

**SB2877**

**Late**

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the Senate Committee on Judiciary and Government Operations**

February 5, 2010

S.B. No. 2877: RELATING TO OFFENSES AGAINST PUBLIC ORDER.

Senator Taniguchi and Members of the Committee:

S.B. 2877 proposes to create a new HRS section which would prohibit attaching a dog to any of the listed objects, except under very stringent conditions.

For example, attaching a dog to any doghouse, tree, fence, stationary object or cable trolley system by a "tether or chain" that is less than ten feet in length would constitute a violation, punishable by a mandatory fine of not less than \$50. nor more than \$150 for a first offense, and not less than \$200. nor more than \$500. for a subsequent violation. Using a "tether or chain" that weighs more than ten percent of the weight of the dog would likewise be a violation. Using a "tether or chain" that does not have a swivel on at least one end would be a misdemeanor. Securing a dog under the age of six months would be a violation. While the word "tether" is not defined, it appears that the intent of the proposed legislation would be to treat leashes as tethers.

The exception to these prohibitions would be if the dog was being walked with a hand-held leash or engaged in "supervised activity" under § 711-1109 (1) (g).

If a person uses a leash less than ten feet in length to secure a dog outside so that the dog does not run out of a fenced yard while the person does work in another area of the yard (bringing in building supplies, groceries, doing yard maintenance, washing the car, etc.) that requires the gate to be open, will it be considered "supervised activity", even if the person is not actually supervising the dog at all times?

If a person uses a tether that weighs more than 15 percent of the dog's weight, how will the person prove it wasn't "reckless" to do so?

What may seem like silly questions will be less so when it is clear that such behavior could constitute a violation of the Hawai'i Penal Code under this proposed legislation. It is not a good idea to draft legislation so specifically that it can entrap those not intended to be caught by the language. For example, the prohibition against tethering any dog under the age of six months ignores the fact that some large breeds of dogs may be amenable to such restraint at less than six months of age. Assuming all the other requirements of this legislation were met, it would somehow be acceptable to tether a 6 ½ month old toy poodle but not a 5 ½ month old german shephard, great dane, golden retriever, etc.

We also oppose the proposal in this bill to mandate a \$50. to \$150. fine for a first violation and \$200. to \$500. fines for subsequent violations. While the first amount may seem nominal, we note that the court already has the ability to fine a person convicted of 2<sup>nd</sup> degree Cruelty to Animals up to \$2000. It is not necessary to mandate any amount.

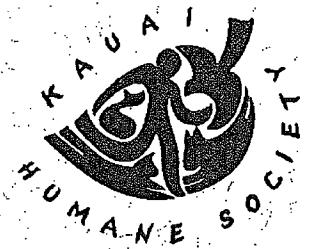
Whether a fine should be imposed and the amount of said fine, if any, should be left to the sound discretion of the judge who will be familiar with the circumstances of each case.

We do not believe the changes proposed in this bill are necessary. They will create more problems than they are designed to solve and will, in actuality, add no further protection than is already found in our current law.

For these reasons, we oppose this proposed legislation. Thank you for the opportunity to comment on this bill.

**LATE**

3-825 Kaumualii Hwy.  
P.O. Box 3330  
Lihue, Hawaii 96766  
phone: 808-632-0610  
fax: 808-632-0727  
[www.kauaihumane.org](http://www.kauaihumane.org)



February 5, 2010

Senator Brian Taniguchi, Chair  
Senator Dwight Takamine, Vice Chair  
Committee on Judiciary and Government Operations  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

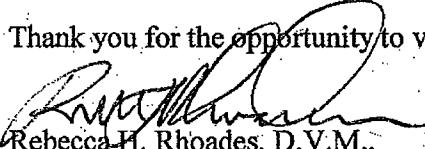
RE: Testimony on SB2877

Dear Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

On behalf of the Kauai Humane Society, we appreciate the opportunity to comment on SB2877, Relating to Offenses Against Public Order.

We are in strong support of the language in this bill and urge you to pass this important legislation. We attended along with other key stakeholders multiple meetings to discuss the issues related to tethered animals in our community following last year's legislative session. This bill is the result of this collaboration to more effectively address pet tethering issues.

Thank you for the opportunity to voice our support of this bill.

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

*Board of Directors*

*President*  
Elizabeth Freitas

*1st Vice President*  
Jo Anne Moniz

*2nd Vice President*  
Paul Douglass

*Treasurer*  
Laura Wiley, C.P.A.

*Secretary*  
Naomi Yamane

*Directors*  
Sandra Day  
Janine Hashitate  
Wallace Johnson  
Jeffrey Kennedy  
Leticia Lee  
Laurel Loo  
Leslie Milnes  
Orianna Skomoroch  
Betty Unanian

*Executive Director*  
Rebecca Rhoades, D.V.M.