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# Adding a Bit More Bite: Suggestions for Improving Animal-protection Laws in Minnesota

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**ADDING A BIT MORE BITE: SUGGESTIONS FOR IMPROVING ANIMAL-PROTECTION LAWS IN MINNESOTA**

Corwin R. Kruse<sup>†</sup>

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In an age which prides itself on technology, enlightenment, education, good will, and justice, we still treat the majority of the earth’s living creatures in a manner which is, in most respects, worthy of a medieval torturers’ guild. That we continue to tolerate inhumanities . . . is an indictment of us all, and one which

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should weigh heavily on each and every human conscience.<sup>1</sup>

## I. INTRODUCTION

It has now been one-third of a century since Professor Friend wrote these words. Although the ensuing years have arguably seen marginal improvement in the way we treat a few types of animals,<sup>2</sup> for the vast majority of species, the situation remains grim. This is not to say that mistreatment of animals never arouses public outcry.<sup>3</sup> But this outcry is typically limited to species considered especially magnificent, or with whom we have developed a special bond.<sup>4</sup> Moreover, such outcry has translated into only limited legal reforms, and many of these are aimed as much at protecting humans as they are protecting animals. This is not to suggest that concerns for human interests should be ignored, simply that they should not replace concern for the interests of the animals.<sup>5</sup>

In this Article, I make a number of proposals for improving Minnesota's animal-protection laws. It is not my goal to present a lengthy exegesis on the minutiae of animal law; such scholarly treatment may be found elsewhere. Instead, I wish to present a concise overview of current Minnesota law regarding animal abuse and offer suggestions for the future.

## II. A SPECIAL TYPE OF PROPERTY, BUT PROPERTY NONETHELESS

Although I do not wish to conduct an in-depth analysis of our relationship to other animals, to understand the state of animal-protection statutes in the United States it is necessary to consider, briefly, the history of animal law. At common law, animals were

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1. Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. RICH. L. REV. 201, 223 (1973).

2. Humans are, of course, animals no less than are dogs or cattle, and to suggest otherwise is to create a false dichotomy. Nonetheless, in the interest of simplicity, I have adopted the standard convention of using the term "animals" to refer to animals other than humans.

3. Witness, for example, the response to reports that Atlanta Falcons quarterback Michael Vick had participated in a dog-fighting operation.

4. See generally S. Plous, *Psychological Mechanisms in the Human Use of Animals*, 49 J. SOC. ISSUES 11 (1993) (discussing factors influencing the way people think about animals and the use thereof).

5. It must also be recognized that, in many cases, human and animal interests overlap. As an example, inclusion of animals in orders for protection would benefit both. See *infra* Part IV.D.

regarded as mere property to be treated or disposed of as the owner wished.<sup>6</sup> It was not until the passage of Martin's Act by British Parliament on June 7, 1822, that modern anti-cruelty laws were born.<sup>7</sup> From this time forward, the courts often struggled with how, precisely, to categorize animals—recognizing that, despite being “property,” they are not qualitatively the same as inanimate property such as a chair. As the Vermont Supreme Court noted in *Morgan v. Kroupa*,<sup>8</sup> “[m]odern courts have recognized that pets generally do not fit neatly within traditional property law principles. . . . Instead, courts must fashion and apply rules that recognize their unique status . . . .”<sup>9</sup>

In the United States, New York's anti-cruelty statute, first enacted in 1829,<sup>10</sup> became a model for similar laws in a number of other states, including Minnesota.<sup>11</sup> This statute represented a major step forward in animal protection because it prohibited beating or torturing horses, cattle, or sheep, regardless of ownership of the animal.<sup>12</sup> Another advance occurred with the

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6. Friend, *supra* note 1, at 201–02 (discussing the property status of animals). Because animals were seen as property, some acts of animal cruelty committed in public might have been indictable as other offenses such as malicious mischief. David Favre & Vivian Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DETROIT C. L. REV. 1, 5–6 (1993). Such an offense could have been prosecuted, however, only if the animal in question belonged to someone else. *Id.* at 6.

7. HILDA KEAN, *ANIMAL RIGHTS: POLITICAL AND SOCIAL CHANGE IN BRITAIN SINCE 1800*, at 33–34 (1998). Two prior anti-cruelty bills—one in 1800 and one in 1809—had been narrowly defeated. *Id.* at 31–33. Of course, various restrictions on the use of animals can be found throughout history. For example, see the biblical prohibition on working oxen on the Sabbath. *Deuteronomy* 5:14.

8. 702 A.2d 630 (Vt. 1997).

9. *Id.* at 633. The status of animals as “property” is of substantial importance when assessing damages for harm to, or the loss of, an animal. See, e.g., *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994) (reasoning that because animals are property, punitive damages cannot be recovered for their loss, and compensatory damages are limited to fair market value). *But cf.* *Jensen v. Walsh*, 623 N.W.2d 247, 251 (Minn. 2001) (allowing for punitive damages in cases where there is “deliberate disregard for the rights or safety of others” and thus opening the door for punitive damages in at least some animal cruelty cases); *Molenaar v. United Cattle Co.*, 553 N.W.2d 424, 428–29 (Minn. Ct. App. 1996) (recognizing that the holding in *Soucek* is limited to products liability actions).

10. The first modern anti-cruelty statute in the United States was actually passed in Maine in 1821; this statute, however, had relatively little impact. Favre & Tsang, *supra* note 6, at 8–9.

11. Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 3 (2000).

12. Favre & Tsang, *supra* note 6, at 9–11 (citing N.Y. REV. STAT. tit. 26 (1829)).

1867 revision of New York's law. Among other things, the revised statute applied to "any living creature,"<sup>13</sup> not just commercially-valuable animals, and went beyond prohibiting affirmative acts, making it illegal to deprive an animal of "necessary sustenance."<sup>14</sup> In addition, the statute gave agents of the newly formed American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.) the power to enforce its provisions and arrest violators.<sup>15</sup> Importantly and innovatively, the statute also provided that the A.S.P.C.A. was to receive all fines collected in violation of the anti-cruelty law.<sup>16</sup>

In Minnesota, the first statute prohibiting animal abuse was enacted in 1851 by the territorial legislative assembly.<sup>17</sup> Upon statehood, in 1858, this anti-cruelty statute became state law.<sup>18</sup> Like many early anti-cruelty laws, this statute was limited in scope, and its reach was further narrowed by the courts. In *United States v. Gideon*,<sup>19</sup> the Supreme Court of the Territory of Minnesota reversed Peter Gideon's conviction for "willfully and maliciously" shooting a dog owned by George Bertram, reasoning that the anti-cruelty statute did not cover dogs because they were not meant to be included in the term "beasts," reserving that term for commercially-valuable animals.<sup>20</sup> Moreover, Justice Sherburne ruled that for a conviction to stand, "malice," as required by the statute, must be directed toward the owner of the animal rather than toward the

13. N.Y. REV. STAT. §§ 375.2-9 (1867), *quoted in* Sauder, *supra* note 11, at 5 n.30.

14. *Id.*

15. N.Y. REV. STAT. § 375.10 (1867), *quoted in* Favre & Tsang, *supra* note 6, at 17.

16. N.Y. REV. STAT. § 375.10 (1867), *quoted in* Favre & Tsang, *supra* note 6, at 18.

17. MINN. REV. STAT. ch. 107, § 18 (1851). The statute read, in its entirety, "[e]very person who shall cruelly beat or torture any horse, ox, or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars, nor less than five dollars." *Id.*

18. MINN. STAT. ch. 96, § 18 (1858).

19. 1 Minn. 292 (1856).

20. *Id.* at 296.

[I]t is but reasonable to suppose that the intention of the law was, in using the term 'beasts,' to include such other animals as may properly come under the name of beasts, and as have an intrinsic value in the same sense that there is value in horses, oxen and cows. The term beasts may well be intended to include asses, mules, sheep, swine, and, perhaps, some other domesticated animals, but it would be going quite too far to hold that dogs were intended.

*Id.*

animal itself.<sup>21</sup> Such a perspective—viewing animal-cruelty laws as being for the protection of human, rather than animal, interests—was common at the time.<sup>22</sup> To great extent, such a perspective still underlies many animal-protection efforts.<sup>23</sup>

In 1905, the Legislature revised the anti-cruelty statute, providing what formed, with only minor revisions, the basis of Minnesota’s contemporary animal protection law.<sup>24</sup> Among other things, this law made it a crime for any person to:

overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work the same when unfit for labor, whether belonging to himself or another;<sup>25</sup> deprive of necessary food, water, or shelter any animal of which he has charge or control;<sup>26</sup> [and] . . . wilfully set on foot, instigate, or in any way further any act of cruelty to animals, or any act tending to produce such cruelty.<sup>27</sup>

Moreover, precluding decisions along the lines of *Gideon*, the act defined “animal” to include every living creature other than humans.<sup>28</sup> In addition, the law defined “cruelty” and “torture” synonymously to cover “every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted.”<sup>29</sup>

21. *Id.* at 297.

22. See Corwin R. Kruse, *Baby Steps: Minnesota Raises Certain Forms of Animal Cruelty to Felony Status*, 28 WM. MITCHELL L. REV. 1649, 1655, 1655 nn.39–44 (2002). In addition to protecting property rights, anti-cruelty laws were seen as exerting a civilizing influence on the working class. See, e.g., Keith Tester, *The Pleasure of the Rich is the Labour of the Poor: Some Comments on Norbert Elias’s “An Essay on Sport and Violence”*, 2 J. HIST. SOC. 161, 169–70 (1989) (discussing the class-based nature of early anti-cruelty laws); KEAN, *supra* note 7, at 24 (noting that during the Victorian period, more humane treatment of animals “became a distinguishing feature of . . . membership of a new middle class and a respectable working class”).

23. Witness the focus on “the link” in many efforts to increase penalties for animal abuse. See, e.g., Patrick Dougherty, *The Legislator’s Perspective on Preventing Family Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 288, 295 (Frank R. Ascione & Phil Arkow eds., 1999) (advising that “[t]he more you can establish the link between abuse and violence of any kind and the destruction of our families . . . the more success you will have in changing negative attitudes . . . and positively influencing legislators’ votes.”).

24. 1905 Minn. Rev. Laws ch. 102, §§ 5151–5160.

25. *Id.* § 5152.1.

26. *Id.* § 5152.2.

27. *Id.* § 5152.7.

28. *Id.* § 5151.

29. *Id.*

## III. CURRENT MINNESOTA ANTI-CRUELTY LAW

Minnesota's current anti-cruelty statute provides:

No person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or to another person.<sup>30</sup> No person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.<sup>31</sup> No person shall keep any cow or other animal in any enclosure without providing wholesome exercise and change of air.<sup>32</sup> No person shall feed any cow on food which produces impure or unwholesome milk.<sup>33</sup> No person shall abandon any animal.<sup>34</sup> No person shall allow any maimed, sick, infirm, or disabled animal to lie in any street, road, or other public place for more than three hours after receiving notice of the animal's condition.<sup>35</sup> No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.<sup>36</sup> [With certain exceptions,] [n]o person shall cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal.<sup>37</sup>

Until recently, violation of any of the provisions of this statute constituted either a misdemeanor or a gross misdemeanor.<sup>38</sup> In 2001, Minnesota's anti-cruelty law was amended to raise certain types of animal abuse to felony status.<sup>39</sup> The amended statute codified new standards of injury that focus on the bodily harm to

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30. MINN. STAT. § 343.21, subdiv. 1 (2006).

31. *Id.* at subdiv. 2.

32. *Id.* at subdiv. 3.

33. *Id.* at subdiv. 4.

34. *Id.* at subdiv. 5.

35. *Id.* at subdiv. 6.

36. *Id.* at subdiv. 7.

37. *Id.* at subdiv. 8.

38. MINN. STAT. § 343.21, subdiv. 9 (2000). In 1905, all violations were misdemeanors. 1905 Minn. Rev. Laws ch. 102, § 5152.

39. *See* 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, §§ 5–13 (codified as amended at MINN. STAT. §§ 343.20–.21, .235 (2006)).

the animal,<sup>40</sup> rather than the more ambiguous criterion of “unnecessary or unjustifiable pain, suffering, or death.”<sup>41</sup>

“Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member to a service animal or a pet or companion animal.<sup>42</sup> “Great bodily harm” means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm to a service animal or a pet or companion animal.<sup>43</sup>

It is notable, however, that these bodily harm criteria apply only to service animals<sup>44</sup> and pets or companion animals.<sup>45</sup> Other classes of animals are still subject to the more vague and subjective standard.<sup>46</sup>

The amended law provides a graduated series of felony-level penalties based on (1) the level of bodily harm; (2) whether the animal is a companion animal or a service animal; (3) whether the act was done to intimidate another person; and (4) whether the accused has a prior cruelty conviction.<sup>47</sup> Punishments for acts other than those identified below remain misdemeanors or, upon a

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40. See MINN. STAT. § 343.20 (2006).

41. See MINN. STAT. § 343.20, subdiv. 3 (2000). Note that this more ambiguous standard remains in effect for animals other than pet or companion animals and service animals.

42. MINN. STAT. § 343.20, subdiv. 8 (2006).

43. *Id.* at subdiv. 9.

44. “Service animal’ means an animal trained to assist a person with a disability.” *Id.* at subdiv. 7. In addition to causing “substantial” and “great” bodily harm, it is illegal to “intentionally and without justification cause [any] bodily harm to a service animal while it is providing service or while it is in the custody of the person it serves.” MINN. STAT. § 343.21, subdiv. 8(a).

45. “Pet or companion animal’ includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal.” *Id.* § 343.20, subdiv. 6.

46. See *id.* (identifying “torture” or “cruelty” as acts, omissions, or neglect that cause or permit “unnecessary or unjustifiable pain, suffering, or death”); § 343.21, subdivs. 1, 7, 9 (prohibiting “torture” and “cruelty” and prescribing penalties). Separate legal prohibitions exist on promoting, engaging in, or attending animal fights. MINN. STAT. § 343.31.

47. See § 343.21, subdiv. 9 (discussing penalties).



second or subsequent violation within five years, gross misdemeanors.<sup>48</sup>

First-time intentional violations of the “torture”<sup>49</sup> or “cruelty”<sup>50</sup> provisions of the anti-cruelty statute that result in “substantial bodily harm to a pet or companion animal may be [punished by] imprisonment for not more than one year or . . . a fine of not more than \$3,000, or both.”<sup>51</sup> The maximum penalty for intentionally abusing a pet or companion animal is increased to two years in prison, a fine of not more than \$5,000, or both, if (1) the person has had a gross misdemeanor or felony conviction for animal abuse within the previous five years,<sup>52</sup> (2) the act was done “to threaten, intimidate, or terrorize another person,”<sup>53</sup> or (3) the act results in death or great bodily harm to the animal.<sup>54</sup> The potential penalties are still greater if both of the last two conditions apply.<sup>55</sup>

[If] the violation results in death or great bodily harm to a pet or companion animal, and the act is done to threaten, intimidate, or terrorize another person, [the offender] may be sentenced to imprisonment for not more than four years or to payment of a fine of not more than \$10,000, or both.<sup>56</sup>

The penalties for harming a service animal are greater than those for the same level of abuse against a pet or companion animal. Intentionally causing substantial bodily harm to a service animal, without justification, is punishable by up to two years in prison, a fine of not more than \$5,000, or both.<sup>57</sup> If the act causes great bodily harm or death, the maximum penalty is four years in prison, a fine of not more than \$10,000, or both.<sup>58</sup>

In addition to facing fines or imprisonment, a person convicted of violating the anti-cruelty law must surrender to authorities any pet or companion animal in his or her custody or control, “unless the court determines that the person is able and fit

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48. *Id.* For a discussion of the reasons behind this, see Kruse, *supra* note 22, at 1663–65 nn.130–45 and accompanying text.

49. § 343.21, subdiv. 1.

50. *Id.* at subdiv. 7.

51. *Id.* at subdiv. 9(b).

52. *Id.* at subdiv. 9(c).

53. *Id.* at subdiv. 9(f).

54. *Id.* at subdiv. 9(d).

55. *Id.* at subdiv. 9(h).

56. *Id.*

57. *Id.* at subdiv. 9(e).

58. *Id.* at subdiv. 9(g).

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## IMPROVING ANIMAL PROTECTION LAWS

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to provide adequately for an animal.”<sup>59</sup> If there is evidence to the contrary, the burden of proof is on the offender to “demonstrate by clear and convincing evidence” the ability to adequately provide for the animal’s needs.<sup>60</sup> The court may also limit the offender’s further possession of pets or companion animals.<sup>61</sup>

Additionally, the court has recourse to other sanctions it considers appropriate.<sup>62</sup> These potential conditions include, but are not limited to:

1. imposing a probation period during which the person may not have ownership, custody, or control of a pet or companion animal;<sup>63</sup>
2. requiring periodic visits of the person by an animal control officer or agent appointed pursuant to section 343.01, subdivision 1;<sup>64</sup>

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59. *Id.* at subdiv. 10.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at subdiv. 10(1).

64. *Id.* at subdiv. 10(2). Section 343.01 provides for the creation of “[a] state federation of county and district societies for the prevention of cruelty to animals . . .” MINN. STAT. § 343.01, subdiv. 1. Minnesota Federated Humane Societies is the organization created pursuant to this statute. The federation and all county and district societies may appoint agents for the purpose of investigating or otherwise assisting lawfully empowered officials in the prosecution of persons charged with cruelty to animals. Appointed agents must have training and experience in activities relating to prevention of cruelty to animals or enforcement of laws relating to cruelty to animals. *Id.* The creation of individual “county and district societies” is provided for in section 343.10. *Id.* § 343.10.

Section 343.10 was recently amended to prohibit county or district societies from “conduct[ing] investigations outside the boundaries of the county or counties included in the county or district society.” Act of May 4, 2007, ch. 45, art. 1, § 60, 2007 Minn. Sess. Law Serv. 105, 134–35 (West) (codified as amended at MINN. STAT. ANN. § 343.10 (West, Westlaw through 2007 Sess.)). When I asked the author of this amendment, Rep. Tom Rukavina, about the purpose of this language, he stated that it was in response to “abuse” in investigations by the “Golden Valley Humane Soc[iety].” E-mail from Rep. Tom Rukavina, Minnesota House of Representatives District 05A (July 27, 2007) (on file with author). He continued, “My animal shelters and humane [societies] up here have been angry about their abuse for years. It wa[s]n’t the first time I’ve tried to correct the problem. It’s not as if we don’t want to protect our animals, it’s just that we feel competent enough to do it ourselves.” *Id.*

Representative Rukavina further suggested that I read articles from the Mesabi Daily News if I wanted more information. *Id.* I did so, and the “problem” does not appear to warrant rewriting state law. See Charles Ramsay, *Mesabi Humane*

3. requiring performance by the person of community service; and<sup>65</sup>
4. requiring the person to receive psychological, behavioral, or other counseling.<sup>66</sup>

The 2001 legislation is obviously a positive step. A number of potential benefits arise from the availability of felony-level penalties for at least some instances of animal abuse.<sup>67</sup> First, they provide an increased incentive for prosecutors to pursue charges and provide leverage in plea negotiations.<sup>68</sup> Second, felony convictions allow for better tracking of abusers—something that is especially important in the case of repeat offenders.<sup>69</sup> Third, enhanced penalties send a public message about the serious nature of animal abuse. Finally, given a potential correlation between animal abuse and interpersonal violence, stronger penalties may help to protect both people and animals.<sup>70</sup>

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*Society Not the Bad Guys*, MESABI DAILY NEWS, July 16, 2007 (noting that visits to rural residences by humane agents have residents “concerned”); Editorial, *Fairness Lacking for Some Who Stand Accused of Animal Abuse*, MESABI DAILY NEWS, July 14, 2007 (asserting that what is alleged to be animal abuse is “either totally unfounded or else someone’s interpretation of day-to-day life in the rural area”). In fact, the articles suggest a need for more humane agents and enhanced investigative powers. The executive director of the Mesabi Humane Society has taken the “position” that it “[doesn’t] have a humane agent.” Ramsay, *supra*. Moreover, he commented that the Mesabi Humane Society “does not handle any livestock cases, only domesticated animals such as dogs and cats.” *Id.*

Fortunately, the Rukavina amendment would appear not to apply to investigations conducted by agents appointed by Minnesota Federated Humane Societies, which has independent authority to “appoint agents for the purpose of investigating or otherwise assisting lawfully empowered officials in the prosecution of persons charged with cruelty to animals.” MINN. STAT. § 343.01, subdiv. 1 (2006). Likewise, the new amendment may be circumvented by incorporating one or more new district societies to include counties without humane agents. *Id.* § 343.10 (“[A] district society for the prevention of cruelty to animals may be formed in any group of two or more contiguous or noncontiguous counties or parts of counties by not less than seven incorporators.”).

65. MINN. STAT. § 343.21, subdiv. 10(3) (2006).

66. *Id.* at subdiv. 10(4).

67. For a more detailed discussion of the potential benefits, see Kruse, *supra* note 22, at 1667–71.

68. Mitchell Fox, *Treating Serious Animal Abuse as a Serious Crime*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 306, 311 (Frank R. Ascione & Phil Arkow eds., 1999); Sauder, *supra* note 11, at 17.

69. Sauder, *supra* note 11, at 16.

70. See, e.g., Sauder, *supra* note 11 (suggesting that enforcement of felony

Despite these advances, much remains to be done. In the remainder of this Article, I present a brief overview of a number of possibilities for enhancing animal protection in Minnesota. In doing so, I have been mindful of the realities of the role of animals in human society and have thus avoided any truly “radical” changes, despite the fact that they would likely have the greatest impact on the lives of animals.

#### IV. SUGGESTIONS FOR IMPROVING ANIMAL PROTECTION IN MINNESOTA

The following are suggestions for improving the current state of animal protection laws in Minnesota. These proposals recognize that cases of animal abuse often encompass dual victims—the animals and their human caretakers or companions. The ideas presented below are not intended to be an exhaustive list of possible courses of action; they are simply offered as examples of the enhancements to existing law that should be considered.<sup>71</sup>

##### A. *Cruelty in the Presence of a Child*

Much has been written about the abuse of pets and companion animals as a means to control human victims,<sup>72</sup> and Minnesota law recognizes this connection by increasing penalties when animals are abused “to threaten, intimidate, or terrorize

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cruelty statutes may help reduce violence against humans); Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963 (1999) (suggesting that animal cruelty is related to other forms of antisocial behavior); Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1 (2001) (discussing research assessing the link between animal abuse and later criminal behavior).

71. For additional suggestions and proposed language for improving anti-cruelty laws, see Stephan K. Otto, *State Animal Protection Laws: The Next Generation*, 11 ANIMAL L. 131 (2005).

72. See, e.g., Frank R. Ascione, *Battered Women’s Reports of Their Partners’ and Their Children’s Cruelty to Animals*, 1 J. EMOTIONAL ABUSE 119 (1998) (reporting threatened or actual abuse of pets by partners of seventy-one percent of battered women who owned pets); Clifton P. Flynn, *Woman’s Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women*, 6 VIOLENCE AGAINST WOMEN 162 (2000) [hereinafter *Woman’s Best Friend*] (finding that almost half of battered women with pets reported that their partners had harmed or threatened to harm those pets); Clifton P. Flynn, *Battered Women and Their Animal Companions: Symbolic Interaction Between Human and Nonhuman Animals*, 8 SOC’Y & ANIMALS 99, 107–13 (2000) [hereinafter *Battered Women*] (discussing various types of pet abuse and its effect on battered women).

another person.”<sup>73</sup> Research suggests that, when animal abuse and domestic violence occur in the same household, the abuse of the animal often takes place in the presence of children.<sup>74</sup> Even in those cases in which other forms of violence are not present, the abuse of animals may have a deleterious effect on children.<sup>75</sup>

New Jersey is currently considering a bill which would, among other things, establish enhanced penalties for abusing an animal in the presence of a child.<sup>76</sup> The proposed law provides that:

A person is guilty of the crime of animal cruelty in the presence of a child if the person commits or threatens the immediate commission of [prohibited acts of animal cruelty] in the presence [of] a person who is in fact under the age of 18, with the purpose or knowledge that such person [shall] witness or observe the offense.<sup>77</sup>

Minnesota should enact a similar statute. Such a law would recognize the harm to a child of viewing animal abuse even when that abuse is not done specifically to threaten the child. In addition, it would relieve prosecutors in such cases from the burden of proving that the abuse was done for the purpose of intimidation—prosecutors would simply need to show that the abuser had knowledge that the child would witness the offense.

### B. Hoarding

When people think of animal cruelty, they often envision aggressive, violent acts. Animals, however, may also be abused by neglect or other acts of omission. Animal hoarding—situations in which people accumulate large numbers of animals for which they are unable to properly care—was, until recently, a largely

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73. MINN. STAT. § 343.21, subdiv. 9(f), (h) (2006).

74. Jane Ann Quinlisk, *Animal Abuse and Family Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE, & ANIMAL ABUSE 168 (Frank R. Ascione & Phil Arkow, eds., 1999) (noting that in those cases in which battered women report violence toward their animals, seventy-five percent of those incidents occurred in the presence of children).

75. See generally Carol D. Raupp, *Treasuring, Trashing or Terrorizing: Adult Outcomes of Childhood Socialization about Companion Animals*, 7 SOC'Y & ANIMALS 141 (1999) (discussing the later effects of childhood socialization regarding treatment of animals).

76. Anti-Animal Cruelty Act, Assemb. 2649, 212th Leg. (N.J. 2007), available at <http://www.njleg.state.nj.us/> (search Bill Number “A2649”).

77. *Id.* § 8(a).

unrecognized problem.<sup>78</sup> Hoarders often live and keep their animals in squalid conditions.<sup>79</sup> These conditions pose substantial health risks for both humans and animals.<sup>80</sup> Perhaps the most difficult problem with hoarders is that they do not recognize the harm they are doing to themselves and the animals, and, in fact, they often view themselves as helping the animals.<sup>81</sup>

Like most states, Minnesota currently has statutes mandating minimum standards for the conditions in which certain types of animals may be kept.<sup>82</sup> Such laws, however, do not recognize the psychological factors involved in hoarding.<sup>83</sup> Accordingly, Minnesota should follow the lead of Illinois and enact a separate provision prohibiting hoarding.<sup>84</sup> This statute should include both

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78. Colin Berry et al., *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167, 168 (2005). An animal hoarder is defined as “an individual who accumulates a large number of animals, who fails to provide the animals with adequate food, water, sanitation, and veterinary care, and who is in denial about this inability to provide adequate care.” *Id.*

79. *Id.* Their homes are “usually unsanitary, often covered in animal waste, trash, and sometimes even rotting animal carcasses.” *Id.*

80. *Id.* at 169.

81. *Id.* at 168. See also Gary J. Patronek, *The Problem of Animal Hoarding*, MUN. LAW., May/June 2001, at 6. The fact that hoarders tend to be middle-aged or older females who often hold themselves out as animal “rescuers” makes them somewhat sympathetic subjects in media reports. *Id.*

82. See MINN. STAT. §§ 346.35–.44 (2006).

83. See Berry et al., *supra* note 78, at 169 (discussing the mental health aspect of hoarding behavior). Although there is agreement among experts that hoarders suffer from serious psychological disorders, there is less consensus on the types of disorders underlying hoarding behavior. See Susan E. Davis, *Prosecuting Hoarders is Like Herding Cats*, CAL. LAW., Sept. 2002, at 26, 29.

84. Under Illinois law, a “companion animal hoarder” is defined as:

a person who (i) possesses a large number of companion animals; (ii) fails to or is unable to provide what he or she is required to provide under [Illinois law]; (iii) keeps the companion animals in a severely overcrowded environment; and (iv) displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the companion animals are living and the deleterious impact they have on the companion animals’ and owner’s health and well-being.

510 ILL. COMP. STAT. ANN. 70/2.10 (West 2004). In addition to other penalties for violation of the Illinois Humane Care for Animals Act, “[i]f the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.” 510 ILL. COMP. STAT. ANN. 70/3.02, 70/16(h) (West 2007).

a prohibition on any future custody of animals and a provision for psychological evaluation and treatment.<sup>85</sup>

As things currently stand, prosecution of hoarding cases is quite difficult.<sup>86</sup> “A successful prosecution hinges on good police work, laws that keep hoarders from repeating their crimes, and community understanding of the true nature of the problem.”<sup>87</sup> Because of the difficulties in getting consent for property searches from alleged hoarders, it is also important that courts issue effective search warrants that “allow officers to search the premises for appropriate medication and food; samples of dirty flooring, walls, and food and water dishes; and any sick or injured animals that might need immediate treatment.”<sup>88</sup> Adopting a law akin to that of the Illinois law is not a panacea, but it is a good first step in combating hoarding.

### C. Prohibitions on Ownership of Animals

Minnesota law currently allows judges to “impos[e] a probation period during which [a person convicted under the anti-cruelty statute] may not have ownership, custody, or control of a pet or companion animal . . . .”<sup>89</sup> Although prohibiting abusers from owning animals is desirable, the statutory language is somewhat ambiguous. It is unclear whether this simply means that, if a judge sentences a convicted abuser to probation in lieu of or in addition to other punishment, any prohibition on ownership may only run for the duration of that probation, or whether the judge is authorized to impose a separate ban on ownership.<sup>90</sup> The statute

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85. Recidivism among hoarders “is rapid and may be almost universal.” Patronek, *supra* note 81, at 7. To be truly effective, prohibitions on custody of animals must include monitoring. *Id.* In addition, because hoarding presents as much a mental health as a legal issue, psychological testing is especially important. See Gary J. Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult-to-Study Population*, 114 PUB. HEALTH REP. 81, 86 (1999) (noting the mental health aspects of hoarding behavior).

86. See Davis, *supra* note 83, at 67.

87. *Id.*

88. *Id.*

89. MINN. STAT. § 343.21, subdiv. 10(1) (2006).

90. See Paul Gustafson, *Puppy Killer Gets 9½-Month Term*, STAR TRIB. (Minneapolis), Mar. 9, 2007, at 5B (noting that, although the anti-cruelty statute raised the possibility that a convicted puppy killer could be banned for life from owning pets, “prosecutors determined that they couldn’t enforce a pet-ownership ban beyond [the convicted person’s two-year] probation”).

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should be amended to clear up this ambiguity—preferably to provide for a lifetime ban on ownership.

The city of St. Paul recently amended<sup>91</sup> its dog-licensing ordinance to provide as follows:

An individual who, within the last five years, has had one or more dogs removed from his/her care two or more times for any of the following reasons shall be disqualified from holding a license under this section:

1. Owning or maintaining a dog which has been declared dangerous because it has without provocation caused bodily injury or disfigurement to any person on public or private property;
2. Owning or maintaining a dog which has been declared dangerous because it has exhibited unusually aggressive behavior, such as an attack on another animal;
3. Owning or maintaining a dog which has been declared dangerous because it has bitten one (1) or more persons on two (2) or more occasions;
4. Owning or maintaining a dog which has been declared dangerous because it has been found to be potentially dangerous and/or the owner has personal knowledge of the same, and the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals;
5. Owning or maintaining a dog which has fresh wounds, scarring, or is observed in a fight, or has other indications which to a reasonable person evidences that the animal has been or will be used, trained or encouraged to fight with another animal;

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91. St. Paul, Minn., Ordinance 07-314 (Apr. 25, 2007) (amending chapter 200 of the St. Paul Legislative Code to disqualify certain individuals from licensing dogs). See Action Minutes of the St. Paul City Council, Apr. 25, 2007, agenda item. 26. The ordinance passed on a 7-0 vote. *Id.*



6. Violating Minn. Stat. § 343.21; or
7. Having a dog removed pursuant to Minn. Stat. §§ 343.12, 343.22, 343.29, or 343.31.<sup>92</sup>

This ordinance provides a good starting point for updating state law, but it should be expanded in at least three ways. First, it should apply to possession or ownership, not just licensing.<sup>93</sup> Second, it should apply to all animals, not simply dogs, at least insofar as the removal was for a violation of the anti-cruelty law. Finally, the language requiring that removal occur “within the last five years” should be removed. If animals need to be removed twice for violation of the anti-cruelty law, regardless of the time frame involved, a permanent ban on ownership should apply.

#### D. Protective Orders

Perhaps one of the most important steps that can be taken to protect both animals and humans from abuse is to include animals in orders for protection in cases of domestic violence. A number of studies point to the prevalence of animal abuse in domestic violence situations.<sup>94</sup> Actual or threatened abuse of animals serves to intimidate and control human victims in a multitude of ways.<sup>95</sup> “Companion animals may be hostages, tools of humiliation, or threatening examples of potential human pain and suffering that

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92. St. Paul, Minn., Ordinance 07-314 (Apr. 25, 2007) (codified at ST. PAUL, MINN., LEG. CODE § 202.02(d) (2007)) (amending chapter 200 of the St. Paul Legislative Code to disqualify certain individuals from licensing dogs). See Action Minutes of the St. Paul City Council, Apr. 25, 2007, agenda item 26. The ordinance passed on a 7-0 vote. *Id.*

93. It should be noted that under the St. Paul Legislative Code, licensing is required to “own, harbor, keep or maintain” a dog over three months of age. ST. PAUL, MINN., LEG. CODE § 200.02(a) (2007). Accordingly, a prohibition on licensing is effectively a prohibition on ownership.

94. See, e.g., *Woman’s Best Friend*, *supra* note 72 (finding that almost half of battered women with pets reported that their partners had harmed or threatened to harm those pets); Ascione, *supra* note 72 (reporting threatened or actual abuse of pets by partners of seventy-one percent of battered women who owned pets); Frank R. Ascione et al., *The Abuse of Animals and Domestic Violence*, 5 SOC’Y & ANIMALS 205 (1997) (discussing the high incidence of pet abuse by partners of battered women).

95. See *Battered Women*, *supra* note 72 (discussing various types of pet abuse and its effect on battered women).

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could be inflicted.”<sup>96</sup> In fact, victims often delay leaving their batterers out of concern for the well-being of their pets.<sup>97</sup>

Moreover, the potential for using animals as a means of control remains after the victim has left the abuser.<sup>98</sup> When companion animals are left behind, abusers may harm or threaten the animals “to intimidate victims into dropping charges and/or returning home.”<sup>99</sup>

Between 2006 and 2007, recognizing the role of animal abuse in domestic violence situations, the states of Maine,<sup>100</sup> New York,<sup>101</sup> Vermont,<sup>102</sup> California,<sup>103</sup> and Illinois<sup>104</sup> revised their laws regarding

96. Raupp, *supra* note 75, at 143.

97. Flynn, *Woman’s Best Friend*, *supra* note 72, at 122. Because of this, Sociology Professor Clifton Flynn has suggested that domestic abuse shelters should work to provide housing for pets, perhaps in conjunction with local animal shelters, to encourage women to seek help. *Id.* at 123.

98. Flynn, *Woman’s Best Friend*, *supra* note 72, at 172.

99. *Id.* As an example, consider the following account by a social worker: My first day as a newly hired, freshly graduated, starry-eyed counselor at the local battered women’s shelter almost made me run home crying. Not because of the black eyes and bruises that shadowed the women’s faces. . . . I was prepared for that (as much as one can be) . . . . What I wasn’t prepared for were the pictures my first client brought to show me, apologetically, to explain why she had to return home. The pictures were of her “loving” husband cutting her beloved dog’s ears off with a pair of garden shears. He had sent the ears along, too, but her mother thankfully neglected to forward them.

Quinlisk, *supra* note 74, at 168.

100. Domestic Relations statute amended to authorize a court issuing a protective order to “[d]irect[] 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.” ME. REV. STAT. ANN. tit. 19-A, § 4007(1)(N) (West Supp. 2006).

101. Family Court Act amended to authorize a court issuing an order for protection to require the petitioner or respondent “to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.” N.Y. FAM. CT. ACT § 842(i)(1) (McKinney Supp. 2007).

102. Vermont Law amended to authorize a court issuing a personal protection order to order a defendant “to refrain from . . . cruelly treating as defined in [Vermont Law] or killing any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household . . . .” VT. STAT. ANN. tit. 15, § 1104(a)(1)(A) (West Supp. 2007).

103. Family Code amended to provide that:

[o]n a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent. The court may order the respondent to stay away from the animal and forbid

protective orders to include animals. A number of other states are considering similar amendments.<sup>105</sup> Minnesota should do the same.

The International Institute for Animal Law has proposed model language for legislation authorizing the inclusion of animals in protective orders. This model Domestic Abuse Animal Protection Act states:

§1 Purpose:

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

§2 Protection Orders:

(a) In any domestic violence case, the court shall order that the petitioner be granted the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent.

(b) The court shall further order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

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the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

CAL. FAM. CODE § 6320(b) (West, Westlaw through 2007 Sess.).

104. Code of Criminal Procedure amended to allow the court to “[g]rant the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.” 725 ILL. COMP. STAT. ANN. 5/112A-14(b)(11.5) (West, Westlaw through 2007 Sess.).

105. According to the Humane Society of the United States, as of March 2007, legislatures in Colorado, Connecticut, Illinois, Maryland, New Jersey, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and the District of Columbia were also considering “pet protection” legislation. *See* The Humane Society: Pet Protective Orders, [http://www.hsus.org/hsus\\_field/first\\_strike\\_the\\_connection\\_between\\_animal\\_cruelty\\_and\\_human\\_violence/pet\\_protective\\_order.html](http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/pet_protective_order.html) (last visited Apr. 28, 2008).

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### §3 Penalties

- (a) Any violation of this statute is a Class A misdemeanor.
- (b) Any violation subsequent to the first violation is a Class 4 felony.<sup>106</sup>

The model statute is useful in that it allows the court to both direct custody of the animal and forbid the defendant from harming that animal. Given the ubiquitous presence of animal abuse in homes where there is domestic violence and the role such abuse plays in controlling the victim of that violence, adopting such language would protect both animals and their human caretakers.

#### *E. Mandatory Reporting*

Minnesota currently requires veterinarians to report suspected cases of animal abuse.<sup>107</sup> Such mandatory reporting should be extended to other classes of individuals who are likely to come into contact with abused animals, including veterinary students and interns, other employees in veterinary offices who have contact with animals, social workers, teachers, and clergy members. In addition, such reporters should be granted immunity for good-faith reporting of suspected cases of abuse.<sup>108</sup>

#### *F. Dedication of Fines for Animal Protection Efforts*

Currently, counties may recoup from individuals convicted of animal cruelty the costs of investigation of cruelty complaints, “including the fee of the doctor of veterinary medicine, the expenses of keeping or disposing of any animal taken into custody pursuant to an investigation, and all other expenses reasonably incident to the investigation . . . .”<sup>109</sup> Although this is a good start, Minnesota should follow the lead of Illinois and set up an Animal Abuse Fund.<sup>110</sup> Under recently enacted legislation, fifty percent of

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106. International Institute for Animal Law: Protective Order Model Law, <http://www.animallaw.com/protectiveordermodellaw.htm> (last visited Apr. 28, 2008).

107. MINN. STAT. § 346.37, subdiv. 6 (2006).

108. Arguably, such reporting could fall under the “Good Samaritan” statute. *Id.* at subdiv. 2 (stating that “[a] person is not liable for rendering humane assistance to an injured pet or companion animal.”).

109. MINN. STAT. § 343.23 (2006).

110. 510 ILL. COMP. STAT. ANN. 70/16.4 (West 2004) (creating “a special fund in the State treasury . . . to investigate animal abuse and neglect . . .”).

the fines collected for felony and class C misdemeanor violations of the Illinois anti-cruelty law, and twenty percent of fines collected for other misdemeanor violations of the law, are deposited into this fund.<sup>111</sup> Such a fund in Minnesota would help provide assets for enhanced enforcement. Additionally, this endowment could pay for veterinary and related bills arising from the abuse of animals.

*G. Training for Law Enforcement & Prosecutors*

For far too long many in law enforcement have paid little attention to cases of animal cruelty and have relegated such cases to the lowest priority.<sup>112</sup> Moreover, when they do respond, officers typically have little training in investigating cruelty cases.<sup>113</sup> Prosecutors may likewise have little interest in pursuing such cases.<sup>114</sup> Even when charges are brought, cases may not be warmly received by the court.<sup>115</sup>

Such views are changing as more people recognize the impact of animal cruelty on both animals and humans. For example, the Law Enforcement Training Unit at the University of Missouri recently created a National Cruelty Investigations School.<sup>116</sup> Training is conducted at various sites around the country and individuals who complete 120 hours of instruction receive certification as a “Certified Humane Investigator.”<sup>117</sup> Law enforcement agencies should encourage officers to take such training. For prosecutors, continuing legal education (CLE)

111. 705 ILL. COMP. STAT. ANN. 105/27.5(b) (West 2007).

112. Friend, *supra* note 1, at 215–20; Joyce Tischler, *Zero Tolerance for Cruelty: An Approach to Enhancing Enforcement of State Anti-Cruelty Laws*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 297, 299–300 (Frank R. Ascione & Phil Arkow eds., 1999).

113. Tischler, *supra* note 112, at 297.

114. There are, of course, some prosecutors who strongly support the prosecution of cruelty cases. See, e.g., Boyd A. Beccue, *Criminal Prosecution of Animal Neglect: Important Practice Notes*, in ANIMAL CRUELTY IN MINNESOTA: PUTTING AN END TO THE VIOLENCE 2 (Pamela Finamore et al. eds., 2000) (“Perpetrators of animal abuse can and should be charged for each count of cruelty they commit.”).

115. Tischler, *supra* note 112, at 298. “One prosecutor told [the Animal Legal Defense Fund] of a judge who was enraged that she dared to take up his court time with such trivia as a cruelty case.” *Id.*

116. The Law Enforcement Training Institute, National Cruelty Investigations School, <http://leti.missouri.edu/animal3.htm> (last visited Apr. 28, 2008).

117. *Id.*

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courses addressing animal welfare issues should be offered regularly and attorneys encouraged to attend.<sup>118</sup>

#### H. Civil Enforcement

As noted above, part of the difficulty in protecting animals is that cruelty cases are often not given high priority in the criminal justice system.<sup>119</sup> One way of remedying this situation is to allow for the civil enforcement of anti-cruelty laws.

Currently, only one state, North Carolina, allows for civil enforcement of such laws.<sup>120</sup> The North Carolina law “grant[s] standing to any person or organization to enforce via injunction a civil anti-cruelty statute that is just as broad as the state’s criminal anti-cruelty statute.”<sup>121</sup> The civil enforcement statute provides, in part:

##### § 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal.

##### § 19A-3. Preliminary injunction; care of animal pending hearing on the merits.

(a) Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in [North

118. For CLEs sponsored by the Animal Law Section of the Minnesota State Bar Association, see Meeting Notices, <http://www2.mnbar.org/sections/animal-law/notices.asp> (last visited Apr. 28, 2008).

119. Friend, *supra* note 1, at 218–20.

120. William A. Reppy, Jr., *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 ANIMAL L. 39, 40–41 (2005). See also N.C. GEN. STAT. ANN. §§ 19A-1 to -4 (LexisNexis 2005 & Supp. 2006).

121. *Id.*

Carolina law]. Every such preliminary injunction, if the plaintiff so requests, may give the plaintiff the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the plaintiff to take possession of the animal as custodian.

(b) The plaintiff as custodian may employ a veterinarian to provide necessary medical care for the animal without any additional court order. Prior to taking such action, the plaintiff as custodian shall consult with, or attempt to consult with, the defendant in the action, but the plaintiff as custodian may authorize such care without the defendant's consent. Notwithstanding the provisions of this subsection, the plaintiff as custodian may not have an animal euthanized without written consent of the defendant or a court order that authorizes euthanasia upon the court's finding that the animal is suffering due to terminal illness or terminal injury.

(c) The plaintiff as custodian may place an animal with a foster care provider. The foster care provider shall return the animal to the plaintiff as custodian on demand.

§ 19A-4. Permanent injunction.

(a) In accordance with [North Carolina law], a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction and dismissal of the action along with dissolution of any preliminary injunction that had been issued.

(b) If the plaintiff prevails, the court in its discretion may include the costs of food, water, shelter, and care, including medical care, provided to the animal, less any amounts deposited by the defendant . . . as part of the costs allowed to the plaintiff under [North Carolina law]. In addition, if the court finds by a

preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner. For good cause shown, the court may also enjoin the defendant from acquiring new animals for a specified period of time or limit the number of animals the defendant may own or possess during a specified period of time.

(c) If the final judgment entitles the defendant to regain possession of the animal, the custodian shall return the animal, including taking any necessary steps to retrieve the animal from a foster care provider.

(d) The court shall consider and may provide for custody and care of the animal until the time to appeal expires or all appeals have been exhausted.<sup>122</sup>

This is likely to be the most controversial of the proposals presented in this Article and would almost certainly bring forth all manner of histrionics and apocalyptic predictions from proponents of vivisection, blood sports, industrial agriculture, and assorted fellow travelers. Indeed, in North Carolina, the civil enforcement statute has been watered down substantially through the addition of numerous exemptions.<sup>123</sup> As Professor Reppy notes, the civil remedy statute originally largely mirrored the criminal anti-cruelty statute.<sup>124</sup> This symmetry was short-lived, however, as various groups lobbied for, and received, exemptions from civil enforcement, apparently out of fears of "activists" attempting to enjoin their activities.<sup>125</sup> These exemptions, as Professor Reppy points out, are unnecessary because unfounded actions could be discouraged in a number of other ways, including the imposition of sanctions under

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122. N.C. GEN. STAT. ANN. §§ 19A-2 to -4 (LexisNexis 2005 & Supp. 2006).

123. See Reppy, *supra* note 120, at 53–60 (discussing the addition of exemptions to the statute).

124. *Id.* at 53–54.

125. *Id.* at 54–55.



Rule 11, liability for malicious prosecution, and statutory awards of attorney's fees to prevailing parties.<sup>126</sup>

Although civil enforcement is desirable, those wishing to champion such a statute in Minnesota should be aware of one further danger—the possibility that once exemptions have been enshrined in the civil statute, they will find their way into the criminal statute. This is what happened in North Carolina.<sup>127</sup> When the legislature amended the criminal statute to create a felony provision, it also imported almost all of the exemptions from the civil law.<sup>128</sup> To make matters worse, the exemptions were not just added to the felony clause, but to the misdemeanor cruelty law as well.<sup>129</sup>

Minnesota's anti-cruelty provision does not presently include exemptions.<sup>130</sup> In fact, the felony provision was limited to pets and service animals to avoid adding exemptions to the law.<sup>131</sup> Proponents of civil enforcement should weigh carefully the pros and cons before moving forward.

## V. CONCLUSION

Although none of the improvements suggested above are particularly "radical," I hold no delusions that many will be implemented in the near future. If there is one thing that I have learned during the years I have studied animal issues—as both a sociologist and as a lawyer—it is that any legislation proposing improvements in the treatment of animals stimulates substantial opposition from any number of sources. With rare exception, the animal-abuse lobby is far too powerful, the unthinking exploitation of animals far too ingrained, and the economic interests far too great to allow any but the most minimal upgrades to the present situation. Nonetheless, incremental progress is arguably better than no progress at all. It is my hope that this Article stimulates debate on our treatment of animals and serves to cause readers to rethink, at least briefly, the status quo. Perhaps animals (and humans) in Minnesota will even gain some additional measure of protection as a result.

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126. *Id.* at 55–56.

127. *Id.* at 60.

128. *Id.*

129. *Id.*

130. *See* MINN. STAT. § 343.21 (2006).

131. *See* Kruse, *supra* note 22, at 1663–65.