



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 657 and 658 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Dayna Polehanki (S.B. 657)

Senator Paul Wojno (S.B. 658)

Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

The bills would amend Chapter IX (Animals) of the Michigan Penal Code to provide uniform language concerning the handling of seized animals in cases of alleged animal abuse or neglect. The bills would prescribe the processes for removing animals, financial responsibility during criminal proceedings, and the final dispositions of animals for owners and possessors who are required to treat animals humanely and for individuals alleged to have abused an animal. Defendants in animal abuse cases could post a security deposit or bond to prevent forfeiture of the animal during sentencing. Additionally, defendants would have to pay restitution to the applicable animal control agency as part of the sentencing terms. If the owner or possessor that posted a security deposit or bond were found not guilty in a criminal action, the amount of the security deposit or bond posted to prevent disposition of the animal could be returned, and the animal would have to be returned to the owner.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 657 and 658 are similar reintroductions to House Bills 4704 and 4703, respectively of the 2021-2022 Legislative Session. House Bills 4703 and 4704 passed the House and were referred to the Committee of the Whole in the Senate but received no further action.

BRIEF RATIONALE

Currently, when an animal is seized by an animal control agency because of an investigation for abuse or neglect, the animal is held by that agency during the criminal case until the animal is returned, given up for adoption, or euthanized. Individuals accused of such crimes must post bond to pay for the animal to be held or forfeit the animal. According to testimony before the Senate committee on Civil Rights, Judiciary, and Public Safety, delays in such cases have resulted in a burden to animal control agencies which can face overcrowding or insufficient bond amounts. It has been suggested that the animal seizure be modified to allow an owner to post funds to prevent forfeiture of the animal during sentencing and reduce the burden on animal control agencies.

FISCAL IMPACT

The bills would have no fiscal impact on State government. The bills could have possible fiscal impacts on local and county governments but in amounts that cannot be determined at this time. Expenditures by local or county government-funded animal control agencies could increase with animal confiscations, but those costs could be mitigated somewhat by the allowance of cost recovery from defendants.

MCL 750.50 (S.B. 657)
750.50b (S.B. 658)

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Bruce R. Baker
Joe Carrasco, Jr.; Michael Siracuse

CONTENT

Senate Bill 657 (S-1) and Senate Bill 658 (S-1), taken together, would amend Chapter IX (Animals) of the Michigan Penal Code to do the following:

- Modify provisions allowing a court to order a defendant to pay restitution as part of a sentence for certain violations of Chapter IX.**
- Prohibit an animal that was the victim of abuse and was seized by an animal control agency from being returned to its owner or possessor if the owner or possessor were alleged to have violated Chapter IX and require the animal to be taken to a local animal control agency.**
- Require a court to award the animal to the animal control agency for evaluation and disposition if the owner or possessor were convicted under Chapter IX.**
- Require an animal control agency taking custody of an animal to give notice within 72 hours of seizing the animal.**
- Require a notice to include, among other things, a statement that the animal's owner or possessor could post a security deposit or bond that could prevent the forfeiture of the animal during the criminal, forfeiture, or other court proceeding until the court made a final determination regarding the animal's disposition.**
- Specify that a request for a hearing within 14 days after the date on the notice would prevent forfeiture of the animal until the court decided whether the requirement to post a security deposit or bond was justified, whether the amount of the security deposit or bond was fair and reasonable, or both.**
- Specify that a court could not find that bond was justified if the owner or possessor were indigent or had substantial financial hardship and allow a court to forego a bond or set a reasonable bond amount based on an owner's or possessor's ability to pay.**
- Allow a prosecuting attorney to initiate a civil action in the final determination of criminal charges to request the court to issue a forfeiture of the animal.**
- Require an animal control agency that had custody of a seized animal to hold it for 14 consecutive days beginning on the date notice was given, and specify that if the owner or possessor had not posted a security deposit or bond or requested a hearing within the 14-day period, the animal would be forfeited and the animal agency could dispose of the animal by adoption, transfer to another animal control agency, or humane euthanasia.**
- Specify that if the owner or possessor that posted a security deposit or bond were found not guilty in the criminal action, the amount of the security deposit or bond posted to prevent disposition if unused for the animal's cost of care could be returned to the owner or possessor, and the animal would have to be returned to the owner.**
- Allow an animal control agency, after receiving a seized animal, to humanely euthanize it or have it euthanized under certain circumstances.**
- Allow an animal control agency that received an animal to apply to the district court or municipal court for a hearing to determine whether the animal would have to be humanely euthanized because of its lack of any useful purpose or the public safety threat it posed.**

Section 50 (Senate Bill 657 (S-1)) of the Penal Code prohibits the owner, possessor, breeder, operator of a pet shop, or person having the charge or custody of an animal from doing any of the following:

- Failing to provide an animal with adequate care.**
- Cruelly driving, working, or beating an animal, or causing an animal to be cruelly driven, worked, or beaten.**

- Carrying or causing to be carried in or upon a vehicle or otherwise any live animal having the feet or legs tied together, other than an animal being transported for medical care or a horse whose feet are hobbled to protect the horse during transport, or in any other cruel and inhumane manner.
- Carrying or causing to be carried a live animal in or upon a vehicle or otherwise without providing a secure space, rack, car, crate, or cage in which livestock may stand and in which all other animals may stand, turn around, and lie down during transportation, or while awaiting slaughter.
- Abandoning an animal or causing an animal to be abandoned, in any place, without making provisions for the animal's adequate care, unless premises are vacated for the protection of human life or the prevention of injury to a human.
- Negligently allowing any animal, including one who is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain.
- Tethering a dog unless the tether is at least three times the length of the dog as measured from the tip of its nose to the base of its tail and is attached to a harness or nonchoke collar designed for tethering.

Section 50b (Senate Bill 658(S-1)) prohibits a person from doing any of the following without just cause:

- Knowingly killing, torturing, mutilating, maiming, or disfiguring an animal.
- Committing a reckless act knowing or having reason to know that the act will cause an animal to be killed, tortured, mutilated, maimed, or disfigured.
- Knowingly administering poison to an animal, or knowingly exposing an animal to any poisonous substance, with the intent that the substance be taken or swallowed by the animal.
- Violating or threatening to violate any of the prohibitions described above with intent to cause mental suffering or distress to a person or to exert control over a person.

Violations of Sections 50 or 50b constitute various misdemeanors or felonies punishable by certain prescribed terms of imprisonment or a fine, or both.

As part of a sentence for a violation of Sections 50 or 50b, a court may order the defendant to pay the costs of the prosecution, and the costs of the care, housing, and veterinary medical care, for the animal victim, as applicable.

Instead, under the bills, as part of a sentence for a violation of Sections 50 or 50b, a court could order the defendant to pay restitution including the costs of the investigation of the violation, the costs of the prosecution, and the costs of seizure, care, housing, veterinary medical care, and disposition of the animal victim, as applicable. The costs of the seizure, care, housing, veterinary care, and disposition of the animal could not be included in the sentence if they were paid previously by the defendant with a security deposit or bond. "Disposition of the animal victim" would include the transfer, euthanasia, or adoption of the animal.

Currently, if an animal is being held while the outcome of a criminal action charging a violation of the Sections is pending, Section 50 generally prescribes a process by which a prosecuting attorney may file a civil action to request that a court order the forfeiture of an animal to an animal control shelter or animal protection shelter to a licensed veterinarian. Senate Bill 657 would delete these provisions.

Under both bills, except as otherwise provided, an animal that was a victim of Sections 50 or 50b and was seized by an animal control agency pending the outcome of a criminal action that charged a violation of these provisions could not be returned to the owner or possessor

of the animal if the owner or possessor of the animal were alleged to have violated Sections 50 or 50b. A seized animal would have to be taken to a local animal control agency or local animal control agency's designee. A service animal that was a victim could be seized by an animal control agency at the animal control agency's discretion taking into consideration the totality of the circumstances. If an animal owner or possessor were convicted of violating Sections 50 or 50b, a court would have to award the animal involved in the violation to the animal control agency for evaluation and disposition.

"Animal control agency" would mean an animal control shelter, an animal protection shelter, or a law enforcement agency. "Animal control shelter" and "animal protection shelter" would mean those terms as defined in Public Act (PA) 287 of 1969, which governs pet shops, animal control shelters, and animal protection shelters. (Under PA 287, "animal control shelter" means a facility operated by a municipality for the impoundment and care of animals that are found in the streets or at large, animals that are otherwise held due to the violation of a municipal ordinance or State law, or animals that are surrendered to the animal control shelter. "Animal protection shelter" means a facility operated by a person, humane society, society for the prevention of cruelty to animals, or any other nonprofit organization for the care of homeless animals.)

(Section 50 defines "animal control shelter as a facility operated by a county, city, village, or township to impound and care for animals found in streets or otherwise at large contrary to an ordinance of the county, city, village, or township or State law. "Animal protection shelter" means a facility operated by a person, humane society, society for the prevention of cruelty to animals, or any other nonprofit organization, for the care of homeless animals. The bill would delete these definitions.)

An animal control agency taking custody of an animal would have to give notice within 72 hours of seizing the animal in person or by registered mail to the last known address of the animal's owner if the owner of the animal were known. If the owner of the animal were unknown, the animal control agency taking custody of an animal would have to give notice within 72 hours after seizing the animal by one of the following methods:

- Posting at the location of the seizure.
- Delivery to an individual residing at the location of the seizure.
- Registered mail to the location of the seizure.

The notice would have to include all the following:

- A description of each animal seized.
- The time, date, location, and description of circumstances under which the animal was seized.
- The address and telephone number of the location where or under what animal control agency's authority the animal was being held and contact information for the individual present at that location from whom security deposit or bond information could be obtained.
- A statement that the owner or possessor of the animal could post a security deposit or bond that could prevent the forfeiture of the animal during the criminal, forfeiture, or other court proceeding until the court made a final determination regarding the animal's disposition, that failure to post a security deposit or bond within 14 days after the date on the notice would result in forfeiture of the animal, and that the owner or possessor of the animal could, before the 14-day period expired, request a hearing from the court with jurisdiction over the alleged violation of Section 50b on whether the requirement to post a security deposit or bond was justified, whether the cost associated with the security

deposit or bond was fair and reasonable for the care of and provision for the seized animal, or both.

- A statement that the owner or possessor of the animal was responsible for all costs described in the bill, unless the court determined that the seizure of the animal was not substantially justified by law.

A request for a hearing within 14 days after the date on the notice would prevent forfeiture of the animal until the court decided whether the requirement to post a security deposit or bond was justified, whether the amount of the security deposit or bond was fair and reasonable, or both. Notice of a request for a hearing would have to be served on the animal control agency holding the animal before the 14-day period expired. A hearing on whether the requirement to post a security deposit or bond was justified, whether the amount of the security deposit or bond was fair and reasonable, or both, would have to be held within 21 days after the request for a hearing. The hearing would have to be before a judge without a jury and the prosecuting attorney would have the burden to establish by a preponderance of the evidence that the bond was justified and reasonable.

If the court found that the prosecuting attorney had met its burden, that the security deposit or bond were justified and reasonable, or both, the animal would be forfeited to the animal control agency that seized the animal unless the owner or possessor of the animal posted the security deposit or bond within 72 hours after the hearing. The court would have to find the bond not justified if the owner or possessor were indigent or had substantial hardship. If the owner or possessor were serving a sentence in a correctional institution or receiving residential treatment in a mental health or substance abuse facility, the owner or possessor would have to be presumed to have a substantial financial hardship. The court would have to consider the owner's or possessor's ability to pay, including employment status, employment history, and financial history. If the court found the bond was not reasonable based on the owner's or possessor's ability to pay, the court could forego a bond and set a reasonable bond amount.

"Indigent" would mean a defendant who receives personal public assistance, including under the Food Assistance Program, Temporary Assistance for Needy Families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the Federal poverty guideline.

An owner's or possessor's failure to appear at a scheduled hearing would result in automatic forfeiture of the animal to the animal control agency if the date of the scheduled hearing were more than 14 days after the date on the notice. The testimony of a defendant at a hearing described above would only be admissible against the defendant for the purpose of impeachment or in a criminal prosecution for perjury. The testimony of a defendant would not waive the defendant's constitutional right against self-incrimination.

An animal control agency that held or was required to hold a seized animal would have to hold the animal for a period of 14 consecutive days, including weekends and holidays, beginning on the date notice was given. After the 14-day period expired, if the owner or a possessor of the animal had not posted a security deposit or bond or requested a hearing, the animal would be forfeited, and the animal control agency could dispose of the animal by transfer to another animal control agency, humane euthanasia, or adoption.

The security deposit or bond would have to be in an amount sufficient to secure payment of all costs during a 30-day period after examination of the animal by a licensed veterinarian. The animal control agency would have to determine the amount of the security deposit or bond within 72 hours after seizing the animal and would have to make the amount of the security deposit or bond available to the owner or possessor of the animal upon request.

Unless the owner or possessor of the animal requested a hearing, he or she would have to provide proof of the security deposit or bond to the animal control agency within 14 days after the date on the notice.

An animal control agency that was holding or was required to hold a seized animal could draw on a posted security deposit or bond to cover the actual reasonable costs incurred in the seizure, care, keeping, and disposition of the animal from the date of the seizure to the date of the official disposition of the animal in the criminal action.

If an animal were seized and were being held by an animal control agency's designee pending the outcome of a criminal action charging a violation and the process described above was not used, before final disposition of the criminal charge, the prosecuting attorney could file a civil action in the court that had jurisdiction of the criminal action requesting that the court issue an order to forfeit the animal to the animal control agency before final disposition of the criminal charge. The prosecuting attorney would have to serve a true copy of the summons and complaint on the defendant owner or possessor of the animal. On the filing of the civil action, the court would have to set a hearing on the complaint. The hearing would have to be conducted within 21 days of the filing of the civil action. The hearing would have to be before a judge without a jury.

At the hearing, the prosecuting attorney would have the burden of establishing by a preponderance of the evidence that a violation had occurred. If the court found that the prosecuting attorney had met the burden and that the amount of the security deposit or bond necessary to prevent the forfeiture of the animal from the date of the seizure to 30 days after the date of the hearing was fair and reasonable based on the restitution, the court would have to order immediate forfeiture of the animal to the animal control agency unless the defendant owner or possessor, within 72 hours after the hearing, submitted to the court clerk a security deposit or bond in a sufficient amount to secure payment of all restitution costs after examination of the animal by a licensed veterinarian from the date of the seizure to the date of the hearing and for an additional period of 30 days. A defendant owner or possessor's failure to post a security deposit or bond within 72 hours after the hearing or the defendant owner or possessor's failure to appear at a scheduled hearing would result in automatic forfeiture of the animal to the animal control agency. The testimony of a defendant at a hearing described above only would be admissible against the defendant for the purpose of impeachment or in a criminal prosecution for perjury. The testimony of a defendant at a hearing would not waive the defendant's constitutional right against self-incrimination.

If a security deposit or bond had been posted and trial in the criminal action did not occur within the initial 30-day bond period or was continued to a later date, the owner or possessor would have to post an additional security deposit or bond in an amount determined sufficient to cover the costs as anticipated to be incurred by the animal control agency caring for the animal. The additional security deposit or bond would have to be calculated in 30-day increments and would continue until the criminal action was resolved. If the owner or possessor of the animal failed to post a new security deposit or bond with the court before the previous security deposit or bond expired, the animal would be forfeited to the animal control agency caring for the animal.

If the owner or possessor that posted a security deposit or bond were found not guilty in the criminal action, the amount of the security deposit or bond posted to prevent disposition of the animal if unused for the animal's cost of care, the animal would have to be returned to the owner.

If a security deposit or bond were posted by an owner or possessor of an animal and the court determined that the animal lacked any useful purpose or posed a threat to public safety, the posting of the security deposit or bond could not prevent disposition of the animal.

After receiving an animal seized under the bills, or at any time thereafter, an animal control agency could humanely euthanize the animal or have it euthanized if, in the licensed veterinarian's opinion, the animal was injured or diseased past recovery or the animal's continued existence was inhumane so that euthanasia was necessary to relieve pain and suffering. This provision would apply to an animal regardless of whether a security deposit or bond had been posted.

An animal control agency that received an animal could apply to the district court or municipal court for a hearing to determine whether the animal would have to be humanely euthanized because of its lack of any useful purpose or the public safety threat it posed. The court would have to hold a hearing within 30 days after the filing of the application and would have to give notice of the hearing to the animal's owner. Upon a finding by the court that the animal lacked any useful purpose or posed a threat to public safety, the animal control agency would have to humanely euthanize the animal or have the animal euthanized. Restitution costs incurred by an animal control agency in the court's discretion, could be assessed against the animal's owner.