

Legislative Analysis



SENTENCING GUIDELINES FOR CRIMES INVOLVING COMPANION ANIMALS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5587 as reported
Sponsor: Rep. Stephanie A. Young

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5588 as reported
Sponsor: Rep. Veronica A. Paiz

House Bill 5589 (H-1) as reported
Sponsor: Rep. Joseph A. Aragona

House Bill 5590 as reported
Sponsor: Rep. Penelope Tsernoglou

House Bill 5592 as reported
Sponsor: Rep. Brenda Carter

House Bill 5591 as reported
Sponsor: Rep. Mike McFall

House Bill 5593 as reported
Sponsor: Rep. Pat Outman

Committee: Criminal Justice
Revised 6-20-24

SUMMARY:

House Bills 5587 to 5593 would each amend the sentencing guidelines in Chapter XVII of the Code of Criminal Procedure to add new offense variable scoring guidelines for offenses that involve pets or service animals.

House Bill 5588 would define the term *companion animal*, as used in Chapter XVII of the code (i.e., in the bills described below), to mean any of the following:

- An animal that is commonly considered to be a pet (such as a cat or a dog).
- An animal that is considered by its owner to be a pet.
- A service animal as defined in federal regulations,¹ where it generally means a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability that are directly related to that person's disability.
- A miniature horse that has been individually trained to do work or perform tasks as described in the federal regulations for service animals referenced above.

MCL 777.1

House Bill 5590 would amend the instructions for scoring offense variable 1 (aggravated use of a weapon). Offense variable 1 is scored for crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public trust, and crimes against public safety, as those categories are defined and assigned under the code. (See **Background**, below.) The instructions include descriptions of different factual elements that may apply to the commission of the sentencing offense (things the offender might have done while committing the crime they are being sentenced for) and assign points to each

¹ <https://www.ecfr.gov/current/title-28/chapter-I/part-36/subpart-A/section-36.104>

Also see: <https://www.ada.gov/topics/service-animals/>

one. The offense variable is scored by determining which elements apply and assessing the points for the applicable one with the highest number of points. For example, if a weapon was displayed or implied during the commission of the sentencing offense, 5 points are assigned. If a firearm was fired at a person, 25 points are assigned. If both apply, then the higher number is scored (in this example, 25 points). In addition, in cases where there are multiple offenders being sentenced for the same offense, if any one of them is assigned points under offense variable 1, then all of them are assessed the same number of points. Finally, points are not scored for armed robbery or assault with a deadly weapon.

The bill would add provisions assigning points for elements of an offense that involve companion animals and the aggravated use of a weapon, as shown in the table below. Because the descriptions of the added circumstances parallel those that now apply to humans, those current provisions are shown as a point of comparison. However, the bill would not change the substance or scores of those current provisions.

Offense Variable 1: Aggravated Use of a Weapon

Current law (retained by bill)	Proposed HB 5590 additions
A firearm was discharged at or toward a human being 25 points	A firearm was discharged at or toward a companion animal 15 points
A victim was cut or stabbed with a knife or other cutting or stabbing weapon 25 points	A companion animal was cut or stabbed with a knife or other cutting or stabbing weapon 15 points
The victim was subjected or exposed to a harmful biological device, harmful biological substance, harmful chemical device, harmful chemical substance, harmful radioactive device, harmful radioactive material, incendiary device, or explosive device 20 points	A companion animal was subjected or exposed to a harmful biological device, harmful biological substance, harmful chemical device, harmful chemical substance, harmful radioactive device, harmful radioactive material, incendiary device, or explosive device 10 points
The victim was touched by any other type of weapon 10 points	The companion animal was touched by any other type of weapon 5 points
A weapon was displayed or implied 5 points	
No aggravated use of a weapon occurred 0 points	

MCL 777.31

House Bill 5587 would amend the instructions for scoring offense variable 3 (physical injury to a victim). Offense variable 3 is scored for crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public trust, and crimes against public safety. The instructions include descriptions of different factual elements that may apply to the commission of the sentencing offense and assign points to each one. The offense variable is scored by determining which elements apply and assessing the points for the applicable one with the highest number of points. In cases where there are multiple offenders being sentenced for the same offense, if any one of them is assigned points under offense variable 3, then all of them must be assessed the same number of points. In reference to the table below, 100 points are scored only if death results from the commission of the crime and homicide is not the sentencing offense. The bill would similarly provide that 50 points are scored for the death of a companion animal resulting from the crime only if killing a companion animal is not the sentencing offense. In addition, if bodily injury is an element of the sentencing offense, the instructions now say to not score 5 points. The bill would specify that this applies in cases of bodily injury *to a victim*.

The bill would add provisions assigning points for elements of an offense that involve physical injury to a companion animal, including death, as shown in the table below. Because the descriptions of the added circumstances parallel those that now apply to humans, those current provisions are shown as a point of comparison. However, the bill would not change the substance or scores of those current provisions.

Offense Variable 3: Physical Injury to a Victim [or Companion Animal]

Current law (retained by bill)	Proposed HB 5587 additions
A victim was killed from the commission of a crime and homicide is not the sentencing offense 100 points	A companion animal was killed from the commission of a crime and killing a companion animal is not the sentencing offense 50 points
A victim was killed as the result of a crime involving the operation of a vehicle or other form of transportation and the offender was impaired, under the influence, or had specified amounts of alcohol or a controlled substance 50 points	A companion animal was killed as the result of a crime involving the operation of a vehicle or other form of transportation and the offender was impaired, under the influence, or had specified amounts of alcohol or a controlled substance 25 points
Life-threatening or permanent incapacitating injury occurred to a victim 25 points	Life-threatening or permanent incapacitating injury occurred to a companion animal 15 points
Bodily injury requiring medical treatment occurred to a victim 10 points	Bodily injury requiring medical treatment occurred to a companion animal 5 points

Bodily injury not requiring medical treatment occurred to a victim	5 points	
No physical injury occurred to a victim	0 points	

MCL 777.33

House Bill 5589 would amend the instructions for scoring offense variable 7 (aggravated physical abuse). Offense variable 7 is now scored for crimes against a person, and under HB 5592 would also be scored for crimes against property. The instructions include descriptions of different factual elements that may apply to the commission of the sentencing offense and assign points to each one. The offense variable is scored by determining which elements apply and assessing the points for the applicable one with the highest number of points. Points are assessed for each person who was placed in danger of injury or loss of life. The bill would provide for points to be assessed for each companion animal that was placed in such danger.

The bill would add a provision assigning points for elements of an offense that involve aggravated physical abuse, as shown below. Because the added description parallels the provision that now applies to humans, that current provision is shown as a point of comparison. The bill would not change the substance or score of that provision.

Offense Variable 7: Aggravated Physical Abuse

Current law (retained by bill)		Proposed HB 5589 additions	
A victim was treated with sadism, ² torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense	50 points	A companion animal was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a companion animal suffered during the offense	25 points
No victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense	0 points	No companion animal was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense	0 points

MCL 777.37

² *Sadism* means conduct that subjects a victim [or, under the bill, a companion animal] to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender’s gratification.

House Bill 5591 would amend the instructions for scoring offense variable 9 (number of victims). Offense variable 9 is scored for crimes against a person, crimes against property, crimes against public order, crimes against public trust, and crimes against public safety. Points are assessed for each person who was placed in danger of physical injury, loss of life, or loss of property. Similarly, the bill would provide for points to be assessed for each companion animal that was placed in such danger, as shown in the table below. Because the added provisions are based on those that now apply to humans, those current provisions are shown as a point of comparison. However, the bill would not change the substance or scores of those current provisions.

Offense Variable 9: Number of Victims

Current law (retained by bill)		Proposed HB 5591 additions	
Multiple deaths occurred (only scored in homicide cases)	100 points	Multiple companion animals were killed	50 points
10 or more victims were placed in danger of physical injury or death, or 20 or more in danger of property loss	25 points	10 or more companion animals were placed in danger of physical injury or death	15 points
2 to 9 victims were placed in danger of physical injury or death, or 4 to 19 in danger of property loss	25 points	2 to 9 companion animals were placed in danger of physical injury or death	15 points
There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss	0 points		

MCL 777.39

House Bill 5593 would amend the instructions for scoring offense variable 11 (criminal sexual penetration). Offense variable 11 is now scored for crimes against a person, and under HB 5592 would also be scored for crimes against property. Points are scored for all sexual penetrations of the victim by the offender arising out of the sentencing offense. Multiple sexual penetrations of the victim extending beyond that offense can be scored in offense variable 12 or 13, which respectively address felonious acts committed at the same time and a continuing pattern of criminal behavior. These provisions would apply to sexual penetration of a companion animal under the bill.

Points are not scored for the one penetration that forms the basis of a first- or third-degree criminal sexual conduct offense, and under the bill would not be scored for the one penetration

that forms the basis of an offense against a companion animal under section 158 of the Michigan Penal Code, which prohibits bestiality.³

Because the added provisions parallel those that now apply to humans, those current provisions are shown in the table below as a point of comparison. However, the bill would not change the substance or scores of those current provisions.

Offense Variable 11: Criminal Sexual Penetration

Current law (retained by bill)	Proposed HB 5593 additions
Two or more criminal sexual penetrations occurred 50 points	Two or more criminal sexual penetrations of a companion animal occurred 25 points
One criminal sexual penetration occurred 25 points	One criminal sexual penetration of a companion animal occurred 15 points
No criminal sexual penetration occurred 0 points	

MCL 777.41

House Bill 5592 would provide for offense variables 7 (aggravated physical abuse) and 11 (criminal sexual penetration) to be scored against all felonies classified as crimes against property under the sentencing guidelines.

MCL 777.22

BACKGROUND:

Michigan uses an indeterminate sentencing system under which the maximum term of imprisonment that may be imposed for an offense is established in law and an appropriate range of imprisonment for a particular offender and offense is determined by scoring their prior record and elements involved in the commission of the offense and then using a sentencing grid based on the felony classification of the offense (Class A through Class H) to determine an advisory sentence range appropriate for the offense and the offender. The score and grid can determine whether an offender is recommended to be sentenced to community sanctions, such as probation, or to be imprisoned (and, if so, for how long).⁴

³ **Note:** A violation of section 158 (bestiality) is classified as a crime against public order under the sentencing guidelines. Crimes against public order are not scored under offense variable 11 under either the act or the bills. The bills’ changes to offense variable 11 would not apply to an individual being sentenced for bestiality. For those changes to apply, it would appear that an individual would have to sexually penetrate a companion animal while committing a crime against a person or (under HB 5592) against property. First, second, and third degree killing or torturing of animals are crimes against property.

⁴ Note, however, that the sentencing guidelines are advisory only, and not mandatory, following the Michigan Supreme Court’s decision in *People v Lockridge*, 498 Mich 358 (2015). While the sentencing court is still required to determine the applicable guidelines range and take it into account when imposing a sentence, it may reasonably depart from the recommended range. See <https://mjuducation.mi.gov/documents/sgm-files/94-sgm/file>

Offense variable scoring (as under the sections the bill would amend) is done after prior record variables are scored.⁵ Which offense variables are scored depends on which of the six crime categories the offense belongs to: crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public safety, or crimes against public trust. These crime categories are assigned in statute.⁶ Offense variables are scored based on the defendant's conduct during the sentencing offense alone (unless the applicable statute provides otherwise), based on facts in the record, as supported by a preponderance of the evidence.

Once determined, the prior record variable scores and the offense variable scores are applied to the sentencing grid that corresponds to the offense class (A through H, as noted above).⁷ The prior record score determines a position on the x (horizontal, or side to side) axis, and the offense variable score determines a position on the y (vertical, up and down) axis. Taken together, the two separate scores indicate a sentence range where their positions cross or meet on the grid. The extent to which a higher offense variable score (as could result from the bills) generates a higher sentence range varies from grid to grid, and from cell to cell within a grid. By way of example, the sentencing grid for class D offenses is shown below.⁸

Offense Variable Level	PRIOR RECORD VARIABLE LEVEL					
	A	B	C	D	E	F
	0 points	1-9 points	10-24 points	25-49 points	50-74 points	75+ points
I 0-9 points	0-6	0-9	0-11	0-17	5-23	10-23
II 10-24 points	0-9	0-11	0-17	5-23	10-23	19-38
III 25-34 points	0-11	0-17	5-23	10-23	19-38	29-57
IV 35-49 points	0-17	5-23	10-23	19-38	29-57	34-67
V 50-74 points	5-23	10-23	19-38	29-57	34-67	38-76
VI 75+ points	10-23	19-38	29-57	34-67	38-76	43-76

So, for example, on this grid, a prior record score of 19 points, with an offense variable score of 55, would result in a recommended sentence range of 19 to 38 months; a prior record score of 5 and offense variable score of 40 would result in a range of 5 to 23 months; and so on.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local units of government. Increasing the number of points when scoring the various offense variables could lead to longer sentences. For longer jail sentences and local probation supervision, county jails would incur additional costs. Costs of incarceration in county jails and local probation

⁵ See Part 5 of Chapter XVII of the Code of Criminal Procedure:
<https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-175-1927-XVII-5>
⁶ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-175-1927-XVII-2.pdf>
⁷ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-175-1927-XVII-6.pdf>
⁸ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-777-65.pdf>

supervision, and how those costs are financed, vary by jurisdiction. For longer prison sentences and state probation supervision, state prisons would incur additional costs. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-21-24):

- Animals and Society Institute
- Attorneys for Animals
- Michigan Humane

The following entities indicated support for the bills:

- Department of Attorney General (5-21-24)
- Animal Law Section of the State Bar of Michigan (5-21-24)
- CHAINED, Inc. (5-21-24)
- Dog Aide (5-21-24)
- Humane Society of Huron Valley (5-21-24)
- Humane Society of Macomb (5-21-24)
- Humane Society of the United States (6-4-24)
- Michigan Pet Alliance (5-21-24)
- Prosecuting Attorneys of Michigan (5-21-24)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Robin Risko

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