

## **PENALTIES FOR CRIMES AGAINST ANIMALS**

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**House Bills 4332 & 4333 (reported from committee without amendment)**

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

**Sponsor: Rep. Tommy Brann**

**Committee: Law and Justice**

**Complete to 6-1-17**

***BRIEF SUMMARY:*** House Bill 4332 would amend Section 50 of the Michigan Penal Code by establishing first, second, and third degrees of killing or torturing an animal, while increasing the maximum prison term for first- or second-degree offenses. The bill would also bring breeders and pet shops under the law and provide additional protections for companion animals. (A "companion animal" would be defined as an animal that is commonly considered to be, or is considered by its owner to be, a pet, including, but not limited to, dogs and cats.)

House Bill 4333 would amend the sentencing guidelines in the Code of Criminal Procedure to reflect the proposed penalties in HB 4332. The Code includes instructions for calculating sentencing guidelines scores, based on a formula that considers offense variables (OVs) and prior record variables. HB 4333 would provide additional sentencing instructions for various offenses related to animal cruelty.

The bills are tie-barred to each other, meaning neither could take effect unless both are enacted, and they would take effect 90 days after enactment.

***FISCAL IMPACT:*** 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.

House Bill 4333 would not have a direct impact on the state or local units of government.

### ***THE APPARENT PROBLEM:***

Many situations of domestic violence and abuse involve the batterer using a beloved family pet as a means to exert control over the victim. As the sponsor of the bill stated, "pets are a crucial part of Michigan families, often like children and close friends." Currently under the law, pets are treated like property, even though cruelty shown toward such a companion can, and often does, result in the same effects as cruelty against a person. As a result, abusers can currently harm and threaten a treasured family pet with little to no punishment or deterrent, while the same actions against a person could be prosecuted easier.

In addition, society condemns abuse of animals, yet under the current law, pet store owners and breeders are not included in the definitions of abusing an animal. Addressing this gap in the law would ensure the safety of all animals, not just family pets.

## ***THE CONTENT OF THE BILL:***

### **House Bill 4332**

#### ***Animal Neglect or Cruelty (Breeders & Pet Shops)***

House Bill 4332 would extend the prohibitions described below to a breeder and an operator of a pet shop. However, the last prohibition regarding tethering a dog would not apply to the operator of a pet shop if the tethering occurred while the dog was being groomed on the premises of the pet shop.

Currently under the law, a person who owns, possesses, is in charge of, or has custody of an animal is prohibited 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 upon 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, or in any other cruel and inhumane manner.
- Carrying or causing to be carried a live animal in or upon a vehicle or otherwise 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.
- 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.

The term "breeder" would mean a person who breeds animals other than livestock for the purpose of making a profit. "Pet shop" would mean a place where animals are sold or offered for sale, exchange, or transfer. "Livestock" would mean those species of animals used for human food and fiber or those species of animals used for service to humans, as defined and listed in Section 5 of the Animal Industry Act; livestock does not include dogs and cats.

#### ***New Penalties for Animal Cruelty***

Table 1, below, shows the current penalties for animal neglect or cruelty. An offender also may be ordered to pay the costs of prosecution.

Table 1: Current Penalties

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

House Bill 4332 would keep the first three levels of penalties the same and create two other levels.

The current penalty for a violation involving 10 or more animals (or two prior convictions) would apply to a violation involving 10 to 24 animals. A violation involving 25 or more animals, or three or more prior convictions, would be a felony punishable by up to seven years' imprisonment, a maximum fine of \$10,000, up to 500 hours of community service, and probation for any term of years but not less than five years.

The bill would also add that if a breeder or pet shop owner violated this act and had five or more prior convictions for violating Public Act 287 of 1969, the person would be guilty of a felony punishable by imprisonment for up to two years, a maximum fine of \$5,000, or both. (Public Act 287 of 1969 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, depicts these new penalties (including those remaining unchanged, with the changed penalties in **boldface**).

Table 2: New Penalties

Animals Involved or Prior Convictions	Maximum Prison Term	Maximum Fine	Maximum Community Service
1 animal <sup>(1)</sup>	93 days	\$1,000	200 hours
2 or 3 animals, or the death of an animal <sup>(1)</sup>	1 year	\$2,000	300 hours
4 to 9 animals, or 1 prior conviction <sup>(2)</sup>	2 years	\$2,000	300 hours
<b>10 to 24 animals, or 2 or more prior convictions<sup>(2)</sup></b>	<b>4 years</b>	<b>\$5,000</b>	<b>500 hours</b>
<b>25 or more animals, or 3 or more prior convictions<sup>(2)*</sup></b>	<b>7 years</b>	<b>\$10,000</b>	<b>500 hours</b>
<b>Breeder/Pet Shop owner with 5 or more priors<sup>(2)</sup></b>	<b>2 years</b>	<b>\$5,000</b>	<b>--</b>
<sup>(1)</sup> misdemeanor <sup>(2)</sup> felony			
*plus possible probation for any term of years, not less than 5			

***1st and 2nd Degree Killing or Torturing Animals***

Under current law, a person is prohibited 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.

House Bill 4332 would also prohibit 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 would establish first, second, and third degrees of the offense of killing or torturing animals. Except as provided below, an offense would be third-degree killing or torturing animals.

A person would be guilty of a first-degree offense if he or she intentionally and knowingly killed, tortured, mutilated, maimed, disfigured, or poisoned a companion animal **and** did so or threatened to do so with the intent to cause mental suffering or distress to a person or to exert control over a person.

A person would be guilty of a second-degree offense if he or she intentionally and knowingly killed, tortured, mutilated, maimed, disfigured, or poisoned a companion animal **or** knowingly did so or threatened to do so with the intent to cause mental suffering or distress to a person or to exert control over a person.

Currently, a violation of killing or torturing an animal is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$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, and/or up to 500 hours of community service.

Under the bill, first-, second-, and third-degree killing or torturing of animals would be felonies, punishable as shown below in Table 3.

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

In addition, the court could order a term of imprisonment imposed for the violation to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction as a violation of this act.

MCL 750.50 et al.

**House Bill 4333**

As noted above, the bill would amend the sentencing guidelines in the Code of Criminal Procedure to reflect the proposed penalties in HB 4332.

### ***Sentencing guidelines designations***

Currently, animal neglect or cruelty involving 10 or more animals, or with two or more prior convictions, is a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment. Under the bill, animal neglect or cruelty involving 10 or more animals, but fewer than 25, or two prior convictions would be added to this class.

The bill would also add the following sentencing guideline designations for the other added provisions from House Bill 4332:

- Animal neglect or cruelty involving 25 or more animals, or with three or more prior convictions, would be 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 Public Act 287 of 1969 would be a Class G felony against the public order, with a statutory maximum sentence of two years' imprisonment.

Additionally, killing or torturing animals is currently a Class F felony against property, punishable by a statutory maximum sentence of four years' imprisonment. The bill would amend this to classify first, second-, and third-degree offenses of killing or torturing animals as follows:

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

### ***Sentencing Guidelines Scoring***

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

Offense variable 4 is ***psychological injury to a victim***. House Bill 4333 would require five points to be assigned for OV 4 for first-, second-, or third-degree killing or torturing of animals if serious psychological injury requiring professional treatment occurred to the owner of a companion animal.

Offense variable 10 is ***exploitation of a vulnerable victim***. The Code requires 10 points to be assigned for OV 10 if the offender *exploited* a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused authority status. Five points must be assigned if the offender *exploited* a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious. "Exploit" means to manipulate a victim for selfish or unethical purposes. Under the bill, that term also would mean to violate Section 50b of the Michigan Penal Code (killing or torturing animals) for the purpose of manipulating a victim for selfish or unethical purposes.

Offense variable 16 is *property obtained, damaged, lost, or destroyed*. The bill would require 25 points to be assigned for OV 16 for a conviction under Section 50 of the Penal Code (animal neglect or cruelty) if the property involved were more than 25 animals. Ten points would have to be assigned for a conviction under Section 50 if the property involved were 10 or more, but fewer than 25, animals.

Offense variable 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*. The bill would require 10 points to be assigned for OV 19 if the offender directly or indirectly violated a personal protection order.

MCL 777.16b et al.

### ***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 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for felony probation supervision averaged about \$3,500 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.

### ***DISCUSSION/ARGUMENTS:***

Supporters of the bills argue 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 oftentimes witness the same abusers continue to lash out on animals, yet the current sentencing guidelines recommends probation. Because probation has not been a strong enough deterrent to commit these crimes in the past, harsher punishments could bring about a better result.

Concerns were raised in testimony regarding the new sentencing, as some wondered how increasing the sentence would be a deterrent for someone who would commit the crime anyway. Proponents of the bills responded that there will always be offenders, but an

increased penalty with jail-time would prohibit re-offense, as an abuser who is serving time would be unable to reoffend. In addition, a harsher penalty could make an abuser reconsider their future actions, as they would have the knowledge that committing the act would result in a harsher punishment.

***POSITIONS:***

A representative from the Michigan Humane Society testified in support of the bills, (5-9-17), and indicated support of the bills (5-30-17).

A representative from the Wayne County Prosecutor's Office testified in support of the bills. (5-9-17)

A representative from Attorneys for Animals testified in support of the bills. (5-9-17)

A representative from Trinity Health of Michigan indicated support for the bills. (5-9-17)

A representative from the State Bar of Michigan Animal Law Section indicated support for the bills. (5-9-17)

A representative from the Michigan Coalition to end Domestic and Sexual Violence indicated support for the bills. (5-9-17)

A representative from the Humane Society of the United States indicated support for the bills. (5-9-17)

A representative from the Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated support for the bills. (5-9-17)

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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.