

**ANIMAL LAW SECTION
Public Policy Position
HB 5063, HB 5064, SB 496, SB 497**

The Animal Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 264 members. The Animal Law Section is not the State Bar of Michigan and the position expressed herein is that of the Animal Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Animal Law Section has a public policy decision-making body with 15 members. On November 30, 2017, the Section adopted its position after discussion and vote at a scheduled meeting. 12 members voted in favor of the Section’s position on HB 5063, HB 5064, SB 496, and SB 497, 0 members voted against this position, 0 members abstained, 3 members did not vote.

The Animal Law Section Supports HB 5063, HB 5064, SB 496, and SB 497 with Recommended Amendments.

Explanation:

These bills would amend MCL 750.50 and the Code of Criminal Procedure to create a crime of leaving an animal unattended in a vehicle and establish related penalties. These bills are well-intended but, in our opinion, require some redrafting. We offer the following detailed analysis and recommendations from a Section member and former prosecuting attorney:

The authors used ambiguous and inconsistent language in what will be elements of the crime. For example, in describing the new crime in (2)(h) the catchall description for "conditions that endanger the health or well-being of the animal" states "or other circumstances that could reasonably be expected to cause suffering, disability or death of an animal."

a. Understanding that the descriptors would be part of the element of the crime, it is difficult to prove suffering of an animal because the prosecutor would have to use the observations of the animal (panting, barking, whining, curled up in a donut, etc.) with the conditions at the time to show suffering and assume the cause and effect. The defense can show that each one of these observations has an innocuous cause (recent exercise, bark at strangers, whining for owner – separation anxiety, normal sleeping position).

b. Disability is not defined in the statute. Later in the penalties in subsection (5) they draw the distinction of "serious physical harm" (5)(c) as a penalty aggravator. Instead of an undefined

"disability," it is more consistent and logical if the statute states "harm" or "serious harm." (I prefer harm.)

c. Logistically, the prosecutor would need to have a vet ready to testify to "suffering" or "disability." Many of the animals in cars cases do not involve vets. Having a vet on a 45-day misdemeanor is difficult for prosecutors, especially new ones in district court. Even if there is a vet that cared for the animal, getting one to come to court who is not a MHS vet is a tall order.

d. The definition of "serious physical harm" in (5)(c) is also ambiguous – "seriously impairs the animal's health or physical well-being." There are better, well-defined, and litigated definitions that could be used.

- MCJI 17.6 Aggravated Assault: "A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body."
- MCJI 17.7 Assault / GBH: "Great bodily harm means any physical injury that could seriously harm the health or function of the body."
- MCL 287.321 Definitions in Dangerous Animals: "'Serious injury' means permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person."

e. There is also a fundamental inconsistency in penalties – (4)(b) penalizes up to 1 year for the death of an animal under the current subsections of 750.50 and (5)(d) penalizes the death under leaving an animal in a car, only, up to 4 years as a felony.

My recommendations:

- (2)(h) : "... could reasonably be expected to cause harm or death of an animal."
- I understand subsection (5) hopes to create a lower penalty for the first offense. I would make the following changes:
 - (5)(b) – 93-day misdemeanor (consistent with (4)(a))
 - (5)(c) – change "serious physical harm" to "serious injury" and use definition from MCJI 17.6 as a guide, "a serious injury is a physical injury that requires immediate veterinary treatment or that causes disfigurement, impairment of health, or impairment of a body part of the animal."
 - (5)(d) – change penalty to a 2-year high misdemeanor (consistent with (4)(c)) I would also change subsection (4) to move the death of an animal from (4)(b) to (4)(c) also making any other cruelty resulting in death under 750.50 as a 2-year misdemeanor.

Contact Person: Ann M. Griffin

Email: annmgriffin@hotmail.com