official required to protect animals – the bill replaces references to “removal” with references to “seizure.” In instances when an animal is seized for the health of the animal, the bill requires that the notice that must be given to the animal’s owner or custodian (of the seizure and any available administrative remedies) be given by personal service or certified mail within 24 hours. The bill also modifies a provision that establishes that an animal that has been seized is considered a stray if the owner or custodian has not petitioned for the animal’s return within 10 days or the owner or custodian is unknown and cannot be ascertained by reasonable effort for 20 days. The bill clarifies that in such an instance, an animal is considered a stray *and* will be forfeited to a person who is authorized to seize the animal. The bill also reduces the amount of time for which reasonable effort must be made to ascertain the owner or custodian from 20 days to 72 hours.

The bill modifies a provision that establishes that the authorizations for the seizure or removal of an animal to protect it from cruelty or for its health, do not allow removal of a farm animal without the prior recommendation of a veterinarian licensed in the State. The bill replaces the reference to “removal of a farm animal” with a reference to seizure of livestock or poultry (as defined under the Agriculture Article of the Annotated Code of Maryland) or a dog that is actively engaged in livestock herding or guarding.

Authorization of Petition for Reasonable Costs of Care

If an animal has been seized to protect it from cruelty or for its health and the owner has filed a petition for the return of the animal in District Court, an officer or authorized agent of a humane society, or a police officer or any other public official required to protect animals who represents the seizing person may file a petition to join the District Court proceeding initiated by the owner, for the reasonable costs of caring for the animal, including the provision of food, water, shelter, and medical care. Reasonable costs of care must be limited to \$15 per day per animal, in addition to necessary medical care, as determined by a licensed veterinarian and documented by invoices. Necessary medical care may not exceed \$50 per day per animal.

Petition and Hearing Requirements

A petition for reasonable costs of care must be filed between 10 and 30 days after the seizure of an animal. Within seven days after filing a petition, the petitioner must serve a copy of the petition on the owner or custodian, as specified.

On receipt of a petition, the court must set a date for a hearing to determine (1) whether the seizure of the animal was warranted; (2) whether the continued possession by the petitioner is warranted; (3) the responsibility of the owner or custodian for the reasonable costs of care for the seized animal; and (4) whether the owner or custodian may be allowed to own or possess a new animal during the pending proceeding and until the disposition of any criminal charges relating to the seizure. A hearing must be scheduled not less than 14 days, but not more than 21 days, from the service of the petition, and within 7 days after the scheduling of the hearing date, a petitioner must serve notice of the hearing date on the owner or custodian, as specified.

At the hearing, the petitioner must demonstrate by a preponderance of the evidence (1) the amount of reasonable costs of care for the seized animal; (2) that the seizure of the animal was warranted; and (3) that the continued possession of the animal by the petitioner is warranted. The owner or custodian must have the opportunity to object to the evidence presented by the petitioner and request an alternative disposition of the animal. Within five days of the commencement of a hearing, the court must issue an order granting or denying the petitions.

Requirements Relating to Court Orders and Other Costs

If the court awards payment of the reasonable cost of care of the seized animal to the petitioner, the court must (1) order the owner or custodian to pay any filing fees paid by the petitioner to file the petition and the amount of reasonable costs of care and (2) inform the owner or custodian of the right to petition for an adjustment of the amount of costs for care. If the court finds that the seizure of an animal was warranted, the court may prohibit the owner or custodian from owning or possessing a new animal until the conclusion of any criminal proceedings related to the seizure of the animal. The court must order the owner or custodian to make the required payments to the clerk of the court according to a specified monthly schedule. The petitioner is eligible to draw funds held by the clerk of the court to reimburse its actual costs incurred for the care of the animal. The owner or custodian's ability to pay may not affect the court's determination as to the amount of the reasonable costs of care, unless the proceeding involves not more than two animals, and the only charges are neglect. The court, on motion by a petitioner or the owner or custodian, and after notice and a hearing, may adjust the amount of costs for care. Payments by the owner or custodian must be suspended until the motion is decided.

Payment of reasonable costs of care by the owner or custodian may not prevent the petitioner from transferring the seized animal to another facility or caretaker if the court is notified of the transfer in a timely manner.

A court order for costs must terminate if (1) the owner surrenders all rights to the animal; (2) the animal is forfeited to the petitioner; or (3) the animal dies or is euthanized. After termination of the order, any unused funds must be returned to the owner or custodian.

Failure to Pay

If an owner or a custodian fails to timely pay any of the amounts ordered within 30 calendar days, the seized animal for which reasonable costs of care were ordered is automatically forfeited to the petitioner, and the petitioner obtains all rights and privileges in and over the animal.

Medical Care and Euthanasia

Payment for reasonable costs of care by the owner or custodian does not prevent the petitioner from providing necessary medical care, including euthanizing the seized animal. The petitioner may euthanize a seized animal if the petitioner obtains a written opinion from a local licensed veterinarian who states it is necessary to alleviate the animal's suffering. Unless immediate euthanasia is considered necessary by the veterinarian, reasonable notice must be provided to the owner or custodian before the animal is euthanized.

Civil Liability

A petitioner is immune from civil liability for damages alleged by an owner or a custodian concerning the care provided by the petitioner, except for intentional misconduct or gross negligence resulting in the death of the seized animal.

Effect of Acquittal or Conviction

If the owner or custodian is acquitted of all criminal charges and if all costs ordered to be paid have been timely paid, the owner or custodian is entitled to (1) take repossession of the animal and (2) a return of all reasonable costs of care paid. If the owner or custodian is convicted of any criminal charges brought in relation to a seizure, any animals seized must be forfeited.

Restitution

The bill may not be construed to prevent an officer or authorized agent of a humane society, or a police officer or other public official required to protect animals, from seeking restitution as part of sentencing if a person does not seek costs of care.

Current Law:

Conditions of Sentencing

As a condition of sentencing or probation for a defendant convicted of animal abuse or neglect, felony aggravated cruelty to animals (general), felony aggravated cruelty to animals (dogfighting), or felony aggravated cruelty to animals (cockfighting), a court may (1) order the defendant to participate in and pay for psychological counseling; (2) order the defendant to pay, in addition to any other fines and costs, all reasonable costs incurred in removing, housing, treating, or euthanizing an animal confiscated from the defendant; and (3) prohibit a defendant from owning, possessing, or residing with an animal, as specified.

Removal/Seizure 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 for its health 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.

An animal is considered a stray if (1) an owner or custodian of the animal was notified of the removal of the animal 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.

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.

State Expenditures: General fund expenditures increase by \$12,666 in fiscal 2023 only, reflecting programming costs for the Judiciary. Any increase in caseload for the District Court is not anticipated to materially affect the Judiciary’s operations or finances.

Local Expenditures: Local government expenditures decrease to the extent that the bill’s provisions defray costs incurred by local government entities that seize animals to protect them from animal cruelty or for their health. The extent of any such decrease in any given jurisdiction depends on the number of seizures of animals in the jurisdiction, the frequency of court-ordered payment of reasonable costs of care, and actual costs paid by owners or custodians of the seized animals.

Additional Information

Prior Introductions: HB 1080 of 2021, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 760, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 1062 (Delegate Moon) - Judiciary.

Information Source(s): Baltimore, Harford, and Montgomery counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Maryland State Treasurer’s Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Agriculture; Department of State Police; Department of Legislative Services

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