



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4332 (Substitute H-3 as passed by the House)
House Bill 4333 (Substitute H-1 as passed by the House)
Sponsor: Representative Tommy Brann
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 1-16-18

CONTENT**House Bill 4332 (H-3) would amend the Michigan Penal Code to do the following:**

- Establish first, second, and third degrees of killing or torturing an animal, and increase the maximum prison term for a first- or second-degree offense.
- Revise and enhance the graduated penalties for animal neglect or cruelty.
- Extend current animal neglect or cruelty prohibitions to a breeder or pet shop operator.
- Establish a felony penalty for animal neglect or cruelty by a breeder or pet shop operator who had five or more prior convictions under Public Act 287 of 1969 (which regulates pet shops).
- Allow a court to include at least five years' probation as part of a sentence for an animal neglect or cruelty offense involving 25 or more animals, or three or more prior convictions.

House Bill 4333 (H-1) would amend the Code of Criminal Procedure to do the following:

- Revise the sentencing guidelines for animal neglect or cruelty and establish sentencing guidelines designations for the penalties proposed by House Bill 4332 (H-3).
- Establish sentencing guidelines designations for first-, second-, and third-degree violations involving animal torture.
- Revise sentencing guidelines scoring requirements for several offense variables.

House Bill 4333 (H-1) is tie-barred to House Bill 4332. Each bill would take effect 90 days after its enactment.

House Bill 4332 (H-3)**Animal Neglect or Cruelty**

Under Section 50 of the Penal Code, 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 bill would extend those prohibitions to a breeder and an operator of a pet shop. Also, the provision related to the tethering of a dog would not apply if the tethering occurred while the dog was being groomed, trained, transported, or used in a hunt or event where a shorter tether was necessary for the safety and well-being of the dog and others. "Breeder" would mean a person who breeds animals other than livestock or dogs for remuneration, or that is a large-scale dog breeding kennel (a facility where more than 15 female intact dogs over the age of four months are housed or kept for the primary purpose of breeding). "Pet shop" would mean a place where animals are sold or offered for sale, exchange, or transfer.

Currently, a violation of Section 50 is punishable as shown in [Table 1](#), based on the number of animals involved, the prior convictions of the offender for this crime, and whether an animal died. An offender also may be ordered to pay the costs of prosecution.

Table 1

Animals Involved or Prior Convictions	Maximum Imprisonment	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 priors ²⁾	4 years	\$5,000	500 hours
¹⁾ misdemeanor. ²⁾ felony.			

Under the bill, the first three levels of penalties would be the same. 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, and up to 500 hours of community service.

Also, as part of the sentence imposed for a violation involving 25 or more animals, or an offender with three or more prior convictions, the court could place the defendant on probation for any term of years, but not less than five years.

If a breeder or pet shop owner violated Section 50 (regardless of the number of animals or prior convictions) and he or she had five or more prior convictions for violating Public Act 287 of 1969, the violation of Section 50 would be 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.)

Section 50 does not prohibit the lawful killing or other use of an animal under a variety of circumstances, including fishing, hunting, trapping, or wildlife control, horse racing, or for scientific research. Under the bill, Section 50 also would not apply to the lawful killing or use of an animal under the Animal Industry Act.

Killing or Torturing Animals

Section 50b of the Code prohibits a person from doing any of 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 also would 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 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 in Table 2.

Table 2

Degree of Offense	Maximum Imprisonment	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 Section 50b.

The Code defines "animal" as any vertebrate other than a human being. The bill would define "companion animal" as an animal that is commonly considered to be, or is considered by its owner to be, a pet, or that is a service animal as that term is defined in Section 50a. The term would include, but not be limited to, cats and dogs. ("Service animal means: a) that term as defined in 28 CFR 36.104, or b) a miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability. Under the Federal regulation, "service animal" refers to any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.)

House Bill 4333 (H-1)

Sentencing Guidelines Designations

Currently, animal neglect or cruelty involving 10 or more animals, or 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, instead, this designation would apply to animal neglect or cruelty involving 10 or more animals, but fewer than 25, or two prior convictions.

The bill also would add sentencing guidelines designations, as shown in [Table 3](#).

Table 3

Offense	Felony Class & Category	Statutory Maximum Sentence
Neglect or cruelty involving 25 or more animals, or 3 or more prior convictions	E-Public Order	7 years
Neglect or cruelty by breeder or pet shop operator with 5 or more prior violations of Public Act 287 of 1969	E-Public Order	2 years

Currently, killing or torturing animals is a Class F felony against property, punishable by a statutory maximum sentence of four years' imprisonment. The bill would classify first-, second-, and third-degree offenses of killing or torturing animals, as shown in [Table 4](#).

Table 4

Offense	Felony Class & Category	Statutory Maximum Sentence
First degree	D-Property	10 years
Second degree	E-Property	7 years
Third degree	F-Property	4 years

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. The bill 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 his or her 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, the 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 25 or more 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 750.50 & 750.50b (H.B. 4332)
777.16b et al. (H.B. 4333)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4332 (H-3)

The bill could have a negative fiscal impact on the State and local government. In 2016, there were 40 violations under this offense category with zero offenders sent to prison and five sent to jail. With the revised and proposed violations, there could be an increase in the number of offenders and number of years a given offender would serve in a correctional facility if sentenced there. More felony arrests and convictions could increase demands on 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 increases funding to public libraries.

House Bill 4333 (H-1)

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.

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.