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# Protecting the Family Pet: The New Face of Maryland Domestic Violence Protective Orders

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## ARTICLE

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### PROTECTING THE FAMILY PET: THE NEW FACE OF MARYLAND DOMESTIC VIOLENCE PROTECTIVE ORDERS

By: Joshua L. Friedman\* and Gary C. Norman\*\*

*A wretched soul, bruised with adversity,  
We bid be quiet when we hear it cry;  
But were we burden'd with like weight of pain,  
As much, or more, we should ourselves complain.*

- William Shakespeare<sup>1</sup>

#### I. INTRODUCTION

Domestic violence is on the rise, and pets are increasingly becoming the victims of marital disputes. There is a demonstrated link between acts and offenses of domestic violence and animal abuse. Domestic abusers often do not think twice about beating or otherwise harming pets that have bonded with the other spouse in order to control, coerce, intimidate, or cause emotional harm to that spouse.

There is an emerging awareness that animals are more than just property.<sup>2</sup> Several states have recognized, through the enactment of

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<sup>1</sup> THE COMEDY OF ERRORS act 2, sc. 1, lines 34-37 (Paul Negri & Susan L. Rattiner eds., Dover Publications, Inc. 2002).

<sup>2</sup> Am. Society for the Protection of Animals, Position Statement on Property, <http://www.aspca.org/about-us/policy-positions/ownership-guardianship.html> (last visited

legislation fortifying their family law systems, that animals play an integral role in the lives of their human counterparts. Legislatures throughout the country have granted local courts the power to issue protective orders that account for the unique circumstances that arise when victims of domestic abuse have companion animals.

Despite attempts from the Animal Law Section of the Maryland State Bar Association and its fellow sponsors in the Maryland State Senate and the House of Delegates, similar legislation has yet to take root in Maryland. Two critical components are needed in order to advocate and move this issue forward in Maryland: The realization that animals are a mainstream issue and political will.

This article reviews the literature that demonstrates the linkages between animals and domestic violence. In conducting this review, the authors discuss media reports and published works on the subject. The authors also provide an overview of current legislation enacted in other jurisdictions across the United States. Additionally, a review of bills recently introduced in the Maryland General Assembly from 2007 to 2009 is provided. Finally, the authors put forth arguments in support of the enactment of legislation authorizing the inclusion of pets and service animals in Maryland protective orders.

## II. OVERVIEW OF DOMESTIC VIOLENCE

Domestic violence can be defined as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”<sup>3</sup> Domestic violence is a complex and consequential public health issue, which should be of concern to civic society. Physical, sexual, emotional, economic, or psychological actions, or the threat thereof, are all forms of domestic violence when the intended purpose of each of these enumerated actions or threats is manipulation, terror, intimidation, isolation, injury, humiliation, fear, or coercion.<sup>4</sup>

Domestic violence can happen to people of all ages, races, ethnicities, religions, socioeconomic classes, and professions.<sup>5</sup> The statistics, which reflect how disproportionately domestic violence affects women, are overwhelming. “One in every four women will experience domestic

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Nov. 24, 2009) (“By viewing animals as more than mere property, the focus shifts from the ownership interest in the animal to what is in the best interest of [the] animal.”).

<sup>3</sup> U.S. Dept. of Justice, Office on Violence Against Women, About Domestic Violence, <http://www.ovw.usdoj.gov/domviolence.htm> (last visited Nov. 24, 2009).

<sup>4</sup> *Id.*

<sup>5</sup> WomensLaw.org, Domestic Violence (Sept. 2, 2009), [http://womenslaw.org/simple.php?sitemap\\_id=39](http://womenslaw.org/simple.php?sitemap_id=39).

violence in her lifetime.”<sup>6</sup> “Eighty-five percent of domestic violence victims are women.”<sup>7</sup> “Over fifty percent of all women will experience physical violence in an intimate relationship,”<sup>8</sup> and twenty-four to thirty percent of those women will experience regular and on-going domestic violence.<sup>9</sup> The majority of domestic violence cases, unfortunately, are also never reported to law enforcement.<sup>10</sup> Additionally, the cost of domestic violence exceeds \$5.8 billion each year.<sup>11</sup> To rectify this issue, “all fifty states now have a version of the civil protection order, which mandates both court and law enforcement participation in instances where persons eligible for relief are in fear of harm.”<sup>12</sup> Aside from the use of private methods to prevent abuse, filing for a civil protection order ranked among the top ten in both the most commonly used and most helpful strategies for battered women.<sup>13</sup>

Although there are a number of societal, psychological, and other explanations for the causes of domestic violence,<sup>14</sup> the desire for control over the victim is the primary motive for most abusers:

Batterers utilize a wide array of coercive tactics to cement their control of their partners, such as isolating them from sources of help, humiliating them privately and in public, controlling their access to money, food, community and transportation, and microregulating their personal lives . . . . Physical violence only punctuates . . . coercive tactics.<sup>15</sup>

Furthermore, one study demonstrated that “the ‘control motive’ plays a greater role as an impetus for domestic violence than for other categories of violence.”<sup>16</sup> This study found that threats and coercive tactics were

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<sup>6</sup> National Coalition Against Domestic Violence, Domestic Violence Fact Sheet, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Nov. 24, 2009).

<sup>7</sup> *Id.*

<sup>8</sup> See WomensLaw.org, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> See National Coalition Against Domestic Violence, *supra* note 6.

<sup>11</sup> *Id.*

<sup>12</sup> Richard A. DuBose, III, Comment, *Katsenelenbogen v. Katsenelenbogen: Through the Eyes of the Victim – Maryland’s Civil Protection Order and the Role of the Court*, 32 U. BALT. L. REV. 237, 241 (2003).

<sup>13</sup> Jane C. Murphy, *Engaging With the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL’Y & L. 499, 506-08 (2002).

<sup>14</sup> Sally F. Goldfarb, *Reconceiving Civil Protective Orders for Domestic Violence: Can Law End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1493 (2008).

<sup>15</sup> Judith A. Wolfer, *The Changing American Family and the Law: Top 10 Myths About Domestic Violence*, 42 MD. B. J. 38, 38-39 (May/June 2009).

<sup>16</sup> Tom Lininger, *The Sound of Silence: Holding Batterers Accountable for Silencing Their Victims*, 87 TEX. L. REV. 857, 867 (2009) (citing a study conducted by Richard B.

more likely to be used before acts of physical violence in domestic violence cases than in other categories of violence.<sup>17</sup> The fact that domestic violence involves nonphysical acts, and is only “punctuated” by the physical violence, demonstrates that the “control motive” is indeed a prevalent cause. One can logically infer that an abuser will target his or her victim’s helpless pet or service animal as a means to effectuate this control.

### III. THE IMPACT ON ANIMALS CAUSED BY DOMESTIC VIOLENCE

To millions of Americans, animals are not merely property—they are much more. The closeness of the relationship between humans and their furry companions is “[b]eyond dispute . . . [as] human[s] . . . have long enjoyed an abiding and cherished association with their household animals.”<sup>18</sup> Animals have a salubrious and psychological effect on their human counterparts. The presence of animals may lead to the improvement of vital signs, decreased medication usage and doctor visits, as well as the amelioration of loneliness, fear, and abandonment among older adults.<sup>19</sup> Not to mention, children, through their companionship with animals, learn positive traits, including empathy, responsibility, and respect for life.<sup>20</sup>

Animals are also known to have a special effect on victims of domestic violence. Pets or service animals reportedly furnish solace, emotional support, and assistance to victims of domestic violence; enabling these victims, after an incident of abuse, to return to their past activities of daily living with less significant difficulty. Animal

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Felson & Steven F. Messner, *The Control Motive in Intimate Partner Violence* 63 SOC. PSYCHOL. Q. 86, 91 (2000)).

<sup>17</sup> *Id.* at 867-68 (citing Felson & Messner, *supra* note 16, at 91).

<sup>18</sup> Sonia S. Waisman & Barbara R. Newell, *Recovery of “Non-Economic Damages” for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 ANIMAL L. 45, 53 (2001) (citing *Nahrstedt v. Lakeside Vill. Condo. Ass’n.*, 878 P.2d 1275, 1292 (Cal. 1994)).

<sup>19</sup> See, e.g., Jennifer Robbins, Note, *Recognizing the Relationship Between Domestic Violence and Animal Abuse: Recommendations for Change to the Texas Legislature*, 16 TEX. J. WOMEN & L. 129, 132 (2006); Rachel Hirschfeld, *Ensure Your Pet’s Future: Estate Planning for Owners and Their Animal Companions*, 9 MARQ. ELDER’S ADVISOR 155, 156 (2007), available at [http://www.animallaw.info/articles/art\\_pdf/arus9marqeldersadvisor155.pdf](http://www.animallaw.info/articles/art_pdf/arus9marqeldersadvisor155.pdf) (citing Anita Gates, *Pitter Patter of Paws Time-Tested Remedy*, N.Y. TIMES, Jul. 24, 2001, at F6); Kelly Henderson, *No Dogs Allowed?: Federal Policies on Access for Service Animals*, 7 ANIMAL WELFARE INFO. CENTER. NEWSL. 2 (Summer 1996), available at <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm>.

<sup>20</sup> Susan L. Pollet, *The Link Between Animal Abuse and Family Violence*, N.Y. L.J., Jan. 28, 2008, at 4.

companions also allow for personal exercise and opportunities to search for escape routes.<sup>21</sup>

The link between domestic violence and violence against pets or service animals has more than just a notable effect on the bond between humans and animals; it can be a potent mechanism of power and control for the abuser.<sup>22</sup> Violence against pets or service animals is a tangible, consequential way of controlling and terrorizing the human victim. Moreover, men and women are not the only victims to experience the sounds and sensations—as well as the physical and emotional torment, scars, and aftermath—of domestic violence.<sup>23</sup> Specifically, “animals may be hostages, tools of humiliation, or threatening examples of potential human pain and suffering that could be inflicted.”<sup>24</sup> Animal abuse may consist of repugnant actions, including “choking, drowning, shooting, stabbing, and throwing the animal against a wall or down the stairs.”<sup>25</sup>

Animals serve as instrumentalities in domestic violence in other ways, such as the horrific subjection of women or children to acts of bestiality at the hands of their abusers.<sup>26</sup> Escalating cycles of violence toward a pet or service animal concomitantly occurs with worsening domestic violence within the dwelling.<sup>27</sup> Moreover, when animal abuse is present, the chance of domestic violence lethality generally increases.<sup>28</sup>

<sup>21</sup> Maryland’s Peoples Law Library, Domestic Violence/Companion Animals (June 7, 2009), [http://www.peoples-law.org/domviol/pets/protect\\_pet.html](http://www.peoples-law.org/domviol/pets/protect_pet.html); Robbins, *supra* note 19, at 132.

<sup>22</sup> Allie Phillips, *The Few and The Proud: Prosecutors Who Vigorously Pursue Animal Cruelty Cases*, 42 PROSECUTOR 20, 21 (Jul.-Sept. 2008) (“The actual killing, torturing and beating of pets—or the threat of such actions—is used by abusers as a weapon to ensure submission and silence by women and children.”); Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 101-02 (2001) (“It is because of this relationship with animals that abusers readily have the ability to exercise control over domestic violence victims through their pets.”).

<sup>23</sup> No matter against whom (or what) domestic violence is perpetrated, such violence should be condemned and prosecuted to the fullest extent possible.

<sup>24</sup> Carol D. Raupp, *Treasuring, Trashing, or Terrorizing: Adult Outcomes of Childhood Socialization about Companion Animals*, 7 SOC’Y & ANIMALS 141, 143 (1999).

<sup>25</sup> Phil Arkow & Tracy Coppola, *Expanding Protective Orders to Include Companion Animals* 3 (2009), <http://www.americanhumane.org/assets/docs/advocacy/ADV-ppo-report-09.pdf>.

<sup>26</sup> Gentry, *supra* note 22, at 101 (citing Frank R. Ascione, *Battered Women’s Reports of Their Partners’ and Their Children’s Cruelty to Animals*, in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE 290, 292-93 (Randall Lockwood & Frank R. Ascione eds., Purdue Univ. Press 1998)).

<sup>27</sup> See Joan E. Schaffner, *Linking Domestic Violence, Child Abuse and Animal Cruelty*, ABA-TIPS ANIMAL L. COMM. NEWSL. (George Washington University Law School, Washington, D.C.), Fall 2006, at 4, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1001255](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001255).

<sup>28</sup> Phillips, *The Few and The Proud*, *supra* note 22, at 21.

In many cases, abusers realize their intended goal by viciously dominating the life of their victim through the threat of harm to a beloved pet or service animal. This course of action instills insecurity and terror in the victims.<sup>29</sup> The same motivations exist for battering pets and for battering women: “discipline, retaliation, demonstration of power or omnipotence, and instillation of fear and the habit of compliance.”<sup>30</sup> Thus, whether physically harming an animal or merely threatening to harm an animal, abusers realize their goal of gaining control over their victims.

Domestic violence can acquire an especially disturbing character when targeted at pets or service animals, because children are often present. A nationwide survey of fifty of the largest domestic violence shelters dating back to 1997 reported that eighty-five percent of women and sixty-three percent of children reported domestic incidents of animal abuse.<sup>31</sup> As a result of witnessing domestic violence, children may become desensitized to the value of life and personal property.<sup>32</sup> Consequently, the connection between committing acts of violence to animals and eventual violence to human counterparts is disturbing. For example, “Columbine High School killers, Eric Harris and Dylan Klebold, shot woodpeckers, Milwaukee serial killer and cannibal, Jeffrey Dahmer, staked severed dog heads on fence posts, and ‘Son of Sam’ serial killer, David Berkowitz, poured ammonia into his mother’s fish tank.”<sup>33</sup> The common thread is that all of these individuals committed acts of abuse against animals before turning to human targets.<sup>34</sup>

The long-term impact of domestic violence on children is also significant. A child’s exposure to domestic violence may lead to, among other things, stuttering, headaches, bed-wetting, anxiety, depression, suicidal behavior, clinging, or aggressive behavior.<sup>35</sup> Even where children do not necessarily morph into killers, as depicted above, they are

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<sup>29</sup> See Bonfante, *infra* note 132.

<sup>30</sup> Robbins, *supra* note 19, at 133.

<sup>31</sup> Press Release, The Humane Society, Vermont Becomes Second State to Include Animals in Domestic Violence Protective Orders (May 26, 2006), [http://www.hsus.org/press\\_and\\_publications/press\\_releases/vermont\\_second\\_state\\_pets\\_protection\\_orders.html](http://www.hsus.org/press_and_publications/press_releases/vermont_second_state_pets_protection_orders.html).

<sup>32</sup> James Blewett, Research Connects Abuse in Childhood with Cruelty to Animals (Oct. 30, 2008), <http://www.communitycare.co.uk/Articles/2008/10/30/109812/the-link-between-animal-cruelty-and-child-protection.html>.

<sup>33</sup> Julie Bykowicz, *Link Between Cruelty to Pets, Humans Explored: Conference Notes Links to Spouse, Child Abuse*, BALT. SUN, Apr. 22, 2002, at 8B.

<sup>34</sup> *Id.* (“Criminal justice researchers have known it for years: Children who hurt and torment animals often grow into adults who assault other people. Many communities, including Howard County, are beginning to acknowledge that link. Some people have taken steps toward dealing with the dangers it presents.”).

<sup>35</sup> Robbins, *supra* note 19, at 135 (citing Elaine Hilberman & Kit Munson, *Sixty Battered Women*, 2 VICTIMOLOGY 460, 463 (1978)).

three times more likely to commit violence against animals if they have personally encountered domestic violence.<sup>36</sup> Therefore, when an act of domestic violence occurs in the presence of children, there is an obvious detrimental impact on these reluctant observers, dramatically increasing the need to alleviate the situation.

The bond of a victim with his or her pet or service animal may hinder that victim's ability to seek and acquire help. Victims are unlikely to flee domestic violence for safe harbor, such as a women's shelter, if they must leave pets or service animals in their wake.<sup>37</sup> Multiple studies show that "18-48 percent of battered women have delayed leaving an abusive home, or have returned to their batterer, out of fear for the welfare of their pets or livestock."<sup>38</sup> Additionally, women in rural locales and women with disabilities may encounter special issues regarding domestic violence, such as the welfare of their farm animals or service animals in deciding whether to flee domestic violence.<sup>39</sup>

Unfortunately, many women's shelters do not investigate whether the violence included pet or service animal abuse. Given that the welfare of pets or service animals has a substantial influence on whether victims choose to flee homes where domestic violence is prevalent, it is critical that service providers capture data and provide refuge to the pets or service animals of victims. Professor Joan Schaffner, a Fellow at the Oxford Center for Animal Ethics,<sup>40</sup> argues that it is imperative for shelters to take the needs of a victim's pet into account and have procedures in place to provide shelter for these animals until reunited with their victim owners.<sup>41</sup>

To address this influential factor on the rehabilitation and safety of victims, many Maryland service providers have established—or plan to establish—"safe haven programs," where pets or service animals can also receive shelter.<sup>42</sup> The American Humane Society, in a manual created for

<sup>36</sup> See, e.g., Cheryl L. Currie, *Animal Cruelty by Children Exposed to Domestic Violence*, 30 CHILD ABUSE & NEGLECT: THE INT'L J. 425, 429 (2006).

<sup>37</sup> Phillips, *The Few and The Proud*, *supra* note 22, at 21.

<sup>38</sup> *Id.*

<sup>39</sup> See Rural Womyn Zone, Violence Against Rural Women, [http://www.ruralwomyn.net/rural\\_violence\\_difference.html](http://www.ruralwomyn.net/rural_violence_difference.html) (last visited Nov. 24, 2009) ("Rural environments are distinct from urban environments in ways that affect the ability of the criminal justice system to investigate and prosecute domestic violence and child victimization cases. Furthermore, rural environments present barriers that create difficulties for service providers in treating and counseling victims.").

<sup>40</sup> Oxford Centre for Animal Ethics, Fellows, <http://www.oxfordanimaethics.com/index.php?p=fellows> (last visited Nov. 24, 2009).

<sup>41</sup> Schaffner, *supra* note 27, at 1.

<sup>42</sup> Bykowicz, *supra* note 33, at 8B; Allie Phillips, *American Humane Launches Pets and Women's Shelter (PAWS) Program*, 42 PROSECUTOR 16, 16 (Apr.-June 2008).



its Pets and Women's Shelters Program, also furnishes guidance to service providers on the issue of allowing pets to stay in shelters with their owners.<sup>43</sup>

In sum, there is a proven link between intimate partner domestic violence and animal abuse. Consequently, the judiciary and legislature are beginning to recognize the need to extend legal protection to animals suffering from domestic violence.<sup>44</sup> The American Humane Society contends, "[t]he inclusion of companion animals in domestic violence protective orders is the next logical step . . . ."<sup>45</sup> In response to widespread public support, many state legislatures are considering the addition of protective orders for pets and service animals.<sup>46</sup> In Maryland, "[t]he framework for such legislation is already in place and merely requires amending . . . existing laws."<sup>47</sup>

#### IV. THE EVOLUTION OF DOMESTIC VIOLENCE PROTECTION IN MARYLAND

##### *A. Legislative History of Domestic Violence Protection in Maryland*

As discussed above, the established link between domestic violence and animal abuse should prompt broader remedies and relief to protect household pets and service animals. In Maryland, attempts have been made, with varying successes, to advance this innovative, yet necessary, legal concept. To properly analyze these developments and the need for future reform, a discussion of the history of domestic violence law in Maryland is imperative.

In accord with the recognition that domestic violence constitutes a pervasive issue, the Maryland General Assembly enacted the Domestic Violence Act in 1980.<sup>48</sup> Subsequently, the Court of Appeals of

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Providing a method for family pets to be safely housed with other family members works toward keeping families and communities safe. In February 2008, American Humane launched the Pets and Women's Shelter (PAWS) Program. The PAWS Program was created specifically to maintain the human-animal bond between women, children and family pets that are faced with the disaster of losing their home and needing each other for comfort . . . . The program provides domestic violence shelters a helpful start-up manual that covers all aspects of on-site housing for pets. In a straightforward effort to make this as stress-free as possible for the shelter, the PAWS Program asks that the family members—not the shelter staff—care for their pets during their residency at the shelter.

*Id.*

<sup>43</sup> Phillips, *American Humane Launches Pets and Women's Shelter (PAWS) Program*, *supra* note 42.

<sup>44</sup> Arkow & Coppola, *supra* note 25, at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1-2.

<sup>47</sup> *Id.* at 2.

<sup>48</sup> Act of May 27, 1980, ch. 887, 1980 Md. Laws 3273-81 (codified at MD. CODE ANN., CTS. & JUD. PROC. §§ 4-501 to -506 (1980)).

Maryland, in *Coburn v. Coburn*,<sup>49</sup> described the purpose of the Act: “[T]o protect and ‘aid victims of domestic abuse by providing an immediate and effective’ remedy. The statute provides a wide variety and scope of available remedies designed to separate the parties and avoid future abuse.”<sup>50</sup> The court further reasoned that the primary goals of the statute were “preventive, protective and remedial, not punitive.”<sup>51</sup>

Unfortunately, the Act was unduly restrictive. For example, to qualify for protection under the Act, one had to be a “spouse, blood relative or step relation” to the abuser, and the victim and abuser were required to have “resided together when the abuse occurred.”<sup>52</sup> Therefore, unmarried couples were unable to obtain protection under the 1980 Act.<sup>53</sup> Additionally, the Act allowed for a temporary *ex parte* order to last for only five days and a subsequent protective order to last for fifteen days, which included the time the temporary order was in effect. In 1992, the Maryland Legislature addressed these inefficiencies by completely overhauling the Domestic Violence Act.<sup>54</sup>

The 1992 amendments to the Act by the Maryland General Assembly were comprehensive.<sup>55</sup> The amendments allowed for the judicial modification of a protective order, provided penalties for the violation of such orders,<sup>56</sup> and expanded the definition of abuse in Maryland to include “battery or assault and battery; rape or sexual offense . . . or attempted rape or sexual offense; [and] false imprisonment.”<sup>57</sup> Today, many states, including Maryland, incorporate “assault and acts resulting in bodily harm” as well as “threats of bodily harm” in the definition of “abuse.”<sup>58</sup> In sum, the 1992 amendments expanded the definition of what constitutes abuse,<sup>59</sup> expanded the group of persons eligible for relief

<sup>49</sup> 342 Md. 244, 674 A.2d 951 (1996).

<sup>50</sup> *Id.* at 252, 674 A.2d at 955 (internal citations omitted).

<sup>51</sup> *Id.* at 253, 674 A.2d at 955 (internal citations omitted).

<sup>52</sup> Susan Carol Elgin, *Domestic Violence: Is Maryland Responding?*, 28 MD. B. J. 43, 44 (Mar./Apr. 1995).

<sup>53</sup> MD. CODE ANN., CTS. & JUD. PROC. § 4-503(b)(2) (Supp. 1981).

<sup>54</sup> See Act of May 5, 1992, ch. 65, 1992 Md. Laws 1447-63 (codified as amended at MD. CODE ANN., FAM. LAW §§ 4-507 to -510, 7-103.1 (Supp. 1992)).

<sup>55</sup> Elgin, *supra* note 52, at 44.

<sup>56</sup> See *Triggs v. State*, 382 Md. 27, 49, 852 A.2d 114, 128 (2004) (holding that separate harassing telephone calls comprised individual acts for purposes of violating a protective order, which was in effect).

<sup>57</sup> Compare MD. CODE ANN., FAM. LAW § 4-501(b)(1) (Supp. 1992), with MD. CODE ANN., FAM. LAW § 4-501(b)(1) (Supp. 1991).

<sup>58</sup> Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1138 (2009).

<sup>59</sup> The expanded definition reads: battery or assault and battery, serious bodily injury or threat of such an injury; rape or sexual assault offense; or attempted rape or sexual offense; false imprisonment and abuse of a child or vulnerable adult. MD. CODE ANN., FAM. LAW § 4-501(b) (Supp. 1992).

under the Act,<sup>60</sup> and increased the time for protection under a protective order from only 30 to 200 days.<sup>61</sup>

Since 1992, the Maryland General Assembly has frequently amended the Act, and other Articles of the Maryland Code,<sup>62</sup> to reflect the ever-shifting nature of domestic violence protection law. The General Assembly should continue to expand the law's coverage to address pervasive issues, such as animal abuse.

*B. Legislative Relief Currently Available for Victims of Domestic Violence*<sup>63</sup>

An extensive array of statutory provisions enable Maryland citizens to seek protection from abusive relationships.<sup>64</sup> Where an abusive relationship is with a neighbor, co-worker, or acquaintance, a victim may petition for interim, temporary, *ex parte*, or final peace orders, which may be issued by a commissioner or judge of a district court.<sup>65</sup> Where a current or former spouse is involved, however, in addition to an interim, temporary or *ex parte* protective order, an individual may also petition for a final protective order.<sup>66</sup> Other individuals may qualify for such an order if an intimate relationship has existed for longer than ninety days or if the relationship is based on marriage, consanguinity, or adoption.<sup>67</sup> Additionally, when a child or "vulnerable adult" is a victim, the State's Attorney's Office, the Department of Social Services, an adult residing in the home, or an adult who is related by consanguinity or adoption may petition for a protective order, which may be issued on behalf of that child or vulnerable adult.<sup>68</sup>

<sup>60</sup> The new definition included, among other things, former spouses, current spouses who were not household members, cohabitants and vulnerable adults. *Id.* at 4-501(h).

<sup>61</sup> *Id.* at § 4-506(g).

<sup>62</sup> For instance, in 1999, amendments to the Courts and Judicial Proceedings Article augmented protections in the state by creating a protective order applicable to non-spouses, styled the "peace order." Act of May 13, 1999, ch. 404, 1999 Md. Laws 2677-88 (codified as amended at MD. CODE ANN., CTS. & JUD. PROC. §§ 3-1501 to -1509 (2006)); Anna R. Benshoof, *House Bill 233: Courts and Judicial Proceedings – Peace Orders*, 29.2 U. BALT. L.F. 82 (1999).

<sup>63</sup> Please note that this section reflects the current status of Maryland's domestic violence statutes as of the publication of this article. In 2009, the Maryland General Assembly enacted an amendment concerning each statute's respective notification requirement. Acts of May 19, 2009, ch. 711 (Md. 2009) (to be codified at MD. CODE ANN., FAM. LAW §§ 4-504(d), 4-504.1(f)(3), 4-505(b)(1)). The changes shall take effect on January 1, 2010, and "shall remain effective for a period of 2 years and, at the end of December 31, 2011, with no further action required by the General Assembly, [the changes] shall be abrogated and of no further force and effect." *Id.* The Act will then revert back to its current status. *Id.*

<sup>64</sup> See MD. CODE ANN., FAM. LAW, §§ 4-504 to -511 (2006 & Supp. 2009).

<sup>65</sup> MD. CODE ANN., CTS. & JUD. PROC., §§ 3-1501 to -1509 (2006).

<sup>66</sup> MD. CODE ANN., FAM. LAW §§ 4-504.1 to -506 (Supp. 2009).

<sup>67</sup> MD. CODE ANN., FAM. LAW § 4-501(d), 4-501(l)(2) to (3) (2006).

<sup>68</sup> *Id.* at § 4-501(m)(2)(ii)(1)-(4).

Maryland has endeavored to ensure that the application process for protective orders is easy and accessible. Victims who petition for the issuance or service of an interim, temporary, or final protective order, or a witness subpoena, are exempt from paying filing fees or costs.<sup>69</sup> Additionally, pre-printed forms are available to aid *pro se* petitioners.<sup>70</sup> This form allows the petitioner to request remedies,<sup>71</sup> such as emergency family maintenance or sole use and possession of the family vehicle.<sup>72</sup> After filing the form, the petitioner appears before a judge for a hearing.<sup>73</sup> The court is allocated wide discretion in granting protective orders and other requested relief based upon the evidence presented.<sup>74</sup>

When a petition for such an order is filed, the court must first determine whether statutorily defined abuse has occurred.<sup>75</sup> Upon a finding of abuse, the court, in an *ex parte* proceeding, may order the alleged abuser to, among other things, refrain from further abuse.<sup>76</sup> After service of the order, it shall remain in effect for no more than seven days.<sup>77</sup> If, however, the court is unable to effectuate service—or for other good cause—the court may continue the temporary order for no more than six months.<sup>78</sup> This temporary *ex parte* order will state the date and time of the final protective order hearing.<sup>79</sup>

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<sup>69</sup> MD. CODE ANN., FAM. LAW § 4-504(c) (Supp. 2009).

<sup>70</sup> See Coburn, 342 Md. at 254 & n.9, 674 A.2d at 956 & n.9 (1996) (citing Martha F. Rasin, *The New Domestic Violence Law's Surprising Track Record*, 26 Md. B.J. 30, 32 (Nov./Dec. 1993)).

<sup>71</sup> *Id.* at 254, 674 A.2d at 956.

<sup>72</sup> MD. CODE ANN., FAM. LAW § 4-506(d)(9)-(10) (Supp. 2009).

<sup>73</sup> *Id.* at § 4-505(a)(1).

<sup>74</sup> Coburn, 342 Md. at 254, 674 A.2d at 956.

<sup>75</sup> *Id.* at 254-55, 674 A.2d at 956.

<sup>76</sup> See MD. CODE ANN., FAM. LAW § 4-505(a)(2) (Supp. 2009). The court may further: (a) order the abuser to refrain from any contact or attempt at contact with the victim, (b) order the abuser to refrain from entering the victim's residence, (c) in the event that the abuser and the victim reside together at the time of the abuse, order the abuser to vacate the home and award temporary possession and use of the home to the victim (provided that if the victim is a nonspouse, either (i) the name of that nonspouse must appear on the lease or deed to the property, or (ii) the nonspouse must have resided in the home with the abuser for a period of no fewer than 90 days within one year before the petition was filed) (or in the event the victim is a minor child, award temporary use and possession of the home to an adult living in the home), (d) order the abuser to remain away from the victim's place of employment, school, temporary residence, the residence of victim's family members, or the victim's child care provider while the victim's child is in the care of that provider, (e) award temporary custody of the victim and abuser's minor child, and (f) in the event the abuse consisted of (i) the use or threat of a firearm, or (ii) serious bodily harm or threat of serious bodily harm, order the abuser to surrender any firearms in the abuser's possession to law enforcement and refrain from purchasing or possessing any firearms for the duration of the order. *Id.* at § 4-505(a)(2)(ii) to (viii).

<sup>77</sup> *Id.* at § 4-505(c)(1).

<sup>78</sup> *Id.* at § 4-505(c)(2).

<sup>79</sup> *Id.* at § 4-506(b)(1)(i).

At the final protective order hearing, the court may order the abuser to refrain from further abuse for a period of one year.<sup>80</sup> Additionally, the order may extend an adult family member's temporary possession of the family home for, again, no more than one year.<sup>81</sup> The order may also include other appropriate relief.<sup>82</sup>

In the event that the court is closed for business, Maryland's Family Law Article also provides that a District Court Commissioner may issue an interim protective order to protect an individual.<sup>83</sup> This order provides all pertinent information for the temporary and final protective order hearing.<sup>84</sup> Under an interim protective order, the person may be eligible for the same relief that is available under a temporary protective order, with a few exceptions.<sup>85</sup> The duration of an interim protective order shall last until the occurrence of either (1) the holding of a temporary protective order hearing, or (2) the end of the second business day that the office of the Clerk of the District Court is open for business following the issuance of the interim order.<sup>86</sup>

As noted above, persons not eligible for relief under the domestic violence statute may obtain protection through a peace order. By their nature, peace orders are less comprehensive.<sup>87</sup> Similar to protective orders, courts possess discretion to modify or rescind a peace order upon serving the victim and respondent with notice and holding a hearing.<sup>88</sup>

Protective orders, on the other hand, provide critical restrictions on interaction with, and conduct toward, victims. The violation of a protective order can result in a fine, imprisonment, or finding of contempt.<sup>89</sup> For an individual's first violation, sanctions include "a fine

<sup>80</sup> *Id.* at § 4-506(d)(1), (i)(1). Recent amendments to the statute make it mandatory for a final protective order to order an abuser to surrender any firearms in the abuser's possession and to refrain from possession. MD. CODE ANN., FAM. LAW § 4-506(e) (Supp. 2009). Additionally, the court may now issue a final protective order effective for two years if the abuser committed an act of abuse against the petitioner within one year of a previous final protective order's expiration. *Id.* at § 4-506(i)(2). Under previous versions of the statute, protective orders could not exceed one year in duration. *See* MD. CODE ANN., FAM. LAW § 4-506(g)(1) (2006).

<sup>81</sup> MD. CODE ANN., FAM. LAW § 4-506(d)(4), (i)(1) (Supp. 2009).

<sup>82</sup> *Id.* at § 4-506(e).

<sup>83</sup> *Id.* at § 4-504.1(a)-(b).

<sup>84</sup> *Id.* at § 4-504.1(e)(1)(i). Particularly, "[a] temporary protective order hearing shall be held on the first or second day on which a District Court judge is sitting after issuance of the interim protective order, unless the judge continues the hearing for good cause." *Id.* at § 4-504.1(e)(1)(ii).

<sup>85</sup> *Compare* MD. CODE ANN., FAM. LAW § 4-504.1(c) (Supp. 2009), *with* § 4-505(a)(2) (Supp. 2009).

<sup>86</sup> *See* MD. CODE ANN., FAM. LAW § 4-504.1(h) (Supp. 2009).

<sup>87</sup> MD. CODE ANN., CTS. & JUD. PROC. § 3-1504(a)(3) (2006) (granting authority to issue a peace order with "only the relief . . . minimally necessary to protect the victim").

<sup>88</sup> *Id.* at § 3-8A-19.4.

<sup>89</sup> MD. CODE ANN., FAM. LAW § 4-508(a)-(b) (2006).

not exceeding \$1,000 or imprisonment not exceeding ninety days, or both . . . .”<sup>90</sup> These penalties increase for one’s second offense, involving “a fine not exceeding \$2,500 or imprisonment not exceeding one year, or both.”<sup>91</sup>

At one time, domestic violence laws in Maryland were considered “among the worst in the nation for providing protection to victims.”<sup>92</sup> With recent amendments to the domestic violence statute, however, the Maryland Legislature has made great strides towards bolstering the statute’s original purpose.<sup>93</sup> Notwithstanding these improvements, peace and protective orders in Maryland are still lacking, as they do not currently include pets and service animals within their gamut. As such, Maryland peace and protective orders presently lack consequence to deter abusers from inflicting harm upon their victims’ animals.<sup>94</sup>

#### V. DOMESTIC VIOLENCE PROTECTION FOR ANIMALS AT THE STATE AND FEDERAL LEVEL

Maryland, along with forty-five other states, the District of Columbia, Puerto Rico, and the Virgin Islands, have laws classifying certain types of animal cruelty as a felony offense.<sup>95</sup> To date, however, only several key states have recognized the necessity of incorporating inclusive language in protective or peace orders that provide for the protection of family pets.

##### A. State Statutory Provisions

Utilizing the separation of powers doctrine, many legislatures throughout the country are currently prioritizing and focusing on this important issue. By addressing animal cruelty in domestic violence statutes, legislatures are acknowledging the obvious correlation between animal abuse and family violence.<sup>96</sup> For example, believed to be the first

<sup>90</sup> MD. CODE ANN., FAM. LAW § 4-509(a)(1) (Supp. 2009).

<sup>91</sup> *Id.* at § 4-509(a)(2).

<sup>92</sup> Elgin, *supra* note 52, at 44.

<sup>93</sup> For an overview of the most recent amendments to the domestic violence statute, see Maryland Network Against Domestic Violence, 2009 Domestic Violence Legislative Agenda – Final Report, <http://www.mnadv.org/2009%20Legis%20Agenda.pdf> (last visited Nov. 24, 2009).

<sup>94</sup> Laura Smitherman, *Gansler Urges Expansion of Animal Cruelty Laws*, BALT. SUN, Jul. 11, 2009, at 4A.

<sup>95</sup> The Humane Society of the U.S., Fact Sheet: State Animal Cruelty Provisions (Aug. 2009), [http://www.hsus.org/web-files/PDF/state\\_cruelty\\_chart.pdf](http://www.hsus.org/web-files/PDF/state_cruelty_chart.pdf).

<sup>96</sup> *See, e.g.*, S. 353, 205th Leg., Reg. Sess. (Cal. 2007). During that session, the California Legislature found that:

- (a) There is a correlation between animal abuse, family violence, and other forms of community violence. (b) According to the California Department of Justice, California law enforcement received 181,362 domestic violence calls in 2005. (c)

state in the nation to do so, Maine amended its domestic violence statute in 2006 to afford protection of animals in domestic violence situations and to award custody of animals to victims of abuse.<sup>97</sup> Several states have followed suit, including Hawaii, which, as of the writing of this article, is the most recent state to enact domestic violence laws protecting animals.<sup>98</sup>

General characteristics of these legislative initiatives<sup>99</sup> include enjoining the abuser from injuring, threatening, or harming the animal in

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Perpetrators often abuse animals in order to intimidate, harass, or silence their human victims. (d) A survey of pet-owning families with substantiated child abuse and neglect found that animals were abused in 88 percent of homes where child physical abuse was present. (e) A 1997 survey of 50 of the largest shelters for battered women in the United States found that 85 percent of women and 63 percent of children entering shelters discussed incidents of pet abuse in the family. (f) A study of women seeking shelter at a safe house showed that 71 percent of those having pets affirmed that their partner had threatened, hurt, or killed their companion animals. (g) Another study showed that violent offenders incarcerated in a maximum security prison were significantly more likely than nonviolent offenders to have committed childhood acts of cruelty toward pets.

*Id.* at § 1.

<sup>97</sup> ME. REV. STAT. ANN. tit. 19-A, § 4007(1)(N) (Supp. 2008); Pam Belluck, *New Maine Law Shields Animals in Domestic Violence Cases*, N.Y. TIMES, Apr. 1, 2006, available at <http://www.nytimes.com/2006/04/01/us/01pets.html>.

<sup>98</sup> HAW. REV. STAT. ANN. § 586-4(a) (West, Westlaw through 2009 Act 34) (effective Jan. 1, 2010).

<sup>99</sup> As of the writing of this article, fourteen jurisdictions in the United States include some sort of protection for animals under their respective protective order statutes. See CAL. FAM. CODE § 6320(b) (Supp. 2009) (allowing court to grant protective order which awards petitioner exclusive care of animal and requires respondent to refrain from, among other things, taking, threatening, or harming the animal); COLO. REV. STAT. ANN. § 18-6-800.3(1) (Supp. 2009) (including acts against property, which includes animals, in the definition of domestic violence); COLO. REV. STAT. ANN. § 18-6-803.5(1)(a) (Supp. 2009) (defining violations of a protection order as when an abuser “contacts, harasses, injures, intimidates, molests, threatens, or touches the protected person or protected property, including animals”); CONN. GEN. STAT. § 54-1K (b) (2009) (“A protective order issued . . . may include provisions necessary to protect any animal owned or kept by the victim including, but not limited to, an order enjoining the defendant from injuring or threatening to injure such animal.”); Animal Protection Amendment Act of 2008, No. 17-281, §107, 2008 D.C. Sess. Law Serv. 10 (to be codified at D.C. CODE § 16-1005(c)) (adding animal law protections not previously allotted by the statute); HAW. REV. STAT. § 586-4 (West, Westlaw through 2009 Act 34) (Effective January 1, 2010, the law will provide that an “ex parte temporary restraining order may also enjoin or restrain both of the parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to the household in question.”); 725 ILL. COMP. STAT. 5/112A-14(b)(11.5) (Supp. 2009) (providing that court shall, when issuing an order of protection prohibiting abuse by a family or household member, grant petitioner exclusive custody of animal and ordering respondent to stay away from and refrain from harming the animal); IND. CODE ANN. § 31-9-2-29.5 (2007) (extending protections under this domestic or family violence provision to “[a] crime involving animal cruelty and a family or household member . . . .”); IND. CODE ANN. § 35-46-3-12.5 (Supp. 2008) (providing that “a person who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or

any way; requiring that the abuser stay a certain distance away from the animal; and imposing criminal penalties upon violations of these orders. Criminal sanctions include criminal contempt, monetary fines, or civil penalties, and even imprisonment. Remedial measures aimed at restoring victims are also available; such measures include psychological, or psychiatric counseling and treatment. Taken together, these statutory measures provide excellent examples of what Maryland's Legislature can do should it decide to enact such legislation.

### *B. The Federal Alternative*

Federal law provides protections similar to those afforded under state laws. The Federal Violence Against Women Act of 1994 ("VAWA") provides for the interstate enforcement of protection orders.<sup>100</sup> VAWA establishes a federal criminal offense for the violation of a protection order when the restrained party crosses interstate boundaries.<sup>101</sup> Amendments to VAWA also provide for increased federal funding for numerous domestic violence programs.<sup>102</sup>

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household member" will be found to have committed domestic violence animal cruelty); LA. REV. STAT. ANN. § 46:2135(7) (Supp. 2009) (providing that court may grant exclusive care of any pets and direct the abuser to refrain from harassing, abusing, or injuring the pets); ME. REV. STAT. ANN. tit. 19-A, § 4007(1)(N) (providing that, upon finding that the abuser has committed the alleged abuse, the court may grant a protective order which "[directs] the care, custody or control of any animal owned, possessed, leased, kept or held by either party"); NEV. REV. STAT. ANN. § 33.018(1)(e)(7) (Supp. 2007) (providing that the injuring or killing of an animal, when done to harass the other, constitutes domestic violence); *Id.* at § 33.030(1)(e) (providing that a court may grant a temporary order enjoining the abuser from "physically injuring, threatening to injure or taking possession of any animal owned or kept by the [victim]"); N.Y. JUD. CT. ACTS § 352.3(1)(c) (McKinney 2008) (court may issue order requiring the abuser to "refrain from intentionally injuring or killing, without justification, any companion animal the [abuser] knows to be owned, possess, leased, kept or held by the [victim]"); S. 2552, 15th Gen. Assem., Reg. Sess. (P.R. 2008), *available at* <http://www.oslpr.org/2005-2008/leyes/pdf/ley-154-04-Ago-2008.pdf> (for Spanish) and <http://www.oslpr.org/download/en/2008/A-0154-2008.pdf> (for English) (providing that court may grant exclusive custody of animal with the victim and order the defendant "to keep far away from the animal"); TENN. CODE ANN. § 36-3-601(1) (Supp. 2008) (defining abuse as, among other things, "inflicting, or attempting to inflict, physical injury on any animal . . ."); VT. STAT. ANN. tit. 15, § 1103(c)(2)(G) (Supp. 2008) (providing that a court may issue "an order concerning the possession, care and control of any animal owned . . . or held as a pet by either party or minor child residing in the household"); W. VA. CODE ANN. § 48-27-702 (Supp. 2009) ("Whenever a law enforcement officer . . . respond[ing] to an alleged incident of domestic violence, forms a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion and grounds to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.").

<sup>100</sup> Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified in relevant part at 18 U.S.C. § 2262 (2006)).

<sup>101</sup> *Id.*

<sup>102</sup> *See, e.g.*, 42 U.S.C. § 10416 (2006) (authorizing national domestic violence hotline and Internet grant); 42 U.S.C. § 3796hh (2006) (authorizing grants to encourage arrest policies



Congress revised and expanded VAWA in 1996 and again in 2000.<sup>103</sup> “While the first version of the Act made important strides against domestic violence, [the 2000 amended version of the Act] mandated a national commitment aimed at fighting the on-going problem of domestic violence through federal funding.”<sup>104</sup> In an “effort to promote the fight against domestic violence at the state level,” the revised statute directs federal funding to “state law school clinics, domestic violence shelters, and legal service offices . . . .”<sup>105</sup>

While these expanded federal protections for victims of domestic abuse do not directly address animal rights, they have still increased the potential for significant reduction of animal abuse cases in the United States through the funding of domestic violence programs and the enforcement of protective orders that also provide protection to animals. The link between violence to animals and domestic violence<sup>106</sup> likewise reveals logical causalities between the decrease of domestic violence and the aforementioned decrease in animal abuse. Although federal preemption<sup>107</sup> laws often hinder state action,<sup>108</sup> in the case of animal protection, these aforementioned federal laws can earnestly motivate state legislatures to promptly enact affirmative animal law legislation.

A prime example can be seen in *United States v. Stevens*,<sup>109</sup> a case in which the Supreme Court of the United States has granted certiorari. In *Stevens*, the Justice Department argued that Title 18, Section 48 of the United States Code, which prohibits the knowing creation, sale, or possession of depictions of animal cruelty with the intent to place them in interstate or foreign commerce for commercial gain, was a legitimate exception to the First Amendment’s free speech clause.<sup>110</sup> This would

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and enforcement of protection orders); 42 U.S.C. § 10409 (2006) (authorizing appropriations for battered women’s shelters); 42 U.S.C. § 10418 (2006) (authorizing demonstration grants for community initiatives).

<sup>103</sup> See Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1498 (2000); National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, 110 Stat. 2656 (1996).

<sup>104</sup> DuBose, III, *supra* note 12, at 241 (citing Murphy, *supra* note 13, at 503 nn.21-24).

<sup>105</sup> *Id.* (citing Murphy, *supra* note 13, at 503 nn.21-24).

<sup>106</sup> See Dana M. Campbell & Pamela D. Frasch, *Criminal Law*, in LITIGATING ANIMAL LAW DISPUTES: A COMPLETE GUIDE FOR LAWYERS 473-74 (Joan Schaffner & Julie Fershtman eds., Am. Bar Ass’n 2009).

<sup>107</sup> See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

<sup>108</sup> See, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963).

<sup>109</sup> 533 F.3d 218 (3d Cir. 2008) (en banc) (holding that statute was unconstitutional because animal cruelty depicted on video tape was protected speech), *cert. granted*, 129 S. Ct. 1984 (2009).

<sup>110</sup> *Id.* at 223. Despite the recent surge in public interest for the protection of animals, in its analysis, the court did not find the protection of animals to be a “compelling government interest.” *Id.* at 230.

thereby criminalize the sale of videotapes of animal cruelty in states where “such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place . . . .”<sup>111</sup>

Although the Supreme Court has yet to rule on this matter as of the publication of this article, the high profile of the case has already generated considerable public sympathy for animal rights issues.<sup>112</sup> With the continued expansion and public scrutiny of notable cases, such as *Stevens*, and legislation,<sup>113</sup> federal laws will likely continue to aid the fight for animal rights at the state and local levels.<sup>114</sup>

#### VI. ADVOCATING FOR A DOMESTIC VIOLENCE BILL IN MARYLAND: MARYLAND’S LEGISLATIVE PURPOSE IN SYNC WITH ANIMAL INTERESTS

As animals take on a status broader than mere chattel, a new and burgeoning field of animal law emerges.<sup>115</sup> This ever-evolving field of law concerns a varied set of issues: from the welfare and protection of animals to the interaction and relationship between animals and their human counterparts.

In Maryland, the recently founded Animal Law Section (“Section”) of the Maryland State Bar Association (“MSBA”) has been a leading voice in this new field.<sup>116</sup> The mission of the Section, which was approved as a fully qualified section of the MSBA in 2006,<sup>117</sup> is “to facilitate the

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<sup>111</sup> 18 U.S.C. § 48(c)(1) (2006).

<sup>112</sup> See, e.g., Krista Gesaman, *Kitty Stomping is Sick: But are Depictions of Animal Cruelty the Legal Equivalent of Child Pornography? The Supreme Court Will Decide*, NEWSWEEK, Oct. 3, 2009, available at <http://www.newsweek.com/id/216740>.

<sup>113</sup> See, e.g., *Animal Legal Defense Fund, Inc. v. Glickman*, 154 F.3d 426 (D.C.Cir.1998) (en banc).

<sup>114</sup> Kathryn Alfisi, *Animal Law*, DC BAR, Mar. 2008, available at [http://www.dcbar.org/for\\_lawyers/resources/publications/washington\\_lawyer/march\\_2008/animal\\_law.cfm](http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/march_2008/animal_law.cfm).

<sup>115</sup> See generally Gary C. Norman, *The Disabled, Service Animals, and the Law*, in LITIGATING ANIMAL LAW DISPUTES: A COMPLETE GUIDE FOR LAWYERS, *supra* note 106, at 267.

<sup>116</sup> The authors of this article are members of this Section. Gary C. Norman is the 2009-10 Chair of the Section. The authors are planning a regional animal law symposium hosted by the Animal Law Section of the Maryland State Bar Association, and in conjunction with the University of Baltimore School of Law and the University of Pennsylvania School of Law. *The Impact on & Opportunities for Animals in the Current Political and Economic Climate* will be held on April 9, 2010, at the University of Baltimore School of Law.

<sup>117</sup> In Summer 2005, Alan Nemeth approached the Board of Governors of the Maryland State Bar Association with the idea of establishing a Special Committee on Animal Law. In October 2005, the first meeting was held. By Spring 2006, there were 113 members of this Special Committee; since only a threshold of 100 members were required to be considered for recognition as a Section, the Section acquired full status within the bar association by Summer 2006. The first Board of Directors, (the “Section Counsel”), was comprised of the following individuals: Barbara R. Graham, Joan Epstein, Dorothy R. Haynes, Larry Kreis, Kate Masterton, Shannon McClellan, Megan Mechak, Kathleen Tabor, and Alan Nemeth as Chair.

development of good legal practice in animal-related issues by providing educational programs and resources and by participating in the legislative process.”<sup>118</sup> Striving to carry out this mission, the Section has quickly become active in legislative advocacy in Annapolis.

For instance, testifying on House Bill 11 before the Judiciary Committee of the House of Delegates, the Section advocated that coverage of the existing Maryland animal cruelty statute should be expanded to include malicious offenses of third parties.<sup>119</sup> Furthermore, concerned members of the Section’s Board of Directors have established a Domestic Violence Subcommittee (“Subcommittee”) under the legislative committee, with the goal of enhancing protections in Maryland for victims of domestic violence.<sup>120</sup>

The MSBA has a full-time registered staff attorney dedicated to governmental affairs in Annapolis.<sup>121</sup> MSBA sections and committees, including the Animal Law Section, work in concert with the staff attorney to introduce legislation. Additionally, the active support of special interest groups committed to animal law issues furnish valuable counsel and assistance in expanding peace and protective orders to include pets or service animals. These special interest groups also help to sort, funnel, and determine issues for the Section to address.

Legislative bills seldom pass when initially introduced. Accordingly, a coordinated, long-term effort to propose positive legislation and galvanize legislators in accord with the merits and utility of such legislation is necessary.<sup>122</sup> In the 2007, 2008, and 2009 sessions of the Maryland General Assembly, the Section advocated positive legislation to include pets and service animals as part of peace and protective

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<sup>118</sup> Md. State Bar Ass’n, Animal Law Section, [http://www.msba.org/sec\\_comm/sections/animallaw/index.htm](http://www.msba.org/sec_comm/sections/animallaw/index.htm) (last visited Nov. 24, 2009).

<sup>119</sup> *Oral Testimony of Barbara Graham, Hearing on Md. H.D. 11 Before the Judiciary Comm.*, 423d Gen. Assem. (Jan. 25, 2006), available at [http://www.msba.org/sec\\_comm/sections/animallaw/hb11.htm](http://www.msba.org/sec_comm/sections/animallaw/hb11.htm). Ms. Graham, Former Section Counsel and Treasurer of the Animal Law Section, testified that Maryland House Bill 11 provides a remedy for past conduct, such as wounding an animal as an instrumentality of domestic violence. *Id.* The legislation advocated by the Section’s Domestic Violence Subcommittee, however, would have built on this, thereby advancing the law one step forward for Maryland victims.

<sup>120</sup> Mary L. Randour & Alan Nemeth, *Animal Cruelty and Domestic Violence: Two Forms of the Same Crime*, MD. B. BULL., Apr. 2007, available at [http://www.msba.org/departments/commpubl/publications/bar\\_bult/2007/april/animalcru.asp](http://www.msba.org/departments/commpubl/publications/bar_bult/2007/april/animalcru.asp).

<sup>121</sup> See generally 2009 MSBA Preliminary State Legislative Program, available at [http://www.msba.org/sec\\_comm/committees/lawscomm/2009FinalStateProgram.pdf](http://www.msba.org/sec_comm/committees/lawscomm/2009FinalStateProgram.pdf).

<sup>122</sup> MD. GEN. ASSEM., DEP’T OF LEGIS. SERVS., HOW A BILL BECOMES A LAW, [http://dls.state.md.us/side\\_pgs/legislation/legislation.html](http://dls.state.md.us/side_pgs/legislation/legislation.html) (last visited Nov. 24, 2009) (providing an explanation of the Maryland General Assembly and the method through which bills are enacted in this State).

orders.<sup>123</sup> While speedily passing in the Maryland Senate, legislation has failed to receive a favorable vote in the Judiciary Committee of the Maryland House of Delegates, thus precluding it from enactment in the Maryland General Assembly.<sup>124</sup>

In contrast to the views of some Maryland legislators,<sup>125</sup> legislation that addresses the welfare of animals in the State of Maryland does not detract from its importance. Although the legislation specifically covers animals, it is still a significant resource for humans.<sup>126</sup> As stated above, there is a demonstrated and consequential link between violence to animals and domestic violence, either through violence against humans directly or as an instrumentality of other offenses.<sup>127</sup> Therefore, influential members of the Maryland General Assembly should not reflexively dismiss animal-related legislation as an inane measure.<sup>128</sup> Now is the time for a law that amends current domestic relations law in Maryland to incorporate pets and service animals in peace and protective orders.

## VII. ON THE ROAD TO A BETTER TOMORROW: THE FIGHT FOR DOMESTIC VIOLENCE LEGISLATION IN MARYLAND OVER THE PAST THREE YEARS

### *A. Legislative Efforts in 2007: Senate Bill 965 and House Bill 1376*

In light of the positive legislation enacted in Maine in 2006, the Section's Subcommittee eagerly assumed the project of expanding peace

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<sup>123</sup> See S. 736, 426th Gen. Assem., Reg. Sess. (Md. 2009); H.D. 901, 426th Gen. Assem., Reg. Sess. (Md. 2009); S. 615, 425th Gen. Assem., Reg. Sess. (Md. 2008); H.D. 1257, 425th Gen. Assem., Reg. Sess. (Md. 2008); S. 965, 424th Gen. Assem., Reg. Sess. (Md. 2007); H.D. 1376, 424th Gen. Assem., Reg. Sess. (Md. 2007).

<sup>124</sup> See, e.g., H.D. 901, 426th Gen. Assem., Reg. Sess. (Md. 2009) (receiving no further action from the House Judiciary Committee, despite receiving a favorable vote in the Senate).

<sup>125</sup> Lisa Rein, *Domestic Violence Bills Languish on Judiciary Panel*, WASH. POST, May 11, 2008, at C8.

Some victims' advocates say they are not taken seriously when they testify before the Judiciary Committee [of the House of Delegates]. At a hearing on a bill to require an abuse suspect to stay away from family pets, some lawmakers joked about whether protected animals should include chickens and farm animals. 'They're not realizing that the pet becomes part of the arsenal' of an abuser, said Cheryl R. Kravitz, a domestic violence survivor from Silver Spring who is co-chairman of the [G]overnor's Family Violence Council. . . . The [Judiciary] [C]ommittee rarely approves bills addressing animal cruelty, respecting [Chairman Joseph Vallario's] view that they are not serious measures.

*Id.* Indeed, the authors note that, on occasion, when advocates testify on animal related issues, such advocates are met with unprofessional "barks."

<sup>126</sup> See, e.g., Yeager, *infra* note 165.

<sup>127</sup> See Dana M. Campbell & Pamela D. Frasch, *Criminal Law*, in LITIGATING ANIMAL LAW DISPUTES: A COMPLETE GUIDE FOR LAWYERS, *supra* note 106, at 473-74.

<sup>128</sup> See Rein, *supra* note 125.

and protective orders in Maryland to incorporate pets or service animals.<sup>129</sup> In the 2007 session of the Maryland General Assembly, the Subcommittee, in collaboration with its chief sponsor, Delegate Susan McComas, introduced House Bill 1376.<sup>130</sup> Introduced in March—which is considered a late point in the session—the bill required approval from the Rules and Executive Nominations Committee of the House of Delegates before progressing legislatively.<sup>131</sup> A similar version of this bill was also introduced as Senate Bill 965 in the same legislative session.<sup>132</sup>

During testimony for Senate Bill 965 and House Bill 1376, the Subcommittee elucidated the reason for its advocacy efforts and urged that the bill be introduced in the hopes that the Legislature would provide the tools, including greater authorization to law enforcement efforts, to best protect these animal “pawns” of domestic violence situations.<sup>133</sup> The Judiciary Committee of the Maryland House of Delegates and the Judicial Proceedings Committee of the Maryland Senate conducted hearings, but undertook no subsequent committee action.<sup>134</sup> The cross-filed bills slowly grinded to a halt, not because of their merit, but rather, due to lack of legislative support.<sup>135</sup>

#### *B. Legislative Efforts in 2008: Senate Bill 615 and House Bill 1257*

In 2008, the Subcommittee introduced a cross-filed version of its bill in collaboration with its chief sponsor in the Maryland Senate, Senator Jamie Raskin, Esq., and its chief sponsor in the House of Delegates, Delegate Susan McComas.<sup>136</sup> Senator Raskin and Delegate McComas cross-filed the bills as Senate Bill 615 and House Bill 1257.<sup>137</sup> The cross-

<sup>129</sup> See Randour & Nemeth, *supra* note 120.

<sup>130</sup> MD. GEN. ASSEM., DEP’T OF LEGIS. SERVS., SYNOPSIS: HOUSE BILLS AND JOINT RESOLUTIONS, 2007 MD. GEN. ASSEM. SESS. (Mar. 5, 2007) at 3, <http://mlis.state.md.us/2007rs/synopsis/sH030534.pdf>.

<sup>131</sup> *Id.*

<sup>132</sup> Cynthia Lifson, Legislative Counsel, Md. Network Against Domestic Violence, 2007 *Legislative Wrap-up: No Change for Victims of Domestic Violence*, VOICE (Spring/Summer 2007), available at [http://www.mnadv.org/The\\_Voice/The\\_Voice\\_Spring-Summer\\_2007\\_rev.pdf](http://www.mnadv.org/The_Voice/The_Voice_Spring-Summer_2007_rev.pdf).

<sup>133</sup> *Testimony, Hearing on Md. S. 965 Before Md. Senate Judicial Proceedings Comm.*, 424th Gen. Assem. (Mar. 16, 2007) (testimony of Maricruz Bonfante, Esq., Section Counsel of the Animal L. Section and Team Leader of Subcommittee) (testimony on file with author); *Testimony, Hearing on Md. H.D. 1376 Before the Judiciary Comm.*, 424th Gen. Assem. (Mar. 16, 2007) (testimony of Bonfante) (testimony on file with author).

<sup>134</sup> Lifson, *supra* note 132.

<sup>135</sup> Smitherman, *Gansler Urges Expansion of Animal Cruelty Laws*, *supra* note 94.

<sup>136</sup> See MD. GEN. ASSEM., DEP’T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, Md. S. 615 (2008), available at [http://www.mlis.state.md.us/2008rs/fnotes/bil\\_0005/sb0615.pdf](http://www.mlis.state.md.us/2008rs/fnotes/bil_0005/sb0615.pdf); MD. GEN. ASSEM., DEP’T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, Md. H.D. 1257 (2008), available at [http://www.mlis.state.md.us/2008rs/fnotes/bil\\_0007/hb1257.pdf](http://www.mlis.state.md.us/2008rs/fnotes/bil_0007/hb1257.pdf).

<sup>137</sup> *Id.*

filed bills possessed language similar to the previously cross-filed bills of 2007 and aimed to amend the Family Law and Criminal Law Articles to enhance protections of pets or service animals from domestic violence.<sup>138</sup>

The subcommittee enjoyed the support of the Women Legislators of Maryland, Inc. on Senate Bill 615.<sup>139</sup> The Domestic Violence Center of Howard County, Inc. (“the Center”) also urged favorable reports.<sup>140</sup> The Center indicated that, where physical violence or verbal and emotional abuse of intimate partners was present, the abuse of an animal was, likewise, often present as well.<sup>141</sup> For instance, in 2008, numerous abusers intentionally or recklessly injured or even killed pets to establish power and control and as a mechanism of intimidation and terror.<sup>142</sup> The Center testified as to one horrific account of an abuser who deliberately kept a family pet outside in the freezing winter cold, causing that pet’s death due to hypothermia.<sup>143</sup>

During the internal deliberations on Senate Bill 615, an amendment was introduced, removing the provisions related to stalking, as well as language related to corresponding changes to the animal cruelty statute<sup>144</sup> in the Criminal Law Article of the Maryland Code.<sup>145</sup> The bill received a favorable report with amendments from the Judicial Proceedings Committee.<sup>146</sup> Eventually, the bill passed in the Maryland Senate, by a vote of forty-two to five.<sup>147</sup> While the Subcommittee’s bill passed in the Senate, albeit with amendments, the Judiciary Committee reported the House version, House Bill 1257, unfavorably, thereby negating its advancement in the 2008 session.<sup>148</sup>

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<sup>138</sup> *Id.*

<sup>139</sup> See Women Legislators of Md., Inc., Legislative Wrap-up (2008), <http://www.womenlegislatorsmd.org/documents/2008LegislativeWrapUp.pdf>.

<sup>140</sup> *Cruelty Toward a Pet or Service Animal: Hearing on Md. S. 615 Before the Judicial Proceedings Comm.*, S. 615, 425th Gen. Assem. (Feb 20, 2008) (testimony of Keri Peterson, Client Services Coordinator, Domestic Violence Center of Howard County, Inc.); *Hearing on Md. H.D. 1257 Before the Judicial Proceedings Comm.*, H.D. 1257, 425th Gen. Assem. (Feb 20, 2008) (testimony of Keri Peterson, Client Services Coordinator, Domestic Violence Center of Howard County, Inc.).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> See MD. CODE ANN., CRIM. LAW §§ 10-601 to -623 (2002 & Supp. 2009).

<sup>145</sup> S. 425-168474/1, Reg. Sess. (Md. 2008), available at [http://mlis.state.md.us/2008rs/amds/bil\\_0005/sb0615\\_16847401.pdf](http://mlis.state.md.us/2008rs/amds/bil_0005/sb0615_16847401.pdf) (Amendments to Senate Bill 615).

<sup>146</sup> MD. GEN. ASSEM., BILL INFO., S. 615, 425th Gen. Assem., Reg. Sess. (Md. 2008), available at <http://mlis.state.md.us/2008rs/billfile/SB0615.htm>.

<sup>147</sup> *Id.*

<sup>148</sup> Phil Arkow, Am. Humane Ass’n, Pets in Protection Orders by State (Nov. 2, 2008), [http://nationallinkcoalition.org/images/PPO\\_-\\_Summary\\_by\\_State.pdf](http://nationallinkcoalition.org/images/PPO_-_Summary_by_State.pdf).

*C. Legislative Efforts in 2009: Amendments to the Maryland Code—  
Senate Bill 736 and House Bill 901*

In the 2009 regular session of the Maryland General Assembly, numerous unaffiliated domestic violence-related bills were passed. For instance, a set of cross-filed bills authorized judges to order the surrender of firearms at the temporary protective order stage and during the entirety of the final protective order stage.<sup>149</sup> Another bill expanded the time that judges were authorized to extend a temporary protective order—from a total of thirty days to six months—in order to furnish service.<sup>150</sup> A third bill required the Department of Public Safety and Correctional Services to notify the petitioner within one hour following *in personam* service of an interim or temporary protective order on a respondent.<sup>151</sup> Finally, a set of cross-filed bills authorized judges to order a law enforcement officer to utilize all reasonable and necessary force to enforce a temporary custody provision of an interim or temporary protective order.<sup>152</sup>

On March 12, 2009, in an effort to shore up support for the bills, representatives of the Section testified before the Judicial Proceedings Committee of the Maryland Senate.<sup>153</sup> During the testimony, the Section put forth the following arguments for the arduous three-year initiative to enhance provisions for pets and service animals:

- (1) Abusers realize the importance of relationships between victims and their pets or service animals and use such relationship to coerce such victims to acquiesce to demands;
- (2) Victims will stay in an abusive situation for fear of what may be done to the family pet or service animal;
- (3) Current peace and protection orders do not address the connection between violence against animals and the effect on human being; Judges have no statutory authority to include a pet or service animal in a peace or protection order A victim who stays in her dwelling arguably has protection for herself and all within the dwelling, including pets, but the Victim who decides to leave has no protection by the current statute;
- (4) Victims, who often apply for protection under a peace or

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<sup>149</sup> S. 267, 426th Gen. Assem., Reg. Sess. (Md. 2009); H.D. 296, 426th Gen. Assem., Reg. Sess. (Md. 2009).

<sup>150</sup> S. 601, 426th Gen. Assem., Reg. Sess. (Md. 2009); H.D. 98, 426th Gen. Assem., Reg. Sess. (Md. 2009).

<sup>151</sup> H.D. 1196, 426th Gen. Assem., Reg. Sess. (Md. 2009).

<sup>152</sup> S. 714, 426th Gen. Assem., Reg. Sess. (Md. 2009); H.D. 464, 426th Gen. Assem., Reg. Sess. (Md. 2009).

<sup>153</sup> *Oral Testimony, Hearing on Md. S. 736 Before the Judiciary Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony of Maricruz Bonfante) (testimony transcript on file with author).

protection order as pro-se litigants, are unaware of any rights or arguments that can be posited to request assistance respecting pet or service animals as the intended victims or instrumentalities of domestic violence;

(5) Even where a victim is able to get a consent to a protection order allowing for protection of a household pet or service animal, such terms are typically unenforceable because there is no penalty for violation of that provision of the order; and

(6) Statutory provisions in the Maryland code respecting animal cruelty or aggravated animal cruelty apply to prior conduct but fail to address on-going or future conduct of an abusive party in the context of domestic violence.<sup>154</sup>

The Subcommittee initiated its first attempt of enhancing the Maryland domestic violence laws by garnering the support of special interest groups, such as the Humane Society of the United States, as well as Maryland legislators.<sup>155</sup> The Subcommittee's correspondence to the Humane Society explained that the goal of the proposed legislation would be the amendment of the Maryland Code's Family Law and the Criminal Law Articles, such that augmented forms of relief could be enabled.<sup>156</sup>

The Subcommittee then drafted proposed amendments to the Family Law Article regarding protective orders, and the Criminal Law Article regarding stalking.<sup>157</sup> These amendments would allow a court to order an abuser to stay away from and refrain from acts of cruelty, or aggravated cruelty, to a pet.<sup>158</sup> The amendments would also expand the definition of stalking to include malicious conduct to a pet.<sup>159</sup>

<sup>154</sup> *Id.*

<sup>155</sup> Letter from Alan Nemeth, Chair of the Animal L. Section, Md. State B. Ass'n. to Delegate Susan McComas (Feb. 2007); Letter from Maricruz J. Bonfante, Esq., Chair of the Pet Domestic Violence Subcomm., Animal L. Section, Md. State B. Ass'n. to Jake Oster, the Humane Society of the U.S. (Feb. 1, 2007).

<sup>156</sup> Bonfante, *supra* note 155.

<sup>157</sup> Nemeth, *supra* note 155.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* Additionally, the International Institute for Animal Law has drafted and proposed model legislation entitled the Model Domestic Abuse Animal Protection Act. The language of this Act may be helpful to such states as Maryland considering positive legislation on the issue of domestic violence and animals:

**§1 Purpose:** The purpose of the Domestic Abuse Animal Protection Act is to allow for the inclusion of animals in domestic violence protective orders.

**§2 Protection Orders:** a) In any domestic violence case, the court shall order that the petitioner be granted the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of the petitioner or the respondent. b) The court shall further order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.



Not to be discouraged by its previous unsuccessful attempts,<sup>160</sup> the Section, in collaboration with Senator Raskin and Delegate McComas, re-introduced its animal law-related domestic violence bills in the 2009 session of the Maryland General Assembly.<sup>161</sup> The cross-filed bills, Senate Bill 736 and House Bill 901, entitled “Domestic Violence - Cruelty Toward a Pet or Service Animal,” proposed to amend the Family Law and the Criminal Law Articles of the Maryland Code to include pets and service animals within the purview of protective orders.<sup>162</sup>

The bills also authorized a court to order the abuser to: (1) remain away from the pet or service animal of the person eligible for relief, (2) remain away from the pet or service animal of a family member, or (3) refrain from cruelty or aggravated cruelty to the pet or service animal.<sup>163</sup> Additionally, the bills indicated that, if the abuser had possession of the pet or service animal, the court could order the respondent to relinquish the pet or service animal to the person entitled to relief, a family member, or a suitable third party.<sup>164</sup> The bills also authorized the imposition of a misdemeanor charge with maximum penalties of a \$1,000 fine and imprisonment of ninety days for a first offense and a \$2,500 fine and one year imprisonment for a second or subsequent offense.<sup>165</sup>

The Subcommittee benefited from the written and oral testimony of numerous individuals and organizations.<sup>166</sup> For instance, the joint oral

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§3 Penalties: a) Any violation of this statute is a Class A misdemeanor. b) Any violation subsequent to the first violation is a Class 4 felony.

Int’l Inst. for Animal Law, Domestic Abuse Animal Protection Act, *available at* <http://www.animallaw.com/protectiveordermodellaw.htm>.

<sup>160</sup> Much like the mythical character of *Sisyphus*, condemned for all eternity to push a massive boulder up the mountain. ALBERT CAMUS, *THE MYTH OF SISYPHUS AND OTHER ESSAYS* 3 (Alfred A. Knopf, Inc. 1955).

<sup>161</sup> S. 736, 426th Gen. Assem., Reg. Sess. (Md. 2009); H.D. 901, 426th Gen. Assem., Reg. Sess. (Md. 2009).

<sup>162</sup> S. 736; H.D. 901.

<sup>163</sup> S. 736, at 5-6; H.D. 901, at 5-6.

<sup>164</sup> S. 736, at 5-6; H.D. 901, at 5-6.

<sup>165</sup> S. 736, at 5; H.D. 901, at 5.

<sup>166</sup> *Joint Oral Testimony of Tracy Coppola, M.S., E.L., & Allie Philips, J.D. on behalf of the Am. Humane Ass’n, Hearing on Md. S. 736 Before the Judiciary Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony transcript on file with author); *Oral Testimony of Kathleen T. Bailey, Esq., Hearing on Md. H.D. 901 Before the Judiciary Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony transcript on file with author); Bonfante, *supra* note 155; *Written Testimony of Cheryl Kravitz, A Domestic Violence Survivor, Hearing on Md. S. 736 Before the Judiciary Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony transcript on file with author); *Testimony of Jeanne Yeager, Executive Director of the Mid-shore Council on Family Violence, Hearing on Md. S. 736 Before Judicial Proceedings Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony transcript on file with author); *Written Testimony of Gary C. Norman, Esq., on behalf of the Maryland Area Guide Dog Users, Inc., Hearing on Md. S. 736 Before Judicial Proceedings Comm.*, 426th Gen. Assem. (Mar. 12, 2009) (testimony transcript on file with author).

testimony of Allie Phillips, J.D., Director of Public Policy, and Tracy Coppola, J.D., a Legislative Analyst, both with the American Humane Association, stated, in pertinent part, that:

Including pets in domestic violence protective orders is a critical step toward combating the cycle of interpersonal violence. This simple step is receiving national recognition, as the District of Columbia, Puerto Rico, and a number of states—California, Colorado, Connecticut, Illinois, Louisiana, Maine, Nevada, New York, Tennessee, and Vermont—have enacted similar laws. Currently, 12 other states—Arizona, Georgia, Hawaii, Iowa, Massachusetts, Minnesota, New Jersey, New Mexico, Ohio, South Carolina, Texas, and Washington—have similar bills pending to encourage judges to include pets in domestic violence protective orders at their discretion and on a case-by-case basis. This process, which is not addressed by state animal cruelty laws, is a strong means of preventing abusers from manipulating the loving bond between both child and adult victims and their pets.<sup>167</sup>

Likewise, Jeanne Yeager, the Executive Director of the Mid-Shore Council on Family Violence, provided testimony in favor of Senate Bill 736.<sup>168</sup> Her testimony concluded with the following:

When a victim leaves an abusive relationship she takes . . . power and control away from the abuser, which enrages the batterer. This is why leaving is the most dangerous time for the victim and for those things she loves most, like her pets. This is also the time when she needs the most support in the form of shelter and Protective Orders. So the question should not be why does she stay, it should be what we have done to help her leave safely and without fear of retaliation to those pets she loves.<sup>169</sup>

As a result of this strong support, the newly introduced legislation received a favorable vote from the Judicial Proceedings Committee, and passed in the Maryland Senate on a vote of forty-three to three.<sup>170</sup> Unfortunately, the heady and seemingly meteoric rise of enhanced protections for companion animals and service pets that would have been allowed by the cross-filed set of bills, once again stalled in the Judiciary Committee of the House of Delegates. This was despite the positive report of the Department of Legislative Services of the Maryland General

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<sup>167</sup> Coppola & Philips, *supra* note 166.

<sup>168</sup> Yeager, *supra* note 166.

<sup>169</sup> *Id.*

<sup>170</sup> MD. GEN. ASSEM., BILL INFO., S. 736, 425th Gen. Assem., Reg. Sess. (Md. 2008), available at [http://mlis.state.md.us/2008rs/bill file/SB0736.htm](http://mlis.state.md.us/2008rs/bill%20file/SB0736.htm).

Assembly, which stated that the mandates of these bills could be implemented and enforced by currently existing resources, thereby imposing, quite literally, zero costs on small businesses.<sup>171</sup>

In response to the public outcry concerning the death of a small animal by torture, Maryland Governor Martin O'Malley requested that the Attorney General of Maryland, Doug Gansler, review the current state of animal cruelty laws.<sup>172</sup> In his correspondence to the Governor on this issue, the Attorney General expressed that the state of animal cruelty laws in Maryland should be enhanced.<sup>173</sup> Logically, if the Governor follows the recommendation of the Attorney General, this will include expanding protective orders to include pets. If the Governor and the Attorney General are now increasingly aware of, and educated on, the need for legislative action on the issue of animal cruelty, then the Chair and members of the Judiciary Committee in the House of Delegates also need to rise to the occasion.

The Judiciary Committee has dismissed the need for legislative action as an animal issue rather than a human issue. This may be due to a lack of understanding.<sup>174</sup> In 2006, 23,813 domestic violence cases were filed in the District Court Courts of Maryland.<sup>175</sup> Given the studies that discuss the prevalence of animal abuse in cases of domestic violence, one can reasonably infer that a significant portion of these cases involved animal cruelty. When domestic violence against animals and domestic violence against humans combine, tragic circumstances occur. The power to inform is the power to persuade, especially if those who are to be

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<sup>171</sup> See MD. GEN. ASSEM. DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, Md. S. 736 (2009), available at [http://mlis.state.md.us/2009rs/fnotes/bil\\_0006/sb0736.pdf](http://mlis.state.md.us/2009rs/fnotes/bil_0006/sb0736.pdf); MD. GEN. ASSEM. DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, Md. H.D. 901 (2009), available at [http://mlis.state.md.us/2009rs/fnotes/bil\\_0001/hb0901.pdf](http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0901.pdf). The important work of this institution becomes akin to a paper tiger—even when the bill indicates a revenue-neutral affect on the state—as the bill must be on the Committee Chairman's agenda to have any positive result.

<sup>172</sup> Laura Smitherman, *O'Malley Asks for Review of Md. Laws on Animal Cruelty*, BALT. SUN, June 19, 2009, at 10A.

Invoking the memory of a pit bull set ablaze in Baltimore, Gov. Martin O'Malley has asked the state's attorney general to review Maryland's animal cruelty laws to determine if they are sufficient to deter such 'heinous' crimes. . . . Maryland ranks 32 out of all U.S. states and territories in terms of the strength of animal protection laws, according to the Animal Legal Defense Fund. Other states' laws are considered tougher because they include provisions such as banning those convicted of animal cruelty from owning pets and issuing restraining orders to protect pets.

*Id.*

<sup>173</sup> Smitherman, *Gansler Urges Expansion of Animal Cruelty Laws*, *supra* note 94.

<sup>174</sup> *Id.*

<sup>175</sup> See Md. Judiciary, Annual Statistical Abstract: Fiscal Year 2006, Table DC-8.13 (2006), available at [http://www.courts.state.md.us/publications/annualreport/reports/2006/2006\\_annual\\_report.pdf](http://www.courts.state.md.us/publications/annualreport/reports/2006/2006_annual_report.pdf).

persuaded open their eyes and hearts to the plight of the voiceless—an issue that can clearly be remedied through positive legislation.

### VIII. ANALYSIS

In Maryland, an illogical resistance exists surrounding animal-related domestic violence issues. The legislative advocacy of the Section failed, not because the proposed bills foisted costly, unfunded mandates on the state, but rather, because the proposed bills would have required legislators to address the law, not as it is, but as it *should* or *ought* to be.<sup>176</sup> Legislators must realize that their status as “representatives of the people” includes representation of the interests of *all*; especially those without a voice—just a bark or a meow.

Therefore, in Maryland, pets and service animals must be included in protective orders, either as a facet of overall measures to prevent and sanction animal cruelty or as a facet of protecting humans. Naturally, pets and service animals cannot express their choice for a particular legislator at the ballot box. This does not detract from the need for earnest legislation in their favor.

To this end, the authors of this article agree with the following statement: “No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants.”<sup>177</sup> A piece of legislation should not be designated “non-meritorious” solely because its language addresses an animal-related issue. Similarly, proposed legislation involving animal issues should not eliminate the affirmative obligation of legislators to engage in fair, robust, and intellectual contemplation on the merits.

In 2006, the Maryland General Assembly enacted House Bill 11, which expanded the scope of the animal cruelty statute to encompass the offenses of third-party non-owners.<sup>178</sup> A former board member of the Section adroitly argued the need to enact House Bill 11 as a measure to protect pets from the brunt of domestic violence.<sup>179</sup> She testified that, before the enactment of House Bill 11, an ex-spouse or intimate partner could visit the abode of the other spouse or partner, and then express frustration and anger indirectly by harming a pet.<sup>180</sup> While this

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<sup>176</sup> See generally Gary C. Norman, *Why Shouldn't Money Be Accessible?*, 19:9 ADA COMPLIANCE GUIDE NEWSL. (Sept. 2008).

<sup>177</sup> *Children's Hosp. of D.C. v. Adkins*, 284 F. 613, 632 (D.C. Cir. 1922) (citing *Stone v. Mississippi*, 101 U.S. 819 (1879)).

<sup>178</sup> H.D. 11, 423d Gen. Assem., Reg. Sess. (Md. 2006).

<sup>179</sup> See Graham, *supra* note 119.

<sup>180</sup> See *id.*

legislation was a positive first step in addressing cruelty against animals, gaps in the law remain.<sup>181</sup>

The Animal Cruelty and Aggravated Animal Cruelty Statute does not cover the issue of protective orders. Thus, amending the boundaries of Maryland domestic relations law to authorize the inclusion of pets and service animals in protective orders is a logical step on the continuous path of progress. Arguably, Maryland may rely on the traditional police powers reserved to the states under the Tenth Amendment of the United States Constitution,<sup>182</sup> to prevent or sanction domestic violence.<sup>183</sup> The seminal decision of the United States Supreme Court in *Jacobson v. Massachusetts*<sup>184</sup> provided compelling language reflecting the meaning of police powers:

The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law.<sup>185</sup>

Similarly, the Court of Appeals of Maryland has stated that, “a statute enacted in the exercise of the State’s police power need only bear a real and substantial relation to the public health, morals, safety and welfare of the citizens of the State.”<sup>186</sup>

The Maryland Legislature may redress social ills as a function of these police powers that affect the general populace by “restraining and regulating private individuals’ rights to liberty and uses of property.”<sup>187</sup> These police powers include criminalizing acts that are within the

<sup>181</sup> The Mayor of Baltimore City has established a task force to address these issues. See Jill Rosen, *Task Force to Fight Animal Abuse in Baltimore*, BALT. SUN, Jul. 9, 2009, at 2A.

<sup>182</sup> See U.S. CONST. amend. X.

<sup>183</sup> See generally Georges C. Benjamin & Anthony D. Moulton, *Public Health Legal Preparedness: A Framework for Action*, 36:1 J. MED., L. & ETHICS 13, 16 (2008) (providing an example where police powers were invoked in Maryland to address an animal biting a small child); Lawrence O. Gostin, *Jacobson v Massachusetts at One Hundred Years: Police Powers and Civil Liberties in Tension*, 95:4 AM. J. PUB. HEALTH 576 (Apr. 2005), available at <http://ajph.aphapublications.org/cgi/reprint/95/4/576.pdf>

<sup>184</sup> 197 U.S. 11 (1905). This decision of the Court is viewed as a watershed in the law of public health.

<sup>185</sup> *Id.* at 26-27 (citing *Crowley v. Christensen*, 137 U.S. 86, 89 (1890)).

<sup>186</sup> *Steuart Petroleum Co. v. Bd. of County Comm’rs of St. Mary’s County*, 276 Md. 435, 446, 347 A.2d 854, 861 (1975).

<sup>187</sup> James G. Hodge, Jr., *Implementing Modern Public Health Goals through Government: An Examination of New Federalism and Public Health Law*, 14 J. CONTEMP. HEALTH L. & POL’Y. 93, 100 (1997).

public's interest to prohibit.<sup>188</sup> Additionally, on local and state levels, legislative bodies are increasingly turning to broader police powers in an attempt to address social ills.<sup>189</sup> Domestic violence, especially where animals are the brunt or instrumentalities of it, is an immediate social ill that requires the implementation of Maryland's police powers.

Domestic violence that involves cruelty or aggravated cruelty to animals, or that targets animals as an instrumentality of overall power and control of abused individuals, is a problem on individual, interpersonal, and societal levels, as it has been linked to mental disorders, family violence, and a myriad of public health issues.<sup>190</sup> In line with these police powers, the expansion of the Maryland domestic relations laws address the tactics of abusers, which have a tangible effect on public health and welfare. Arguably, reliance on violence against animals as a measure of power, submission, victim isolation, rage, and perpetual terror, among other things,<sup>191</sup> is a significant issue of public health necessitating, once again, based on the police powers, an expansion of the law.

Notably, the Legislature can expand provisions in Maryland law to include animals within the gamut of "stalking," a linchpin of the ability of abusers to exercise power and control over their victims. This permits legislators to address the "human" issue while serving the interests of the animals.<sup>192</sup> Accordingly, "[i]ncluding in a protection order a provision prohibiting the abuser from having contact with companion [and] service...animals can help prevent further . . . threats, intimidation, and danger to victims of domestic violence."<sup>193</sup>

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<sup>188</sup> Dawson v. State, 329 Md. 275, 283, 619 A.2d 111, 115 (1993) (citing Rice v. State, 311 Md. 116, 126, 532 A.2d 1357, 1362 (1987); Greenwald v. State, 221 Md. 235, 240, 115 A.2d 894, 897 (1959), *appeal dismissed*, 363 U.S. 719 (1960)).

<sup>189</sup> See Hodge, *supra* note 187, at 93-94.

<sup>190</sup> Robbins, *supra* note 19, at 144 (citing Frank R. Ascione, *The Abuse of Animals and Human Interpersonal Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 50, 52 (Frank R. Ascione & Phil Arrow eds., 1999)).

<sup>191</sup> See Janet Mickish & Kathleen Schoen, *Peace Orders and Animals in Domestic Violence*, 35 COLO. LAW. 105, 107 (2006) (citing Clifton Flynn, *Battered Women and Their Animal Companions: Symbolic Interaction Between Human and Nonhuman Animals*, 8 SOC'Y & ANIMALS 101, 109 (2000)) (noting that male domestic violence offenders often harm companion animals to: "demonstrat[e] power, teach[] submission, isolate victims from a network of support and relationships, express[] rage at self-determined action by victims, perpetuat[e] the context of terror, launch[] a preemptive strike against a victim leaving, punish[] and terroriz[e] by stalking and executing an animal, forc[e] a victim to be involved in the abuse, and confirm[] their power").

<sup>192</sup> Tara J. Gilbreath, *Where's Fido: Pets Are Missing in Domestic Violence Shelters and Stalking Laws*, 4 J. ANIMAL L. 1, 18 (2008) ("A stalker can threaten or injure a victim's pet without consequences under existing anti-stalking law. . . . By passing new laws allowing animals entrance into domestic violence shelters and including them in anti-stalking legislation, legislatures can mitigate the vulnerability under the current law.").

<sup>193</sup> Mickish & Schoen, *supra* note 191, at 109-10.

For the reasons set forth above, the authors agree that ensuring the safety of pets is a necessary part of realizing this same safety for victims of domestic violence. So long as pets are publicly ignored, domestic violence victims will continue to remain with their abusers, sacrificing their own physical and psychological health in an attempt to protect their animals.<sup>194</sup> The Maryland General Assembly has the power to safeguard against this deleterious impact on the human and animal bond through the enactment of positive legislation.

#### X. CONCLUSION

*“He who is cruel to animals becomes hard also in his dealings with men.”*<sup>195</sup>

Existing Maryland domestic relations laws continue to lag behind other states, especially regarding the inclusion of pets and service animals in protective orders. The authors recognize that some legislators believe humans must be the focal point. These legislators should not myopically view these bills as involving only animal-related issues. As illustrated above, often, such bills, and the issues that such bills seek to redress, affect the welfare of humans as well.

The enactment of positive legislation will, as it often does, ignite a public discussion on such issues as animal cruelty and domestic violence. The consequential question is therefore, whether legislators in the Maryland General Assembly will possess the biblical “good courage”<sup>196</sup> and poise against parochial and anti-animal interests, and strive to improve the law, not as it is, but as it could be.

When zealous advocates such as the Section engage in the legislative process by providing earnest testimony, legislators should heed such arguments. Certainly, enhancing the state of Maryland’s laws to permit the inclusion of pets and service animals in protective orders is laudable in its own degree as a facet of the overall principles set forth in the Maryland Code concerning the welfare of animals. Maryland legislators, in their capacity as community leaders, have an advantageous opportunity to build on the enactment of similar bills in numerous other states, as set forth herein. By enhancing their current domestic relations laws to encompass our furry companions, several states have met the call of the human and animal bond. Similarly, amending Maryland domestic relations law to encompass pets and service animals within the purview

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<sup>194</sup> Robbins, *supra* note 19, at 136-37.

<sup>195</sup> Kirsten E. Brimer, *Justice for Dusty: Implementing Mandatory Minimal Sentences for Animal Abusers*, 113 PENN. ST. L. REV. 649, 653 (2008) (quoting IMMANUEL KANT, LECTURES ON ETHICS, 240 (Louis Infield trans., Hackett 1963) (1775-1780)).

<sup>196</sup> *Psalms* 31:24.

of protective orders will progressively ensure that Maryland maintains pace with emerging trends in the law as a vehicle of positive social regulation.

In conclusion, interested parties should note the poignant words of one author: “[The] only source of hope and strength [of a victim] is a competent attorney who can ensure . . . equal justice and complete freedom from . . . violence . . . . In order to build confidence, courage, and a spirit of collaboration, counsel should encourage the battered client to actively participate in [his or her] case.”<sup>197</sup> What is more, as many of the legislators in the Maryland General Assembly are attorneys, they must heed the guiding principles of the Rules of Professional Conduct: A lawyer must serve as an advisor, an advocate, a negotiator, and an evaluator; he must be competent, prompt and diligent; he must be guided by personal conscience; and he must be a zealous advocate on behalf of his clients.<sup>198</sup> In this particular case, the battered clients can only plaintively bark or meow; therefore, to ensure their “equal justice and complete freedom”<sup>199</sup> from domestic violence, we must speak up on their behalf.

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<sup>197</sup> Phyliss Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Cultural, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REC. 31, 40 (2008) (citing Lisa E. Martin, *Providing Equal Justice for the Domestic Violence Victim: Due Process and the Victim's Right to Counsel*, 34 GONZ. L. REV. 329, 337 (1999)).

<sup>198</sup> See Md. Rules app. at 622-24 (Md. Lawyers' Rules of Professional Conduct, Preamble).

<sup>199</sup> See Craig-Taylor, *supra* note 197 and accompanying text.