

Honolulu, Hawaii

MAR 06 2009

RE: S.B. No. 1222  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred S.B. No. 1222 entitled:

"A BILL FOR AN ACT RELATING TO THE HUMANE TREATMENT OF PET ANIMALS,"

begs leave to report as follows:

The purpose of this measure is to create the misdemeanor offense of confinement of a pet animal on public property, and to decrease from twenty to ten the number of dogs or cats deprived of necessary sustenance in the offense of animal hoarding.

Your Committee received testimony in support of, in opposition to, and commenting on this measure. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Under this measure, a person commits the offense of confinement of a pet animal on public property if the person intentionally, knowingly, or recklessly confines a pet animal in a cage on public property for more than four hours, with some excepted circumstances. It is an affirmative defense that the pet animal's confinement was beneficial to the animal.

The Hawaiian Humane Society testified in opposition to this measure that current laws in place address "issues as they relate to animals being kept in inhumane confinements, such as the animal cruelty law, where the basics of 'necessary sustenance' are clearly and distinctly defined."



Section 711-1100, Hawaii Revised Statutes, defines "necessary sustenance" as follows:

"Necessary sustenance" means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;
- (3) Access to protection from wind, rain, or sun; and
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health."

Section 711-1100, Hawaii Revised Statutes, defines "pet animal" as follows:

"Pet animal" means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption."

The definition of "necessary sustenance" is silent as to how long--whether four hours or ten years--a pet animal may be confined in a cage; how the type of pet animal--whether dog, cat, rabbit, guinea pig, pig, or bird--bears on the acceptable manner and duration of confinement in a cage; or how the duration of confinement affects the adequacy of "space necessary for the health of the animal."



Testimony in support of this measure described an individual who has been "hoarding animals in an inhumane manner on a City sidewalk/grassy area" for years, confining cats, kittens and other animals in small carriers, traps, shopping carts and cages 24 hours a day, 7 days a week, never letting them out. This bill was introduced to address gaps in the law because, according to supporters, the response of the humane society to which complaints about this individual's treatment of animals were directed was, in effect, that "they are unable to take action on the confinement of the cats because there is no law on the books"; they "will not act if an animal appears to be healthy"; and they "[do] not believe the existing statute allows them to confiscate the abused animals."

Testimony in opposition cited unintended consequences were this measure enacted in its present form: the prohibition against confinement of a "pet animal" on "public property" for "more than four hours" would apply to the Honolulu Zoo, the State Quarantine Facility, the Hawaiian, Maui, and Kona Humane Societies, and others, including caretakers who trap, neuter and return feral cats; enforcement by "an organization formed for the prevention of cruelty to animals" could result in a "botched arrest"; confiscation of animals without due process is unconstitutional; and prosecution might be fruitless because of mental health issues.

Several testifiers proposed that a task force be convened to define and discuss "minimum standards of pet keeping" that would not only meet the needs of the community, but would consider the unique differences among the counties with regard to enforcement capabilities. Your Committee endorses this approach.

Your Committee notes that the Supplemental Commentary on section 711-1109 to 1110, Hawaii Revised Statutes, provides, in part:

"Act 173, Session Laws 1998, amended §711-1109 to provide that depriving pet animals of necessary sustenance constitutes the crime of cruelty to animals. The legislature noted that the statute identified only those acts which were the most heinous and extreme, such as beating, mutilation, poisoning, starvation, and torture. However, on a daily basis, other less overt acts such as daily neglect also resulted in the inhumane treatment of animals. Thus,



the legislature agreed that pet animals deserved a minimum level of care including adequate food, water, and shelter. Senate Standing Committee Report No. 87."

Your Committee finds it timely and appropriate to revisit our law's treatment of these "less overt acts" of animal cruelty.

At the time of public decision-making on this measure, S.B. No. 1222, Relating to the Humane Treatment of Pet Animals, your Committee deferred three other measures that proposed penalties for inhumane forms of restraint and confinement of animals: S.B. No. 30, S.D. 1 (2009) Relating to Animals, S.B. No. 488 (2009), Relating to Animal Cruelty, and S.B. No. 1188 (2009), Relating to Animals. Each proposed new misdemeanor offenses prohibiting, with exceptions, various forms of restraint or confinement, including tethering, fastening, chaining, tying, kenneling or caging.

S.B. No. 30, S.D. 1 proposed a new misdemeanor offense of dog tethering applicable, with exceptions, to a person who tethers, fastens, chains, ties or otherwise restrains a dog to a dog house, tree, fence or other stationary object.

S.B. No. 488 proposed a new subsection in section 711-1109, Hawaii Revised Statutes, animal cruelty in the second degree, applicable, with exceptions, to a person who tethers, fastens, chains, ties or otherwise restrains a companion animal for longer than a reasonable period of time to complete a temporary task, or, for any amount of time in which the tether, fastener, chain, tie or other restraint causes actual harm; or in a manner that endangers the animal's health, safety or well-being or inflicts emotional distress upon the animal.

S.B. No. 1188 proposed three new subsections in section 711-1109, Hawaii Revised Statutes, applicable, with exceptions, to a person who: tethers, fastens, chains, ties or otherwise restrains a dog or cat for an unreasonable period of time or in a manner that unreasonably limits movement; tethers, fastens, chains, ties, restrains, kennels or cages a dog or cat in any manner that exposes the animal to unsafe conditions; or tethers, fastens, chains, ties, restrains, kennels or cages a dog or cat in any manner that causes exposure without shelter during periods of hazardous weather.



With regard to dog tethering, your Committee concurs with the position of the Committee on Water, Land, Agriculture, and Hawaiian Affairs set forth in Stand. Com. Rep. No. 15 on S.B. No. 30, S.D. 1 (2009):

"Under present law, dogs may be tethered for twenty-four hours a day, seven days a week to a stationary object as long as the tether is at least six feet long. Continuously tethered dogs become lonely, bored, territorial, and aggressive. Researchers have found that tethered dogs are nearly three times more likely to bite and over five times more likely to bite children.

Additionally, a tether can become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. Dogs are pack animals and are naturally social. Tethered dogs live an isolated existence that is contrary to their own instincts, and this lack of socialization is part of what makes tethered dogs more dangerous.

Your Committee has heard from one public citizen who witnessed neighbors who kept two dogs tethered by ropes tied to trees in their front yard. The neighbor had been burglarized, and the dogs were a security measure. When the public citizen called the Hawaiian Humane Society for assistance, the Hawaiian Humane Society informed the public citizen that Hawaii law did not prevent the neighbors from keeping the dogs tethered. The dogs could not interact with each other because the tether was too short, and in time they grew despondent and died. The public citizen supports this measure for the welfare of dogs, and for the helpless neighbors forced to watch the abuse of animals.

Your Committee, however, recognizes that there are enforcement challenges for the Hawaiian Humane Society and economic hardships imposed by this measure. In light of these issues, your Committee encourages the proponents of the measure to collaborate with other parties to resolve differences in crafting amendments for this measure."



It is your Committee's expectation that stakeholders will collaborate to refine and revise the language in this bill during the remainder of the 2009 legislative session. In addition, your Committee notes that an ad hoc Task Force on Humane Restraint and Confinement of Pet Animals will be convened to further discuss these issues in the 2009 interim and requests the ad hoc Task Force to develop comprehensive legislation for the 2010 Regular Session relating to restraint standards for dogs and confinement standards for of pet animals generally, including the definition of "necessary sustenance" under section 711-1100, Hawaii Revised Statutes, as it relates to "area of confinement" as used in paragraph (4) of that definition.

Accordingly, your Committee has amended this measure by:

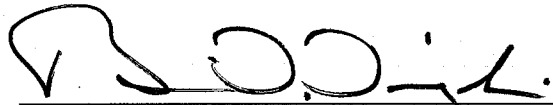
- (1) Deleting the provision creating the offense of confinement of a pet animal on public property;
- (2) Adding amendments to section 711-1109, cruelty to animals in the second degree, to:
  - (a) Separate prohibitions in section 711-1109(a), Hawaii Revised Statutes, to distinguish between conduct in directed at "any" animal ("[o]verdrives, overloads, tortures, torments, beats, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal") and conduct directed at a "pet" animal ("deprives a pet animal of necessary sustenance or causes such deprivation.");
  - (b) Add a new subsection that prohibits confinement of a pet animal in a cruel or inhumane manner or for an unreasonable period of time; and
  - (c) Add a new subsection that prohibits, with exceptions, tethering a dog to a stationary object, or restraint with chain or a chain-, choke- or pinch- collar;
- (3) Changing the quantity of dogs and cats deprived of necessary sustenance in the animal hoarding statute to "more than fifteen";



- (4) Making technical nonsubstantive revisions; and
- (5) Changing the effective date to July 1, 2050 to continue discussions on these matters.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1222, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1222, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Government Operations,



BRIAN T. TANIGUCHI, Chair



**Record of Votes**  
**Committee on Judiciary and Government Operations**  
**JGO**

\*Only one measure per Record of Votes