

2006 LEGISLATIVE REVIEW

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REVIEW EDITOR'S NOTE

I am pleased to introduce the ninth annual edition of *Animal Law's* Legislative Review. Over the past year, animal advocates have enjoyed some exciting successes in the legislative field, particularly at the state level. The animal-friendly legislation that passed in 2006 will not only provide more protection to animals, but also marks further progress in the slow, but definite, national trend in recognizing animals—particularly companion animals—as more than property. Unfortunately, as with most years, some legislation that passed this year will also negatively affect nonhuman animals and their human advocates. This section addresses the most important and noteworthy of these successes and setbacks at both the state and federal level.

Ms. Blair McCrory reports on federal legislation from the second session of the 109th Congress, including the Animal Enterprise Terrorism Act, which broadens the criminal sanctions imposed against “animal enterprise terrorists”; the Pets Evacuation and Transportation Standards Act, which requires jurisdictions to include animals in their disaster preparedness plans in order to be eligible to receive Federal Emergency Management Agency funds; the Partners for Fish and

Wildlife Act, which allocates additional funding to the United States Fish and Wildlife Service's Partners for Fish and Wildlife Program; and the Farm Stewardship Purchasing Act, which would require farming operations that provide food products to the United States government to meet certain welfare standards concerning the living conditions of farmed animals.

Reporting on state actions, Ms. Shannon Douglass evaluates recent state legislative developments, including laws that expand protective orders to cover animals; laws requiring cross reporting of animal abuse and other types of abuse; hunting legislation that lowers minimum hunting ages; the Arizona ban on veal crates and pig gestation crates; and the new California tethering law.

It is our hope that this section provides not only a useful review of the year's legislative developments, but also a tool to help advocates recognize where animal law successes and failures have occurred and analyze why they occurred. With this knowledge, we hope animal advocates will be able to continue to develop more animal-friendly laws. *Animal Law* welcomes suggestions for the publication of future Legislative Reviews.

Marjorie A. Berger
Legislative Review Editor

I. FEDERAL LEGISLATION

A. *Animal Enterprise Terrorism Act*

On November 27, 2006, President George W. Bush signed into law the hotly contested Animal Enterprise Terrorism Act (AETA).¹ Senator James Inhofe (R-OK) introduced the AETA on September 8, 2006² as an amendment to the Animal Enterprise Protection Act of 1992 (AEPA).³ Earlier versions of the bill were first introduced by Inhofe in the Senate and by Representative Thomas Petri (R-WI) in the House of Representatives (House) during the first session of the 109th Congress in 2005, but no action was taken on the bill during that session other than referral to committee.⁴ The bill was reintroduced in the House by

¹ Lib. Cong., THOMAS, *Search Bill Summary and Status for the 109th Congress*, "Major Actions," <http://thomas.loc.gov/bss/109search.html>; *search* Animal Enterprise Terrorism Act, *select* S. 3880, *select* All Information (accessed Feb. 15, 2007).

² 152 Cong. Rec. S9254 (daily ed. Sept. 8, 2006).

³ Animal Enterprise Protection Act of 1992, 18 U.S.C. § 43 (superseded 2006).

⁴ Lib. Cong., THOMAS, *Search Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/bss/109search.html>; *search* Animal Enterprise Terrorism Act, *select* S. 1926, *select* All Congressional Actions (accessed Feb. 15, 2007); Lib. Cong., THOMAS, *Search Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/bss/109search.html>; *search* Animal Enterprise Terrorism Act, *select* H.R. 4239, *select* All Congressional Actions (accessed Feb. 15, 2007).

Petri on November 9, 2006 during the second session of the 109th Congress, after its unanimous passage in the Senate.⁵

The AEPA first created the crime of “animal enterprise terrorism,”⁶ which, prior to the passage of the AETA, was defined as “intentionally [causing] physical disruption . . . of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property . . . used by the animal enterprise,” with resulting economic damages of at least ten thousand dollars.⁷ Although the AEPA had been used to successfully prosecute individuals,⁸ Inhofe stated that the AEPA’s criminal provisions against damaging or interfering with the operations of an animal enterprise were inadequate.⁹ Senator Inhofe explained that, under the AEPA, “only the animal enterprise itself [was] covered by law,” leaving a gap that could be exploited by activists through targeting persons or organizations with ties to animal enterprises instead of the animal enterprises themselves.¹⁰ Accordingly, the AETA expands the definition of animal enterprise terrorism to encompass offenses against any entity with an association to an animal enterprise.¹¹ Further, the law adds attempts to commit acts of animal enterprise terrorism to the list of activities constituting an offense.¹² Finally, the AETA increases the criminal penalties for violations.¹³

Lawmakers who supported these changes argued that the AEPA was inadequate to protect against the “[threat] posed by . . . animal rights extremists,” stating that these activists have recognized the limits in the current statutory regime and have found ways to get around the law.¹⁴ The AETA was widely supported by groups and individuals in the agricultural, biomedical, biotechnology, and fur industries; com-

⁵ Rep. Tom Petri, *The Animal Enterprise Terrorism Act: Legislation by Rep. Thomas E. Petri (R-WI)*, http://www.house.gov/petri/aeta_moreinfo.htm (accessed Jan. 26, 2007).

⁶ Will Potter, *Animal Enterprise Protection Act: Using an Obscure Law to Charge Nonviolent Activists with Terrorism*, <http://www.greenisthenewred.com/blog/aepa> (July 29, 2006).

⁷ 18 U.S.C. § 43(a)(2). An “animal enterprise” is defined as “a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or any fair or similar event intended to advance agricultural arts and sciences.” *Id.* at §§ 43(d)(1)(A–C).

⁸ For example, the AEPA was used to prosecute the SHAC 7. Moshe Gohar, Dept. Just., Press Release, MILITANT ANIMAL RIGHTS GROUP, SIX MEMBERS CONVICTED IN CAMPAIGN TO TERRORIZE COMPANY, EMPLOYEES AND OTHERS (Mar. 2, 2006) (available at <http://newark.fbi.gov/dojpressrel/2006/nk030206usa.htm>). The SHAC 7 consisted of individuals who ran a website that expressed ideological support for other groups and individuals participating in protest activities aimed at Huntingdon Life Sciences, a notorious animal testing lab. Potter, *supra* n. 6.

⁹ U.S. Sen. Comm. Env. & Pub. Works, *Majority Press Release: Inhofe Introduces Animal Enterprise Terrorism Act*, <http://epw.senate.gov/pressitem.cfm?id=247941&party=rep> (Oct. 28, 2005).

¹⁰ *Id.*

¹¹ 18 U.S.C. § 43(a)(2); Petri, *supra* n. 5.

¹² 18 U.S.C. § 43(b).

¹³ Lib. Cong., *supra* n. 1.

¹⁴ See e.g. 151 Cong. Rec. E2276 [¶ 5] (daily ed. Nov. 4, 2005) (speech by Rep. Petri).

petitive animal showing organizations; as well as universities, teaching hospitals, and other research institutes.¹⁵

While numerous organizations supported the passage of the AETA, it was also met with heavy opposition. Animal rights and free speech advocates led by the Equal Justice Alliance, an organization composed of over two hundred social advocacy groups,¹⁶ strongly opposed the bill on grounds that its language provided overly broad protections that would infringe upon individual free speech rights and could be interpreted to protect even unlawful animal enterprises.¹⁷ Groups and legislators opposing the AETA argued that while they do not condone vandalism or violence in the name of animal rights activism, the bill as drafted—and ultimately passed—could “criminalize as ‘terrorism’ otherwise lawful, constitutionally protected acts.”¹⁸

Groups such as the National Lawyers Guild (NLG) and the American Civil Liberties Union (ACLU) expressed concerns that the bill would have a “chilling effect” on both unlawful and lawful speech.¹⁹ AETA supporters stated the bill would not criminalize First Amendment protected activities, because it exempts from its coverage any “lawful economic disruption” that results from “reaction to the disclosure of information.”²⁰ The ACLU and NLG argued, however, that protection from economic “disruption”—but not economic “damage”—was

¹⁵ Norman Abrams, *A Message from the Chancellor on Animal Research Legislation - Nov. 2006*, <http://www.ucla.edu/chancellor/statement-researchlaw.html> (Nov. 2006) (stating the university’s belief that animal research is “vital to the quest to advance knowledge and to prevent or cure many diseases, thereby improving human health and quality of life,” and thanking Sen. Dianne Feinstein (D-CA) for her co-sponsorship of the AETA); Am. Kennel Club, *AKC News: The Animal Enterprise Terrorism Act Passes the House of Representatives* [¶ 1], http://www.akc.org/news/index.cfm?article_id=3057 (Nov. 14, 2006) (encouraging all “fanciers” to contact their representatives and urge them to support the AETA); Fur Commn. USA, *Eco-terror Legislation: Animal Enterprise Terrorism Act: Supporting Groups*, <http://www.furcommission.com/resource/pressSFbills.htm> (accessed Jan. 12, 2007) (voicing the group’s support of the AETA and listing other organizations in support of the Act).

¹⁶ Equal Just. Alliance, *AETA Opposition List*, <http://noaeta.org/opposition.htm> (last updated Apr. 2, 2007).

¹⁷ Am. Civ. Liberties Union, *ACLU Letter to Congress Urging Opposition to the Animal Enterprise Act. S. 1926 and H.R. 4239*, <http://www.aclu.org/freespeech/gen/25620leg20060306.html> (Mar. 6, 2006); Equal Just. Alliance, *Why Oppose AETA*, <http://noaeta.org/whyoppose.htm> (accessed Apr. 8, 2007); Humane Socy. U.S., *Fact Sheet: Oppose the Animal Enterprise Terrorism Act (AETA) H.R. 4239 and S. 3880 (as Amended and Passed by Senate)*, http://www.hsus.org/web-files/PDF/109_AETA_factsheet.pdf (accessed Apr. 8, 2007).

¹⁸ 152 Cong. Rec. E2100 (daily ed. Dec. 5, 2006) (speech by Representative Steve Israel (D-NY) expressing his concerns with the AETA); Am. Socy. Prevention Cruelty Animals, *Federal: Urge Your Representative to Oppose the Animal Enterprise Terrorism Act!* [¶ 2], <http://secure2.convio.net/aspca/site/Advocacy?cmd=display&page=UserAction&id=2037> (site no longer available) (on file with *Animal L.*).

¹⁹ Am. Civ. Liberties Union, *supra* n. 17, at [¶ 3]; Natl. Laws. Guild, *National Lawyers Guild Opposes Animal Enterprise Terrorism Act* [¶ 3], http://www.nlg.org/news/statements/AETA_Act.htm (Oct. 30, 2006).

²⁰ 18 U.S.C. § 43(d)(3)(B); Petri, *supra* n. 5.

insufficient,²¹ because a plain reading of the law's language seemed to target any activity causing an "animal enterprise" to suffer any profit losses.²² Thus, these groups contended, protest activities which sway public opinion and thereby cause declines in profit could be criminalized by the AETA's prohibitions.²³

After the AETA had passed in the Senate by unanimous consent, the ACLU changed its position, stating in a letter to House Committee on the Judiciary Chairman James Sensenbrenner (R-WI) that it would not oppose passage of the AETA in the House if minor changes were made to the Senate version.²⁴ Specifically, the ACLU asked that the bill's language include a definition of "real or personal property" to avoid application of the law to all activities that caused a loss of profits.²⁵ Additionally, the ACLU asked that an "animal enterprise" be defined to include only lawful enterprises, to avoid the inadvertent protection of criminal activities such as dog fighting.²⁶

The ACLU recommendations were never realized, because the bill was rushed to a quick vote in the House with no committee markup or opportunity to correct flaws that might have existed.²⁷ On November 13, 2006, in spite of strong opposition to the AETA, Representative Sensenbrenner moved to suspend the rules and pass the bill.²⁸ Under these rules, which are generally reserved for non-controversial, bi-partisan legislation, floor debate is limited to only forty minutes, and no amendments to the bill may be offered.²⁹ Representative Sensenbrenner's motion to suspend the rules was granted, and the bill passed through the House by voice vote.³⁰

²¹ Am. Civ. Liberties Union, *supra* n. 17, at [¶ 5].

²² *Id.* at [¶ 5]; Natl. Laws. Guild, *supra* n. 19, at [¶ 3].

²³ Am. Civ. Liberties Union, *supra* n. 17, at [¶ 3]; Natl. Laws. Guild, *supra* n. 19, at [¶ 1]. For example, The American Society for the Prevention of Cruelty to Animals (ASPCA) reasoned, hypothetically, that exposure of cruel conditions at a puppy mill through an undercover investigation could be deemed illegal, although disclosed lawfully, if that disclosure resulted in economic damage, *i.e.* lost profits. Am. Socy. Prevention Cruelty Animals, *supra* n. 18, at [¶ 3].

²⁴ Ltr. from Caroline Fredrickson, Dir., Wash. Legis. Off. ACLU & Marvin J. Johnson, Legis. Counsel ACLU, to Hon. F. James Sensenbrenner, Jr., Chairman, H. Jud. Comm. & Hon. John Conyers, Jr., Ranking Member, H. Jud. Comm., *ACLU Urges Needed Minor Changes to AETA, But Does Not Oppose Bill (S. 3880. the "Animal Enterprise Terrorism Act")* 1 (Oct. 30, 2006) (available at http://www.aclu.org/images/general/asset_upload_file809_27356.pdf).

²⁵ *Id.* at 1-2.

²⁶ *Id.* at 2.

²⁷ Humane Socy. U.S., *Some Major Gains for Animals Ushered In by 109th Congress, But Other Major Reforms Blunted by Republican Leaders* [¶ 8], http://www.hsus.org/press_and_publications/press_releases/some_major_gains_for_animals.html (Dec. 11, 2006); Lib. Cong., *supra* n. 1.

²⁸ Lib. Cong., *supra* n. 1.

²⁹ Thomas P. Carr, *CRS Report for Congress: Suspension of the Rules in the House: Principle Features*, <http://www.rules.house.gov/Archives/98-314.pdf> (updated Nov. 29, 2004).

³⁰ Lib. Cong., *supra* n. 1.

B. *Pets Evacuation and Transportation Standards Act*

In the aftermath of Hurricane Katrina, Representatives Tom Lantos (D-CA) and Christopher Shays (R-CT), as well as numerous others, recognized an urgent need to ensure that in future disaster situations, residents being forced to evacuate would not also be forced to part ways with their pets and service animals.³¹ In response, Representatives Lantos and Shays, who co-chair the Congressional Friends of Animals Caucus, introduced H.R. 3858, the Pets Evacuation and Transportation Standards (PETS) Act in the House on September 22, 2005.³² The PETS Act was signed into law by President George W. Bush on October 6, 2006.³³

In order to qualify for Federal Emergency Management Agency (FEMA) funds, jurisdictions must submit disaster preparedness plans.³⁴ With the passage of the PETS Act, these plans must now also include the accommodation of individuals with pets.³⁵ Specifically, the PETS Act requires that local and state emergency preparedness authorities plan for animals in order to qualify for FEMA funds.³⁶ The Act grants FEMA the authority to assist state and local authorities in developing these plans and authorizes federal funds to help plan for, construct, or renovate emergency shelter facilities that will accommodate pets and service animals.³⁷ Finally, the PETS Act permits FEMA to provide essential assistance, including rescue, care, and shelter, to persons with pets and service animals, as well as the animals themselves, during and following a disaster.³⁸

During Hurricane Katrina evacuation efforts, many rescue organizations refused to allow pets onboard buses and boats or into shelters,³⁹ leaving evacuees with the grim choice of being rescued or

³¹ Congressman Tom Lantos, *Press Releases, Lantos Legislation Will Ensure That in Future Disasters, People Will Not Be Forced to Abandon Household Pets* [¶ 1], http://lantos.house.gov/HoR/CA12/Newsroom/Press+Releases/2005/PR_050922_Katrina_PETSBill.htm (Sept. 22, 2005).

³² Congressman Christopher Shays, *On the Issues: Animal Welfare: Pets Evacuation and Transportation Standards Act*, <http://www.house.gov/shays/issues/animal/index.htm#pets> (accessed Feb. 27, 2007).

³³ Lib. Cong., *THOMAS: Search Bill Summary and Status for the 109th Congress: Major Actions*, <http://thomas.loc.gov/bss/109search.html>; search PETS Act, select H.R. 3858, select All Information (accessed Feb. 22, 2007).

³⁴ 152 Cong. Rec. H6806 (daily ed. Sept. 20, 2006) (statement of Rep. Shays).

³⁵ Lib. Cong., *supra* n. 33, <http://thomas.loc.gov/bss/109search.html>; search PETS Act, select H.R. 3858, select All Information, select Summary (accessed Mar. 17, 2007).

³⁶ Pub. L. No. 109-308, 120 Stat. 1725 (Oct. 6, 2006).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Best Friends Animal Socy., *Katrina: The State of Animal Disaster Planning Laws One Year Later* [¶ 5], http://network.bestfriends.org/animallawcoalition/news/print_7171.html (Aug. 29, 2006); Gina Spadafori, *Including Pets in Evacuation Plans Could Save Human Lives*, *Boston Globe* C6 [¶ 8] (Oct. 13, 2005) (available at http://www.boston.com/yourlife/home/articles/2005/10/13/including_pets_in_evacuation_plans_could_save_human_lives/) (“The Red Cross cites aggression, allergies, and people’s fear of animals as reasons why its shelters do not accommodate pets.”).

remaining in jeopardy with their pets.⁴⁰ While some fifteen thousand animals were rescued by animal agencies and concerned volunteers,⁴¹ another six hundred thousand animals died or were left homeless.⁴² Animal rights organizations argued that a strong, coordinated effort involving both pre-disaster planning and post-disaster volunteer rescue efforts would have been far more effective in saving both human and animal lives.⁴³

What also became clear after Hurricane Katrina was that, when forced to choose between their own safety or remaining with their animals, many pet owners would forego evacuation to avoid abandoning their pets—a serious issue given that over 358 million pets currently reside in sixty-three percent of United States households.⁴⁴ Proponents rallied for legislation that would eliminate the need for people to choose between the welfare of themselves and their animals in future disasters.⁴⁵ The Humane Society of the United States (HSUS) pointed out that while Hurricane Katrina caused enormous amounts of devastation and destruction, it also highlighted the bond between Americans and their pets and the need for public policy to reflect that bond.⁴⁶ Furthermore, the HSUS urged that forcing evacuees to abandon their pets, whom many consider to be family members, only contributed to the hardship of people who had already lost almost everything.⁴⁷

Championed by groups such as the HSUS,⁴⁸ the American Society for the Prevention of Cruelty to Animals,⁴⁹ the American Veterinary

⁴⁰ Lantos, *supra* n. 31.

⁴¹ Best Friends Animal Socy., *supra* n. 39, at [¶ 6].

⁴² *Id.* at [¶¶ 1–2].

⁴³ Humane Socy. U.S., *President Bush Signs Bill to Leave No Pet behind in Disaster Planning and Evacuation* [¶ 7], http://www.hsus.org/press_and_publications/press_releases/president_bush_signs_pets_Act.html (Oct. 6, 2006) [hereinafter Humane Socy. U.S., *Bush Signs PETS Act*] (site no longer available) (on file with *Animal L.*); Humane Socy. U.S., *No Pet Left behind: The PETS Act Calls for Disaster Plans to Include Animals*, “A Change of Plans,” http://www.hsus.org/pets/pets_related_news_and_events/no_pet_left_behind_the_pets.html (Apr. 20, 2006) [hereinafter Humane Socy. U.S., *No Pet Left behind*] (site no longer available) (on file with *Animal L.*).

⁴⁴ Congressman Christopher Shays, *President Bush Signs Bill to Leave No Pet behind in Disaster Planning and Evacuation* [¶ 7], <http://www.house.gov/shays/news/2006/october/octpets.htm> (accessed Feb. 28, 2007) (stating that a recent Zogby International poll found that sixty-one percent of pet owners say they would refuse to evacuate without their pets).

⁴⁵ Humane Socy. U.S., *No Pet Left behind*, *supra* n. 43.

⁴⁶ Humane Socy. U.S., *Bush Signs PETS Act*, *supra* n. 43, at [¶ 3].

⁴⁷ *Id.* at [¶ 5].

⁴⁸ Humane Socy. U.S., *No Pet Left behind*, *supra* n. 43.

⁴⁹ Am. Socy. Prevention Cruelty Animals, *Lobby for Animals: Federal: PETS Act Passes into Law!* <http://secure2.convio.net/aspca/site/Advocacy?JServSessionIdr012=51mpd0df61.app23b&pagename=homepage&id=1974> (last updated Oct. 10, 2006) (site no longer available) (on file with *Animal L.*).

Medical Association (AVMA),⁵⁰ and the American Kennel Club,⁵¹ the PETS Act faced little opposition in Congress.⁵² While the PETS Act faced nearly no organized opposition, scattered comments appeared in opposition to its passage in editorials and electronic discussion forums, such as weblogs.⁵³ Opponents were most concerned about the use of taxpayer money to save animals and feared placing animal lives ahead of human lives.⁵⁴ However, as previously mentioned, the legislation actually protects human lives by preventing people from having to make a choice between their own life and that of their pet.⁵⁵

As of August 2006, even prior to the passage of the PETS Act, nearly a dozen states had already enacted legislation aimed at rescuing people and animals during disasters, including Louisiana—one of the states hardest hit by Hurricane Katrina.⁵⁶

C. *Partners for Fish and Wildlife Act*

The Partners for Fish and Wildlife Act (Partners Act) was introduced by Representative John Sullivan (R-OK) and Senator James Inhofe (R-OK), who also introduced the Animal Enterprise Terrorism Act.⁵⁷ The Partners Act unanimously passed the Senate and passed the House by voice vote under suspension rules.⁵⁸ It was signed into law by President Bush on October 3, 2006.⁵⁹ The Partners Act was introduced to address the funding issues faced by the Partners for Fish and Wildlife Program (Program) and authorizes up to seventy-five mil-

⁵⁰ Am. Veterinary Med. Assn., *JAVMA News: Congress Orders Disaster Planners to Account for Pets*, http://www.avma.org/onlnews/javma/nov06/061101a_pf.asp (Nov. 1, 2006).

⁵¹ Am. Kennel Club, *American Kennel Club News Article: AKC Endorses Federal PETS Act*, http://www.akc.org/news/index.cfm?article_id=2907 (June 6, 2006).

⁵² The PETS Act had 110 co-sponsors and passed by a vote of 349 to 24 in the House of Representatives. Lib. Cong., *supra* n. 33, at “Major Actions.”

⁵³ See e.g. Anne McMurry Ltr. to the Ed., *Pets Get Saved But Not Humans?* The Tennessean (Jan. 6, 2007) (“I have no problem with private funds and private organizations attempting to do what they can for animals but I do have a problem with the government using taxpayers’ money for such activity putting the lives of human victims and rescuers at risk.”); Jeff Stone, Kan. City Star Blog Unfettered Ltrs., *People First, Then Pets*, http://blogs.kansascity.com/unfettered_letters/2006/06/people_first_th.html (June 20, 2006) (“When we have all the humans taken care of, in a warm bed with plenty to eat, then we can worry about the animals.”).

⁵⁴ McMurry, *supra* n. 53.

⁵⁵ Lantos, *supra* n. 31, at [¶ 3].

⁵⁶ Kim Campbell Thornton, *Katrina Leading to Better Pet Rescue Efforts: One Year Later, New Laws Are Aimed at Protecting Animals in Disasters: More Than Property*, <http://www.msnbc.com/id/14353134>, search Kim Campbell Thornton, scroll to article dated August 21, 2006 (Aug. 21, 2006).

⁵⁷ 152 Cong. Rec. at S9254.

⁵⁸ Lib. Cong., *THOMAS: Search Bill Summary and Status for the 109th Congress: Major Actions*, <http://thomas.loc.gov/bss/109search.html>; search Partners for Fish and Wildlife Act, select S. 260, select All Information (accessed Feb. 27, 2007).

⁵⁹ *Id.*

lion dollars annually for Program-specific use through fiscal year 2011.⁶⁰

The Program was established in 1987 and is administratively managed by the United States Fish and Wildlife Service (FWS).⁶¹ The Program's primary goal is to promote and implement habitat restoration on private lands for the benefit of "federal trust species."⁶² The Program achieves this goal through voluntary agreements with private landowners and tribes.⁶³ Through these agreements, the Program provides financial and technical assistance, along with cost-share incentives, directly to the private landowners.⁶⁴ To date, the Program has helped conserve fish and wildlife resources on nearly 2.5 million acres of habitat in the United States⁶⁵ and has been heralded as a "shining example of how [the federal government] can protect wildlife and the property of individuals at the same time."⁶⁶

The mission of the Program is essential, given that an estimated seventy-three percent of American land is privately owned,⁶⁷ with over eighty percent of all fish and wildlife living on those lands.⁶⁸ Because not enough public land exists in the United States to provide for the needs of wildlife, public money is disbursed to private landowners through the Program to fund habitat restoration, enhancement, and management.⁶⁹ Since its inception, the Program has been operated as a separate line item under the President's budget.⁷⁰ As a result, the Program's funds have been subject to reprogramming within the FWS.⁷¹ In 2004, President Bush signed an executive order asking numerous departments, including the Department of the Interior (DOI),

⁶⁰ Pub. L. No. 109-294, § 5, 120 Stat. 1351, 1354 (2006).

⁶¹ U.S. Fish & Wildlife Serv., *U.S. Fish & Wildlife Serv. Manual* pt. 640, ch. 1, subsec. 7 (Sept. 24, 2003) (available at <http://www.fws.gov/policy/640fw1.pdf>) [hereinafter FWS, *Manual*]; U.S. Fish & Wildlife Serv., *Partners for Fish and Wildlife Program*, <http://ecos.fws.gov/partners/viewContent.do?viewPage=home> (Sept. 27, 2006) [hereinafter FWS, *Partners Program*].

⁶² FWS, *Manual*, *supra* n. 61, at subsec. 7(A); *see also Partnerships for Wildlife Act*, 16 U.S.C. §§ 3741–3744, 3742 (2000) (stating the purposes of the Act "are to establish a partnership among the United States Fish and Wildlife Service, designated state agencies, and private organizations and individuals to carry out wildlife conservation"). "Federal Trust Species" include migratory birds, inter-jurisdictional fish, and federally endangered, threatened, or imperiled species. FWS, *Partners Program*, *supra* n. 61, at [¶ 2].

⁶³ FWS, *Manual*, *supra* n. 61, at subsec. 10.

⁶⁴ U.S. Fish & Wildlife Serv., *Partners for Fish and Wildlife Program, Frequently Asked Questions: What is the Partners for Fish and Wildlife Program?* <http://ecos.fws.gov/partners/viewContent.do?viewPage=faq> (Apr. 17, 2006).

⁶⁵ 152 Cong. Rec. H6798 (daily ed. Sept. 20, 2006) (statement of Rep. Jones).

⁶⁶ *Id.* at H6799 (statement of Rep. Sullivan).

⁶⁷ FWS, *Partners Program*, *supra* n. 61, at [¶ 2].

⁶⁸ 152 Cong. Rec. at H6799 (statement of Rep. Sullivan).

⁶⁹ FWS, *Partners Program*, *supra* n. 61, at [¶ 2].

⁷⁰ 152 Cong. Rec. at H6799 (statement of Rep. Sullivan).

⁷¹ *Id.*

which oversees the FWS,⁷² to strengthen cooperative efforts to achieve conservation goals.⁷³ The Partners Act will help the FWS and the DOI to meet this Presidential goal.⁷⁴

Passage of the Partners Act will not only allow the Program to stabilize and expand, but will also highlight the benefits of public and private partnership and increase congressional oversight of the Program's activities.⁷⁵ The Partners Act was supported by thirty-four different groups, including sportsmen, conservationists, and private landowners.⁷⁶ Sportsmen saw the Partners Act as an opportunity to guarantee the survival of wildlife for future gaming activities,⁷⁷ while the Partners Act allowed landowners to maintain private ownership over their lands while reaping the benefits of public funding for the enhancement and maintenance of their property.⁷⁸

D. Farm Animal Stewardship Purchasing Act

Every year, the United States government spends billions of taxpayer dollars on food products for use by a variety of programs and agencies, including the National School Lunch Program, the Armed Services, and the Bureau of Prisons.⁷⁹ While laws exist to regulate the death of farmed animals used for food,⁸⁰ no laws are currently in place

⁷² U.S. Dept. Interior, *Index to Key Department of the Interior Websites: Department of the Interior Bureaus*, <http://www.doi.gov/subject.html> (accessed Mar. 17, 2007).

⁷³ Exec. Or. 13352, 69 Fed. Reg. 52989 (Aug. 26, 2004).

⁷⁴ U.S. Fed. News, *New Law Provides Additional Resources to Assist Private Landowners with Wildlife Conservation* (Oct. 6, 2006) (available at <http://mountain-prairie.fws.gov/pressrel/06-55.htm>) (accessed Feb. 28, 2007).

⁷⁵ *Id.* at H6798–99.

⁷⁶ 152 Cong. Rec. at H6799 (statement of Rep. Sullivan); e.g. Ltr. to H.R. Majority & Minority Leaders from Izaak Walton League of Am. (July 12, 2006) (noting the benefits the Program has reaped for hunters and anglers and emphasizing the importance of the Partners Act to improving management of wildlife on private lands) (available at <http://www.iwla.org/index.php?id=321>) (accessed Feb. 28, 2007); e.g. Private Landowner Network, *PLN Project Updates and News from the Land Conservation Sector, President Bush has signed the Partners for Fish and Wildlife Act into law* [¶ 6], <http://www.privatelandownernetwork.org/yellowpages/pun.asp?id=45> (accessed Feb. 28, 2007) (describing one private landowner's experience with the Program as "the most rewarding and landowner-friendly [conservation] program of them all").

⁷⁷ See e.g. 152 Cong. Rec. at H6799 (Speaking in support of the Partners Act during floor debate, Rep. Sullivan stated "[t]here are few things I enjoy more than fishing with my kids, and we owe our future generations the same opportunity.").

⁷⁸ See FWS, *Partners Program*, *supra* n. 61 (describing the distribution of public funding through the program to private landowners for "habitat improvements"); see also Private Landowner Network, *supra* n. 76, at [¶ 3] ("The program puts financial . . . resources into the hands of willing landowners to help them manage their lands.").

⁷⁹ Humane Socy. U.S., *HSUS Urges Congress to Pass Farm Animal Stewardship Purchasing Act* [¶ 5], http://www.hsus.org/press_and_publications/press_releases/hsus_urges_congress_pass_farm_animal_act.html (June 9, 2006).

⁸⁰ E.g. Humane Methods of Slaughter Act of 1958, 7 U.S.C. § 1902 (2000) (stating that "[no] method of slaughtering . . . shall be deemed to comply with the public policy of the United States unless it is humane," and providing an exclusive list of humane methods of slaughter).

to regulate the living standards of these animals while alive.⁸¹ A 2003 Gallup poll found that nearly two-thirds of Americans “support passing strict laws concerning the treatment of farm animals,” and a 2003 Zogby poll found that almost seventy percent of Americans find it “unacceptable” that animals are not protected from abuse on factory farms.⁸²

In light of these findings, it is no surprise that on June 8, 2006, Congressmen Christopher Shays (R-CT) and Peter DeFazio (D-OR) introduced the Farm Animal Stewardship Purchasing Act (Stewardship Purchasing Act),⁸³ which would require that the government only buy meat, dairy products, and eggs from farm operations that meet certain animal welfare standards.⁸⁴ Shays noted that the “humane treatment of animals speaks to our nation’s core values.”⁸⁵ He stated the Stewardship Purchasing Act’s requirement that the federal government lead by example would mirror the approach taken when the Humane Methods of Slaughter Act⁸⁶ was enacted nearly fifty years ago.⁸⁷

The Stewardship Purchasing Act would not prohibit any farm activities; rather, it would require farm operations choosing to do business with the federal government to meet modest welfare standards.⁸⁸ The Stewardship Purchasing Act would require government suppliers to provide:

- (1) adequate shelter which allows sufficient space for the covered animal to stand, lie down, get up, walk, move his or her head freely, rest, and turn around completely and fully extend all limbs or wings without touching any part of an enclosure;
- (2) daily access to adequate food and water sufficient to ensure the health and well-being of the covered animal without forced feeding or feed withdrawal; and
- (3) adequate veterinary care, including prompt treatment or humane euthanasia of a sick or injured covered animal.⁸⁹

Because consumption by the federal government only accounts for a little over one percent⁹⁰ of the ten billion farmed animals slaugh-

⁸¹ Congressman Christopher Shays, *On the Issues: Animal Welfare: Farm Animal Stewardship Purchasing Act*, <http://www.house.gov/shays/issues/animal/index.htm#farm> (accessed Mar. 17, 2007).

⁸² Humane Socy. U. S., *Fact Sheet: Support H.R. 5557—Farm Animal Welfare / Federal Procurement: Americans Want Better Treatment of Farm Animals*, http://www.hsus.org/webfiles/PDF/109_stewardship_factsheet.pdf (site no longer available) (on file with *Animal L.*).

⁸³ H.R. 5557, 109th Cong. (June 8, 2006).

⁸⁴ *Id.* at § 2(a)(2).

⁸⁵ Shays, *supra* n. 81.

⁸⁶ 7 U.S.C. §§ 1901–1907.

⁸⁷ Shays, *supra* n. 81.

⁸⁸ *Id.*

⁸⁹ H.R. 5557, 109th Cong. § 3(b).

⁹⁰ Shays, *supra* n. 81.

tered annually,⁹¹ this law would not have a widespread effect on the living conditions of farmed animals. However, the Stewardship Purchasing Act's guidelines would mean that operations choosing to be federal suppliers could not engage in current industry practices, such as the confinement of hens in battery cages, the use of gestation or veal crates, the practice of forced molting of hens through starvation, the forced feeding of geese for *foie gras*, the slaughter of downed animals, or the practice of leaving sick or injured animals to suffer and die without treatment or humane euthanasia.⁹² This concept is not a new one and mimics steps taken by United States companies like McDonald's, Burger King, and Whole Foods Market, among others, which have voluntarily raised supplier welfare standards.⁹³

Opponents of the Stewardship Purchasing Act voice two main criticisms. First, opponents such as the Animal Agriculture Alliance (Alliance) argue that the farming industry already treats its animals humanely.⁹⁴ The Alliance points to America's "safe and abundant" food supply as a demonstration that only livestock raised under healthy conditions are entering the marketplace as food.⁹⁵ Kay Johnson, executive vice-president of the Alliance, further claims that the strict confinement of animals is safer and less stressful for the animals, because they are not subject to predators or the weather.⁹⁶

Second, opponents claim the measures called for in the Stewardship Purchasing Act are impractical and open to extreme interpretation.⁹⁷ Pork producers are incensed at the idea of being ordered around by "people with hidden agendas lacking real-world knowledge of the production process."⁹⁸ Pork producers are particularly opposed to language in the bill that would outlaw the use of gestation or farrowing crates,⁹⁹ and that might be interpreted to require euthanasia by injec-

⁹¹ Humane Socy. U.S., *Lawmakers with a Conscience* [¶ 2], http://www.hsus.org/farm/news/ournews/shays_farm_animal_stewardship_purchasing_act.html (June 9, 2006).

⁹² Shays, *supra* n. 81.

⁹³ Humane Socy. U.S., *supra* n. 91, at *Catching up with Industry and the European Union*.

⁹⁴ Jan Sluizer, Voice of Am., *Animal Activists Urge More Humane Treatment of Farm Animals* [¶ 4], <http://www.voanews.com/english/archive/2006-09/2006-09-27-voa46.cfm?CFID=41799428&CFTOKEN=84198535> (Sept. 27, 2006).

⁹⁵ *Id.* (equating healthy conditions with humane conditions, Johnson reasoned that mistreated animals would be unhealthy, creating unsafe products for the marketplace).

⁹⁶ *Id.* at ¶ 8.

⁹⁷ Cattle Network, *The Vocal Point: Animal Welfare Bill's Only Merit: No Chance of Passage: A Litany of Problems* [¶ 4], <http://www.cattlenetwork.com/Content.asp?ContentID=50388> (July 7, 2006) (positing such questions as: "[w]ith tens of thousands of farms, ranches and production facilities, how would regular inspections even be possible?"); Marlys Miller, *Bill Would Require Minimum Care Standards for Food-Animals*, *Pork* [¶¶ 2-3] (June 29, 2006) (available at http://www.porkmag.com/directories.asp?pgID=720&ed_id=4223).

⁹⁸ Miller, *supra* n. 97, at [¶ 8].

⁹⁹ Gestation crates house pregnant sows for the duration of the pregnancy and confine them in such a manner that they can hardly move. Farrowing crates separately

tion of sick or injured animals, both of which run afoul of current industry practices.¹⁰⁰ Other critics of the Stewardship Purchasing Act question not only how farmers selling food to the government at commodity prices would be able to afford inspection fees, but also how food raised at inhumane operations could logistically be segregated from food raised at humane operations once that food reaches third party government suppliers.¹⁰¹

Animal advocacy organizations like the HSUS,¹⁰² Farm Sanctuary,¹⁰³ and Best Friends Animal Society¹⁰⁴ view this legislation as modest and a good first step in the movement to protect animals while alive. These groups recount in grim detail what animals experience on farms, such as confinement in spaces so small they cannot move, forced feeding, and being “pumped full of antibiotics so their weak immune systems can tolerate the unnatural and inhumane conditions.”¹⁰⁵

Proponents of the Stewardship Purchasing Act say that this legislation would be the catalyst for changes that could positively impact the lives of millions of farmed animals,¹⁰⁶ changes some argue will not happen until farmers are forced by law to do so.¹⁰⁷ Proponents also contend that, in addition to the obvious benefits the Stewardship Purchasing Act would provide to farmed animals, the positive effects of humane practices would extend beyond the barn to benefit the workers and the land itself by treating them with care and respect.¹⁰⁸

After its introduction, the Stewardship Purchasing Act was assigned to the House Government Reform Committee and the House Agriculture Committee’s Subcommittee on Livestock and Horticulture.¹⁰⁹ However, as no action was taken on the bill before the end of

house a sow and her piglets. They allow the sow to lie down and feed her piglets, but prevent her from other interaction with the piglets for fear of her killing them. Humane Socy. U.S., *Factory Farming Campaign*, http://www.hsus.org/farm/multimedia/gallery/pigs/farrowing_crates.html (accessed Mar. 17, 2007).

¹⁰⁰ Miller, *supra* n. 97, at [¶ 3].

¹⁰¹ Cattle Network, *supra* n. 97, at [¶¶ 7, 13].

¹⁰² Humane Socy. U.S., *supra* n. 79, at [¶ 1].

¹⁰³ Farm Sanctuary, *Support the Farm Animal Stewardship Purchasing Act*, http://www.farmsanctuary.org/campaign/fed_stewardship.htm (accessed Feb. 27, 2007).

¹⁰⁴ Laura Allen, Best Friends Animal Socy., *Update: Pork Producers Are Using Fear Tactics to Try and Defeat the Farm Animal Stewardship Purchasing Act* [¶ 14], http://network.bestfriends.org/animallawcoalition/news/print_4961.html (updated July 2, 2006) (“The standards are basic, but it’s a start.”).

¹⁰⁵ Michael Markarian, *Guest Viewpoint: Farm Animals Deserve Better Lives*, Register-Guard [¶ 5] (Eugene, OR) (June 23, 2006) (available at <http://www.registerguard.com/news/2006/06/23/ed.col.markarian.0623.p1.php?section=opinion>). Michael Markarian is the Executive Vice President of External Affairs for the HSUS. Humane Socy. U.S., *Executive Staff*, http://www.hsus.org/about_us/board_and_staff/experts/michael_markarian.html (accessed Apr. 8, 2007).

¹⁰⁶ Humane Socy. U.S., *supra* n. 79, at [¶ 7].

¹⁰⁷ Allen, *supra* n. 104, at [¶ 7].

¹⁰⁸ Sluizer, *supra* n. 94, at [¶ 10].

¹⁰⁹ GovTrack, *H.R. 5557[109]: Farm Animal Stewardship Purchasing Act*, <http://www.govtrack.us/congress/bill.xpd?bill=h109-5557> (accessed Apr. 8, 2007).

the second session of the 109th Congress, the Stewardship Purchasing Act was cleared from the books and never became law.¹¹⁰

II. STATE LEGISLATION

A. *The Connection between Domestic and Animal Abuse*

Awareness of the correlation between animal cruelty and domestic abuse is growing.¹¹¹ A survey of fifty of the largest women's shelters in the United States showed that eighty-five percent of women and sixty-three percent of children spoke of instances of animal abuse in their homes.¹¹² Batterers often control and intimidate their victims by abusing or even killing the victims' companion animals.¹¹³ Furthermore, children witnessing animal and domestic abuse are more likely to become animal abusers themselves.¹¹⁴

A study surveying women's shelters in Northern Utah substantiates the animal abuse and interpersonal violence correlation.¹¹⁵ The study found that seventy-four percent of the women entering the shelter had a companion animal or had owned one within the last twelve months.¹¹⁶ Of these women, seventy-one percent reported that their partner had either threatened to harm—or actually harmed—a companion animal.¹¹⁷ Many of the abusive partners were actively violent toward the animals:

¹¹⁰ *Id.*

¹¹¹ See e.g. Humane Socy. U.S., *Animal Cruelty and Family Violence: Making the Connection*, http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/animal_cruelty_and_family_violence_making_the_connection/ (accessed Apr. 8, 2007) (noting studies that have indicated an increased presence of animal cruelty in domestic abuse situations and noting that domestic abuse professionals are beginning to alter training to take into account the connection between the two forms of violence); 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?ex=1301547600&en=a0b5af0f296ba5db&ei=5090&partner=rssuserland&emc=rss>) (stating that "the issue has captured attention around the country as police departments, domestic-violence programs, animal protection societies and state officials become increasingly aware of a link between domestic violence and animal abuse").

¹¹² Frank R. Ascione, *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered*, 5 Socy. & Animals 3 (1997) (available at <http://www.psyeta.org/sa/sa5.3/Ascione.html>).

¹¹³ *Id.* at *Animal Abuse and Domestic Violence* (noting that "[a]necdotally, we also know that animals have been abused by perpetrators to frighten their partners, as a threat of potential interpersonal attacks, and as a form of retaliation or punishment, and that abuse has been implicated in forced bestiality.").

¹¹⁴ *Id.* at *Child Witnesses to Domestic Violence and Animal Abuse* ("Witnessing parent and companion animal abuse may compromise children's psychological adjustment, increase their propensity to interpersonal violence (via observational learning and/or identification with the aggressor), and make children's cruelty to animals more likely to emerge as a symptom of their distress.").

¹¹⁵ Frank R. Ascione, *Domestic Violence and Cruelty to Animals*, <http://www.parkc.org/domestic.htm> (accessed Apr. 8, 2007).

¹¹⁶ *Id.* at *Results*.

¹¹⁷ *Id.*

[a]ctual harm or killing of animals was reported by [fifty-seven percent] of the women with pets and included acts of omission (e.g., neglecting to feed or allow veterinary care) but most often acts of violence. Examples reported included slapping, shaking, throwing, or shooting dogs and cats, drowning a cat in a bathtub, and pouring lighter fluid on a kitten and igniting it.¹¹⁸

Furthermore, seven of the twenty-two women with children reported that their child or children had harmed or killed a companion animal.¹¹⁹ Five out of these seven mothers also reported that their partners had threatened to—or had actually hurt or killed—a pet.¹²⁰ Finally, “[w]orry over their pets’ safety was reported by nearly one in five of the women with pets, suggesting a possible obstacle preventing other women from seeking shelter assistance.”¹²¹

With the connection between animal abuse and domestic abuse becoming more apparent, state legislatures have begun to take important steps toward acknowledging and responding to that link. Some states have passed laws that include animals in protective orders so that every victim in the family might be protected. Other states have passed legislation requiring cross reporting between agencies so that more cases of abuse may become known and investigated. Both of these steps provide important protections for both human and nonhuman victims of abuse.

1. Protective Orders

Susan Welsh, like many women in her situation, stayed with her abusive husband for over twelve years.¹²² She says she would have left him sooner if not for her animals—he had already killed two of her sheep and her dog, and she knew what he could do to any animal she left behind.¹²³ Welsh’s case is not unique, however; domestic abuse often spills over to animal cruelty.¹²⁴ Further, because companion animals often play an important role in American families, abusers are able to control and intimidate their victims by threatening to abuse—or actually abusing—their victims’ companion animals.¹²⁵

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Ascione, *supra* n. 115, at *Discussion*.

¹²² Belluck, *New Maine Law Shields Animals in Domestic Violence Cases*, *supra* n. 111.

¹²³ *Id.*

¹²⁴ Ascione, *Domestic Violence and Cruelty to Animals*, *supra* n. 115.

¹²⁵ See e.g. Belluck, *New Maine Law Shields Animals in Domestic Violence Cases*, *supra* n. 111 (quoting Karen Days, president of the Columbus Coalition against Family Violence in Ohio: “I had a victim who was in my office, and the prosecutor agreed to issue a warrant for the arrest of her partner. But she was just adamant that she be able to go home first and get her dog. When I asked why, she said, ‘When I left him before, he started mailing me pieces of my cat to tell me if you don’t come back this is what I’m going to continue to do.’”).

a. Maine

In response to this growing awareness of the connection between domestic violence and animal cruelty, Maine became the first state in the country to include animals as well as people in protective orders.¹²⁶ Representative Piotti (D) introduced L.D. 1881 into the House on December 28, 2005,¹²⁷ and by March 22, 2006, both the House and the Senate had passed the bill.¹²⁸ Under the new law, a court may now grant protective order relief to include “[d]irecting 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.”¹²⁹

b. Vermont

Vermont also included companion animals within protective orders this year by amending its stalking laws.¹³⁰ Vermont’s law is very similar to Maine’s law. The Vermont law states that if a court finds it necessary to issue a permanent order, it may include “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.”¹³¹ Vermont also amended its law to provide temporary emergency relief if the plaintiff submits an affidavit showing the necessity for such relief.¹³² Courts may issue an order requiring that the defendant refrain from abusing the plaintiff or the plaintiff’s children, or also “from cruelly treating as defined in 13 V.S.A. § 352 or 352(a) or killing any animal owned, possessed, leased kept, or held as a pet by either party or a minor child residing in the household.”¹³³ A person who violates the order may be imprisoned for up to one year or fined up to five thousand dollars, or both.¹³⁴

c. New York

New York was the final state to include animals in protective orders this year. A bill sponsored by Assemblywoman Linda Rosenthal and Senator Frank Padavan was signed into law by Governor George

¹²⁶ MSNBC, *New Law Includes Pets in Spousal Protection: Maine Is First State to Link Domestic Violence to Animal Abuse*, <http://www.msnbc.msn.com/id/12266515> (last updated May 19, 2006).

¹²⁷ Me. H.J., 122d 2d Reg. Sess. 1113 (2006).

¹²⁸ Me. Sen. J., 122d 2d Reg. Sess. 1634 (2006); *see also* Maine Legislature, *Actions for LD 1881*, <http://janus.state.me.us/legis/LawMakerWeb/dockets.asp?ID=280019977> (accessed Apr. 8, 2007) (stating that LB 1881 passed the House on March, 21, 2006 and passed the Senate on March 22, 2006).

¹²⁹ 19-A Me. Rev. Stat. Ann. § 4007(1)(N) (Supp. 2006).

¹³⁰ 2006 Vt. Acts & Resolves 193.

¹³¹ Vt. Stat. Ann. tit. 15, § 1103(c)(7) (Supp. 2006).

¹³² *Id.* at § 1104 (a)(1)(A) (2006).

¹³³ *Id.*

¹³⁴ Vt. Stat. Ann. Tit. 13, § 1030(a) (2006).

Pataki in July 2006.¹³⁵ In its report supporting the bill, the New York City Bar Association Committee on Legal Issues Pertaining to Animals stated that the bill was good legislation, because it both protects animals from abuse and “eliminate[s] the cruel tactics abusers use to intimidate their victims.”¹³⁶ Under the new law, a court may issue a protective order to provide that a defendant “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 minor child residing in the household.”¹³⁷

The passing of these laws in Maine, Vermont, and New York is a large step forward in the protection of animals. Other states have begun to recognize the importance of such protective measures, and legislators in New Jersey and Illinois are now considering similar measures in their own states.¹³⁸

2. Cross Reporting

Protective orders for animals were not the only legislative acknowledgement of a correlation between domestic abuse and animal cruelty this year. West Virginia¹³⁹ and Tennessee both passed laws that require the cross reporting of animal cruelty and child abuse.¹⁴⁰ These laws recognize the concept that if one member of a household is being neglected or mistreated, it is possible that other members might be as well.¹⁴¹

a. West Virginia

In 2006, West Virginia passed Senate Bill (SB) 13 which amended several sections of the West Virginia Code to require various agencies to report to each other any suspected abuse.¹⁴² For instance, if a humane officer reasonably comes to suspect child abuse in the course of investigating animal cruelty, he or she is required to report this suspicion and the reasons for the suspicion to the local child protective ser-

¹³⁵ Humane Socy. Rochester, Lollypop Farm, *Current Legislation: Pet Protection Orders*, <http://lollypop.org/org/org175.asp?ssid=&orgid=175&storyTypeID=&sid=ƍ> (accessed Apr. 8, 2007); Michelle O'Donnell, *Cute and Furry, Some Say, A Beaten Dog, A Court Finds*, N.Y. Times B (Sept. 1, 2006).

¹³⁶ N.Y.C. Bar Assn., Comm. Leg. Issues Pertaining to Animals, *Report on Legislation 10767 A 1* (2006) (available at http://www.nycbar.org/pdf/report/A10767_animal_law.pdf).

¹³⁷ N.Y. Jud. Ct. Acts Law § 352.3 (McKinney Supp. 2006).

¹³⁸ Emily Bazar, USA Today, *Laws Shield Pets from Domestic Violence*, http://www.usatoday.com/news/nation/2006-08-23-pets-violence_x.htm (Aug. 23, 2006).

¹³⁹ W. Va. Code Ann. § 48-27-702(c) (Lexis Supp. 2006).

¹⁴⁰ Tenn. Code Ann. § 38-1-402 (Lexis Supp. 2006).

¹⁴¹ W. Va. Legis., *Member's News Release, John Yoder: Proposed Senate Bill to Look at Connections between Animal Cruelty and Human Abuse*, http://www.legis.state.wv.us/News_release/newsrelease_RecordView1.cfm?RecordID=26 (Feb. 18, 2005).

¹⁴² W. Va. Legis., *Senate Bill No. 13*, http://www.legis.state.wv.us/Bill_Text_HTML/2006_SESSIONS/RS/BILLS/sb13%20intr.htm (accessed Apr. 8, 2007).

vices agency.¹⁴³ The same requirement applies to an officer who suspects elder abuse or neglect, except that he or she must report to adult protective services.¹⁴⁴ Likewise, adult protective services workers must report to the appropriate humane officer if they form the reasonable suspicion that an animal is the victim of cruel or inhumane treatment.¹⁴⁵ Finally, law enforcement officers responding to domestic abuse incidents must also now report reasonable suspicions of animal cruelty within twenty-four hours to the proper humane officer.¹⁴⁶ The bill was passed into law quickly. It was introduced on January 11, 2006, and Governor Joe Manchin signed the bill into law on March 22, 2006.¹⁴⁷

b. Tennessee

Tennessee passed similar legislation this year when it enacted SB 2714.¹⁴⁸ This bill amended several provisions of existing law in order to require officers of different agencies to report to each other when they suspect cruelty. It is very similar to West Virginia's law, and provides that:

[a]ny state, county or municipal employee of a child or adult protective services agency, while acting in a professional capacity or within the scope of employment, who has knowledge of or observes an animal that the person knows or reasonably suspects has been the victim of cruelty, abuse, or neglect, shall report the known or reasonably suspected animal cruelty, abuse, or neglect to the entity or entities that investigate reports of animal cruelty, abuse, and neglect in that county.¹⁴⁹

An important similarity is that Tennessee's statute also specifies that the suspicion of abuse must be reasonable.¹⁵⁰ The law differs from that of West Virginia, in that Tennessee allows two days to make the report, whereas West Virginia allows only one.¹⁵¹ Tennessee is also careful to add that the law does not create a duty to investigate animal abuse: "Unless a duty exists under current law, nothing in this section shall be construed to impose a duty to investigate known or reasonably suspected animal cruelty, abuse or neglect."¹⁵²

¹⁴³ W. Va. Code Ann. § 7-10-2(b) (Lexis 2006).

¹⁴⁴ *Id.*

¹⁴⁵ W. Va. Code Ann. § 9-6-9a (2006). Child protective services also must report their reasonable suspicions for animal cruelty within twenty-four hours. W. Va. Code Ann. § 49-6a-2b.

¹⁴⁶ W. Va. Code Ann. § 48-27-702(c).

¹⁴⁷ W. Va. Legis., *Bill History of Senate Bill 13*, http://www.legis.state.wv.us/Bill_Status/Bills_history.cfm?input=13&year=2006&sessiontype=RS&btype=bill (accessed Apr. 8, 2007).

¹⁴⁸ 2006 Tenn. Pub. Acts ch. 736.

¹⁴⁹ Tenn. Code Ann. § 38-1-402(a).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at § 38-1-402(b).

¹⁵² *Id.* at § 38-1-402(c).

The concept of cross reporting legislation is simple: because a link exists between animal cruelty and child abuse, agency employees acting within the scope of their employment investigating child abuse or domestic violence are likely to come across instances of animal cruelty as well.¹⁵³ These cross reporting statutes, reinforced with training to recognize the signs of abuse, mean that agency employees may investigate and prosecute more cases of both animal and human cruelty.¹⁵⁴ Intuitively, this makes sense, because many people view their companion animals more like family members than property.¹⁵⁵ Appropriately, the cross reporting and protective order statutes recognize this sentiment by allowing court orders to protect animals along with the rest of the family, and by requiring protective service workers to notice when an animal in the family also suffers from abuse.¹⁵⁶

B. Youth Hunting Programs

To reverse waning levels of hunting recruitment, the National Shooting Sports Foundation, the United States Sportsman's Alliance, and the National Wild Turkey Federation formed an organization called Families Afield.¹⁵⁷ Concerned that hunting restrictions for children threaten to phase out the hunting tradition in the United States, Families Afield advocates youth apprenticeship hunting programs to encourage young people to begin supervised hunting at earlier ages.¹⁵⁸ Families Afield argues that children will likely continue to hunt when they become adults if they learn to hunt from their parents.¹⁵⁹ Furthermore, children who hunt under close supervision, without having to meet educational requirements, are less likely to forgo hunting in

¹⁵³ Phil Arkow, *Why Should Child Protection Care about Animal Welfare?* <http://www.animaltherapy.net/ChildAbuse.html> (accessed Apr. 8, 2007) (noting that professionals will certainly come across other forms of abuse during their career and that they are in a remarkably good position to recognize the signs, thereby helping more people).

¹⁵⁴ *Id.*

¹⁵⁵ Debbye Turner, *Are Pets More than Just Property? One Family is Embroiled in a Lawsuit over the Killing of Their Dog*, <http://www.cbsnews.com/stories/2007/01/17/earlyshow/contributors/debbyeturner/main2366898.shtml> (Jan. 17, 2007).

¹⁵⁶ Tenn. Code Ann. § 38-1-402(a).

¹⁵⁷ Families Afield, *An Initiative for the Future of Hunting: Families Afield: Removing Barriers, Opening Doors, Helping Young Hunters and Their Families Enjoy Sporting Traditions Together 2*, http://www.familiesafield.org/pdf/FamiliesAfield_Report.pdf (accessed Feb. 28, 2007) ("Current data shows only 25 percent of youth from hunting households are active in the sport. Over the past quarter-century, the total number of hunters has dropped 23 percent. New hunters are not being recruited.")

¹⁵⁸ *See id.* at 2-3 (explaining that Families Afield works with elected officials and the public as an education outreach organization in order to pass legislation that creates apprenticeship programs that will make it easier for children to develop an interest in hunting).

¹⁵⁹ *See id.* at 3-5 (saying that nationally for every one hundred hunters lost, only sixty-nine new hunters take their place, but that states with restrictive youth hunting regulations have ratios even lower than the national average).

favor of other activities such as video gaming and organized sports.¹⁶⁰ States with permissive hunting rules for children have higher hunter recruitment, and therefore have a better long-term chance to sustain hunting levels.¹⁶¹ Families Afield states that young supervised hunters are “especially safe” among all hunting groups.¹⁶²

Families Afield has stated that its strategy for loosening youth hunting restrictions is to rely on state specific initiatives.¹⁶³

Specific goals are twofold. First, help each audience understand the benefits of not only permitting, but also actively encouraging, families to hunt together. Second, persuade leaders to re-examine their state’s institutional impediments to hunting, inspecting old assumptions through the bright lens of modern statistical facts.¹⁶⁴

In the 2005–2006 legislative session, Pennsylvania, Ohio, Michigan, Illinois, and Utah passed legislation amending regulations to make it easier for children to become exposed to hunting.¹⁶⁵

1. *Pennsylvania*

On December 22, 2005, Pennsylvania became the first state to pass youth hunting Families Afield legislation, providing authorization for the Pennsylvania Board of Game Commissioners to create a mentored youth hunting program.¹⁶⁶ House Bill (HB) 1690 first appeared in the House to amend the exceptions from certain hunting regulations to include methods of hunting coyotes.¹⁶⁷ After the bill passed in the House,¹⁶⁸ it went to the Senate’s Committee on Game and Fisheries, where it was amended to include authorization for the Mentored

¹⁶⁰ *Id.* at 3 (quoting the president of United States Sportsmen’s Alliance as saying: “By the time kids are in middle school, they’re already being pulled away by the allure of video games, organized sports or other activities.”).

¹⁶¹ *See id.* at 5 (noting that four of the states that Families Afield classifies as “least restrictive” have a hunter replacement ratios better than 1:1, and only twenty-four percent have hunter replacement ratios lower than the national average, in contrast to the eighty percent of the “very restrictive” states that have hunter replacement ratios lower than the national average).

¹⁶² Families Afield reports that children represent only .000005% of all hunting accidents, and that only .0000016% of the accidents involved supervised children. *Id.* at 6.

¹⁶³ Families Afield, *supra* n. 157, at 7.

¹⁶⁴ *Id.*

¹⁶⁵ Families Afield, *Successes*, <http://www.familiesafield.org/Successes.cfm> (accessed Apr. 8, 2007).

¹⁶⁶ U.S. Sportsmen’s Alliance, *Pennsylvania Governor Signs Families Afield Bill*, <http://www.ussportsmen.org/interactive/features/Read.cfm?ID=1682> (accessed Apr. 8, 2007).

¹⁶⁷ Pa. H. 1690, 2005–2006 Reg. Sess. (June 22, 2005) (excluding “[a]ny natural or manmade nonliving bait used to attract coyotes from hunting or trapping” from the provisions of 34 Pa. Consol. Stat. § 2308(a) (2006)).

¹⁶⁸ This bill passed the House by 193 votes to 1. Pa. H. J., 2005–2006 Reg. Sess. 1797 (2005).

Youth Hunting Program.¹⁶⁹ The Senate passed this version,¹⁷⁰ and the House agreed to the Senate's amendments.¹⁷¹

Prior to the HB 1690 amendments, the law required every person to obtain the proper license to hunt, unless a relevant exception applied.¹⁷² HB 1690 amended the statute to allow participation in the Mentored Youth Hunting Program in those exceptions.¹⁷³ The statute does not of itself establish the Mentored Youth Hunting Program, but rather grants a license exception pursuant to the regulation of a program that the Pennsylvania Game Commission may regulate.¹⁷⁴

In July 2006, the Commission developed a Mentored Youth Hunting Program and published regulations for it.¹⁷⁵ Under the Program, children under twelve years old may hunt without a license¹⁷⁶ with a mentor who has a valid hunting license and is twenty-one years of age or older.¹⁷⁷

Mentors are limited to one child per trip,¹⁷⁸ and the pair is limited to one lawful hunting device.¹⁷⁹ Further, the law requires that the mentor carry the gun while walking or moving into a different position, because when the child possesses the gun or other hunting device, the child must remain stationary and within arms' reach of the mentor.¹⁸⁰

¹⁶⁹ Pa. H. 1690, 2005–2006 Reg. Sess. 2–3 (Nov. 1, 2005) (amending 34 Pa. Consol. Stat. § 2701(A) to exclude “regulation of the commission for implementing a mentored youth hunting program” from the general requirement that hunters obtain licenses).

¹⁷⁰ Pa. Sen. J., 2005–2006 Reg. Sess. 1105–1106 (2005).

¹⁷¹ When recommending concurrence with the Senate's amendment, Representative Staback said that he thought the Mentored Youth Hunting Program would “[go] a long way in attracting more young people to become part of our hunting tradition, our hunting heritage.” Pa. H. J. 2600 (2005). The House voted 195 to 1 to concur in the amendments. *Id.*

¹⁷² 34 Pa. Consol. Stat. Ann. § 2701(a) (West Rev. Supp. 2006) (stating that “every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title”).

¹⁷³ Section 2701 as amended by HB 1690 now reads: “Except in defense of person or property or pursuant to exemptions authorized in this Title or by regulation of the Commission for implementing a mentored youth hunting program, every person . . .” *Id.* (emphasis added).

¹⁷⁴ 34 Pa. Consol. Stat. Ann. § 322(c)(13) (West 1997).

¹⁷⁵ 36 Pa. Bull. 3618 (July 22, 2006).

¹⁷⁶ A mentored youth is defined as “[a]n unlicensed person, under 12 years of age who is accompanied by a mentor while engaged in hunting or related activities.” Pa. Code tit. 58, § 143.242 (2006).

¹⁷⁷ A mentor is defined as “[a] licensed person, 21 years of age or older who is serving as a guide to a mentored youth while engaged in hunting or related activities.” *Id.*

¹⁷⁸ *Id.* at § 143.244(2).

¹⁷⁹ *Id.* at § 143.244(3). A lawful hunting device is “[a]ny firearm or implement that is lawful to be possessed during the current season and used to harvest the particular species hunted.” *Id.* at § 143.242.

¹⁸⁰ *Id.* at § 143.244(1) (“A mentored youth shall be stationary, within arms reach and subject to the immediate control of the mentor at all times while in possession of any lawful hunting device.”). Stationary is also defined: “[t]he state or condition where a person is still, fixed in place or static, indicated by a cessation of all forward, backward

2. Ohio

Ohio also passed Families Afield legislation that amends existing hunting law to allow for an apprentice license.¹⁸¹ Ohio already had a special youth hunting license, but HB 296 raised the age for this youth license from under sixteen to under eighteen years old.¹⁸² The youth license is required for hunters under the age of eighteen, unless they have an apprentice license,¹⁸³ and can only be issued upon completion of a hunter education course.¹⁸⁴ The apprentice license does not require this hunter education course.¹⁸⁵ However, Ohio differs from Pennsylvania in that adults as well as children may purchase an apprentice license.¹⁸⁶ Ohio appears to be trying to attract both new adults and children to hunting.¹⁸⁷

As with Pennsylvania's law, Ohio's law requires that apprentice license holders hunt only while accompanied by a valid hunting license holder who is at least twenty-one years old.¹⁸⁸ Yet, Ohio differs from Pennsylvania in what "accompanied" means. Rather than insisting that the mentor stay within arms-length of the apprentice, Ohio defines "accompany" as "to go along with another person while staying within a distance from the person that enables uninterrupted, unaided

or lateral movement, whether in the standing, kneeling, sitting or prone position." Pa. Code tit. 58 § 143.242.

¹⁸¹ On January 24, 2006, the Senate passed House Bill 296 "[t]o amend sections 1531.01, 1533.10, and 1533.111 and to enact section 1533.102 of the Revised Code to provide for the issuance of apprentice hunting licenses and apprentice fur taker permits and to enable persons who are sixteen or seventeen years of age to obtain youth hunting licenses and youth fur taker permits." Ohio Sen. J., 126th Gen. Assembly 1942-43 (2006).

¹⁸² Ohio Rev. Code Ann. § 1533.10 (West 2006).

¹⁸³ *Id.* ("Every applicant who is under the age of eighteen years shall procure a special youth hunting license or an apprentice youth hunting license, the fee for which shall be one-half of the regular hunting license fee.")

¹⁸⁴ *Id.* ("The chief, with approval of the wildlife council, shall adopt rules prescribing a hunter education and conservation course for first-time hunting license buyers, other than buyers of apprentice hunting licenses, and for volunteer instructors. The course shall consist of subjects including, but not limited to, hunter safety and health, use of hunting implements, hunting tradition and ethics, the hunter and conservation, the law in section 1533.17 of the Revised Code along with the penalty for its violation, including a description of terms of imprisonment and fines that may be imposed, and other law relating to hunting.")

¹⁸⁵ *Id.*

¹⁸⁶ HB 296 adds the exception "or an apprentice hunting license" for every mention of the three types of hunting licenses: resident hunting license, nonresident hunting license, youth hunting license. *Id.* It does the same for fur taking licenses. Ohio Rev. Code Ann. § 1533.111 (West 2006).

¹⁸⁷ See generally Ohio Dept. Nat. Resources: Div. Wildlife, *Apprentice Afield: Tips and Suggestions*, <http://www.dnr.state.oh.us/wildlife/hunting/mentoring.htm> (accessed Apr. 8, 2007).

¹⁸⁸ Ohio Rev. Code Ann. § 1533.102 (West 2006) ("Any type of apprentice hunting license authorizes the holder of such a license to hunt only while accompanied by another person who is twenty-one years of age or older and who possesses a valid hunting license.")

visual and auditory communication.”¹⁸⁹ Another difference is that Ohio allows the valid hunting license holder to accompany up to two apprentice license holders.¹⁹⁰ Although Ohio does not limit availability of the apprentice license by age, Ohio limits the number of apprentice licenses people can receive to three.¹⁹¹ Each license is valid for approximately one year: from March through the following February.¹⁹²

3. Michigan

Senator Michelle McManus of Michigan introduced SB 1105 on March 1, 2006 to amend 1994 PA 451 in order to create an apprentice hunting license.¹⁹³ Michigan followed a plan very similar to Ohio’s, but different in some details. Like Ohio, Michigan has a youth hunting license for which minors are eligible,¹⁹⁴ provided that they have completed safety training.¹⁹⁵ The apprentice license applies to people who have not completed such a course.¹⁹⁶ Similar to the Ohio law, Michigan’s apprentice license may be issued to adults as well as to children.¹⁹⁷ However, both adults¹⁹⁸ and children¹⁹⁹ with apprentice licenses must be accompanied by a valid hunting license holder who is at least twenty-one years old. Michigan’s definition of “accompany” is very similar to Ohio’s: “to go along with another person under circumstances that allow one to come to the immediate aid of the other person and while staying within a distance from the person that permits uninterrupted, unaided visual and auditory communication.”²⁰⁰

Michigan’s law differs slightly from Ohio’s; however, Michigan’s law explicitly specifies that a parent or guardian must authorize the adult license holder to accompany the child.²⁰¹ The adult license

¹⁸⁹ *Id.* at § 1531.01 (BBB).

¹⁹⁰ *Id.* at § 1533.102 (“No holder of a valid hunting license or fur taker permit shall accompany more than two holders of any type of apprentice hunting license or apprentice fur taker permit at one time.”).

¹⁹¹ *Id.* (“No person shall purchase more than three apprentice hunting licenses of any type or more than three apprentice fur taker permits of any type.”).

¹⁹² *Id.* (“Unless otherwise provided by division rule, an apprentice license or permit is valid beginning on the first day of March and ending at midnight on the last day of February of the following year.”).

¹⁹³ Mich. Sen. J., 93d Leg., Reg. Sess. 339 (2006).

¹⁹⁴ A minor may be issued a hunting license if “[t]he minor child is at least 10 years old or, if the license is a license to hunt deer, bear, or elk with a firearm, at least 12 years old.” Mich. Comp. Laws § 43520(1)(c) (2006).

¹⁹⁵ *Id.* at § 43520(2).

¹⁹⁶ *Id.* at § 43520(3).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* (“A person 17 years old or older shall not hunt game under an apprentice license unless another person at least 21 years old who possesses a license, other than an apprentice license, to hunt that game accompanies that apprentice licensee and does not accompany more than 1 other apprentice licensee.”).

¹⁹⁹ *Id.* at § 43517(b).

²⁰⁰ Mich. Comp. Laws § 43502(1).

²⁰¹ *Id.* at § 43517(b) (“If the license is an apprentice license, a parent or guardian, or another person at least 21 years old authorized by a parent or guardian, who is licensed

holder may not accompany more than two apprentice license holders,²⁰² and the accompanying adult's license must be for the same game as the apprentice's license.²⁰³ Michigan decided to limit the number of apprentice licenses as well, but unlike Ohio, set the limit at two licenses.²⁰⁴ Michigan's law is unique among those passed in 2006 in that it requires the Department of Natural Resources to report to the legislature on the effects the apprentice program and the reduction of hunting age have had on hunter recruitment and safety.²⁰⁵

4. *Illinois*

Illinois also created an apprentice hunter license program in 2006 by enacting HB 5407, which added section 3.1-5 to section 5 of the Wildlife Code.²⁰⁶ "The purpose of this Program shall be to extend limited hunting privileges, in lieu of obtaining a valid hunting license, to persons interested in learning about hunting sports."²⁰⁷ Illinois's law seems to be slightly more restrictive than those passed in Pennsylvania, Ohio, and Michigan. An initial difference is that only Illinois residents may apply for an apprentice license.²⁰⁸ As with the other states, Illinois allows children to receive apprentice licenses.²⁰⁹ However, children with an apprentice license may be supervised only by a parent, guardian, or grandparent,²¹⁰ rather than allowing supervision by any person over the age of twenty-one who has a valid license. Another striking difference is that Illinois does not define "supervised" or prescribe how many apprentices an adult may supervise while hunting. Adults aged eighteen or over must simply be supervised by a resi-

to hunt that game under a license other than an apprentice license accompanies the minor child." (emphasis added).

²⁰² *Id.* at § 43520(3) ("[A] person shall not go along with more than 2 apprentice licensees of any age for the purpose of accompanying those apprentice licensees while those apprentice licensees are hunting.")

²⁰³ *Id.* ("[T]he person shall not go along with the apprentice licensee while the apprentice licensee is hunting unless the person actually accompanies the apprentice licensee and possesses a license, other than an apprentice license, to hunt the same game as the apprentice licensee.")

²⁰⁴ *Id.* ("A person is not eligible to obtain a specific type of apprentice license, such as a firearm deer license, an archery deer license, a combination deer license, a small game license, or turkey license, for more than 2 license years.")

²⁰⁵ *Id.* at § 43520(4) ("By October 1, 2008, the department shall submit to the standing committees of the senate and house of representatives with primary responsibility for conservation and outdoor recreation issues a report on the effect of the apprentice hunter program and the reductions in minimum hunting age enacted by the 2006 amendatory act that amended this section on recruitment of new hunters and other relevant issues, such as hunter safety.")

²⁰⁶ Ill. H. J., 94th Gen. Assembly 233 (2006).

²⁰⁷ 520 Ill. Comp. Stat. 3.1-5(a) (2006).

²⁰⁸ *Id.* at § 3.1-5(d).

²⁰⁹ *Id.* at § 3.1-5(b) ("Any resident who is at least 10 years old may apply to the Department for an Apprentice Hunter License.")

²¹⁰ *Id.* at § 3.1-5(c) ("For persons aged 10 through 17, the Apprentice Hunter License shall entitle the licensee to hunt while supervised by a validly licensed resident parent, guardian, or grandparent.")

dent valid license holder.²¹¹ Another difference is that the apprentice license may not be renewed and is good for only one year.²¹²

5. *Utah*

Rather than implementing a formal apprentice program, Utah passed HB 328,²¹³ which simply removes the minimum age for hunting small game.²¹⁴ Because the bill did not create an apprentice license, children will still have to follow the ordinary regulations governing obtaining a license, including passing hunting education courses prior to license approval. Nevertheless, children under the age of fourteen hunting with any weapon must be accompanied by a parent, legal guardian, or someone approved by a parent who is at least twenty-one years old.²¹⁵

The concept behind all of this legislation is that hunting is declining in popularity across the country and that states need to do more to reach out to children and other potential new hunters in order to preserve the sport.²¹⁶ Not everyone agrees, however. People who oppose expanding hunting opportunities to children suggest that it is irresponsible to allow children to handle guns in hunting situations at a young age.²¹⁷ Opponents of apprentice hunting programs also suggest that it is inappropriate to mentor children by instilling the idea that killing animals is acceptable recreation.²¹⁸

Heidi Prescott, Senior Vice President of Campaigns for the HSUS, said, “[a]t a time when youth violence is a nationwide epidemic and our children already face many threats every day, we should not put them in more danger or teach them that killing defenseless animals is wholesome entertainment.”²¹⁹ Further, arguments that hunting is a wonderful way for parents to spend time with their children in nature can be countered by the argument that parents may engage in many activities with their children in nature that are not destructive, such

²¹¹ *Id.* (providing that “[f]or persons 18 or older, the Apprentice Hunter License shall entitle the licensee to hunt while supervised by a validly licensed resident hunter”).

²¹² *Id.* at 3.1-5(b) (providing that “[t]he Apprentice Hunter License shall be a one-time, non-renewable license that shall expire on the March 31 following the date of issuance”).

²¹³ Utah H. Nat. Resources, Agric., & Env. Standing Comm., *Eliminating the Age Requirement for Hunting Small Game H.B. 328*, 2006 Gen. Sess. (Feb. 7, 2006).

²¹⁴ HB 328 removes the minimum age for small game hunting by amending Utah Code Ann. § 23-19-17 to remove the language “12 years or older.” Utah Code Ann. § 23-19-17 (Lexis 2006).

²¹⁵ *Id.* at § 23-20-20(2).

²¹⁶ Families Afield, *supra* n. 157, at 3.

²¹⁷ See Humane Socy. U.S., *Babes in the Woods—With Guns*, http://www.hsus.org/press_and_publications/press_releases/babes_in_the_woods_-_with.html (Dec. 20, 2005) (suggesting that allowing children who are not even old enough to drive to hunt increases risk of injury to themselves and everyone in the woods).

²¹⁸ *Id.*

²¹⁹ *Id.*

as hiking, biking, or kayaking.²²⁰ If there is a decreased interest in hunting, perhaps it is simply because people are becoming more interested in conserving wildlife and in treating animals humanely.²²¹ Perhaps states should not be concerned with preserving traditions that the people may no longer find socially acceptable.²²²

C. Veal Crates and Pig Gestation Crates

In its November election, Arizona voted in favor of voter ballot initiative Proposition 204, the Humane Treatment for Farm Animals Act (the Act).²²³ The initiative was brought by Arizonans for Humane Farms, a coalition of groups including the Animal Defense League of Arizona, Animal Welfare Advocacy, Inc., the Arizona Humane Society, Farm Sanctuary, and the HSUS.²²⁴ By passing the Act, Arizona became the first state to ban the use of veal crates,²²⁵ and the second state after Florida to ban the use of pig gestation crates.²²⁶ A veal crate is a stall approximately two feet wide in which a calf is tethered for approximately twenty weeks, the time between separation from his mother and slaughter.²²⁷ Breeding pigs spend eight months per year in gestation crates approximately two feet wide and seven feet long, without enough room to turn around or lie down comfortably.²²⁸

The Act requires that gestating pigs and veal calves not be tethered or confined in such a way that prevents them from being able to lie down and extend their legs or turn around.²²⁹ Exceptions exist for practices such as transportation, exhibitions, veterinary care, and

²²⁰ Humane Socy. U.S., *Learn the Facts about Hunting*, http://www.hsus.org/wildlife/issues_facing_wildlife/hunting/learn_the_facts_about_hunting.html (site no longer available) (on file with *Animal L.*).

²²¹ *Id.*

²²² *See id.* (“The facts are that more and more hunters are giving up hunting because it is no longer a socially acceptable activity.”).

²²³ Ariz. Sec. St., *State of Arizona Official Canvass* 15, <http://www.azsos.gov/election/2006/General/Canvass2006GE.pdf> (Dec. 4, 2006).

²²⁴ Arizonans Humane Farms, *Vote Yes on Proposition 204: Endorsements of Proposition 204*, http://www.yesonproposition204.com/endorsements.shtml#Sponsoring_Organizations (accessed Apr. 8, 2007).

²²⁵ Farm Sanctuary, *Victory for Farm Animals in Arizona!* http://www.farmsanctuary.org/actionalerts/alert_AZ_initiative.htm (accessed Apr. 8, 2007).

²²⁶ *Id.* In 2002, Florida also banned pig gestation crates through a voter initiative ballot that amended the state constitution. Art. X § 21, Fla. Const.

²²⁷ Humane Socy. U.S., *An HSUS Report: The Economic Consequences of Adopting Alternative Production Systems to Veal Crates* 1, <http://www.yesonproposition204.com/HSUS%20Economic%20Analysis%20of%20Veal%20Crates%20and%20Alternatives.pdf> (accessed Apr. 8, 2007) (“Annually in the United States, approximately 1 million calves are raised for veal, tethered in individual hutches or stalls typically 2-feet wide by 6-feet long, until they are slaughtered by 20 weeks of age.”) (citations omitted).

²²⁸ Humane Socy. U.S., *An HSUS Report: Welfare Issues with Gestation Crates for Pregnant Sows* 1, <http://www.hsus.org/web-files/PDF/farm/HSUS-Report-on-Gestation-Crates-for-Pregnant-Sows.pdf> (accessed Apr. 8, 2007).

²²⁹ Ariz. Rev. Stat. Ann. § 13-2910.07(a) (West 2007).

scientific research.²³⁰ A violation of this Act is a class one misdemeanor.²³¹ The Act will go into effect on December 31, 2012.²³²

Because the Act was an initiative ballot on which the voters decided directly, public debate on both sides of the issue became rather heated. The AVMA published a study supporting the notion that it is impossible to say that pig gestation crates are a worse system than group housing.²³³ The AVMA report suggests that an ideal housing situation for pregnant pigs will minimize aggression; protect the pigs from injury, disease, and the effects of environmental extremes; provide appropriate food and water; facilitate observation of the pigs by caretakers; and allow the pigs to express normal behavior.²³⁴ Some veterinarians in Arizona said publicly that the Act was unnecessary, because years of husbandry practice have taught farmers how best to care for their animals, and breeding pigs are kept in specially designed barns and crates for their own comfort and protection from illness and injury.²³⁵ More vehement opposition suggested that the Act represented an anti-farming, pro-vegetarian agenda based on out-of-state interests.²³⁶

Proponents of the Act, on the other hand, claimed it is inherently inhumane to confine animals in crates so small that the animals cannot lie down or stretch their legs.²³⁷ Crates of that size restrict or impede altogether many natural behaviors, creating both physical and mental pain.²³⁸ For instance, “[a]s a result of the intensive confinement, crated sows suffer a number of welfare problems, including poor hygiene, risk of urinary infections, weakened bones, overgrown hooves, poor social interaction, lameness, behavioral restriction, and stereotypies.”²³⁹ Similarly, the welfare of calves in veal crates is adversely affected.²⁴⁰ Proponents also argued that the legislation was directed toward large factory farms rather than the small Arizonan farmer.²⁴¹

²³⁰ *Id.* at § 13-2910.07(b).

²³¹ *Id.* at § 13-2910.07(c).

²³² *Id.* at § 13-2910.07.

²³³ See Campaign Ariz. Farmers & Ranchers, *No on 204—It’s Hogwash: Facts & Research*, <http://www.azfarmersranchers.com/index.php?p=5> (accessed Apr. 8, 2007); Am. Veterinary Med. Assn., *Task Force Report: A Comprehensive Review of Housing for Pregnant Sows*, 227 *J. Am. Veterinary Med. Assn.* 1580, 1580–90 (Nov. 15, 2005) (available at http://www.azfarmersranchers.com/downloads/111505_AVMA_TaskForceReport_sows.pdf).

²³⁴ Am. Veterinary Med. Assn., *supra* n. 233, at 1587.

²³⁵ Campaign Ariz. Farmers & Ranchers, *supra* n. 233.

²³⁶ *Id.*

²³⁷ Arizonans Humane Farms, *Vote Yes on Proposition 204: Crates*, <http://www.yesonproposition204.com/crates.shtml> (accessed Apr. 8, 2007).

²³⁸ *Id.*

²³⁹ Humane Socy. U.S., *An HSUS Report: Welfare Issues with Gestation Crates for Pregnant Sows*, *supra* n. 228, at 1.

²⁴⁰ Arizonians Humane Farms, *supra* n. 237, at 2.

²⁴¹ *Id.* (“Industrialized animal factories have taken over agribusiness, pushing out small family farms. Factory farms have made it increasingly difficult, if not impossible, for independent farmers to make a living, unable to compete against profit-driven

Proponents said that both the pork industry and a potential veal industry could easily survive in Arizona without confinement crates, because group confinement can also be cost effective.²⁴²

Arizona does not have a particularly large pig farming industry, and the veal industry appears nonexistent in the state.²⁴³ Therefore, the Act does not directly affect a large number of animals. However, Arizona's law does represent an important mark for the issue of sow and veal calf confinement, an issue that more and more states are confronting. North Dakota, for instance, has already introduced a bill this year that would specifically allow for sow gestation crates.²⁴⁴ Farm Sanctuary reports that Maryland Senator Gwendolyn Britt has introduced legislation to ban gestation crates.²⁴⁵

D. Dog Confinement

California also addressed confinement for animals in 2006 by passing SB 1578, a law that makes it an infraction or a misdemeanor to tether a dog for more than three hours in a twenty-four hour period.²⁴⁶ SB 1578 added a chapter to the Health and Safety Code,²⁴⁷ stating that "[n]o person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object."²⁴⁸ This simple prohibition is subject to many exceptions, however. A person may: "[a]ttach a dog to a running line, pulley, or trolley system;"²⁴⁹ restrain a dog as required in camping or other recreational areas;²⁵⁰ restrain a dog involved with an activity that requires a state license;²⁵¹ or restrain a dog while actively engaging in agricultural activities or in

mega-facilities that treat animals as mere machines, rather than feeling, sensitive beings.") (citation omitted).

²⁴² See Arizonans Humane Farms, *Vote Yes on Proposition 204: Science*, <http://www.yesonproposition204.com/science.shtml> (accessed Apr. 8, 2007); Humane Socy. U.S., *An HSUS Report: The Economic Consequences of Adopting Alternative Production Systems to Gestation Crates* 1–2, <http://www.yesonproposition204.com/HSUS%20Economic%20Analysis%20of%20Gestation%20Crates%20and%20Alternatives.pdf> (accessed Apr. 8, 2007).

²⁴³ Arizonans Humane Farms, *Vote Yes on Proposition 204: Frequently Asked Questions (FAQ)*, <http://www.yesonproposition204.com/faq.shtml> (accessed Apr. 8, 2007) (stating that there are about sixteen thousand pigs in gestation crates in Arizona and admitting up front that the veal crate part of the legislation does not affect calves currently in the state; the group suggests that this legislation will prevent veal crates from moving into the state).

²⁴⁴ N.D. H. 1421, 60th Leg., (Jan. 15, 2007).

²⁴⁵ Farm Sanctuary, *Farm Sanctuary Campaigns: Support Maryland Bill to Ban Gestation Crates*, http://www.farmsanctuary.org/campaign/state_MD_GC.htm (accessed Apr. 8, 2007).

²⁴⁶ Cal. Health & Safety Code Ann. § 122335 (West 2006).

²⁴⁷ *Id.*

²⁴⁸ *Id.* at § 122335(b).

²⁴⁹ *Id.* at § 122335(c)(1).

²⁵⁰ *Id.* at § 122335(c)(2).

²⁵¹ *Id.* at § 122335(c)(4).

herding sheep or cattle.²⁵² The exception most likely to affect ordinary dog owners, however, provides that a person may “[t]ether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period.”²⁵³ A “reasonable period” is defined as “a period of time not to exceed three hours in a 24-hour period, or a time that is otherwise approved by animal control.”²⁵⁴

Several cities throughout the country already have ordinances that either ban chaining altogether or place limits on it,²⁵⁵ but to date, Connecticut is the only other state to have passed such a law state-wide.²⁵⁶ California’s law is similar to Connecticut’s—both prohibit tethering dogs for unreasonable times—but California elected to create an objective standard for reasonableness by defining it to mean no more than three hours within a twenty-four hour period.²⁵⁷ This specificity may have caused the California legislature some trepidation, and SB 1578 was amended several times, adding and altering exceptions to the prohibition.²⁵⁸

The California law is potentially stricter than Connecticut’s, because a person who violates the California law even once may be guilty of either an infraction or a misdemeanor.²⁵⁹ The punishment for an infraction is a fine of up to \$250,²⁶⁰ which is essentially comparable to the Connecticut statute, which allows a fine of \$250 for the third violation.²⁶¹ Yet because a violation of the California statute may be classified as a misdemeanor, it can be punished by a fine of up to \$1,000, imprisonment in a county jail for up to six months, or both.²⁶²

²⁵² Cal. Health & Safety Code Ann. § 122335(c)(5).

²⁵³ *Id.* at § 122335(c)(3).

²⁵⁴ *Id.* at § 122335(a)(4).

²⁵⁵ Off. Sen. Floor Analyses, *SB 1578 Bill Analysis* 6-7, http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1551-1600/sb_1578_cfa_20060905_135024_sen_floor.html (accessed Apr. 8, 2007) (“The Animal Protection Institute indicates that ‘approximately 80 cities and counties in the United States, including the cities of Los Angeles and San Francisco, have passed laws banning or carefully regulating the chaining of dogs. This bill is consistent with this trend as it gives animal control throughout California a tool to protect our canine companions from long-term neglect.’”); see also People Ethical Treatment Animals, *Helping Animals: Current Legislation on Tethering Dogs*, http://www.helpinganimals.com/ga_tetherLegislation.asp (accessed Apr. 8, 2007) (listing cities and states that have laws and ordinances addressing the chaining of animals).

²⁵⁶ Conn. Gen. Stat. § 22-350a (2005) (providing that “[a]ny person who confines or tethers a dog for an unreasonable period of time shall be fined not more than one hundred dollars for the first offense, not less than one hundred dollars or more than two hundred fifty dollars for a second offense, and not less than two hundred fifty dollars or more than five hundred dollars for any subsequent offense.”).

²⁵⁷ Cal. Health & Safety Code Ann. § 122335(a)(4).

²⁵⁸ Cal. St. Legis., *Bill Search*, http://www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=sb_1578&sess=PREV&house=B&author=lowenthal (accessed Apr. 8, 2007).

²⁵⁹ Cal. Health & Safety Code § 122335(d).

²⁶⁰ *Id.* at § 122335(d)(1).

²⁶¹ Conn. Gen. Stat. § 22-350a.

²⁶² Cal. Health & Safety Code Ann. § 122335(d)(2).

The California Animal Association (CAA), the sponsor for SB 1578, characterized it as a public safety law,²⁶³ as chained dogs are said to be 2.8 times more likely to bite than unchained dogs.²⁶⁴ Dogs that are chained all the time can become aggressive and anxious.²⁶⁵ The CAA also said that “California animal control agencies receive hundreds of calls each month from concerned citizens reporting dogs chained to trees, fences, and houses, and that SB 1578 will free hundreds, if not thousands, of dogs from unhealthy and unhappy lives.”²⁶⁶

The Animal Council (Council) stated its opposition to the statewide ban on tethering dogs.²⁶⁷ The Council argued that “fencing is not always available, feasible or safe and that tethering may be the best and safest option.”²⁶⁸ Dog owners need flexibility that the statute fails to provide, and in addition to this, the standard is vague and could likely lead to discriminatory enforcement.²⁶⁹ If the problem is aggressive, neglected dogs, existing law already addresses this problem.²⁷⁰

Several other states, such as Maine,²⁷¹ Tennessee,²⁷² Texas,²⁷³ Maryland,²⁷⁴ New York,²⁷⁵ and Rhode Island,²⁷⁶ are currently considering legislation restricting the time and manner in which dogs can be tethered.

²⁶³ Cal. Sen. Comm. Bus., Professions & Econ. Dev., *SB 1578 Bill Analysis* 4, http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1551-1600/sb_1578_cfa_20060403_154113_sen_comm.html (accessed Apr. 8, 2007).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Cal. Sen. Comm. Bus., Professions, & Econ. Dev., *supra* n. 263, at 5.

²⁷⁰ *Id.*

²⁷¹ Me. H. 866, 123d Leg. (Mar. 8, 2007).

²⁷² Tenn. Sen. 637, 105th Gen. Assembly (Feb. 7, 2007); Tenn. H. 422, 105th Gen. Assembly (Feb. 8, 2007).

²⁷³ Tex. H. 1411, 80th Reg. Sess. (Feb. 13, 2007).

²⁷⁴ Md. 673, 2007 Sess. (Feb. 8, 2007).

²⁷⁵ N.Y. Sen. 2052, 2007 Sess. (Jan. 1, 2007).

²⁷⁶ R.I. Sen. 517, 2007 Jan. Sess. (Feb. 15, 2007).