

Testimony in Support:
House Bill 2302

Senator King and members of the committee,

My name is Katie Barnett. I am a Douglas County resident and Kansas licensed attorney. I ask you to vote Yes on these very important changes to the Kansas Animal Cruelty statute through House Bill 2302.

My practice areas are primarily animal law, municipal law, and legislative drafting. Unfortunately, I have had an opportunity to use this statute in different counties in the state of Kansas. I hope my testimony explains the impact the current language has on local governments and how these slight changes can make a tremendous difference both fiscally, and legally, for victims of animal abuse.

The reasons for pre-conviction bond or forfeiture of animals are multifaceted, including the extraordinary cost of housing living evidence to a local government for the pendency of the criminal case, to the welfare of the animals impounded during that time. The statute currently has due process protections in place for the defendant/animal owner. The owner has an opportunity to cover the cost of care for thirty days before a forfeiture petition is filed. This is not just a formality that relinquishes all legal rights to the animals upon filing of the petition. The petition includes a fair hearing under the law and can include witness testimony and abides by the rules of evidence. Ultimately, as noted in the statute, a judge decides whether or not the animals are forfeited over to the county or animal shelter, or if they remain the property of the defendant.

There are four main changes in this bill:

(1. Adding law enforcement, prosecutors, and other known facilities that regularly house animals seized in animal abuse cases. In 2010, I worked on a case in Sumner County where eight dogs were seized and the Undersheriff had to work with the local jail to house and care for the dogs because there was no animal shelter and no national animal organization stepped in to help. The Undersheriff had no authority under the current language of the statute to petition the court for custody of the animals. The animals sat for nearly a year while the County repeatedly asked the owner to sign over the animals to the County, meanwhile incurring the cost of care for those animals.

In 2012, Montgomery County seized over twenty dogs (35 total, as puppies were born later) in an animal abuse case. The defendants were in custody and refused to post the 30 day bond for the animals and refused to sign them over to the County. There was no animal shelter to petition the court, only the small veterinary clinic which was completely unaware that they had the power to file such a petition, but certainly did not have the money to hire an attorney to file the civil petition on their behalf.

Even when there is authority, as a practical matter, the current language makes it prohibitive to reduce this statute to practice in many under-resourced counties.

(2. Striking the requirement that county commissioners must have a procedure in place for the forfeiture petition in the county is both a legal and practical change that must be made for this section to be used properly. Many of the counties in which I have worked have no such language. Counties and local governments are unaware that this is a requirement until they are faced with a seizure of animals and need to use this language. It is my opinion that there is no legal requirement to shift the procedure burden to a county government, when the information and procedure is already in the statute and satisfies procedural due process requirements. As written, unless a county has procedures for early forfeiture, this law cannot be used. That places a tremendous burden on the counties in Kansas lacking the resources to care for these animals while a criminal case is pending.

(3. Currently, the court is charged with ordering the animal adopted or euthanized under this section. Animal shelters, veterinarians, trainers, and behaviorists will tell you that often the behavior of an animal upon seizure may change throughout its time of impoundment. An animal may fall into one behavior category, only to exhibit behavior that may warrant a different label later. Changing the burden of deciding the permanent disposition of the animal by the court, to transferring ownership of the animal to the petitioner is a legal, safe and more humane way for this statute to function effectively.

(4. Finally, in subsection (h), once someone is adjudicated guilty of animal abuse, the court is tasked with anticipating or guessing whether or not the animal will be subject to abuse in the future when deciding the fate of the animal. This should be amended to read the animal is simply not returned to the owner if found guilty. Legally, this subsection currently conflicts with section 6415 that prohibits anyone found guilty of felony animal abuse from owning an animal for the next five years. Logically, there is no way a court can accurately predict that an animal will or will not be subject to abuse in the future. Returning an animal to its abuser is bad policy and endangers the welfare of the animal.

I am excited to answer any questions you have on this bill, what the current practice is, and the impact HB2302 will have on communities within the state.

Thank you for your time.

A handwritten signature in blue ink that reads "Katie Bray Barnett". The signature is written in a cursive, flowing style.

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