

SB2800

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**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. 2800: RELATING TO OFFENSES AGAINST PUBLIC ORDER.

Senator Taniguchi and Members of the Committee:

S.B. 2800 proposes to change the definitions in HRS § 711-1100 by adding a new definition for “primary pet enclosure” and amending the definition of “necessary sustenance”.

These proposed changes are intended to impact the offense of Cruelty to animals in the second degree, HRS § 711-1109 (1) (a) which states in relevant part:

A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly or recklessly:
... deprives a pet animal of necessary sustenance or causes such deprivation.

Currently, the law requires that a person provide “necessary sustenance” which includes, but is not limited to, providing:

- (1) sufficient quality and quantity of food,
- (2) adequate access to water,
- (3) access to protection from wind, rain or sun, and
- (4) an area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health.

The change proposed in this bill would delete (4) above and replace it with a requirement that a person provide an area of confinement in a “primary pet enclosure” (defined as a kennel, cage, or structure which restricts an animal’s space) that, among other requirements:

- ...
- (B) is constructed of safe materials to protect an animal from injury

...

 - (D) provides an animal with a solid surface or resting platform that is large enough for the animal to lie down in a normal manner, and
 - (E) provides enough space for an animal to “easily stand, sit, lie, turn around, make all other normal body movements in a comfortable normal position for the animal without making physical contact with any other animal enclosure” and “to interact safely with other animals within the enclosure”.

We believe these proposed changes are ill-advised and will lead to a great deal of confusion in applying our Second Degree Cruelty to Animals statute.

First of all, it is unclear what is meant by “safe materials”. Pet product stores sell soft-sided carrying bags for cats, for example, which would not necessarily “protect an animal from injury”. A pet owner who handled the carrier responsibly to assure that no harm

came to their pet would still risk technical violation of this law. Such a carrier does not necessarily provide a “solid surface” or resting “platform”, also undefined terms. Finally, there are carries used for transporting pets which do not necessarily provide room for an animal to “easily” “turn around” or “make other normal bodily movements in a comfortable position”, another term that is not defined.

The changes proposed in this bill are unnecessary. They will create litigation challenging the vagueness of the terms and they will 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.

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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 SB 2800

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

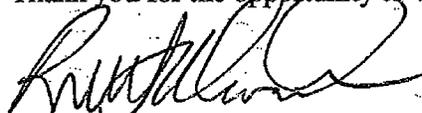
On behalf of the Kauai Humane Society, we appreciate the opportunity to comment on SB2800, Relating to Animals.

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 pet confinement animals in our community following last year's legislative session. This bill is the result of this collaboration to more effectively address the standards by which pets should be kept when confined.

The language in this bill is long overdue for protecting the health and well-being of confined pet animals. On Kauai, we regularly investigate complaints regarding the care of animals in cages. With our current language for necessary sustenance, we are limited on what corrective action we can require a pet owner to make. We know the cage is overcrowded, we know the animal can barely move, we know the wire floor will cause sores on the feet, and we recommend changes. But the law only allows us to recommend, not require. In one case recently in Poipu, we recommended changes. The owner didn't follow our recommendations and a dog died as a result.

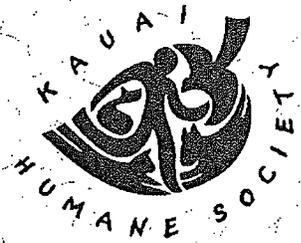
We need this language to better protect pets in our community and provide them with a minimum standard of care.

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



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Kauai Humane Society

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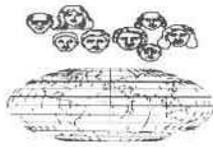
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Testimony in Opposition of SB2800 Relating to Offenses Against the Public Order”

Aloha Chairman Brian Taniguchi and members of the JGO Committee. I write to you asking your support in opposition to SB2800, a bill that is being supported and lobbied by the Hawaiian Humane Society and the Humane Society of the United States. In the recent past these two organizations have behaved in a fashion that calls into question the integrity of their organization as it relates to enforcing animal welfare laws and the preservation of civil rights of pet owners and animal care facilities. In particular, I am referring to their recent attempts to prosecute Mr. Norman Pang of Animal Haven in Waianae, by entering the Pang’s property without a search warrant, complaints, or other irrefutable evidence documenting acts of cruelty by Mr. Pang that would support criminal charges.

Personnel from The Humane Society of the United States wore fake law enforcement badges while on Pang’s property to surreptitiously gather evidence to provide to the Hawaii Humane Society in its attempt to submit a manufactured case to the City Prosecutor’s office. The behavior of these two proponents in other cases also calls into question their integrity. Therefore, legislation such as SB2800, being proposed by these organizations, should be rejected. Furthermore, an investigation into their behavior, as exhibited in the Pang matter, should be initiated due to their inability to strike a balance between animal welfare and the constitutional rights of citizens of the state of Hawaii.

SB 2800 will only serve as a reward for bad behavior.

Again, I respectfully submit this testimony in strong opposition to SB2800 and ask your support in rejecting this bill.

Carroll Cox
EnviroWatch, Inc.
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