

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

SFA

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5057 (as passed by the House)
Sponsor: Representative Jon Jellema
House Committee: Judiciary
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 9-22-98

CONTENT

The bill would amend the Michigan Penal Code to do the following:

- Specify that a prosecutor could file a civil action (rather than a petition in a criminal action) for a court order forfeiting an animal before final disposition of an animal cruelty charge.
- Prohibit a person from tethering a dog unless the tether met certain criteria.
- Redefine “shelter” to specify the adequate shelter for a dog.

The Penal Code contains procedures under which an animal may be forfeited while an animal cruelty prosecution is pending. Specifically, if an animal is impounded and is being held by a dog pound, animal shelter, or licensed veterinarian pending the outcome of a criminal action charging a violation of the Code’s animal cruelty provisions, or provisions concerning the willful and malicious killing or injuring of animals, the prosecuting attorney may file a petition in the criminal action requesting the court to issue an order forfeiting the animal to the pound, shelter, or veterinarian before final disposition of the criminal charge.

The bill would retain this provision but would permit a prosecuting attorney to file a civil action in the court having jurisdiction of the criminal action, rather than filing a petition in the criminal action. The bill also would refer to an “animal control shelter” (instead of a “dog pound”), and to an “animal protection shelter” (rather than an “animal shelter”).

Under the Code, an owner, possessor, or person having the charge or custody of an animal must not fail to provide the animal with adequate care, which includes the provision of sufficient shelter. “Shelter” currently is defined as adequate protection from the elements suitable for the age and species of animal and weather conditions to maintain the animal in a state of good health, including structures or natural features such as trees and topography. The bill would define “shelter” as adequate protection from the elements and weather conditions suitable for the age, species, and physical condition of the animal so as to maintain the animal in a state of good health. For livestock, shelter would include structures or natural features such as trees or topography. For a dog, shelter would include one or more of the following:

- The residence of the dog’s owner or other individual.
- A doghouse that was an enclosed structure with a roof and of appropriate dimensions for the breed and size of the dog. The doghouse would have to have dry bedding when the outdoor temperature was or was predicted to drop below freezing.
- A structure, such as a garage, barn, or shed, that was sufficiently insulated and ventilated to

protect the dog from exposure to extreme temperatures or, if not sufficiently insulated and ventilated, that contained a doghouse as provided above that was accessible to the dog.

In addition, the bill would prohibit an owner, possessor, or person having the charge of custody of a dog from tethering it unless the tether was at least three times the length of the dog as measured from the tip of its nose to the base of its tail, and was attached to a harness or nonchoke collar designed for tethering. ("Tethering" would mean the restraint and confinement of a dog by use of a chain, rope, or similar device.)

MCL 750.50

Legislative Analyst: S. Lowe

FISCAL IMPACT

Civil proceedings regarding forfeiting an animal would be less expensive and more timely for local prosecutors. Civil proceedings also would avoid possible constitutional issues, including double jeopardy and court-appointed counsel. An estimate on avoided costs is not determinable.

Fiscal Analyst: B. Bowerman

S9798\S5057SA

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.