



# Ohio Legislative Service Commission

## Bill Analysis

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### Am. H.B. 55

128th General Assembly  
(As Passed by the House)

**Reps.** B. Williams and Combs, Bolon, Book, Boyd, Chandler, Domenick, Evans, Fende, Foley, Gerberry, Hagan, Harris, Letson, Skindell, Slesnick, S. Williams, Winburn, Yuko, Bubb, Celeste, Derickson, Dyer, Garland, Goyal, Grossman, Heard, Luckie, Lundy, McGregor, Murray, Patten, Sears, Stewart, Szollosi

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## BILL SUMMARY

- Increases the penalty for a violation of the prohibition against committing cruelty to animals for a second or subsequent violation from a misdemeanor of the second degree to a misdemeanor of the first degree.
- Requires a court, in addition to any other sanctions it imposes on the offender if the offender is not already undergoing counseling as a condition of probation or as a community control sanction, to impose a term of basic probation supervision or a term of intensive probation supervision on an offender who commits a felony violation of the prohibition against knowingly committing cruelty to a companion animal (i.e., knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal).
- Requires a juvenile court, in addition to any other disposition that it makes for a delinquent child, to require a child under 18 years of age who is adjudicated a delinquent child for violating the prohibition against knowingly committing cruelty to a companion animal described in the prior dot point to undergo psychological evaluation to determine if the child needs individual or family counseling and, if such counseling is recommended by the evaluation, to undergo individual or family counseling.
- Specifies that a juvenile court that imposes a requirement as described in the preceding dot point may require the parent, guardian, or other person having care of the child to pay the costs of the evaluation, any counseling, or both.

- Requires the State Board of Psychology and the State Medical Board to approve one or more continuing education courses related to the counseling of individuals who abuse animals.
- Requires that the professional standards committees of the Counselor, Social Worker, and Marriage and Family Therapist Board approve one or more continuing education courses of study with regard to the counseling of individuals who abuse animals.
- Permits the court, when issuing a criminal protection order or a criminal domestic violence temporary protection order, to include within the scope of the protection order any companion animal that is in the complainant's or alleged victim's residence.
- Permits the court, when issuing a civil stalking or sexually oriented offense protection order, to include within the scope of a protection order any companion animal that is in the residence of the person to be protected.
- Permits a court, when issuing a civil domestic violence protection order or approving a civil domestic violence consent agreement, to include any companion animal that is in the petitioner's residence.
- Eliminates the requirement that the owner of a pit bull dog must comply with the statutory requirements applicable to an owner of a vicious dog solely because of the breed of the owner's dog by removing the automatic inclusion of pit bull dogs from the definition of vicious dog.
- Repeals the statement that the ownership, keeping, or harboring of a pit bull dog is *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog.

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## CONTENT AND OPERATION

### Cruelty to animals

#### Prohibition

Current law, unchanged by the bill, 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, other than an animal impounded or confined prior to slaughter, 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;

(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, nor feeding cows on food that produces impure or unwholesome milk;

(5) Detaining livestock in railroad cars or compartments longer than 28 hours, or if permission has been granted, longer than 36 hours, after they are so placed without supplying them with necessary food, water, and attention, nor permitting such stock to be so crowded as to overlie, crush, wound, or kill each other.

## Penalty

Under current law, a violation of the prohibition described above is a misdemeanor of the second degree, and the court may order the offender to forfeit the animal or livestock and may provide for its disposition. The bill makes no change to the penalty for a first violation of the prohibition, but it increases the penalty to a misdemeanor of the first degree for each subsequent violation of the prohibition. (R.C. 959.99(D).)

## Cruelty to a companion animal

### Knowing conduct

Current law, unchanged by the bill, 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 (see **COMMENT 1** for definition of "companion animal"). The prohibition does not apply in specified circumstances relating to animal research, veterinary medicine, hunting, field trials, training, or the administration of medicine. (R.C. 959.131(B) and (D), not in the bill.) A violation of this prohibition is currently a misdemeanor of the first degree for a first offense and a felony of the fifth degree for each subsequent violation. The court may order the forfeiture of any or all of the companion animals in the offender's care, may prohibit or limit the offender's ownership or care for companion animals, may order the offender to pay for the costs incurred by an impounding agency for the care of an impounded companion animal, and may in specified circumstances (see the first paragraph under "**Psychological treatment and counseling for a delinquent child who commits cruelty against a companion animal,**" below) order as a community control sanction or as a condition of probation that the offender undergo psychological evaluation or counseling. (R.C. 959.99(E)(1) and (3).)

The bill leaves this penalty structure in place but requires a court, in addition to any other sanction imposed, to impose a term of basic probation supervision or a term of intensive probation supervision for any felony violation of the prohibition, if the offender is not already undergoing counseling imposed as a community control sanction or as a condition of probation for a previous violation of committing cruelty to a companion animal (see **COMMENT 1** for definitions of "basic probation supervision" and "intensive probation supervision") (R.C. 959.99(E)(1)(a)).

### Negligent conduct

Current law, unchanged by the bill, prohibits a person from *negligently* engaging in specified types of conduct against a companion animal (R.C. 959.131(C) and (D), not

in the bill). The prohibition and the penalties imposed for it, also unchanged by the bill, are described in **COMMENT 2**.

### **Psychological treatment and counseling for a delinquent child who commits cruelty against a companion animal**

Under current law, if a court has reason to believe that a person who is convicted of or pleads guilty to a violation of any prohibition against committing cruelty to a companion animal involving either knowing conduct or negligent conduct 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. (R.C. 959.99(E)(4).)

The bill requires a juvenile court, in addition to any other disposition that it makes, to order a child under 18 years of age who is adjudicated a delinquent child for committing cruelty against a companion animal based on knowing conduct, as described above in "**Knowing conduct**" under "**Cruelty to a companion animal**," to undergo psychological evaluation to determine if the child needs individual or family counseling and must make a recommendation as to the frequency and length of time that the counseling should occur. If individual or family counseling is recommended by the evaluation, the court must require the counseling to take place and must establish the frequency and length of time of the counseling. The court may order the parent, guardian, or other person having care of the child to pay the costs of the evaluation, any counseling, or both. (R.C. 959.99(E)(4)(b) and 2152.19(F).)

### **Continuing education courses regarding the counseling of individuals who abuse animals**

The bill requires the State Medical Board to approve one or more continuing medical education courses of study included within the programs certified by the Ohio State Medical Association and the Ohio Osteopathic Association and requires the State Board of Psychology to approve one or more continuing education courses of study regarding the counseling of individuals who abuse animals (R.C. 4731.284 and 4732.141(H)). The bill also requires that the professional standards committees of the Counselor, Social Worker, and Marriage and Family Therapist Board approve one or more continuing education courses of study with regard to the counseling of individuals who abuse animals (R.C. 4757.33(C)). The bill does not, however, specifically require any doctor of medicine and surgery, doctor of osteopathic medicine and surgery, psychologist, or person who holds a license or certificate of registration issued under R.C. Chapter 4757. to take the animal abuse continuing education course(s). (R.C. 4731.284, 4732.141(H), and 4757.33(C).)

## **Protection of companion animals in protection orders**

The bill amends the various sections of the Revised Code dealing with protection orders to include the protection of a companion animal within the scope of the orders. (See **COMMENT 1** for definition of "companion animal.")

### **Criminal protection orders not involving a family or household member**

Under current law, upon the filing with the court that has jurisdiction of the case of a complaint that does not involve a family or household member and that alleges a violation of R.C. 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), or 2911.211 (aggravated trespass) or a municipal ordinance substantially similar to any of those sections containing a misdemeanor offense, or the commission of a sexually oriented offense and a motion requesting the order, the court may issue a protection order as a pretrial condition of release after a hearing on the matter. The court must conduct the hearing not later than the next court day after the motion is filed. If the court finds that the safety and protection of the complainant or alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a protection order as a pretrial condition of release that contains terms designed to ensure the safety and protection of the complainant or the alleged victim, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or alleged victim.

If the court issues a criminal protection order as an *ex parte* order, it must conduct, not later than the next court day after its issuance, a hearing to determine whether the order should remain in effect, be modified, or be revoked. The court may issue the protection order pursuant to its own motion (upon the filing of a complaint alleging a violation described above) or the motion of a complainant or alleged victim.

The bill does not change the procedures for requesting or granting such a protection order. However, it provides that the court may include within the scope of the order any companion animal that is in the complainant's or alleged victim's residence. (R.C. 2903.213(B), (C)(1), (D)(1), and (J)(2).)

### **Civil stalking or sexually oriented offense protection orders involving any person**

Under current law, a person may file a petition in the court of common pleas of the county in which the person resides alleging that another person engaged in a violation of section 2903.211 (menacing by stalking) against the person or against a family or household member of the person or committed a sexually oriented offense against the person or a family or household member of the person and requesting the

issuance of a civil stalking or sexually oriented offense protection order under R.C. 2903.214. If a person who files a petition requests an *ex parte* order, the court must hold an *ex parte* hearing not later than the next court day after the petition is filed. The court, for good cause shown at the *ex parte* hearing, may enter any temporary orders that the court finds necessary for the safety and protection of the person to be protected by the order. If the court issues a protection order after an *ex parte* hearing, the court must schedule a full hearing for a date that is within ten court days after the *ex parte* hearing. The court must give the respondent notice of, and an opportunity to be heard at, the full hearing.

If a person who files a petition does not request an *ex parte* order, or if a person requests an *ex parte* order but the court does not issue an *ex parte* order after an *ex parte* hearing, the court must proceed as in a normal civil action and grant a full hearing on the matter. After an *ex parte* or full hearing, the court may issue a protection order that contains terms designed to ensure the safety and protection of the person to be protected by the protection order.

The bill does not change the procedure for requesting or issuing such a protection order. However, the bill specifies that the court may include within the scope of the order any companion animal that is in the residence of the person to be protected. (R.C. 2903.214(A)(7) and (E)(1)(a).)

### **Criminal temporary protection orders involving a family or household member**

Under current law, upon the filing of a complaint that alleges a violation of R.C. 2909.06 (criminal damaging or endangering), 2909.07 (criminal mischief), 2911.12 (burglary), or 2911.211 (aggravated trespass) or of a similar municipal ordinance, any offense of violence, or any sexually oriented offense, if the alleged victim of any of those violations or offenses was a family or household member at the time of the violation, the complainant, the alleged victim, a family or household member of an alleged victim, or another specified person may file a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender. The court must conduct a hearing to determine whether to issue the order not later than 24 hours after the filing of the motion. If the court issues a temporary protection order as an *ex parte* order, it must conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next court day after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified, or be revoked.

If, after the hearing, the court finds that the safety and protection of the complainant, alleged victim, or any other family or household member of the alleged



victim may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order as a pretrial condition of release that contains terms designed to ensure the safety and protection of the complainant, alleged victim, or family or household member. The court may issue the order on its own motion (upon the filing of a complaint alleging any of the above violations or offenses) or on motion made as described above. (R.C. 2919.26.)

The bill does not change the procedure for requesting or issuing such a protection order. However, it provides that the court may include within the scope of the order any companion animal that is in the complainant's or alleged victim's residence. (R.C. 2919.26(B), (C)(1), (D)(1), and (K)(1).)

### **Domestic violence civil protection orders**

Under current law, a person may file a petition in a court of common pleas alleging that a respondent engaged in domestic violence (defined to include the commission of a sexually oriented offense against a family or household member) against a family or household member and requesting the issuance of a civil domestic violence protection order under R.C. 3113.31. If a person who files such a petition requests an *ex parte* order, the court must hold an *ex parte* hearing on the same day that the petition is filed. The court, for good cause shown at the *ex parte* hearing, may enter any temporary orders that the court finds necessary to protect the family or household member from domestic violence. If the court issues a protection order after an *ex parte* hearing, it must schedule a full hearing within ten days (or within seven days in some circumstances) and give the respondent notice of, and an opportunity to be heard at, the full hearing.

If a person who files a petition does not request an *ex parte* order, or if a person requests an *ex parte* order but the court does not issue an *ex parte* order after an *ex parte* hearing, the court must proceed as in a normal civil action and grant a full hearing on the matter.

After an *ex parte* or full hearing, the court may grant any protection order or approve any consent agreement to bring about the cessation of domestic violence against the family or household members. The order or agreement may, generally, direct the respondent to refrain from abusing or from committing sexually oriented offenses against the family or household members, grant possession of the residence or household to the petitioner or other family or household member, require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member, or provide other remedies as specified in R.C. 3113.31(E)(1)). (R.C. 3113.31.)



The bill does not change the procedures for requesting or issuing such a protection order or approving such a consent agreement. However, it provides that the court may include within the scope of the order or consent agreement any companion animal that is in the petitioner's residence. (R.C. 3113.31(A)(7) and (E)(9).)

## **Removal of pit bull dogs from definition of vicious dog**

### **Operation of the bill**

#### **Overview--pit bull dog owner compliance with vicious dog owner requirements based on dog's behavior; *prima facie* evidence of vicious dog**

The bill makes two changes to the existing law dealing with vicious dogs. First, it eliminates (by removing language that automatically includes pit bull dogs within the definition of vicious dog) the requirement that an owner of a pit bull dog comply with the statutory confinement, restraint, transfer of ownership, and liability insurance duties and debarking restrictions applicable to vicious dogs solely because the owner's dog is a pit bull dog. Under the bill, the owner of a pit bull dog will be required to comply with those duties and restrictions only if the dog exhibits the behavior that defines a dog as a vicious dog. (See "**Background/existing law**," below for a discussion of those provisions.)

Second, the bill repeals the existing statement that the ownership, keeping, or harboring of a pit bull dog is *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog. Therefore, under the bill, a person who owns, keeps, or harbors a pit bull dog cannot be found to have owned, kept, or harbored a vicious dog unless the pit bull dog exhibits the behavior that defines a dog as a vicious dog. (R.C. 955.11(A)(4)(a)(iii).)

#### **Changes to vicious dog definition**

Under existing law, "vicious dog" is defined as a dog that, without provocation and subject to exceptions related to police dogs performing official duties and dogs harming persons committing a trespass or other criminal offense on the dog owner's property, meets any of the following (R.C. 955.11(A)(4)):

- (1) Has killed or caused serious injury to any person;
- (2) Has caused injury, other than killing or serious injury, to any person, or has killed another dog;
- (3) Belongs to a breed that is commonly known as a pit bull dog.

The bill removes the third component of the definition of a vicious dog. As a result, pit bull dogs will be treated in the same manner as all other dogs in determining whether they are vicious dogs. A pit bull dog will meet the definition of a vicious dog only if it kills or causes injury to a person or another dog and none of the exceptions apply.

### ***Prima facie* evidence rule**

Existing law also provides that the ownership, keeping, or harboring of a pit bull dog is *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog. Under that provision, a person who owns, keeps, or harbors a pit bull dog is considered to own, keep, or harbor a vicious dog without the need for additional evidence and solely because of the breed of the dog that the person owns, keeps, or harbors. The bill repeals this *prima facie* evidence rule. Therefore, under the bill a person cannot be found to own, keep, or harbor a vicious dog unless evidence is presented to prove that the behavior of the person's dog is such that it meets the behavioral components of the vicious dog definition. (R.C. 955.11(A)(4)(a)(iii).)

### **Background/existing law**

#### **Transfer of ownership requirements for vicious dog or dangerous dog**

Under existing law, the seller or other transferor of ownership or possession of a dog who knows that the dog is a dangerous or vicious dog, within ten days after the transfer, must give a completed form that contains specified information to the transferee and to the board of health and dog warden of the transferee's place of residence. In addition, a seller must answer specified questions on the form dealing with the dog's past behavior. (R.C. 955.11(D) and (E).) Whoever violates this requirement is guilty of a minor misdemeanor on a first offense and a fourth degree misdemeanor on a subsequent offense (R.C. 955.99(A)).

Under the bill, an owner of a pit bull dog would not be required to comply with the transfer requirements described above unless the dog meets the behavioral components of the vicious dog definition or meets the requirements of the definition of dangerous dog.

#### **Confinement and restraint requirements for a vicious dog or dangerous dog**

Existing law (with limited exceptions for dogs engaged in hunting or training for hunting) prohibits the owner, keeper, or harbinger of a vicious dog from failing to do any of the following (R.C. 955.22(D)):

(1) While the dog is on the premises of the owner, keeper, or harbinger, securely confining it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure with a top;

(2) While the dog is off those premises, keeping it on a chain-link leash or tether not more than six feet in length and also doing one or both of the following:

(a) Keeping the dog as described in paragraph 1 above;

(b) Having a person of suitable age and discretion control the leash or tether or securely attaching, tying, or affixing it to the ground or a stationary object so that the dog is adequately restrained and stationing such a person close enough to the dog to prevent it from causing injury to any person;

(c) Muzzling the dog.

Whoever violates these requirements is guilty of a first degree misdemeanor or fourth degree felony depending upon the circumstances of the offense. In addition, the dog must be destroyed if it causes death or serious injury to a person and may be destroyed in other specified circumstances. (R.C. 955.99(G).)

The owner of a dangerous dog is subject generally to the same requirements; however, the penalties for a violation of the requirements are different.

Under the bill, the owner of a pit bull dog would be subject to the requirements that apply to a vicious dog or to those that apply to a dangerous dog only if the dog meets the behavioral components of the vicious dog definition or meets the requirements of the definition of dangerous dog.

#### **Liability insurance requirements applicable to a vicious dog**

Existing law prohibits an owner, keeper, or harbinger of a vicious dog from failing to obtain liability insurance with coverage of at least \$100,000 per occurrence covering damage, bodily injury, or death caused by the dog. Whoever violates this prohibition is guilty of a misdemeanor of the first degree. (R.C. 955.22(E) and 955.99(H).)

Under the bill, the owner of a pit bull dog does not have to comply with the above liability insurance requirements unless the dog meets the behavioral components of the vicious dog definition.

#### **Debarking restrictions related to vicious dogs**

Existing law also prohibits a person from debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog, possessing a vicious dog

that the person knows or has reason to believe is debarked or surgically silenced, or falsely attesting to a veterinarian (before the vet debarks or surgically silences the dog) on a written waiver form that the dog is not a vicious dog. Whoever violates this prohibition is guilty of a fourth degree felony, and the dog must be destroyed. (R.C. 955.22(F) and 955.99(J).)

Under the bill, an owner of a pit bull dog is not subject to this prohibition unless the dog meets the behavioral components of the vicious dog definition.

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## COMMENT

1. As used in the bill:

"Companion animal" means 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. (R.C. 959.131(A)(1).)

"Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision. (R.C. 959.99(E)(1)(b), by reference to existing R.C. 2929.01(C), which is not in the bill.)

"Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision. (R.C. 959.99(E)(1)(b), by reference to existing R.C. 2929.01(R), which is not in the bill.)

2. Current law, unchanged by the bill, prohibits a person who confines or 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, or (b) depriving the companion animal of necessary sustenance, confining the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water, or impounding or confining the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight, if it can

reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation, confinement, or impoundment or confinement in any of those specified manners. The prohibition does not apply in specified circumstances relating to animal research, veterinary medicine, hunting, field trials, training, or the administration of medicine. (R.C. 959.131(C) and (D).)

Under current law, unchanged by the bill, a violation of this prohibition is a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense. The special sanctions described in "**Cruelty to a companion animal**" under the **CONTENT AND OPERATION** portion of this analysis regarding a violation that involves *knowing* conduct also apply to a violation of this prohibition. (R.C. 959.99(E)(2) to (4); also R.C. 959.131(E).)

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## HISTORY

ACTION	DATE
Introduced	03-03-09
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