

## **Bestiality in Ohio**

DanaMarie K. Pannella, Holland & Muirden, Attorneys at Law  
<http://www.holland-muirden.com>  
(330) 239-4480; [dpannella@hmlawohio.com](mailto:dpannella@hmlawohio.com)

### **WHAT IS BESTIALITY?**

Bestiality, sexual conduct between a human and an animal, is legal in Ohio unless it can be proven that unnecessary or unjustifiable pain or suffering was caused to the animal. Ohio is one of only a dozen states without a specific law banning bestiality. It is demonstrated that bestiality, like other animal cruelty offenses, often has a correlation to offenses committed against humans. Jeremy Hoffman, a detective with Virginia's Fairfax County Police, recently told a Senate committee that almost every child pornographer he arrested also had a collection of bestiality pornography.

Many efforts have been made in Ohio to prohibit bestiality, most recently Senate Bill 195 (SB 195). As of April 18, 2016, the bill is stalled in the Senate Criminal Justice Committee.

### **TAKING ACTION AGAINST BESTIALITY VIA "HOME RULE"**

In Ohio, municipal corporations (cities and villages) have certain powers granted to them in Article XVIII of the Ohio Constitution. This is called "home rule." Article XVIII, § 3 of the Ohio Constitution provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Thus, it is possible, pursuant to municipalities' home rule powers, to enact ordinances prohibiting bestiality within their jurisdictions. Some townships in Ohio also have home rule powers and two counties, Summit and Cuyahoga, have charter governments with county-wide home rule powers.

This document contains a model bestiality ordinance that is in accord with the current version of SB 195. In some instances, this model ordinance includes stricter provisions.

**Jurisdictions considering enacting this model law should consult with legal counsel.**

### **MODIFICATIONS TO SB 195**

- (1) Model ordinance prohibits sexual conduct between a human and fish. SB 195 does not prohibit this conduct.
- (2) Model ordinance elevates the degree of crime from a second degree misdemeanor to a first degree misdemeanor, consistent with Ohio Revised Code §959.131(B), prohibitions concerning companion animals.

## **MODIFICATIONS TO SB 195, CONTINUED**

- (3) Model ordinance allows a court to prohibit a convicted offender from caring for any animals for a specified or indefinite period of time, consistent with Ohio Revised Code §959.131, prohibitions concerning companion animals.
- (4) Model ordinance allows a court to order that a convicted offender pay restitution to the impounding agency for the care of impounded animals, consistent with Ohio Revised Code §959.131, prohibitions concerning companion animals.
- (5) Model ordinance requires the animal(s)'s owner, keeper or harbinger to request a probable cause hearing post-seizure instead of receiving an automatic hearing, eliminating the burden on law enforcement and courts when owners do not intend to lay claim to their animal or no owner can be found.

## **MODEL BESTIALITY ORDINANCE (OHIO)**

### **§ XXX.XX Bestiality**

(a) "Animal" means a nonhuman mammal, bird, fish, reptile, or amphibian, either dead or alive for purposes of this section.

(b) "Sexual conduct" means either of the following committed for the purpose of sexual gratification:

(1) Any act done between a person and animal that involves contact of the penis of one and the vulva of the other, the penis of one and the penis of the other, the penis of one and the anus of the other, the mouth of one and the penis of the other, the mouth of one and the anus of the other, the vulva of one and the vulva of the other, the mouth of one and the vulva of the other, any other contact between a reproductive organ of one and a reproductive organ of the other, or any other insertion of a reproductive organ of one into an orifice of the other;

(2) Without a bona fide veterinary or animal husbandry purpose to do so, the insertion, however slight, of any part of a person's body or any instrument, apparatus, or other object into the vaginal, anal, or reproductive opening of an animal.

(c) No person shall knowingly engage in sexual conduct with an animal or knowingly possess, sell, or purchase an animal with the intent that it be subjected to sexual conduct.

(d) No person shall knowingly organize, promote, aid, or abet in the conduct of an act involving any sexual conduct with an animal.

(e) Whoever violates this section is guilty of bestiality, a misdemeanor of the first degree.

(1) The court may order a person who is convicted of or pleads guilty to a violation of this section to forfeit to an impounding agency, as defined in YYY.YY, any or all of the animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any animals for a specified or indefinite period of time.

(2) A court may order a person who is convicted of or pleads guilty to a violation of this section to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of an animal that the agency impounded as a result of the investigation or prosecution of the violation, provided that the costs were not otherwise paid.

(3) If a court has reason to believe that a person who is convicted of or pleads guilty to a violation of this section suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court shall order the offender to pay the costs of the evaluation or counseling.

### **§ YYY.YY Seizure and Impoundment of Animals for Bestiality; Hearing**

(a) As used in this section:

(1) "Impounding Agency" means a county dog pound, county humane society organized under RC 1717.05, municipal dog pound, or law enforcement agency.

(2) "Offense" means a violation of section XXX.XX.

(3) "Officer" means any law enforcement agent, animal control officer, county humane agent, or deputy dog warden.

(b) An officer may immediately seize and cause to be impounded at an impounding agency an animal that the officer has probable cause to believe is the subject of an offense.

(c) The officer shall give written notice of the seizure and impoundment to the owner, keeper, or harbinger of the animal that was seized and impounded within three (3) days of seizure if they can be found. If the officer is unable to give the notice to the owner, keeper, or harbinger of the animal, the officer shall post the notice on the door of the residence or in another conspicuous place on the premises at which the animal was seized.

(1) The notice shall include a statement that, upon written request by the owner, keeper, or harbinger of the animal to the impounding agency, which is received by the impounding agency within ten (10) calendar days of the notice of seizure and impoundment, a hearing will be held at the next available court date, or no later than three (3) days from the date the notice of a request for a hearing was received, whichever is earlier. The notice shall also state that the hearing will be held to determine whether the officer had probable cause to seize the animal and, if applicable, to determine the amount of a bond or cash deposit that is needed to provide for the animal's care and keeping for not less than thirty (30) days beginning on the date on which the animal was seized and impounded. If a hearing is not timely requested by the owner, keeper, or harbinger, the animal is deemed forfeited without hearing and the impounding agency may determine the disposition of the animal.

(d) An animal that is seized under this section may be humanely destroyed immediately or at any time during impoundment or otherwise provided with veterinary care if a licensed veterinarian determines it to be necessary because the animal is suffering.

(e) (1) If the owner, keeper, or harbinger of the animal has requested a hearing in writing, the court shall hold a hearing to determine whether the officer impounding an animal had probable cause to seize the animal. If the court determines that probable cause exists, the court shall determine the amount of a bond or cash deposit that is needed to provide for the animal's care and keeping for not less than thirty (30) days beginning on the date on which the animal was impounded. If the owner, keeper, or harbinger does not appear at hearing and notice of hearing was properly served, the animal is deemed forfeited and the impounding agency may determine the disposition of the animal.

(2) If the court determines that probable cause does not exist, the court immediately shall order the impounding agency to return the animal to its owner if possible. If the animal cannot be returned because it has died as a result of neglect or other misconduct by the impounding agency or if the animal is injured as a result of neglect or other misconduct by the impounding agency, the court shall order the impounding agency to pay the owner an amount determined by the court to be equal to the reasonable market value of the animal at the time that it was impounded plus statutory interest as defined in section 1343.03 of the Revised Code from the date of the impoundment or an amount determined by the court to be equal to the reasonable cost of treatment of the injury to the animal, as applicable. The requirement established in division (e)(2) of this section regarding the payment of the reasonable market value of the animal shall not apply in the case of a dog that, in violation of section 955.01 of the Revised Code, was not registered at the time it was seized and impounded.

(3) If the court determines that probable cause exists and determines the amount of a bond or cash deposit, the case shall continue and the owner shall post a bond or cash deposit to provide for the animal's care and keeping for not less than thirty (30) days beginning on the date on which the animal was impounded. The owner may renew a bond or cash deposit by posting, not later than ten (10) days following the expiration of the period for which a previous bond or cash deposit was posted, a new bond or cash deposit in an amount that the court, in consultation with the impounding agency, determines is sufficient to provide for the animal's care and keeping for not less than thirty (30) days beginning on the date on which the previous period expired. If no bond or cash deposit is posted or if a bond or cash deposit expires and is not renewed, the impounding agency may determine the disposition of the animal unless the court issues an order that specifies otherwise.

(f) If a person is convicted of committing an offense, the court may impose the following additional penalties against the person:

(1) A requirement that the person pay for the costs incurred by the impounding agency in caring for an animal involved in the applicable offense, provided that the costs were incurred during the animal's seizure or impoundment. A bond or cash deposit posted under this section may be applied to the costs.

(2) An order permanently terminating the person's right to possession, title, custody, or care of the animal that was involved in the offense. If the court issues such an order, the court shall order the disposition of the animal.

(g) If a person is found not guilty of committing an offense, the court immediately shall order the impounding agency to return the animal to its owner if possible and to return the entire amount of any bond or cash deposit posted under division (e) of this section. If the animal cannot be returned because it has been adopted or euthanized the impounding agency shall pay the fair market value of the animal at the time that it was impounded plus statutory interest as defined in RC 1343.03 from the date of the impoundment or an amount determined by the court to be equal to the cost of treatment of the injury to the animal, as applicable. The requirements established in this division regarding the return of a bond or cash deposit and the payment of the reasonable market value of the animal shall not apply in the case of a dog that in violation of section 955.01 of the Revised Code, was not registered at the time it was seized and impounded.

(h) If charges are filed for an offense described in this section against the custodian or caretaker of an animal, but the animal that is the subject of the charges is not impounded, the court in which the charges are pending may order the owner or person having custody of the animal to provide to the animal the necessities described in division (C)(5), (D)(2), and (E)(5) of RC 959.131 until the final disposition of the charges. If the court issues an order of that nature, the court also may authorize an officer or another person to visit the place where the animal is being kept, at the times and under the conditions that the court may set, to determine whether the animal is receiving those necessities and to remove and impound the animal if the animal is not receiving those necessities.