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March 28, 2017

Oregon State Legislature
House Committee on the Judiciary
The Honorable Jeff Barker, Chairperson
900 Court St. NE
Salem, Oregon 97301

RE: House Bills 2625 and 3283

Chairperson Barker and Members of the Committee—

Since 2013, I have had the honor to serve as a deputy district attorney focusing on animal cruelty throughout the state of Oregon. I have been sworn as a deputy DA in 21 of Oregon's 36 counties, have prosecuted over 125 individual cases of animal neglect and abuse, and have served as a resource for DDAs, law enforcement officers, and humane societies/animal shelters throughout the state. I am very familiar both with the criminal laws and procedures in animal cruelty cases, as well as the related collateral and civil issues that arise in these cases.

There is a critical need for comprehensive and thoughtful pre-trial care and forfeiture statutes, and for statutes that fight recidivism by animal cruelty defendants. That is why I am writing to express my support for House Bills 2625 and 3283. These bills would go a long way in achieving those goals.

HB 2625

Unlike other property seized from criminal defendants, seized animals must be provided with daily care. For abused and neglected animals, this care often involves significant veterinary bills and expensive feeding regimens. Counties and animal shelters expend significant resources paying for care of these animals, which are largely unrecoverable even after convictions. Additionally, abused and neglected animals can be further harmed by lengthy stays in animal shelters (instead of loving, "forever" homes) while their defendant owners await trial.

These shelter stays and their related costs can be mitigated, or avoided altogether, through pre-trial forfeiture, which is available under ORS 167.347.

Pre-trial forfeiture allows the seizing county (or the animal shelter) to ask a Court for a judicial finding that a seized animal was subjected to treatment in violation of the animal cruelty statutes. Upon making that finding, the court sets a bond amount, equal to the amount it would cost to care for the animal from the date of seizure to the presumptive date of trial. If the bond amount is posted within 72 hours, forfeiture is stayed pending trial. If it is not posted, the animal is forfeited and can be re-homed.

However, the current language of 167.347 may prevent certain abused or neglected animals from being eligible for pre-trial forfeiture. The statute can be read to only allow forfeiture for animals for which there is an associated criminal charge pending. For example, if law enforcement seizes and impounds 50 horses, but the Deputy District Attorney or Grand Jury (using prosecutorial discretion) only charges

neglect related to the 17 worst-off, only those 17 may be forfeited. I do not believe the law mandates this outcome, but I have seen this position taken both by defense attorneys and judges. Clarification on this point by the legislature is critical.

HB 2625 clarifies that 167.347 allows for pre-trial forfeiture of all animals seized, as long as there is a criminal animal cruelty case pending. This amendment would allow prosecutors to use their discretion in charging cases, rather than simply filing every single count available. Prosecutors and grand jurors, in my experience, are not inclined to bring every conceivable criminal charge against a defendant, especially when there are dozens (or hundreds) of potential counts.

I have personally been in a position where a judge refused to even consider forfeiting animals that did not have a related criminal charge, even though there was ample evidence that the non-charged animals were also neglected. As a result, it is now my practice to bring (or present to the grand jury) a criminal count for each and every animal seized (for whom a criminal case of abuse or neglect can be ethically made). I also recommend this strategy to all the DDAs I advise. This is the only way to prevent the outcome described above, which would potentially force provably abused or neglected animals to go back to their prior owner.

Any concerns that this amendment would diminish the accused's rights are misplaced. First, the seizure/impoundment of an animal can only be done when a law enforcement officer has probable cause of abuse or neglect. Notice is still required prior to a forfeiture hearing. The case for forfeiture has to be presented in open court to a neutral magistrate, who has to make a separate finding of probable cause, based on evidence. At this hearing, the defendant-respondent (or any other claimant to the animal) can present their own evidence and cross-examine the petitioner's witnesses. Finally, even if probable cause is found, forfeiture can still be avoided by the paying of a bond amount.

HB 2625 is an important bill to both protect animals in Oregon and preserve prosecutorial discretion, and I strongly encourage its passage.

HB 3283

Under ORS 167.332, misdemeanor animal cruelty convictions carry a 5 year ban on possession of certain animals. Felony animal cruelty convictions (except for felony animal neglect) carry a 15 year ban. Felony animal neglect carries only a 5 year ban, same as the misdemeanors. HB 3283 would move felony animal neglect into the 15 year ban category. The legislature should pass this bill given both the serious nature of these offenses and concerns of recidivism.

Generally speaking, animal neglect occurs when a person fails to provide "minimum care" for an animal in their custody or control. Animal neglect becomes a felony in Oregon when a person 1) Neglects a substantial number of animals, 2) Neglects an animal resulting in serious physical injury or death in the presence of a minor, or 3) Neglects an animal while having certain prior convictions for animal neglect/domestic violence.

If a person is convicted of felony animal neglect in Oregon, it means their behavior was far outside the legal norm. Not only was their care below the minimum standards expected in our community, there were additional aggravating circumstances. Accordingly, felony animal neglect is generally classified as a level 6 offense on the Oregon Crime Seriousness scale, the same level as Assault of a Public Safety Officer, Felony Strangulation, and Unlawful Use of a Weapon. In some cases, felony animal neglect can even be classified as a level 7 offense. Yet under the current law, even the worst case of felony animal neglect can only legally result in the person being prohibited from animal possession for 5 years.

Animal neglect is the kind of offense that can take place entirely behind closed doors. Oregon has no “registry” of animal neglecters or abusers, which would allow animal dealers and shelters to avoid selling/adopting animals to people with priors. Additionally, many felony animal neglect cases arise from compulsive hoarding, which means that people will seek out as many animals as they can, as soon as they are legally able. The law should extend the period of time that the most serious neglecters are required to go without animals beyond the current—minimal—5 years.

Thank you for considering these very important improvements to Oregon’s strong animal cruelty laws. If you have any follow-up questions, I can be contacted at jacob.kamins@co.benton.or.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jacob Kamins', with a long horizontal flourish extending to the right.

Jacob Kamins, OSB #094017