



Ohio Legislative Service Commission

Bill Analysis

Andrea Holmes

Sub. H.B. 108

129th General Assembly
(As Reported by H. Criminal Justice)

Reps. Gerberry and Hagan, Weddington, Winburn, Garland

BILL SUMMARY

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

CONTENT AND OPERATION

Knowingly committing cruel treatment of a companion animal

Prohibition

The bill prohibits an owner, manager, or employee of a kennel of dogs that is registered with the applicable county auditor under current law¹ (hereafter "registered kennel of dogs") and that confines or is the custodian or caretaker of a "companion animal" (see "**Definitions**" below) from *knowingly* doing any of the following:²

(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.³ However, the bill provides that if an owner, manager, or employee of a registered kennel of dogs violates the existing prohibition against knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal and the new prohibition against *owners, managers, and employees of a registered kennel* of dogs knowingly committing such acts as set forth above, the prosecutor (see "**Definitions**," below) in the case, at the prosecutor's

¹ R.C. 955.04, not in the bill.

² R.C. 959.131(D).

³ R.C. 959.99(E)(3).

discretion, may prosecute the owner, manager, or employee of the kennel of dogs for either of those violations.⁴

The penalty for a violation of the current prohibition against knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.⁵ Thus, under the bill, if the owner, manager, or employee of a registered kennel of dogs knowingly commits such against a companion animal, a prosecutor has the discretion to charge the owner, manager, or employee with either a misdemeanor or a felony.

Negligently committing cruel treatment of a companion animal

Current law

Current law prohibits a person who confines or who is the custodian or caretaker of a "companion animal" from *negligently* doing any of the following:⁶

(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 (hereafter "current negligent deprivation prohibition").

A violation of the "current negligent deprivation prohibition" is a second degree misdemeanor on the first offense and a first degree misdemeanor on each subsequent offense.⁷

⁴ R.C. 959.131(F).

⁵ R.C. 959.99(E)(1).

⁶ R.C. 959.131(C).

⁷ R.C. 959.99(E)(2).

Operation of the bill

The bill repeals the existing prohibition against any person who confines or is the caretaker or custodian of a companion animal negligently torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against the companion animal that is described above in paragraph (1) under "**Current law**."⁸

Additionally, the bill prohibits an owner, manager, or employee of a registered kennel of dogs that confines or is the custodian or caretaker of a companion animal from *negligently* doing any of the following:⁹

(1) Harming, injuring, harassing, or causing the death of 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 (hereafter "new negligent deprivation prohibition").

Penalty

A violation of the "new negligent deprivation prohibition" set forth above under "**Operation of the bill**" is a first degree misdemeanor.¹⁰ However, the bill provides that if an owner, manager, or employee of a registered kennel of dogs violates the "current negligent deprivation prohibition" discussed above under "**Current law**" that applies to an animal's custodian or caretaker and the "new negligent deprivation prohibition" applicable to owners, managers, and employees of registered kennels set forth above under "**Operation of the bill**," the prosecutor in the case, at the prosecutor's discretion, may prosecute the owner, manager, or employee of a kennel of dogs for either of those violations. Thus, under the bill, with respect to negligent deprivation of a companion animal by the owner, manager, or employee of a registered kennel, a prosecutor has the

⁸ Current R.C. 959.131(C)(1).

⁹ R.C. 959.131(E).

¹⁰ R.C. 959.99(E)(4).

discretion to charge the owner, manager, or employee with either a first degree misdemeanor or a second degree misdemeanor on a first offense.¹¹

Additional penalties

The bill provides that a court may order a person who is convicted of or pleads guilty to the new prohibitions created by the bill 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 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 prohibitions 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.¹² These additional penalties exist in current law for the current prohibitions against mistreating companion animals described above.

Exceptions

The bill specifies that the new prohibitions created by the bill as set forth above do not apply to any of the following:¹³

(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;

¹¹ R.C. 959.131(G).

¹² R.C. 959.99(E)(5) and (6).

¹³ R.C. 959.131(H).

(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 apply to the current prohibitions against mistreating a companion animal.

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.¹⁴

"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.¹⁵

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.¹⁶

HISTORY

ACTION	DATE
Introduced	02-22-11
Reported, H. Criminal Justice	09-21-11

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¹⁴ R.C. 959.131(A)(1).

¹⁵ R.C. 959.131(A)(2) by reference to 1717.01(B), not in the bill.

¹⁶ R.C. 959.131(A)(7).