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Bill Analysis
Legislative Service Commission

Sub. S.B. 221*

124th General Assembly
(As Reported by S. Judiciary on Criminal Justice)

Sens. Goodman, Mumper, Ryan, Coughlin, DiDonato, Furney, Hagan, Brady, Spada, Randy Gardner

BILL SUMMARY

- Increases the penalty for abandoning a domestic animal.
- Prohibits any person from committing specified acts of cruelty upon a companion animal.
- Prohibits a person who confines or is the custodian or caretaker of a companion animal from negligently committing any of those specified acts of cruelty upon the animal, confining the animal in a primary enclosure without adequate space, or failing to provide sufficient food and water, adequate ventilation and circulation, adequate shelter, or adequate exercise.
- Establishes a procedure for the impoundment of a companion animal and for the care of the impounded companion animal during the pendency of charges against a person who violates any of the prohibitions established by the bill.
- As part of that procedure, permits an impounding agency to file a motion requesting the court to require the defendant to post a deposit to cover the costs of caring for the impounded animal.
- Requires an agent of a county humane society to report known or suspected child abuse or neglect if the knowledge or suspicion is obtained in the officer's official capacity.

** This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Expands the list of persons and entities that must sign the memorandum of understanding prepared by a public children services agency regarding reports of child abuse or neglect to also require the county humane society to sign the memorandum of understanding.
- Requires minimum training of 20 hours related to investigation and prosecution of animal cruelty and neglect for a county humane society agent and requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General establishing training requirements for those officers.

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CONTENT AND OPERATION

Cruelty to animals

Existing law

Existing law prohibits a person from doing any of the following (R.C. 959.13(A)--not in the bill):

(1) Torturing an animal, depriving one of necessary sustenance, unnecessarily or cruelly beating, needlessly mutilating or killing, or impounding or confining an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water;

(2) Impounding or confining an animal without affording it, during such confinement, access to shelter from wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer. This prohibition does not apply to animals impounded or confined prior to slaughter. For the purpose of this prohibition, "shelter" means a man-made enclosure, windbreak, sunshade, or natural windbreak or sunshade that is developed from the earth's contour, tree development, or vegetation.

(3) Carrying or conveying an animal in a cruel or inhumane manner;

(4) Keeping animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, or feeding cows on food that produces impure or unwholesome milk;

(5) Detaining livestock in railroad cars or compartments longer than 28 hours after they are so placed without supplying them with necessary food, water, and attention, or permitting such stock to be so crowded as to overlie, crush, wound, or kill each other.

The above-described provisions do not prohibit the dehorning of cattle. (R.C. 959.13(B)--not in the bill.)

A violation of the above prohibitions against cruelty to animals is a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including, but not limited to, the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first must be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, must be paid to the former owner of the animal. (R.C. 959.99(D).)

All fines collected for violations of the above prohibitions must be paid to the society or association for the prevention of cruelty to animals, if one exists in the county, township, or municipal corporation where the violation occurred. (R.C. 959.13(C)--not in the bill.)



Operation of the bill

The bill retains the existing prohibitions against cruelty to animals but creates additional prohibitions, described below, that only apply to a "companion animal" (R.C. 959.131). It defines a "companion animal" as any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. "Companion animal" does not include livestock or any "wild animal" (see "**Definitions**"). (R.C. 959.131(A)(1) and 959.132(A)(1).)

Prohibitions regarding a companion animal

Existing law

Existing law prohibits the owner or keeper of a dog, cat, or other domestic animal from abandoning the animal. Whoever violates this prohibition is guilty of a minor misdemeanor. (R.C. 959.01--not in the bill, and R.C. 959.99(A).)

Operation of the bill

Increase of penalty for "abandonment" violation. The bill increases the penalty for an owner or keeper of a dog, cat, or other domestic animal who abandons the animal. Under the bill, any owner or keeper of a domestic animal who abandons the animal is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense. (R.C. 959.99(A) and (E)(2).)

New "companion animal" prohibitions, penalties, procedures, and exemptions. The bill also creates the following prohibitions with respect to a companion animal (R.C. 959.131(B) and (C)):

(1) It prohibits any person from knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal.

(2) It prohibits a person who confines or who is the custodian or caretaker of a companion animal from negligently doing any of the following:

(a) Torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against the companion animal;

(b) Failing to provide the companion animal with sufficient quantities of wholesome food and potable water;

(c) Failing to provide the companion animal with adequate ventilation and circulation of wholesome air;

(d) Failing to provide the companion animal with access to adequate shelter from heat, cold, wind, rain, snow, excessive direct sunlight, or other adverse environmental conditions if it is reasonable to expect that without that shelter the companion animal would become sick or suffer;

(e) Failing to provide the companion animal with adequate exercise;

(f) Confining the companion animal in a "primary enclosure" (see "**Definitions**") that does not have adequate space in which the companion animal may stand up to its full height, stretch out, turn around, and lie down comfortably.

A violation of (1) is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. A violation of (2) is a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense. (R.C. 959.99(E)(1) and (2).)

The bill requires that, notwithstanding any other statute that provides for the distribution of fine moneys, the clerk of court must forward all fines the clerk collects that are imposed for any violation of (1) or (2) above to the treasurer of the political subdivision or the state, whose county humane society or law enforcement agency is to be paid the fine money as described below. The treasurer to whom the fines are forwarded must pay the fine moneys to the county humane society or the county, township, municipal, or state law enforcement agency in Ohio that primarily was responsible for or involved in the investigation and prosecution of the violation. If a county humane society receives any of the fine moneys, the county humane society must use the fine moneys to provide the training that is required for humane agents under the bill and is described in "**Humane agent training**," below. (R.C. 959.131(E).)

A court may do any or all of the following with respect to a person who is convicted of or pleads guilty to a violation of (1) or (2) above (R.C. 959.99(E)(3) and (4)):

(1) It may order the person to forfeit to an "impounding agency" (see "**Definitions**") any or all of the companion animals in that person's ownership or care.

(2) It may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time.

(3) It may order the person to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion

animal that the agency impounded as a result of the investigation or prosecution of the violation, provided that the person did not otherwise pay the costs under other procedures in the bill described below.

(4) If the court has reason to believe that the person suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court must order the offender to pay the costs of the evaluation or counseling.

The above new prohibitions do not apply to any of the following (R.C. 959.131(D)):

(1) A companion animal used in scientific research conducted by an institution in accordance with the federal animal welfare act (see "Definitions") and related regulations;

(2) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate to do so under Ohio law;

(3) Dogs being used or intended for use for hunting or field trial purposes, provided that the dogs are being treated in accordance with usual and commonly accepted practices for the care of hunting dogs.

Procedure for impounding or otherwise monitoring a companion animal

Impounding a companion animal

The bill authorizes an "officer" (see "Definitions") to impound a companion animal if the officer has probable cause to believe that it or other companion animals that are kept by the same person on the premises are the subject of a violation of one of the bill's prohibitions involving a companion animal contained in R.C. 959.131 and if the officer has lawful access to the companion animal at the time of the impoundment. The officer must give written notice of the impoundment by posting the notice on the door of the residence on the premises at which the companion animal was impounded, by giving it in person to the owner, custodian, or caretaker of the companion animal, or by otherwise posting the notice in a conspicuous place on the premises where the companion animal was seized. (R.C. 959.132(B).)

Probable cause hearing

An owner, custodian, or caretaker of one or more companion animals that have been impounded as described above may file a written request for a hearing

with the clerk of the court in which charges are pending that were filed under the bill's new companion animal prohibitions and that involve the impounded companion animals. If a hearing is requested, the court must conduct a hearing not later than 21 days following receipt of the request. At the hearing, the impounding agency has the burden of proving by a preponderance of the evidence that probable cause exists to find that the defendant is guilty of a violation of one of the bill's prohibitions involving a companion animal contained in R.C. 959.131. If the court finds at the conclusion of the hearing that probable cause does not exist for finding that the defendant committed a violation and that the defendant otherwise has a right to possession of the impounded companion animals, the court must order the animals to be returned to the defendant. However, if the court finds at the conclusion of the hearing that probable cause exists for finding the defendant guilty of a violation with respect to one or more of the impounded companion animals, the court must do one of the following with respect to each impounded companion animal: (1) allow the impounding agency to retain custody of the companion animal pending resolution of the underlying charges, or (2) order the companion animal to be returned to the defendant under any conditions and restrictions that the court determines are appropriate to ensure that the companion animal receives humane and adequate care and treatment. (R.C. 959.132(D).)

Costs of care hearing

The bill permits an impounding agency, at any time that one or more charges of a violation of one of the bill's companion animal prohibitions contained in R.C. 959.131 are pending, to file a motion in the court in which the charges are pending requesting that the defendant post a deposit to cover the costs of caring, during the pendency of the charges, for any impounded companion animals seized or removed from the defendant's custody if the reasonably necessary projected costs of the care that will be provided prior to the final resolution of the charges are estimated to be in excess of \$1,500. The motion must be accompanied by an affidavit that sets forth an estimate of the reasonably necessary costs that the impounding agency expects to incur in providing that care. Those costs may include, but are not limited to, the necessary cost of veterinary care, medications, food, water, and board for the companion animals during the pendency of the charges.

Within ten days after the date on which a motion is filed as described in the preceding paragraph, the court must conduct a hearing. At the hearing, except as described in the next sentence, the impounding agency has the burden of proving by a preponderance of the evidence that there is probable cause to find that the defendant is guilty of a violation of one of the bill's companion animal prohibitions contained in R.C. 959.131 and that the reasonably necessary

cumulative costs of caring during the pendency of the charges for the companion animals seized or removed from the defendant's custody or control are reasonably projected to exceed \$1,500. However, if at a previous hearing requested by an owner of a companion animal the court made a finding concerning probable cause, that probable cause finding must be used for the hearing requested by the impounding agency. (R.C. 959.132(E)(1), (2), and (5)(b).)

The bill allows for the following findings and orders by the court (R.C. 959.132(E)(3)):

(1) If the court finds at the conclusion of the hearing that probable cause does not exist for finding that the defendant committed a violation of one of the bill's companion animal prohibitions contained in R.C. 959.131 and that the defendant otherwise has a right to possession of the companion animals, the court must order the animals to be returned to the defendant.

(2) If the court finds at the conclusion of the hearing that probable cause exists for finding that the defendant committed a violation of one of those prohibitions but that the reasonably necessary costs for caring during the pendency of the charges for the companion animals seized or removed from the defendant's custody or control are reasonably projected to be \$1,500 or less, the court must deny the petitioner's motion to require the defendant to pay a deposit.

(3) If the court finds at the conclusion of the hearing that probable cause exists for finding the defendant guilty of the violation of one of those prohibitions with respect to one or more of the impounded companion animals and for determining that the reasonably necessary projected costs of caring for the companion animals exceed \$1,500 during the pendency of the charges, the court must do one of the following: (a) order the defendant to post a deposit with the clerk of the court in a form and in an amount that the court determines is sufficient to cover the cost of care of the companion animals from the date of impoundment until the date of the disposition of the charges, (b) order one or more of the companion animals to be returned to the defendant under any conditions and restrictions that the court determines to be appropriate to ensure that the companion animals receive humane and adequate care and treatment, or (c) deny the motion of the impounding agency requesting the defendant to post a deposit but permit the impounding agency to retain custody of one or more of the companion animals pending resolution of the underlying charges.

The bill permits the court to order the defendant to forfeit the right of possession and ownership in one or more of the companion animals to the impounding agency if the defendant fails to comply with the conditions set forth in an order of the court that is rendered as described above in (1), (2), or (3). If the order that was not complied with required the defendant to post a deposit,

forfeiture of the companion animals relieves the defendant of any further obligation to post the deposit. (R.C. 959.132(E)(4).)

The bill requires that the two hearings mentioned above (i.e., the probable cause hearing and the costs of care hearing) be combined whenever possible (R.C. 959.132(D) and (E)(5)).

Determination of guilt

If the defendant is found guilty of violating one of the bill's companion animal prohibitions contained in R.C. 959.131 or any other offense relating to the care or treatment of a companion animal and the defendant posted a deposit to cover the costs of care for the animal, the court must determine the amount of the reasonably necessary costs that the impounding agency incurred in caring for the companion animal during the pendency of the charges. The court must order the clerk of the court to pay that amount of the deposit to the impounding agency and to dispose of any amount of the deposit that exceeds that amount in the following order (R.C. 959.132(F)(1)):

- (a) Pay any fine imposed on the defendant relative to the violation;
- (b) Pay any costs ordered against the defendant relative to the violation;
- (c) Return any remaining amount to the defendant.

If the defendant is found not guilty of violating one of the bill's companion animal prohibitions contained in R.C. 959.131 or any other offense relating to the care or treatment of a companion animal, the court must order the clerk of court to return the entire amount of the deposit to the defendant, and the impounding agency must return the companion animal to the defendant. If the companion animal cannot be returned, the court must order the impounding agency to pay to the defendant an amount determined by the court to be equal to the reasonable market value of the companion animal at the time that it was impounded plus statutory interest from the date of the impoundment. In determining the reasonable market value of the companion animal, the court may consider the condition of the companion animal at the time that the companion animal was impounded and any change in the condition of the companion animal after it was impounded. (R.C. 959.132(F)(2).)

Costs of veterinary care

The bill requires an impounding agency that impounds a companion animal under the bill to pay a person who provides veterinary care to the companion animal during the impoundment for the cost of the veterinary care regardless of whether the impounding agency is reimbursed for the payment (R.C. 959.132(G)).

Monitoring the care of a companion animal

If charges are filed against the custodian or caretaker of a companion animal alleging a violation of the bill's companion animal prohibitions contained in R.C. 959.131, but the companion animal that is the subject of the charges is not impounded, the court in which the charges are pending may order the owner or person having custody of the companion animal to provide to the companion animal the necessities described in the bill until the final disposition of the charges. If the court issues an order of that nature, the court also may authorize an officer or another person to visit the place where the companion animal is being kept, at the times and under the conditions that the court may set, to determine whether the companion animal is receiving those necessities and to remove and impound the companion animal if the companion animal is not receiving those necessities. (R.C. 959.132(C).)

Reporting by certain authorities of abuse or neglect of children

The bill includes agents of a county humane society in the list of persons who are required under existing law to report (to a public children services agency or a municipal or county peace officer) a knowledge or suspicion that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child if the knowledge or suspicion is obtained while acting in the specified official or professional capacity (R.C. 2151.421(A)(1)(b)). The failure by a county humane agent to make a report of child abuse or neglect is a misdemeanor of the fourth degree (R.C. 2151.99--not in the bill).

Memorandum of understanding

Existing law

Existing law requires each public children services agency to prepare a "memorandum of understanding" (see below) that is signed by all of the following: (1) if there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative, (2) if there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative, (3) the county peace officer, (4) all chief municipal peace officers within the county, (5) other law enforcement officers handling child abuse and neglect cases in the county, (6) the prosecuting attorney of the county, and (7) if

the public children services agency is not the county department of job and family services, the county department of job and family services.

A memorandum of understanding must set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under R.C. 2151.421 and R.C. 2919.21(C), 2919.22(B)(1), 2919.23(B), and 2919.24 and must have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of mandatory and discretionary child abuse or neglect reports made pursuant to R.C. 2151.421(A) or (B) and, when feasible, providing for only one interview of a child who is the subject of any such report. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and is prohibited from resulting in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and cannot not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

A memorandum of understanding must include all of the following: (1) the roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect, and (2) standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected. (R.C. 2151.421(J).)

Operation of the bill

The bill expands the list of persons and entities that must sign the memorandum of understanding prepared by a public children services agency to also require the county humane society to sign the memorandum of understanding, in addition to the currently specified persons and entities (R.C. 2151.421(J)(1)).

Humane agent training

Existing law permits a county humane society to appoint agents, who are residents of the county or municipal corporation for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals. All appointments of agents must be approved by the mayor of the municipal corporation for which they are made or by the probate judge of the county for which they are made if the society exists outside a municipal corporation. (R.C. 1717.06.)

The bill requires that in order for a person to qualify for appointment as a humane agent under this provision, a person first must successfully complete a minimum of 20 hours of training on issues relating to the investigation and prosecution of cruelty to and neglect of animals. The Ohio Peace Officer Training Commission must recommend rules to the Attorney General establishing requirements for the training of agents of a county humane society, including, without limitation, a requirement that the agents receive instruction regarding animal husbandry practices that is within the scope of an overall curriculum for instruction on the topic of animal husbandry practices that is consistent with recommendations, if any, of The Ohio State University College of Veterinary Medicine. The humane agent training must comply with those recommended rules. (R.C. 1717.06 and 109.73(A)(12).)

A person who has been appointed as a humane agent prior to the effective date of the bill may continue to act as a humane agent for a period of time on and after the effective date of the bill without completing the training. However, on or before December 31, 2004, a person who has been appointed as a humane agent prior to the effective date of the bill must successfully complete the training described in the preceding paragraph and submit proof of its successful completion to the appropriate appointing mayor or probate judge in order to continue to act as a humane agent after December 31, 2004. (R.C. 1717.06.)

Definitions

As used in the bill:

"Cruelty," "torment," and "torture" include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief (R.C. 959.131(A)(2) and 2151.421(F)(3), by reference to R.C. 1717.01--not in the bill).

"Impounding agency" means the county humane society, animal shelter, or law enforcement agency that either has impounded a companion animal or has made regular visits to the place where a companion animal is kept to determine whether it is provided with necessities (R.C. 959.132(A)(2)).

"Residential dwelling" means a structure or shelter or the portion of a structure or shelter that is used by one or more humans for the purpose of habitation (R.C. 959.131(A)(3)).

"Officer" means any law enforcement officer, agent of a county humane society, dog warden, assistant dog warden, or other person appointed to act as an animal control officer for a county, municipal corporation, or township in accordance with state law, an ordinance, or a resolution (R.C. 959.132(A)(3)).

"Practice of veterinary medicine" means the practice of any person who (R.C. 959.131(A)(4) by reference to R.C. 4741.01--not in the bill):

(1) For hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal, or for the prevention of or to test for the presence of any disease of any animal, or who holds himself out as being able or legally authorized to act in such manner, or who holds himself out as being a veterinarian involved in environmental health, public health, food hygiene, preventive medicine, space medicine, or other special areas, or who engages in the practice of embryo transfer;

(2) Practices dentistry or surgery on any animal;

(3) Represents himself as engaged in the practice of veterinary medicine;

(4) Uses any words, letters, or titles in such connection and under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine.

"Wild animal" includes mollusks, crustaceans, aquatic insects, fish, reptiles, amphibians, wild birds, wild quadrupeds, and all other wild mammals, but does not include domestic deer (R.C. 959.131(A)(5) by reference to R.C. 1531.01--not in the bill).

"Primary enclosure" does not include a carrier designed for transporting one or more animals, while it actually is being used for transporting one or more animals (R.C. 959.131(A)(6)).

"Federal animal welfare act" means the federal "Laboratory Animal Act of 1966," as amended by the federal "Animal Welfare Act of 1970," the federal "Animal Welfare Act Amendments of 1976," and the federal "Food Security Act of 1985," and as it may be subsequently amended (R.C. 959.131(A)(7)).

HISTORY

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