

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

A.6553
S.2052

Assembly Member Magee
Senator DeFrancisco

AN ACT to amend the agriculture and markets law, in relation to the tethering of dogs.

THIS BILL IS APPROVED WITH RECOMMENDATIONS

This Committee offers its strong approval of the proposed legislation A-6553 and its Senate equivalent, S-32052 (collectively, the “Proposed Legislation”) with recommendations. The proposed legislation would amend the Agriculture and Markets Law to add a new section, Section 353-c, to prohibit dogs from being tethered for more than six hours in any twenty-four hour period. Anyone violating this provision will be subject to a fine of \$50-\$100 for a first offense and \$100-\$250 for a second or subsequent offense. It is silent as to the place of tethering and presumably applies to tethering indoors as well as outdoors.¹ While the Committee has recommendations, the Committee urges passage of the Proposed Legislation even in its current form as an important first step in barring the practice of prolonged chaining, which threatens both public safety and the health and welfare of the affected dogs.

The Committee recommends that the State legislature adopt a maximum three-hour time restriction for tethering in any twenty-four hour period. An additional provision should be added

¹ With regard to enforcement of indoor tethering, this is legally supported. Enforcement of the proposed state legislation against pet shops and kennels would not require a warrant, since the ASPCA has the authority to make warrantless inspections of those closely regulated businesses, the so-called “administrative search”. See, *Marshall v. Barlow’s, Inc.*, 436 U. S. 307, 98 S. Ct 1816 (1978) (a case involving OSHA inspectors). However, enforcement against a private dog owner would be difficult indoors inasmuch as warrantless entry onto a private premises absent consent, exigency or emergency is constitutionally prohibited. *Payton v. New York*, 445 U. S. 573, 100 S. Ct. 1371 (1980). However, a warrantless entry not to arrest or search for evidence of a crime but to prevent injury or save a life- the “emergency” exception (see *Brigham City, Utah v. Stuart*, 547 U. S. 398, 126 S. Ct. 1943 (2006) - has been held to apply to animals. *People v. Rogers*, 184 Misc. 2d 419, 708 N. Y. S. 2d 795 (App. Term 2d Dep’t 2000); *Tuck v. United States*, 427 A2d. 1115 (D.C. Ct. of App. 1984). Therefore, a complaint that a tethered dog was in imminent danger of injury, or was becoming imminently dangerous, would justify law enforcement’s entry to enforce the proposed legislation and any other applicable anti-cruelty statute. See proposed Sec. 353-c (4).

requiring that the chained dog have access to covered shelter and water. The minimum length of fifteen feet for a tethering device attached to a fixed point and a minimum ten feet for a running cable trolley system, should apply to small dogs, with tethering lengths increased in proportion to the size of the dog. These provisions have been incorporated in some sister state anti-cruelty statutes, which restrict tethering, as discussed below.

Discussion

The Proposed Legislation Provides Key Protections Concerning Tethering Devices but Should Increase Minimum Tether Lengths and Further Restrict the Amount of Time that Dogs can be Tethered.

The Proposed Legislation provides important restrictions on tethering lengths and the devices used to tether dogs, which are critical components of tethering regulation. The Proposed Legislation, Agriculture and Markets Law, Sec 353(1)(a), defines a “tethering device” as “a chain, rope, or other restraining device which attaches to a dog.” If the tethering device is attached to a fixed point, it must be at least fifteen feet in length. Sec. 353-c(1)(b) provides that a “running cable trolley system”, which is a suspended cable to which a tethering device is attached by means of a pulley, loop, or other moveable device, must be at least ten feet in length. The Proposed Legislation contains certain important safety provisions: if the device is attached to a fixed point, it also must be attached in a manner that prevents injury or strangulation; choke-type and prong collars may not be used with tethering devices; and only harnesses and collars “made expressly for such purpose” are acceptable. The Committee commends these necessary limitations on the type and nature of acceptable tethering practices, and their inherent recognition that the manner of the tethering can affect the well-being of the dog as much as the duration of the tethering.

It would be advisable for the Proposed Legislation to provide for a tether to be designed not only to prevent strangulation and injury, but also to be appropriate to the age and size of the dog. The Proposed Legislation takes a “one size fits all” approach to tether length as described above. The Committee recommends that serious consideration be given to adopting a sliding scale for tether lengths, beginning with a minimum of ten feet/moving cable system - fifteen feet/fixed point system for small dogs and increasing in length for larger dogs.

Sec. 353- c(2) of the Proposed Legislation also restricts the time period allowed for tethering a dog: it must not exceed a continuous six hour period in any 24-hour period. While the Committee agrees that it is essential to limit the permissible time period for tethering, it is respectfully suggested that the maximum permissible amount of time for tethering not exceed three continuous hours in a twenty-four hour period. Other jurisdictions likewise have recognized that a three-hour tethering period constitutes a reasonable period of time. *See e.g.*, Cal. Health & Safety Code. Sec. 122335 (b), which prohibits tethering a dog for more than a “reasonable” period of time. Sec. 122335 (a)(4) defines “reasonable” as no more than three continuous hours in any twenty-four hour period with certain narrow exceptions, such as the dog’s participation in an activity or training for an activity licensed by the State. Sec.122335(c)(4). *See also* Proposed City Council Ordinance Sec. 17-192 to Title 17 of New York City Administrative Code (adopting a three-hour limit in any twelve-hour period).

Chained Dogs Represent A Threat To Public Safety

The sponsors' memorandum in support of the Proposed Legislation in the Assembly aptly notes that "Across the country, there is a greater recognition of the negative physical and psychological effects that the chaining of dogs has on our canine friends. In the past, studies have shown that dogs which are chained up for long periods of time are not properly socialized and have a tendency to be more aggressive." The Committee agrees with these findings, which have found widespread support. For example, the Center for Disease Control, the U. S. Department of Agriculture, the Humane Society of the United States, and the American Veterinary Association have all concluded that chaining or tethering of dogs creates dogs that are at a significantly greater risk to bite. According to the September 15, 2000 issue of the *Journal of the American Veterinary Medical Association*, seventeen per cent of dogs involved in fatal attacks on humans between 1979 and 1998 were restrained on their owners' property at the time of the attack. In addition, an article in the AVMA May 15, 2003 Newsletter, on dog biting prevention, opined that a dog should never be chained or tethered, since that led to aggressive behavior. See also *Fatal Dog Attacks*, Delise, Karen; Annubis Press, Nov.1, 2002, attributing twenty-five per cent of fatal attacks to chained dogs. According to one study by the Center for Disease Control, biting dogs were more likely to be male, unneutered and chained.²

The Proposed Legislation Accords with Growing National Recognition that Unregulated Tethering Leads to Inhumane Treatment of Dogs.

The cruelty involved in prolonged tethering has been recognized by a number of authorities. The U. S. Department of Agriculture issued a statement in the July 2, 1996, Federal Register against tethering, as follows: "Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects; further restricting the dog's movement and potentially causing injury." The Humane Society of the United States has stated that the practice of continuous chaining "is both inhumane and a threat to the safety of the confined dog, other animals, and humans."³

In recognition of the danger posed by chaining both to the affected dogs and the public at large, a growing number of states and municipalities have either enacted statutes that place limitations on tethering or currently have such legislation under consideration. Such legislation also serves to provide law enforcement with another tool to invoke against promoters of dogfights, who chain their dogs in order to foster greater aggressiveness.

² See K. A. Gershman, J. J. Sacks, and J. C. Wright, "Which Dogs Bite? A Case-Control Study of Risk Factors", *Pediatrics*, v. 93, no. 69 (June 1994).

³ The Humane Society of the United States, "The Facts About Chaining or Tethering Dogs", see <http://www.hsus.org/pets/issues> affecting our pets/chaining /.

In recognition of the inhumane nature of dog chaining, these tethering laws not only limit the length of time that a dog can be tethered⁴ but focus on the length and design of the tether. For example, some of these laws limit the tether's attachment to a "proper harness or buckle – type collar"⁵ or "a well-fitted collar that will not cause trauma or injury to the dog,"⁶ or prohibit "pinch or choke collar."⁷ In Michigan, tethering a dog to any collar other than a "harness or nonchoke collar designed for tethering" is a violation of Michigan's animal anti-cruelty statute.⁸ Virginia's statutes dealing with the humane treatment of animals has a very specific definition of the required collar for a tethered dog in its definitions section within the definition of "adequate space" which must be provided to companion animals. See Va. St. Sec. 3.1 – 796.66, which requires that a tether to be attached to a properly applied collar, halter, or harness, configured to protect the dog from injury and it or the tether from entanglement with other objects or animals, or from extending over an object or edge, causing strangulation or injury. That section also includes definitions of, *inter alia*, adequate care, which includes appropriate veterinary care, as well as definitions of adequate shelter, adequate feeding, and abandonment.

Two municipalities - Biloxi⁹ and Pascagoula,¹⁰ Mississippi - place an outright ban on tethering but allow for a grace period of 90 days if the dog owner or keeper is in violation, if the tether, collar, and living conditions of the dog are determined by the animal control officer to be non-dangerous and accord with specified humane standards.

Summary of Recommendations

The tethering statute would of course be construed in the context of the obligation under existing State law to feed, water and shelter any companion animal. If one fails to properly do so, at the very least it is neglect if not outright cruelty. Nevertheless, it is recommended that the Proposed Legislation limit tethering to three continuous hours in any twenty-four hour period and specify that an owner, caretaker, or keeper of any tethered dog must:

- (1) always keep water within reach of the tethered dog; and
- (2) always keep a covered shelter accessible to the tethered dog.¹¹

⁴ See e. g. Cal. Health & Safety Code. Sec. 122335 (b) prohibits tethering a dog for more than a reasonable period of time. Sec. 122335 (a) (4) defines "reasonable" as no more than three continuous hours in any twenty-four hour period with certain narrow exceptions, such as the dog's participation in an activity or training for an activity licensed by the State. Sec. 122335 (c)(4).

⁵ Nashua New Hampshire Ordinance, Sec. 5-12 (2)(b).

⁶ 7 Del. Stat. 1704 (c)(4). 7 Del. Stat. 1704 is entitled specifications for the humane care, treatment and handling of dogs, and provides, *inter alia*, standards for required feeding, shelter, and veterinary care.

⁷ California Health & Safety Code Sec. 122335 (c) (1).

⁸ Mich. Cons. Laws. Sec. 750.50(2)(g). Violations of this section are punishable under subdivision (4) of MCL 750.50 as either a misdemeanor or felony, depending on the severity of the injury to the animal and the number of animals involved. Certain revisions to Mich. Cons. Laws. Sec. 750.50 became effective April 1, 2008, increasing penalties for animal cruelty.

⁹ Biloxi Ord. Sec. 4-1-21

¹⁰ Pascagoula Ord. Sec. 10-8.

¹¹ See e.g., Delaware's anti-cruelty statutes, which provides in 7 De. St. Sec. 1704 (4) that a dog tethered out-of-doors must have access to the dog house and to food and water containers.

It would be advisable for the Proposed Legislation to provide for a tether to be designed not only to prevent strangulation and injury, but also to be appropriate to the age and size of the dog by adopting a sliding scale for tether lengths, which would increase minimum tether lengths as the size of the dog increased.

Conclusion

The passage of the Proposed Legislation will enhance animal welfare by prohibiting tethering practices that constitute a well-recognized form of animal cruelty at the same time that it protects the public from a dangerous practice. New York State will join a growing number of jurisdictions that have recognized the inhumane nature of unrestricted tethering and the threat that it poses to the safety and welfare of both dogs and humans.