



House
Legislative
Analysis
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PROHIBIT CRUELTY TO ANIMALS

Senate Bill 605 with committee
amendments
First Analysis (11-29-93)

Sponsor: Sen. Virgil C. Smith, Jr.
Senate Committee: Judiciary
House Committee: Public Health

THE APPARENT PROBLEM:

Michigan law criminalizes certain acts of animal cruelty. Under Public Act 70 of 1877 (titled "An Act for the more effectual prevention of cruelty to animals"), it is a misdemeanor to commit any of several acts (or to cause anyone else to do these acts), including overworking, torturing, tormenting, cruelly beating or killing, mutilating, or failing to provide animals with proper food, drink, and shelter. Cropping dogs' ears, unless one is a registered veterinary surgeon, is considered to be mutilation of or cruelty toward an animal under this 1877 act. Under different chapters of the Michigan Penal Code, acts of animal cruelty are either misdemeanors or felonies. Chapter 56 of the code ("Malicious and willful mischief and destruction") makes it a felony to maliciously destroy, injure, or poison horses, cattle, or someone else's animals. Under Chapter 9 ("Animals"), it is a felony to fight, bait, or use animals for target shooting, and it is a misdemeanor to cruelly work, transport, or abandon animals (without providing adequate care), or to let old, sick, or injured animals "suffer unnecessary torture or pain."

However, none of the existing provisions of the code address the problem of owners torturing their own animals or stray animals without known owners. At the request of the humane society, legislation has been introduced that would do this.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code (Public Act 328 of 1931) to:

- * repeal and reincorporate parts of the existing 1877 anti-animal cruelty act and a revised version of the "malicious destruction of animals" part of the Penal Code;

- * make it a felony (punishable by imprisonment for up to four years and a fine of up to \$5,000) to willfully and maliciously kill or injure animals;

- * allow courts to prohibit violators from having animals, and to include the costs of prosecution and care of the injured animal, in a defendant's sentence;

- * allow courts to order counseling as a condition of probation;

- * allow probation to be revoked for, and criminal contempt penalties to be imposed on, people who had an animal in violation of their probation conditions; and

- * exempt farming, fishing, hunting, trapping, wildlife and pest or rodent control, scientific research, and departmental rules and regulations authorized under the Executive Reorganization Act (Public Act 380) of 1965.

Prohibited acts. More specifically, the bill would add a new section to the Penal Code that incorporated and expanded on the existing "malicious destruction of animals" part of the code. Currently, Chapter 56 of the Penal Code (MCL 750.377) makes it a felony to "wilfully and maliciously kill, maim, . . . disfigure," or administer poison to ("or expose any poisonous substance with intent that the same should be taken or swallowed by"), "any horses, cattle, or other beasts of another." The bill would make it a felony, in addition, to torture or mutilate animals; remove the requirement that the animals in question be owned by someone other than the person committing the felonious act of animal cruelty; and exempt therapeutic veterinary medical substances from the provision regarding poisonous substances.

Senate Bill 605 (11-29-93)

The bill would not include the existing prohibition against cropping dogs ears (this provision would be incorporated into Senate Bill 189).

Sentencing. As part of the sentence for violations of the bill's prohibitions, courts could order defendants to pay the costs of prosecution and would be required to order defendants to pay the costs of care, housing, and veterinary care of the injured animal. Courts also could order, as part of a sentence, that defendants not own or possess animals, either temporarily or permanently. If someone owned or possessed an animal in violation of probation, their probation could be revoked.

Probation. Courts also could order, as a condition of probation, that defendants be evaluated for, and, if appropriate, receive and pay for, psychiatric, psychological, or social counseling.

Contempt. If someone owned or possessed an animal in violation of a court order under the bill, he or she would be subject to civil and criminal contempt. If found guilty of criminal contempt, he or she could be imprisoned for up to 90 days or fined up to \$500.

Exemptions. The bill would specify that it didn't prohibit the lawful killing of animals in farming; fishing; hunting, trapping, or wildlife control regulated under the Wildlife Conservation Act (Public Act 256 of 1988); pest or rodent control regulated under the Pesticide Control Act (Public Act 171 of 1976); or activities authorized under rules promulgated under the Executive Organization Act of 1965 (Public Act 380 of 1965). The bill also would not prohibit the lawful killing or use of animals in scientific research under Public Act 224 of 1969 (the animal research act), or the sections of the Public Health Code authorizing the Department of Public Health to engage in research programs and prevent the spread of diseases, allowing the use of animals in research, and allowing dog pounds and animal shelters to use sodium pentobarbital to euthanize animals.

Prosecution. The bill would reincorporate a provision from the 1877 act that requires all prosecuting attorneys to represent and prosecute in behalf of the people in their respective counties all cases of offenses arising from violations of the bill.

Repealer. The bill would repeal section 377 of the Penal Code (the "malicious destruction of animals" law) and Public Act 70 of 1877, which prohibits cruelty to animals (including cropping dogs' ears), allows warrantless arrests of violators and the seizure and impounding of animals, authorizes search warrants on complaints and the seizure and disposal of instruments of torture, allows an incorporated anti-animal cruelty society to designate someone to investigate and prosecute cases of animal cruelty, requires law enforcement officers to prosecute violators (and makes it a misdemeanor for them not to do so), and defines certain terms ("animal(s)," "owner," "person," and "whoever").

BACKGROUND INFORMATION:

The Senate Fiscal Agency reports that there were eight convictions in 1992 under the existing "malicious destruction of animals" section of the Penal Code, for which five people received probation, one was jailed, one sent to prison, and one was given a combination penalty. (9-28-93)

HOUSE COMMITTEE ACTION:

The House Public Health Committee amended the bill to:

- * increase the maximum felony fine to \$5,000 (from the \$2,500 maximum in the bill as passed by the Senate),
- * change the provisions exempting scientific research from the prohibition against killing animals to allow for research that doesn't necessarily kill animals, and
- * break the tie-bar to Senate Bill 189. (Senate Bill 189 would amend the Penal Code to specify penalties for misdemeanors relating to the care and transportation of animals. The bill has passed the Senate and is currently pending before the House Judiciary Committee.)

FISCAL IMPLICATIONS:

According to a Senate Fiscal Agency analysis of the bill as reported from the Senate Judiciary Committee, the bill would have undetermined fiscal implications for the state. (9-28-93)

ARGUMENTS:

For:

Michigan's existing felony anti-cruelty law has two enormous loopholes: it doesn't apply to stray animals and it doesn't apply to animal owners victimizing their own animals. The existing "malicious destruction of animals" act, passed over 50 years ago, applies only to people who victimize animals owned by other people (so-called "beasts of another"). The bill would make the issue of animal ownership irrelevant, allowing prosecutors to focus, rightly, on the degree of willful and malicious intent and its consequences. Since the majority of animal cruelty cases in Michigan reportedly are the result of neglect or ignorance, most prosecutions of acts of animal cruelty still would use the misdemeanor provisions of the law. But it also is vitally necessary that animal owners be subject to felony penalties, since in many cases they are the chief offenders. And more generally, when someone exhibited violent and aberrant behavior in the treatment of animals, prosecution would be able to be pursued under the felony provisions of the law. Surely ownership should neither allow nor prohibit people from abusing animals.

The bill also would create progressive, prevention-oriented penalties that would allow courts to require those convicted of animal cruelty to pay for the costs of caring for and rehabilitating surviving animal victims if the court determined they were financially able to do so. It also would allow courts to require mental health treatment for those convicted of animal cruelty, as well as imposing fines and imprisonment equal to those now in law for baiting, fighting, or using animals for target practice. At the same time, the bill would in no way interfere with fishing, hunting, farming, or any currently legal activity involving animals.

For:

The bill is needed as much because of its potential for protecting people as it is needed to protect animals. There is an increasing body of evidence that links abuse of animals with violence against people in the sense that abuse of animals is an early warning sign of deviant and antisocial behavior. The fact is, normal people do not abuse animals, and there is good retrospective evidence that people who do abuse animals often themselves were abused as children and go on to commit violent acts against other people. Animal abuse is not just the result of some personality flaw in the abuser but a symptom

of someone who is deeply disturbed and in need of help. People who exhibit violent and aberrant behavior toward animals need to be drawn into a system that can help them before their violent actions are turned against other people. The bill, by allowing courts to require mental health counseling for animal abusers, could help not only animals but help prevent violence against other people.

Against:

The bill still would require intent (that is, the human behavior would have to be "willful and malicious") before someone could be prosecuted under the bill's felony provisions. Yet many people viciously abuse, and sometimes even kill, their animals in the name of "discipline," whether out of ignorance or deliberately. These people, too, should be subject to felony penalties if their actions resulted in injury to their animals.

Response:

The question of when an action is "disciplinary" and when it is abusive sometimes is difficult to determine. After all, many people still believe that striking their children is a legitimate way to discipline them, even though a number of child development experts argue otherwise. It is better to update and revise the existing animal cruelty laws in the most obvious areas, and leave the thorny question of discipline alone.

POSITIONS:

The Michigan Humane Society supports the bill. (11-17-93)

The Michigan Association of Animal Control Officers supports the bill. (11-23-93)

The Michigan Federation of Animal Advocates hasn't seen the bill yet, but supports the concept of protecting animals regardless of their ownership status. (11-23-93)

The Michigan Veterinary Medical Association has no position on the bill. (11-23-93)