

I would first like to thank the Committee for the opportunity to speak on issues prosecutors deal with in enforcement of animal abuse laws in South Carolina. At the conclusion of my presentation, I was asked a few questions I would like to respond to in more detail than the limited time at the hearing allowed.

Initially, I raised the issue of a simple amendment to an existing law relating to the definition of a dangerous animal contained in S.C. Code §47-3-710. As written, the statute provides as follows:

SECTION 47-3-710. Definitions.

(A) As used in this article "dangerous animal" means an animal of the canine or feline family:
(1) which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals;

(2) which:

(a) makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined as required by Section 47-3-720; or
(b) commits unprovoked acts in a place other than the place where the animal is confined as required by Section 47-3-720 and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being;

(3) which is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting.

(B) "Dangerous animal" does not include:

(1) an animal used exclusively for agricultural purposes; or

(2) an animal which attacks a person who is trespassing or who appears to be trespassing. A trespasser is a person who is not lawfully upon the premises of the owner, as set forth in Section 47-3-770(A).

(C) An animal is not a "dangerous animal" solely by virtue of its breed or species.

(D) As used in this article "owner" means a person who owns or has custody or control of the animal.

(E) As used in this article, "injury" or "bodily injury" means (1) broken bones, (2) lacerations, (3) punctures of the skin, or (4) any physical injury resulting in death.

HISTORY: 1988 Act No. 515, eff May 9, 1988; 1992 Act No. 374, Section 1, eff May 19, 1992.

In challenging a determination that an animal meets the definition provided by this section, it has been alleged that the State must prove that the animal must meet ALL of the subsections of Section 47-3-710(A). If this were the case, no animal could be declared a dangerous animal unless it "is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting" Section 47-3-710(A)(3). Reading this in conjunction with Section 47-3-710(A), it is clear that a dangerous animal can be a member of the canine or feline family. If an animal must meet the ALL of the 47-3-710(A) subsections to be classified as a dangerous animal, then a member of the feline family would have to be "owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting". Simply put, I am not aware of anyone who has encountered a case involving a fighting cat. If the State must establish ALL the elements of Section 47-3-710(A) are satisfied to declare an animal is a dangerous animal, then no feline could ever be declared a "dangerous animal".

Although it seems clear by reading the statute this was NOT the intent of the legislature, a simple amendment to the statute could remove any confusion. Specifically, Section 47-3-710(A) could be amended to read:

SECTION 47-3-710. Definitions.

(A) As used in this article "dangerous animal" means an animal of the canine or feline family:

- (1) which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals; **or**,
(2) which:
(a) makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined as required by Section 47-3-720; or
(b) commits unprovoked acts in a place other than the place where the animal is confined as required by Section 47-3-720 and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being; **or**,
(3) which is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting.

The simple addition of the word “or” in two places in the statute would eliminate any confusion in the application of the Statute.

Next, I raised the issue of South Carolina’s lack of a tethering law. The information I provided to the Committee included a very brief overview of the existing tethering laws across the United States. That information can be found at the following link: <https://www.animallaw.info/topic/table-state-dog-tether-laws>. ***(NOTE: This document posted separately on study comm. page)***

During the questioning period, Dr. Hill asked if there was another state's law I believed was a good model for South Carolina to follow. After reviewing the summary of the laws for each of the states that currently address this issue, I would suggest the law of Connecticut as a good starting point for a potential South Carolina law. I have included the operative portion of the Connecticut law, and would suggest that a provision for the forfeiture of any animal involved in a second or subsequent offense violation be added. Additionally, I would note the law provides exemptions for hunting activities, camping, dogs receiving veterinary services, and dogs being groomed.

§ 22-350a. Tethering dog to stationary object or mobile device. Prohibited means. Retention of other protections afforded dogs. Confining or tethering dog for unreasonable period of time. Fines

(a) No person shall tether a dog to a stationary object or to a mobile device, including, but not limited to, a trolley or pulley by means of: (1) A tether that does not allow such dog to walk at least eight feet, excluding the length of such dog as measured from the tip of such dog's nose to the base of such dog's tail, in any one direction, (2) a tether that does not have swivels on both ends to prevent twisting and tangling, unless a person is in the presence of such dog, (3) a coat hanger, choke collar, prong-type collar, head halter or any other collar, halter or device that is not specifically designed or properly fitted for the restraint of such dog, (4) a tether that has weights attached or that contains metal chain links more than one-quarter of an inch thick, or (5) a tether that allows such dog to reach an object or hazard, including, but not limited to, a window sill, edge of a pool, fence, public road or highway, porch or terrace railing that poses a risk of injury or strangulation to such dog if such dog walks into or jumps over such object or hazard, unless a person is in the presence of such dog. The provisions of subdivisions (1) and (2) of this subsection shall not be construed to apply to: (A) Any veterinary practice licensed pursuant to section 20-197 that tethers a dog in the course of such veterinary practice, (B) any exhibition, show, contest or other temporary event in which the skill, breeding or stamina of such dog is judged or examined, (C) any exhibition, class, training session or other temporary event in which such dog is used in a lawful manner to hunt a species of wildlife during the hunting season for such species of wildlife or in which such dog receives training in a lawful manner to hunt such species of wildlife, (D) the temporary tethering of a dog at any camping or recreation area as expressly authorized by the Commissioner of Energy and Environmental Protection, or (E) the temporary tethering of a dog at a grooming facility in the course of grooming such dog.

(b) No person shall tether a dog outdoors to a stationery object or to a mobile device, including, but not limited to, a trolley or a pulley, when a weather advisory or warning is issued by local, state or federal authorities or when outdoor environmental conditions, including, but not limited to, extreme heat, cold, wind, rain, snow or hail, pose an adverse risk to the health or safety of such dog based on such dog's breed, age or physical condition, unless tethering is for a duration of not longer than fifteen minutes.

(c) Nothing in this section shall be construed to affect any protection afforded to any dog pursuant to any other provision of the general statutes, regulations of the Connecticut state agencies, local ordinance or local regulation.

(d) Any person who confines or tethers a dog for an unreasonable period of time or in violation of the provisions of subsection (a) or (b) of this section shall be fined one hundred dollars for the first offense, two hundred dollars for a second offense, and not less than two hundred fifty dollars or more than five hundred dollars for a third or subsequent offense.

While there are some obvious, and some not so obvious, modifications to the statute that would need to be made to conform the statute to South Carolina law, the framework for a clear and concise statute is there. I consider the Connecticut statute to be an excellent starting point.

Finally, the issue of an exemption for hunting dogs in cases of animal abandonment under S.C. Code §47-1-70 was raised during the hearing. After reviewing the exemption in the context of the overall statute, I would submit to the Committee that the exemption is simply unnecessary. The definition of abandonment is contained in §47-1-70(A), which provides, in relevant part, "As used in this section "abandonment" is defined as deserting, forsaking, or intending to give up absolutely an animal without securing another owner or without providing the necessities of life." The exemption for hunting dogs was made to prevent an innocent hunter whose dog was lost while hunting from being charged with abandoning the dog. It seems axiomatic that a hunter who is making or has made attempts to find his or her dog would not be considered to have "desert[ed], forsak[en], or intend[ed] to give up absolutely" their dog.

The same thing can be said of *any* dog owner. If my dog was to escape his fenced in back yard and I made even minimal effort to locate him (calling neighbors, the local animal shelter(s), or animal control), if he was found a week later I would not be charged with abandonment of that dog. A dog that goes missing during a hunt is no different, and I submit to the Committee the owner in that situation would have an even easier time showing that efforts to locate and recover the dog were made. Accordingly, the abandonment statute does not come into consideration because the statute itself does not apply to the scenario of a dog *that gets lost during a hunt* without ever getting to the issue of whether the animal in question is "A hunting dog that is positively identifiable in accordance with Section 47-3-510 or Section 47-3-530". S.C. Code §47-1-70(C)." If that scenario is taken out of consideration, then I am aware of no other justification for the hunting dog exemption in the statute. Having said that, I do feel the issue merits some further discussion by the Committee.

I would be happy to assist the Committee in any way possible moving forward on these or other matters. If I can be of further assistance, or if the Committee has any additional questions, please do not hesitate to contact me.

David W. Miller
Deputy Solicitor,
2nd Judicial Circuit
Post Office Box 845
Barnwell, South Carolina 29812
Telephone: (803) 541-1091
Facsimile: (803) 541-1112