

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 Senate Committee on Judiciary and Government Operations

February 13, 2009, 9:30 a.m.

RE: S.B. 1176: Relating To Dangerous Dogs

Chair Taniguchi and Members of the Committee:

S.B. 1176 seeks to criminalize the letting loose of dangerous dogs. We oppose this measure on the grounds that it is excessively vague and would be ineffective in achieving its goals. First of all, the definition of a "dangerous dog" is very unclear. It is defined as "any dog that without provocation, attacks a person or animal or behaves in a manner that a reasonable person would believe poses an imminent threat of bodily injury to one or more persons or serious injury or death to a domestic animal." This definition would subject an owner to criminal liability the first time a dog attacks someone. Unless a dog has attacked before, how would an owner know that he owns a "dangerous dog?" Also, the term "provocation" is undefined. Does it mean pulling on a dog's tail? Orally taunting the dog? Running near a dog can provoke certain breeds to chase a person. Some dogs like to engage in roughhouse play. This can be misinterpreted as an attack, which could escalate to a dangerous situation if the person starts to physically assault the dog. Certain breeds are more prone to aggressive behavior than others. By owning such a breed, are owners automatically suspect under this statute?

Secondly, on page 2, lines 6 - 8, there is no state of mind for permitting the dog to roam freely. Even with owners' best efforts, dogs routinely break out of their yards or housing. Such conduct should only be criminalized if the owner intentionally or knowingly allows such a dog to roam freely.

Third, the section relating to dangerous dog complaints appears to be unnecessary. Currently, dogs which inflict serious injuries can be confiscated by animal control personnel. Indeed, under the Honolulu Revised Ordinances, it is already a violation to allow a dog to become a stray and roam off leash. See Revised Ordinances of Honolulu § 7-4.2.

Finally, the section on page 4 which makes the penalty for a dog biting a person causing any "injury requiring medical treatment" a class C felony with a mandatory minimum prison term of one year is excessive. A person whose dog breaks out of its pen and bites someone will receive this penalty without regard to fault. Moreover, with regard to the class C felony, there is no limitation that the bite occurs off the owner's premises. Therefore, if a trespasser or burglar gets

bitten by a "dangerous dog", the occupant of the premises being violated would be guilty of a felony.

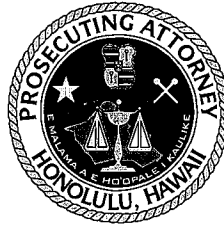
HRS §§ 142-74 and 142-75 delegate authority to regulate dogs who harm humans or other animals to the individual counties. Because counties across the state differ as to their rural or urban nature, such authority is best left to them. Each county can better determine the need for stricter animal control laws.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

February 13, 2009

RE: S.B. 1176; RELATING TO DANGEROUS DOG.

Chair Taniguchi, and members of the Senate Committee on Judiciary and Government Operations Committee, the Department of the Prosecuting Attorney comments on SB 1176.

The purpose of SB 1176 is to add a new part to chapter 142. These new parts would regulate dangerous dogs who freely roam outside the owner's property without the owner's supervision. New sections relating to procedures and penalties are also provided.

We would note that this bill appears to contemplate a statewide dangerous dog statute. It is our understanding that all or almost all of the counties have their own dangerous dog ordinances which are authorized under Hawaii Revised Statutes (HRS) section 142-74 and 142-75. We are not sure if the intent of this bill is to preempt those county ordinances. If the intent is to preempt the county ordinances, we would respectfully request that the legislature not pass any statewide law that is less comprehensive and less clear than the current county ordinances.

Thank you for this opportunity to testify.

Susan Miyao

From: Kawehi Yim [kyim@hawaiianhumane.org]
Sent: Thursday, February 12, 2009 4:55 PM
To: JGO Testimony
Subject: SB1176 -- Relating to Dangerous Dogs
Attachments: att62e6c.jpg



HAWAIIAN
HUMANE
SOCIETY

Senator Brian T. Taniguchi, Chair
Committee on Judiciary and Government Operations
February 13, 2009, 9:30 a.m.

SUBJECT: SB1176 -- Relating to Dangerous Dogs
POSITION: Concerns.

The Hawaiian Humane Society has concerns related to SB1176 as it relates to dangerous dogs. The Concern raised is that the current language of this bill may be in conflict with county ordinance which themselves vary from county to county.

We ask that the Judiciary Committee carefully review the current county ordinances to ensure that the needs of the entire committee are adequately met with the language of this bill.

Sincerely,

Kawehi Yim
Community Relations Director
Hawaiian Humane Society
2700 Waialae Avenue
Honolulu, HI 96826

Phone: 808.356.2212

E-Mail: kyim@hawaiianhumane.org

When it comes to giving, go local. On Oahu, Hawaiian Humane Society is the only animal welfare organization that shelters, rescues, adopts and welcomes all animals — all day and every day. 100% of your gift stays in the islands for the benefit of Hawaii's animals and people.

From: Dr. Becky Rhoades [drbecky@kauaihumane.org]
Sent: Thursday, February 12, 2009 3:34 PM
To: JGO Testimony
Subject: B 1176 Relating To Dangerous Dogs Hearing on February 13, 2009
Attachments: image001.jpg; image003.jpg; image002.jpg



Kauai Humane Society
PO Box 3330
Lihue, Hawaii 96766
(808) 632-0610
www.kauaihumane.org

February 12, 2009

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

HEARING DATE: Friday, February 13, 2009, 9:30 a.m.
Conference Room 016, State Capitol

Re: SB 1176 Relating To Dangerous Dogs

Dear Chairman Taniguchi and Members of the Committee,

On behalf of the Kauai Humane Society and its 2000 members, we oppose SB 1176 related to dangerous dogs.

Each County has ordinances related to the control and prosecution of dangerous dogs. Our ordinance on Kauai already has many of the provisions included in the language of SB 1176. We strongly recommend that concerned constituents work with their County on changes they feel are needed to strengthen ordinances related to the control of dangerous dogs.

While this is statewide legislation, we feel the enforcement of a law such as this needs to be addressed on a county by county basis because of their unique differences.

Sincerely,

A handwritten signature in black ink that reads "R. Rhoades".

Rebecca H. Rhoades, D.V.M.
Executive Director
Kauai Humane Society

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Friday, February 13, 2009
9:30 a.m.

SB 1176

Chair Taniguchi, Vice Chair Takamine, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes Section 2, page 4, §142- Leash Liability** of S.B. 1176. As currently written, the leash liability section of the bill imposes strict liability for any injuries or damages caused by an unleashed dog. As this section provides for strict liability, Hawaii Insurers Council believes that injuries or damages caused by an unleashed dog could have been caused by mitigating factors, such as the injured provoking a dog to escape from a house when the owner enters or exits or a thief cuts the lock and opens the gate for a dog to escape.

If the intent is to hold the owner of a “dangerous dog”, as defined in the bill, liable for any injuries or damages, Hawaii Insurers Council suggests the following amendment:

§142- Penalty. (b) If a dangerous dog bites a person causing injury requiring medical treatment, the owner shall be guilty of a class C felony, shall be sentenced to a mandatory minimum term of imprisonment of one year, ***shall be liable for any injuries or damages caused by the***

dangerous dog, and shall be fined \$5,000. The dangerous dog shall also be destroyed.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 11, 2009 7:18 PM
To: JGO Testimony
Cc: jillf2184@yahoo.com
Subject: Testimony for SB1176 on 2/13/2009 9:30:00 AM

Testimony for JGO 2/13/2009 9:30:00 AM SB1176

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Jill Friedman
Organization: Individual
Address:
Phone:
E-mail: jillf2184@yahoo.com
Submitted on: 2/11/2009

Comments:

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

NOTICE OF HEARING

DATE: Friday, February 13, 2009
TIME: 9:30 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

To Chair - Senator Brian T. Taniguchi
Re; Dog Bill

From Theo Coumbis
PO Box 1979 Kailua 96734
theocoumbis@yahoo.com

Thank you for hearing my testimony. I have lived in Kailua for about 12 years. I exercise regularly on Kailua and Kalama beaches. About 4 years ago I was attacked and badly bitten by a fairly large dog while I was jogging on the beach. I had to go to the doctor for assistance. I was a savage bite I was bleeding and had a burshed and swollen thigh injury for weeks.

Although I called the police and filed a report nothing really happened to the owner to discourage him from letting his dog run loose on the beach without a leash.

To this day I still see that owner on the beach with his dog and the dog is still not on a leash. This dog I was told by the owner had a history of biting people. I had done nothing to provoke the dog to bite me it just snuck up behind me and bit me for no apparent reason.

When I jog on the beach I am constantly having to dodge dogs that are running loose on the beach with out a leash and some of these dogs are large dogs, Dobermans and German Shepards for example. This is a stressful way to try and exercise.

I have noticed over the years that the amount of dogs running loose on Kailua and Kalama beaches has gotten worse. In fact sometimes especially on the weekend it seems like a jungle.

There is a sign in the park that says no dogs on beach but no one enforces it or appears to take any notice of it. I don't mind dogs on the beach if the owner is controlling the dog securely with a leash.

Please note there are small children on the beach and I have seen dogs run up to these children many times without restraint. It just looks like a disaster waiting to happen.

I urge you to please do something to enforce the law that no dogs are allowed to run loose on the beach.

Thank you.
Theo Coumbis