



## **OPPOSE HB1499 – An Act to Include Animals in Abuse Prevention Orders (Rep. Koutoujian)**

Referred to Joint Committee on the Judiciary

### **PROBLEM:**

The research documenting the link between animal abuse and violence toward humans is increasing, particularly in cases of domestic violence. More education is needed to deal with this violence link.

### **HISTORY:**

Judges in the Commonwealth currently have the power to write Restraining Orders (209A) including personal property (computers, furniture, vehicles, etc.), minor children and pets.

### **WHAT THIS BILL DOES:**

1. It gives the "custody of the animal to the plaintiff" thereby assuming the defendant is the abuser of the animal.
2. It only protects an animal from abuse if the human plaintiff is being abused and seeks a restraining order.
3. It assumes that the plaintiff (person being abused) would be the better caretaker of the animal.
4. It does not define animal abuse, nor does it refer to other existing animal cruelty laws.

### **WHY YOU SHOULD OPPOSE:**

1. This bill would raise the status of an animal/pet to the same legal status of a minor child. Pets are personal property and should be treated as such.
2. This bill is redundant in regard to the powers already granted to judges who write restraining orders.
3. Domestic Violence organizations are well aware of the link between spouse/animal abuse and are working to educate law enforcement.

### **FOR MORE INFORMATION:**

**Massachusetts Federation of Dog Clubs and Responsible Dog Owners**

Virginia Rowland, President; Blackslate@aol.com; 978-424-1044

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MassFed 05/21/09

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**HOUSE . . . . . No. 1499**

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian, Katherine Clark

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:  
The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Include Animals in Abuse Prevention Orders.

Peter J. Koutoujian 10th Middlesex  
Martha M. Walz 8th Suffolk  
Christine E. Canavan 10th Plymouth  
Robert L. Hedlund Plymouth and Norfolk  
Richard T. Moore Worcester and Norfolk  
Elizabeth A. Malia 11th Suffolk  
Steven J. D'Amico 4th Bristol  
James B. Eldridge Middlesex and Worcester  
Kenneth J. Donnelly Fourth Middlesex  
Timothy J. Toomey, Jr. 26th Middlesex  
Denise Provost 27th Middlesex  
Colleen M. Garry 36th Middlesex  
Anthony D. Galluccio Middlesex, Suffolk and Essex  
Anthony W. Petrucci First Suffolk and Middlesex  
Paul McMurtry 11th Norfolk  
Robert J. Nyman 5th Plymouth  
Anthony D. Galluccio Middlesex, Suffolk and Essex  
Kathi-Anne Reinstein 16th Suffolk  
Marc R. Pacheco First Plymouth and Bristol

Katherine Clark 32nd Middlesex  
John P. Fresolo 16th Worcester  
Walter F. Timilty 7th Norfolk  
Bill Bowles 2nd Bristol  
Scott P. Brown Norfolk, Bristol and Middlesex  
Michael Brady 9th Plymouth  
Lori Ehrlich 8th Essex  
Bruce J. Ayers 1st Norfolk  
John W. Scibak 2nd Hampshire  
Jennifer M. Callahan 18th Worcester  
Denis E. Guyer 2nd Berkshire  
Bruce E. Tarr First Essex and Middlesex  
Kevin G. Honan 17th Suffolk  
Ann-Margaret Ferrante 5th Essex  
Carl M. Sciortino, Jr. 34th Middlesex  
Kathi-Anne Reinstein 16th Suffolk  
Alice Hanlon Peisch 14th Norfolk  
Cory Atkins 14th Middlesex  
Geraldo Alicea 6th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

**AN ACT TO INCLUDE ANIMALS IN ABUSE PREVENTION ORDERS.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3 of Chapter 209A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "minor" in line 6 the following words:- ; ordering the possession, care and control of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household to the plaintiff. The court may order the defendant to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming, or otherwise disposing of the animal;

CURRENT LAW TO BE AMENDED

CHAPTER 209A. ABUSE PREVENTION

Chapter 209A: Section 3. Remedies; period of relief

Section 3. A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

(a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor; **(INSERT NEW TEXT HERE) ordering the possession, care and control of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household to the plaintiff. The court may order the defendant to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming, or otherwise disposing of the animal;**

(b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;

(c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;

(d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an "abusive parent" shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child's best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

- (a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;
- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;
- (c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;
- (d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;
- (e) ordering the abusive parent to pay the costs of supervised visitation;
- (f) prohibiting overnight visitation;
- (g) requiring a bond from the abusive parent for the return and safety of the child;
- (h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and
- (i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearing.

(e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines. Each judgment or order of support which is issued, reviewed or modified pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section 12 of chapter 119A;

(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

(g) ordering information in the case record to be impounded in accordance with court rule;

(h) ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;

(i) the judge may recommend to the defendant that the defendant attend a batterer's intervention program that is certified by the department of public health.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiff's address is inaccessible to the defendant as provided in section 8 of this chapter and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention.

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter except orders for custody or support.

If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.