

A-Engrossed Senate Bill 230

Ordered by the Senate May 8
Including Senate Amendments dated May 8

Sponsored by Senator DECKERT; Senator BURDICK (at the request of Christopher and Constance Hawes, Oregon Humane Society and Michael E. Wellington of the Lane County Animal Regulation Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Changes definition of physical injury for purposes of animal abuse and neglect statutes. Specifies means of establishing some forms of physical injury to animal.]

Changes neglect resulting in death of animal from crime of animal neglect in the first degree to new crime of aggravated animal neglect in the first degree. Provides for maximum penalty of five years' imprisonment, fine of \$100,000, or both.

Prohibits possession of animal within specified period following conviction for certain crimes against animals. *[Creates exceptions.]* Makes violation offense subject to maximum penalty of \$1,000 fine and forfeiture of animal if predicate conviction was misdemeanor or \$5,000 fine and forfeiture of animal if predicate conviction was felony.

Requires court or juvenile department counselor to require youth to undergo psychiatric evaluation and appropriate care or treatment under specified circumstances.

[Changes culpable mental state for animal abuse in the second degree from recklessly to criminally negligent.]

[Changes culpable mental state for animal abuse in the first degree from recklessly to criminally negligent.] Eliminates element that abuse causing death of animal be inflicted cruelly. Reclassifies crime of animal abuse in the first degree to felony with maximum penalty of five years' imprisonment, fine of \$100,000, or both, if crime is committed under certain conditions or committed by defendant having specified criminal history.

Changes definitions for crime of aggravated animal abuse in the first degree. Changes culpable mental state *[for malicious killing of animal from intentionally to recklessly]*. Revises elements for establishing torture.

Increases maximum penalty for crime of animal abandonment to six months' imprisonment, \$2,000 fine, or both.

Amends statute governing peace officer entry of premises to care for animal to allow entry in any lawful manner.

[Changes time limit for holding hearing on preconviction forfeiture of animal.]

A BILL FOR AN ACT

1
2 Relating to crimes involving animals; creating new provisions; and amending ORS 133.377, 133.379,
3 167.310, 167.320, 167.322, 167.330, 167.340, 167.345, 167.347, 167.350 and 609.095.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2001 Act are added to and made a part of ORS 167.315**
6 **to 167.330.**

7 **SECTION 2. (1) A person commits the crime of aggravated animal neglect in the first**
8 **degree if, except as otherwise authorized by law, the person intentionally, knowingly or**
9 **recklessly fails to provide minimum care for an animal in the person's possession and the**
10 **failure to provide care results in the death of the animal.**

11 **(2) Aggravated animal neglect in the first degree is a Class C felony.**

12 **SECTION 3. (1) In addition to any other penalty imposed by law, a person convicted of**
13 **violating ORS 167.315, 167.325, 167.330 or 167.340 or of a misdemeanor under ORS 167.320, may**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 not possess a domestic animal for a period of five years following entry of the conviction.
2 An offense under this subsection is an unclassified misdemeanor punishable by a fine not
3 exceeding \$1,000 and forfeiture of the animal as provided in ORS 167.350.

4 (2) In addition to any other penalty imposed by law, a person convicted of violating ORS
5 167.322 or section 2 of this 2001 Act or of a felony under ORS 167.320, may not possess a do-
6 mestic animal for a period of 15 years following entry of the conviction. An offense under
7 this subsection is an unclassified misdemeanor punishable by a fine not exceeding \$5,000 and
8 forfeiture of the animal as provided under ORS 167.350.

9 **SECTION 4.** A court having jurisdiction pursuant to ORS 419C.005 over a youth who
10 commits an act that would be a violation of ORS 167.315, 167.320 or 167.322 if done by an adult
11 shall, in addition to any other exercise of wardship over the youth, order that the youth
12 undergo psychiatric evaluation. If warranted by the mental condition of the youth, the court
13 shall order that the youth undergo appropriate care or treatment.

14 **SECTION 5.** If a youth enters into a formal accountability agreement under ORS
15 419C.230, and a juvenile department counselor has probable cause to believe that the youth
16 may be found to be within the jurisdiction of the juvenile court for an act that would be a
17 violation of ORS 167.315, 167.320 or 167.322 if done by an adult, the agreement must provide
18 for the youth to undergo psychiatric evaluation and, if warranted by the mental condition
19 of the youth, undergo appropriate care or treatment.

20 **SECTION 6.** ORS 167.347 and 167.348 are added to and made a part of ORS 167.310 to
21 167.350.

22 **SECTION 7.** ORS 167.310 is amended to read:

23 167.310. As used in ORS 167.310 to 167.350:

24 (1) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

25 (2) "Domestic animal" means an animal, other than livestock, that is owned or possessed
26 by a person.

27 [(2)] (3) "Good animal husbandry" includes, but is not limited to, the dehorning of cattle, the
28 docking of horses, sheep or swine, and the castration or neutering of livestock, according to ac-
29 cepted practices of veterinary medicine or animal husbandry.

30 [(3)] (4) "Livestock" has the meaning provided in ORS 609.125.

31 [(4) "Pet or domestic animal" means any animal that is owned or possessed by a person, other than
32 livestock or poultry.]

33 (5) "Minimum care" means care sufficient to preserve the health and well-being of an
34 animal and, except for emergencies or circumstances beyond the reasonable control of the
35 owner, includes, but is not limited to, the following requirements:

36 (a) Food of sufficient quantity and quality to allow for normal growth or maintenance
37 of body weight.

38 (b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's
39 needs. Access to snow or ice is not adequate access to potable water.

40 (c) For a domestic animal, access to a barn, dog house or other enclosed structure suf-
41 ficient to protect the animal from wind, rain, snow or sun and that has adequate bedding to
42 protect against cold and dampness.

43 (d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress
44 from injury, neglect or disease.

45 (e) For a domestic animal, continuous access to an area:

1 **(A) With adequate space for exercise necessary for the health of the animal;**

2 **(B) With air temperature suitable for the animal; and**

3 **(C) Kept reasonably clean and free from excess waste or other contaminants that could**
4 **affect the animal's health.**

5 [(5)] **(6) "Physical injury" [has the meaning provided in ORS 161.015.] means the infliction of**
6 **physical trauma, or the infliction of pain inconsistent with reasonable handling or training**
7 **techniques.**

8 **(7) "Physical trauma" means fractures, cuts, punctures, bruises, burns or other wounds**
9 **or illnesses produced by violence or by a thermal or chemical agent.**

10 [(6)] **(8) "Possess" has the meaning provided in ORS 161.015.**

11 [(7)] **(9) "Serious physical injury" [has the meaning provided in ORS 161.015] means physical**
12 **injury that creates a substantial risk of death or that causes protracted disfigurement, pro-**
13 **tracted impairment of health or protracted loss or impairment of the function of a limb or**
14 **bodily organ.**

15 [(8) As used in ORS 167.325 and 167.330, "Minimum care" means care sufficient to preserve the
16 health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable
17 control of the owner, includes, but is not limited to, the following requirements:]

18 [(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body
19 weight.]

20 [(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs.
21 Snow or ice is not an adequate water source.]

22 [(c) In the case of pet or domestic animals, access to a barn, dog house or other enclosed structure
23 sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding to pro-
24 tect against cold and dampness.]

25 [(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from in-
26 jury, neglect or disease.]

27 [(e) Pet or domestic animals shall not be confined to an area without adequate space for exercise
28 necessary for the health of the animal or which does not allow access to a dry place for the animal to
29 rest. The air temperature in a confinement area must be suitable for the animal involved. Confinement
30 areas must be kept reasonably clean and free from excess waste or other contaminants which could
31 affect the animal's health.]

32 **SECTION 8.** ORS 167.320 is amended to read:

33 167.320. (1) A person commits the crime of animal abuse in the first degree if, except as other-
34 wise authorized by law, the person intentionally, knowingly or recklessly:

35 (a) Causes serious physical injury to an animal; or

36 (b) [*Cruelly*] Causes the death of an animal.

37 (2) Any practice of good animal husbandry is not a violation of this section.

38 (3) Animal abuse in the first degree is a Class A misdemeanor.

39 **(4) Notwithstanding subsection (3) of this section, animal abuse in the first degree is a**
40 **Class C felony if:**

41 **(a) The person committing the animal abuse has previously been convicted of two or**
42 **more of the following offenses:**

43 **(A) Any offense under ORS 163.160, 163.165, 163.175, 163.185, 163.190 or 163.195 or the**
44 **equivalent laws of another jurisdiction, if the offense involved domestic violence as defined**
45 **in ORS 135.230 or the offense was committed against a minor child; or**

1 **(B) Any offense under this section or ORS 167.322, or the equivalent laws of another ju-**
2 **risdiction; or**

3 **(b) The person knowingly commits the animal abuse in the immediate presence of a mi-**
4 **nor child. For purposes of this paragraph, a minor child is in the immediate presence of an-**
5 **imal abuse if the abuse is seen or directly perceived in any other manner by the minor child.**

6 **(5) It is an affirmative defense in a prosecution for violation of subsection (1)(b) of this**
7 **section that the defendant caused the death of an animal to end the immediate suffering of**
8 **the animal.**

9 **SECTION 9.** ORS 167.322 is amended to read:

10 167.322. (1) A person commits the crime of aggravated animal abuse in the first degree if the
11 person:

12 (a) [*Maliciously*] **Recklessly** kills an animal **under circumstances manifesting an extreme**
13 **indifference to the life of the animal; or**

14 (b) Intentionally or knowingly tortures an animal.

15 (2) Aggravated animal abuse in the first degree is a Class C felony.

16 (3) As used in this section, [*“maliciously” means intentionally acting with a depravity of mind and*
17 *reckless and wanton disregard of life.*] **“torture” means an action taken for the primary purpose**
18 **of inflicting pain.**

19 **SECTION 10.** ORS 167.330 is amended to read:

20 167.330. (1) A person commits the crime of animal neglect in the first degree if, except as oth-
21 erwise authorized by law, the person intentionally, knowingly, recklessly or with criminal
22 negligence[.:]

23 [(a)] fails to provide minimum care for an animal in [*such*] **the** person’s custody or control[.:] and

24 [(b) *Such*] **the** failure to provide care results in serious physical injury [*or death*] to the animal.

25 (2) Animal neglect in the first degree is a Class A misdemeanor.

26 **SECTION 11.** ORS 167.340 is amended to read:

27 167.340. (1) A person commits the crime of animal abandonment if the person intentionally,
28 knowingly, recklessly or with criminal negligence leaves a [*domesticated*] **domestic** animal at a lo-
29 cation without providing for the animal’s continued care.

30 (2) It is no defense to the crime defined in subsection (1) of this section that the defendant
31 abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the
32 defendant did not make reasonable arrangements for the care of the animal.

33 (3) Animal abandonment is a Class [C] **B** misdemeanor.

34 **SECTION 12.** ORS 167.345 is amended to read:

35 167.345. (1) [*If there are exigent circumstances and probable cause to believe that any animal is*
36 *being impounded or confined without minimum care for more than 24 consecutive hours, without med-*
37 *ical cause, a peace officer, as defined in ORS 161.015, may enter the premises where the animal is being*
38 *held and provide the animal with water, food or emergency on-site first aid treatment. The peace officer*
39 *shall not be liable for any damages for such entry, unless the damages were caused by the unnecessary*
40 *actions of the peace officer that were intentional or reckless.*] **As used in this section, “peace**
41 **officer” has the meaning given that term in ORS 161.015.**

42 (2) If there is probable cause to believe that any animal is being subjected to treatment in vio-
43 lation of ORS 167.315 to **167.330 or** 167.340, a peace officer, after obtaining a search [*warrant in the*
44 *manner authorized by law, may enter the premises where the animal is being held.*] **warrant or in**
45 **any other manner authorized by law, may enter the premises where the animal is located to**

1 provide **the animal with** food, [and] water **and emergency medical treatment** and **may** impound
 2 [such] **the** animal. If after reasonable [search] **effort** the owner or person having custody of [such]
 3 **the** animal cannot be found and notified of the impoundment, [such] **the** notice shall be conspicu-
 4 ously posted on [such] **the** premises and within 72 hours after the impoundment [such] **the** notice
 5 shall be sent by certified mail to the address, if any, [at which] **where** the animal was impounded.

6 **(3) A peace officer is not liable for any damages for an entry under subsection (2) of this**
 7 **section, unless the damages were caused by the unnecessary actions of the peace officer that**
 8 **were intentional or reckless.**

9 [(3)] **(4)** A court may order an animal impounded under subsection (2) of this section to be held
 10 at any animal care facility in the state. A facility receiving the animal shall provide adequate food
 11 and water and may provide veterinary care.

12 **SECTION 13.** ORS 167.347 is amended to read:

13 167.347. (1) If any animal is impounded pursuant to ORS 167.345 [(2)] and is being held by a
 14 county animal shelter or other animal care agency pending outcome of criminal action charging a
 15 violation of ORS [167.310] **167.315 to 167.330 or** 167.340, prior to final disposition of the criminal
 16 charge, the county or other animal care agency may file a petition in the criminal action requesting
 17 that the court issue an order forfeiting the animal to the county or other animal care agency prior
 18 to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon
 19 the defendant and the district attorney.

20 (2) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a
 21 hearing on the petition. The hearing shall be conducted within 14 days [of] **after** the filing of the
 22 petition, or as soon as practicable.

23 (3)(a) At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have
 24 the burden of establishing probable cause to believe that the animal was subjected to abuse, neglect
 25 or abandonment in violation of ORS [167.310] **167.315 to 167.330 or** 167.340. If the court finds that
 26 probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner,
 27 unless the defendant, within 72 hours of the hearing, posts a security deposit or bond with the court
 28 clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred,
 29 and anticipated to be incurred, by the petitioner in caring for the animal from the date of initial
 30 impoundment to the date of trial.

31 (b) Notwithstanding paragraph (a) of this subsection, a court may waive for good cause shown
 32 the requirement that the defendant post a security deposit or bond.

33 (4) If a security deposit or bond has been posted in accordance with subsection (3) of this sec-
 34 tion, and the trial in the action is continued at a later date, any order of continuance shall require
 35 the defendant to post an additional security deposit or bond in an amount determined by the court
 36 that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the
 37 petitioner in caring for the animal until the new date of trial.

38 (5) If a security deposit or bond has been posted in accordance with subsection (4) of this sec-
 39 tion, the petitioner may draw from that security deposit or bond the actual reasonable costs in-
 40 curred by the petitioner in caring for the impounded animal from the date of initial impoundment
 41 to the date of final disposition of the animal in the criminal action.

42 (6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS
 43 167.350.

44 **SECTION 14.** ORS 167.350 is amended to read:

45 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-

1 quire a defendant convicted under ORS 167.315 to 167.330 [*and*] **or** 167.340 to forfeit any rights of
2 the defendant in the animal subjected to abuse, neglect or abandonment, and to repay the reasonable
3 costs incurred by any person or agency prior to judgment in caring for each animal subjected to
4 abuse, neglect or abandonment.

5 (2) When the court orders the defendant's rights in the animal to be forfeited, the court may
6 further order that those rights be given over to an appropriate person or agency demonstrating a
7 willingness to accept and care for the animal or to the county or an appropriate animal care agency
8 for further disposition in accordance with accepted practices for humane treatment of animals. This
9 subsection [*shall not constitute or authorize any limitation upon*] **does not limit** the right of the
10 person or agency to whom rights are granted to resell or otherwise make disposition of the animal.
11 A transfer of rights under this subsection constitutes a transfer of ownership.

12 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the
13 owner or person having custody of an animal to repay the reasonable costs incurred by any person
14 or agency in providing [*water, food or first aid treatment under ORS 167.345 (1).*] **minimum care to**
15 **the animal.**

16 (4) A court may order a person convicted under ORS 167.315 to 167.330 [*and*] **or** 167.340 to
17 participate in available animal cruelty prevention programs or education programs, or both, or to
18 obtain psychological counseling for treatment of mental health disorders that, in the court's judg-
19 ment, contributed to the commission of the crime. The person shall bear any costs incurred by the
20 person for participation in counseling or treatment programs under this subsection.

21 **SECTION 15.** ORS 609.095 is amended to read:

22 609.095. (1) A dog is a public nuisance if it:

- 23 (a) Bites a person;
- 24 (b) Chases vehicles or persons;
- 25 (c) Damages or destroys property of persons other than the keeper of the dog;
- 26 (d) Scatters garbage;
- 27 (e) Trespasses on private property of persons other than the keeper of the dog;
- 28 (f) Disturbs any person by frequent or prolonged noises;
- 29 (g) Is a female in heat and running at large; or
- 30 (h) Injures or kills a [*pet or*] domestic animal as defined in ORS 167.310 [*(4)*].

31 (2) The keeper of a dog in a county, precinct or city that is subject to ORS 609.030 and 609.040
32 to 609.110 maintains a public nuisance if the dog commits an act described under subsection (1) of
33 this section or the keeper does not comply with reasonable restrictions as described in subsection
34 (3) of this section. Except as provided under ORS 609.990 (4), maintaining a dog that is a public
35 nuisance is a violation.

36 (3) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable
37 restrictions imposed under ORS 609.990. If a keeper fails to provide acceptable proof of compliance
38 to the court on or before the 10th day after issuance of the order imposing the restrictions, there
39 is a rebuttable presumption that the keeper has failed to comply. If the court finds the proof sub-
40 mitted by the keeper unacceptable, the court shall send notice of that finding to the keeper no later
41 than five days after the proof is received.

42 (4) Any person who has cause to believe a keeper is maintaining a dog that is a public nuisance
43 may complain, either orally or in writing, to the county, precinct or city. The receipt of any com-
44 plaint is sufficient cause for the county, precinct or city to investigate the matter and determine
45 whether the keeper of the dog is in violation of subsection (2) or (3) of this section.

1 **SECTION 16.** ORS 133.377 is amended to read:

2 133.377. (1) Any person violating ORS 167.315 to 167.330 [*and*] **or** 167.340 may be arrested and
3 held without warrant, in the same manner as in the case of persons found breaking the peace.

4 (2) The person making the arrest, with or without warrant, shall use reasonable diligence to give
5 notice thereof to the owners of the animals found in the charge of the person arrested, and shall
6 properly care and provide for such animals until the owners or their duly authorized agents take
7 charge of them; provided, such owners or agents shall claim and take charge of the animals within
8 60 days from the date of said notice.

9 (3) The person making such arrest shall have a lien upon the animals for the expense of such
10 care and provisions.

11 (4) Any peace officer who cares or provides for an animal pursuant to this section and any
12 person into whose care an animal is delivered by a peace officer acting under this section shall be
13 immune from civil or criminal liability based upon an allegation that such care was negligently
14 provided.

15 **SECTION 17.** ORS 133.379 is amended to read:

16 133.379. (1) It shall be the duty of any peace officer to arrest and prosecute any violator of ORS
17 167.315 to 167.330 [*and*] **or** 167.340 for any violation which comes to the knowledge or notice of the
18 officer.

19 (2) All fines and forfeitures collected for violations of ORS 167.315 to 167.330 [*and*] **or** 167.340,
20 except for forfeitures of the animal as provided under ORS 167.350, shall be paid into the county
21 treasury of the county in which it is collected, and placed to the credit of the county school fund.
22