

STEVE HAMBLEY

Thank you Chair Koehler, Vice Chair Smith, Ranking Member Brent, and members of the House Agriculture Committee for allowing me to present House Bill 24, which would update the Ohio Revised Code relating to humane societies and their agents. This legislation will bring the code up to date with current humane society practices, while improving the public accountability for these organizations and their agents. It will likewise encourage a more consistent and coordinated enforcement of animal cruelty laws.

Many of the Humane Societies in this state that provide exemplary services in the enforcement and prosecution of our animal cruelty statutes, demonstrating the wisdom of working with local government officials and agencies in accomplishing a common public good. However, there is evidence that some of these non-profit organizations require more explicit and affirmative controls to ensure due process and the protection of individual civil liberties consistently across the State of Ohio.

House Bill 24 is the culmination of over four years of work, two bills in the 131st General Assembly, one bill in the 132nd General Assembly, and nearly twenty different working versions of this legislation.

House Bill 24 takes many steps to update the revised code regarding Humane Society Law, the appointment of Humane Agents and the use of Special Prosecutors. I will enumerate later in my testimony many of the changes in HB 24, but first, I would like to highlight the most important section of HB 24: judicial oversight for Non-prosecution agreements offered by special prosecutors employed by Humane Societies. As members will hear in future hearings, with the permission of the Chairman, proponents of the bill will illustrate how these non-prosecution agreements have been used by a few bad actors to intimidate and exploit animal owners who have limited means to fight the charges against them in court.

Under current law, humane societies may employ attorneys to act as special prosecutors in cases of animal or child abuse and cruelty, as well as appoint humane agents to enforce the law. In no other area of criminal law do we allow a non-profit agency, whose board is not subject to oversight by elected officials, to represent both the law enforcement AND prosecution side of criminal matters.

I believe in recognition of these concerns, in 2015, the General Assembly enacted Goddard's Law which elevated criminal animal abuse of companion animals to a potential felony case and in accordance with provisions of that bill, out of the hands of these private prosecutors working for the Humane Societies. While these much-needed changes in state law had my full support, they only partly addressed the concerns raised in my two prior bills (HB 198 and HB 278) in the 131st General Assembly.

The proposed changes to humane society law, the oversight of non-prosecution agreements and subjecting humane society agents to the state bribery law that are critical features of HB 24 are long overdue updates to the ORC. Collectively, they are intended to help ensure due process of those accused of animal abuse and public accountability for county humane societies and their actions.

As most of you know, I was a Medina County Commissioner for 18 years. Late in 2013, a number of residents came to me to complain about the actions of the humane agent working for the local humane society, as well as the private prosecutor hired by the humane society. Subsequently, the County Probate Judge engaged the County Sheriff and the County Prosecutor into conducting an

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investigation into the various charges and complaints. I have attached a copy of the investigation conducted by the Sheriff's department for your review and consideration.

One of the most troubling concerns originating from the various complaints was the use of Non-Prosecution Agreements by the Humane Society under extra-legal powers exercised by the humane officer and the private prosecutor. Several of the residents mentioned these NPA's but stated that they were afraid to produce copies for fear that they would be prosecuted as retribution. One of them told me that the Humane Officer warned them that they would definitely be prosecuted if they publicly revealed the document. True or not, I believe that at the very least some of them felt intimidated by the potential of further prosecution by the Humane Society's private attorney. However, one complainant was willing to produce the document.

This resident signed a Non-Prosecution Agreement to avoid prosecution under Ohio Revised Code Chapter 959. Under this extra-legal agreement the animal owner was required to pay the local humane society \$20 per month. The Sheriff's report shows that the Humane Officer personally collected that \$20 per month from the owner in cash without a receipt which presumably was conveyed to the treasury of the humane society. I don't know of any public law enforcement official or county prosecutor that thinks this collection of cash as part of a Non-Prosecution Agreement is appropriate handling of what some might consider to be public funds.

Maybe this particular agreement was a fair settlement of the case against this owner. Maybe the cash fees imposed upon the owner covered the costs of veterinarian services that were required to euthanize the owner's dog, as the Humane Society's private attorney has claimed. But perhaps it wasn't. But I do know, the County Prosecutor, the County Probate Judge, the County Sheriff, the Board of County Commissioners, and the Municipal Court Judge were all unaware of this specific non-Prosecution Agreement at that time.

Unfortunately, this does not appear to be an isolated incident. During testimony to House committees over the last 4 years, references are made several times to NPA's by Humane Societies elsewhere in the State of Ohio.

"When the SPCA officers came up, told me I would pay tens of thousands of dollars to them to get my horses back, threatened to call Child Services to have my children taken away, told me I would be prosecuted and sent to prison for years (and I had four children from ages 2 to 16 at the time), I signed whatever they put in front of me. I had not done anything wrong. But threats—veiled and spoken—and the fear of losing my children and my freedom made me sign it." Tori Whitacre, 112 Peake CT, Creston, OH 44217. Testimony before House Civil Justice Committee, May 30, 2017.

To fix this issue, HB 24 proposes to prohibit a humane society from entering into written agreement not to prosecute a person for an alleged violation of law unless the agreement has been reviewed and approved by a judge.

This bill goes further to offer a comprehensive clean-up of Humane Society law. I will keep the following changes brief:

- Requires each county humane society submit an annual report of enforcement activities to the appropriate county sheriff.
- Specifies that generally the records of an enforcement activity by a humane society agent are public records under Ohio Public Records Law.

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- Specifies procedures for the removal from office of a humane society agent for “just cause.”
- Specifies that a humane society agent is a "public servant" for the purposes of bribery law and is therefore subject to the criminal statute on bribery.
- Expands the current law, which governs the seizure and impoundment of companion animals, to apply to the seizure and impoundment of any animal when related to a violation of domestic animal law.
- Requires that the written notice, which the impounding officer must provide to the owner, be given not later than 24 hours after the animal was seized and impounded - - current law is silent on the timing of such notice.
- Modifies the law governing the amount of bond that a court may determine must be provided by the owner of the animal for the care of the animal during impoundment using a “necessary and reasonable” standard.
(Jane Smith of Wayne County in *Testimony before House Civil Justice Committee*, May 30, 2017. Paid \$300 a month for care of her daughter’s gecko who ate \$1.20 worth of crickets a week. She also reported another seizure of 800 feeder mice and 200 guinea pigs from a pet store in which the bond was set as \$10,000 PER DAY. The pet shop owner forfeited their animals.)
- Increases the monthly salary of humane agents for the first time since 1953. We have also built in raises, occurring every 5 years, to offset inflation.
- HB 24 updates the humane law, so that Humane Societies are solely focused on animal cases. Specifically, the bill eliminates the authority for these special attorneys to prosecute violations of law relating to child abuse, employment of a child under 14 years of age and “neglect or refusal of an adult to support a destitute parent.” While Humane Agents will remain mandatory reporters of child abuse, in summary, Humane Societies will no longer be permitted to prosecute child abuse cases, or any case related to humans.
- HB 24 also gives County Commissioners the flexibility to pay for the Humane Agents and appointed prosecuting attorneys of animal abuse cases out of the general fund or the dog and kennel fund, as they so choose.

Proponents for these various provisions include the County Commissioners Association of Ohio, Ohio Prosecuting Attorneys Association, and the Ohio Judicial Conference. In the 132nd General assembly, Substitute House Bill 147 was voted out of the House Civil Justice Committee chaired by Representative Jim Butler unanimously, and passed the House 87-2.

Thank you Mr. Chairman. I am available for any questions the committee may have.