



Ohio Legislative Service Commission

Final Analysis

Margaret E. Marcy

Sub. H.B. 60

131st General Assembly
(As Passed by the General Assembly)

- Reps.** Patmon and Hall, Antonio, Brown, Patterson, Gerberry, Slaby, LaTourette, Grossman, Boyd, Cera, Barnes, Leland, Lepore-Hagan, Phillips, Sheehy, Romanchuk, Blessing, Ruhl, Anielski, Ashford, Baker, Celebrezze, Dovilla, Driehaus, Fedor, Hackett, Hambley, Henne, Howse, G. Johnson, T. Johnson, M. O'Brien, S. O'Brien, Pelanda, Ramos, Rogers, Schuring, Sears, Slesnick, K. Smith, Sweeney
- Sens.** Hite, Gardner, Peterson, LaRose, Bacon, Beagle, Brown, Cafaro, Coley, Eklund, Gentile, Hottinger, Hughes, Lehner, Obhof, Oelslager, Patton, Sawyer, Skindell, Tavares, Thomas, Uecker, Williams, Yuko

Effective Date: September 13, 2016

ACT SUMMARY

Cruelty against companion animals

- Prohibits a person from knowingly causing serious physical harm to a companion animal and specifies that a violation of the prohibition is a fifth degree felony.
- Clarifies that the laws that prohibit cruelty against companion animals apply to dogs and cats kept in pet stores.
- Revises the prohibition against knowingly committing specified acts of cruelty against a companion animal that apply to an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of the animal.
- Revises the prohibition against negligently committing specified acts of cruelty against a companion animal that apply to any person who confines or is the custodian or caretaker of the companion animal, including an owner, manager, or employee of a dog kennel.
- Prohibits a humane society or its agent from employing an attorney or assistant attorneys to prosecute a felony violation of the law prohibiting cruelty against companion animals.

- Authorizes a county humane society to use fine money derived from violations of the law prohibiting cruelty against companion animals to provide additional training to humane agents.

Penalty for assaulting a police dog or horse, if the dog or horse is killed

- Modifies the penalty for assaulting a police dog or horse, if the dog or horse is killed, to require a mandatory prison term and a mandatory fine.

Use of animals to secure opioids

- Requires state agency collaboration in the development of resources and educational materials to enhance the ability of veterinarians to identify current or potential clients who may abuse opioids and may use animals in their care to improperly secure them.

CONTENT AND OPERATION

Cruelty against companion animals

Continuing law establishes several prohibitions against committing an act of cruelty against a companion animal. A companion animal is any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including at a pet store as added by the act. A companion animal does not include livestock or any wild animal.¹ The act adds a new prohibition against causing a companion animal serious physical harm and amends existing prohibitions that apply to custodians or caretakers of companion animals and the owner, manager, and employee of a dog kennel.

Causing serious physical harm to a companion animal

The act prohibits a person from knowingly causing serious physical harm to a companion animal and specifies that a violation of the prohibition is a fifth degree felony.² Under the act, serious physical harm is any of the following:

(1) Physical harm that carries an unnecessary or unjustifiable substantial risk of death;

(2) Physical harm that involves either partial or total permanent incapacity;

¹ R.C. 959.131(A)(1).

² R.C. 959.131(C) and 959.99(E)(2).



(3) Physical harm that involves acute pain of a duration that results in substantial suffering or that involves any degree of prolonged or intractable pain; or

(4) Physical harm that results from depriving the companion animal of good, wholesome food and water and that proximately causes the death of the companion animal, when the deprivation is by a person who confines or who is the custodian or caretaker of a companion animal.³

Caretakers, custodians, and dog kennel personnel

The act revises the prohibitions against cruelty to a companion animal that apply to either an owner, manager, or employee of a dog kennel or a custodian or caretaker of a companion animal.

Knowing violations

Prior law prohibited an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from *knowingly* doing either of the following:

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

(2) Depriving the companion animal of necessary sustenance; confining the companion animal without supplying it during the confinement with sufficient quantities of food and water; or impounding or confining the companion animal without affording it, during the impoundment or confinement, with access to shelter if it was substantially certain that the companion animal would die or experience unnecessary or unjustifiable pain or suffering due to the deprivation, confinement, or impoundment in any of those specified manners.

The act retains item (1), above, but revises item (2) by doing all the following:

--Specifying that the sufficient quantities of food must be good and wholesome;

--Specifying that the shelter provided must afford the companion animal protection from heat, cold, wind, rain, snow, or excessive direct sunlight;

³ R.C. 959.131(A)(12).

--Separating the provisions pertaining to providing adequate food and water from the provisions pertaining to access to adequate shelter, thus, allowing a person who violates both provisions to be charged with two separate offenses; and

--Altering the standard for determining criminal liability so that, in order for the prohibition to apply, the acts of cruelty must be reasonably expected to cause the animal to die or experience unnecessary or unjustifiable pain or suffering as a result of the cruelty.⁴

A violation of the prohibitions remains a fifth degree felony.⁵

Negligent violations

Prior law prohibited a person who confines or is the custodian or caretaker of a companion animal and an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from *negligently* doing any of the following:

(1) Committing any act by which unnecessary or unjustifiable pain or suffering was caused, permitted, or allowed to continue, against the companion animal, when there was a reasonable remedy or relief;

(2) Omitting any act of care by which unnecessary or unjustifiable pain or suffering was caused, permitted, or allowed to continue against the companion animal when there was a reasonable remedy or relief;

(3) Committing any act of neglect by which unnecessary or unjustifiable pain or suffering was caused, permitted, or allowed to continue against the companion animal when there was a reasonable remedy or relief;

(4) Needlessly killing the companion animal; or

(5) 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 could reasonably be expected that the companion animal would become sick or suffer

⁴ R.C. 959.131(E).

⁵ R.C. 959.99(E)(4).



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

The act repeals the first four prohibitions above and replaces them with a prohibition against torturing, tormenting, or committing an act of cruelty against the companion animal.

The act also revises item (5) above by separating the provisions pertaining to providing adequate food and water from the provisions pertaining to access to adequate shelter. Thus, a person who violates both provisions may be charged with two separate offenses.⁶

The criminal penalties for negligent acts of cruelty against companion animals remain unchanged by the act. Under continuing law, a person who confines or is the custodian or caretaker of a companion animal and who violates the applicable prohibition is guilty of a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense. An owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal and who violates the applicable prohibition is guilty of a first degree misdemeanor.⁷

Exemptions

The act retains the following existing exemptions to the companion animal statute and applies those exemptions to the new prohibition against knowingly causing serious physical harm to a companion animal:

(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;

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

⁶ R.C. 959.131(D) and (F).

⁷ R.C. 959.99(E)(3) and (5).



(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 certificate under the laws pertaining to veterinarians.⁸

Humane society's employment of attorney

The act prohibits a humane society or its agent from employing an attorney or one or more assistant attorneys to prosecute a felony violation of the law prohibiting cruel treatment of companion animals. Under prior law, a humane society or its agent could employ an attorney and one or more assistant attorneys to prosecute violations of all laws pertaining to cruelty to animals, including companion animals.⁹

Humane agents training

The act alters the purposes for which a county humane society may use the proceeds of fines received for a violation of the prohibitions against cruelty to companion animals. Under prior law, all of the proceeds had to be used to provide the training necessary for a person to qualify as a humane agent. The act also permits a humane society to use the proceeds to provide additional training for humane agents.¹⁰

Penalty for assaulting a police dog or horse, if the dog or horse is killed

The act modifies the penalty for the offense of assaulting a police dog or horse, if the offense results in the death of the dog or horse. It does so by establishing a mandatory prison term and a mandatory fine.

Offense of assaulting a police dog or horse

Law unchanged by the act, prohibits a person from knowingly causing, or attempting to cause, physical harm to a police dog or horse if:

(1) The dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted; or

(2) The dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.¹¹

⁸ R.C. 959.131(G).

⁹ R.C. 2931.18.

¹⁰ R.C. 959. 131(H) and 1717.06, not in the act.

¹¹ R.C. 2921.321(A).

The prohibition does not apply to a licensed veterinarian whose conduct is in accordance with Ohio law governing the licensing of veterinarians.¹²

A violation of the prohibition is the offense of assaulting a police dog or horse. In general, a violation of the prohibition against assaulting a police dog or horse is a second degree misdemeanor. If the violation results in physical harm, but not serious harm or death, to the police dog or horse, it is a first degree misdemeanor. If the violation results in serious physical harm, but not death, to the police dog or horse, it is a fourth degree felony. If the violation results in the death of the police dog or horse, it is a third degree felony.¹³

Law unchanged by the act, also sets forth the offenses of harassing a police dog or horse, assaulting an assistance dog, and harassing an assistance dog, which are related to, but involve conduct different from that prohibited under, the offense of assaulting a police dog or horse.¹⁴

Mandatory prison term

Under prior law, the penalty for the offense of assaulting a police dog or horse if the offense results in the death of the dog or horse did not include a mandatory prison term, and the sentencing court had guided discretion in determining whether to impose a prison term sanction or one or more community residential sanctions, nonresidential sanctions, or financial sanctions. Additionally, under prior law there was no presumption for or against a prison term.¹⁵

The act retains the third degree felony penalty for the offense, but it requires that the court impose on the offender one of the prison terms prescribed for a third degree felony. The prison terms prescribed for a third degree felony are terms of 9, 12, 18, 24, 30, or 36 months. The mandatory prison term cannot be reduced pursuant to judicial release, the state's 80% release mechanism, earned credits, or any other early release provision.¹⁶

¹² R.C. 2921.321(F).

¹³ R.C. 2921.321(E)(1).

¹⁴ R.C. 2921.321(B) to (D).

¹⁵ R.C. 2929.13 and 2929.18; and 2929.14, 2929.15 through 2929.17, not in the act.

¹⁶ R.C. 2921.321(E)(1)(a), 2929.13(F)(4), and 2929.14(A)(3)(b), not in the act.



Mandatory fine

The act also enacts a mandatory fine for the offense of assaulting a police dog or horse, when the offense results in the dog's or horse's death. Under the act, in addition to any other sanction imposed for the offense, the sentencing court must impose on the offender a mandatory fine from the range prescribed for a third degree felony. The fine must be paid to the law enforcement agency that was served by the police dog or horse that was killed. The law enforcement agency may use the fine for one or more of the following purposes:

(1) If the dog or horse was not owned by the agency, as payment to its owner for the cost of the dog or horse and the cost of the training to qualify the animal as a police dog or horse, if the agency did not pay that cost previously; or

(2) After payment of the costs above, payment of one or more of the following: the cost of replacing the dog or horse that was killed, the cost of training the replacement dog or horse to qualify it as a police dog or horse, or the cost of additional training of the replacement dog or horse to train it to the level of training achieved by the dog or horse that was killed.¹⁷

The offender is also responsible for any veterinary bills and the cost of any damaged equipment incurred as a result of the violation.¹⁸

A mandatory fine imposed under this provision is a judgment in favor of the law enforcement agency to which it is paid, and the offender subject to the fine is the judgment debtor. Once the fine is imposed as a judgment, the state or political subdivision may use specified standard civil judgment collection methods to collect the amount of the fine. The court may designate its clerk or another person to collect the fine, and the clerk or designated person may contract for the collection with a public agency or private vendor.¹⁹

Under existing sentencing law, unchanged by the act, the court may hold a hearing if necessary to determine whether the offender is able to pay the fine or is likely in the future to be able to pay it. If the court finds that the offender satisfactorily has completed all other sanctions imposed on the offender and that all restitution ordered has been paid, it may suspend any financial sanctions imposed that have not been paid.

¹⁷ R.C. 2921.321(E)(1)(b) and 2929.18(B)(10).

¹⁸ R.C. 2929.321(E)(5).

¹⁹ R.C. 2929.18(D) and (F).



No fine imposed under this provision precludes a victim from bringing a civil action against the offender.²⁰

Use of animals to secure opioids

The act requires the Attorney General, the State Veterinary Medical Licensing Board, the State Board of Pharmacy, and the Ohio Veterinary Medical Association to collaborate in the development of resources and educational materials to enhance the ability of veterinarians to identify current or potential clients who may abuse opioids and who may use the animals in the clients' care to improperly secure the opioids.²¹

HISTORY

ACTION	DATE
Introduced	02-11-15
Reported, H. Agriculture & Rural Development	06-17-15
Passed House (93-2)	06-25-15
Reported, S. Agriculture	05-25-16
Passed Senate (33-0)	05-25-16
House concurred in Senate amendments (94-2)	05-25-16

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²⁰ R.C. 2929.18(E), (G), and (H).

²¹ R.C. 4741.05.

