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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 37  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Antani and Holmes

Amanda George Goodman, Attorney

CORRECTED VERSION<sup>\*</sup>

### Summary

#### **Dog designation hearing processes and related provisions**

- Alters the process for designating a dog a vicious, dangerous, or nuisance dog.

#### **Vicious dogs**

- Revises the behaviors that lead to a designation of a dog as a vicious dog.
- Requires a court, if a dog is finally determined to be a vicious dog and the dog has killed a person or another dog, to order the dog to be humanely destroyed.
- Allows a court, if a dog is finally determined to be a vicious dog and the dog has not killed another person or another dog, to order the dog to be humanely destroyed.
- Specifies that a farm dog under certain circumstances is not a vicious dog.

#### **Dangerous dogs**

- Revises the behaviors that lead to a designation of a dog as a dangerous dog.
- Specifies that both of the following are not a dangerous dog:
  - A dog that has caused injury, serious injury, or death to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the dog's owner, keeper, or harbinger ("owner"); and
  - A farm dog under certain circumstances.

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\* The corrected version of the analysis adds a footnote describing a court's ability in current law to order a vicious dog to be humanely euthanized and makes formatting corrections.

## **Other designation hearing process provisions**

### **Jurisdiction**

- Changes which court has territorial jurisdiction to conduct a hearing concerning the designation of a dog as a nuisance dog, dangerous dog, or vicious dog.

### **Reasonable cause**

- Specifies that reasonable cause to designate a dog as a nuisance, dangerous, or vicious dog may be supported by one or more notarized affidavits of a witness describing the situation in which the dog engaged in behavior that warrants such a designation.

### **Affirmative defenses**

- Establishes the following affirmative defenses to a designation of a dog as a nuisance, dangerous, or vicious dog:
  - The dog or the dog's offspring was willfully teased, tormented, or abused;
  - The dog was coming to the aid or defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out that activity;
  - The dog caused injury or serious injury to a person or killed a person while the person was committing or attempting to commit a trespass or other criminal offense on the property of the dog's owner;
  - The dog was responding to its own pain or injury; or
  - The person toward whom the dog's behavior was directed was intervening between two or more animals engaged in aggressive behavior or fighting.

## **Criminal penalties**

### **Violation of confinement and restraint prohibition**

- Revises the criminal penalties for violating the existing prohibition against failing to properly confine or restrain a dog.
- Establishes affirmative defenses to the prohibition that are identical to the affirmative defenses that may be asserted in a dog designation hearing.

### **Ownership of certain dogs by felons**

- Adds child endangerment to the list of existing offenses that preclude a person from owning certain types of dogs, and increases the period of time that a person cannot own such a dog from three years to five years.

### **Criminal penalties relating to sale or transfer of dogs**

- Revises the criminal penalties for violating the existing prohibition against failing to comply with specified requirements for the sale or transfer of a dog as follows:
  - Increases the penalty from a minor misdemeanor to a fourth degree misdemeanor on a first offense; and

--Increases the penalty from a fourth degree misdemeanor to a third degree misdemeanor on each subsequent offense.

- Applies the above penalties to all violations of the prohibition rather than establishing different penalties for different elements of the prohibition as in current law.

## **Notification regarding complaints**

- Requires any person authorized to enforce the Dog Law (“investigator”) to investigate any complaint that indicates a possible violation.
- Requires the investigator to notify the dog’s owner that there has been a complaint regarding the dog if the investigator does not cite the person for or charge the person with a violation.
- Establishes the required contents of the notice, requires the investigator to post the notice on the door of the dwelling at which the dog resides within 24 hours of the investigation, and requires the dog’s owner to respond to the notice within 48 hours via specified forms of communication.
- Establishes specified penalties if the dog owner does not respond.

## **Other provisions**

### **Dog wardens’ arrest authority and training**

- Clarifies that dog wardens and deputies have the same police powers, including the authority to make arrests, as are conferred on sheriffs and police.
- Requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General establishing requirements for the training of dog wardens and deputies.

### **Liability insurance for a dangerous dog**

- Allows additional entities to provide insurance to the owner of a dangerous dog.
- Specifies that insurance coverage must be at least \$100,000.

### **Reorganization of the Dog Law**

- Reorganizes and moves various provisions of the Dog Law.

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## Detailed Analysis

The bill revises and reorganizes the law governing dogs in the following three ways: (1) it revises the dog designation hearing process, (2) it revises the criminal penalties that apply to an owner of a dog that causes harm to a person or another dog, and (3) it establishes a notification process for complaints of alleged violations of the Dog Law.

### Dog designation hearing processes and related provisions

Under current law, a dog warden or other animal control official may designate a dog that harms or threatens a person or another dog as either a vicious, dangerous, or nuisance dog. Current law establishes a process for designating a dog into one of those three categories depending on the dog’s behavior. Before a dog is designated, the owner, keeper, or harborer (“owner”) of the dog may object to the designation through a court hearing process.

The bill revises the behaviors that lead to a designation of a dog as a vicious dog or dangerous dog, and the process for designation. Notably, the bill broadens the types of behaviors that result in a dog being designated a vicious dog. It generally retains the provisions of law governing the designation of a nuisance dog.

#### Vicious dogs

As indicated above, the bill revises the behaviors that result in a dog being designated a vicious dog as follows:<sup>1</sup>

Current law	H.B. 37
A dog that, without provocation, has done any of the following:	A dog that has done any of the following (removes “without provocation”):
1. Killed a person;	Same.
2. Caused serious injury to a person.	Same.
No provision.	Adds the following:

<sup>1</sup> R.C. 955.21(G)(1).

Current law	H.B. 37
	<p>Caused injury to a person after being designated a dangerous dog; or</p> <p>Caused serious injury or death to another dog after being designated a dangerous dog, including death by euthanasia when recommended by a veterinarian, registered veterinary technician, or county dog warden after evaluating the dog's injuries.</p>

Under the bill, if a dog is finally determined to be a vicious dog and the dog killed a person or another dog during the incident that gave rise to that determination, a court *must* order the dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense ("humanely destroyed").<sup>2</sup> Current law only requires a vicious dog to be humanely destroyed after a second attack.<sup>3</sup>

However, if the dog is finally determined to be a vicious dog, and the dog did not kill a person or another dog during the incident that gave rise to that determination – that is, the dog caused injury or serious injury to a person or serious injury to a dog – the court *may, but is not required to*, order the dog to be humanely destroyed.<sup>4</sup>

The bill also retains, in part, current law that requires a court to apply certain restrictions and requirements to the owner of a dog determined to be a vicious dog (if the vicious dog is not ordered to be humanely destroyed), including restrictive confinement and restraint and the obligation to obtain liability insurance.<sup>5</sup>

Last, current law excludes certain dogs from the definition of vicious dog. Specifically (1) a police dog that was assisting law enforcement when the dog caused injury, serious injury, or death to any person or dog, and (2) a dog that caused injury, serious injury, or death to a person or dog who was attempting to commit a criminal offense on the dog owner's property.

The bill adds to this list a dog that is kept on a farm, and has injured, seriously injured, or killed another dog because that dog either came onto farm property or disrupted the farm dog's duties.<sup>6</sup>

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<sup>2</sup> R.C. 955.222(E)(2).

<sup>3</sup> See R.C. 955.222 and 955.99(H). Under current law, when a dog is first designated a vicious dog under R.C. 955.222 for either killing or causing serious injury to a person, the court does not have authority to order the vicious dog to be humanely destroyed. It is not until that vicious dog *subsequently* kills or causes serious injury to a person that the court has the authorization to order the vicious dog to be humanely destroyed through a criminal prosecution of the dog's owner under R.C. 955.99(H).

<sup>4</sup> R.C. 955.222(E)(1).

<sup>5</sup> R.C. 955.222(E)(3) and 955.22(F).

<sup>6</sup> R.C. 955.21(G)(2).

## Dangerous dogs

The bill revises the behaviors that result in a dog being designated a dangerous dog as follows:<sup>7</sup>

Current law	H.B. 37
A dog that, without provocation, has done any of the following:	A dog that has done any of the following (removes “without provocation”):
1. Caused injury, other than killing or serious injury, to a person;	1. Caused injury to any person;
2. Killed another dog;	2. Caused injury, serious injury, or death to another dog, including death by euthanasia when recommended by a veterinarian, registered veterinary technician, or county dog warden after evaluation of the dog’s injuries; and
3. Been the subject of a third or subsequent violation of the provision governing properly restraining a dog.	3. Same, but adds that the owner of the dog has pled guilty to or been convicted of three or more of those violations.

Current law, retained by the bill, excludes from the definition of dangerous dog a police dog that has caused injury, serious injury, or death to any person or dog while the police dog is assisting law enforcement officers in the performance of their official duties. The bill adds that a dangerous dog also does not include either of the following:

1. A dog that has caused injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the dog owner’s property; or
2. A dog that is kept or harbored on a farm that has injured, seriously injured, or killed another dog that has either come onto the farm property or disrupted the farm dog’s duties.<sup>8</sup>

## Dangerous dog registration

The bill requires a county dog warden, instead of a county auditor, to issue dangerous dog registrations and administer the law governing dangerous dog registration certificates.<sup>9</sup>

The bill also revises the notification requirements that apply when the owner of a dangerous dog relocates. Under current law, if a dangerous dog owner relocates to a new address, the owner must provide specified written notice to the appropriate county auditor. Under the bill, however, that notification requirement applies only if the dangerous dog also

<sup>7</sup> R.C. 955.21(A)(1).

<sup>8</sup> R.C. 955.21(A)(2).

<sup>9</sup> R.C. 955.223(B) and 955.224.

relocates with the owner. In addition, the bill requires the notification to be given to the appropriate county dog warden instead of the county auditor.<sup>10</sup>

## **Other designation hearing process provisions**

### **Jurisdiction**

The bill changes which court has jurisdiction to conduct a hearing concerning the designation of a dog as a nuisance, dangerous, or vicious dog. Under current law, the municipal or county court that has jurisdiction over the dog owner's residence conducts the hearing. In the bill, the municipal or county court that has jurisdiction over the location of the alleged incident (that gave rise to the designation hearing) conducts the hearing.<sup>11</sup>

### **Reasonable cause**

Under current law, a person authorized to designate a dog as a nuisance, dangerous, or vicious dog, must have reasonable cause to do so. The bill specifies that reasonable cause may be supported by one or more notarized witness affidavits describing the situation in which the dog engaged in behavior that warrants the designation.<sup>12</sup>

### **Affirmative defenses**

The bill establishes an affirmative defense (which is a defense that, if credible, negates the designation) to the designation of a dog as a nuisance, dangerous, or vicious dog if any of the following apply:

1. The dog or the dog's offspring was willfully teased, tormented, or abused by a person;
2. The dog was coming to the aid or defense of a person who was not engaged in illegal activity;
3. The dog was responding to its own pain or injury;
4. The person toward whom the dog's behavior was directed was intervening between two or more animals engaged in aggressive behavior or fighting; or
5. The dog caused injury, serious injury, or death to a person while the person was committing or attempting to commit a criminal offense on the dog owner's property.<sup>13</sup>

Current law instead specifies that a nuisance, dangerous, or vicious dog is, by definition, a dog that demonstrated specified behaviors and was not provoked – meaning the dog was not teased, tormented, or abused by a person, or the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out that activity.<sup>14</sup>

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<sup>10</sup> R.C. 955.224(C) and (D).

<sup>11</sup> R.C. 955.222. The bill also removes superfluous language indicating which court has jurisdiction to conduct dog designation hearings.

<sup>12</sup> R.C. 955.222(A).

<sup>13</sup> R.C. 955.222(D).

<sup>14</sup> R.C. 955.11(A)(7).

## Criminal penalties

The bill revises the criminal penalties that apply to the owner of *any* dog that is not properly kept, confined, or restrained, and that causes injury or death to a person or another dog. The bill also makes changes to the provisions that govern felons that own dogs, and the criminal penalties relating to the sale or transfer of dogs.

### Violation of confinement and restraint prohibition

Current law prohibits a person from failing, at any time, to do either of the following:

1. Keep a dog physically confined or restrained on the owner's premises by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape; or
2. Keep a dog under the reasonable control of some person.

The prohibition does not apply when a dog is lawfully engaged in hunting and accompanied by its owner.<sup>15</sup>

The bill revises the existing penalties associated with the prohibition and adds new penalties. The changes to the penalties authorize (or in certain cases require) a court to order the humane destruction of a dog even if the dog has not previously been designated a dangerous or vicious dog. Under current law, a court cannot order a dog destroyed for a violation unless the dog has been so designated. The following table sets forth the changes made by the bill:

Type of dog	Penalty for first offense	Penalty for subsequent offenses	Additional ramifications	Comparison to current law
A nondesignated dog	\$25 to \$100 fine	\$75 to \$250 fine; possible imprisonment for up to 30 days.	The court may order the offender to do any of the following: 1. Personally supervise the dog; 2. Require that dog to complete dog obedience training; or 3. Both (1) and (2) <sup>16</sup>	Same as current law (see R.C.955.99(E)).
Nuisance dog	Minor misdemeanor	4th degree misdemeanor	For a third offense involving the same dog, a court must require the	Same as current law (see R.C. 955.99(F)).

<sup>15</sup> R.C. 955.22(B).

<sup>16</sup> R.C. 955.22(D).

Type of dog	Penalty for first offense	Penalty for subsequent offenses	Additional ramifications	Comparison to current law
			<p>offender to register the dog as a dangerous dog. The court may also order the offender to do any of the following:</p> <ol style="list-style-type: none"> <li>1. Personally supervise the nuisance dog;</li> <li>2. Require that dog to complete dog obedience training; or</li> <li>3. Both (1) and (2).<sup>17</sup></li> </ol>	
Dangerous or vicious dog	4th degree misdemeanor	3rd degree misdemeanor	<p>The court must do one of the following:</p> <ol style="list-style-type: none"> <li>1. Order the offender to obtain liability insurance and personally supervise the dangerous or vicious dog, require that dog to complete dog obedience training, or do both;</li> <li>2. Order the dangerous or vicious dog to be humanely destroyed.<sup>18</sup></li> </ol>	<p>Same as current law with respect to a dangerous dog (see R.C. 955.99(G)). For vicious dogs the penalty is a 4<sup>th</sup> degree felony if the dog kills a person, and the dog must be destroyed. If the dog causes serious physical injury to a person, it is a 1<sup>st</sup> degree misdemeanor and the court must do one of the following:</p> <ol style="list-style-type: none"> <li>1. Order the offender to obtain liability insurance and take certain actions that apply to the keeping and confinement of dangerous dogs; or</li> <li>2. Order the dog to be humanely destroyed.</li> </ol>

<sup>17</sup> R.C. 955.22(E).

<sup>18</sup> R.C. 955.22(F).

Type of dog	Penalty for first offense	Penalty for subsequent offenses	Additional ramifications	Comparison to current law
<u>Any</u> dog that causes injury (other than serious injury) to a person or causes injury or serious injury to another dog	1 <sup>st</sup> degree misdemeanor	5 <sup>th</sup> degree felony	The court <u>may</u> order that the dog be humanely destroyed. <sup>19</sup>	New provision
<u>Any</u> dog that kills another dog	1 <sup>st</sup> degree misdemeanor	5 <sup>th</sup> degree felony	The court <u>must</u> order that the dog be humanely destroyed. <sup>20</sup>	New provision
<u>Any</u> dog that causes serious injury to a person	5 <sup>th</sup> degree felony	4 <sup>th</sup> degree felony	The court <u>may</u> order that the dog be humanely destroyed. <sup>21</sup>	New provision
<u>Any</u> dog that kills a person	5 <sup>th</sup> degree felony	4 <sup>th</sup> degree felony	The court <u>must</u> order that the dog be humanely destroyed. <sup>22</sup>	New provision

If the court does not order a dog to be humanely destroyed when authorized to do so, the court must issue an order that requires the dog owner to comply with the requirements governing dangerous dogs. Those requirements include restrictive confinement and restraint and the obligation to obtain liability insurance.<sup>23</sup>

Last, the bill establishes affirmative defenses to the offense that are identical to the affirmative defenses that may be asserted in a dog designation hearing (see above).<sup>24</sup>

### **Ownership of certain dogs by felons**

Current law prohibits certain felons from knowingly owning, possessing, having custody of, or residing in a residence with either of the following:

<sup>19</sup> R.C. 955.22(G)(1) and (3).

<sup>20</sup> R.C. 955.22(G)(1) and (3).

<sup>21</sup> R.C. 955.22(G)(2) and (4).

<sup>22</sup> R.C. 955.22(G)(2) and (4).

<sup>23</sup> R.C. 955.22(I).

<sup>24</sup> R.C. 955.22(C).

1. An unspayed or unneutered dog that is 12 weeks or older; or
2. Any dog that has been determined to be a dangerous dog.

Specifically, this applies to a felon who is convicted of or pleads guilty to any of the following:

1. A felony offense of violence committed on or after May 22, 2012;
2. A felony violation of a domestic animal offense;
3. Conspiracy, attempt, and complicity;
4. A weapons control offense;
5. A corrupt activity offense ; or
6. Drug offenses committed on or after May 22, 2012.

The bill adds child endangerment<sup>25</sup> to the list of offenses.

Under current law, the prohibition applies for a period of three years, commencing either on the person's date of incarceration release or, if the person is not incarcerated, on the date of the person's final release from the other sanctions. The bill increases this restricted period to five years.<sup>26</sup>

### **Criminal penalties relating to sale or transfer of dogs**

The bill revises the criminal penalties that apply to a person who fails to comply with specified requirements governing the sale or transfer of a dog. Current law prohibits any person from selling or transferring a dog unless the person provides all of the following to the buyer or other transferee ("buyer"):

1. A transfer of ownership certificate that contains the dog's registration number, the seller's name, and a brief description of the dog;
2. If requested, a written notice regarding the dog's behavior and propensities; and
3. A written form on which the seller must furnish the buyer's name and address and the dog's age, sex, color, breed, and current registration number if the seller has knowledge that the dog is a dangerous dog. This information must also be provided to the board of health of the health district in which the buyer resides and to the dog warden of the county in which the buyer resides. The person must provide the required form not later than ten days after the transfer of ownership or possession of the dog and must include with it answers to certain questions regarding the behavior of the dog.<sup>27</sup>

The bill specifies that whoever violates any element of the above prohibition is guilty of a fourth degree misdemeanor on a first offense and a third degree misdemeanor on each

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<sup>25</sup> R.C. 2919.22, not in the bill.

<sup>26</sup> R.C. 955.54.

<sup>27</sup> R.C. 955.11(B) to (E) in current law; R.C. 955.13 in the bill.

subsequent offense.<sup>28</sup> Current law instead specifies that whoever violates the prohibition because of a failure to comply with (1) above is guilty of a minor misdemeanor; whoever violates the prohibition because of a failure to comply with (2) or (3) above is guilty of a minor misdemeanor on a first offense and a fourth degree misdemeanor on each subsequent offense.<sup>29</sup>

## **Notification regarding complaints**

The bill requires any person authorized to enforce the Dog Law (“investigator”) to investigate any complaint that indicates a possible violation of any provision of that Law involving a dog. If, after investigating an alleged violation, the investigator does not cite the person for or charge the person with a violation, the investigator must notify the dog’s owner that there has been a complaint regarding the dog and that the investigator investigated a possible violation.

The bill requires the notice to specify all of the following:

1. A citation to the provision or provisions of law that govern the alleged violations;
2. Contact information for the investigator; and
3. A requirement that the dog’s owner respond to the investigator indicating that the owner has received the notice.

Under the bill, the investigator must post the notice on the door of the dwelling at which the dog resides within 24 hours of the investigation. The dog’s owner must respond within 48 hours via email, facsimile, telephone, or social media correspondence, indicating that the owner has received the notice. If the dog’s owner responds within a reasonable time after the 48-hour period, the person is not subject to the fines discussed below, provided that the response is accompanied with a reasonable explanation of why the 48-hour response deadline was not met.

If the owner of the dog does not respond within:

--48 hours or a reasonable time from the time the notice is posted, the owner must be fined \$25;

--96 hours, the owner must be fined \$40; or

--Seven days, a court may issue a summons or warrant for the owner’s arrest.

The fines must be deposited in the applicable county dog and kennel fund.<sup>30</sup>

## **Other provisions**

### **Dog wardens arrest authority and training**

The bill clarifies that dog wardens and deputies have the same police powers, including the authority to make arrests, as are conferred on sheriffs and police officers.<sup>31</sup> The bill also

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<sup>28</sup> R.C. 955.13(E).

<sup>29</sup> R.C. 955.99(A), repealed.

<sup>30</sup> R.C. 955.60.

requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General that establishes requirements for the training of dog wardens and deputies for the purposes of the exercise of those police powers that include 42 hours of initial training and ten hours of continuing education within a time period established by the Commission.<sup>32</sup>

### **Liability insurance**

The bill retains the current law requirement that the owner of a dangerous dog must obtain liability insurance with an insurer authorized to write liability insurance in Ohio providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court. The bill adds that an approved or otherwise eligible insurer may provide the coverage and specifies that the coverage must be at least \$100,000.<sup>33</sup>

### **Reorganization of the Dog Law**

The bill reorganizes and moves the codified location of the following:

- Provisions governing criminal penalties;<sup>34</sup>
- Provisions defining “vicious,” “dangerous,” and “nuisance” dogs;<sup>35</sup>
- Provisions governing the transfer of ownership of any dog (but revises the provisions governing dangerous dog registration, see above);<sup>36</sup>
- The confinement and restraint requirements for all dogs;<sup>37</sup>
- The confinement and restraint requirement for dangerous dogs;<sup>38</sup>
- Requirements regarding ownership of a dangerous dog;<sup>39</sup> and
- Provisions prohibiting debarking and silencing dangerous dogs.<sup>40</sup>

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<sup>31</sup> R.C. 955.12(E).

<sup>32</sup> R.C. 109.73(A)(13).

<sup>33</sup> R.C. 955.223(B)(1).

<sup>34</sup> R.C. 955.99, repealed; R.C. 955.01, 955.10, 955.11, 955.13, 955.16, 955.22, 955.223, 955.224, 955.225, 955.23, 955.24, 955.25, 955.261, 955.39, 955.43, 955.50, and 955.54.

<sup>35</sup> R.C. 955.11(A) is moved to R.C. 955.21.

<sup>36</sup> R.C. 955.11(B) to (D) is moved to 955.13; R.C. 955.22(I) is moved to R.C. 955.224.

<sup>37</sup> R.C. 955.22(B).

<sup>38</sup> R.C. 955.22(D) is moved to 955.223(A).

<sup>39</sup> R.C. 955.22(E) is moved to 955.223(B).

<sup>40</sup> R.C. 955.22(F) to (H) is moved to 955.225.

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## History

Action	Date
Introduced	02-12-19