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# COUNTY ADVISORY BULLETIN

**CAB**

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**Bulletin 2021-02**

**April 2021**

## **HUMANE SOCIETY REFORM CHEMICAL CAPTURE AUTHORIZED FOR DOG WARDENS**

**APPLICABLE LEGISLATION:** Sub. SB 24 (133rd General Assembly)

**REVISED CODE SECTIONS:** Amends ORC Sections 109.73, 935.19, 935.20, 955.16, 959.131, 959.132, 959.15, 959.21, 959.99, 1717.01, 1717.02, 1717.05, 1717.06, 1717.07, 1717.08, 1717.09, 1717.10, 2151.421, 2921.02, 2931.18, 4729.01, 4729.531, 4729.532, 4729.54, 4729.55, 5101.63, and 5147.22; Enacts ORC Sections 955.151, 959.134, 1717.061, 1717.062, 1717.16, 1717.17, 1717.18, 4729.533, 4729.534, 4729.535, 4729.542, 4729.991, and 4741.201; and Repeals ORC Sections 1717.03, 1717.04, 1717.14, and 3113.10.

**LEAD SPONSORS:** Representatives Steve Hambley and Darrell Kick

**HOUSE COSPONSORS:** Abrams, Brown, Butler, Callender, Carfagna, Carruthers, Crossman, Dean, Denson, Galonski, Ghanbari, Ginter, Green, Greenspan, Grendell, Hillyer, Holmes, A., Jones, Koehler, LaRe, Leland, Lepore-Hagan, Lightbody, Lipps, Liston, Manning, D., O'Brien, Patton, Perales, Plummer, Reineke, Roemer, Rogers, Seitz, Smith, T., Stein, Upchurch, Wiggam

**SENATE COSPONSORS:** Antonio, Blessing, Brenner, Burke, Coley, Craig, Eklund, Gavarone, Hackett, Hoagland, Huffman, M., Huffman, S., Johnson, Kunze, Lehner, McColley, Obhof, O'Brien, Peterson, Roegner, Rulli, Sykes, Thomas, Wilson

**EFFECTIVE DATE:** March 31, 2021

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### **BACKGROUND**

CCAO policy sought reform of the humane society law. The laws governing humane societies were very broad and gave extraordinary powers to this non-profit agency that

had limited oversight by elected officials. Provisions of HB 24 addressed many of the reforms sought by CCAO. One of CCAO's and the Ohio Dog Warden Association's major legislative goals was also achieved by including provisions in HB 24 authorizing dog wardens to utilize chemical capture of animals.

Humane agents, who can act in an official law enforcement capacity to enforce laws to prevent the cruelty to animals and children, receive supplemental salary payments from the county general revenue fund. Because the agent is receiving public funds, CCAO believed that the humane agents should submit weekly written reports to the board of county commissioners of their enforcement activities as well as dogs seized, impounded, adopted and destroyed. CCAO felt the law should be updated to allow for the removal of a humane agent for cause. Ohio law permits humane societies to appoint an attorney and may employ one or more assistant attorneys to prosecute misdemeanor violations listed in ORC Section 2931.18, including prevention of cruelty to animals or children. These attorneys are paid out of the county treasury in an amount approved as just and reasonable by the board of county commissioners. CCAO sought to have this mandate eliminated or to at least change the law to require the consent of the board of county commissioners. Each of these areas was addressed by HB 24.

Appointment of the humane agents was not addressed. CCAO continues to advocate that appointments of humane agents should be approved by county commissioners and not the county probate judge. The humane agents within municipal corporations are appointed by the municipal executive official. Commissioners serve as the executive officials for the county and should have the same ability to appoint humane agents as do the mayor or city manager of a city or village.

## **CHANGES TO THE HUMANE SOCIETY LAW**

### ***Authority over protection of persons removed***

HB 24 limits a humane society's authority to the protection of animals. The authority of humane society agents to arrest a person for a violation of law for the protection of persons or children has been removed. These provisions of law were truly antiquated and the responsibility for these functions are and have been performed by other governmental agencies for many years.

### ***Compensation of humane agents*** (ORC 1717.07)

HB 24 increases the minimum amount the county must pay a humane society agent from \$25.00 to \$100.00 per month. There is now also an automatic increase in the minimum salary by \$5 per month every five years beginning January 1, 2020. This payment is now allowed to be made from the dog and kennel fund in addition to the county general fund. (The village amount was increased from \$5.00 to \$25.00 and the city amount was increased from \$25.00 to \$150.00.)

### ***Humane society appointment of attorneys*** (ORC 2931.18)

HB 24 makes two major changes. While humane societies maintain their authority to appoint, they no longer are authorized to employ, attorneys to prosecute violations of law relating to prevention of cruelty to animals, except for certain felony violations related to companion animals. While the commissioners are required to pay the attorneys appointed by the humane society an amount the commissioners determine to be just and reasonable, they are now allowed use dog and kennel funds (ORC 2931.18) in addition to the county general fund to make the pay these attorneys.

### ***Enforcement activity reports*** (ORC 1717.16)

The act requires each county humane society to annually submit enforcement activity reports to the county sheriff. It also specifies that humane society agent enforcement activity records are legal public records, except for records that are confidential law enforcement investigatory records. CCAO had sought to have these reports also submitted directly to the commissioners, however, you are advised to contact your sheriff to ask him to routinely provide you copies of the reports filed with the sheriff's office.

### ***Nonprosecution agreements*** (ORC 1717.18)

HB 24 now prohibits a humane society from entering into a nonprosecution agreement unless the agreement has been reviewed and approved by the judge that has presided over the probable cause hearing for seizure of the animal related to the case. In reviewing the agreement the judge is required to reconsider whether the bond amount if previously set is necessary and reasonable for the animal's care. A judge cannot approve an agreement that requires a person to provide financial compensation that is in excess of what is necessary and reasonable for the animal's care during the impoundment of the animal. Furthermore, the act renders a nonprosecution agreement void and unenforceable if a judge has not approved it.

### ***Humane society agent's appointment approval and proof of training***

HB 24 clarifies that an approving authority (the probate judge if the humane society is located outside a municipality) must approve a humane society agent's appointment in order for the appointment to take effect. Prior law did not specifically state that the appointment did not take effect until the approval. Current law requires a person to successfully complete at least 20 hours of training on issues relating to the investigation and prosecution of cruelty to and neglect of animals prior to their appointment as a humane society agent but no verification of successful completion of the training was required HB 24 now requires the person to submit proof of training as follows:

- For an individual who completes training after March 31, 2021: the individual must present to the approving authority proof of successful training signed by the training entity before the approving authority can approve the appointment. The

approving authority must then notify the sheriff and board of county commissioners when the agent's appointment has been approved.

- For an individual who is serving as humane society agent on or before March 31, 2021: the agent must present proof of successful training to the approving authority by September 30, 2021. Within two days after receiving the proof, the approving authority must notify the sheriff and board of county commissioners. If the agent does not present the required proof by September 30, 2021, the agent is suspended as a humane society agent until the proof is filed with the county sheriff. In addition, the probate judge of the county in which a humane society operates must, by June 29, 2021, send written notice to the society informing it of this requirement.

The approving authority is required to maintain, as a public record, a copy of each humane agent's proof of training received by the authority. The authority must file a copy of the proof with the county sheriff within two days of the appointment of a new agent or within two days of receiving proof from an agent appointed prior to March 31, 2021. The sheriff must maintain the copy as a public record. (ORC 1717.06(D))

A person may file a complaint with an appointing authority if the individual has reasonable cause to believe that the agent either has not successfully completed the required training or the agent's proof of successful completion of training contains false or misleading information. The complaint must be in the form of an affidavit. The approving authority must notify the humane society and investigate the complaint. If the authority finds that the agent has not provided signed proof of training, the authority must provide written notification to the agent's humane society to inform the society that the agent has 30 days from the date of the notification to provide signed proof. The authority must rescind the approval of the appointment and order the humane society to revoke the appointment if the agent does not provide the signed proof within the 30-day period or the authority finds that the agent knowingly provided proof of successful training completion that contains false or misleading information. The humane society must file written notice with the county sheriff of the revocation of a humane society agent's appointment. (ORC 1717.062)

### ***Humane society agent removal from office*** (ORC 1717.17)

HB 24 authorizes the probate judge to revoke the approval of an agent's appointment for just cause. A person may start the procedure for removal by filing with the probate court a motion to revoke the appointment. The motion must be a sworn affidavit describing the conduct that constitutes just cause for the motion.

After reviewing the facts, the probate judge may dismiss the motion without a hearing or direct the court clerk to serve the humane society agent with a summons and a copy of the motion and any accompanying memorandum. The summons must state the time and place for a hearing.

The humane society agent may waive the right to a hearing. If the humane society agent does so, the probate judge must revoke the humane society agent's appointment as requested in the motion. If the humane society agent does not waive the right to a hearing, the probate judge must conduct a hearing. The humane society agent is entitled to the assistance of counsel at the hearing.

At the hearing, the person who filed the motion has the burden of proving, by a preponderance of the evidence, that just cause exists for the revocation of the humane society agent's appointment.

If, after the hearing, the probate judge finds that the person who filed the motion has not sustained the burden of proof, the probate judge must deny the motion. If the probate judge finds that the burden of proof has been met, the probate judge must grant the motion and revoke the humane society agent's appointment.

### ***Application of bribery law to humane agents*** (ORC 2921.02)

The act specifies that a humane society agent is a public servant and therefore subject to Ohio's bribery law. Under that law, a public servant cannot knowingly solicit or accept for themselves or another person any valuable thing or valuable benefit to corrupt or improperly influence the person or another public servant regarding the discharge of the public servant's duty.

## **CHEMICAL CAPTURE AUTHORIZED FOR DOG WARDENS**

CCAO and the Ohio County Dog Warden Association spent several years working with the legislature to provide additional methods to safely capture dogs without spending days to catch or trap the dog or the use of lethal force. Dog wardens can now use chemical capture on dogs that create a safety risk such as dogs that are running on main roads and freeways or pose a risk around schools or homes. Past practices and techniques required traps which could take days or the use of firearms, which is fatal, to apprehend the dog. The ability to utilize the chemical capture of animals protects both the animal and the individuals seeking to safely secure the animal for capture. This authority was finally obtained through HB 24.

### ***Modification of animal euthanasia provisions*** (ORC 4729.531, 4729.532, 4729.533)

In order to facilitate chemical capture for dog wardens several changes had to be made in the statutes authorizing animal euthanasia. Currently the State Board of Pharmacy may issue a limited license to an animal shelter for purchasing, possessing, and administering drugs (in dosage form) for animal euthanasia. HB 24 authorizes the Pharmacy Board to issue a limited license to the office of a county dog warden that allows the office to purchase and use drugs for euthanasia.

An agent or employee of a dog warden is authorized to perform euthanasia by lethal injection only if the dog warden has a limited license; and the agent or employee, which may include the dog warden, has received certification after successfully completing a euthanasia technician certification course. The curriculum for a euthanasia technician certification course must be approved by the State Veterinary Medical Licensing Board, be at least 16 hours in length and meet certain curriculum requirements. If the agent, employee, or dog warden is a veterinarian technician, completion of the course is not required.

Several procedural changes were also made in the administration of animal euthanasia. The Veterinary Medical Board is required, in consultation with the Pharmacy Board, to approve by rule any substance used by a county dog warden or an agent or employee of a county dog warden or animal shelter to euthanize an animal by lethal injection and prohibits a dog warden or an agent or employee of a dog warden or animal shelter from performing euthanasia by lethal injection using any substance other than an approved substance. Former law instead required the Veterinary Medical Board and the Pharmacy Board to both approve by rule a combination of drugs that contained pentobarbital and at least one other drug used for euthanasia purposes. The act also allows the Pharmacy Board to approve the transfer of euthanasia drugs from an animal shelter or dog warden to another licensee. The act also removes the order of preference in law regarding authorized methods for euthanizing an animal when using a lethal solution.

If the dog warden intends to use dangerous drugs for euthanasia purposes, they are required to apply for and be issued a limited category II or III terminal distributor license from the Pharmacy Board . When submitting the application, the dog warden must include with the application a list of the dangerous drugs to be administered to animals and the personnel who are authorized to administer them to animals. Once issued a license, the dog warden may possess and use dangerous drugs for euthanasia.

A county dog warden, like an animal shelter, is obligated under law as a licensed as a terminal distributor of dangerous drugs to maintain supervision and control over the possession and custody of dangerous drugs that are acquired by or on behalf of the dog warden and to have at least one of their agents or employees is a certified euthanasia technician.

***Chemical capture provisions for dog wardens (ORC 4729.534)***

HB 24 authorizes an animal shelter or county dog warden that holds a limited category II or III terminal distributor license from the Pharmacy Board that allows the office to purchase and use drugs for euthanasia to apply to the Pharmacy Board for a chemical capture classification to the limited license. The chemical capture classification allows the holder to purchase, possess, and administer a combination of drugs for chemical capture. Chemical capture means using an anesthetic drug on a companion animal to do any of the following: (1) immobilize and capture, (2) attempt to immobilize and capture, or (3) attempt to immobilize or capture. (ORC 955.151(A), ORC 4729.533(B))

HB 24 authorizes a certified officer who is appointed or employed by a county dog warden that holds a chemical capture classification to chemically capture a companion animal to limit injury to the officer, the animal or another animal, or the public. A companion animal is an animal that is kept inside a residential dwelling and any dog or cat. It also provides civil immunity for any harm the officer causes to a companion animal, livestock, or wild animal if the officer is acting within the scope of the officer's employment and is in compliance with rules governing certified officers adopted by the Pharmacy Board and states that chemical capture of a companion animal in accordance with Ohio law is not an act of cruelty. (ORC 4729.534)

Only certified officers may engage in the chemical capture of a companion animal. An individual qualifies as a certified officer if the individual either successfully completes an approved chemical capture course or successfully completes training acceptable to the Pharmacy Board from the National Animal Control Association or Safe Capture International, Inc. In order to be an approved chemical capture course, the curriculum must include the following topics: the pharmacology, proper administration, storage, and recordkeeping of drugs used in chemical capture; federal and state laws regulating the storage and accountability of drugs used in chemical capture; chemical capture technology, animal behavior, post-immobilization procedures, proper public and personnel safety, and marksmanship training; and any other topic specified by the Board. (ORC 4729.534(C))

To administer the chemical capture provisions the Pharmacy Board, in consultation with the Veterinary Medical Board, is required, pursuant to ORC 4729.553(E), to adopt rules that:

1. Specify the information an applicant must provide for issuance or renewal of a chemical capture classification;
2. Specify the drugs to be used in chemical capture; the proper storage, administration, and use of approved drugs; the proper storage, maintenance, and use of instruments and equipment used in chemical capture; and the proper disposal of instruments used in chemical capture;
3. Establish criteria for determining when chemical capture is appropriate; the care of a companion animal immediately after capture; and recordkeeping for the drugs used and actions taken during a chemical capture; and
4. Address any other matters the Board considers necessary or appropriate for administration and enforcement of the law regarding chemical capture.

## **DISPOSITION OF IMPOUNDED DOGS - ORC 955.16**

HB 24 revises the law governing the disposition of a dog that has been seized and impounded by a county dog warden, but that has not been redeemed by its owner within a specified time period. CCAO and the dog wardens association have been working on better defining the disposition. Dogs may now be adopted with a fee approved by the County Commissioners previously not defined. Additionally, dog

wardens were required to allow research facilities to take dogs from the dog pound for research purposes. The new language allows the County to approve the nonprofits and facilities and “may” not allow dogs to be giving to the facilities.

A county dog warden is now authorized to charge an adoption fee for any dog that is adopted.

A dog may also be donated to any person, including either of two entities specifically identified in the statute. A dog may be donated to a nonprofit special agency that is engaged in training any type of assistance dogs or to a nonprofit teaching or research institution or organization that is certified by the Director of Health as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals.

HB 24 removed the preference that the county dog warden was obligated to comply with a donation request made by a teaching or research institution or organization.

A dog may still be humanely destroyed if it is not redeemed, donated or adopted.

#### **AUTHORITY TO SIEZE AND IMPOUND ANIMALS EXPANDED – ORC 959.131**

HB 24 allows either an animal control officer or a humane society agent to seize and impound any animal, instead of only a companion animal as in prior law, that the officer has probable cause to believe is the subject of an animal cruelty violation.

The impoundment notice subsequent to a seizure now must be made within 24 hours of the seizure. Previously the law did not specify a time by which notice had to be provided. The bond requirement for care of the animal while impounded has also been modified. The new standard requires that the amount of the bond be “necessary and reasonable” for the animal’s care as determined by the court. Prior law specified that the amount had to be an amount that the court determined was “needed,” or when renewing the bond, an amount that was “sufficient” for the animal’s care .