

May 30, 2017

The Ohio House of Representatives  
Civil Justice Committee  
c/o Chairman Jim Butler

Re: Opponent testimony to HB 147

Chairman Butler, Vice Chair Hughes, Ranking Member Boggs and Honorable Members of the Civil Justice Committee, thank you for the opportunity to testify in opposition to House Bill 147 ("HB 147"). I have served as a prosecutor for animal cruelty cases for over four years. I have testified in opposition and as an interested party regarding this bill since its predecessor, House Bill 198, was introduced in 2015. It is my opinion that if HB 147 is passed through this committee as drafted, it will have a drastic chilling effect on the valuable services our local humane societies provide, often free of charge, to both humans and animals alike, as well as deepen the inequity between how owners of livestock and owners of companion animals are treated by the legal system.

### **1. Why do humane societies exist?**

I believe it is confusion and misunderstanding about this state's humane societies that lends to the impetus behind this bill. The humane society model relieves our state of the burden and expense of caring for animals. It is no secret that our local animal control, sheriffs, and police are often underpaid, understaffed, and overburdened. For that reason, the legislature of this state delegated a very important task to humane societies. While the legislature recognized a need for crimes against animals to be investigated and prosecuted, they also realized that other things are a priority when governmental funds are limited.

Humane societies are controlled by a board of directors and have the vested power to hire legal counsel and law enforcement, just like many other agencies, such as park districts and the port authority. As support for the relief humane societies provide, the counties are required to pay one humane agent \$25 per month and contribute toward the prosecution of cases. However, those payments are obviously not enough to operate a humane society. Citizens are very much in control of a humane society's work. If citizens support the humane society's work and want that work to continue, they must show support with their money and time.

### **2. Humane societies are transparent and have governmental oversight.**

The sponsor of this bill has advocated for transparency in humane society cases. Beyond the immense power of citizen donations, significant oversight of humane society operations is already in place.

First, county probate courts are vested with the power to control humane agent appointments. This direct control of employees does not exist in other analogous scenarios, such as that of a park district or city, and actually creates more direct oversight of the humane societies' actions.

Second, county commissioners have direct oversight for prosecutorial work. County commissioners only have to pay prosecutors such amounts as are deemed "just and reasonable." Commissioners can make any reasonable inquiry they like under current law to determine whether an appointed prosecutor is providing proper services to the community, and can deny payment for services which are not just or reasonable.

Third, humane societies are subject to the oversight of the Attorney General. The Attorney General monitors and conducts investigations into this state's charitable organizations, including humane societies.

Fourth, humane society prosecutors are subject to the oversight of the Ohio Supreme Court. They are subject to the same rules of ethics as every other prosecutor in this state.

Fifth, a humane society's work as law enforcement is actually already subject to the same open public records act as every other law enforcement agency in the state. Humane society

funding and spending activities are also public record and filed yearly as part of tax reporting laws.

### **3. Unintended consequences and inefficiencies—more red tape.**

HB 147 makes several modifications to existing law that serve to simply burden humane societies and other agencies without creating effective change. For example, HB 147 requires that:

- (1) the appointment of a humane agent be filed with the county sheriff. Current law, retained in HB 147, has long required approval of a humane agent appointment by the mayor of the municipal corporation for which it is made, or a probate judge when the appointment is made for the county. The mayor or probate judge would already retain proof of training. This provision is redundant.
- (2) a humane society notify the mayor, probate judge, county sheriff, and board of county commissioners when an approved humane agent has ceased to perform the duties of the appointment. Either the mayor OR county probate judge approve an appointment, so it is redundant and unnecessary to notify non-appointing authorities. For example, there are over 50 mayors in Cuyahoga County; it would be quite burdensome to include all of them in this notification when those mayors have no interest in the appointment. This provision also does not specify that notification is for a permanent cessation of performance of duties.
- (3) the humane agent training certificate be signed by both the CEO of the organization giving the training AND the chief executive of the appointing humane society. The humane society CEO cannot attest to whether the training was received because the CEO will not be present for training. Most humane agents receive initial training through OPOTA, for which there is no “CEO,” and current law allows others to provide the training as long as they follow the curriculum as set by OPOTA. This language does not seem to address any real issue while managing to be overly restrictive and not taking all available training scenarios into consideration.
- (4) an appointing authority investigate when an individual files a complaint that “suspects” a humane agent has not successfully completed training or that the proof of completion contains false or misleading information. Under this process, anyone can file a complaint with the appointing agency and force investigation. This provision is rife with potential for abuse. The humane society, training agency, and appointing authority must all ensure that training has been completed and proof must be filed with the appointing authority at the time of the appointment. Under HB 147’s language, *any person can file a complaint without reasonable basis*. This could be an extremely costly process for the appointing authority and humane society over time without consequence for the complainant.

### **4. Nonprosecution agreements for some.**

An amendment to HB 147 requires that **only nonprosecution agreements by humane societies be approved by the probate court**. Nonprosecution agreements (NPAs) are commonly used valid exercises of prosecutorial discretion in which amnesty is granted to a defendant in exchange for the defendant agreeing to fulfill certain requirements. Under an NPA, the agency refrains from filing criminal charges to allow the defendant to demonstrate good conduct. NPAs generally require the defendant to pay a fine, waive the statute of limitations, cooperate with the government, admit the relevant facts, and/or enter into compliance and remediation commitments.

NPAs in any case are not filed with and do not involve review by a court. Each case is documented and supported by probable cause. The investigations and NPAs are law enforcement activities, and are public records. NPAs are most often requested directly by defense attorneys as a benefit to their client. In the case of animal cruelty, NPAs allow law enforcement to resolve cases with education, in the least invasive manner, making every effort to keep animal owners out of criminal court, and avoid costs to the county.

The sponsor of this bill has voiced concerns with NPAs, but HB 147 only codifies a process of judicial approval for an extremely minute fraction of NPAs—only animal cruelty cases investigated by a humane society. It does not codify judicial approval of any other NPA for any other crime, or even for animal cruelty cases that are investigated by a county sheriff. If additional

oversight of prosecutorial authority and granting of NPAs is the desired outcome, judicial approval of all NPAs should be codified—for all cases, all law enforcement agencies, and all prosecutors. The NPA amendment as it stands is extraordinarily ineffective.

#### **5. NPAs: Jurisdiction and the probable cause hearing—Suggested modifications.**

Companion animal cruelty cases in Ohio are already subject to stricter scrutiny than any other crime. Every time a law enforcement agent seizes a companion animal, the officer must take the case before the municipal or county court and prove they had probable cause to seize the companion animal pursuant to ORC §959.132. A companion animal is any dog, cat, or animal kept inside of a residential dwelling, excluding livestock and wild animals. No “check” on the seizure of livestock exists until such time that criminal charges are heard. This means defendants who have had non-companion animals impounded do not receive the same process or protection as those who have had a companion animal impounded under current law.

A simple fix to the NPA amendment involves codifying the same probable cause procedure for livestock that companion animal owners already have. Currently, as an appointed prosecutor, I ask the municipal or county judge overseeing the probable cause hearing to approve any proposed NPA. This is because that judge hears evidence regarding the companion animal’s seizure and rules on whether or not probable cause for the seizure existed. That judge is in the best and only position to evaluate the evidence and decide whether an NPA is appropriate. While this step is not legally required, I have elected to handle NPAs in this manner due to concerns voiced by this bill’s sponsor. Unfortunately, this makes NPAs for livestock owners unattainable because there is no probable cause hearing available to them.

Thus, if HB 147 is to focus only on NPAs entered into for violations of animal cruelty offenses, we must be consistent and fair under the law. This includes:

- (1) codifying the probable cause hearing for animals other than companion animals. This would create the process by which an NPA could be approved by a municipal or county judge after hearing evidence;
- (2) consistency in public records for all violations of ORC 959. If public knowledge of NPAs is the issue, the average public is not going to go to the probate court docket to search for animal cruelty offenders and even then, would only produce those offenders investigated by humane societies; and
- (3) equality for defendants. It is not consistent or fair for offenders whose case is handled by a humane society to have the NPA on the record, but not if the case is handled by police.

The amendment as it exists is flawed. Probate judges do not handle animal cruelty/neglect cases (or criminal cases at all) and it is unreasonable to expect probate judges to add competency in this area of the law to their already busy dockets. The evidence in companion animal cases is already being heard at the probable cause hearing by municipal or county judges. It is extremely inefficient and burdensome to have to re-present the same evidence and witnesses at a second hearing. This is an unjustifiable expense for the state and also for defendants who will have to pay for their attorney to appear for a second time, as well as pay duplicative court costs. This also slows down the entire prosecutorial process as the second hearing would need to be scheduled at the probate court—creating another unreasonable expense for humane societies and defendants if an animal is being held at the humane society during the pending case.

Therefore, codifying probable cause hearings for any animal species impounded by a law enforcement authority under ORC 959, not just companion animals, serves two purposes:

- (1) corrects an inconsistency in current code that will better protect defendants and adds oversight of impounding agencies; and
- (2) creates a consistently scheduled hearing for ALL cases where NPA proposals can be reviewed by a judge, ensuring that all defendants are being treated equally.

For these reasons, I oppose HB 147 in its current form. I appreciate your consideration and attention to this matter.

Yours truly,  
DanaMarie K. Pannella, Esq.