

A Bill for an Act Relating to Animal Cruelty.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1109.1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) If there is probable cause to believe that a pet animal or equine animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, a law enforcement officer, after obtaining a search warrant, or in any other manner authorized by law, may enter the premises where the pet animal or equine animal is located to provide the pet animal or equine animal with food, water, and emergency medical treatment or to impound the pet animal~~[-]~~ or equine animal. If after reasonable effort, the owner or person having custody of the pet animal or equine animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal or equine animal was removed.”

2. By amending subsection (3) to read:

“(3) A court may order a pet animal or equine animal impounded under subsection (1) to be held at a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals. A facility receiving the pet animal or equine animal shall provide adequate food and water and may provide veterinary care.”

SECTION 2. Section 711-1109.2, Hawaii Revised Statutes, is amended to read as follows:

“§711-1109.2 Forfeiture of animal prior to disposition of criminal charges.

(1) If any pet animal or equine animal is impounded pursuant to section 711-1109.1, prior to final disposition of ~~[the]~~ a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal or equine animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal or equine animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal or equine animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35~~[-]~~, as applicable. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal or equine animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal or equine animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal[-] or equine animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal or equine animal may be destroyed by a petitioner under this section prior to final disposition of [the] a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, except in the event that the pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal or equine animal under this section shall not be subject to the provisions of chapter 712A.

(7) In addition to any reasonable costs incurred under subsection (4) by the petitioner in the caring for the pet animal or equine animal, the court may award reasonable attorney's fees and court costs to the petitioner following the conviction of the defendant.

(8) As used in this section, "pet animal or equine animal" includes any offspring from the pet animal or equine animal that was pregnant at the time of the rescue and born during the impoundment of the pet animal or equine animal."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012; provided that the amendments made to sections 711-1109.1 and 711-1109.2, Hawaii Revised Statutes, by sections 1 and 2 of this Act, shall not be repealed when section 711-1109.1(1) and sections 711-1109.2(1), (3), and (5), Hawaii Revised Statutes, are reenacted on July 1, 2015, pursuant to Act 149, Session Laws of Hawaii 2011.

(Approved April 17, 2012.)