

# House Bill 2529

Sponsored by Representative GELSER; Representative WITT (at the request of Scott Heiser)

## 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 **as introduced**.

Modifies procedures related to seizure and forfeiture of criminally mistreated animals.  
Requires person who commits sexual assault of animal to report as sex offender.

## A BILL FOR AN ACT

1  
2 Relating to crimes involving animals; creating new provisions; amending ORS 133.377, 133.379,  
3 167.345, 167.347, 167.350 and 181.594; and repealing ORS 167.375.

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

5 **SECTION 1.** ORS 167.345 is amended to read:

6 167.345. (1) As used in this section, "peace officer" has the meaning given that term in ORS  
7 161.015.

8 (2) If there is probable cause to believe that any animal is being subjected to treatment in vio-  
9 lation of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**, a peace officer, after ob-  
10 taining a search warrant or in any other manner authorized by law, may enter the premises where  
11 the animal is located to provide the animal with food, water and emergency medical treatment and  
12 may impound the animal. If after reasonable effort the owner or person having custody of the animal  
13 cannot be found and notified of the impoundment, the notice shall be conspicuously posted on the  
14 premises and within 72 hours after the impoundment the notice shall be sent by certified mail to the  
15 address, if any, where the animal was impounded.

16 (3) A peace officer is not liable for any damages for an entry under subsection (2) of this section,  
17 unless the damages were caused by the unnecessary actions of the peace officer that were inten-  
18 tional or reckless.

19 (4)(a) A court may order an animal impounded under subsection (2) of this section to be held  
20 at any animal care facility in the state. A facility receiving the animal shall provide adequate food  
21 and water and may provide veterinary care.

22 **(b) A court may order a fighting bird impounded under subsection (2) of this section to**  
23 **be held on the property of the owner, possessor or keeper of the fighting bird in accordance**  
24 **with ORS 167.433.**

25 **SECTION 2.** ORS 167.347 is amended to read:

26 167.347. (1) If any animal is impounded pursuant to ORS 167.345 and is being held by a county  
27 animal shelter or other animal care agency pending outcome of criminal action charging a violation  
28 of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**, prior to final disposition of the  
29 criminal charge, the county or other animal care agency may file a petition in the criminal action  
30 requesting that the court issue an order forfeiting the animal to the county or other animal care  
31 agency prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the

**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 petition upon the defendant and the district attorney.

2 (2) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a  
 3 hearing on the petition. The hearing shall be conducted within 14 days after the filing of the peti-  
 4 tion, or as soon as practicable.

5 (3)(a) At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have  
 6 the burden of establishing probable cause to believe that the animal was subjected to a violation  
 7 of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**. If the court finds that probable  
 8 cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the  
 9 defendant, within 72 hours of the hearing, posts a security deposit or bond with the court clerk in  
 10 an amount determined by the court to be sufficient to repay all reasonable costs incurred, and an-  
 11 ticipated to be incurred, by the petitioner in caring for the animal from the date of initial  
 12 impoundment to the date of trial.

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

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

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

24 (6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS  
 25 167.350 **and 167.435**.

26 **SECTION 3.** ORS 167.350 is amended to read:

27 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-  
 28 quire a defendant convicted under ORS 167.315 to 167.333, [or] 167.340, **167.355 or 167.365** to forfeit  
 29 any rights of the defendant in the animal subjected to the violation, and to repay the reasonable  
 30 costs incurred by any person or agency prior to judgment in caring for each animal subjected to the  
 31 violation.

32 (2) When the court orders the defendant's rights in the animal to be forfeited, the court may  
 33 further order that those rights be given over to an appropriate person or agency demonstrating a  
 34 willingness to accept and care for the animal or to the county or an appropriate animal care agency  
 35 for further disposition in accordance with accepted practices for humane treatment of animals. This  
 36 subsection does not limit the right of the person or agency to whom rights are granted to resell or  
 37 otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a  
 38 transfer of ownership.

39 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the  
 40 owner or person having custody of an animal to repay the reasonable costs incurred by any person  
 41 or agency in providing minimum care to the animal.

42 (4) A court may order a person convicted under ORS 167.315 to 167.333, [or] 167.340, **167.355,**  
 43 **167.365 or 167.428** to participate in available animal cruelty prevention programs or education pro-  
 44 grams, or both, or to obtain psychological counseling for treatment of mental health disorders that,  
 45 in the court's judgment, contributed to the commission of the crime. The person shall bear any costs

1 incurred by the person for participation in counseling or treatment programs under this subsection.

2 (5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal subjected to a violation  
 3 of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**. Any such animal is subject to  
 4 forfeiture as provided in subsections (1) to (3) of this section **or, if the animal is a fighting bird,**  
 5 **as provided in ORS 167.435.**

6 **SECTION 4.** ORS 133.377 is amended to read:

7 133.377. (1) Any person violating ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or**  
 8 **167.428** may be arrested and held without warrant, in the same manner as in the case of persons  
 9 found breaking the peace.

10 (2) The person making the arrest, with or without warrant, shall use reasonable diligence to give  
 11 notice thereof to the owners of the animals found in the charge of the person arrested, and shall  
 12 properly care and provide for such animals until the owners or their duly authorized agents take  
 13 charge of them; provided, such owners or agents shall claim and take charge of the animals within  
 14 60 days from the date of said notice.

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

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

21 **SECTION 5.** ORS 133.379 is amended to read:

22 133.379. (1) It shall be the duty of any peace officer to arrest and prosecute any violator of ORS  
 23 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428** for any violation which comes to the  
 24 knowledge or notice of the officer.

25 (2) All fines and forfeitures collected for violations of ORS 167.315 to 167.333, [or] 167.340,  
 26 **167.355, 167.365 or 167.428**, except for forfeitures of the animal as provided under ORS 167.350 **or**  
 27 **167.435**, shall be paid into the county treasury of the county in which it is collected, and placed to  
 28 the credit of the county school fund.

29 **SECTION 6.** ORS 181.594 is amended to read:

30 181.594. As used in ORS 181.595, 181.596, 181.597 and 181.603:

31 (1) "Attends" means is enrolled on a full-time or part-time basis.

32 (2)(a) "Correctional facility" means any place used for the confinement of persons:

33 (A) Charged with or convicted of a crime or otherwise confined under a court order.

34 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that  
 35 if committed by an adult would constitute a crime.

36 (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient  
 37 facility only as to persons detained therein charged with or convicted of a crime, or detained therein  
 38 after being found guilty except for insanity under ORS 161.290 to 161.370.

39 (3) "Institution of higher education" means a public or private educational institution that pro-  
 40 vides a program of post-secondary education.

41 (4) "Sex crime" means:

42 (a) Rape in any degree;

43 (b) Sodomy in any degree;

44 (c) Unlawful sexual penetration in any degree;

45 (d) Sexual abuse in any degree;

- 1 (e) Incest with a child victim;
- 2 (f) Using a child in a display of sexually explicit conduct;
- 3 (g) Encouraging child sexual abuse in any degree;
- 4 (h) Transporting child pornography into the state;
- 5 (i) Paying for viewing a child's sexually explicit conduct;
- 6 (j) Compelling prostitution;
- 7 (k) Promoting prostitution;
- 8 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 9 (m) Contributing to the sexual delinquency of a minor;
- 10 (n) Sexual misconduct if the offender is at least 18 years of age;
- 11 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 12 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
- 13 or by a person found to be within the jurisdiction of the juvenile court;
- 14 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
- 15 child to be more than five years younger than the offender;
- 16 **(r) Sexual assault of an animal;**
- 17 [(r)] (s) Any attempt to commit any of the crimes set forth in paragraphs (a) to [(q)] (r) of this
- 18 subsection;
- 19 [(s)] (t) Burglary, when committed with intent to commit any of the offenses listed in paragraphs
- 20 (a) to [(q)] (r) or [(t)] (u) of this subsection; or
- 21 [(t)] (u) Public indecency or private indecency, if the person has a prior conviction for a crime
- 22 listed in this subsection.
- 23 (5) "Sex offender" means a person who:
- 24 (a) Has been convicted of a sex crime;
- 25 (b) Has been found guilty except for insanity of a sex crime;
- 26 (c) Has been found to be within the jurisdiction of the juvenile court for having committed an
- 27 act that if committed by an adult would constitute a sex crime; or
- 28 (d) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a
- 29 crime that would constitute a sex crime if committed in this state.
- 30 (6) "Works" or "carries on a vocation" means full-time or part-time employment for more than
- 31 14 days within one calendar year whether financially compensated, volunteered or for the purpose
- 32 of governmental or educational benefit.

33 **SECTION 7. (1) The amendments to ORS 133.377, 133.379, 167.345, 167.347 and 167.350 by**  
34 **sections 1 to 5 of this 2009 Act apply to violations of ORS 167.355, 167.365 or 167.428 com-**  
35 **mitted on or after the effective date of this 2009 Act.**

36 **(2) The amendments to ORS 181.594 by section 6 of this 2009 Act apply to violations of**  
37 **ORS 167.333 committed on or after the effective date of this 2009 Act.**

38 **SECTION 8. ORS 167.375 is repealed.**

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