



ANNE ARUNDEL COUNTY OFFICE OF LAW

Legislative Summary

To: Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Via: Gregory J. Swain, County Attorney /s/

Date: January 5, 2024

Subject: Bill No. 1-24 – Public Safety – Animal Care and Control – Potentially Dangerous, Dangerous, and Vicious Animals

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 1-24.

Background

Currently, the burden of proof in the Code for the designation of an animal as potentially dangerous, dangerous, or vicious is by a preponderance of the evidence. The Code is also not specific on the type of evidence that is necessary for a vicious animal finding, which can lead to designations being overturned for lack of evidence. The Code also does not include any method for an animal owner to seek reconsideration of conditions that have been placed on an animal that has been deemed potentially dangerous or dangerous.

Additionally, current law does not make an animal owner responsible to pay for the “cost of care” for animals seized for cruelty or surrendered by owners charged with cruelty, which can result in the County incurring thousands of dollars in unrecovered costs of care for these animals that are held pending various criminal and civil trials or hearings.

Purpose

The purpose of the Bill is to revise the burdens of proof for a dangerous or vicious animal designation. The Bill also sets forth the type of evidence required for a vicious designation. The Bill allows for reconsideration of conditions in a potentially dangerous or dangerous order once a year, reduces the license fees for such animals after one year, and generally provides for waiver of various fees.

The Bill also establishes new provisions requiring owners of animals seized for cruelty to

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

pay the “costs of care” incurred by the County in caring for such animals. State law was recently updated to include a “cost of care” component in a “replevin” process under State law, and this Bill sets forth a similar concept in the County’s administrative procedures pertaining to animals seized or surrendered for cruelty.

Bill No. 1-24

SECTION 1.

Subsection **12-4-402(b)** is revised to state that the burden of proof for a potentially dangerous animal is “preponderance of the evidence”. This is currently the standard of proof used for all designations, as set forth in current § 12-4-403(c). Subsection **(c)** changes the burden of proof for a dangerous animal to “clear and convincing” evidence. Subsection **(d)** is revised to make the burden of proof for a vicious designation to be “beyond a reasonable doubt.” The burden of proof for a vicious designation is particularly onerous since the finding mandates the animal be destroyed.

“Preponderance of the evidence” is the lowest standard and means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

To be “clear and convincing”, evidence should be “clear” in the sense that it is certain, plain to the understanding, and unambiguous and “convincing” in the sense that it is so reasonable and persuasive as to cause you to believe it. “Beyond a reasonable doubt” is the highest standard, used in criminal cases.

Subsection **(d)(1)** is revised to require that a vicious designation based on a finding that an animal killed or inflicted severe injury on a person or domesticated animal be based on eyewitness testimony to the events or through authenticated digital evidence showing the events. Similarly, subsection **(d)(2)** is revised to provide that for an animal previously determined to be potentially dangerous or dangerous, the same evidence is required to prove that the animal has engaged in a second incident that constitutes a public safety threat. Because an animal designated as vicious is subject to euthanasia, the changes in the burden of proof and evidence requirements ensure that the findings are based on sufficient evidence.

Subsection **12-4-403(c)** is revised to be consistent with the burdens of proof set forth in § 12-4-402 as discussed above. Additionally, that section currently provides that the burden of proof is on the appellant, and that is changed to the “Agency”, as it is the Agency that is required to prove that an animal is potentially dangerous, dangerous, or vicious.

Section **12-4-403(d)** is new and establishes criteria for reconsideration of a potentially dangerous or dangerous animal order. Under subsection **(d)(1)**, a petition to reconsider may be filed no more than once in a 12-month period. Subsection **(d)(2)** allows the owner to petition to revise any of the conditions of the order, except for the designation of the animal. Under

subsection **(d)(3)**, the petition is subject to hearing under § 12-4-206¹ and the Agency shall notify all witnesses to the original hearing. Subsection **(d)(4)** provides that after receiving findings and recommendations from the Animal Matters Commission, the Chief (of the Police Department) may revise any condition for maintaining an animal subject to a potentially dangerous or dangerous order.

Subsection **12-4-504(c)(2)** is new and allows the fees for redemption of impounded animals to be waived upon a request of the animal owner and a showing of good cause.

Section **12-4-702(c)(3)** is revised to reduce the license fees for a dangerous and potentially dangerous animal after the first year. There is no change from the codified fee for the first year, which is \$125 for a dangerous animal license and \$100 for a potentially dangerous animal license. Rather than remaining at these rates for the life of the animal, after the first year, the fee reverts to the standard rate for both potentially dangerous and dangerous animals.

Section 12-4-901 deals with cruelty. Existing subsection (b) requires that an animal be seized by the Agency to protect an animal from cruelty, abuse or neglect, and existing subsection (c) requires an animal be surrendered when the owner is charged criminally under State law with animal cruelty.

Subsection **(d)** is revised to require that the notice issued by the Agency for an animal seized or surrendered under the section include the estimated costs of care for the animal.

¹ This section provides:

(a) **Generally.** Within 30 days after receiving an appeal, petition, or a request for a hearing authorized under this article, the Commission shall convene to hear the matter. The person requesting the hearing shall be notified of the date, time, and place of the hearing.

(b) Hearing procedures.

- (1) A person shall have right to counsel before the Commission.
- (2) The hearing date may be postponed:
 - (i) by the Chief on written request by either party at least five days before the scheduled hearing date for good cause shown; or
 - (ii) by the Commission on the hearing date if the requesting party appears and presents good cause for a postponement.
- (3) The hearing shall be open to the public.
- (4) The Commission may admit all relevant evidence without regard to the formal rules of evidence.
- (5) All witnesses shall testify under oath or affirmation administered by a designee of the Commission.

(c) **Findings and recommendations.** The Commission's duties for citations are governed by § 12-4-308. Within 15 days of a hearing on anything other than a citation, the Commission shall submit written findings and recommendations to the Chief. Within 15 days of receipt of the recommendation, the Chief shall issue a final decision, and the final decision shall be served on the owner as provided by § 12-4-102.

(d) **Appeals.** When appeals are considered by the Commission, the Chief may initiate corrective or enforcement action other than action relating to suspension, denial, or revocation of licenses authorized by this title.

(e) **De novo appeal.** The Chief's decision under §§ 12-4-403, 12-4-713, 12-4-901, or 12-4-913 is subject to de novo review by the County Board of Appeals. A person who appeared at the hearing and was aggrieved by the Chief's decision may file a written request for appeal with the Board of Appeals within 30 days of the decision.

Subsection **(i)** is revised to include new subsections **(i)(1) through (11)** to establish criteria for the payment of “costs of care” for animals seized or surrendered under § 12-4-901. The changes made are similar to a recent addition to State law. Effective October 1, 2022, House Bill 1062 created § 10-615.1 of the Criminal Law Article of the State Code. That section provides that when a petition for a return of an animal seized for cruelty is filed in the District Court of Maryland (also known as a “replevin” action), an agency or entity holding the animal may cross petition to seek the “costs of care” for the animal. Because the County Code already has an established administrative process for an animal owner to petition for the return of an animal seized or surrendered for cruelty (*see* § 12-4-901(f), as established by Bill 89-20), animal owners in Anne Arundel County do not use the District Court replevin process. Therefore, the “cost of care” concept is incorporated into the established administrative process.²

Subsection **(i)(1)** provides that if an owner files a petition for return of a seized or surrendered animal, the owner shall pay all costs of care beginning on the date the animal was seized or surrendered. Under **(i)(2)**, the costs of care are capped at \$15 per day per animal, plus the costs of necessary medical care, as determined by a licensed veterinarian and documented by invoices, up to a maximum of \$50 per day. These caps are the same as those in the State law.

Under subsection **(i)(3)**, the notice provided in accordance with subsection (d) shall advise the owner of the estimated costs of care and the deadline for payment. Subsection **(i)(4)** provides that within five days of the date of a notice, the owner shall pay the costs of care for a 30-day period. In accordance with subsections **(i)(5) and (6)**, if the animal remains seized or surrendered, the owner shall continue to make payments for 30-day periods until the seizure or surrender ends.

Under subsection **(i)(7)**, if the owner fails to make the costs of care payments when due, the animal shall be deemed unwanted and unredeemed and shall become the property of the County as of the day after any missed payment. Once an animal is unwanted or unredeemed, the County may allow for the disposition of the animal under § 12-4-505, which includes adoption or placement of the animal.

Subsection **(i)(8)** incorporates a State law provision and provides that if an animal owner is convicted of any cruelty charges brought under § 10-615, any animals seized or surrendered shall be forfeited to the County.

Subsection **(i)(9)** makes clear that any costs of care that are not paid as required may be collected in the same manner as judgment or a debt, and that nothing shall preclude the County from seeking restitution for unpaid costs as part of a criminal case.

Under subsection **(i)(10)**, an owner may request review of the costs of care as any part of a petition filed under subsection (d), and the costs may be reduced or waived as deemed appropriate. Lastly, under subsection **(i)(11)**, after the end of a seizure or surrender, the County

² Under § 10-615(d) of the Criminal Law Article, an administrative remedy may be created for animals seized or surrendered. If an administrative remedy is not available, the petition for the return of the animal may be filed with the District Court. Baltimore County and Montgomery County have “costs of care” provisions very similar to the ones set forth in this Bill.

shall issue a refund of any payment that exceeds the actual costs of care, including any payment for any days the County did not care for the animal, or if the Commission, Board of Appeals, or any court orders the County to return any portion of the costs of care.

SECTION 2.

This section provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill.
Thank you.

cc: Honorable Steuart Pittman, County Executive
Christine Anderson, Chief Administrative Officer
Jeff Amoros, Chief of Staff
Chris Trumbauer, Budget Officer
Ethan Hunt, Government Relations Officer
Amal Awad, Chief, Police Department
Major William Lowry, Police Department
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