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ANIMAL FORFEITURE

House Bill 5057 as enrolled
Public Act 405 of 1998
Second Analysis (1-27-99)

Sponsor: Rep. Gerald Law
House Committee: Judiciary
**Senate Committee: Farming, Agribusiness,
and Food Systems**

THE APPARENT PROBLEM:

Public Act 458 of 1996 amended the animal cruelty provisions of the Michigan Penal Code, among other things, to allow for the preconviction forfeiture of animals during criminal animal cruelty proceedings through petition by the prosecuting attorney. The act, however, does not specify whether the forfeiture proceedings were to be civil or criminal, and when the governor signed House Bill 5561 (which became Public Act 458 of 1996), he sent a letter to the House of Representatives expressing some concerns regarding the implementation of the new forfeiture action. The letter indicates that while it appears that the forfeiture action was intended to be civil in nature, the language in Public Act 458 requiring the prosecuting attorney to file the forfeiture petition "in the criminal action" could create confusion and raise constitutional questions on issues ranging from the assignment of court-appointed counsel to double jeopardy. At the request of the governor, legislation has been introduced to establish animal cruelty forfeiture proceedings as civil proceedings.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to make the following changes to the code's provisions regarding animal cruelty.

Terms and definitions. The term "animal shelter" would be replaced with the term "animal protection shelter," and "dog pound" would be replaced with "animal control shelter." The definition of "adequate care," which currently refers to the provision of sufficient food, water, shelter, sanitary conditions, and veterinary medical attention, would be amended to include exercise as well. The definition of "shelter" would be rewritten and expanded, with specific provisions for dogs in addition to the more general

provisions. "Shelter" currently is rather confusingly defined as meaning "adequate protection from the elements suitable for the age and species of animal and weather conditions to maintain the animal in a state of good health, including structures or natural features such as trees and topography." The bill would redefine "shelter" to mean "adequate protection from the elements and weather conditions suitable for the age, species, and physical condition of the animal so as to maintain the animal in a state of good health." "Shelter for livestock" would include structures or natural features such as trees or topography, while "shelter for dogs" would have to include one or more of the following: (a) the dog owner's residence (or that of another individual), (b) a doghouse that was an enclosed structure with a roof and of appropriate dimensions for the breed and size of dog, with dry bedding required when the temperature dropped (or was predicted to drop) below freezing, or (c) a structure (including, but not limited to, a garage, barn, or shed) that was sufficiently insulated and ventilated to protect the dog from exposure to extreme temperatures or, if not sufficiently insulated and ventilated, contained a doghouse, as specified in the bill (that is, an enclosed structure with a roof, of a size appropriate to the dog, and with dry bedding for below freezing temperatures), that was accessible to the dog.

Tethering dogs. The bill would add a definition of "tethering" and would prohibit tethering a dog except under specified conditions. The bill would define "tethering" to mean "the restraint and confinement of a dog by use of a chain, rope, or similar device." A dog could not be tethered unless the tether was at least three times the length of the dog (as measured from the tip of its nose to the base of its tail) and attached to a harness or nonchoke collar designed for tethering.

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Forfeiture proceedings. The bill would change current provisions allowing the prosecutor to petition the court to issue an order forfeiting an animal during an animal cruelty criminal proceeding. Currently, if an animal is impounded and held by a dog pound, licensed veterinarian, or an animal shelter pending the outcome of a criminal action charging either misdemeanor or felony animal cruelty, the prosecuting attorney may file a petition in the criminal action requesting that the animal be forfeited before the final disposition of the criminal charge. The prosecuting attorney must serve copies of the petition on the defendant and on anyone with a known ownership or security interest in the animal (including anyone who had filed a lien with the secretary of state in an animal involved in the pending action). Within 14 days after receiving a petition for forfeiture (or as soon as practicable), the court has to schedule a hearing, at which the prosecuting attorney must establish by a preponderance of the evidence that a violation has occurred. If the court finds that the prosecuting attorney meets this requirement, it must order immediate forfeiture of the animal unless the defendant, within 72 hours of the hearing, submits to the county clerk enough cash or other security to repay all reasonable cost of caring for the animal from the date of initial impoundment to the date of trial. Any order of continuance of a trial also requires additional cash or security to be submitted to pay for the care of the animal until the new date of trial. If a defendant does submit cash or security, the court is able to authorize the use of that money or security before final disposition of the criminal charges to pay for the care of the animal from the time it was impounded until final disposition of criminal charges.

Under the bill, instead of allowing the forfeiture proceeding to be done by petition before final disposition of the criminal charge, the prosecutor would be required to file a civil action with the court that was hearing the criminal action. The civil action would be heard by the judge without a jury and would otherwise proceed in the same fashion as is currently required for a petition.

Prohibition against other civil actions. The bill would provide that an animal that had been seized under the animal cruelty provisions could not be subject to any other civil action (for example, by the defendant in an effort to regain the animal) before the final judgment in the forfeiture action.

MCL 750.50

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bill led to increased numbers of convictions or longer lengths of stay in local jails or prisons, it could increase local or state costs. In addition, the civil forfeiture provisions could reduce burdens on prosecutors to some extent. (1-27-99)

ARGUMENTS:

For:

The bill would clarify that the forfeiture proceedings added to the animal cruelty provisions of the Michigan Penal Code would be civil proceedings, and is intended to avoid potential constitutional problems with multiple prosecutions for the same offense ("double jeopardy") and court-appointed counsel. The bill also would clarify what would constitute adequate shelter for both livestock and for dogs, and would add provisions regarding the tethering of dogs intended to ensure that when dogs are tethered, it was done so in a way that would minimize the likelihood that the dog would become entangled and possibly hang or otherwise injure itself.

Analyst: S. Ekstrom

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