

PENALTIES FOR CRIMES AGAINST ANIMALS

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**House Bills 4332 and 4333 as enacted
Public Acts 452 and 652 of 2018**

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

**Sponsor: Rep. Tommy Brann
House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 6-24-19**

BRIEF SUMMARY: House Bill 4332 amends the Penal Code to increase penalties for certain animal abuse violations and to establish first, second, and third degrees of killing or torturing animals. The bill also brings breeders and pet shop owners under the animal abuse law and provides protections for companion animals. HB 4333 amends the sentencing guidelines in the Code of Criminal Procedure to reflect the penalties in HB 4332.

FISCAL IMPACT: House Bill 4332 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. (See **Fiscal Information**, below, for further discussion.)

THE APPARENT PROBLEM:

In many domestic violence and abuse situations, the abuser will use a beloved family pet to exert control over his or her victim. As the sponsor of HB 4332 stated, "Pets are a crucial part of Michigan families, often like children and close friends." Under the law, however, pets are treated as property—even though cruelty directed toward such a companion can, and often does, result in the same traumatic effects as cruelty against a person. Abusers can harm and threaten a treasured family pet with little or no punishment or deterrent, while the same actions against a person would be more easily prosecuted. Additionally, while society condemns abuse of animals, pet store owners and breeders are not included in the definitions governing animal abuse. Legislation has been proposed to address these gaps in the law, to ensure the safety of all animals, not just family pets.

THE CONTENT OF THE BILLS:

Animal neglect or cruelty

The Penal Code prohibits a person who owns, possesses, is in charge of, or has custody of an animal from doing any of the following:

- Failing to provide an animal with adequate care.
- Cruelly driving, working, or beating an animal or causing it to be cruelly driven, worked, or beaten.
- Carrying or causing to be carried in or on a vehicle or otherwise any live animal:
 - Whose feet or legs are tied together, except an animal being transported for medical care or a horse whose feet are hobbled to protect it during transport.
 - Without providing a secure space, rack, car, crate, or cage in which *livestock* may stand and in which all other animals may stand, turn around, and lie down during transport or while awaiting slaughter.

- In any other cruel and inhumane manner.
- Abandoning an animal or causing an animal to be abandoned, without making provisions for the animal’s adequate care, unless premises are vacated for the protection of human life or the prevention of injury to a human.
- Negligently allowing any animal, including one that is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory, to suffer unnecessary neglect, torture, or pain.
- Tethering a dog unless the tether is at least three times the length of the dog and is attached to a harness or nonchoke collar designed for tethering.

House Bill 4332 extends the above prohibitions to a *breeder* and an operator of a *pet shop*.

The bill also adds that the last prohibition (regarding tethering a dog) does not apply if the tethering occurs while the dog is being groomed, trained, transported, or used in a hunt or event where a shorter tether is necessary for the safety and well-being of the dog and others.

Breeder means a person that breeds animals other than *livestock* or dogs for remuneration or that is a large-scale dog breeding kennel as defined in 1969 PA 287.¹

Pet shop means a place where animals are sold or offered for sale, exchange, or transfer.

Livestock means those species of animals used for human food and fiber or for service to humans. Livestock includes cattle, bison, sheep, goats, New World camelids (e.g., llamas), swine, members the horse family, privately owned deer, rabbits, poultry, ratites (e.g., emus), and aquaculture. Livestock does not include dogs and cats.

New penalties for animal cruelty

Table 1 shows the penalties for animal neglect or cruelty (i.e., for violating the above prohibitions) before enactment of HB 4332. A violation was punishable by one or more of the applicable penalties (prison, fine, or community service), and the violator could be ordered to pay the costs of prosecution.

Table 1: Previous Penalties

Animals Involved or Prior Convictions	Maximum Prison Term	Maximum Fine	Maximum Community Service
1 animal ⁽¹⁾	93 days	\$1,000	200 hours
2 or 3 animals, or the death of an animal ⁽¹⁾	1 year	\$2,000	300 hours
4 to 9 animals, or 1 prior conviction ⁽²⁾	2 years	\$2,000	300 hours
10 or more animals, or 2 or more prior convictions ⁽²⁾	4 years	\$5,000	500 hours
⁽¹⁾ misdemeanor ⁽²⁾ felony			

The bill keeps the first three levels of these penalties the same and creates two new levels.

¹ A facility where more than 15 female intact dogs over the age of 4 months are housed or kept for the primary purpose of breeding. As used in this subdivision, “housed or kept for the primary purpose of breeding” means that the female dog has previously been bred and whelped. A female dog that has not previously produced offspring shall not be considered to have been housed or kept for the primary purpose of breeding. (MCL 287.331)

Under the bill, the previous penalty for a violation involving 10 or more animals (or with two or more prior convictions) applies to a violation involving from 10 to 24 animals or with exactly two prior convictions. A violation involving 25 or more animals, or with three or more prior convictions, is a felony punishable by up to seven years' imprisonment, a fine of up to \$10,000, and/or up to 500 hours of community service. The offender may also be placed on probation for any term of years, but not less than five years.

The bill also adds that if a breeder or pet shop owner violates the act and has five or more prior convictions for violating 1969 PA 287, the person is guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$5,000, or both. [1969 PA 287 generally prohibits pet shop operators from selling dogs or cats that are too young, have not been inoculated, or lack veterinarian health certificates and other health records. A violation of the act is a misdemeanor.]

Table 2, below, describes the new penalties enacted by HB 4332 (including those penalties remaining unchanged, with the changed penalties in **bold**). As before, a violation is punishable by one or more of the applicable penalties (prison, fine, or community service), and a violator may be ordered to pay the costs of prosecution.

Table 2: New Penalties

Animals Involved or Prior Convictions	Maximum Prison Term	Maximum Fine	Maximum Community Service
1 animal ⁽¹⁾	93 days	\$1,000	200 hours
2 or 3 animals, or the death of an animal ⁽¹⁾	1 year	\$2,000	300 hours
4 to 9 animals, or 1 prior conviction ⁽²⁾	2 years	\$2,000	300 hours
10 to 24 animals, or 2 or more prior convictions ⁽²⁾	4 years	\$5,000	500 hours
25 or more animals, or 3 or more prior convictions ^{(2)*}	7 years	\$10,000	500 hours
Breeder/pet shop owner with 5 or more prior convictions ⁽²⁾	2 years	\$5,000	--
⁽¹⁾ misdemeanor ⁽²⁾ felony *plus probation for at least 5 years			

The penalties described above do not apply to various lawful killings or other uses of animals, such as fishing, hunting or trapping wildlife, farming, or scientific research. The bill adds that the lawful killing or use of an animal under the Animal Industry Act is also exempt from these penalties.

Killing or torturing animals

The Penal Code prohibits a person from doing the following without just cause:

- Knowingly killing, torturing, mutilating, maiming, disfiguring, or poisoning an animal.
- Committing a reckless act knowing or having reason to know that it will cause an animal to be killed, tortured, mutilated, maimed, or disfigured.

The bill additionally prohibits a person from knowingly killing, torturing, mutilating, maiming, disfiguring, or poisoning an animal, or threatening to do so, with the intent to cause mental suffering or distress to a person or to exert control over a person.

The bill establishes first, second, and third degrees of the offense of killing or torturing animals. A person who violates any of the above prohibitions is guilty of killing or torturing animals in the third degree unless the conditions described below apply to the offense.

A person is guilty of killing or torturing animals in the first degree if he or she intentionally and knowingly kills, tortures, mutilates, maims, disfigures, or poisons a **companion animal** and does so (or threatened to do so) with the intent to cause mental suffering or distress to a person or exert control over a person.

A person is guilty of killing or torturing animals in the second degree if he or she intentionally and knowingly kills, tortures, mutilates, maims, disfigures, or poisons a **companion animal** or does those things or threatens to do those things with the intent to cause mental suffering or distress to a person or to exert control over a person.

Companion animal means an animal commonly considered to be, or considered by its owner to be, a pet or service animal, including at least dogs and cats.

Previously, a violation of killing or torturing an animal was a felony punishable by one or more of the following: imprisonment for up to four years; a fine of up to \$5,000 for a single animal and \$2,500 for each additional animal involved in the violation (but not more than a total of \$20,000); or community service for up to 500 hours.

Under the bill, killing or torturing animals in the first, second, and third degree are punishable as shown in Table 3.

Table Three: Penalties for Killing or Torturing Animals

Degree of Offense	Maximum Prison Term	Maximum Fine	Maximum Community Service
First	10 years	\$5,000	500 hours
Second	7 years	\$5,000	500 hours
Third	4 years	\$5,000	500 hours

The court may order a term of imprisonment imposed for killing or torturing an animal to be served consecutively to a term of imprisonment imposed for any other crime, including a crime arising out of the same transaction.

MCL 750.50 et al.

House Bill 4333 amends the sentencing guidelines in the Code of Criminal Procedure to reflect the penalties in HB 4332.

Sentencing guidelines designations

Previously, animal neglect or cruelty involving 10 or more animals, or with two or more prior convictions, was a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment. House Bill 4333 adds animal neglect or cruelty involving 10 to 24 animals, or with two prior convictions, to this class.

The bill also adds the following sentencing guideline designations:

- Animal neglect or cruelty involving 25 or more animals, or with three or more prior convictions, is a Class E felony against the public order, with a statutory maximum sentence of seven years' imprisonment.
- Animal neglect or cruelty by a breeder or pet shop operator with five or more prior violations of 1969 PA 287 is a Class G felony against the public order, with a statutory maximum sentence of two years' imprisonment.

The bill classifies killing or torturing animals as follows:

- First degree killing or torturing animals is a Class D felony against property with a statutory maximum sentence of 10 years' imprisonment.
- Second degree killing or torturing animals is a Class E felony against property with a statutory maximum sentence of seven years' imprisonment.
- Third degree killing or torturing animals is a Class F felony against property with a statutory maximum sentence of four years' imprisonment.

Sentencing guidelines scoring

The code includes instructions for calculating sentencing guidelines scores, based on a formula that considers offense variables (OVs) and prior record variables.

OV 4 is *psychological injury to a victim*. The bill requires five points to be assigned for killing or torturing animals in any degree if serious psychological injury requiring professional treatment occurs to the owner of a companion animal.

OV 10 is *exploitation of a vulnerable victim*. The code requires 10 points to be assigned if the offender abused authority status or exploited (manipulated for selfish or unethical purposes) a victim's physical disability, mental disability, age, or a domestic relationship. Five points must be assigned if the offender exploited a victim's difference in size and/or strength or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious. The bill adds that "exploit" includes killing or torturing animals to manipulate a victim for selfish or unethical purposes.

OV 16 is *property obtained, damaged, lost, or destroyed*. The bill requires 25 points to be assigned for a conviction for animal neglect or cruelty if the offense involved more than 25 animals. Ten points must be assigned for a conviction involving 10 to 24 animals.

OV 19 is *threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services*. Under the bill, 10 points must be assigned if an offender directly or indirectly violated a personal protection order.

MCL 777.16b et seq.

HB 4332 took effect March 21, 2019, and HB 4333 took effect March 28, 2019.

FISCAL INFORMATION:

House Bill 4332 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. The fiscal impact would depend on the number of individuals convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and parole and probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for felony probation supervision averaged about \$3,700 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4333 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Supporters of the bills argued that the connection between animal abuse and other violent behavior, particularly in domestic violence situations, would be adequately addressed in the legislation. Law enforcement officers often witness the same abusers continue to lash out at animals, yet the current sentencing guidelines recommends probation. Because probation has not been a strong enough deterrent to prevent these crimes in the past, harsher punishment could bring about a better result.

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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.