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ACT OF THE GENERAL ASSEMBLY**2005-2006**

NO. 193. AN ACT RELATING TO ORDERS AGAINST STALKING OR SEXUAL ASSAULT,
NO CONTACT ORDERS, AND ESTABLISHING A VICTIMS' RIGHTS STUDY COMMITTEE.

(H.373)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. chapter 178 is added to read:

CHAPTER 178. ORDERS AGAINST STALKING
OR SEXUAL ASSAULT

§ 5131. DEFINITIONS

As used in this subchapter:

- (1) "Course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."
- (2) "Following" means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death.
- (3) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.
- (4) "Nonphysical contact" includes telephone calls, mail, e-mail or other electronic communication, fax, and written notes.
- (5) "Sexually assaulted the plaintiff" means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, or aggravated sexual assault as defined in 13 V.S.A. § 3253, and that the plaintiff was the victim of the offense.
- (6) "Stalk" means to engage in a course of conduct which consists of following or lying in wait for a person, or threatening behavior directed at a specific person or a member of the person's family,
and:

(A) serves no legitimate purpose; and

(B) would cause a reasonable person to fear for his or her safety or would cause a reasonable person substantial emotional distress.

(7) “Stay away” means to refrain from knowingly:

(A) initiating or maintaining a physical presence near the plaintiff;

(B) engaging in nonphysical contact with the plaintiff directly or indirectly;

(C) engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

(8) “Threatening behavior” means acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.

§ 5132. JURISDICTION AND VENUE

(a) The superior court shall have jurisdiction over proceedings under this chapter.

(b) Proceedings under this chapter may be commenced in the county in which the plaintiff resides. If the plaintiff has left his or her residence to avoid being stalked or sexually assaulted, the plaintiff shall have the option to bring an action in the county of the previous residence or the county of the new residence.

§ 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR

SEXUAL ASSAULT

(a) A person, other than a family or household member as defined in 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on behalf of him or herself or his or her children by filing a complaint under this chapter. The plaintiff shall submit an affidavit in support of the order.

(b) Except as provided in section 5134 of this title, the court shall grant the order only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff.

(c) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff’s sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is material to a fact

at issue and its probative value outweighs its private character, the court may admit:

(1) Evidence of the plaintiff's past sexual conduct with the defendant.

(2) Evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease.

(3) Evidence of specific instances of the plaintiff's past false allegations of violations of chapter 59 or 72 of Title 13.

(d)(1) If the court finds by a preponderance of evidence that the defendant has stalked or has been convicted of sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

(2) If the court finds by a preponderance of evidence that the defendant has sexually assaulted the plaintiff and there is a danger of the defendant further harming the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both. The court may consider the defendant's past conduct as relevant evidence of future harm.

(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or the plaintiff's children, or both. It is not necessary for the court to find that the defendant stalked or sexually assault the plaintiff during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.

(f) No filing fee shall be required.

(g) Every order under this chapter shall contain the name of the court, the names of the parties, the date of the petition, and the date and time of the order and shall be signed by the judge.

(h) Form complaints and form orders for an "Order Against Stalking or Sexual Assault" shall be provided by the court administrator and shall be maintained by the clerks of the courts.

(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(k) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

(l) A finding by the court pursuant to this chapter that the defendant stalked or sexually assaulted the plaintiff shall not be admissible in any subsequent civil proceedings for the purpose of establishing liability.

§ 5134. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, a person other than a family or household member as defined in 15 V.S.A. § 1001(2) may file a complaint for a temporary order against stalking or sexual assault. Such complaint shall be filed during regular court hours. The plaintiff shall submit an affidavit in support of the order. The court may issue a temporary order under this chapter ex parte, without notice to the defendant, upon motion and findings by the court that the defendant has stalked or sexually assaulted the plaintiff. An order may be granted requiring the defendant to refrain from stalking or sexually assaulting the plaintiff and to refrain from interfering with the plaintiff's personal liberty.

(b) Every order issued under this section shall contain the name of the court, the names of the parties, the date of the petition, and the date and time of the order and shall be signed by the judge. Every order issued under this section shall state upon its face a date, time, and place that the defendant may appear to petition the court for modification or discharge of the order. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 10 days from the date of issuance of the order. At such hearings, the plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff. If the court finds that the plaintiff has met his or her burden, it shall continue the order in effect and make such other orders as it deems necessary to protect the plaintiff or the plaintiff's children, or both.

(c) Form complaints and form orders shall be provided by the court administrator and shall be maintained by the clerks of the courts.

(d) Every order issued under this chapter shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(e) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

§ 5135. SERVICE

(a) A complaint or ex parte temporary order or final order issued under this chapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. Orders against stalking or sexual assault shall be served at the earliest possible time and shall take precedence over other summonses and orders, with the exception of abuse prevention orders issued pursuant to chapter 21 of Title 15. Orders shall be served in a manner calculated to ensure the safety of the plaintiff. Methods of service which include advance notification to the defendant shall not be used. The person making service shall file a return of service with the court stating the date, time, and place that the order was delivered personally to the defendant.

(b) If service of a notice of hearing issued under section 5133 or 5134 of this title cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the plaintiff for such additional time as it deems necessary to achieve service on the defendant.

§ 5136. PROCEDURE

(a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the Vermont Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

(b) The court administrator is authorized to contract with public or private agencies to assist plaintiffs to seek relief and to gain access to superior court. Law enforcement agencies shall assist in

carrying out the intent of this section.

(c) The office of the court administrator shall ensure that the superior court and the district court have procedures in place so that the contents of orders and pendency of other proceedings can be known to both courts for cases in which an order against stalking or sexual assault proceeding is related to a criminal proceeding.

§ 5137. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL;

DEPARTMENT OF PUBLIC SAFETY PROTECTION ORDER

DATABASE

(a) Police departments, sheriff's departments, and state police district offices shall establish procedures for filing notice against stalking or sexual assault orders issued under this chapter and for making their personnel aware of the existence and contents of such orders.

(b) Any court in this state that issues a notice against stalking or sexual assault order under this chapter shall transmit a copy of the order to the department of public safety's protection order database.

§ 5138. ENFORCEMENT

(a) Law enforcement officers are authorized to enforce orders issued under this chapter. A foreign abuse prevention order as defined in 15 V.S.A. § 1101 shall be accorded full faith and credit throughout this state and shall be enforced as if it were an order of this state. Law enforcement officers may rely upon a copy of any order issued under this chapter or any foreign abuse prevention order. Enforcement may include, but is not limited to, making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

(b) In addition to the provisions of subsection (a) of this section, violation of an order issued under this chapter may be prosecuted as a criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for criminal contempt may be initiated by the state's attorney in district or superior court in the unit or county in which the violation occurred. The maximum penalty which may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken. After two years have passed from conviction under this subsection, the court may on

motion of the defendant expunge the record of the criminal proceeding and conviction unless the defendant has been convicted of a felony or misdemeanor involving moral turpitude or a violation of a protection order after such initial adjudication.

Sec. 2. 13 V.S.A. § 1030 is amended to read:

§ 1030. VIOLATION OF ABUSE PREVENTION ORDER OR AN ORDER
AGAINST STALKING OR SEXUAL ASSAULT

(a) A person who commits an act prohibited by a court or who fails to perform an act ordered by a court in violation of an abuse prevention order issued under chapter 21 of Title 15 or chapter 69 of Title 33, or an order against stalking or sexual assault issued under chapter 178 of Title 12, after the person has been served notice of the contents of the order as provided in those chapters; or a foreign abuse prevention order issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who is convicted of a second or subsequent offense under this section shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.

(c) Upon conviction under this section for a violation of an order issued under chapter 21 of Title 15, the court shall, unless the circumstances indicate that it is not appropriate or not available, order the defendant to participate in domestic abuse counseling or a domestic abuse program approved by the department of corrections. The defendant may at any time request the court to approve an alternative program. The defendant shall pay all or part of the costs of the counseling or program unless the court finds that the defendant is unable to do so.

(d) Upon conviction for a violation of an order issued under chapter 178 of Title 12, the court may order the defendant to participate in mental health counseling or sex offender treatment approved by the department of corrections. The defendant shall pay all or part of the costs of the counseling unless the court finds that the defendant is unable to do so.

~~(d)~~(e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.

~~(e)~~(f) Prosecution for violation of an abuse prevention order or an order against stalking or sexual

assault shall not bar prosecution for any other crime, including any crime that may have been committed at the time of the violation of the ~~abuse prevention~~ order.

Sec. 3. 15 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

The following words as used in this chapter shall have the following meanings:

* * *

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:

- (A) ~~attempting~~ Attempting to cause or causing physical harm~~;~~.
- (B) ~~placing~~ Placing another in fear of imminent serious physical harm~~;~~.
- (C) ~~abuse~~ Abuse to children as defined in subchapter 2 of chapter 49 of Title 33.
- (D) Stalking as defined in 12 V.S.A. § 5131(6).
- (E) Sexual assault as defined in 12 V.S.A. § 5131(5).

* * *

(3) A "foreign abuse prevention order" means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Family Court Rules ~~or~~, chapter 69 of Title 33, or chapter 178 of Title 12.

* * *

Sec. 4. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of him or herself or his or her children by filing a complaint under this chapter. The plaintiff shall submit an affidavit in support of the order.

* * *

(c) If the court finds that the defendant has abused the plaintiff and that there is a danger of further abuse, the court shall make such orders as it deems necessary to protect the plaintiff, the children, or both, which may include the following:

* * *

(6) if the court finds that the defendant has a duty to support the child or children, a temporary order of child support pursuant to chapter 5 of this title, for a period not to exceed three months. A support order granted under this section may be extended if the relief from abuse proceeding is consolidated with an action for legal separation, divorce, or parentage;

(7) an order concerning the possession, care and control of any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household.

(d) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff's sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(1) Evidence of the plaintiff's past sexual conduct with the defendant.

(2) Evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease.

(3) Evidence of specific instances of the plaintiff's past false allegations of violations of chapter 59 or 72 of Title 13.

(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff, the children, or both, from abuse. It is not necessary for the court to find that abuse has occurred during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.

~~(e)~~(f) No filing fee shall be required.

~~(f)~~(g) Every order under this chapter shall contain the name of the court, the names of the parties, the date of the petition, the date and time of the order, and shall be signed by the judge.

~~(g)~~(h) Form complaints and form orders shall be provided by the court administrator and shall be maintained by the clerks of the courts.

~~(h)~~(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(k) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

Sec. 5. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the rules of civil procedure, temporary orders under this chapter may be issued ex parte, without notice to defendant, upon motion and findings by the court that defendant has abused plaintiff, his or her children, or both. The plaintiff shall submit an affidavit in support of the order. Relief under this section shall be limited as follows:

(1) upon a finding that there is an immediate danger of further abuse, an order may be granted requiring the defendant:

(A) to refrain from abusing the plaintiff, his or her children, or both, or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household; and

* * *

(e) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

Sec. 6. 15 V.S.A. § 1105 is amended to read:

§ 1105. SERVICE

(a) A complaint or ex parte temporary order or final order issued under this chapter shall be served in accordance with the rules of civil procedure and may be served by any ~~sheriff, deputy sheriff, or any municipal or state police~~ law enforcement officer. Abuse orders shall be served at the earliest possible time and shall take precedence over other summonses and orders. Orders shall be served in a manner

calculated to insure the safety of the plaintiff. Methods of service which include advance notification to the defendant shall not be used. The person making service shall file a return of service with the court stating the date, time and place at which the order was delivered personally to the defendant.

* * *

Sec. 7. 15 V.S.A. § 1107 is amended to read:

§ 1107. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL;
DEPARTMENT OF PUBLIC SAFETY ~~RELIEF FROM ABUSE~~
PROTECTION ORDER DATABASE

(a) Police departments, sheriff's departments and state police district offices shall establish procedures for filing abuse prevention orders issued under this chapter, chapter 69 of Title 33, chapter 178 of Title 12, and foreign abuse prevention orders and for making their personnel aware of the existence and contents of such orders.

(b) Any court in this state that issues an abuse prevention order under section 1104 or 1103 of this chapter, or that files a foreign abuse prevention order in accordance with subsection 1108(d) of this chapter, shall transmit a copy of the order to the department of public safety ~~relief from abuse protection order database~~.

Sec. 8. 33 V.S.A. § 6939 is amended to read:

§ 6939. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL;
DEPARTMENT OF PUBLIC SAFETY PROTECTION ORDER
DATABASE

(a) Police departments, sheriff's departments and state police district offices shall establish procedures for filing orders issued under this subchapter and for making personnel aware of the existence and contents of such orders.

(b) Any court in this state that issues an order under this subchapter shall transmit a copy of the order to the department of public safety protective order database.

Sec. 9. REPORT FROM COURT ADMINISTRATOR

The court administrator shall report to the senate and house committees on judiciary on or before January 15, 2009 on the number of orders issued pursuant to this act and the implementation and

administration of the provisions of the act concerning orders against stalking and sexual assault.

Sec. 10. 13 V.S.A. § 7554(a)(3) is amended to read:

(3) A judicial officer may order that a defendant not harass or contact or cause to be harassed or contacted a victim or potential witness. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

Sec. 11. STATEMENT OF LEGISLATIVE INTENT

It is not the intent of the general assembly that Sec. 10 of this act restrict attorneys who are representing criminal defendants from contacting witnesses or the alleged victim in cases for which no contact orders have been issued.

Sec. 12. STUDY

(a) A study committee is hereby established for the purpose of reviewing and addressing the rights of victims under current law to facilitate better enforcement of such rights and to consider specially the following issues:

- (1) scheduling and continuances of court hearings as they relate to victims;
- (2) the victim's input with plea agreements and sentencing recommendations;
- (3) victim notification by the department of corrections and the parole board; and
- (4) the role of the victim at parole board hearings.

(b) The committee shall consist of the following 15 members:

- (1) the executive director of the Vermont center for crime victim services or his or her designee;
- (2) the coordinator of the network against domestic and sexual violence or his or her designee;
- (3) two victims/survivors of crime who are members of the Vermont victim/survivor of crime council;
- (4) a representative of the prisoner's rights office;
- (5) a representative of the Vermont chapter of the American Civil Liberties Union;
- (6) a defense attorney appointed by the Vermont bar association;
- (7) the attorney general or his or her designee;
- (8) the executive director of the department of state's attorneys and sheriffs or his or her designee;
- (9) the court administrator or his or her designee;

- (10) the defender general or his or her designee;
- (11) the commissioner of public safety or his or her designee;
- (12) the commissioner of the department of corrections or his or her designee;
- (13) the chair of the Vermont parole board; and
- (14) an attorney appointed by the Vermont bar association.

(c) In its deliberations, the committee shall consult with the governor's criminal justice cabinet, as needed.

(d) The committee shall have the assistance and cooperation of all state and local agencies and departments. The center for crime victim services shall provide professional and administrative support for the committee.

(e) The at-large members and victims/survivors of crime shall be entitled to per diem compensation and reimbursement for expenses in the same manner as legislative members, provided they are not state employees, through the center for crime victim services.

(f) The committee shall present its findings and recommendations, including proposals for legislative action, to the general assembly no later than January 15, 2007.

Sec. 13. EFFECTIVE DATE

Secs. 1-8 of this act shall take effect October 1, 2006.

Approved: May 26, 2006

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Item 1

kept and some or all of the offspring are offered for sale, sold or exchanged for value.

Sec. 10. 19-A MRSA §4007, sub-§1, ¶L, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

L. Ordering the defendant or, if the complaint is dismissed, the plaintiff to pay court costs or reasonable attorney's fees; ~~or~~

Sec. 11. 19-A MRSA §4007, sub-§1, ¶M, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

M. Entering any other orders determined necessary or appropriate in the discretion of the court; ~~or~~

Sec. 12. 19-A MRSA §4007, sub-§1, ¶N is enacted to read:

N. Directing the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household.

Sec. 13. 19-A MRSA §4011, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Exception. When the only provision that is violated concern relief authorized under section 4007, subsection 1, paragraphs H to ~~M~~ the violation must be treated as contempt and punished in accordance with law.



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Disclaimer

Balinsky, Brett

From: Cieslewicz, Dianne
Sent: Tuesday, October 17, 2006 2:53 PM
To: Balinsky, Brett
Cc: Cieslewicz, Dianne
Subject: RE: Protecting animals within scope of domestic abuse injunctions

Hi Brett,

I went over your questions with Senator Risser. I think #1 had three questions. All three are a "yes," please include:

- A. Harming animals that may not be the petitioner's pets
- B. Animals that may not be traditional pet such as farm animals
- C. Animals that are owned by or in the care, control or custody of children of the petitioner or respondent but may not reside with the petitioner or respondent

#2. Yes, please use chapter 951

#3 I'll give you a call regarding effective date.

Also, just for your information I'm going to send you a copy of the New York Times article that promoted the drafting of this legislation.

From: Balinsky, Brett
Sent: Wednesday, October 11, 2006 11:41 AM
To: Cieslewicz, Dianne
Subject: RE: Protecting animals within scope of domestic abuse injunctions

Hi Dianne,

Thanks for getting back to me. I'm not sure if I saw that exact NY Times article but did see several newspaper articles and there are actually two states that have recently enacted this law, Vermont and Maine. I've looked at those two statutes and the language is fairly general - primarily allows a court to include in the restraining order a provision regarding pets or animals - and does not specifically address the several issues I've raised in my e-mail.

I'll look forward to your response. Thanks.

Brett

From: Cieslewicz, Dianne
Sent: Wednesday, October 11, 2006 11:14 AM
To: Balinsky, Brett
Subject: RE: Protecting animals within scope of domestic abuse injunctions

Hi Brett,

Thanks for your email. I just got back from vacation and am sorting through all my emails. I'll get back to you about your specific questions next week or the following week. In the meantime, I remember that this request came after reading a story in the New York Times about another state that passed this kind of legislation. I remember that whoever I talked to originally about this request said that they would dig up that story. Did that article get passed on to you?

Dianne
6-1627

From: Balinsky, Brett
Sent: Tuesday, October 03, 2006 4:56 PM
To: Cieslewicz, Dianne
Subject: Protecting animals within scope of domestic abuse injunctions

Hi Dianne,

I will be drafting the bill to include violence against animals as conduct that can be prohibited by domestic abuse restraining orders and injunctions. I have a few questions:

1. Do you want to include a prohibition of threats to harm animals or harm to animals other than the petitioner's pets? It seems that in many cases, particularly those in which the petitioner and the respondent resided together, especially if they had children together, there may be some ambiguity as to who is the owner of a pet. An animal might have been purchased by the respondent but may be considered to be the pet of the petitioner or others in the household. Would you like me to phrase the prohibition to include a prohibition of harm against animals owned by or in the care, control or custody of any member of the household of the petitioner or the respondent or both? What about other animals that may not be traditional pets or in the household itself, such as farm animals if the household is set on a farm? There would have to be some exception, though, for legitimate health, veterinary and agricultural reasons for ending an animal's life. Do you want to include animals that are owned by or in the care, control or custody of children of the petitioner or respondent, regardless of whether they reside with the petitioner or the respondent?

2) What actions or threat of actions to an animal do you want to be included within the scope of the prohibition in this bill? Do you want to make it general, such as a violation of chapter 951 or do you have more specific actions in mind?

3) What effective date do you want for this bill?

Brett A. Balinsky
Legislative Attorney
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