



Ohio Prosecuting Attorneys Association

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Executive Director
House Bill 24
Proponent Testimony
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Chairman Koehler, Vice-Chair Smith, Ranking Member Brent and members of the House Agriculture and Rural Development Committee, thank you for the opportunity to provide proponent testimony in support of House Bill 24, a bill to update Ohio humane society law.

Our association has been engaged with Rep. Hambley on this legislation for several years now. We appreciate his willingness to broker compromise on the bill and find a workable middle ground. We have agreed that we can support the version of the bill that is now pending despite its not addressing two concerns that our members have with the current state of humane society law.

Our members are generally concerned about humane societies performing governmental functions as a private organization. Under current law, humane societies exercise two such functions – humane society agents are granted arrest authority (with only 20 hours of training) and are granted authority to appoint private attorneys to prosecute violations of law relating to the prevention of cruelty to animals. We prefer that these functions be performed by government officials who are responsible to the public they serve. We encouraged Rep. Hambley to repeal both functions. In an effort to find a middle ground, Rep. Hambley arrived at the bill that is before you now that maintains these functions but establishes greater oversight of humane societies.

I understand that there are questions in particular about the private prosecution provision and judicial oversight of non-prosecution agreements entered into by the private attorneys employed by humane societies. I also understand that it has been suggested that, if humane society attorneys are to be subjected to such judicial oversight, elected prosecutors and their assistant prosecutors should be as well. This gets to the heart of our concerns with private prosecutions because our elected prosecutors and their assistants are already subject to public oversight while humane society attorneys are not. Most importantly, our county prosecutors are elected and their assistant prosecutors are their representatives. They have inherent authority to bring charges against a person, dismiss charges against a person, and enter into negotiated pleas – which the court may refuse to accept. Prosecutors do this on behalf of the people of the State of Ohio. If the voting public doesn't like the way a prosecutor is handling cases, they can be voted out of office.

I would also draw the committee's attention to Rule 3.8 of the Ohio Rules of Professional Conduct. The rule establishes the "special responsibilities of a prosecutor" under our attorney ethics rules. It provides that the prosecutor in a criminal case shall not "pursue or prosecute a charge that the prosecutor knows is not supported by probable cause" and shall not "fail to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate guilt...or mitigates the offense..." The comments to the rule note that "A prosecutor has the responsibility of a minister of justice and *not simply that of an advocate* (emphasis added). This responsibility carries with it specific obligations to see that the defendant is accorded justice and that guilt is decided upon the basis of sufficient evidence." The comment goes on to say that "knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4" (Misconduct).

Private attorneys appointed by humane societies are not subject to the voting public. Their non-prosecution agreements are not subject to judicial oversight – at least not currently. And they are not subject to Rule 3.8 of the Rules of Professional Conduct regarding the special responsibilities of a prosecutor. They are private attorneys who are advocating for their private client, the humane societies. They are not ministers of justice who are representing and advocating for the people of the State of Ohio.

Given this, House Bill 24 appropriately provides judicial oversight of the agreements that these private attorneys enter into, oversight which will help prevent abuses and promote transparency. This strikes at least some balance between the desire of humane societies to maintain this authority and the need for the public to have confidence that our criminal justice system is promoting public safety, not favoring private interests.

Thank you, again, for the opportunity to provide testimony in support of House Bill 24. I would be happy to answer any questions.