

**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339
Honolulu, Hawaii 96809-0339

January 8, 2020

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott Saiki
Speaker and Members of the House
of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

SUBJECT: REPORT IN ACCORDANCE WITH SENATE RESOLUTION 8 SENATE DRAFT 1 (2019) REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO EXAMINE THE IMPLEMENTATION OF ACT 217, SESSION LAWS OF HAWAII 2018, REGARDING MISREPRESENTATION OF SERVICE ANIMALS (Revised).

Dear President Kouchi, Speaker Saiki, and members of the Legislature,

Attached is the following revised report submitted in accordance with:

- SENATE RESOLUTION 8 SENATE DRAFT 1 (2019) REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO EXAMINE THE IMPLEMENTATION OF ACT 217, SESSION LAWS OF HAWAII 2018, REGARDING MISREPRESENTATION OF SERVICE ANIMALS.

Insightful revisions were received from the Disability & Communication Access Board and the Hawaii Civil Rights Commission after the initial report was submitted to the Legislature. The revisions are underscored.

In accordance with section 93-16, HRS, copies of these reports have been transmitted to the Legislative Reference Bureau Library and the reports may be viewed electronically at <http://humanservices.hawaii.gov/reports/legislative-reports/>.

Sincerely,

Cathy Betts
Deputy Director

January 8, 2020

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ecopy:

Office of the Governor

Office of the Lieutenant Governor

Department of Budget & Finance

Legislative Auditor

Senator Russell E. Ruderman, Chair, Senate Committee on Human Services

Representative Joy A. San Buenaventura, House Committee on Human Services &
Homelessness

Report to the Thirtieth Hawaii State Legislature 2020

**In Accordance with Senate Resolution 8 Senate Draft 1 (2019) relating to
Act 217, Hawaii Session Laws 2018,
Regarding the Misrepresentation of Service Animals**

**Department of Human Services
Office of the Director
December 2019 - Revised¹**

¹ Please see clarifying revisions that were contributed by the Disability and Communication Access Board and the Hawaii Commission on Civil Rights received after the initial report was transmitted to the Legislature. The revisions are underscored.

Senate Resolution 8 Senate Draft 1 (SR8 SD1) (2019).

The Senate requested the Department of Human Services (DHS), in consultation with the Hawai'i Civil Rights Commission (HCRC) and the Disability and Communication Access Board (DCAB), examine and report on the implementation of Act 217 (Session Laws of Hawaii, (SLH) 2018), including:

- (1) How to enforce the prohibition against misrepresentation of a service animal;
- (2) Whether administrative rules need to be adopted;
- (3) How to better oversee and regulate service animals;
- (4) Whether additional legislation is necessary;
- (5) Issue guidance about misrepresentation of a service animal for use by law enforcement and the business community.

Further the Senate requested:

- (6) The Department of Human Services develop a public outreach campaign to educate places of accommodations as well as the public as to the important work that legitimate service animals do and why it is important for service animals to assist their owners; and
- (7) Submit a report of its findings and recommendations to the Legislature, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2020.

After consultation with HCRC, DCAB, the Department of the Attorney General, inquiry with County law enforcement agencies, inquiry with several individuals who submitted testimony in support of SB 2461 (2018), review of other States' statutes and recent briefs on the issue, DHS submits this report to the Legislature.

I. Background: Act 217 (SLH 2018)/SB 2461

The preamble of Act 217 (SLH 2018)² articulates the Legislature's reasons and purposes for the Act:

"The legislature finds that there is a growing problem with people fraudulently representing untrained animals as service dogs. This has resulted in legitimate service dogs being needlessly distracted or even attacked by untrained dogs or other animals,

² See https://www.capitol.hawaii.gov/session2018/bills/GM1326_PDF

as well as in violations of the food and sanitation code. Currently, there is no legal consequence for misrepresenting a pet dog or other animal as a service animal.

The legislature further finds that, generally, a service animal is a dog that is individually trained to work or perform tasks for people with disabilities. The work or task that a service animal has been trained to provide must be directly related to a person's disability. The legislature affirms that a dog or other animal whose sole function is to provide companionship, comfort, or emotional support does not qualify as a service dog under chapter 347, Hawaii Revised Statutes, or the Americans with Disabilities Act of 1990 (ADA).

The legislature additionally finds that a penalty for misrepresentation of a dog or other animal as a service animal will discourage people from fraudulently representing their pets as service animals in order to bring the animals into restaurants, supermarkets, and other inappropriate locations. The legislature also finds that statutory penalties will also discourage persons from fraudulently misrepresenting a pet animal as a service animal in order to gain housing amenities which, but for otherwise lawful restrictions on pet ownership, would not be available to residents of a dwelling or building. The legislature finds that such penalties are not inconsistent with the spirit of the ADA. The legislature also finds that an appropriate definition of "service animal" will help businesses and other organizations to comply with the law.

It is not the legislature's intent to undermine the valuable purpose and goals of the ADA or other applicable state or federal laws. The United States Department of Justice has issued guidance on the questions that can be asked of a person to determine if a dog is a bona fide service dog, suggesting that it does not violate the ADA to ask questions concerning the specific and appropriate training of a particular dog being presented as a service animal.³ The legislature further recognizes that more than fifteen states currently prohibit misrepresentation of a service animal by means of civil or criminal penalties, or both.

The purpose of this Act is to:

- (1) Establish a civil penalty for fraudulently representing an animal as a service animal; and
- (2) Establish a definition of "service animal" that more closely conforms with the Americans with Disabilities Act of 1990, as amended."

SR 8 SD 1 (2019) is relevant to purpose (1) of Act 217 (SLH 2018). Act 217 (SLH 2018) created a new section in Chapter 347, HRS, BLIND, VISUALLY HANDICAPPED, AND OTHER DISABLED PERSONS. Specifically, Section 2 of Act 217 (SLH 2018) added section 347-2.6 (HRS)

³ However, see the referenced guidance https://www.ada.gov/service_animals_2010.htm; in contrast, the guidance states that staff may ask two specific questions. The guidance does not suggest that additional questions regarding specific and appropriate training of the service animal is permitted.

that defines “misrepresentation of a service animal” and creates a "civil penalty." Section 347-2.6 (HRS), states:

- (a) It shall be unlawful for a person to knowingly misrepresent as a service animal any animal that does not meet the requirements of a service animal as defined in section 347-2.5.
- (b) Upon a finding of clear and convincing evidence, a person who violates subsection (a) shall be fined not less than \$100 and not more than \$250 for the first violation, and not less than \$500 for a second violation and each violation thereafter.
- (c) Nothing in this section shall preclude any other civil remedies available to a person, entity, or other organization arising from misrepresentation by another person of a service animal.⁴

Act 217 (SLH 2018) also amended section 347-2.5, HRS,⁵ to read:

Service animal, defined. As used in this chapter, "service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must relate directly to the individual's disability. Neither the potential crime deterrent effects of an animal's presence nor the provision of emotional support, comfort, or companionship by an animal constitutes work or tasks for the purposes of this definition.

In his letter to Senate President Ronald D. Kouchi and House Speaker Scott K. Saiki, Governor David Y. Ige provided the following reasons why SB2461 SD1 HD1 CD1 would become law without his signature:

“Enforcement of this civil offense may be problematic because there is no official registry or form of recognized identification for a service animal. The ADA prohibits asking any questions beyond "is the dog a service animal, required because of a disability?" and "what task(s) has the dog been trained to perform?" In other words, the ADA makes it illegal to ask about the nature of the person's disability, require proof of the disability, and/or require the animal to perform the stated task. Additionally, owners are allowed to train their own animals, as opposed to being professionally trained.

⁴ https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0347/HRS_0347-0002_0006.htm

⁵ https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0347/HRS_0347-0002_0005.htm

None of the county police departments submitted testimony. However, it appears they would be the primary agencies responsible for enforcement. It may be difficult to prove in court by a clear and convincing standard that a person knowingly misrepresented an animal as a service animal. However, it is worth noting that similar legislation is present in at least fifteen other states.” GM1326 (SLH 2018).

While enforcement remains problematic, there is some anecdotal evidence that having a clear statement in law that misrepresenting a pet as a service animal is unlawful may have had some deterrent impact. When asked about the impact of the law's passage, Jim Kennedy, Executive Director of Hawaii Fi-Do Service Dogs, commented on the deterrent effect of the law when he wrote "the law was still a good one because it forces one to recognize it is “now legally wrong” ... as opposed to just something many "think is wrong." There is a world of difference, because one can easily ignore the latter, but not the former."

Additionally, an interview with a business owner who testified in favor of the law, reported that since the law passed, he has noticed that people are bringing fewer pets to his place of business; he has also recently put up a sign that has further reduced the number of pets that people bring to his business. He did report that he has had to ask a person whose dog was barking to leave the premises; the person brought out a letter from her doctor that the pet was necessary for her. While he said he was empathetic, the owner understood that service animals are trained not to bark or be disruptive. He also commented that pet or service animal owners should not put their animals on furniture or in places, like carts, that are meant for people, their products, things, or food.

A food industry representative reported that the media coverage⁶ after the passage of the law was positive and informative, and that the membership of her association has not provided more commentary since the law's passage.

⁶ See, "A new law aims to crack down on fake service dogs- with big fines for their owners," *Hawaii News Now*, at <https://www.hawaiinewsnow.com/2018/12/26/lulu-is-cute-shes-no-service-dog-come-jan-you-could-face-fine-pretending-she-is/>; or "Misrepresentation of "Service Animal" Becomes Unlawful, January 1, 2019, " *Hawaii Employers Council*, at <https://www.hecouncil.org/news/2018/07/24/main/misrepresentation-of-service-animal-becomes-unlawful-in-hawaii-january-1-2019/>; and HCRC Press Release: "State Civil Rights Commission and Disability Access Board Caution About New Service Animal Law," at <https://governor.hawaii.gov/newsroom/latest-news/hcrc-press-release-state-civil-rights-commission-and-disability-access-board-caution-about-new-service-animal-law/>.

However, one business owner who supported the law's passage, reported customers still regularly bring pets into his establishment despite the new law and signage.

II. Response to Requested Inquiry

(1) How to enforce the prohibition against misrepresentation of a service animal?

Since passage of Act 217 (SLH 2018), different entities have published comprehensive legal briefs⁷ and developed a practice tool that provide overviews of the complexity of the laws, contexts, and analysis that apply to service animals and other assistance animals. The practice matrix of federal laws lays out the covered entities, law, definitions of animals covered, regulations and implementing agency, permissible documentation and/or questions, and other applicable law. See the attached Exhibit 1. The matrix summarizes the 9 contexts where service animals are regulated and the 5 federal laws that may overlap in different ways in 5 of the 9 contexts. With the myriad of laws, it will not be easy to fashion Act 217 (SLH 2018) into a law that is easy to enforce.

The Legislature should keep in the foreground the access rights of individuals with disabilities and avoid a situation that would chill a disabled individual from accessing a service or accommodation. The Legislature may want to start with articulating the context within the matrix where Hawaii law should apply as intentional misrepresentation could occur in all contexts. However, because of the varying definitions, or lack of definitions, and varying covered disabilities or conditions, an individual could also easily believe their service or assistance animal in one context is a service animal in other or all contexts.

Once the context or contexts are clarified, the oversight entity or entities would also be identified and authorized to draft regulations regarding due process and enforcement. The Legislature should further determine whether private individuals, government entities and

⁷ See: Brown, S. E. (2019). ADA National Network. Retrieved December 23, 2019, from https://adata.org/legal_brief/legal-brief-service-animals-and-individuals-disabilities-under-americans-disabilities; see Attached Exhibit 1, Brown, S.E. (2019), ADA National Network, Retrieved December 23, 2019, from https://adata.org/legal_brief/assistance-animals-and-individuals-disabilities-under-federal-laws-matrix-and-practice; and Lee, T. (2017), 23 Animal L. 325 (2017), Criminalizing Fake Service Dogs: Helping or Hurting Legitimate Handlers?.

programs, and/or public accommodations may petition or submit a complaint to enforce the law.

a. Identifying the context

The preamble of Act 217 (SLH 2018) includes language referring to public accommodations and housing amenities as two "contexts" as if those contexts were identical. However, the applicable law and definitions in those contexts are not the same, nor consistent. For example, in the housing context, the Federal Fair Housing Act (FHA) and equivalent state fair housing law, chapter 515, HRS, are broader than for public accommodations. These laws in the housing context provide for reasonable accommodation for persons with disabilities for "assistance animals" which are animals that work, assist, provide emotional support, or perform tasks for a person with a disability. Assistance animals include, but are not limited to, service animals, and can also include animals commonly referred to as support animals, therapy animals, and comfort animals.

In addition to the broader acceptance of types of animals in the housing context (i.e. assistance animals other than service animals), the FHA and chapter 515, HRS, requirement of reasonable accommodation both allows for and requires parties to engage in an interactive process which could involve questions and documentation for an "assistance animal" that is otherwise disallowed for public accommodations for "service animals" under Titles II & III of the Americans with Disabilities Act (ADA). Section 347- 2.5, HRS, which most resembles the "service animal" definition in Titles II and III of the ADA, is also inconsistent with the FHA and chapter 515, HRS, requirement of a reasonable accommodation for an "assistance animal" in the housing context.

It should thus be noted that the preamble to Act 217 and the actual statutory amendments that resulted are not necessarily consistent in identifying context; hence, the resulting analysis presented in this Report will raise this issue of "context" multiple times.

b. Identify the complainant, granting oversight and enforcement authority to agencies

Once the Legislature identifies the context where section 347-2.6, HRS, should apply, it may become clearer as to which agencies should have oversight, investigative, and enforcement authority. Several agencies have oversight authority of overlapping federal laws: the U.S. Department of Justice for employment and public accommodations, the U.S. Department of Transportation for air travel, public and private transportation, the U.S. Department of Education in K-12 educational settings, and the U.S. Department of Housing and Urban Development for residential housing.

In Hawaii, HCRC has authority to enforce the State's anti-discrimination statutes prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. However, section 347-2.6, HRS, is not a civil rights statute per se as it is meant to penalize an individual's actions whether or not the individual's actions impact upon another person's civil rights.

The section is unclear as to: who may make a complaint alleging that an individual misrepresented a pet or animal as a service animal; who is the fact finder and determine whether by clear and convincing evidence that misrepresentation occurred and levy the fine; and what venue and due processes will be afforded to the individual alleging misrepresentation or being accused of misrepresentation.

In the City & County of Honolulu, the Honolulu Police Department and the Hawaiian Humane Society are authorized, amongst other things, to investigate complaints of animal cruelty and abuse.⁸ The Hawaiian Humane Society also has an on-line Citizen Complaint Form to report alleged animal cruelty; anyone can make a complaint.

Or as in section 347-13.5, HRS,⁹ any person injured by a violation of section 347-13, HRS,¹⁰ has a private right of action in the circuit court where the violation was alleged to occur to recover three times a person's actual damages or \$1,000, whichever sum is greater for each

⁸ See, <https://www.hawaiianhumane.org/investigations-rescues-laws/>.

⁹ See, https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0347/HRS_0347-0013_0005.htm

¹⁰ See, https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0347/HRS_0347-0013.htm

violation. The person bringing the action is also entitled to costs and reasonable attorney's fees.

It is difficult to find successful published results of a misrepresentation claim independent of a civil rights case. The case of Lerma v. Cal. Exposition & State Fair Police, (E.D. Cal., 2014), (the case referenced by one testifier in SB2461 SD1 (2018) as successful enforcement of laws regarding misrepresentation of service animal), involved a plaintiff with a puppy who attended the State Fair, and a State Fair Police Officer who observed the plaintiff with the puppy. The reference to the misrepresentation crime report was made as a defense to a denial of access claim made by the animal owner. The disposition of the crime report itself was not included in the published decision.

In Lerma, the officer asked plaintiff what task the dog had been trained to perform, plaintiff responded "all I have to tell you is it's a service dog and I'm going to sue you." (Officer's declaration, at ¶ 6.) When asked how she would handle the dog's need to relieve itself or whether it was housebroken, she responded again that she was going to sue the officer. (Id.) The Officer could not determine whether the puppy was housebroken or whether it was a service animal as defined by the ADA. He therefore informed plaintiff that based on the limited information provided by plaintiff, he could not determine that the puppy met the ADA requirements and directed plaintiff to remove it from the property. The officer informed the plaintiff that she could return to the State Fair Park without the puppy if she agreed to comply with local, state, and federal laws. (Id. at ¶ 7.) The officer then prepared a crime report, charging plaintiff with fraudulently representing herself as a service dog owner, pursuant to Cal. Penal Code § 365.7. (Id. at ¶ 9, Ex. 1.). The disposition of the crime report was not included in the case.

The Lerma case shows the value of a well-trained workforce.

The Lerma case and other published cases involving service animals, required the individual with the service animal to affirmatively assert their claim under Title III of the ADA, including that they are disabled as provided by the ADA, that the defendant owns, leases or operates a place of public accommodation, and that the plaintiff was denied accommodation because of the disability. Also in Lerma, the officer initiated a criminal case charging plaintiff

Lerma with fraudulently *representing herself* as a service dog owner as opposed to misrepresenting the animal as a service animal. While the officer was successful in having the puppy removed from the premises, the County of Sacramento was still required to defend itself in the civil rights case. The County prevailed.

Other states have use different strategies to address misrepresentation more focused on the individual versus the animal:¹¹ misrepresenting to another that a person has a disability or disability-related need; making materially false statements to obtain documentation for use of an assistance animal or service animal;¹² requiring a written or verbal warning that it is illegal to intentionally misrepresent a service animal;¹³ knowingly creating documents that falsely represent that an animal is a service animal, with a harness, collar, vest or sign used to indicate an animal is a service animal.¹⁴

Additional penalties include 30 hours of community service.¹⁵

In terms of enforcement, states allow: a court or duly appointed hearing officer to impose the civil penalty on the person misrepresenting the animal,¹⁶ a representative of a place or accommodation who suspects that an animal is being misrepresented as a service animal to gain entry may file a complaint with local law enforcement, though the place or accommodation has to first have posted conspicuous public notice that it does not allow animals other than service animals and reserves the right to file a complaint,¹⁷ and one state adds misrepresenting service animals as a violation on a uniform traffic ticket that may be used by all law enforcement officers.¹⁸

c. Identifying the analysis & elements to apply of "knowingly misrepresent"

¹¹ For lists of state laws, see <https://www.animallaw.info/topic/table-state-assistance-animal-laws>; and <http://www.ncsl.org/research/labor-and-employment/service-animal-misrepresentation.aspx>

¹² See, Alabama (2018), [HB 198](#)

¹³ See, Colorado (2016), [HB 1426](#)

¹⁴ See, Alabama (2018), [HB 198](#), Maine (2015), [HB 1092](#)

¹⁵ See, Alabama (2019), [SB 10](#), Florida (2015), [HB 71](#)

¹⁶ See, Arizona (2018), [HB 2588](#)

¹⁷ See, Montana (2019), [HB 439](#)

¹⁸ See, South Carolina (2019), [SB 281](#)

To "knowingly misrepresent" a service animal, could refer to several elements in the definition, such as the species of the animal, whether the animal was individually trained to do work or perform tasks for the benefit of an individual with a disability; and whether the work or task relates to the individual's disability.

As summarized in the practice matrix (Exhibit 1), depending on the context, there are different permissible processes that a claimant or investigator would need to consider most likely prior to engaging in the misrepresentation analysis. For example, if one assumes positive intent, a person may not know that their dog may be considered a "service animal" in one context and not in another. Say an individual with a disability and a "service animal" arrives on a flight to Honolulu with a "service animal" that provides emotional support as defined by the Air Carrier Access Act (ACAA). The same individual and "service animal" may then be denied access to a public accommodation as the animal did not meet the definition of a "service animal" per the ADA or Hawaii law, because it wasn't a dog, or it provided "emotional support" which is explicitly excluded as "work" or "a task," by Titles II & III of the ADA and Hawaii law though allowed by the ACAA. This goes back to the issue of context and the individual's intent. Without prior acknowledgement, it may be difficult to establish the individual intentionally misrepresented the animal as a service animal.

(2) Whether administrative rules need to be adopted.

Once the Legislature identifies the applicable contexts, the agencies with oversight and investigation authority will need to draft administrative rules.

(3) How to better oversee and regulate service animals;

Given the number of existing laws on the subject, oversight may be best accomplished through training and education.

Everyone should be informed that poorly behaved, aggressive, out of control, or not-house broken animals may be easy to observe and easy to remove from most premises or contexts without regard to the ADA or FHA. However, the differences between service animals, assistance animals, and pets may not be so obvious.

Training and public outreach efforts may be the best strategies to improving enforcement or adherence to existing civil rights laws. However, any outreach message should not create confusion and encourage violations of state and federal fair housing law. The Legislature should consider investing in:

- Funds for on-line training modules for the different contexts in which service, assistance, and comfort animals are allowed; and contexts where only working service animals are allowed;
- Funds for additional training so individuals who believe they need a service animal, have access to specialized training if they currently do not have access to training for their service animal;
- Funds for a regular media campaign that aims to inform the public as to the importance of the work service animals perform for individuals with disabilities and to inform the public about good pet ownership in public spaces. A good example is a local video by Hawaii Fido about service animals, at <https://www.youtube.com/watch?v=MiqWK2s1xD8>; and
- Funds for printing, translating, and distributing relevant service animal information and at points where businesses renew licenses or pay taxes; or where animal owners obtain licenses or veterinary services.

As different jurisdictions have initiated provisions requiring prior notice of the law before issuing sanctions, the Legislature may want to inquire with the counties about including a notice and acknowledgment that State law prohibits the misrepresentation of a service animal in the application and renewal of pet licenses.

(4) Whether additional legislation is necessary;

Once the Legislature determines the contexts, identifies the agencies with oversight and enforcement authority, and describes who may file a complaint, legislation amending the current law will likely be necessary. Legislation appropriating funds for outreach, education, the development and implementation of training modules as described above may be done at any time.

(5) Issue guidance about misrepresentation of a service animal for use by law enforcement and the business community.

Given the lack of context, guidance regarding enforcement of the law prohibiting misrepresentation is premature.

This past summer, DCAB developed with some available print funds, information cards and flyers regarding service animals in public accommodations and government programs. The flyer is geared toward public accommodations and government programs and is downloadable from the DCAB website <https://health.hawaii.gov/dcab/files/2019/10/ServiceAnimalFlyer.pdf>. See Exhibit 2, Flyer Service Animals. However, information regarding misrepresentation of a service animal is not included because there is no clear enforcement mechanism, contact entity, or phone number for individuals to call.

DHS and the Office on Language Access briefly discussed translating these flyers into the top four languages spoken in Hawaii (Korean, Chinese, Ilocano, and Vietnamese). Funds for translation services as well as additional printing in additional languages will be required.

DCAB also produced a flyer regarding assistance animals in the residential housing context.¹⁹

(6) The Department of Human Services develop a public outreach campaign to educate places of accommodations as well as the public as to the important work that legitimate service animals do and why it is important for service animals to assist their owners.

As discussed in (3) above, the Legislature could appropriate funds to support:

- on-line training modules for the different contexts in which service, assistance, and comfort animals are allowed; including reminders that poorly behaved, aggressive, out of control, or not-house broken animals may be easy to observe and easy to remove from most premises;
- additional training so individuals who believe they need a service animal have access to specialized training if they currently do not have access;

¹⁹ See <https://health.hawaii.gov/dcab/files/2019/12/Assistance-Animals.pdf>.

- a media campaign that aims to inform pet owners about good pet ownership in public spaces as well as the importance of service animals to individuals with disabilities. We have received quotes for on-screen spots at local theater chain that is interested in working with the Department of Human Services;
- Translation and printing of informational flyers for government services and public accommodations; and
- Augmenting DCAB's current outreach and training efforts with an appropriation as DCAB already conducts outreach and public education, albeit in the general context of civil rights awareness training. The experience from DCAB is that it has become the default agency for state and local government, public accommodations, residential settings, and other contexts to contact for clarification on the applicability of various laws. This is because DCAB is NOT an enforcement agency and is a "safe" environment for entities to receive technical assistance and information without being exposed to a penalty or fine. Thus, DCAB is positioned to provide objective information to all parties.

III. Other Considerations – Pending Legislation

(1) State legislation regarding military veterans and pending federal legislation: The Wounded Warrior Service Dog Act of 2015.

Different states have enacted laws to increase access to service dogs by veterans by expanding definitions of disabilities recognized for use of a service dog.

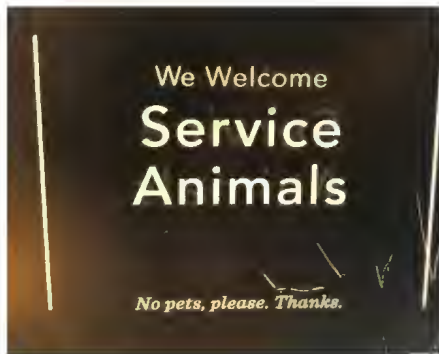
Also, the Wounded Warrior Service Dog Act of 2015 is a proposal pending in Congress and would direct the secretaries of Defense and Veterans Affairs to establish a K-9 Companion Corps to award grants to assist non-profits to establish programs to provide assistance dogs to members of the armed forces and veterans with certain disabilities, including traumatic brain injury, and post-traumatic stress disorder.²⁰

(2) Pet friendly environments.

²⁰ See Reed, James, "State Policies on Service Dogs for Military Veterans," *National Conference of State Legislatures, Legisbrief*, found at <http://www.ncsl.org/LinkClick.aspx?fileticket=wADqyRZyROM%3d&tabid=29941&portalid=1>

Places of public accommodation may declare their businesses to be "pet friendly" meaning they allow pets and service animals. In Hawaii, HB 681 (2019) and SB 1152 (2019) were introduced to allow restaurant owners to decide whether dogs are allowed on their premises under certain circumstances. Testimony was submitted both for and against the issue.²¹ However, on the internet, there are already listings that describe pet friendly restaurants.²² National chains also advertise their "pet friendliness," though the images appear limited to dogs.²³

Certain national chains provide signage upon entry and at least one store down town allows leashed pets. Here are examples of signage in stores located near each



other in downtown Honolulu:

While the two businesses above do not allow pets, the store below allows leashed pets and service animals:

²¹ See https://www.capitol.hawaii.gov/Session2019/Testimony/HB681_TESTIMONY_AGR_02-08-19_.PDF

²² See, <http://www.honolulumagazine.com/Honolulu-Magazine/June-2019/9-We-Tried-The-Most-Pet-Friendly-Bars-and-Restaurants-on-Oahu-to-Grab-a-Drink-With-Your-Dog/>

²³ <https://www.rover.com/blog/dog-friendly-stores-across-america/>



In addition, in pet friendly environments, service animals, assistance animals and pets may all have equal access. Thus, the status of a service animal would be irrelevant to access, making both the status of the animal and any possible misrepresentation moot.

IV. Summary

In summary, the Legislature should:

- a. Identify the context or contexts in which the law of misrepresentation of service animals should apply;
- b. Appropriate funds to develop on-line training modules regarding service animals in different contexts and that inform the public, government programs, and public accommodations of the importance of service animals, and the applicable law in different contexts;
- c. Appropriate funds to develop print and other media informing the public, government programs, and public accommodations of the importance of service animals, and the law in different contexts;
- d. Appropriate funds to translate the materials into the State's 4 most common languages;
- e. Require notice of the law regarding misrepresentation of a service animal be distributed at points of regular government intersection with business owners, such as with excise tax information, and points of intersection with animal

owners such as with county governments that issue animal licenses, veterinary or other pet supply stores.



Assistance Animals and Individuals with Disabilities under Federal Laws: Matrix and Practice Considerations

ADA Knowledge Translation Center Legal Brief No. 2.2

Sharan E. Brown

ADA Knowledge Translation Center

2019

Exhibit 1

Introduction

One of the primary goals of American civil rights laws is community access for individuals who have historically been denied an equal opportunity to participate with others. Assistance animals, including service animals, provide numerous supports and services that minimize barriers for some individuals with disabilities, thereby allowing them greater inclusion in community activities. The American with Disabilities Act (ADA) and other federal laws recognize the importance of some assistance animals for individuals with a wide variety of disabilities.

The applicable rules regarding the rights of individuals with disabilities and their assistance animals under various federal laws are not complicated. The courts and administrative agencies enforcing these laws have developed regulations and issued guidance to apply in various situations. Nonetheless, the application of the appropriate rules to a particular scenario is often very confusing. This is due in part to the difference in the definition of an assistance animal among the laws and within the ADA itself. When both the ADA and other federal or state laws are applicable, determining the rules to apply becomes particularly difficult because the definitions and standards may not be the same.

The following matrix summarizes selective federal law and the standards that apply to assistance animals in various settings. It should be considered a work in progress as the law continues to evolve in this area. In some cases state law applicable to assistance animals in public spaces will differ from the federal definitions and obligations of covered entities. In these situations, the state law must also be considered when it differs from the federal law. For more information on service animals under the ADA and assistance animals under other federal laws, please see <https://adata.org/publication/individuals-disabilities-and-their-assistance-animals-brief-history-and-definitions> and <https://adata.org/publication/assistance-animals-FHA-Section-504-ACAA>.

Assistance Animals and Federal Law at a Glance

Covered Entity	Law	Definition of Animals Covered	Regulations and Implementing Agency	Permissible Documentation and/or Questions	Other Applicable Federal Law
Employers with 15 or more employees	ADA Title I	No definition	Reasonable Accommodation if required to allow the individual to perform essential functions of the job and enjoy equal benefits and privileges of employment EEOC	2 questions: 1) does animal perform specific task related to ability to perform essential functions; and 2) is the animal a “reasonable” accommodation	
Local & State Government Programs and Services	ADA Title II	Service Animal (dogs individually trained to perform task or service) or Miniature Horse on case by case basis	Reasonable Modifications and animal must be 1) in control of handler; 2) housebroken; 3) not a danger (direct threat) to others DOJ	2 questions: 1) is animal a service animal required because of disability; and 2) what work or task has animal been trained to perform.	Section 504 FHA
Public Transportation	ADA Title II	Service animal: [A]ny guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, etc.	Shall permit service animals to accompany individuals with disabilities in vehicles and facilities. Animal must not pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider’s control. DOT	Same as Local & State Government Programs and Services (Title II)	

Covered Entity	Law	Definition of Animals Covered	Regulations and Implementing Agency	Permissible Documentation and/or Questions	Other Applicable Federal Law
Public Accommodations (12 categories of private business)	ADA Title III	Same as Local & State Government Programs and Services (Title II) above	Same as Local & State Government Programs and Services (Title II) above DOJ	Same as Local & State Government Programs and Services (Title II) above	FHA
Private Transportation	ADA Title III	Same as Public Transportation (Title II)	Same as Public Transportation (Title II) above DOT	Same as Public Transportation (Title II) above	
Recipients of federal funding	Section 504	No definition of animals covered but OCR applies Local & State Government Programs and Services (Title II) standards	Reasonable Modifications to policies, procedures DOE and DOJ	Applies Local & State Government Programs and Services (Title II) standards as above	Title II FHA
Public K-12 education	IDEA	No definition of animals covered	Related Services necessary to allow child to receive free appropriate public education (FAPE) DOE	IEP team determines what "related services" are necessary to provide FAPE	Title II Section 504

Covered Entity	Law	Definition of Animals Covered	Regulations and Implementing Agency	Permissible Documentation and/or Questions	Other Applicable Federal Law
Public housing; three exceptions to coverage	FHA	Animals that work, provide assistance, or perform tasks for the benefit of person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of person's disability.	Reasonable accommodation to rules, policies, practices or services in order to allow person equal opportunity to use and enjoy a dwelling. Exceptions: <ul style="list-style-type: none"> • creates undue financial or administrative burden; • fundamentally alters nature of business; • creates substantial damage to housing; • or poses a direct threat. HUD	2 questions: 1) does the person have a disability (as defined under Section 504 & ADA); and 2) does the person have a disability related need for the assistance animal.	Title II Title III Section 504
All Airlines registered in the US and foreign code share partners	ACAA	All animals that are individually trained to assist a qualified person with a disability or any animal necessary for the emotional well-being of a passenger (a few species exceptions).	Must meet the size/weight (fit under the seat) and species requirements; cannot be dangerous or disruptive DOT	Emotional and Psychiatric Support animals only must bring documentation and 48 hr. advanced notice; Other animals "rely on credible verbal assurances." NOTE: some airlines have implemented new rules on their flights	

Law is often behind social realities and slow to respond to evidence that existing law needs modification. The increased use of assistance animals in a variety of settings—schools, airlines, restaurants, and transportation network companies (Uber, for example)—is forcing the courts and administrative agencies to deal with gaps in existing law. The Department of Transportation’s notice of advanced rule making regarding assistance animals under the ACAA in May of 2018 is an example of the recognition that current federal law needs clarification to ensure that individuals with disabilities continue to benefit from the supports and services provided by their assistance animals and freely participate in all settings.¹

Content was developed by the ADA Knowledge Translation Center and is based on professional consensus of ADA experts and the ADA National Network.



ADA Knowledge Translation Center

<http://adata.org/ADAKTC>

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¹ <https://www.regulations.gov/document?D=DOT-OST-2018-0068-1157>

Service Animals

In places of public accommodation or state/local government programs

Different laws apply to housing, air travel, or employment situations.

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.

A service animal must be allowed to accompany a person with a disability in all areas of the facility where members of the public, program participants, customers, or clients are allowed.

- **You may ask only two questions to determine if an animal is a service animal if the need is not obvious (e.g., the dog is pulling a wheelchair or guiding a blind person)**

(1) Is this animal required because of a disability?

(2) What work or task has this animal been trained to perform?

Then you must make an informed decision based upon the reply.

- **You may not ask for service animal certification, documentation, or vest/patch as proof.**

A regular dog license can be required.

- **The animal must be under the control of the handler at all times.**

The service animal must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the person's disability prevents the use of these devices.

- **The animal may be excluded if:**

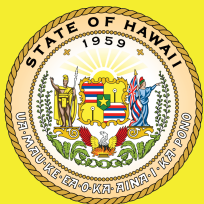
(1) The presence of the animal would fundamentally alter the nature of the goods, services, program, or activity.

(2) The animal poses a legitimate safety risk.

(3) The animal is out of control and the handler does not take effective action to control it.

(4) The animal is not housebroken.

- **Emotional, support, therapy, or companion animals that are not trained to perform a task for a person with a disability are NOT service animals. However, nothing prohibits an establishment (except for a food establishment) from voluntarily allowing non-service animals to come in.**



State of Hawaii (10/19)

The information provided complies with the Americans with Disabilities Act and Hawaii State Law, Chapter 489, Hawaii Revised Statutes, for access to places of public accommodation and state or local government facilities.

For more information, go to

https://www.ada.gov/regs2010/service_animal_qa.html

Disability and Communication Access Board

For more information contact dcab@doh.hawaii.gov