

other humane disposition. Cruelty to animals in the second degree is a Class A misdemeanor.

The bill amends KRS 52.135, relating to torture of a dog or cat, by:

- defining “physical injury” and “reasonable costs,”
- adding “knowing or reckless” to the mental state, so that a person who intentionally, knowingly, or recklessly inflicts or subjects the animal to extreme or continued physical pain, or physical injury.

All torture of a dog or cat would be a Class D felony, instead of a Class A felony for a first offense and Class D for subsequent offenses as per current law. Conviction would also lead to imposition of costs and ownership in the dog or cat, similar to conviction of cruelty to animals in the second degree.

The bill creates the crime of extreme neglect of a dog or cat as a Class D felony. Extreme neglect is the failure to provide adequate food, drink, space, shelter, or health care that results in physical injury, continued suffering, or death. A person can be guilty of extreme neglect by intentionally, knowingly, or recklessly engaging in the conduct. The same exemptions that apply to cruelty to animals in the second degree would apply to the crime of extreme neglect. Similarly, a person convicted could be ordered to pay the costs for the care of the animal and could have his/her ownership terminated.

The fiscal impact of the bill is indeterminable to minimal. There would be some costs associated with training local law enforcement and animal control officers on the changes to the animal cruelty and torture crimes and the establishment of the new crime of extreme neglect. Government-owned or supported animal shelters could be required to take control of additional animals that are the subject of the prosecutions. Although the court may order restitution, it is likely that the convicted person would not be able to make *actual* restitution in all cases. Thus, there could be increased costs for the care of more animals in the custody of animal control and shelters.

More animals could be seized under the cruelty to animals in the second degree charge because of the lowering of the mental status requirement to knowingly or recklessly. The person’s ownership of these animals could be terminated if the person is convicted, but the bill merely permits, rather than requires, termination. Nevertheless, more persons could have their ownership to the animals terminated because more charges may be filed. It is not possible to determine the number of animals for which counties/local animal control offices might be responsible, and the ability of counties to handle additional animals varies considerably. The Lexington Humane Society (LHS), which works under contract with Lexington/Fayette Animal Care and Control (LFACC), has limited capacity for larger animals that could be confiscated under the cruelty in the second degree offense. Animals found or confiscated by Animal Control will be held for a 3-5 days and then *may* be placed with LHS. Smaller animals may be kept at the LHS facility; larger (farm) animals will likely be placed with farms for fostering. The Franklin County Humane Society, which works under contract with Franklin County Animal Control, keeps small animals and would try to place larger animals with the Kentucky State University Agriculture Farm.

The fact that termination of ownership is permissive, rather than mandatory, may allow the local animal control office to apprise the court of the office's fiscal situation or to find alternate housing arrangements for any animals.

Nevertheless, there could be costs involved. According to the Kentucky Equine Adoption Center, the average monthly cost of care of a horse is \$500, which includes feed, farrier services, simple veterinary care, and overhead; the veterinary care of an abused horse would have a higher monthly cost initially. According to statistics in a 2011 editorial by the Humane Society of the United States, the average monthly cost of animal shelter care for cats and dogs in good health would be \$58 to \$73 per animal. According to the Scott County Animal Care and Control, *initial* costs for a medical assessment and vaccinations for each cat and dog range from \$30 to \$40. To the extent that local animal control offices have the ability to adopt animals or find foster homes, the fiscal impact of the bill could be minimal. To the extent that the offices do not have that ability, the fiscal impact would be greater.

The bill creates the potential for an increase in the number of arrests and incarcerations. The change in the required mental state for both the cruelty to animals in the second degree and the torture of a dog or cat could make it easier to prosecute and prove a charges involving those crimes; more people could be charged, and more could be convicted. The new crime of extreme neglect of a dog or cat could lead to more prosecutions and convictions of this *new* crime. It is not possible to determine the number of additional offenses that would be incurred under the bill, but it is not expected that any increase in the number of offenses would significantly impact most local jails. The costs relating to misdemeanor and felony incarcerations (since all crimes under this bill are felonies and not misdemeanors) are described below.

According to the Administrative Office of the Courts, there were about 187 persons convicted of the Class A misdemeanor charge for cruelty to animals in the second degree in 2019; over 150 persons saw their charges dismissed during that same time. Because of the change in required mental state, there may be more prosecutions and more convictions. There were three persons convicted of Class A misdemeanor torture offenses that will now be a Class D felony.

A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 77 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

A person convicted of a Class D felony may be incarcerated for one to five years. When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 77 full service jails or three life safety jails. While the expense of housing inmates varies by jail, each

additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, relates to the bill as filed.

Data Source(s): LRC Staff; Administrative Office of the Courts; LRC Publication, "County Government in Kentucky"; Department of Corrections; Kentucky Equine Adoption Center; Scott County Animal Care and Control; Humane Society of the United States; Franklin County Humane Society; Lexington Humane Society

Preparer: Robert Jenkins **Reviewer:** KHC **Date:** 2/21/20