

DISPOSITION OF ABUSED ANIMALS

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House Bills 4703 and 4704 (proposed H-1 substitutes)

Sponsor: Rep. Douglas C. Wozniak

Committee: Judiciary

Complete to 10-23-21

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

SUMMARY:

House Bills 4703 and 4704 would amend Chapter IX (Animals) of the Michigan Penal Code to provide uniformity among several sections of the animal cruelty statutes pertaining to the disposition of animals that are seized for an alleged violation involving animal abuse or neglect.

Currently, several sections in Chapter IX provide criminal penalties for violations involving harm to animals. However, these laws vary as to the process followed when an animal is removed due to alleged abuse or neglect, financial responsibility for the care of the animal during the course of a criminal prosecution, and the process for final disposition of the animal.

House Bill 4704 would amend section 50 of the code, which prohibits various actions by an owner, possessor, or person having charge of an animal that result in harm to the animal.

House Bill 4703 would amend section 50b, which among other things prohibits any person from knowingly killing, torturing, maiming, or poisoning an animal without just cause.

The bills would add virtually identical language to sections 50 and 50b to provide uniformity with provisions currently contained in section 49 of the code, which prohibits animal fighting, regarding the seizure of an animal involved in a violation and final disposition of that animal.

Restitution

Currently, sections 50 and 50b allow a court, as a part of the sentence for a violation, to order the defendant to pay the costs of the care, housing, and veterinary medical care of the animal. The bills would instead allow the court to order the defendant to pay restitution including the costs of the investigation of the violation, the costs of the prosecution, and the costs of the seizure, care, housing, veterinary medical care, and *disposition of the animal victim*, as applicable. The bills state that these costs should not be included in the sentence if previously paid by the defendant with a security deposit or bond as described below.

Disposition of the animal victim would include the transfer, euthanasia, or adoption of the animal.

Confiscated animal

The bills would add that an animal that is a victim of a violation of either section 50 or 50b and that was confiscated by a law enforcement officer could not be returned to the owner or possessor of the animal if the owner or possessor were alleged to have committed a violation. (This would not apply to an owner or possessor who had posted a security deposit or bond and was found not guilty in the criminal action.) If the animal that is a victim of a violation is a *service animal*, it could be seized or confiscated by law enforcement at their discretion, taking

into consideration the totality of the circumstances. A confiscated animal would have to be taken to a local **animal control agency**. If an animal owner or possessor were convicted of a violation, the court would have to award the animal involved in the violation to the animal control agency for evaluation and disposition.

Service animal would mean a dog or miniature horse that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks would have to be directly related to the disability (e.g., guiding an individual who is visually impaired or calming an individual suffering from post-traumatic stress disorder) and would not include the provision of emotional support or companionship or the crime-deterrent effect of a dog's presence.¹

Animal control agency would mean an **animal control shelter**, **animal protection shelter**, or law enforcement agency.

Animal control shelter would mean 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 would mean 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.

Notice requirement

The bills would require the animal control agency taking possession of the animal as described above to give notice by registered mail to the last known address of the animal's owner, if known, within 72 hours after seizure of the animal. If the owner were unknown, notice would have to be given by posting at the location of the seizure, by delivery to a person residing at the location of the seizure, or by registered mail to the location of the seizure. The notice would have to include all of 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 the animal is being held and contact information for the individual at that location from whom security deposit or bond information may be obtained.
- A statement including all of the following:
 - That the animal's owner or possessor may post a bond or security deposit that may prevent the 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.

¹ See the definition of "service animal" in 28 CFR 36.104: <https://www.govinfo.gov/content/pkg/CFR-2017-title28-vol1/pdf/CFR-2017-title28-vol1-sec36-104.pdf>. The bill would incorporate this definition while adding that, as described above, **service animal** includes a miniature horse that has been individually trained to do work or perform tasks as described in the federal regulation for the benefit of a person with a disability.

- That failure to do so within 14 days after the date on the notice will result in forfeiture of the animal.
- That—before expiration of the 14-day period—a hearing may be requested from the court with jurisdiction over the alleged violation on whether the requirement to post a security deposit or bond is justified and whether the cost associated with the security deposit or bond is fair and reasonable for the care of and provision for the seized animal.
- A statement that the owner or possessor is responsible for all costs for housing and caring for the animal as described in the bill unless the court determines that the seizure of the animal was not substantially justified by law. (The specified costs include costs of providing veterinary medical treatment, investigation costs, and disposition of the animal.)

Hearing to determine justification of securing deposit or bond

A request for a hearing within 14 days after the date on the notice would prevent forfeiture of the animal until the court made a determination whether the requirement to post a security deposit or bond is justified, whether the amount of the security deposit or bond is fair and reasonable, or both. The defendant's ability to pay would be a consideration.

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 is justified, whether the amount of the security deposit or bond is fair and reasonable, or both, would have to be held within 21 days of the request for a hearing, and the prosecuting attorney would have the burden to establish by a preponderance of the evidence that a violation of section 50 or 50b occurred. If the court finds that this burden has been met or that the security deposit or bond is fair and reasonable, or both, the animal would be forfeited to the animal control agency that seized it unless the owner or possessor of the animal posted the required security deposit or bond within the required time period. Failure to appear at a scheduled hearing requested under the bills would result in automatic forfeiture of the animal if the date of the scheduled hearing is more than 14 days after the date on the notice described above.

Duties of entity with custody of the animal/forfeiture of animal

Under the bills, an animal control agency having custody of a seized animal would have to hold it for 14 consecutive days, including weekends and holidays, beginning on the date notice was given. If at the expiration of the 14-day period the owner or possessor of the animal has not posted a security deposit or bond or requested a hearing as described above, the animal would be forfeited. The animal control agency could then dispose of the animal by adoption, transfer to another animal control agency, or humane euthanasia.

Security deposit or bond

The security deposit or bond would have to be in an amount sufficient to cover all costs relating to the care of the animal during a 30-day period of boarding and veterinary treatment after examination 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 seizing the animal and would have to make the amount of the security deposit or bond available to the owner or possessor upon request. Unless the owner or possessor of the animal requests a hearing, proof

of the security deposit or bond would have to be provided to the animal control agency no later than 14 days after the date on the notice.

An animal control agency holding, or requiring to be held, a seized animal could draw on the security deposit or bond posted 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 a security deposit or bond has been posted, and the 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 amount to cover the cost of the animal's care as anticipated to be incurred by the animal control agency caring for the animal. The additional security deposit or bond would be calculated in 30-day increments and continue until the criminal action is resolved. Failure to post a new security deposit or bond with the court before the previous one expires would result in the animal being forfeited to the animal control agency caring for the animal.

If owner or possessor not guilty

If the owner or possessor who posted a security deposit or bond were found not guilty in the criminal action, the amount posted to prevent disposition of the animal could be returned at the court's discretion and, if the animal had not been euthanized, the animal would have to be returned to the owner.

Dangerous animal

Posting a security deposit or bond would not prevent disposition by humane euthanasia of an animal determined by the court to lack any useful purpose or to pose a threat to public safety.

An animal control agency receiving a seized animal could apply to the district or municipal court for a hearing to determine whether the animal would be required to 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 more than 30 days after the filing of the application and would have to give notice of the hearing to the owner 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. The court would have discretion to assess against the animal's owner expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by an animal control agency, or by a person, firm, partnership, corporation, or other entity.

Injured or diseased animal

Upon receiving an animal that was seized, or at any time thereafter, an animal control agency could humanely euthanize the animal or have it euthanized if, in the opinion of a licensed veterinarian, the animal is injured or diseased past recovery or its continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering. This provision would apply to an animal whether or not a security deposit or bond has been posted.

MCL 750.50b (HB 4703)

MCL 750.50 (HB 4704)

FISCAL IMPACT:

House Bill 4703 would have an indeterminate net fiscal impact on animal control agencies funded by local and county governments. The bill could increase expenditures by animal control agencies related to animals confiscated under the bill. Additional costs may also be incurred for notification requirements under the bill. The bill would defray expenses that animal control agencies currently experience 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 bill would not have a fiscal impact on state government.

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 cost 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 actual 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.