

SB 6
Relating to animals

SB 6 increases penalties for animal abuse and animal neglect including increasing the classification for these crimes on the sentencing grid. The measure also creates requirements for animal rescue organizations including licensure requirements and fees. These licensure fees, and any civil penalties for violations, would be paid to local governments' dog licensing and control activities.

The measure has an estimated fiscal impact of \$47,067 General Fund to the Department of Corrections for the costs of incarceration and community corrections; and \$46,216 General Fund to the Public Defense Services Commission for the costs of court-appointed counsel. These amounts are anticipated to be absorbed within existing budgeted resources for these respective agencies.

The Public Safety Subcommittee recommends SB 6 be amended and reported out do pass as amended.

Joint Committee on Ways and Means

Carrier – House: Rep. Williamson
Carrier – Senate: Sen. Winters

Revenue:

Fiscal: Fiscal statement issued

Action: Do Pass the A-Engrossed Measure as Amended and be Printed B-Engrossed

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: John Terpening, Legislative Fiscal Office

Meeting Date: June 12, 2013

WHAT THE MEASURE DOES: Increases penalty for animal abuse in the first degree upon a previous conviction of domestic violence, child abuse or if abuse committed in presence of minor to class C felony and categorizes offense as category 6 on the sentencing guidelines grid. Elevates aggravated animal abuse in the first degree to a category 7 on the sentencing guidelines grid. Increases penalty for animal neglect in the second degree to a class A misdemeanor and increases to a class C felony if prior conviction of animal neglect or episode of 10 or more animals or committed in presence of a minor child. Increases severity of sentencing based on number of animals neglected. Increases penalty for animal neglect in the first degree to a class C felony and increases to a class B felony if prior conviction of animal neglect or episode of 10 or more animals or committed in presence of a minor child. Increases severity of sentencing based on number of animals neglected. Adds equines and other animals of same genus against which crime was committed to prohibition on possessing a domestic animal after conviction. Provides alternative service for notice of forfeiture. Provides defendant opportunity for hearing on forfeiture. Establishes process for hearing on impoundment and lien. Provides definitions. Establishes standards and license program for animal rescue entities. Authorizes inspections upon complaint and seizure upon evidence of cruelty.

ISSUES DISCUSSED:

- Fiscal impact of the measure
- Proposed amendment

EFFECT OF COMMITTEE AMENDMENT: Prohibits possessing animal of the same genus against which the crime was committed. Allows person subject to animal possession prohibition to file motion with sentencing court requesting a waiver.

BACKGROUND: SB 6 significantly strengthens penalties against animal abuse and neglect. Animal abuse occurs when a person intentionally, knowingly or recklessly causes death or serious physical injury to an animal. Aggravated animal abuse occurs when some maliciously kills or tortures an animal. Animal neglect occurs when a person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in their care.

Currently sentencing classifications for animal abuse and neglect are at the category three level of the sentencing grid with penalties ranging from probation to 30 days jail time. SB 6 raises the penalties to a six, seven or eight on the sentencing grid which will result in jail time and could result in several months in prison. In addition, SB 6 provides for licensing and oversight for animal care entities in response to a recent Marion County case of animal neglect which resulted in the seizure of 149 neglected dogs from an animal rescue facility.

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 6 – B

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: John Terpening
Reviewed by: Steve Bender, Monica Brown
Date: 6-10-2013

Measure Description:

Increases punishment for animal neglect in first degree to maximum of five years' imprisonment, \$125,000 fine, or both, and, for repeat animal neglect offenders or animal neglect offenses involving 10 or more animals, to maximum of 10 years' imprisonment, \$250,000 fine, or both.

Government Unit(s) Affected:

Department of Corrections, Department of Justice, District Attorneys and their Deputies, Judicial Department, Oregon Criminal Justice Commission, Public Defense Services Commission, Cities, Counties

Summary of Expenditure Impact:

Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Department of Corrections – General Fund		
Prison Cost	\$25,471	\$77,016
Special Payments to Counties	\$21,595	\$114,015
Total Cost	\$47,067	\$191,031
Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Public Defense Services Commission – General Fund	\$46,216	\$46,216

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure increases penalties for animal abuse and animal neglect including increasing the classifications for the crimes on the sentencing guidelines grid. For felony animal abuse in the first degree, the measure directs the Criminal Justice Commission (CJC) to classify the crime as a category 6 on the sentencing guidelines grid. For aggravated animal abuse in the first degree, CJC is to classify the crime as a category 7. Currently, both of these specific crimes are classified as category 3. CJC assumes 1 conviction per year for animal abuse and 6 convictions per year for aggravated animal abuse.

The measure moves animal neglect in the second degree from Class B misdemeanor to a Class A misdemeanor and moves animal neglect in the second degree to a Class C felony if certain conditions apply. Additionally, the crime classifications increase on the sentencing guidelines grid depending on the number of animals neglected. CJC assumes 2 convictions per year for animal neglect in the second degree.

The measure increases animal neglect in the first degree from Class A misdemeanor to a Class C felony. Additionally, the crime would increase to a Class B felony if certain conditions apply and the crime classifications are increased depending on the number of animals neglected. CJC assumes 2 convictions per year for animal neglect in the first degree.

The Department of Corrections (DOC) assumes a three month lag between the measure's effective date and the date first offenders may be received. Included in the cost estimates in the above table are funds that would be distributed to the community corrections departments of counties for costs of probation, post-prison supervision, and local control. The estimated length of stay is assumed to be approximately 18 months for animal abuse, and 27 months for aggravated animal abuse and animal neglect in a DOC facility at a marginal cost per day of \$21.93. DOC assumes any incarcerated inmates will be distributed into existing housing facilities and there would be no additional costs for staffing or construction. The estimated length of stay in local control is approximately 4 months with an average of three years of probation. The cost per day estimate for local control and probation is \$8.64.

These cost estimates could vary depending on the actual number of cases, convictions and length of sentences issued. Thus far in the 2013 session, this is the tenth fiscal impact statement issued by the Legislative Fiscal Office on measures effecting the corrections population. The cumulative effect of similar measures passed during the legislative session will impact the Corrections Population Forecast produced by the Office of Economic Analysis which serves as the basis for funding the Department of Corrections operations and community corrections budgets.

Based on historical data from the Judicial Department, there was an average of 65 cases per year where the highest charge was second degree animal neglect and 37 cases per year where the highest charge was first degree animal neglect.

The Public Defense Services Commission (PDSC) notes that the average cost of representation for misdemeanors or contempt of court is \$350, the average cost for representation of a Class C felony is \$750, and the average cost of representation of a Class B felony is \$1,000. The elevation of second degree animal neglect to a Class C felony under certain circumstances, and first degree animal neglect to a Class C felony would increase costs to PDSC by approximately \$400 per case. Elevating animal neglect to a Class B felony under certain circumstances would increase costs to PDSC by approximately \$650 per case. Using the historical data from the Judicial Department above, assuming that 10% of the first and second degree animal neglect cases would become at least a Class C felony and that 10% of the first degree animal neglect become Class B felonies, and that 90% of defendants would be eligible for court-appointed counsel, the estimated cost to PDSC could be as much as \$23,108 per year.

There is a minimal fiscal impact to the Judicial Department and District Attorney's and Their Deputies as a result of this measure and no fiscal impact to the Department of Justice.

The measure also creates requirements for animal rescue organizations including record-keeping, licensure requirements and licensing fees, authorization for inspection of records by enforcing agencies, and civil penalties for violations. The licensure fees and civil penalties would be paid to local governments' dog licensing and control enforcing agencies. The fiscal and revenue impact to local governments as a result of this measure is indeterminate.

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 6**

1 On page 1 of the printed A-engrossed bill, line 3, delete “and” and insert
2 a comma and after “167.347” insert “and 167.348”.

3 On page 3, delete lines 23 through 37 and insert:

4 **“SECTION 6.** ORS 167.332 is amended to read:

5 **“167.332. (1) Except as provided in subsection (3) of this section:**

6 **“(a)** In addition to any other penalty imposed by law, a person convicted
7 of violating ORS 167.315, 167.325, 167.330, 167.333, 167.340 or 167.355 or of a
8 misdemeanor under ORS 167.320, may not possess a domestic animal **or any**
9 **animal of the same genus against which the crime was committed** for
10 a period of five years following entry of the conviction.

11 **“[(2)] (b)** In addition to any other penalty imposed by law, a person con-
12 victed of violating ORS 167.322, 167.365 or 167.428 or of a felony under ORS
13 167.320, may not possess a domestic animal **or any animal of the same**
14 **genus against which the crime was committed** for a period of 15 years
15 following entry of the conviction.

16 **“[(3)] (2)** A person who possesses [*a domestic*] **an** animal in violation of
17 this section commits a Class C misdemeanor. When a person is convicted of
18 possessing [*a domestic*] **an** animal in violation of this section, **as part of the**
19 **sentence** the court may order the removal of [*domestic animals*] **that ani-**
20 **mal** from the person’s residence **and may prohibit the person from pos-**
21 **sessing any animal of the same genus that the person unlawfully**
22 **possessed under this section or against which the underlying violation**

1 of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355,
2 167.365 or 167.428 was committed.

3 “(3)(a) A person subject to an animal possession prohibition de-
4 scribed in subsection (1) of this section may file a motion with the
5 sentencing court requesting a waiver of the prohibition. The person
6 must file a sworn affidavit in support of the motion stating that:

7 “(A) The person’s conviction leading to the possession prohibition
8 involved only livestock;

9 “(B) During the two years before the conviction triggering the
10 prohibition, the person was the owner of a commercial livestock op-
11 eration;

12 “(C) The person has not been convicted, in the previous five years,
13 of a crime involving animals or domestic violence or a crime where
14 the victim was under 18 years of age; and

15 “(D) The person’s conviction was the result of:

16 “(i) Criminal liability for the conduct of another person under ORS
17 161.155 (2)(c);

18 “(ii) Criminal liability of a corporation as described in ORS 161.170,
19 and the person is a corporation; or

20 “(iii) Animal neglect as described in ORS 167.325 or 167.330 and the
21 person’s criminal conduct was not knowing or intentional.

22 “(b) When a person files a motion and affidavit described in para-
23 graph (a) of this subsection, the sentencing court shall hold a hearing.
24 At the hearing, the sentencing court shall grant the motion if the
25 person proves by clear and convincing evidence that:

26 “(A) Continued enforcement of the prohibition against possessing
27 livestock would result in substantial economic hardship that cannot
28 otherwise be mitigated;

29 “(B) The person no longer poses any risk to animals; and

30 “(C) The person is capable of providing and willing to provide nec-

1 **essary, adequate and appropriate levels of care for all livestock that**
2 **would come within the person’s custody or control if the petition is**
3 **granted.**

4 **“(c) When deciding a motion filed under this subsection, the sen-**
5 **tencing court may consider the person’s financial circumstances and**
6 **mental health in determining whether the person is capable of ade-**
7 **quately caring for livestock.**

8 **“(d) If the sentencing court grants the motion described in this**
9 **subsection, the waiver of the prohibition against possessing animals**
10 **shall apply only to livestock. The sentencing court shall further order**
11 **that for five years the person must consent to reasonable inspections**
12 **by law enforcement and the United States Department of Agriculture**
13 **to ensure the welfare of the livestock under the person’s custody or**
14 **control. A refusal to consent to a reasonable inspection described in**
15 **this paragraph is contempt of court and, if the person is found in**
16 **contempt, shall result in the sentencing court revoking the waiver of**
17 **the possession prohibition.**

18 **“(e) As used in this subsection, ‘commercial livestock operation’**
19 **means a business engaged in the raising, breeding or selling of live-**
20 **stock for profit.”.**

21 On page 4, after line 40, insert:

22 **“SECTION 8.** ORS 167.348 is amended to read:

23 **“167.348. (1) If an animal is forfeited according to the provisions of ORS**
24 **167.347 or 167.350, the agency to which the animal was forfeited may place**
25 **the animal with a new owner. The agency [*shall*] **may** give placement pref-**
26 **erence to any person or persons who had prior contact with the animal, in-**
27 **cluding but not limited to family members and friends of the former owner**
28 **whom the agency determines are capable of providing necessary, adequate**
29 **and appropriate levels of care for the animal. **The agency may not, how-****
30 **ever, place the animal with family members or friends of the former**

1 **owner who aided or abetted the criminal conduct underlying the**
2 **forfeiture or had knowledge of the criminal conduct and failed to in-**
3 **tervene.** As a condition of placement, the agency shall require the new
4 owner to execute an agreement to provide minimum care to the animal. The
5 agreement must indicate that allowing the former owner to possess the ani-
6 mal constitutes a crime.

7 “(2) Notwithstanding subsection (1) of this section, the agency may not
8 place the animal with any person who resides with the former owner.”.

9 In line 41, delete “8” and insert “9”.

10 On page 5, line 41, delete “9” and insert “10” and delete “10” and insert
11 “11”.

12 On page 6, line 26, delete “10” and insert “11”.

13 In line 33, delete “10” and insert “11”.

14 In line 45, delete “10” and insert “11”.

15 On page 7, line 12, delete “10” and insert “11”.

16 In line 14, delete “10” and insert “11”.

17 In line 18, delete “9” and insert “10”.

18 In line 20, after “agency” insert “, a law enforcement agency or the
19 United States Department of Agriculture”.

20 In line 22, delete “9” and insert “10”.

21 In line 23, after “agency” insert “or a law enforcement agency”.

22 In line 24, delete “enforcing”.

23 In line 26, delete “9” and insert “10”.

24 In line 27, delete “authorized representative of the enforcing”.

25 In line 29, delete “9” and insert “10”.

26
