



House  
Legislative  
Analysis  
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## ANIMAL CRUELTY CASES: FORFEITURE OF ANIMALS

House Bill 5561 as passed by the House  
Second Analysis (8-7-96)

Sponsor: Rep. John Jellema  
Committee: Judiciary and Civil Rights

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

Reportedly, two animal neglect and cruelty cases have occurred in Ottawa County in the past two years that involved large numbers of farm animals. Apparently one case, which occurred in March 1994, involved approximately 160 cattle, many of whom were dying because of lack of food during a harsh winter. The owner reportedly was found to be mentally ill, and a conservator was authorized to dispose of the animals. Since the animals were sold as livestock, with the proceeds turned over to the owner's estate, the county didn't incur high costs.

The second incident, however, cost the humane society -- and eventually the county -- over \$57,000 to care for the neglected animals during the prolonged legal proceedings. According to newspaper accounts, on March 28, 1995, the Ottawa Shores Humane Society initially seized almost 100 sick horses, rabbits, and goats from a Nunica farm following a cruelty investigation. More than two dozen additional animals were subsequently taken from the farm. When the humane society officials arrived on the farm, they found several dead animals, including a dead foal lying in the pasture, four dead goats in a small pole barn which had over four feet of manure in it, and a dead rottweiler whose body had been allowed to lie in the sun for over a month. Carcasses of dead animals were found throughout the property, and body parts of goats were found hanging in trees. Eventually, the humane society wound up caring for 73 goats, 20 horses, 4 cows, 21 rabbits, and 11 dogs. In excess of four horses (foals), 16 goats, two chickens, and the rottweiler were either found dead or died during the course of the ongoing investigation. The animals who were seized were malnourished, had diarrhea, and were infected with lice, a foot rot disease, and infectious abscesses. A 64-year-old farmer/truck driver and his 38-year-old daughter were charged with four counts each of cruelty to animals, plus an additional count of failure to bury a dead animal. All of the charges are misdemeanors.

After they were arraigned, the pair was released on personal recognizance bonds. The pair fired their

attorney one month into the case and never hired another one. On March 30, the pair sued the humane society in the Ottawa County Circuit Court, claiming that the humane society was improperly holding the seized animals and seeking their immediate return. On May 30, 1995, however, the circuit court judge dismissed the lawsuit as being "improper as a matter of law and fact." However, the judge also ruled against a motion filed by the humane society, which spent over \$7,000 defending against the civil suit, asking the court to order the defendants to pay the society's legal fees and costs of caring for the animals and to impose monetary sanctions to deter future frivolous claims. The society also had asked that in lieu of a monetary judgement against the defendants, that the court order the pair to forfeit to the society all animals in its possession. Because the judge did not order the farmer to pay monetary damages, he also ruled that "it would be improper for the court to order forfeiture" of the animals. When the pair failed to appear at two court hearings -- a June 20 pre-trial hearing and again on June 29 for jury selection for their scheduled July 6 trial (which had been postponed from May 19) -- the 58th District Court judge issued a bench warrant for their arrest. The family and friends claimed not to know the pair's whereabouts, but they were finally taken into custody on July 4, after a tipster told police they were hiding out at an Allegan County campground. The farmer/trucker said he had not attended the court hearings because he felt that the laws he was accused of breaking weren't valid. During the second pretrial hearing, the two refused to plead guilty or no contest to the four charges involving animal cruelty. They also refused a bench trial, and petitioned the U.S. District Court in Lansing to shift the case to the federal level. Jury selection was scheduled for August 24, and a trial date of September 14 was set. On September 14, both defendants pleaded no contest and were sentenced to 90 days in jail. However, since they had already spent 73 days in jail since their July 4 arrest, and were granted 15 days for good behavior, both were released on September 16.

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During roughly this same time, the legislature enacted Public Act 334 of 1994, which took effect on April 1, 1995. The act amended the Michigan Penal Code to specify penalties for misdemeanors relating to the care and transportation of animals, and to include in those offenses failure to provide an animal with "adequate care." As part of a sentence for an animal cruelty conviction, the court can order the defendant to pay the costs of prosecution and the costs of the care, housing, and veterinary care for the animal(s). Also, as a condition of probation, the court may order the defendant not to own or possess an animal for a period of time up to the length of probation. However, people still cannot be ordered to forfeit animal ownership, or to pay the costs of care, until they are convicted. To prevent the kind of situations that occurred in Ottawa County, some people believe that the law should include a procedure under which ownership of animals could be forfeited while a cruelty prosecution was pending and that repeat animal cruelty offenders should be subject to the permanent loss of the right to own animals.

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

The animal cruelty provisions of the Michigan Penal Code (MCL 750.50) prohibit people from treating animals in certain ways, including failing to provide them with adequate care; cruelly driving, working, or beating them; carrying them in or on a vehicle with their feet or legs tied (with certain exceptions) or without providing them with a secure space to stand, turn around, and lie down in; abandoning them without providing for their adequate care; and willfully or negligently allowing them to suffer unnecessary neglect, torture, or pain. Violations are misdemeanors, and as part of the sentence for a violation, the court can order the defendant to pay both the costs of prosecution and the costs of caring for the animal.

The bill would amend the code to allow for the preconviction forfeiture of animals during criminal animal cruelty proceedings. It also would let courts order permanent revocation of the right to own animals under certain circumstances, and would make second and subsequent animal cruelty violations felonies rather than misdemeanors.

**Forfeiture.** If an animal was impounded and held by a dog pound, an animal shelter, or a licensed veterinarian pending the outcome of a criminal action charging either misdemeanor or felony animal cruelty, the prosecuting attorney would be able to ask the court to order that the animal be forfeited by the defendant. The prosecuting attorney would have to notify both the defendant and anyone with a known ownership or security interest in the animal (including anyone who had filed a lien with the

secretary of state in an animal involved in the pending action). In cases where the animal involved was encumbered by a security interest held by an individual who had no prior knowledge of, or had not consented to the commission of, the crime, the forfeiture of the animal would be subject to that person's security interest. After receiving a petition for forfeiture, the court would have to schedule a hearing to be held within 14 days after the petition was filed, or as soon as practicable. An individual's decision to testify at such a hearing would not waive that person's constitutional right against self-incrimination, nor would the testimony he or she provided at the hearing be admissible in any criminal proceeding except a prosecution for perjury. At the hearing, the prosecuting attorney would have to establish by a preponderance of the evidence that a violation had occurred. If this requirement were met, the court would have to order immediate forfeiture of the animal to the dog pound, animal shelter, or licensed veterinarian unless the defendant, within 72 hours, submitted to the county clerk enough cash or other security to repay all reasonable costs of caring for the animal from the date of initial impoundment to the date of trial. Any order of continuance of a trial would also require additional cash or security to be submitted to pay for the care of the animal until the new date of trial. If a defendant did submit cash or security, the court would be able to authorize the use of that money or security before final disposition of the criminal charges to pay for the care of the animal from the time it was impounded until final disposition of criminal charges.

**Permanent loss of right to own animals.** The bill would allow the court, in second or subsequent animal cruelty violations, to order the defendant not to own or possess an animal for any period of time, including permanent relinquishment of animal ownership.

**Penalties.** Currently, a first violation of the animal cruelty provisions is a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$1,000, and community service for up to 200 hours (or a combination of these). The bill would add the cost of prosecution to the possible penalties for violations. In addition, second and subsequent violations would be felonies, not misdemeanors. A second violation would be a felony punishable by imprisonment for up to two years, a fine of up to \$2,000, community service for up to 300 hours, or any combination of these (plus the cost of prosecution). A third or subsequent violation would be a felony punishable by imprisonment for up to four years, a fine of up to \$5,000, community service for up to 500 hours, or a combination of these penalties (plus cost of prosecution).

In chart form, the penalties would be as follows:

Violation number	Imprisonment	Fine	Community service	Cost of prosecution
First	93 days	\$1,000	200 hours	yes
Second	2 years	\$2,000	300 hours	yes
Third et al.	4 years	\$5,000	500 hours	yes

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would have indeterminate state and local costs that would result from the hearing required under the bill. (8-5-96)

### ***ARGUMENTS:***

#### ***For:***

The bill would address a serious problem with the current animal cruelty statute. When the Ottawa Shores Humane Society had to care for more than 100 sick and starving animals taken from a Nunica farm last year, it cost the society nearly \$60,000 and almost put it out of business. The animals were seized, after an animal cruelty investigation, in March, April, and May of 1995. The original May 19 trial date was delayed until July 6, but that date too had to be postponed until September 14 because the defendants went into hiding and weren't apprehended until July 4. As a result of these delays, the humane society wound up having to house and care for over 100 animals while the criminal trial was pending because the animals were evidence in a criminal case. Despite multiple fundraisers and donations of time and service from volunteers, veterinarians, and attorneys, the humane society's resources were virtually depleted by the enormous demands posed by the case. In July the humane society did begin searching for permanent adoptive homes for the animals because they could no longer afford to house the animals, but the humane society was aware that they had no clear legal authority to give the animals away and that the court could order the animals back into the Nunica farmer's custody, in which case the abusive and neglectful owners would have a legal claim against the humane society. In fact, the defendants did file a civil suit (which the court dismissed) against the humane society, claiming that the humane society was holding the animals "improperly" and demanding their immediate return. The humane society countered by asking the court (which declined to grant the motion) to order the farmer to either forfeit the animals to the shelter or else pay the humane society's legal fees and impose monetary sanctions to prevent the defendant

from filing future such "frivolous claims." By July, however, the humane society felt that if the defendant wanted to continue to sue the society, whatever it would cost would be less than what they'd had to pay for the animals' care.

In this case, the humane society simply had to absorb the costs of the case as best as it could. And while it did survive, it seems fundamentally unfair that animal protection organizations should have to totally shoulder the consequences of other people's irresponsible behavior. There also is the possibility that counties could be placed in the position of having to foot the bill for caring for neglected or abused animals for lengthy periods of time. Taxpayers in Ottawa County, for example, did pay for part of the costs of the Nunica case because the county has a contract with the Ottawa Shores Humane Society under which the humane society acts as the county's animal control facility. However, the contract amounts to only about a quarter of the humane society's annual budget, so in this case at least the taxpayers were protected from having to pay the full costs of the case even though the county offered to pay for some of the additional expenses.

The bill would protect local animal care providers as well as local units of government from having to absorb the kinds of huge financial burdens imposed by cases like the Nunica case, as well as ensuring that ownership of the animals didn't remain in legal limbo during possibly prolonged criminal animal cruelty proceedings. In addition, the bill's felony penalties and the possible permanent termination of animal ownership for repeat offenders would ensure that abusive or neglectful animal owners would be adequately punished and could be prevented from endangering animals in the future.

#### ***Against:***

Some people have expressed concern that the bill could be unfair to animal owners by forcing them to either give

up ownership of the animal(s) in question or paying cash or other security for the animal's care. A defendant who couldn't afford a sizeable amount of cash or security ultimately could be acquitted but still would have lost his or her animal(s).

***Response:***

The bill is a reasonable attempt to balance the rights of suspected animal abusers to own animals against the humane treatment of defenseless, and often obviously suffering, animals. The amount of cash or security necessary in any particular case would depend in part on how cooperative the defendant wished to be; if, instead of dragging out the proceedings or running away, the defendant cooperated, the amount of money needed to care for the animals in question -- and thus the cash or security required -- would be less. And if a defendant were acquitted, but had lost his or her animal, he or she always could bring an action for damages against the party to whom the animal had been forfeited.

***POSITIONS:***

The Michigan Association of Counties supports the bill. (7-30-96)

The Ottawa Shores Humane Society supports the bill. (7-30-96)

The Michigan Association of Animal Control Officers supports the bill. (7-30-96)

The Michigan Humane Society supports the bill. (8-5-96)

The Department of State Police supports the bill. (8-7-96)

The Michigan Farm Bureau supports the bill. (8-7-96)

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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.