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BILL ANALYSIS



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Senate Bills 708 and 709 (as introduced 12-5-17)
Sponsor: Senator Wayne Schmidt
Committee: Judiciary

Date Completed: 2-20-18

CONTENT

Senate Bill 709 would amend Public Act 426 of 1988, which governs confinement and destruction of dangerous animals, to do the following:

- Allow, instead of require, a court to issue a summons ordering a dog's owner to show cause why the dog should not be found to be a vicious dog, if the dog were alleged to have killed or seriously injured a person or another dog.
- Specify that the person who filed a complaint alleging that a dog was a vicious dog would have the burden of proving so by clear and convincing evidence.
- Allow a court to order a vicious dog to be euthanized or require the owner to comply with various requirements, including implanting the dog with a microchip, and spaying or neutering the dog.
- Require an animal control department to impound a vicious dog if its owner failed to comply with the proposed requirements.
- Require an animal control department to maintain a list of vicious dogs within its jurisdiction.
- Allow an animal control department that had custody of a vicious dog to petition the court for an order requiring the dog's owner to post security in an amount sufficient to pay reasonable expenses of caring for the dog.
- Require an animal control department that received notice of an alleged infraction to notify the owner within 10 days of receiving of the notice and after an investigation.
- Require a court to conduct a hearing to determine whether a dog was a dangerous dog after receiving a complaint from animal control department; and require the owner to comply with certain requirements if the court found that the dog was dangerous.
- Allow an animal control department to impound a dangerous dog if the owner failed to comply with the proposed requirements.
- Specify that an owner of an animal that attacked an individual without justification would be liable in a civil action for damages caused by the attack.
- Prescribe criminal penalties for failing to comply with the proposed requirements for a vicious or dangerous dog.

Senate Bill 708 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed by Senate Bill 709 as a Class G crime against public safety with a statutory maximum sentence of four years' imprisonment; and remove the felony of dangerous animal causing death.

Senate Bill 708 is tie-barred to Senate Bill 709. Each bill would take effect 90 days after its enactment.

Senate Bill 709 is discussed in greater detail below.

Definitions

"Animal control department" would mean an animal control shelter as that term is defined in Section 1 of Public Act 287 of 1969 (which regulates animal control shelters, animal protection shelters, and pet shops): 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.

"Vicious dog" would mean a dog that, without justification, attacks an individual and causes serious physical injury to or the death of that individual, or attacks and causes the death of another dog.

"Dangerous dog" would mean one or more of the following: a) a dog that behaves in a manner that a reasonable individual would believe poses a serious and unjustified imminent threat of serious physical injury to or the death of an individual, a companion animal, or livestock while on property that is not the property of the dog's owner. A dog would not be a dangerous dog if it were muzzled, on a leash, or attended by the dog's owner. A dog also would not be dangerous if it, without justification, bit an individual and did not cause serious physical injury to that individual.

"Companion animal" would be defined as an animal that is commonly considered to be, or is considered by the owner to be, a pet. Companion animal would include dogs, cats, and equines.

"Bite" would mean to seize with teeth or jaws so that the individual or animal seized is wounded or pierced. The term would include an act that results in the contact of saliva with any break or abrasion of the skin.

"Dangerous animal" currently means a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner. A dangerous animal does not include any of the following: a) an animal that bites or attacks a person who is knowingly trespassing on the property of the animal's owner; b) an animal that bites or attacks a person who provokes or torments the animal; or c) an animal that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault. Under the bill, the term would mean an animal other than a dog that, without justification, bites or attacks an individual. A dangerous animal would not include livestock.

"Justification" or "justified" would mean the bite or attack occurred in one or more of the following circumstances:

- An animal bites or attacks an individual who is knowingly trespassing on the property of the animal's owner.
- An animal bites or attacks an individual who provokes or torments the animal or its offspring.

- An animal's bite or attack is a response that an ordinary and reasonable person would conclude was designed to protect an individual if that individual is engaged in a lawful activity or the subject of an assault.
- A dog is owned by a branch of the United States Armed Forces, a correctional facility, or a police department, and the dog was performing its duties as expected.
- A dog is working as a hunting dog, herding dog, or predator control dog on the owner's real property or under the control of its owner, and the injury or damage was to a species or type of domestic animal that is appropriate to the work of the dog.

Vicious Dog Complaint

Currently, if a sworn complaint alleges that an animal is a dangerous animal and it has caused serious injury or death to a person, or a dog, a district court magistrate, district court, or a municipal court must issue a summons to the owner ordering him or her to appear to show cause why the animal should not be destroyed. Under the bill, instead, if a sworn complaint by an animal control officer, a law enforcement officer, or an adult individual, with personal knowledge of an incident, alleged that a dog was a vicious dog and that it had caused serious physical injury to or the death of an individual, or had caused the death of another dog, a district or municipal court could issue a summons to the owner ordering him or her to appear to show cause why the dog should not be found to be a vicious dog. ("Serious physical injury" would mean permanent, serious disfigurement, serious impairment of health that creates a substantial risk of death or causes death, or serious impairment of a bodily function of an individual.)

The bill would eliminate a requirement that, if a complaint is made, the court order the animal's owner to turn the animal over an animal control authority, humane society, veterinarian, or boarding kennel until a hearing concerning the disposition of the animal is held. Under the bill, if a complaint were made, the animal control officer or law enforcement officer would have to notify the owner of the conduct that was the basis of the complaint, conduct a thorough investigation, interview the owner and witnesses, gather medical and veterinary records, and submit to the court a detailed report with the sworn complaint. The animal control department would have to determine where the dog would be confined while the case was pending.

The animal control officer, law enforcement officer, or adult individual who filed the complaint would have the burden of proving by clear and convincing evidence that the dog was a vicious dog. The court could consider the opinion of a board-certified veterinary behaviorist or another expert in determining if a dog's behavior was justified. The court could not find that the dog was a vicious dog if it found that the dog's conduct was justified. If the court found that the evidence established to a clear and convincing level that the dog was a vicious dog and that its conduct was not justified, the court would have to declare the dog to be a vicious dog.

Requirements for Vicious Dog Owner

Currently, the court or magistrate must order the destruction of an animal, at the owner's expense, if the animal is found to be a dangerous animal that caused serious injury or death to another person or dog. If the animal is found to be dangerous but did not cause serious injury or death to a person, the owner must comply with certain requirements. These include having an identification number tattooed on the animal, if it is a dog; having the animal sterilized; taking steps to ensure that the animal cannot escape; and obtaining and maintaining liability insurance coverage to protect the public from damage or harm caused by the animal. The bill would eliminate these provisions.

Under the bill, after a hearing, if the court found that a dog was a vicious dog, the court could order that the dog be euthanized. If the dog were not euthanized, the owner would have to comply with all of the following requirements:

- Implant the vicious dog with a microchip, if it did not already have one, and provide the microchip number to the animal control department.
- Within 15 days of the court's decision, have the dog spayed or neutered at the owner's expense if it were not already spayed or neutered.
- Maintain ownership of the dog, and not sell or give away the dog without obtaining a court order approving the transfer of ownership.
- Provide a current address to the animal control department, and, whenever the owner relocated, notify the animal control departments where he or she had relocated and where he or she had formerly resided of the relocation.

The owner also would have to maintain the dog in an enclosure approved by the animal control department before its release to its owner at all times except as follows: a) if it were necessary for the owner to obtain veterinary care for the dog; b) if an emergency or natural disaster threatened the dog's life; or c) to comply with a court order, provided that the dog was securely muzzled and restrained with a leash not longer than six feet, was under the owner's direct control and supervision, or was muzzled in its owner's residence.

"Enclosure" would mean a secured fence or structure that has sides at least six feet high, a top, and a bottom, and is suitable to prevent the entry of young children and the escape of the animal. An enclosure could be a room within a residence. An owner could tether the animal in conjunction with the enclosure.

Impoundment of Vicious Dog; Posting Security

If the owner of a vicious dog failed to comply with any of the above requirements, the animal control department would have to impound the dog, and the owner would have to pay a \$500 fine plus the impoundment fees to the animal control department.

The dog's owner could appeal the impoundment. If the impoundment were not appealed within 21 days, the court could order the dog to be euthanized. If a notice of appeal were filed, the order of euthanasia would be stayed automatically pending the outcome of the appeal. The owner would have to bear the burden of timely written notification to the animal control department.

If the animal control department had custody of the dog, it could file a petition with the court requesting an order that the owner post security for the dog. The security would have to be sufficient to secure payment of all reasonable expenses expected to be incurred by the animal control department or animal shelter in caring for or providing for the dog pending the determination. Reasonable expenses would include the estimated medical care and boarding of the animal for 30 days. If security were posted, the animal control department could draw money to cover the actual costs incurred by the department or shelter in caring for the dog.

After receiving the petition, the court would have to schedule a hearing to be conducted within five business days after the petition was filed. The petitioner would have to serve the dog's owner with a true copy of the petition.

If the court ordered the posting of security, it would have to be posted with the court clerk within five business days after the hearing concluded. If the owner failed to post security, the dog would be forfeited and the animal control department would have to transfer the dog through adoption or another measure, or ensure that the dog was humanely euthanized.

Dangerous Dog; Investigation

Under the bill, within 10 business days after an animal control department received notice of an alleged infraction and after a thorough investigation, the animal control department would have to notify the owner of the dog of the alleged infraction and the investigation, and allow the owner an opportunity to meet with the director of the department. After the meeting, or if a meeting were refused, the department could continue its investigation. If it did so, the department would have to gather medical evidence, interview witnesses, and create a detailed report before it filed with the district or municipal court a sworn complaint requesting that the court find the dog to be a dangerous dog.

After the complaint was filed, the court would have to conduct a hearing, and could not find a dog to be a dangerous dog unless a preponderance of the evidence established that the dog was a dangerous dog. If the court found that the dog's conduct was justified, the court could not find that the dog was a dangerous dog.

Requirements for a Dangerous Dog Owner

After a hearing described above, if the court found that the dog was a dangerous dog, the owner would have to comply with all of the following:

- Implant the dog with a microchip, if it did not already have one.
- Within 15 days of the court's decision, have the dog spayed or neutered at the owner's expense if it were not already spayed or neutered.
- If the court determined that the protection of the public required the dog to undergo a behavior evaluation, at the owner's expense, obtain an evaluation from a certified applied behaviorist, a board-certified veterinary behaviorist, or another recognized expert in the field and complete the expert's recommendations.
- If the court determined that the protection of the public required the dog to be supervised, maintain the dog under the direct supervision of an adult while on public premises.

Also, if the court determined that the protection of the public required the dog to be restrained, the owner would have to maintain it in a muzzle that would prevent the dog from biting a person or animal while on public premises. The muzzle could not injure the dog or interfere with the dog's vision or respiration.

An animal control department would have the right to impound a dangerous dog if the owner failed to comply with the Act's requirements.

The owner of a dangerous dog could petition the district or municipal court to reverse the designation of dangerous dog.

The bill would prohibit a person from knowingly or recklessly permitting a dangerous dog to leave its owner's premises when the dog was not on a leash or controlled by another recognized control method.

Animal Attack

The owner of an animal that, without justification, attacked an individual who was peaceably conducting himself or herself in any place where he or she could lawfully be, would be liable in a civil action for the damages caused to the individual by the attack.

If a dangerous dog or a vicious dog attacked an individual after the dog had been declared a dangerous dog or vicious dog, the dog's owner would have to surrender it to the appropriate animal control department to be humanely euthanized.

Local Ordinance

The governing body of a local unit of government could enact an ordinance or code that restricted or placed additional requirements on the owners of dogs, provided that it did not regulate a dog based on breed, perceived breed, or type.

Penalties

The Act prescribes criminal penalties for the owner of a dangerous animal that kills, injures, or bites. The owner of a dangerous animal that causes a person's death is guilty of involuntary manslaughter, which is a felony punishable by up to 15 years' imprisonment or a maximum fine of \$7,500, or both. If the animal attacks a person and causes serious injury other than death, the owner is guilty of a felony punishable by imprisonment for up to four years, a fine of not less than \$2,000, or at least 500 hours of community service, or a combination of these penalties. If the dangerous animal attacks or bites a person and causes an injury that is not a serious injury, or is allowed to run at large, the owner is guilty of a misdemeanor, punishable by up to 90 days' imprisonment, a fine of not less than \$250 or more than \$500, or at least 240 hours of community service, or any combination of these penalties.

The bill would eliminate those penalties. Under the bill, a person who failed to comply with the requirements pertaining to a dangerous dog would be guilty of a misdemeanor punishable by one or more of the following: a) imprisonment for up to 90 days, b) a fine of at least \$1,000, or c) at least 100 hours of community service. A person who failed to comply with the requirements pertaining to a vicious dog would be guilty of a felony punishable by one or more of the following: a) up to four years' imprisonment, b) a fine of at least \$2,000, or c) at least 500 hours of community service.

MCL 777.12m (S.B. 708)
287.321 et al. (S.B. 709)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 708

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Senate Bill 709

The bill would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government. The bill would remove penalties related to ownership of dangerous animals and replace them with new violations and penalties. It is unknown whether the net effect of these changes would result in more or fewer misdemeanor and felony arrests and convictions. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision

is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Conversely, fewer misdemeanor and felony arrests and convictions could reduce resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Any associated decrease in fine revenue would reduce funding to public libraries.

The bill also would require an animal control department to investigate alleged infractions, including conducting interviews with the dog owner and witnesses, gathering medical and veterinary records, and submitting a detailed report to the court. An animal control department also would be required to maintain a list of vicious dogs within its jurisdiction. The additional costs imposed by these requirements would vary by jurisdiction.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.