



NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**H.R. 1313
S.810**

**Rep. Bartlett
Sen. Cantwell**

AN ACT to prohibit the conducting of invasive research on great apes, and for other purposes.

Great Ape Protection and Cost Savings Act of 2011

THIS LEGISLATION IS APPROVED

The Committee on Legal Issues Pertaining to Animals of the Association of the Bar of the City of New York respectfully submits this report in support of H.R. 1313/S.810, the Great Ape Protection and Cost Savings Act of 2011. The Committee had previously provided comments on similar legislation in 2008 (H.R. 5852).¹ The current legislation provides a number of improvements to the 2008 legislation, as outlined below:

1. The legislation is more explicit that no federal funds may be used to support another entity conducting or facilitating invasive research.
2. The legislation prohibits transfer of ownership to a non-federal entity.
3. The legislation provides guidelines for a "suitable sanctuary".
4. The legislation establishes in the Treasury a Great Ape Sanctuary System Fund.
5. The legislation imposes civil penalties (no more than \$10,000 per violation, each day a violation continues constitute a separate offense).
6. The legislation clarifies the effective dates of each prohibition.

In light of these improvements and our previous support for similar legislation, the Committee supports the enactment of H.R. 1313/S.810.

Purposes of the Act

The stated purposes of the Act are fourfold:

¹ See http://www.nycbar.org/pdf/report/Great_Ape_Act.pdf.

- (1) phase out invasive research on great apes and the use of Federal funding of such research, both within and outside of the United States;
- (2) prohibit the transport of great apes for purposes of invasive research;
- (3) prohibit the breeding of great apes for purposes of invasive research; and
- (4) require the provision of lifetime care of great apes who are owned by or under the control of the Federal Government in a suitable sanctuary through the permanent retirement of the apes.

With regard to chimpanzees specifically, the practical effect of the enforcement of this legislation would be to save from further suffering the approximately 1,000 chimpanzees still held in laboratories in the United States, and to cause the retirement from such research to permanent sanctuary of approximately 500 chimpanzees owned by the Federal Government.

Congressional Findings Stated in the Act

Section 1 of the Act sets forth seven (7) findings which form the rationale for the proposed legislation. These are as follows:

- “(1) chimpanzees are the only great apes currently used in invasive research in the United States;
- (2)(A) as of the date of introduction of this Act, there are approximately 1,000 chimpanzees housed in laboratories in the United States;
 - (B) more than 1/2 of these chimpanzees are owned by the Federal Government; and
 - (C) the vast majority are financially supported by the Federal Government;
- (3) great apes are highly intelligent and social animals;
- (4) research laboratory environments involving invasive research cannot meet the complex physical, social, and psychological needs of great apes;
- (5) invasive research performed on great apes, and the breeding, housing, maintenance, and transport of great apes for these purposes, are economic in nature and substantially affect interstate commerce;
- (6) maintaining great apes in laboratories costs the Federal Government more than caring for great apes in suitable sanctuaries that are specifically designed to provide adequate lifetime care for great apes; and
- (7) the National Research Council report entitled ‘Chimpanzees in Research--Strategies for their Ethical Care, Management, and Use’ concluded that--

- (A) there is a 'moral responsibility' for the long-term care of chimpanzees used for scientific research;
- (B) there should be a moratorium on further chimpanzee breeding;
- (C) euthanasia should not be used as a means to control the size of the great ape population; and
- (D) sanctuaries should be created to house chimpanzees in a manner consistent with high standards of lifetime care, social enrichment, and cognitive development.

Discussion

This bill is welcome and timely for several reasons. First, it is a logical extension of the amended CHIMP ACT (cited in the above-identified findings)(42 U. S. C. 287a-3a), effective December 26, 2007. That Act retired from further invasive biomedical research into Federally funded sanctuaries chimpanzees already subjected to such experiments, with certain limitations. A number of other countries limit or prohibit outright any biomedical research on great apes on ethical grounds alone, regardless of whether there might be possible scientific value in any such experiments.² No sentient being should be subjected to wanton, prolonged cruelty, whatever such being's level of intelligence. However, the high intelligence, large size and social nature of great apes means that separation from their natural environment and social group and confinement in a laboratory involves an inherent cruelty even before these animals are subjected to any invasive biomedical experimentation.

Further, the provisions of the Animal Welfare Act, and the regulations promulgated pursuant thereto, specifically provide that they are intended to prevent unnecessary suffering and promote alternative research.³ In 2005, the United States Department of Agriculture's Office of the Inspector General issued an audit report that noted, among many other critical findings, that: (1) the number of research facilities cited for violations of the Animal Welfare Act had increased during the examination period; (2) some of the Institutional Animal Care and Use Committees (IACUCs) did not ensure that unnecessary and/or repetitive experiments would not be performed on laboratory animals; and (3) inspections revealed that

² In 1997, Great Britain banned all biomedical research on great apes: chimpanzees, gorillas, bonobos, and orangutans. In 2002, Article 10E of the Dutch Animal Testing Law prohibited all testing after that date on those types of apes. Similarly, in 2003, Sweden banned invasive biomedical research on great apes though not behavioral research by means of a binding regulation passed by its Board of Agriculture. Austria amended its animal protection laws in December, 2005 to ban research on chimpanzees, gorillas and orangutans. In 1999, New Zealand amended its Animal Welfare Act to ban the use of "nonhuman hominids" in research, testing, or teaching, unless such research, testing or teaching was in the best interest of the nonhuman hominid. There is a moratorium on chimpanzee research in Japan. Further, on November 20, 2007, the European Union banned all cosmetic testing on any animals effective March 2009. The *Jerusalem Post* reported that on May 1, 2007, effective immediately, Israel's Knesset banned all animal testing of cosmetics and cleaning products.

³ See, *inter alia*, 9 CFR, Chapter 1, Subchapter A, Part 2, Subpart C, Section 2.31(d)(1) which provides, in relevant part, as follows: "the IACUC (Institutional Animal Care and Use Committee) shall determine that the proposed activities or significant changes meet the following requirements: (i) procedures involving animals will avoid or minimize discomfort, distress, and pain to the animals; (ii) the principal investigator has considered alternatives to procedures that may cause more than momentary or slight pain or distress to the animals and has provided a written narrative description of the methods and sources: e. g., the Animal Welfare Information Center, used to determine that other methods were not available; and (iii) the principal investigator has provided written assurance that the activities do not unnecessarily duplicate previous experiments.

IACUCs do not effectively monitor the search for alternative research, veterinary care, review of painful procedures, and the use of animals.

Decisional law also illustrates the difficulty of enforcing laws intended to protect laboratory animals in the court system. In *Taub v. State*, 296 Md. 439, 463 A. 2d 819 (1983), Dr. Taub's state court conviction for animal cruelty was dismissed though it had been proven his laboratory monkeys dwelt in squalor and received no veterinary care. The Appeals Court ruled that Federal preemption applied inasmuch as his laboratory operated on a Federal grant. In an unreported case available on the Internet, *State of New Mexico v. Dr. Donald Rick Lee, D. V. M. and Charles River Laboratories, Inc.* (June 14 2007), the New Mexico Court of Appeals ruled that the gross neglect that resulted in the death of two chimpanzees and the serious illness of another as a result of inhumane conditions in research laboratories could not be prosecuted criminally under state animal cruelty laws.

As a matter of information, we note that, on February 5, 2008, a new five-year plan to further reduce, refine and replace the use of animals in research and regulatory testing was unveiled at a symposium marking the 10-year anniversary of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM).⁴ According to Dr. Elias A. Zerhouni of the National Institutes of Health, "The idea here is to move the 20th century paradigm of testing one compound at a time on many animals to the 21st century paradigm of testing five to 10,000 compounds against 5,000 to 20,000 conditions in cells that are specific to human toxicology."⁵

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⁴ See January 2008 NIH Publication No. 08-6410, NICEATM-ICCVAM Five-Year Plan (2008-2012), A Plan to advance alternative test methods of high scientific quality to protect and advance the health of people, animals and the environment. NICEATM is the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods. ICCVAM is a permanent interagency committee composed of representatives from 15 federal regulatory and research agencies, including the National Institutes of Health (NIH), that use, generate or disseminate toxicological information. ICCVAM promotes the development, validation, and regulatory acceptance of scientifically sound new, revised, and alternative testing methods that protect human and animal health and the environment. In Healthday News, in *The Washington Post* on February 14, 2008, Steven Reinberg reported that the National Institutes of Health, the Environmental Protection Agency, and the National Toxicity Program had signed a memorandum of understanding to immediately commence testing some chemicals using alternative testing methods.

⁵ Quoted in *The Washington Post*, February 14, 2008, Healthday News by Steven Reinberg.