



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 3203, S.D. 1, RELATING TO ANIMAL HOARDING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 20, 2008 **TIME:** 2:25 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General has legal concerns about this bill.

The purpose of this bill is to create a new misdemeanor offense in chapter 711, Hawaii Revised Statutes (HRS), which prohibits animal hoarding. The offense of animal hoarding is defined as: (1) negligently possessing more than a typical number of pet animals; (2) negligently failing or being unable to provide necessary sustenance for each pet animal; and (3) displaying an inability to recognize or understand the nature of, or having reckless disregard for, the conditions under which the pet animals are living and the deleterious impact the conditions have on the pet animals' and owner's health and well-being.

We have several concerns about this new criminal offense. First, the offense prohibits possession of more than a "typical" number of pet animals but does not define "typical." As drafted, this part of the offense may be unconstitutional for vagueness. Rules of statutory construction and Hawaii case law on penal statutes have held that a criminal statute is void for vagueness unless it: (1) gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he or she may act accordingly, and (2) provides explicit standards for those

who apply the statute, in order to avoid arbitrary and discriminatory enforcement and the delegation of basic policy matters to police officers, judges, and juries for resolution on an ad hoc and subjective basis. See State v. Kalani, 108 Haw. 279 (2005), and State v. Marley, 54 Haw. 450 (1973). Prohibiting the possession of more than a "typical" number of pets appears to be too imprecise for use in a penal statute.

Second, we have a concern regarding the provision that makes it an offense if the person is unable to provide necessary sustenance for the pet animals. This provision makes it a crime even if the person is unable to act. It punishes involuntary conduct. Section 702-200(1), HRS, provides, "In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable." The commentary on section 702-200 states as follows:

Statutory law cannot hope to command or deter acts over which the accused has no control. Moreover, any attempt at moral condemnation of involuntary acts or omissions through the use of the penal sanction would ultimately disserve the integrity of the penal law.

Lastly, the bill makes it an offense if the person displays an inability to recognize or understand the nature of the conditions under which the pet animals are living and the deleterious impact the conditions are having upon the pet animals' and owner's health and well-being. Put another way, the bill makes it a crime if a person is unable to recognize or understand that the pet animals' living conditions are having a bad effect on the animals and the person. The phrase "displays an inability to recognize or understand" is not clear. It may be interpreted to refer to a mental disability or disorder, or to punish someone who cannot have the requisite state of mind.

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**Office of the Public Defender
State of Hawaii**



**Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

March 20, 2008, 2:25 p.m.

RE: S.B. 3203, S.D. 1: Relating To Animal Hoarding

Chair Waters and Members of the Committee:

This measure would make the act of animal hoarding a misdemeanor offense punishable by up to one year in jail and/or a two thousand dollar fine.

The Office of the Public Defender opposes S.B. 3203, S.D. 1.

Section 711-1109, Animal Cruelty in the Second Degree proscribes the intentional, knowing or reckless causation of substantial bodily injury or starvation of any animal. The causation of substantial bodily injury or starvation of a single animal is prohibited under the current animal cruelty laws. The offense of animal hoarding would be harder to prove than animal cruelty.

The offense of animal hoarding would require proof of possession of more than a typical number of pet animals. What constitutes a typical number of animals? The language is vague as to what constitutes a typical number of animals, and may not provide sufficient notice to the pet owner.

We believe that this bill unnecessarily duplicates cruelty to animals in the second degree, and is harder to prove. Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE TOMMY WATERS, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-fourth State Legislature
Regular Session of 2008
State of Hawaii

March 20, 2008

RE: S.B. 3203, S.D. 1; RELATING TO ANIMAL HOARDING.

Chair Waters and members of the House Judiciary Committee, the Department of the Prosecuting Attorney submits the following comments on S.B. 3203, S.D. 1.

The purpose of this bill is to create a new misdemeanor offense in Hawaii Revised Statutes (HRS) chapter 711 which prohibits animal hoarding. The offense of animal hoarding is defined as: 1) negligently possessing more than a typical number of pet animals; 2) negligently failing or being unable to provide necessary sustenance for each pet animal; and 3) displaying an inability to recognize or understand the nature of, or having reckless disregard for, the conditions under which the pet animals are living and the deleterious impact the conditions have on the pet animals' and owner's health and well-being.

We take no position on the policy issues underlying the need for legislation; however, we do have serious concerns about current form of the proposed form of the offense. First, the offense prohibits the possessing of more than a "typical" number of pet animals but does not define "typical." We fear that as drafted this part of the offense may be unconstitutional for vagueness. Rules of statutory construction and Hawaii case law on penal statutes have held that a "criminal statute is void for vagueness unless it: 1) gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he or she may act accordingly, and 2) provides explicit standards for those who apply the statute, in order to avoid arbitrary and discriminatory enforcement and the delegation of basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis. See State v. Kalani, 108 Haw. 279 (2005) and State v. Marley, 54 Haw. 450 (1973). Unfortunately, we believe that prohibiting more than a "typical" number of pets may be too imprecise for use in a penal statute. Would five dogs be too many, or is six or seven the limit? And would the number depend on their sizes and whether they were kept in a studio apartment or a home or a large agricultural lot? We believe these uncertainties for the police, prosecutor, judges, juries as well as the suspect may make this bill unconstitutionally vague.

Furthermore, the hoarding offense applies to persons who are unable to provide necessary sustenance for their pet animals. This is counter to the general rule of penal statutes

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which punish persons who have the ability to comply but willfully fail to comply as opposed to persons who do not have the ability to comply.

Lastly, we note this proposal applies to persons who display an inability to recognize or understand the deleterious impact of the conditions upon the pet animals. Under HRS section 704-400, a person is not responsible for conduct where they lacked substantial capacity either to appreciate the wrongfulness or their conduct to the requirements of law as a result of physical or mental disease, disorder or defect. We believe that if a person truly did not understand the circumstances in which their pets were living, there is a possibility that the person will be found not guilty pursuant to HRS 704-400 if there is a sufficient underlying mental or physical disease or defect.

Thus, although we do not take any position on the underlying public policies of this bill, we do have concerns about the proposal as currently drafted.

Thank you for this opportunity to testify.

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JUDtestimony

From: animal_care_foundation@juno.com
Sent: Thursday, March 20, 2008 2:35 AM
To: JUDtestimony
Subject: SB 3203 SD1 (Animal Hoarding) Testimony

DATE:
Thursday, March 20, 2008

TIME:
2:25 p.m.

PLACE:
Conference Room 325

RE: SB 3203- relating to Animal hoarding

Postion: strongly oppose

This bill sounds good on its face, but the reality that it will be abused if enacted into law.

The language in this bill is too broad. There is no specificity about how many animals is "a large number of animals".

The Hawaiian Humane Society (HHS) has a large number of animals and so do animal rescue organizations. Unfortunately prosecutions on O`ahu have been politically motivated against animal rescues, and HHS is really above the law if history is any indication. The HHS has had a terrible pattern and practice of going after animal rescue organizations and individual breeders, who are in competition with them. We have sworn testimony from employees saying how HHS wanted to "make a big splash in the media" by going after organizations that make them look bad - a revenge motive and malicious prosecution since the rescuer was later found not guilty at trial. They also go after breeders who are in competition with the breeders on their board of directors or are those who are their financial supporters.

As a practical matter this bill greatly hinders adoption efforts by rescues. People will think having 6 or 7 animals is a large number and won't adopt additional animals. Currently HHS kills somewhere between 30,000 and 70,000 animals a year. How many animals will this Committee unintentionally kill in order to try to save a relatively small number of animals who would likely be saved by the existing state animal cruelty law anyway?

What is the "condition" that the law seeks to prevent? Does any place which has not achieved the "Good Housekeeping Seal of Approval", or HHS's arbitrary and capricious version of the Good Housekeeping Seal of Approval qualify for criminal penalties. One person in Kane`ohe was cited for having green algae growing on the water buckets his dogs drank out of. HHS tried to cite someone for not having medical records for all their animals 6 months current when there was no illness for that the animals suffered from. Do all of you bring your animal to the vet every 6 months? You should, but I wouldn't think it a criminal action if the animal was young and healthy.

And what is a "deleterious effect" on human or animal health and who decides? Do allergies of people qualify? Does kennel cough or ringworm qualify? I've also heard that HHS and the department of Health considers just having feces present outside of an animal is a health hazard to people and animals. While I think having dog feces in a kennel is something that should be cleaned up I don't think it ranks as a toxic waste spill, or a biological hazard, or potential health emergency/potential health epidemic risk.

Also, we are saving the animals from a messy house by having them confiscated and killed in a barbaric and cruel fashion. What is the point to that? Does the Committee understand the level of cruelty that is a daily occurrence at HHS?

There are a number of small no-kill shelters which might be at risk if this bill advances as written. We suggest working with the broad animal protection community to draft legislation that will truly protect animals and avoid the state being embroiled in costly time consuming litigation over the overbreadth and vagueness of the bill when it violates people's civil rights.

Submitted by:
Frank De Giacomo, V.P.
Animal CARE Foundation

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**TESTIMONY OF GLEN FUKUNAGA IN SUPPORT OF S.B. No. 3203 S.D. 1
Relating to Animal Hoarding**

HOUSE COMMITTEE ON JUDICIARY

Hearing Date: Thursday, March 20, 2008
2:25 p.m. Conference Room 325

**To: Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair
Members of the Committee on Judiciary**

My name is Glen Fukunaga and as a concerned citizen I am presenting this testimony in strong support of S.B. No. 3203 S.D. 1.

Most people are unfamiliar with the term "animal hoarding." The Hoarding of Animals Research Consortium, a group affiliated with Tufts University's School of Veterinary Medicine in Massachusetts, describes animal hoarding as

"an important, misunderstood, and under-recognized community problem that affects both human and animal welfare. It is responsible for substantial animal suffering and property damage. Often associated with adult self-neglect, animal hoarding can place children, elders, and dependent adults at serious risk, and can be an economic burden to taxpayers."

There are four characteristics of animal hoarders:

- Failure to provide minimal standards of sanitation, space, nutrition and veterinary care
- An inability to see that level of care is creating problems for animals and humans
- Obsessive attempts to maintain and add to the numbers of animals even while conditions get progressively worse
- Denying that living conditions are creating a problem for animals and people

An April 2000 Psychiatric Times article entitled *People Who Hoard Animals*, by Hoarding of Animals Research Consortium Corresponding Author Randy Frost, Ph.D, described an extreme case in which over 600 animals were found in the home of a Los Angeles woman; some of the animals were already dead, and some so ill that they had to be euthanized. The woman refused to voluntarily surrender the animals to animal control, and insisted that they were well cared-for.

The Hoarding of Animals Research Consortium has estimated that as many as 250,000 animals per year are acquired by animal hoarders.

Animal hoarding must *not* be confused with legitimate animal sheltering, sanctuary and rescue groups whose laudable efforts ensure that the animals entrusted to them receive proper care.

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It has been reported that for most hoarders, living spaces are compromised to the extent that they no longer serve the function for which they were intended. Household functions such as food preparation are impaired, and basic sanitation is impossible. Other family members, such as children and dependent elderly persons are at risk. Rodent and insect infestations, animal feces and urine, and high levels of ammonia pose immediate health risks. Odors and an increased fire hazard from clutter can create a community health threat.

According to a September 11, 2005 Honolulu Advertiser article by the Hawaiian Humane Society entitled *Animal hoarders in denial of cruelty*: the Hawaiian Humane Society has investigated animal hoarding cases but believes that many hoarders go unreported or undetected; O'ahu law states that no household can contain more than 10 pet dogs without being considered a commercial operation; there is no number limit for cats; and although many different animals can be hoarded, cats are common because they are easier to conceal than dogs.

Simply having more animals than an arbitrarily set limit law is not animal hoarding. How many is too many to care for depends on the circumstances. The first element of the offense, possession of "more than a typical number" of pet animals, calls for the application of common sense and would vary with the situation. It is not typical for a person living on the street to have 20 animals and more on the way. On a farm it might not be unusual at all. However, if a specific number would render this provision more enforceable, I would recommend "more than fifteen pet animals."

Why do we need a separate offense? Hawaii's existing statutes on cruelty to animals deal with one animal at a time. Citing an animal hoarder for many minor infractions may make law enforcement efforts appear overly aggressive toward a well-meaning person. Without early intervention, hoarders keep acquiring, putting the community, the elderly, infirm, young children, and themselves at risk. A separate offense of animal hoarding is necessary to empower law enforcement to look at the overall picture, recognize a problem, and intervene early.

According to a May 1, 2003 Journal of the American Veterinary Medicine Association article entitled "Lawmakers tackle animal hoarding" by Bridget M. Kuehn:

Most states and municipalities do not have laws that specifically address animal hoarding. Law enforcement often must write a separate citation for each offense for each animal.

When animal hoarders are charged with many minor citations, such as failure to provide proper nutrition, sanitation, veterinary care, licensing, and vaccinations, more serious charges may be buried and it may seem that law enforcement is being overly aggressive and harassing a well-meaning person, according to Dr. [Gary] Patronek [VMD, PhD, founder of the Hoarding of Animals Research Consortium]. It may create reasonable doubt because it may appear person meant

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well but became overwhelmed; however, this is one case where the whole is much worse than the sum of its parts. . . .

"(A series of minor citations) makes it seem like the offenses were fairly trivial and the general public, as well as, the courts, can sympathize with these people more easily," Dr. Patronek said. "There is a unique and serious pathology present with animal hoarding that is not addressed well by the serial citation approach."

Penalties for these minor infractions are often weak, he said, and prosecution rarely leads to a concerted plan to help prevent recidivism.

While animal hoarders are generally unseen and unnoticed, I have been witness to a highly public example for the past several years. A homeless woman in Kakaako has been hoarding cats and ducks in squalid and extremely confining conditions. They are placed in cages atop shopping carts, without any time outside even to urinate or defecate. I have included photographs that give a sense of the nature and extent of the situation. The Hawaiian Humane Society has informed me that they have no written standards on such confinement and welcome guidelines on this matter. In the future, the Legislature should bolster the "area of confinement" component in the definition of "necessary sustenance."

HRS §711-1100 defines "necessary sustenance" as:

"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."

Emphasis added.

The provision on "area of confinement" could, for example, refer to the Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats set forth in the U.S. Department of Agriculture Animal Health and Husbandry Standards, 9 C.F.R. 3.6.

In summary, I respectfully urge you to pass S.B. No. 3203 S.D. 1.

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In the future, I would request that the definition of necessary sustenance be reviewed to assure adequate protection for pet cats and dogs permanently confined to cages or pet carriers.

Please note that the Hoarding of Animals Research Consortium's website is www.tufts.edu/vet/cfa/hoarding. Compelling videos of animal hoarding cases can be found by searching for "hoarding" on the Humane Society of the United States website, www.hsus.org.

Thank you for the opportunity to testify on this measure.

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Animal hoarder with shopping cart. Honolulu, December 2007

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Animal hoarder's carts and carriers. Honolulu, October 2007

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Pet carriers stacked in shopping carts. Honolulu, November 2007

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Pet carriers stacked in shopping carts. Honolulu, October 2007

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Pet carriers stacked in shopping carts. Honolulu, October 2007

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