

Legislative Analysis



DISPOSITION OF ANIMALS THAT WERE TORTURED, ABUSED, NEGLECTED, OR ABANDONED

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Senate Bill 657 (S-1) as passed by the Senate
Sponsor: Sen. Dayna Polehanki

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 658 (S-1) as passed by the Senate
Sponsor: Sen. Paul Wojno

House Committee: Criminal Justice
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 11-11-24

SUMMARY:

Senate Bills 657 and 658 would respectively amend sections 50 and 50b of the Michigan Penal Code, which prohibit animal neglect or cruelty and torturing or killing an animal (for a description of those offenses, see **Background**, below). The bills would change the process that applies to animals seized in such cases, among other things no longer requiring a prosecuting attorney to initiate a separate civil action for forfeiture of a seized animal. The process proposed by the bills would be similar to the one that applies for animal fighting violations under section 49 of the code. As the current process and that proposed by the bills are the same for both types of proceedings (that is, under both sections 50 and 50b), the bills are described together below.

Currently, as part of the sentence for a violation of section 50 or 50b, the court can order a defendant to pay the costs of the care, housing, and veterinary medical care for an animal, as applicable. When an animal has been seized in a criminal case for a violation and is being held by an animal control shelter, animal protection shelter, or veterinarian pending the case's outcome, the prosecutor can file a civil action requesting the court to issue an order forfeiting the animal to the shelter or veterinarian before final disposition of the criminal charge. If the prosecutor shows by a preponderance of the evidence that a violation occurred, the animal must be ordered forfeited unless the defendant posts a bond in an amount the court determines will cover the costs to care for the animal from the time it was seized to the date of trial. An additional bond amount can be ordered if necessary.

Under the bills, the court could order a defendant to pay restitution as part of the sentence for a violation, which would include, as applicable, the costs of the investigation and prosecution and the costs of the animal's seizure, care, housing, veterinary medical care, and disposition (e.g., its transfer, adoption, or euthanizing). Costs of the animal's seizure, care, housing, veterinary medical care, and disposition that were previously paid by the defendant with a security deposit or bond as described below "should not" be included in the sentence.

An animal seized by an *animal control agency* pending the outcome of a criminal case described above could not be returned to its owner or possessor if they are alleged to have committed the violation. (However, if they are found not guilty, the animal would have to be returned to them.) A seized animal would have to be taken to a local animal control agency or

its designee. (A service animal could be seized by an animal control agency at the agency's discretion.) If the owner or possessor is convicted of the violation of section 50 or 50b, the court would have to award the animal to the animal control agency for evaluation and disposition.

Animal control agency would mean any of the following:

- An animal control shelter (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).
- An animal protection shelter (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).
- A law enforcement agency.

An animal control agency that takes custody of an animal would have to give notice of the seizure within 72 hours either in person or by registered mail to the last known address of the animal's owner, if known. If the owner is unknown, the agency would have to give notice on the same time frame by posting it at, or sending it by registered mail to, the location of the seizure or by delivering it to someone who resides there. The notice would have to include all of the following:

- A description of each animal seized.
- The time, date, and location, and a description of the circumstances, of the animal's seizure.
- The address and phone number where the animal is being held and contact information for someone there who can provide security deposit or bond information.
- A statement of the following:
 - That the animal's owner or possessor can post a security deposit or bond that may prevent forfeiture of the animal for the duration of the criminal, forfeiture, or other court proceeding until the court makes 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 will result in forfeiture of the animal.
 - That the owner or possessor may, before the end of the 14-day period, request a hearing from the court on whether the requirement for a security deposit or bond is justified or whether its amount is fair and reasonable, or both.
- A statement that the owner or possessor is responsible for the costs of the investigation and prosecution and the costs of the animal's seizure, care, housing, veterinary care, and disposition, unless the court determines that the animal's seizure was not substantially justified by law.

A timely request for a hearing would prevent forfeiture of the animal until the court determines whether the requirement for a security deposit or bond is justified or whether its amount is fair and reasonable, or both. Notice of a hearing request would have to be served on the relevant animal control agency before the end of the 14-day period described above. A hearing would have to be held within 21 days of the request. The hearing would be before a judge without a jury. The prosecuting attorney would have the burden to establish by a preponderance of the

evidence that the bond¹ is justified. If the court finds that the security deposit or bond is justified and reasonable, or both, the animal's owner or possessor would have 72 hours after the hearing to post the required security deposit or bond or the animal would be forfeited to the animal control agency.

If the owner or possessor is *indigent* or has a substantial financial hardship, the court would have to find that the bond is not justified. (An owner or possessor who is serving a sentence in a correctional institution or receiving residential treatment in a mental health or substance abuse facility would be rebuttably presumed to have a substantial financial hardship.) The court would have to consider the owner's or possessor's ability to pay, including their employment status, employment history, and financial history. If the court finds that the bond is not reasonable based on the owner's or possessor's ability to pay, the court could "forego" a bond or 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, who resides in public housing, or who earns an income less than 140% of the federal poverty guideline.

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

An animal control agency holding a seized animal would have to hold it for 14 consecutive days, including weekends and holidays, beginning on the date notice was given as provided above. If the owner or possessor of the animal has not posted a security deposit or bond or requested a hearing by the end of those 14 days, the animal would be forfeited, and the animal control agency could dispose of it by transfer to another animal control agency, adoption, or humane euthanasia.

The security deposit or bond described above would have to be in an amount sufficient to secure payment of all costs of the investigation and prosecution and the costs of the animal's seizure, care, housing, veterinary medical care, and disposition 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 no later than 72 hours after the seizure of the animal and make the amount available to the owner or possessor upon request. Unless the owner or possessor of the animal requests a hearing as described above, they would have to provide proof of the security deposit or bond to the animal control agency not later than 14 days after the date on the notice described above.

If an animal is seized and is being held by an animal control agency or its designee pending the outcome of a criminal action and the process described above is not used, the prosecutor could file a civil action requesting the court to issue an order to forfeit the animal to the animal control agency before final disposition of the criminal charge. The prosecutor would have to

¹ It is unclear whether references to "bond" alone in these provisions still mean "security deposit or bond."

serve a true copy of the summons and complaint on the defendant owner or possessor. The court would have to set a hearing on the complaint, to be conducted within 21 days of the filing of the civil action. The hearing would be before a judge without a jury. At the hearing, the prosecutor would have the burden of establishing by a preponderance of the evidence that a violation of section 50 or 50b occurred. If the court finds that the prosecutor has met that 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 is fair and reasonable based on all costs of the investigation and prosecution and the costs of the animal's seizure, care, housing, veterinary medical care, and disposition, then the court would have to order immediate forfeiture of the animal to the animal control agency unless the owner or possessor, within 72 hours after the hearing, submits to the court clerk a security deposit or bond in a sufficient amount to secure payment of all costs of the investigation and prosecution and the costs of the animal's seizure, care, housing, veterinary medical care, and disposition 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. Failure of the owner or possessor to post a security deposit or bond within 72 hours after the hearing or to appear at a scheduled hearing would result in automatic forfeiture of the animal to the animal control agency. As above, the testimony of a defendant at a hearing would be admissible against the defendant only for the purpose of impeachment or in a criminal prosecution for perjury and would not waive the defendant's constitutional right against self-incrimination.

An animal control agency that holds a seized animal as provided in the bill could draw on a security deposit or bond described above to cover the actual reasonable costs incurred for the investigation and prosecution and for the animal's seizure, care, housing, veterinary medical care, and disposition from the date of the seizure to the date of the official disposition of the animal in the criminal action.

If a security deposit or bond has been posted as described above, and trial in the criminal action does not occur within the initial 30-day bond period or is 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 of the investigation and prosecution and of the animal's seizure, care, housing, veterinary medical care, and disposition 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 continue until the criminal action is resolved. If the owner or possessor of the animal fails to post a new security deposit or bond before the previous security deposit or bond expires, the animal would be forfeited to the animal control agency.

If an owner or possessor who posted a security deposit or bond is found not guilty in the criminal action, the animal and any unused amount of the security deposit or bond must be returned to the owner [or possessor?].

If a security deposit or bond is posted by an owner or possessor and the court determines that the animal lacks any useful purpose or poses a threat to public safety, the posting of the security deposit or bond would not prevent disposition of the animal.

An animal control agency that receives a seized animal could humanely euthanize it or have it euthanized if, in the opinion of a licensed veterinarian, it is injured or diseased past recovery or its continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering, regardless of whether a security deposit or bond has been posted.

An animal control agency that receives a seized animal could apply to the district or municipal court for a hearing to determine whether the animal must be humanely euthanized because of its lack of any useful purpose or the public safety threat it poses. The court would have to hold a hearing not later than 30 days after the application is filed and give notice of the hearing to the owner [or possessor?] of the animal. Upon a finding by the court that the animal lacks any useful purpose or poses a threat to public safety, the animal control agency would have to humanely euthanize the animal or have the animal euthanized. Costs for the investigation and prosecution and for the animal's seizure, care, housing, veterinary medical care, and disposition that are incurred by an animal control agency or any other person could, in the court's discretion, be assessed against the owner of the animal.

MCL 750.50 (SB 657)
MCL 750.50b (SB 658)

BACKGROUND:

Animal neglect or cruelty (section 50)

Senate Bill 657 would amend section 50 of the Michigan Penal Code, which prohibits an 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 on a vehicle or otherwise a live animal with its feet or legs tied together (except for an animal being transported for medical care or a horse whose feet are hobbled to protect it during transport) or in any other cruel and inhumane manner.
- Carrying or causing to be carried a live animal in or on a vehicle or otherwise without providing a secure space, rack, car, crate, or cage in which livestock can stand and in which all other animals can stand, turn around, and lie down during transportation or while awaiting slaughter. With regard to sled dogs, room to stand means sufficient vertical distance to allow the animal to stand without its shoulders touching the top of the crate or transportation vehicle.
- Abandoning an animal or causing it to be abandoned, in any place, without making provisions for its adequate care, unless premises are vacated for the protection of human life or the prevention of injury to a human. An animal lost by an owner or custodian while traveling, walking, hiking, or hunting is not considered abandoned if the owner or custodian has made a reasonable effort to locate it.
- Negligently allowing an animal (including one that 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. This provision does not apply to tethering that occurs while the dog is being groomed, trained, transported, or used in a hunt or event where a shorter tether is necessary for the safety and well-being of the dog and others.

Killing or torturing animals (section 50b)

Senate Bill 658 would amend section 50b of the Michigan Penal Code, which 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 above with the intent to cause mental suffering or distress to a person or to exert control over a person.

Penalties are enhanced if the animal is a pet, as well as for intentional violations.

FISCAL IMPACT:

Senate Bills 657 and 658 would have an indeterminate fiscal impact on animal control agencies funded by local and county governments. The bills would result in additional costs for animal control agencies for the confiscated animals turned over to them. Additional costs may also be incurred for notification requirements. Expenses could be offset by allowing the recovery of costs from defendants for the “seizure” and “disposition” of animal victims. The net fiscal impact of the bills on animal control agencies would be indeterminate. The bills also would have an indeterminate fiscal impact on local court funding units. Additional costs would be incurred depending on how provisions of the bills affect court caseloads, the number of additional hearings on security deposits or bonds paid to prevent forfeiture of seized animals during court proceedings, and related administrative costs. The number of cases that would go to courts under provisions of the bills is unknown, making it difficult to project the fiscal impact.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.