

## Expanding Protective Orders to Include Companion Animals

By Phil Arkow & Tracy Coppola

### INTRODUCTION

*“It wasn’t just the cats and dogs, it was the sheep and the chickens. I was terrified for their welfare. I knew if I were to leave, he wouldn’t hesitate to kill them. He had done it before.”*

-- Susan Walsh, 50, whose testimony before the Maine legislature was instrumental in enacting the first state law that includes animals in domestic violence protective orders. (New York Times Apr. 1, 2006)

*“About a hundred miles down the interstate, he opened the car door and ordered my daughter Christine to kick our dog Dusty out. When she refused, he told her he would do to Dusty what he did to Rocko, only he would do it right this time, and she could watch while he tortured and killed Dusty and dumped her off the side of the road, too. Then he said he would come home and kill me and Christine would be left alone with him.*

*“He raped Christine her first night alone in our new home while I was at work. She had just turned eight.”*

-- Marsha Millikin: “Life and Death Inside the Cycles of Violence.”

Domestic violence-related animal abuse is a national epidemic. In 2004 there were approximately 627,400 nonfatal intimate partner victimizations (U.S. Department of Justice Bureau of Justice Statistics, 2006). It is estimated that as many as 71% of these incidents include incidents of abuse or death to family pets. (Ascione, Weber & Wood, 1997). As a result of growing scientific documentation of the frequent co-occurrence between animal abuse and intimate partner violence, state legislatures and courts are beginning to recognize the need to legally protect the animal victims of family violence. The inclusion of companion animals in domestic violence protective orders is the next logical step in this effort.

Historically, legislatures recognized animals merely as personal property, based upon a 19<sup>th</sup> Century framework through which courts have traditionally displayed a general unwillingness to impose harsh sentences on those found guilty of animal cruelty and an even greater unwillingness to render guilty verdicts (Livingston, 2001; Desnoyers, 2005). The scarcity of animal cruelty convictions leads advocates for the prevention of all forms of family violence to seek innovative legislative strategies. Such strategies include the following: reclassifying severe forms of animal cruelty and neglect as felonies; implementing procedures for the cross-reporting of child abuse, elder abuse, domestic violence and animal abuse; and including pets in protective orders.<sup>1</sup>

Because of the widespread prevalence of pets in American households, a majority of citizens advocate enacting laws which increase animal protection (Favre & Tsang, 1993). This is demonstrated by the fact that forty-five states and the District of Columbia have

enacted laws defining certain types of cruelty to animals as felony offenses. In 2006, Maine, New York, and Vermont enacted laws that include companion animals in domestic violence protection orders, <sup>ii</sup> and in 2007, California, Colorado, Connecticut, Illinois, Nevada, and Tennessee followed. In 2008, pets-in-protective order legislation was signed into law in the District of Columbia and Louisiana.

In response to such widespread public support, legislatures nationwide are considering similar bills this year. The framework for such legislation is already in place and merely requires amending already existing laws.

Part I of this report discusses the correlation between animal abuse and family and domestic violence, as well as the critical need to include animals in protective orders.

Part II discusses the definition of a protective order and provides general guidance regarding how to obtain one.

Part III provides copies of the recently amended protective order statutes in the States of Maine, Vermont, and New York.

To effectively protect both human and non-human victims from domestic abuse, the American Humane Association avidly promotes the coordination of resources between animal protection, domestic violence, child protection and law enforcement communities. Enhancing awareness and knowledge about the relationship between violence to animals, children, and adults provides a unique opportunity for social service agencies to enhance services to all (Boat, 1999).

**PART I:  
THE CORRELATIONS BETWEEN ANIMAL ABUSE AND INTIMATE  
PARTNER VIOLENCE**

**Animal abuse is consistent with, and often co-occurs with, the power and control mechanisms frequently prevalent in intimate partner violence.**

Abusers often take advantage of women's and children's attachments to pets by threatening to harm or kill the family pet to ensure the woman will not leave or that the child will not report the abuse.

Much as with domestic violence, perpetrators of cruelty to animals overwhelmingly are male. Two key statewide studies in Massachusetts and Rhode Island reported 96% and 94% of defendants in animal cruelty cases, respectively, were male (Arluke & Luke, 1997; Desnoyers, 2005). It has been reported that 13% of intentional animal abuse cases involve domestic violence (Humane Society of the U.S., 2000). One study reported that 87% of batterer-perpetrated incidents of pet abuse were committed in the presence of their partners for the purpose of revenge or control (Quinlisk, 1999).

**If he's hurting animals, the women and children could be next.**

Household pets become pawns in the game of power and control that batterers use to coerce, control and intimidate their victims. In a nationwide study, 71% of battered women reported that their abusers had harmed, killed or threatened animals, and 32% reported their children had hurt or killed animals. (Ascione, Weber & Wood, 1997).

In a study of battered women in several northeastern states, 48% of respondents reported that animal abuse had occurred "often" during the past 12 months and another 30% reported the abuse occurred "almost always." Types of animal abuse reported included punching, hitting, choking, drowning, shooting, stabbing, and throwing the animal against a wall or down the stairs. Respondents reported that animal abuse incidents coincided with violent outburst against human family members 51% of the time (Carlisle-Frank & Flanagan, 2006).

## **Fear for the welfare of household animals is a significant barrier that prevents thousands of battered women from escaping abusive situations.**

When victims seeking shelter leave pets behind, abusers often retaliate by torturing or killing the pets. Twelve independent surveys have reported that between 18% and 48% of battered women have delayed their decision to leave, or have returned to their batterer, out of fear for the welfare of their pets or livestock (Ascione, 2007). One study reported that such concern for pets' welfare was seven times more likely for women whose pets had been threatened or abused than those whose pets had not been harmed, and that women residing in rural communities were more than twice as likely to raise such concerns as urban women (Faver & Strand, 2003). Including animals in protective orders is a potentially significant means to remove an obstacle that prevents victims from seeking safety from a violent home.

## **Pet owners, and female pet owners and children in particular, may have strong emotional ties to their animals that make them vulnerable.**

Data consistently show that females show more empathy, affection and concern for animals, which can be used as a weapon by batterers seeking emotional control. In nine studies assessing animal abuse as a risk factor for intimate personal violence, the proportion of women who currently or recently had pets in their homes ranged from 40.2% to 90.6%. It is clear that pets are a common feature of these households and their presence makes them potential targets of abuse (Ascione, 2007).

Pets are ubiquitous in American culture: current estimates put the dog and cat population at 73.9 million and 90.5 million, respectively, helping to make the pet industry a \$38.4 billion economic sector in 2006. More than 63% of U.S. households, or 69.1 million homes, care for one or more pets. (APPMA, 2006). Our relationships with these pets has changed dramatically in recent decades: only 2% of American pet owners now consider their animals to be "property", while 51% consider them "companions" and 47% consider them to be "members of the family" (American Veterinary Medical Association, 2002).

## **Legislative and professional responses to the connections between animal abuse and family violence are accelerating.**

In response to the issue of animal abuse—particularly in the context of intimate partner violence—remarkable legal and professional changes have occurred over the past ten years. Thus far, 45 states plus the District of Columbia and the Virgin Islands have enacted legislation defining certain forms of animal abuse as felonies. In 2006, Maine,

Vermont and New York enacted laws allowing courts to include pets in domestic violence protective orders, and in 2007 California, Connecticut, Colorado, Illinois, Nevada, and Tennessee followed, and in 2008, pets-in-protective orders legislation was also signed into law in the District of Columbia and Louisiana.

Prosecuting attorneys (Davidson, 1998; Livingston, 2001; Ritter, 1996; Sharp, 1999) and legislators (Dougherty, 1999; Cohen, 1999) appear to be taking animal abuse more seriously than ever before. In the same way pediatricians and other physicians acknowledge that intimate partner violence and child abuse are serious public health issues, the veterinary community is beginning to view pet abuse as an animal health issue that may sometimes be intricately related to human health (Arkow, 2004; Arkow, 1994; Olson, 1998; Patronek, 2004; Sinclair, Merck & Lockwood, 2006).

### **In addition to harm to animals and battered women, cruelty to animals often has significant deleterious effects on children's development.**

Children who are exposed to domestic violence are nearly three times more likely to treat animals with cruelty than children who are not exposed to such violence (Currie, 2006). In one study of battered women with children who sought shelter in a safe house, 32% reported their children had hurt or killed a family pet (Ascione, 1998). Many studies report alarming connections between animal cruelty by children and subsequent interpersonal violence in adolescence and adulthood (Merz-Perez, Heide & Silverman, 2001; Verlinden, Herson & Thomas, 2000).

## **Why is it Important to Include Animals in Protective Orders?**

### **The Vital Role of Family Pets**

Pets provide comfort and unconditional love to the women and children victims of intimate partner violence. Animals have unique and important roles in child development. Direct contact with and emotional attachment to animals can help children develop empathy with other living creatures (Ascione, 2005; George, 1999). Children often intervene to protect their mothers and pets from being battered. Some children may even allow themselves to be victimized to save their pet from being harmed or killed (Edelson, Mbilinyi, Beeman, & Hagemester, 2003).

## **Protective Orders as a Means of Achieving Primary Prevention**

Legislation that allows protective orders to include the family pet removes one significant barrier that causes many victims of intimate partner violence to avoid leaving their abuser.

Including pets in protective orders may also have a significant impact on child victims of domestic violence. Research indicates that children who witness animal cruelty may imitate that behavior. Tragically, this behavior is often symptomatic of future abuse toward other animals or human beings (Boat, 1999; Arkow, 1996): 36.8% of boys and 29.4% of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse the family pet (Ascione, 2005, p. 137). Significant research documents a relationship between childhood histories of animal cruelty and patterns of chronic interpersonal aggression (Kellert & Felthous, 1985; Hensley & Tallichet, 2005; Merz-Perez, Heide & Silverman, 2001; Becker & French, 2004). Including the family pet in a protective order is critical toward breaking and even preventing the cycle of family violence.

## **The Emergence of Safe Haven Shelters as Evidence that Pets Need Protection from Domestic Violence**

Without provisions for animals caught in the midst of domestic violence, many human victims choose to remain in violent households. For example, one victim of domestic abuse decided to leave the family home and enter a shelter. Because the shelter did not accept pets, she had to leave her dog behind. Within days, her partner managed to deliver her an audiotape recording of him torturing the dog. Immediately thereafter, the woman left the shelter and never returned (Flynn, 1999).

Other victims retaliate: Ascione (1998) cited the case of Peggy Sue Brown, who was acquitted of fatally shooting her husband after a seven-year ordeal of domestic violence and child abuse terror that included his hanging a pet rabbit in the garage and skinning the animal alive in front of her and their baby. Mr. Brown held the boy next to the screaming rabbit and said, “See how easy it would be?”

In response, over 160 “Safe Haven” programs<sup>iii</sup> have been initiated across the U.S. whereby animal shelters, veterinarians, breed rescue groups and similar organizations collaborate with domestic violence prevention agencies to provide short- and long-term foster care for the animal victims of intimate partner violence. Having protective orders that include pets will greatly assist battered adult victims and their children in those communities where domestic violence shelters are neither equipped to house animals nor have such life-saving Safe Haven collaborations.<sup>iv</sup>

## PART II: WHAT IS A PROTECTIVE ORDER AND HOW DOES SOMEONE GET ONE?

As shown in Fig. 1, a Protective Order is one of many options available to a victim of intimate partner violence. Victims generally have two legal recourses: civil or criminal charges. The steps to a civil action are to register a complaint, have a hearing for a temporary, preliminary or *ex parte* protective or restraining order which may lead to a second hearing for a permanent order. As a civil action, such an order does not result in a criminal record, nor does it preclude the filing of criminal charges against the batterer. Other civil actions include legal separation, child custody and support, and divorce. Several states have enacted legislation that allows companion animals to be specifically included in protective orders. The general provisions below suggest many areas where concern for the victim's companion animals may be addressed by adding minor amendments to existing state statutes:

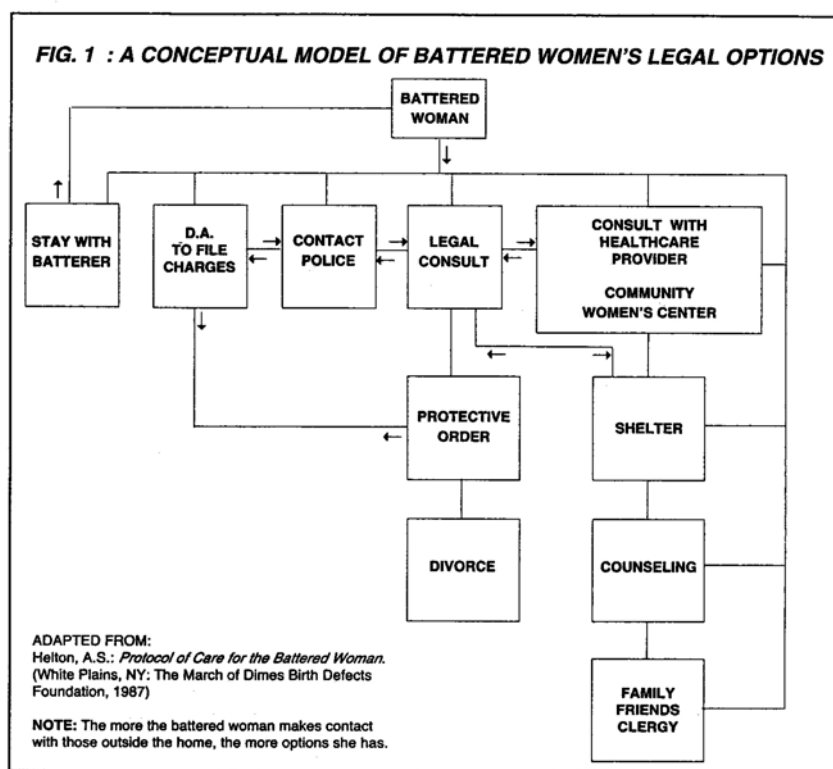


Diagram courtesy of Arkow, P. (2003). *Breaking the Cycles of Violence: A Guide to Multi-Disciplinary Interventions. A Handbook for Child Protection, Domestic Violence and Animal Protection Agencies*. Alameda, CA: Latham Foundation, 2003.

A protective order is a legal order issued by a state court which requires one person to stop harming another person. It is also sometimes called a protection order, a restraining order, a TPO or TRO ("temporary protection order" or "temporary restraining

order"), or some other similar name. All protective order laws are state laws, not federal laws, and each state's statute is different.

In general, these laws establish who can file for an order, what protection or relief a person can get from such an order, and how the order will be enforced. While there are differences from state to state, all protective order statutes permit the court to order the abuser to stay away from the petitioner, her home, workplace or school ("stay away" provisions) and to cease further contact. The court can order that all contact, whether by telephone, notes, mail, fax, email or delivery of flowers or gifts, is prohibited ("no contact" provisions). Courts can also order the abuser to stop hurting or threatening the petitioner ("cease abuse" provisions).

Some statutes also allow the court to order the abuser to pay temporary support or continue to make mortgage payments on a home owned by both ("support" provisions), to award the petitioner sole use of a home or car owned by both ("exclusive use" provisions), or to pay for medical costs or property damage caused by the abuser ("restitution" provisions). Some courts might also order the abuser to turn over any guns, rifles and ammunition ("relinquish firearms" provisions), attend a batterers' treatment program, appear for regular drug tests, or start alcohol or drug abuse counseling.

Many jurisdictions also allow the court to make decisions about the care and safety of any children involved. Courts can order the abuser to stay away from and have no contact with the children's doctors, daycare, school, or after-school job. Most courts can make temporary custody decisions, although many courts are very reluctant to do so. Some can issue visitation or child support orders. The court may order supervised visitation, or specify a safe arrangement for transferring children back and forth ("custody, visitation and child support" provisions).

When the abuser does something that the court has ordered him not to do, or fails to do something the court has ordered him to do, he has violated the order. The victim can ask the police or the court, or both, depending on the violation, to enforce the order. The police can generally enforce the stay away, no contact, cease abuse, exclusive use, and custody provisions - those that need immediate response. These types of violations can also later be addressed by the court, and it is often a good idea to bring them to the court's attention.

Other violations are not easily enforced by the police, such as failure to pay support or attend treatment programs: those are better enforced by the court. In a "motion for contempt" explaining how the abuser violated the order, the court will hold a hearing to determine if the facts prove that the abuser violated the order. If the court finds a violation did occur, it will determine a penalty. Depending upon state law and the nature of the violation, the penalty might be a finding of civil or criminal contempt, which could result in a fine, jail time or both. In some cases, it might result in a misdemeanor or felony criminal conviction and punishment.



When filing out the petition, the court will ask for a detailed description of the domestic violence and subsequent need for immediate protection, as well as the victim's relationship with the abuser, county of residence, and whether he/she is also petitioning for protection for another family member. Each state defines domestic violence differently. Each protective order is issued in response to the wishes filed by or on behalf of a person seeking protection.

Protective orders vary in length and content depending on state law. The Full Faith and Credit provisions of the federal Violence Against Women Act of 1994 (VAWA) ensures that protection orders are recognized and enforced across state lines.<sup>v</sup>

### **What are the Required Steps for Getting a Protective Order?**

Several general guidelines apply universally to all victims of domestic abuse:

#### **I. Petition/Ask the Court for a Preliminary or Temporary Protective Order**

A Preliminary, Temporary, or *Ex parte* Protection Order is a court order designed to provide the victim and family members with immediate protection from the abuser. "*Ex parte*" means that the order can be issued without the abuser being present in court. Such an order will protect the victim until a full court hearing, where the abuser may appear, usually within about 14 days.

The victim must go to the court where he/she lives or works or where the behavior occurred and ask ("petition") the court to file a Preliminary or Temporary Protection Order against the abuser. There are no fees for filing this petition.

The court clerk will then present the petition to a judge, who will decide, based on the victim's sworn statement, whether to issue the Order. There is no requirement that the abuser be present at this hearing. If a temporary order is issued, the Court — and never the victim -- will notify the abuser before the hearing through "service of process".

#### **II. Prepare for the Court Hearing**

Approximately two weeks after filing the preliminary order, the victim must attend a mandatory court hearing to determine if he/she should have protection and for how long. The victim can prepare for the hearing through: contacting individuals who viewed the abuse to serve as witnesses and give testimony; gathering evidentiary information to help document the case for protection; and reviewing his/her history with the abuser. This information can include such items as medical reports, police reports, injury photos, 911 tapes, statements or outlines concerning the abuse. Although legal counsel is not

required, it is best that the victim seek legal representation at the hearing. A local domestic violence organization can assist the victim in the legal process.<sup>vi</sup>

### **III. Attend the Permanent Protective Order Hearing**

Even if the judge decides not to issue the Preliminary Protective Order, a date for the Permanent Protective Order—which includes a full hearing--will be set usually within two weeks. It is imperative that the victim as well as the abuser attend this hearing. If the abuser fails to arrive in court, the judge may issue a warrant for his/her arrest.

At the hearing, the judge will hear testimony from witnesses from both sides and from both the victim and abuser. The judge will then, after further examining the record of evidence, decide whether to issue a Permanent Protective Order. If the judge decides in the victim's favor, he/she will sign the protective order, which will indicate clearly what the abuser has been ordered to do as well as a date of expiration, if applicable. A certified (court stamped) copy of the order will be delivered to both victim and abuser.

### **IV. Review the Final Protective Order Prior to Exiting the Courthouse**

It is critical to review the order to ensure it contains all necessary elements. According to the United States Department of Justice's Office on Violence Against Women, including the following information in a protective order will more effectively ensure it will be enforced: (1) the names of the parties (your name, the name of the abuser, any children or pets); (2) The date the order was issued; (3) An expiration date, if the order has one; (4) A signature by, or on behalf of, a judicial officer; (5) Terms and conditions against the abuser; (6) Name and phone number of the court which issued the order.

### **V. Keep the Protection Order Handy at All Times**

To maximize protection after the order is issued, the victim must keep it close at all times. It is especially important to provide copies of the order to community members such as neighbors, babysitters, law enforcement, or anyone else who should be informed that the order is enforceable.

## CONCLUSION

*“My first day as a newly hired, freshly graduated, starry-eyed counselor at the local battered women’s shelter almost made me run home crying.... What I wasn’t prepared for were the pictures my first client brought to show me, apologetically, to explain why she had to return home. The pictures were of her ‘loving’ husband cutting her beloved dog’s ears off with a pair of garden shears. He had sent the ears along, too, but her mother thankfully neglected to forward them.”*

-- Anne Quinlisk, “Animal Abuse and Family Violence”

Legislation that includes animals in protective orders acknowledges the indisputable fact that pet abuse is all too often part of the family violence dynamic, and significantly contributes to keeping battered women locked in a life of terror. Pet protective order legislation is not only a straightforward and relatively simple step for states to take by amending existing domestic violence laws, it is a vital step toward protecting all innocent family members. No family should have to experience the traumas endured by Susan, Marsha, and their pets.

## PART III

### Maine, Vermont, and New York Protective Order Statutes

#### MAINE

#### **Maine Revised Statutes Annotated Currentness. Title 19-A. Domestic Relations. Part 4. Protection from Abuse. Chapter 101. Protection from Abuse. § 4007. Relief.**

**Citation: ME ST T. 19-A § 4007**

**Summary:** This Maine law concerning personal protection orders in cases of abuse was amended (Sec. 1-N) in March of 2006 to include companion animals. The new language specifies that a court may enter an order 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.

#### **§4007. Relief**

**1. Protection order; consent agreement.** The court, after a hearing and upon finding that the defendant has committed the alleged abuse, may grant a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the plaintiff's household. Relief granted under this section may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, harassing, attacking or otherwise abusing the plaintiff and any minor children residing in the household; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

A-1. Directing the defendant not to possess a firearm or other dangerous weapon for the duration of the order; [1997, c. 334, §5 (new).]

A-2. Prohibiting the defendant from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household; [2001, c. 134, §6 (new).]

B. Directing the defendant to refrain from going upon the premises of the plaintiff's residence; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

C. Directing the defendant to refrain from repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

D. Directing the defendant to refrain from having any direct or indirect contact with the plaintiff; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

E. When the mutual residence or household of the parties is jointly owned or jointly leased or when one party has a duty to support the other or their minor children living in the residence or household and that party is the sole owner or lessee:

(1) Granting or restoring possession of the residence or household to one party, excluding the other; or

(2) A consent agreement, allowing the party with the duty to support to provide suitable alternate housing;

[1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

F. Ordering a division of the personal property and household goods and furnishings of the parties and placing any protective orders considered appropriate by the court; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

F-1. Ordering the termination of a life insurance policy or rider under that policy owned by the defendant if the plaintiff is the insured life under the policy or rider. Upon issuance, a copy of the court order must be sent to the insurer that issued the policy; [2003, c. 106, §1 (new).]

G. Either awarding some or all temporary parental rights and responsibilities with regard to minor children or awarding temporary rights of contact with regard to minor children, or both, under such conditions that the court finds appropriate as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6-B. The court's award of parental rights and responsibilities or rights of contact is not binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 55 or in a similar action brought in another jurisdiction exercising child custody jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act; [2005, c. 366, §5 (amd).]

H. Requiring the defendant to receive counseling from a social worker, family service agency, mental health center, psychiatrist or any other guidance service that the court considers appropriate. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under section 4014; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

I. Ordering the payment of temporary support for the dependent party or for a child in the dependent party's custody in accordance with chapter 63, or both, when there is a legal obligation to support that dependent party or that child, or both; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

J. Ordering the payment of temporary support payments to the State as provided in chapters 63 and 67; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

K. Ordering payment of monetary compensation to the abused person for losses suffered as a direct result of the abuse. Compensatory losses are limited to loss of earnings or support, reasonable expenses incurred for personal injuries or property damage and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

L. Ordering the defendant or, if the complaint is dismissed, the plaintiff to pay court costs or reasonable attorney's fees; [2005, c. 510, §10 (amd).]

M. Entering any other orders determined necessary or appropriate in the discretion of the court; or [2005, c. 510, §11 (amd).]

**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. [2005, c. 510, §12 (new) .]**

If the court enjoins the defendant under this subsection and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

[2005, c. 510, §§10-12 (amd) .]

**1-A. No possession of firearm or dangerous weapons for duration of order.** If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm or other dangerous weapon, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms and other dangerous weapons at any location if there is probable cause to believe such firearms or dangerous weapons have not been relinquished by the defendant.

[2003, c. 372, §3 (new) .]

**2. Duration.** A protective order or approved consent agreement is for a fixed period not to exceed 2 years. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it determines necessary to protect the plaintiff or minor child from abuse. The court may continue the order in effect until the hearing under section 4006, subsection 1 on the motion to extend. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff) .]

**3. Consequences of violation.** A protective order or approved consent agreement must indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement, as provided in section 4011 and Title 15, section 393, subsection 1, paragraph D, if applicable. [1997, c. 334, §6 (amd) .]

**4. Title to property.** An order or agreement may not affect title to any real property. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff) .]

**5. Bond prohibited.** The court may not require the execution of a bond by the plaintiff prior to issuance of an order of protection. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff) .]

**6. Service of order.** The court shall order a law enforcement agency or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15 to serve the defendant personally with a protective order or consent decree. [1999, c. 67, §2 (amd) .]

**7. Mutual order of protection or restraint.** The court may not issue a mutual order of protection or restraint. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff) .]

**8. Action by plaintiff.** A plaintiff may extinguish or modify an order only by legal process in accordance with the Maine Rules of Civil Procedure. Any other action or inaction on the part of the plaintiff does not alter, diminish or negate the effectiveness of the order. Criminal sanctions may not be imposed upon the plaintiff for violation of a provision of the plaintiff's order for protection. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff) .]

**9. Financial accounting.** In all proceedings under this chapter, the court shall apply the child support guidelines in chapter 63 using the information the plaintiff is able to provide the court. Failure of a party to file an income affidavit may not unnecessarily delay a proceeding and does not preclude the issuance of an order, except that the court shall require the plaintiff to complete and file an income affidavit at a final hearing involving child support even if the defendant does not appear for the hearing. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

## VERMONT

### **Amendment to 15 V.S.A. § 1103 Requests for Relief (Personal Protection Order Amendment)**

#### **Summary:**

Vermont amended its personal protection/no contact order law on May 26, 2006 (effective October 1, 2006) to include companion animals as a proper subject for inclusion in an order. Specifically, 15 V.S.A. § 1103 was amended [Sec. (C)(7)] to allow a court to include an order relating to 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 in a domestic violence situation. This amendment was part of the larger Act Number 193 (H. 373), which pertains to orders against stalking, sexual assault, no-contact orders, and the establishment of a victims' rights committee.

## **TITLE 15**

### **Domestic Relations**

#### **CHAPTER 21. ABUSE PREVENTION**

##### **Subchapter I. General Provisions**

#### **§ 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.

(b) Except as provided in section 1104 of this title, the court shall grant relief only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving abuse by a preponderance of the evidence.

(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:

(1) an order that the defendant refrain from abusing the plaintiff, his or her children or both and from interfering with their personal liberty, including restrictions on the defendant's ability to contact the plaintiff or the children in person, by phone or by mail and restrictions prohibiting the defendant from coming within a fixed distance of the plaintiff, the children, the plaintiff's residence, or other designated locations where the plaintiff or children are likely to spend time;

(2) an order that the defendant immediately vacate the household and that the plaintiff be awarded sole possession of a residence;

(3) a temporary award of parental rights and responsibilities in accordance with the criteria in section 665 of this title;

(4) an order for parent-child contact under such conditions as are necessary to protect the child or the plaintiff, or both, from abuse. An order for parent-child contact may if necessary include conditions under which the plaintiff may deny parent-child contact pending further order of the court;

(5) if the court finds that the defendant has a duty to support the plaintiff, an order that the defendant pay the plaintiff's living expenses for a fixed period of time not to exceed three months;

(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.

(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, the date and time of the order, and shall be signed by the judge.

(h) Form complaints and form orders 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." (Added 1979, No. 153 (Adj. Sess.), § 1; amended 1981, No. 218 (Adj. Sess.), § 5; 1983, No. 34, eff. April 18, 1983; 1985, No. 79, § 3; 1993, No. 228 (Adj. Sess.), § 2; 2005, No. 193 (Adj. Sess.), § 4, eff. Oct. 1, 2006.)

## NEW YORK

Court Act. Article 8. Family Offenses Proceedings. Part 4. Orders. § 842. Order of protection.

Citation: NY FAM CT § 842

Summary: This New York law pertains to the issuance of protection orders. In July of 2006, the amendment that allows companion animals owned by the petitioner of the order or a minor child residing in the household to be included in the order was signed into law. The law specifically allows a court to order the respondent to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

Statute in Full:

**\*Amendment to law in 2006 to include companion animals is in bold font for convenience\***

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a

determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counselling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

**(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.**

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. The court may also upon the showing of special circumstances extend the order of protection for a reasonable period of time.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless whether such persons have been married or have lived together at any time.

## **ADDITIONAL RESOURCES**

American Humane Association's Sheltering Animals for Emergencies (SAFE), an educational campaign that focuses on the role the family pet plays in the delay for seeking help

American Humane Association: Handling the Pets of Domestic Violence Victims (Operational Guide section)

Arkow, P (2003). *Breaking the Cycles of Violence: A Guide to Multi-Disciplinary Interventions. A Handbook for Child Protection, Domestic Violence and Animal Protection Agencies*. Alameda, CA: Latham Foundation, 2003.

Ascione, F.R. (2000). *Safe Havens for Pets: Guidelines for Programs Sheltering Pets for Women Who Are Battered*. Logan, UT: Utah State University. Available at: [http://www.vachss.com/guest\\_dispatches/ascione\\_safe\\_havens.pdf](http://www.vachss.com/guest_dispatches/ascione_safe_havens.pdf)

Loar, L. & Colman, L. (2004). *Teaching Empathy: Animal-Assisted Therapy Programs for Children and Families Exposed to Violence*. Alameda, CA: Latham Foundation.

National Coalition Against Domestic Violence/American Humane Association: Pets and Domestic Violence Fact Sheet. Available at <http://www.ncadv.org/files/DVandPets.pdf>

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<sup>i</sup>Recognizing the connection between violence toward animals and violence toward humans, cross-reporting requires a coordinated response among professionals who already report or investigate child abuse. Animal control officers and child protective services workers are trained to recognize signs of abuse and neglect. They have access to homes where abuse is suspected, which puts them in a unique position to protect *both* the children and the animals in abusive homes. Recently, a cross-reporting bill was signed into law in West Virginia (H.B. 2935 & S.B. 13) and Tennessee (H.B. 3122 & S.B. 2714). States that will likely reintroduce cross-reporting bills include New York (A. 2058 & S. 1793) and Michigan (H.B. 5390). Furthering legislation that requires cross-reporting is necessary. For example, California and Colorado mandate that veterinarians report *child* but not, ironically, *animal* abuse. “Until such a system of monitoring and reporting animal abuse incidents becomes nationwide, more circumscribed approaches to recording cases of animal abuse are recommended” Ascione, at 147. State legislation incorporating animals in protective orders is a perfect example of such an approach.

<sup>ii</sup>See appendix for actual statutory language: ME ST. T. 19-A § 4007; 15 V.S.A. § 1103/ H. 373; NYCPL 530.12 CPL § 530.12.

<sup>iii</sup>See an online directory of Safe Haven shelters per state at: [http://www.hsus.org/hsus\\_field/first\\_strike\\_the\\_connection\\_between\\_animal\\_cruelty\\_and\\_human\\_violence/safe\\_havens\\_for\\_animals\\_online\\_directory\\_of\\_safe\\_havens\\_for\\_animals\\_programs.html](http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/safe_havens_for_animals_online_directory_of_safe_havens_for_animals_programs.html).

<sup>iv</sup> For the definitive guide to establishing and maintaining such programs, see Frank R. Ascione (2000): *Safe Havens for Pets: Guidelines for Programs Sheltering Pets for Women Who Are Battered*, at [http://www.vachss.com/guest\\_dispatches/ascione\\_safe\\_havens.pdf](http://www.vachss.com/guest_dispatches/ascione_safe_havens.pdf). See also American Humane Association, *Operational Guide: Handling the Pets of Domestic Violence Victims*, 2000 (operational guide designed to help animal care and control agencies implement Safe Haven programs).

<sup>v</sup> For more details, including state-by-state descriptions of the protection order process, please see [www.womenslaw.org](http://www.womenslaw.org).

<sup>vi</sup> The National Center for Victims of Crime provides additional resources including the National Domestic Violence Hotline at (800) 799-SAFE.

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