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## MISDEMEANOR ANIMAL CRUELTY

Senate Bill 189 (Substitute H-6)  
First Analysis (9-13-94)

Sponsor: Sen. Michael J. Bouchard  
Senate Committee: Judiciary  
House Committee: Judiciary

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

While Michigan's law on the felony offense of animal cruelty was recently revised with the enactment of enrolled Senate Bill 605, Public Act 126 of 1994, the penal code's statute on misdemeanor animal cruelty has remained unchanged for decades, except for a 1988 amendment that expanded and clarified the meaning of "abandonment" under the statute.

The statute, couched in archaic language and using undefined terms, makes it a misdemeanor for someone in charge of an animal to "cruelly drive or work" an animal unfit for labor, to transport an animal with its feet tied together or "in any other cruel and inhuman [sic] manner," to fail to provide a box or cage in which a transported animal may lie down, to abandon an animal without making provisions for adequate care, or to willfully or negligently permit an aged, sick, or disabled animal to suffer unnecessary torture or pain.

Critics have pointed to a number of flaws in this statute. For one thing, its prohibition against allowing an animal to suffer unnecessary pain does not apply to a young and healthy animal. Moreover, the duty to provide adequate care for an animal applies only in the context of animal abandonment; there is no clearly specified duty to provide adequate care for an animal that has not been abandoned. The definition of "adequate care" (added in 1988), also falls short, say many, by using undefined terms. Further, provisions requiring transported animals to have room to stand and lie down fail to accommodate situations where animals are safer if their movement is more restricted. (Horses, for example, should not be able to lie down while being trailered.)

Finally, the misdemeanor anti-cruelty statute specifies no particular penalties, meaning that the offense is punishable by up to 90 days in jail and a fine of up to \$100. Many have urged that the

penalty structure be updated to increase fines, allow community service as an alternative to incarceration, and authorize certain conditions of probation.

The Michigan Humane Society has urged the adoption of legislation to meet these and other concerns.

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

The bill, which would take effect October 1, 1994, would amend the Michigan Penal Code with regard to misdemeanor animal cruelty. (The misdemeanor offense generally focuses on neglect, while the felony offense generally has to do with malicious acts.) The bill would define terms, remove a condition that an animal be sick or aged before its caretaker can be prosecuted for allowing it to suffer unnecessary torture or pain, require adequate care to be provided to all animals, revise transportation requirements, and update and expand penalties. The bill would apply to all nonhuman vertebrates (that is, animals having backbones). The bill specifically would not apply to the lawful use of an animal, including fishing, hunting, trapping, wildlife control, horse racing, the operation of a zoo or aquarium, pest or rodent control, scientific research, or farming or animal husbandry. Further details follow.

**Abandonment/neglect.** The law currently forbids someone with the custody of an animal from permitting an aged, sick, or maimed animal to suffer unnecessary torture or pain. The law also prohibits abandoning an animal without making provisions for the animal's adequate care, defined as the provision of food, water, shelter, and medical attention sufficient to maintain an animal in good health.

The bill would instead prohibit someone with the custody of an animal from allowing it to suffer

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unnecessary torture or pain (whether or not the animal was infirm), and from failing to provide the animal with adequate care (whether or not the animal was being abandoned); the bill also would prohibit someone from willfully or negligently neglecting and animal. The definition of "adequate care" would be expanded to include the need for sanitary conditions, and the various elements of "adequate care" would be defined as described below. The bill would retain the prohibition against abandoning an animal without making provisions for the animal's adequate care, but would exempt situations where premises were temporarily vacated for the protection of human life in a disaster.

**Transport.** The law at present forbids transporting an animal with its feet or legs tied together or in any other "cruel and inhuman" manner. It also forbids transporting an animal without providing a suitable rack or cage in which the animal may stand and lie down. Under the bill, an animal's legs could be tied together if the animal was being transported for veterinary care, and a horse's legs could be hobbled to protect it during transport. Space requirements also would be modified: livestock would have to be able to stand, and all other animals would have to be able to stand, lie down, and turn around. "Stand," in the context of transporting sled dogs, would mean sufficient vertical distance to allow the animal to stand without its shoulders touching the top of the crate or transportation vehicle.

**Penalties.** Violation of the bill would be a misdemeanor punishable by up to 93 days in jail (rather than the current 90), a fine of up to \$1,000 (rather than the current \$100), up to 200 hours of community service, or any combination of these penalties. (Making misdemeanor animal cruelty punishable by up to 93 days in jail would trigger state fingerprinting and criminal recordkeeping requirements.)

As part of the sentence, the court could order the defendant to pay the costs of prosecution and the costs of care provided for the animal, as applicable. If the court did not order the defendant to pay the costs in full, its reasons would have to be stated on the record. As a condition of probation, the court could order the defendant not to own or possess an animal for a period of time not to exceed the period of probation. (Probation for a misdemeanor may last up to two years.) Definitions. "Adequate care" would mean the provision of sufficient food, water,

shelter, sanitary conditions, and veterinary medical attention in order to maintain an animal in a state of good health. "Sanitary conditions" would mean space free from health hazards including excessive animal waste, overcrowding of animals, or other conditions that endangered an animal's health; this definition would not include a condition resulting from a customary and reasonable practice of farming or animal husbandry. "Shelter" would mean adequate protections 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. "State of good health" would mean freedom from disease and illness, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal was undergoing appropriate treatment. "Water" would mean potable water suitable for the age and species of animal, made regularly available unless otherwise directed by a veterinarian.

MCL 750.50

#### **HOUSE COMMITTEE ACTION:**

Unlike the Senate-passed version of the bill, the House Committee substitute contains definitions of the elements of "adequate care," does not contain a prohibition against nonveterinarians cropping dogs' ears, makes special provision for the transportation of sled dogs, allows community service to be ordered for violators, increases the possible jail term to 93 days, limits the period for which a defendant could be ordered not to possess an animal to the period of probation, does not provide for criminal contempt penalties for defendants who possessed animals despite court orders not to do so, explicitly exempts hunting, fishing, and other activities, and is not tie-barred to Senate Bill 605 (which has already been enacted as Public Act 126 of 1994).

#### **FISCAL IMPLICATIONS:**

With regard to a Senate version of the bill, the Senate Fiscal Agency said that the bill could have a minimal impact on local units of government. The new fines could increase revenues for local units of government, but there were no available data indicating how many people might be convicted under the bill. (10-5-93)

**ARGUMENTS:****For:**

By addressing a number of loopholes and other defects of the current misdemeanor animal cruelty law, the bill would extend to anticruelty investigators and prosecutors the tools with which to tackle the many cases of animal neglect which constitute the bulk of animal cruelty situations. Offenses would be more clearly defined without reference to irrelevant matters such as whether an animal had been abandoned when lacking adequate care, or whether an animal was infirm when the person in charge of it allowed it to suffer unnecessary torture. The concept of adequate care would be extended to include proper sanitation, thus better enabling authorities to deal with problems presented by animal "collectors," well-meaning people who take in excessive numbers of strays, sometimes allowing the animals' wastes to build up many inches deep indoors while also allowing the animals to breed indiscriminately, and suffer from preventable diseases.

The bill also would put into place a more progressive and effective penalty structure, with more emphasis on fines and community service than on incarceration. Public and private animal shelters could receive court-ordered reimbursement for the expenses of caring for a defendant's animal. The offense would be elevated to a 93-day, rather than 90-day, misdemeanor, thereby ensuring that offenders will be fingerprinted and have criminal records maintained for them, and thus enabling authorities to identify and appropriately deal with repeat offenders. People who had shown themselves to be unfit for pet owning could be ordered not to own pets as a condition of probation.

The bill would update, clarify, and strengthen the law on misdemeanor animal cruelty.

**Against:**

There may be lingering concerns about various aspects of the bill. Sportsmen may find that the bill lacks adequate assurances that a lost hunting dog left behind in the field would not be considered "abandoned." Farmers may have concerns about risks stemming from standard animal husbandry practices or about potential requirements to provide for semi-feral barn cats. These and other people may question whether a court should be able to order someone not to possess an animal for an extended period of time. Although the bill appears

to enjoy widespread support, it is not clear whether all of its potential critics have been satisfied.

**Response:**

It is hard to see how a hunter whose dog became lost could be prosecuted for animal abandonment; a lost dog is not an abandoned dog. Further, the bill specifically addresses the concerns of agricultural and hunting and fishing interests by specifically exempting such lawful activities.

**Against:**

The bill's transportation provisions, while an improvement over earlier versions, still fail to meet the needs of people whose main concern is ensuring that their sled or show dogs are safely transported. Such dogs are typically transported in crates or cages that encourage the dogs to lie down by limiting vertical space to just enough to enable the dogs to get up and turn around to lie down on the other side. The bill is deficient in this regard on at least two points: by requiring a crate's ceiling to clear the dog's shoulders, the bill requires an excessive amount of vertical space; by limiting the application of a special provision to sled dogs, the bill ignores the parallel safety needs of show dogs and other dogs being transported.

**POSITIONS:**

The Michigan Department of Agriculture supports the bill. (9-7-94)

The Michigan Humane Society supports the bill. (9-7-94)

The Michigan Association of Animal Control Officers supports the bill. (9-8-94)

The Michigan Farm Bureau finds the bill to be an improvement over previous versions, and does not oppose the bill. (9-9-94)

The Michigan United Conservation Clubs has no objection to Substitute H-6. (9-9-94)

Mid-Union Sled Haulers, Inc., supports provisions that improve protections for animals, but has concerns about transportation requirements that may interfere with the safe transport of dogs. (9-12-94)