



# Ohio Legislative Service Commission

## Bill Analysis

Andrea Holmes

### H.B. 108

129th General Assembly  
(As Introduced)

Reps. Gerberry and Hagan

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## BILL SUMMARY

- Specifically prohibits an owner of a registered kennel of dogs that confines or is the custodian or caretaker of a companion animal, subject to specified exemptions, from negligently committing specified types of cruel treatment of a companion animal.
- Specifies that a violation of the prohibition described above is a fifth degree felony and provides additional sanctions that the sentencing court may impose.
- Grants a prosecutor the authority to prosecute the owner of a kennel of dogs who violates the prohibition described above either under an existing prohibition against negligent cruel treatment of a companion animal under the Companion Animal Cruelty Law (second degree misdemeanor on first offense, first degree misdemeanor on subsequent offenses) or the new prohibition governing dog kennel owners described above (fifth degree felony).

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## CONTENT AND OPERATION

### Operation of the bill

#### Prohibition

The bill prohibits an owner of a kennel of dogs that is registered with the applicable county auditor under current law<sup>1</sup> and that confines or is the custodian or caretaker of a companion animal from negligently doing any of the following:<sup>2</sup>

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<sup>1</sup> R.C. 955.04, not in the bill.

<sup>2</sup> R.C. 959.131(D).

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

(2) 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.

### **Penalty**

A violation of the prohibition set forth above is a fifth degree felony.<sup>3</sup> However, the bill provides that if the owner of a registered kennel of dogs violates the existing prohibition against cruel treatment of a companion animal by an animal's custodian or caretaker in R.C. 959.131(C) (see "**Prohibition against negligent cruel treatment of a companion animal by the animal's custodian or caretaker,**" below), and the new prohibition applicable to owners of registered kennels established by the bill as set forth above, the prosecutor (see "**Definitions,**" below) in the case, at the prosecutor's discretion, may prosecute the owner of a kennel of dogs for either of those violations. The penalty for the existing prohibition against cruel treatment of a companion animal by an animal's custodian or caretaker in R.C. 959.131(C) is a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense. The penalty for the new prohibition applicable to owners of registered kennels is a fifth degree felony. Thus, under the bill, with respect to cruel treatment of a companion animal by the owner of a registered kennel, a prosecutor has the discretion to charge the owner with either a misdemeanor or a felony.<sup>4</sup>

### **Additional penalties**

The bill provides that a court may order a person who is convicted of or pleads guilty to the prohibition set forth above to forfeit to an impounding agency, as defined in R.C. 959.132, any or all of the companion animals in that person's ownership or care. The court may also 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, and may order

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<sup>3</sup> R.C. 959.99(E)(3).

<sup>4</sup> R.C. 959.131(E).

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 costs were not otherwise paid under R.C. 959.132. Additionally, if a court has reason to believe that a person who is convicted of or pleads guilty to the prohibition set forth above 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, and the court must order the offender to pay the costs of the evaluation or counseling.<sup>5</sup> These additional penalties exist in current law for the existing prohibitions against mistreating companion animals (see "**Current law**," below).

### **Exceptions**

The bill specifies that the prohibition set forth above does not apply to any of the following:<sup>6</sup>

(1) A companion animal used in scientific research conducted by an institution in accordance with the federal Animal Welfare Act 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 Chapter 4741. of the Revised Code;

(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;

(4) The use of common training devices, if the companion animal is being treated in accordance with usual and commonly accepted practices for the training of animals;

(5) The administering of medicine to a companion animal that was properly prescribed by a person who has been issued a license, temporary permit, or registration under Chapter 4741. of the Revised Code.

These exceptions currently apply to the existing prohibitions against mistreating a companion animal.

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<sup>5</sup> R.C. 959.99(E)(4) and (5).

<sup>6</sup> R.C. 959.131(F).

## Definitions

As used in R.C. 959.131, "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.<sup>7</sup>

"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.<sup>8</sup>

The bill defines "prosecutor" as having the same meaning as in R.C. 2935.01 which defines "prosecutor" as including the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.<sup>9</sup>

## Current law

### **Prohibition against negligent cruel treatment of a companion animal by the animal's custodian or caretaker**

Current law, unchanged by the bill, prohibits a person who confines or who is the custodian or caretaker of a "companion animal" (see "**Definitions**," below) from negligently doing any of the following:<sup>10</sup>

(1) "Torturing," "tormenting," needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of "cruelty" against the companion animal (see "**Definitions**," below);

(2) 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

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<sup>7</sup> R.C. 959.131(A)(1).

<sup>8</sup> R.C. 959.131(A)(2) by reference to 1717.01(B), not in the bill.

<sup>9</sup> R.C. 959.131(A)(7).

<sup>10</sup> R.C. 959.131(C).

other way as a result of or due to the deprivation, confinement, or impoundment or confinement in any of those specified manners.

Another provision of current law, also unchanged by the bill, prohibits a person from knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal.<sup>11</sup> A violation of this prohibition is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.<sup>12</sup> The additional penalties and the exemptions described in "**Additional penalties**" and "**Exemptions,**" above, apply to this prohibition.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	02-22-11

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<sup>11</sup> R.C. 959.131(B).

<sup>12</sup> R.C. 959.99(E)(1).

<sup>13</sup> R.C. 959.131(D), redesignated by the bill as division (F) of that section, and 959.99(E)(3) and (4), redesignated by the bill as divisions (E)(4) and (5) of that section.