



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2561, S.D. 2, RELATING TO ANIMAL ENDANGERMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Thursday, March 14, 2024                      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325, and Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Elyse C.N. Oyama, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

This bill adds a new section to chapter 708, Hawaii Revised Statutes (HRS), to provide immunity from criminal liability to public officials and individuals seeking to retrieve pet animals from unattended vehicles. The bill also adds a new section to chapter 711, HRS, to prohibit individuals from leaving pet animals in unattended vehicles under certain circumstances. The proposed offense would be a misdemeanor.

The Department recognizes that the focus of the bill is the health, safety, and well-being of pet animals left unattended in vehicles under unsafe conditions. However, we note that the current offense of cruelty to animals in the second degree under section 711-1109(1)(e), HRS, could already be used in these types of circumstances to prosecute the vehicle's owner or operator. Section 711-1109(1)(e), HRS, provides:

(1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

\* \* \*

(e) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner . . . .

Section 711-1109(1)(e), HRS, contains broader wording to address a variety of circumstances that may result in harm to an animal. It also includes the states of mind of "intentionally, knowingly, or recklessly," whereas the proposed new section in chapter

711 would be limited to “intentionally,” as stated on page 3, line 6. Lastly, section 711-1109(1)(e) is not limited to the protection of “pet animals,” but rather aims to protect “every living creature, except a human being.” See section 711-1100, HRS (defining “animal.”) The offense under section 711-1109(1)(e), HRS, is a misdemeanor (and a class C felony if the offense involved ten or more pet animals in any one instance).

For the above reasons, we recommend the following amendments:

- (1) For section 3 of the bill, delete the proposed offense set out in section 711- (a), HRS, on page 3, lines 6-11, and the corresponding penalty provision, section 711- (h), on page 6, lines 10-11.
- (2) Move the animal removal procedure set out in section 711- (b) to (g) and (i) (page 3, line 12, through page 6, line 9, and page 6, line 12, through page 7, line 2) from section 3 to section 2 of the bill, within the proposed new section under chapter 708, HRS.

Thank you for the opportunity to provide comments.

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**February 15, 2024**

**S.B. NO. 2561, S.D. 2: RELATING TO ANIMAL ENDANGERMENT**

**House Committee on Judiciary & Hawaiian Affairs**

**Hearing: March 14, 2024 at 2:00 p.m.**

**Chair David A. Tarnas**

**Vice Chair Gregg Takayama**

**Honorable Committee Members**

The Office of the Public Defender (OPD) **opposes** this bill which, in the course of providing civil and criminal immunity to persons who rescue endangered animals from unattended vehicles, also seeks to create penal liability, a misdemeanor offense, for the person who left the animal in the unattended vehicle.

The OPD does not condone behavior which endangers the health, safety or well-being of any animal. However, this bill presents both legal and logistical issues and its provisions must be reexamined.

First, §§ 711-\_\_ (a) and (h) of the bill are unnecessary as the conduct which is sought to be prohibited is already subject to criminal liability under HRS § 711-1109(1)(e). Under that section, “[a] person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly: ... [c]arries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner.” It appears that the bill attempts to resolve this issue in § 711-\_\_ (h), by making a violation of (a) a misdemeanor violation of HRS § 711-1109. However, this is problematic because the state of mind for a violation of § 711-\_\_ (a) of the bill is intentional (i.e. “intentionally”), while the states of mind for a violation of HRS § 711-1109 are intentional, knowing and reckless (i.e. “intentionally, knowingly, or recklessly”).

Second, this bill should focus on its primary purpose, which appears to be providing immunity from civil and criminal liability for persons who damage property during the course of retrieving a pet animal from imminent danger in an unattended vehicle. Instead, the bill seeks to not only

deal with the immunity issue but also to create a criminal offense in subsection (a) which then becomes a violation of HRS § 711-1109. The bill should remove §§ 711-\_\_ (a) and (h) of the bill and focus instead solely on attempting to provide immunity from civil and criminal liability for persons who damage property during the course of rescuing an endangered animal from an unattended vehicle.<sup>1</sup>

Third, the bill uses numerous terms and phrases which are susceptible to subjective interpretation:

1. “other circumstances that could reasonably be expected to cause suffering, disability, or death to the pet animal.”
2. “reasonable efforts to locate the unattended vehicle’s owner or operator”
3. “good faith and reasonable belief, based upon known circumstances”
4. “entry into the unattended vehicle is reasonably necessary to prevent imminent danger or harm to the pet animal”
5. “shall not use more force than reasonably necessary to enter the unattended vehicle”
6. “a low temperature, inside or outside a vehicle, that could endanger a pet animal’s health, safety, or well-being”
7. “a high temperature, inside or outside a vehicle, that could endanger a pet animal’s health, safety, or well-being”

All of the foregoing phrases and terms are susceptible to subjective interpretation and will lead to significant litigation both at the trial and appellate levels.

Fourth, this bill would create the distinct possibility of pretextual usage by law enforcement. While the bill initially appears to prohibit law enforcement persons from searching or seizing items found in the vehicle during the course of the claimed rescue of the animal, this prohibition is qualified by the phrase “unless otherwise permitted by law.” Under the “plain view” doctrine, evidence is admissible in situations where “[t]he officer has already intruded, and, if his intrusion is justified, the objects in plain view, sighted inadvertently, will be admissible.”<sup>2</sup> Thus, the bill creates another opportunity for law enforcement officers to enter a vehicle to ostensibly rescue an animal as a pretext to conducting a warrantless search.

The OPD applauds the efforts of the drafters of the bill to encourage persons to rescue endangered animals from unattended vehicles without fear of criminal or civil liability. However, due to the aforementioned issues, this bill should be reexamined and revised to avoid its numerous pitfalls. At a minimum, the subsections which attempt to create an offense under HRS § 711-1109 should be deleted and the remaining immunity provisions moved to Chapter 708 as a defense to a charge of criminal property damage or remain in Chapter 711 as a statutory provision similar to § 711-

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<sup>1</sup> Even though the specific conduct at issue could conceivably be prosecuted under HRS § 711-1109(1)(e), separate legislation could be submitted add the specific prohibited conduct in subsection (a) of the bill as a subsection under HRS § 711-1109 which already lists various types of conduct which constitute cruelty to animals.

<sup>2</sup> State v. Kaaheena, 59 Haw. 23, 28, 575 P.2d 462, 466 (1978).

1109.1 which provides that a law enforcement officer is not liable for damages caused when they enter premises with probable cause to believe that an animal is being subjected to treatment in violation of HRS §§ 711-1108.5, 711-1109, 711-1109.3 or 711-1109.35.

The OPD **opposes** this bill. Thank you for the opportunity to comment on S.B. No. 2561, S.D.2.



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March 13<sup>th</sup>, 2024

**RE: Memorandum of Support on SB 2561 SD2**  
*Relating to animal endangerment*

Dear Chair Tarnas, Vice Chair Takayama, and honorable members of the House Committee on Judiciary and Hawaiian Affairs,

The Animal Legal Defense Fund, the nation's preeminent legal advocacy organization for animals, and its hundreds of members in Hawai'i, strongly support the enactment of SB 2561 SD2. This bill aims to make leaving an animal unattended in a vehicle in dangerous conditions a misdemeanor and limits civil and criminal liability to Good Samaritans who rescue domestic animals in distress from motor vehicles after taking reasonable steps.

The Animal Legal Defense Fund supports "Good Samaritan" laws across the country. Although public awareness has been on the rise about the dangers of leaving children or animals in hot cars as a result of media coverage and outreach campaigns by many groups, including the Animal Legal Defense Fund, too many people remain unaware of the potential risk. This is evidenced by the number of animals who still die in hot vehicles every year. For example, although it has been shown to have little effect on the interior temperature of a vehicle, many people still believe leaving windows open on a warm day is sufficiently protective, or do not realize how quickly temperatures can soar to life-threatening levels inside a car even when the outside temperature is as low as 70 degrees. Even on demonstrably hot days, some people still do not realize the dangers of leaving an animal inside a vehicle even when just running a "quick errand."

Dogs and other companion animals are particularly vulnerable to heatstroke because they cannot cool themselves like humans and have a harder time maintaining a comfortable body temperature. And Hawai'i is a state that experiences hotter temperatures than most year-round. Having laws in place to protect citizens from liability in these cases is an important step toward empowering people to act when they see an animal or child in distress. In addition, in order to avoid liability, the Good Samaritan will have had to act in accordance with the commonsense steps outlined in the bill to ensure they have tried all other measures before breaking the window.

Further, there has been no evidence that the passage of these kinds of bills would result in a rash of car window smashing across the state. This bill protects the average constituent who wants to do the right thing, and probably would not stand idly by while a dog is in distress anyway despite the current absence of this law. This bill would simply protect them under the outlined limited circumstances. By passing this bill, Hawai'i would join 14 other states in helping save animals from unnecessary deaths.

For these reasons, the Animal Legal Defense Fund strongly supports the enactment of SB 2561 SD1 and respectfully requests that it be passed by this committee.

Sincerely,

Lindsay Vierheilig  
Legislative Affairs Manager  
Animal Legal Defense Fund  
[lvierheilig@aldf.org](mailto:lvierheilig@aldf.org)

**All our clients are innocent**  
Printed on recycled paper

# TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) WITH COMMENTS ON SB 2561 SD2

Date: Thursday, March 14, 2024

Time: 2:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) with **COMMENTS** on SB 2561 SD2, Relating to Animal Endangerment. While HAJ appreciates the intent of the measure to ensure animal safety, however, we have **serious concerns with SB 2561 SD2** in its current form as it grants broad blanket immunity from any civil damages arising from saving an unattended animal in a hot vehicle.

Specifically, HAJ is primarily concerned with the broad language of subsection (e) which provides blanket immunity for animal control officers, police officers and firefighters when entering into a vehicle without first meeting any criteria similar to subsection (f).

Additionally, HAJ is concerned with the immunity provided for in subsection (g) which allows private citizens to enter a vehicle to rescue an animal if they comply with subsection (f).

Hawaii law requires that all first responders, such as ambulance EMTs, police, firefighters, emergency room doctors and nurses, and others, **perform their jobs with reasonable care under the circumstances**. While we understand the intent of the measure, there is no justification for condoning negligence for animal control officers, police officers and firefighters in the performance of their duties.

HAJ understands the need for ensuring the safety of an unattended animal, however, animal control officers, police officers and firefighters should not be granted complete immunity from civil liability. The standard of care including performance of their jobs with reasonable care under circumstances should be upheld.

Accordingly, HAJ respectfully recommends adding the following amendment to the end of paragraph (e) on page 4 and paragraph (g) on page 6 to read: “provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss or injury caused by negligent, intentional, willful or wanton conduct of that person.”

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.





**Hawaiian Humane Society**  
People for animals. Animals for people.

2700 Waiialae Avenue Honolulu, Hawaii 96826  
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Date: March 13, 2024

To: Chair Rep. David A. Tarnas  
Vice Chair Gregg Takayama  
and Members of the Committee on Judiciary and Hawaiian Affairs

Submitted By: Stephanie Kendrick, Director of Community Engagement  
Hawaiian Humane Society, 808-356-2217

RE: Testimony with comments on SB 2561, SD2:  
Relating to Animal Endangerment  
Thursday, March 14, 2024, 2 p.m., Room 325 and Via Videoconference

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The Hawaiian Humane Society appreciates the opportunity to offer comments on Senate Bill 2561, SD2, which prohibits intentionally leaving or confining pet animals in a vehicle under conditions that endanger their health, safety, or well-being; permits law enforcement officers, animal control officers, and firefighters to enter an unattended vehicle to protect the health, safety, or well-being of a pet animal that is endangered by being left or confined in an unattended vehicle; and allows private citizens to rescue a pet animal that has been left in an unattended vehicle under certain circumstances.

The Hawaiian Humane Society is deputized to enforce animal laws for the City and County of Honolulu. We are also a member of the Hawaii Animal Welfare Association, which represents the animal service providers across the state. Hawaiian Humane, its colleagues in the other counties and the county police departments take these calls very seriously. As the bill points out, animals left in cars with no air conditioning, ventilation or access to water can quickly suffer from overheating.

While local law enforcement agencies operate on the understanding that they already have the authority to act in these cases without legal repercussions, we appreciate this measure's intent to clarify that fact.

Mahalo for the opportunity to offer comments on SB 2561, SD2.

**SB-2561-SD-2**

Submitted on: 3/13/2024 8:26:07 AM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tiffany Kim	Fur-Angel Foundation	Support	Written Testimony Only

Comments:

In strong support of HB2561 relating to animal endangerment.

Tiffany Kim

Ewa Beach, Hawaii

**SB-2561-SD-2**

Submitted on: 3/12/2024 3:57:49 PM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I support this bill. Leaving animals in a vehicle, thereby endangering, is no less heinous than leaving a child in the same vehicle.

**SB-2561-SD-2**

Submitted on: 3/12/2024 6:30:17 PM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lisa Bishop	Individual	Support	Written Testimony Only

Comments:

Mahalo for the opportunity to testify in strong support of this bill!

Lisa Bishop

Hawaii Resident, Homeowner, Taxpayer, and Voter

Aloha,

I write in support of SB2561. Due to the various changes in weather patterns caused by climate change, it can be concerning to see a pet left unattended in a vehicle. This bill states that one of the steps is to call 911 and arrange removal with law enforcement. While this is an important step, there is no guarantee that they will be able to respond immediately. Many people who own pets may feel obligated to help an animal they see left in the car.

On page five, line fifteen, it states, "Not to use more force than reasonably necessary.". This is an important clarification, as someone could cause serious damage to a car under the guise of good intentions. Good samaritans should not be held liable for trying to offer safety and relief to the animals because some owners lack responsibility and care for their pets. Some owners may resort to physical violence when they see any damage to their vehicle (broken window(s), states to paint, etc.) that could lead to injury on the citizen's part. A lot of people could jump to conclusions, which is why the search for the owner should be done effectively.

Many people believe that a crack of a few inches is enough when they leave their pets in the car. On hot days, the interior temperature of the car can exceed high temperatures very quickly. The small crack is not a suitable solution and barely helps the problem (Lindsey and Dahlman). A lot of animals are prone to heatstroke, and the owner has to know their pet's

limits. While that shopping trip may be short for you, it could mean your pet's life. In some cases, an owner could leave the car running with the A/C on, but that is not a guarantee. There is a chance that it could cut off and leave your pet trapped, essentially baking in the vehicle. For example, in 2023, on a Saturday, the trainer informed her that while Whiskey and the other four canines were being kept in a 20-foot shipping container, they passed away due to heat exhaustion (Morales). The trainer claimed that although the air conditioner was present, the circuit breaker tripped while he was away (Morales). The best solution is to not bring your dog on errands and be mindful of the situations you put these animals in.

Thank you for the opportunity to testify.

## Works Cited

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- Carl, Christian, and Jon Walley. "Companion Animals Are Baking to Death in Hot Temps." *PETA*, 23 February 2023,  
<https://www.peta.org/features/dogs-and-other-companion-animals-suffer-heat-related-deaths/>. Accessed 12 March 2024.
- Lindsey, Rebecca, and LuAnn Dahlman. "Climate Change: Global Temperature | NOAA Climate.gov." *Climate.gov*, 18 January 2024,  
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- Morales, Manolo. "Dog dies while left in a shipping container, in the care of a trainer." *KHON2*, 24 October 2023,  
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**SB-2561-SD-2**

Submitted on: 3/13/2024 12:24:22 PM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Glen Kagamida	Individual	Comments	Written Testimony Only

Comments:

The problem is anybody caught in this situation can claim it was UNintentional. Prosecutors have difficulty proving INTENT. A lot of time and money will be wasted.

Instead, issue a citation and fine, keep track of the person, and if there is a pattern of this cruel behavior, THEN drop the hammer.

Or, change the wording from intentional to negligent.