

# Legislative Analysis

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## ANIMAL ABUSE: REVISE PENALTIES

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**House Bill 4550 as enrolled**  
**Public Act 151 of 2007**

**House Bill 4551 as enrolled**  
**Public Act 152 of 2007**

**Sponsor: Rep. John Espinoza**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary**

### **First Analysis (9-3-08)**

**BRIEF SUMMARY:** House Bill 4551 would revise the penalties for certain conduct towards an animal by its owner or a person having the charge of the animal that results in harm to the animal; allow consecutive sentencing for crimes arising out of the same transaction; remove the element of intent from the prohibition on willfully or negligently allowing an animal to suffer unnecessary neglect, torture, or pain; and provide an exemption for veterinarians and veterinary technicians acting within their scope of practice. House Bill 4550 would place the maximum term of imprisonment within the sentencing guidelines.

**FISCAL IMPACT:** The bills would have a fiscal impact on state and local governments as discussed later in the analysis.

### **THE APPARENT PROBLEM:**

In 2007, two situations involving the neglect of large numbers of animals came to light. In Sanilac County, Fred Jacklett and Laurie McConnell pled guilty to five misdemeanor counts of animal cruelty after investigators found 33 dead animals and about 45 more malnourished at Jacklett's farm on New Year's Day. According to one news report, "sows were eating their own young" and animals couldn't reach food that was in sight but behind padlocked fences. Jacklett reportedly "told police that he had been 'too busy partying' to feed the animals". Sheriff deputies who responded to the scene originally requested the local prosecutor to charge Jacklett with 191 charges, including 88 felonies. The prosecutor responded that the criminal statutes pertaining to animal abuse did not allow him to charge the defendants with felonies because the actions required " 'willful, malicious intent' to harm or kill." (Article published Jan. 20, 2007, [thetimesherald.com](http://thetimesherald.com).)

In a Jackson County high-profile case, 69 horses, including quarterhorses and thoroughbreds, were seized after animal control officials found them standing in pastures littered with piles of trash, rusted auto parts, and animal feces. At least one horse needed to be euthanized and several were visually malnourished. By the end of November, 2007, "overtime wages for county animal control employees had come to nearly 400 percent of the amount budgeted" for the entire year and food and medical care for the

horses had cost the county tens of thousands of dollars. (Detroit Free Press, Dec. 10, 2007.) A blog posted Feb. 05, 2008 on The Grand Rapids Press - MLive site reported the total cost to the Jackson County Animal Control as \$131,031, with some of the expenses offset by auctioning off most of the 80 plus herd (at least 15 mares foaled after being impounded). Originally, citing weak animal cruelty laws, the county prosecutor charged the two men involved with one count each of animal neglect, a 93-day misdemeanor. Reportedly, each man has since been charged with felony animal torture relating to three of the horses, with the criminal prosecution still ongoing.

These and other cases have identified several weaknesses in the animal abuse laws relating to simple neglect and negligence on the part of owners or others having charge of animals (i.e., farm or store managers). For instance, for a first offense, the penalty is the same whether one animal or a thousand were neglected. Secondly, though it has been well documented that persons who abuse or neglect animals are more likely to abuse or neglect humans, an owner accused of neglecting an animal cannot be ordered to undergo psychological evaluation or treatment (persons charged under a different provision involving cruelty may be so ordered).

In addition, if a court ordered the animal (or animals) to be forfeited, the court cannot order the defendant to reimburse the county or local animal control for the costs of housing and providing medical care for the animal. Also, since sentences for this crime must be served concurrently, even if a person was convicted of 50 counts of animal neglect, his or her sentences would run at the same time; in essence, the person would serve the same amount of jail or community service as if only one charge had been brought.

Some believe that the animal abuse and neglect laws need to be strengthened and penalties more appropriate to the level of harm caused to animals by those who own them or are responsible for their care.

### ***THE CONTENT OF THE BILLS:***

House Bill 4551 would amend the penal law to revise the penalties for harming animals and allow for consecutive sentencing. The bill would exempt veterinarians and veterinarian technicians from the prohibitions and penalties contained in the bill when lawfully engaging in the practice of veterinarian medicine. The bill would specify that it would not prohibit a person from being charged with, convicted of, or punished for any other prohibited violation. Moreover, a court could order a term of imprisonment imposed for a violation prohibited under the bill 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 the violation of the section amended by the bill. House Bill 4550 would amend the sentencing guidelines. The bills would take effect April 1, 2008.

Details specific to each bill are as follows:

**House Bill 4551** would amend the Michigan Penal Code (MCL 750.50). Section 50 of the code prohibits various actions by an owner, possessor, or person having the charge of an animal that result in harm to the animal. One of the prohibited actions is to willfully or negligently allow any animal, including one who was aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain. The bill would delete *willfully* and apply the prohibition to those actions that were negligent.

Abandoning an animal is also prohibited without making provisions for the animal's adequate care. An exception is provided for premises that are temporarily vacated for the protection of human life during a disaster. The bill would delete the underscored language and revise the exception to instead apply to premises vacated for the protection of human life *or the prevention of injury to a human*.

A court could order a person convicted of a violation to be evaluated to determine a need for psychiatric or psychological counseling, and could order the person to receive such counseling. The evaluation and counseling would be at the defendant's own expense. (This is similar to a provision for a person convicted of animal cruelty.) The bill would also delete a restriction that a defendant could be ordered to pay the costs of an animal's care as part of a sentence for a violation only if forfeiture of the animal had not been ordered. Under the bill, the defendant could be ordered to assume the costs of the care even if forfeiture is ordered.

Current penalties for a violation of the prohibited acts are based on the number of prior convictions, and range from a 93-day misdemeanor for a first offense to a four-year felony for a third or subsequent violation. In addition, a court can impose a fine, community service, and/or order the offender to pay the costs associated with prosecution.

The bill would instead base penalties on the number of animals involved in the violation or the number of prior convictions for prohibited acts as follows:

Offense	Offense Level	Punishment: Any 1 or more
One animal and first offense	Misdemeanor	- Up to 93 days imprisonment - Maximum \$1,000 fine - Up to 200 hours community service - May be ordered to pay costs of prosecution
Two or three animals or death of an animal; first offense	Misdemeanor	- Up to one year imprisonment - Maximum \$2,000 fine - Up to 300 hours community service - May be ordered to pay costs of prosecution

Four to nine animals OR one prior conviction	Felony	- Up to 2 years imprisonment - Maximum \$2,000 fine - Up to 300 hours community service - May be ordered to pay costs of prosecution
Ten or more animals OR two or more prior convictions	Felony	- Up to 4 years imprisonment - Maximum fine of \$5,000 - Up to 500 hours community service - May be ordered to pay costs of prosecution

**House Bill 4550** would amend the Code of Criminal Procedure (MCL 777.16b) to revise the corresponding provisions in the sentencing guidelines to reflect the changes proposed by House Bill 4551. The bill is tie-barred to House Bill 4551.

***FISCAL INFORMATION:***

The bills' fiscal impact would depend on how they affected misdemeanor and felony convictions and sentences. There are no data on the numbers of misdemeanor convictions under current law, but to the extent that the bills increased the numbers of misdemeanor convictions or the severity of misdemeanor sentences, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by county, could increase.

In 2007, there were no offenders sentenced for felony violations of MCL 750.50 (animal neglect/cruelty). To the extent that the bills increased the numbers of felony convictions or the severity of felony sentences, they could increase state costs. The average appropriated cost of prison incarceration is about \$31,000 per prisoner annually; felony parole and probation supervision averages about \$2,000 per supervised offender per year.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

***ARGUMENTS:***

***For:***

Prosecutors and animal lovers have long agreed that animal abuse laws need to be updated. House Bill 4551 would make some important changes. First, it is important to distinguish the section of law the bill would revise from other, similar provisions. Under the state criminal laws, crimes of dogfighting and willful and malicious torture, maiming, or killing of an animal by any person are covered by other provisions. House Bill 4551 would amend Section 50 of the penal code; Section 50, among other things, prohibits certain conduct on the part of the owner, possessor, or person having the charge or

custody of an animal. The prohibited acts include failing to provide an animal with adequate care; cruelly driving, working, or beating an animal; abandoning an animal (except for certain emergency situations in which the owner must flee the premises); inappropriately transporting or tethering an animal; and willfully or negligently allowing any animal to suffer unnecessary neglect, torture, or pain.

Most of the current prohibitions would remain unchanged. Of importance is the deletion of the element of intent for allowing any animal to suffer unnecessary neglect, torture, or pain. Under the bill, an owner or person in charge of the animal could be prosecuted under this provision if he or she negligently allowed the abuse to occur. Whether or not the person willfully harmed the animal would no longer be a factor.

Penalties have also been revised to be more appropriate to the actual harm done and the numbers of animals involved. Under the bill, even neglect or abuse of a single animal resulting in that animal's death could land an offender in jail for a year; felony charges could be brought on a first offense if the abuse involved more than four animals.

Also of importance is the ability of a court to order a defendant to undergo psychological evaluation and, if appropriate, order counseling or treatment. According to one article in a University of Pennsylvania publication, "[p]sychology, sociology, and criminology studies conducted in the last quarter-century have shown that many violent offenders repeatedly committed acts of serious animal cruelty during childhood and adolescence. Other research has demonstrated consistent patterns of animal cruelty among perpetrators of common forms of violence, including child abuse, spouse abuse, and elder abuse. Recognition of these patterns may help human service professional make life-saving decisions related to suspected instances of family violence when animal abuse is also evident." (Finklestein, Susan, "Canary in a Coal Mine: The Connection Between Animal Abuse and Human Violence", Bellwether, No. 58, Fall 2003.) Evaluations and treatments ordered under this provision may identify current or potential human abusive situations and end a cycle of violence before it reaches a tragic end.

***For:***

House Bill 4551 would allow a judge to order sentences for multiple convictions for actions arising out of the same transaction be served consecutively. Sometimes, more than one provision of law is being violated. Under the bill, a judge would have discretion to order consecutive sentences when appropriate.

Further, under the bill's revisions, a court could order the defendant to reimburse the cost of housing and caring for forfeited animals. This would help in situations similar to the one Jackson County faced when the sale of the forfeited horses fell far short of the cost to feed, house, and provide medical care for them.

***Against:***

In light of the chronic overcrowding of the state's jails and prisons, it is unlikely that convictions under House Bill 4551 will result in longer incarcerations for very many. The same would hold true for judges imposing consecutive sentences; there simply isn't

room to fill a bed with a person who failed to adequately feed his or her herd of animals when it is needed to house a sex offender or murderer.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.