



The official Publication of the New York State Bar Association's Committee on Animals and the Law

Co-Editors and Publication Subcommittee Co-Chairs:

Adam N. Lepzelter, Esq.
Breanna Reilly, Esq.

Publication Subcommittee Members:

Kirk Passamonti, Esq.
Ashley Chase, Esq.
Fiona Farrell, Esq.
Jim Sarlis, Esq.
Stacey Tranchina, Esq.

COAL Officers:

Barbara J. Ahern, Esq., *Chair*
Kirk Passamonti, Esq., *Vice-Chair*
Stacey Tranchina, Esq., *Secretary*

Find us on the web at:

<https://nysba.org/committees/committee-on-animals-and-the-law/>

IN THIS ISSUE

From The Chair

COAL 2023 Legislation Subcommittee Report

Spotlight on the Special Projects

Subcommittee Part II: Guide to the Use
of Service and Support Animals in New
York State and New York City

Monkey Business: From Comic Book Ads to
Primate Protection Laws, by Jim Sarlis,
Esq.

Laws Protecting Service Animals in New
York, by Adam N. Lepzelter, Esq.

The Court of Appeals Denies "Happy" The
Elephant's Release to an Elephant
Sanctuary, by Lydia S. Antoncic, Esq.

Helping Hands: The Transition from Service
Monkeys to Emerging Technologies, by
Jim D. Sarlis, Esq.

NYSBA Committee on Animals and the Law
Member Spotlight: Rebecca Flynn
Graham Thompson, Esq., by Breanna C.
Reilly, Esq.

2022 Student Writing Competition Third and
Fourth Place Finishers

Laws & Paws Word Search

Letter from the Chair, Barbara J. Ahern, Esq.

As I sit down to write this column, it is early September – always a time of change, when the lazy days of summer come to an end, and the busier days of fall are upon us. There are many other changes with this September as well, still related to the pandemic and to the adjustments people are making as pandemic rules and cautions come to an end. The Committee delivered a CLE program in the first pandemic year (2020) that addressed some of the issues that faced those of us with dogs and cats in our homes, who discovered that we did not always have easy access to veterinary care. Those problems continue to exist, and the Committee is seeking to find a way of ensuring that veterinary care will be available for all our animals when it is needed.

The other post-pandemic issue for companion animals is the overcrowding of animal shelters, made worse when the “pandemic pets” taken by people into their homes during the pandemic have been left at a shelter when those same people were no longer spending working hours at home. In my area of upstate New York, the local regional shelter has put out a plea for adopters, because they are so overcrowded; and they have stopped taking stray and abandoned dogs and cats from neighboring towns. My heart goes out to all those dogs and cats who deserve homes with families, not a shelter life. The Committee supported legislation in 2022 that established new standards for shelters to ensure that the animals in the shelters would be provided quality care and a safe place to live. Many members of the Committee are looking for other ways to help those companion animals in shelters have a better life. It is a worthy effort.

And these are just the companion animal issues that have presented themselves before us. The Committee also works on issues related to horses, agricultural animals, exotic animals and wildlife. We have held CLE programs on issues related to all these different kinds of animals, and do so to raise awareness among other members of the Bar Association (and attorneys outside NYSBA) about the need to work for more humane treatment of all these different animals who live among us. We support different pieces of legislation that would help horses, including a bill passed this year to prohibit the slaughter of horses for human or animal consumption, agricultural animals, exotics, and the many different species grouped together as “wildlife.”

I dread the fall scheduling of events by local Rod and Gun Clubs that hold “killing contests” to reward those members who kill the greatest numbers of wild animals – squirrels, coyotes, crows, and others -- for no reason other than sport, and then leave the dead carcasses behind. The Committee has worked for several years to support legislation that would prohibit these killing contests. It was passed this year by the legislature, after being taken up by the Assembly on the last day of the 2023 legislative session. It was a shock to listen, during the debate, to Assemblymembers who opposed the bill, talking about the “sport” in these events, and suggesting that the bill sponsor had no business listening to humane groups who opposed these killing contests and supported the prohibition. There is much work to be done to change the way that people think about the animals among us.

This issue of *Laws and Paws* comes at the beginning of my last year as Chair of the Bar Association's Committee on Animals and the Law. There is much information in this issue of *Laws and Paws* that exemplifies the work that the Committee does, and the issues we support. Please take the time to read – and think about – the idea of personhood for animals, supported by the Nonhuman Rights Project in their litigation seeking to move the elephant Happy from the Bronx Zoo to a more humane setting; the long history of monkeys kept as pets before the practice was outlawed in 2005; and the list of other bills that the Committee supports in order to make life better for animals.

There is still much to be done – in New York, in this country and in the world around us – to give animals the quality of life they deserve. Please join us – at our CLEs, in our legislative campaigns, and on other projects – as we try to move the world in that direction.

A handwritten signature in black ink, appearing to read "Barbara J. Ahern". The signature is written in a cursive style with a long horizontal line extending to the right.

Barbara J. Ahern, *Chair, Committee on Animals and the Law*

COAL 2023 Legislation Subcommittee Report

New York State Bar Association's Committee on Animal Law (COAL) position memoranda are available at <https://nysba.org/2023-and-2024-legislative-memoranda>. The public portion of the Legislative Retrieval Service (LRS) provides access to bill status, text, summary and sponsor's memos <http://public.leginfo.state.ny.us/navigate.cgi> [public.leginfo.state.ny.us]

I. Bills Signed into Law

(1) S. 846 (Gianaris) / A.981 (L. Rosenthal) – Chapter 35 of the Laws of 2023, effective 3/3/23

Allows a retail pet store to receive rental fees from animal adoption organizations.

This 2023 law is a chapter amendment to the 2022 law that prohibited the sale of cats, dogs and rabbits in retail pet stores. The 2023-chapter amendment allows a retail pet store to receive a reasonable rental fee for space in which an SPCA, humane society or animal protective association, adoption or rescue organization showcases dogs, cats and rabbits available for adoption; and extends the effective date of the 2022 law prohibiting dogs, cats and rabbits from being sold in retail pet stores until 12/15/24. The COAL did not take a position.

(2) S.2123 (Addabbo) / A.3777 (Paulin) – Chapter 131 of the Laws of 2023, effective 12/15/2025

Technical correction for legislation related to the transport of animals to shelters.

This 2023 law is a chapter amendment to the 2022 law enacting standards of care for animals held in, or being transported by, animal shelters. The 2023-chapter amendment makes a technical correction to the dedicated fund that will receive interest on funds held to carry out the 2022 law and provides that funds shall be deposited into the animal shelter regulation fund. The COAL did not take a position.

(3) S.7459 (Martinez) / A.6996 (Wallace) – Chapter 153 of the Laws of 2023, effective 6/30/23

Provides that when a medication is prescribed for animals that information may be provided in writing or orally and noted in the veterinary medical record.

This 2023 law is a chapter amendment to the 2022 law requiring a veterinarian to provide certain information on drugs prescribed for or dispensed to a dog, cat or rabbit to the owner or agent of the dog, cat or rabbit. The 2023-chapter amendment provides that the information must be provided when a drug that will be used outside the veterinary office is initially prescribed; provides that the information may be provided in writing or orally, noted in the veterinary medical record; and extends the effective date of the 2022 law to 6/15/24. The COAL did not take a position.

II. Bills passed by both houses but not yet delivered to the Governor

(1) S.1677-A (Addabbo) / A.3552-A (Pretlow)

Increasing fines for selling a disabled member of the Equidae family at auction.

This bill amends the Agriculture and Markets Law Section 358. The bill increases fines for certain auction sales of certain disabled or diseased horses and expands coverage from horses to all equids. The fines are increased to not more than \$1000 per violation from fines of not less than \$5 nor more than \$100. Fines apply to any licensed auctioneers to receive or offer for sale or sell at public auction any Equidae (the taxonomic family that includes, among other, ponies, miniature horses, donkeys, mules, and zebras) who is diseased, debilitated, or lame, or for any other cause such that working that equid would violate the state's law against cruelty to animals. Possible punishment of not more than six months' imprisonment or both fine and imprisonment remains unchanged. The COAL supported – Letter to the Governor.

(2) S.2163-B (Addabbo) / A.5109-A (Glick)

Prohibits the slaughter of horses and similar species for human or animal consumption.

This bill amends the Agriculture and Markets Law to prohibit the slaughter of horses, including horses, ponies, donkeys, mules, asses and burros, for human or animal consumption. To strengthen its prohibitions, the bill makes it unlawful for a person who owns or is buying a horse to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, receive, give away, hold or accept, or direct another to do so, with intent to slaughter the horse for human or animal consumption. Violation of the bill's prohibitions is a misdemeanor punishable by a civil penalty up to \$1,000 for an individual or \$2,500 for a corporation for a first offense, with those monetary penalties doubling for subsequent offenses. This bill will close gaps in current law that allow for the transport of horses across the border to Canada, where slaughterhouses and abattoirs exist for horses. The prohibition is a humane measure protecting older horses, and a public health measure providing that horsemeat tainted with medications taken by horses for therapeutic or performance reasons will not be included in food intended for human or animal consumption. The COAL supported – COAL Memo in Support #18.

(3) S.2630 (May) / A.783 (Hunter)

Establishes an Urban Deer Management Program – Pilot Program

This bill establishes an urban deer management pilot program; authorizes the Department of Environmental Conservation, after a review of the site-specific deer management plan, and upon a finding that deer have become a nuisance, destructive to public or private property or a threat to public health or welfare, to issue a certified nuisance wildlife specialist a deer cull permit. The COAL did not take a position.

(4) S.4099 (Kennedy) / A.2917 (Glick)

Prohibits prizes for animal killing contests.

This bill amends the Environmental Conservation Law to prohibit the organizing, promoting, conducting, or participation in events in which wildlife are killed for monetary or other prizes given to the individual or team that has killed the largest number of animals. Violations are subject to fines ranging from \$500 to \$2000 per violation and forfeiture of any animals killed to DEC. Exempted from the prohibitions are the hunting, or taking, of white-tailed deer, turkey or bear. Although they are promoted by the organizers as a means of controlling nuisance wildlife species,

scientists and wildlife management experts agree that the “wildlife killing contests” prohibited by this bill are counterproductive to sound wildlife conservation and management. They are, instead, inhumane activities that ignore the vital role that native wildlife play in a healthy ecosystem. The COAL supported – COAL Memo in Support #12.

(5) S.4804A (Palumbo) / A.5542-A (Thiele)

Establishes a Deer Management Program for the Town of Southold, Long Island.

This bill directs the Department of Environmental Conservation to establish a Long Island deer management pilot program in the town of Southold. This program provides qualifications for certified nuisance wildlife specialists, issuing permits and permission to use certain activities for deer culling. The COAL did not take a position.

III. Bills on which COAL issued position memoranda that were not passed by the Legislature in 2023

(1) S.460A (Sepulveda) / A.768A (L.Rosenthal)

Includes wildlife animals as those subjected to the animal cruelty laws.

This bill amends Agriculture and Markets Law Section 353-a (Aggravated cruelty) to extend protection to wildlife, in addition to companion animals, who are already protected. The violation of Section 353-a is a felony. Currently, felonious conduct, if perpetrated against wildlife, is a misdemeanor. It is logically inconsistent to afford a pet rabbit, rat, frog, etc. protections they would not have if living as wildlife or to condemn more lightly pain and suffering because it is inflicted upon wildlife. The bill, similarly, to penal laws, focuses upon the conduct being proscribed rather than upon the nature of the victim. The COAL supported – COAL Memo in Support #1.

(2) S.761 (Krueger) / A.776 (L.Rosenthal)

Amends the definition of aggravated animal cruelty.

This bill amends the definition of “aggravated cruelty to animals” to eliminate the element of the severity of the physical injury caused to an animal as the basis for a criminal charge and conviction. Specifically, it proposes amendments to the elements of the crime of aggravated cruelty to animals under the Agriculture and Markets Law Section 353-a (1) by eliminating the requirement that the injury to the animal be “serious.” Prosecutors report that some Courts refused to find defendants guilty because by the time the case involving the animal is before the Court, the animal has recovered from its serious injuries, although the other elements of the aggravated cruelty charge have been met. This change would make it more likely for charges to be sustained regardless of an animal's recovery from the act of cruelty. The COAL supported – COAL Memo in Support #2.

(3) S.1455 (Serrano) / A.1226 (L.Rosenthal)

Regulates controlling nuisance wildlife.

This bill requires nuisance wildlife control operators (NWCO) to include in their reports to the Department of Environmental Conservation (DEC) the incidents and reasons when lethal, rather

than non-lethal methods, were used to control nuisance wildlife. The bill also requires that the DEC's list of NWCOs include any enforcement actions taken against NWCOs that are related to violations of nuisance wildlife control laws and regulations and that the list be made available to the public. These changes are made by an amendment to Environmental Conservation Law Section 11-0524 (Nuisance wildlife control operators). The goal is to increase transparency through the proposed reporting requirements. This bill will allow the public to make informed choices among NWCOs and to select those who have demonstrated to be committed to using humane, non-lethal methods for managing nuisance wildlife whenever possible. The COAL supported – COAL Memo in Support #3.

(4) S.1619 (Addabbo) / A.110 (L.Rosenthal)

Prohibits leg-gripping traps.

This bill amends the Environmental Conservation Law Sections 11-1101, 11-1901 and 11-1903 to prohibit the use of wildlife leg-gripping traps, which are used to trap furbearing animals such as beavers, raccoons, foxes and coyotes. These traps are triggered by springs once an animal steps into them, clamping onto the animal's limb and holding the animal in place until it is discovered by the trapper. Leg-gripping traps inflict tremendous pain on animals and also present significant risks of catching non-target species, including humans and family pets, as they cannot discriminate between their victims. More humane alternatives exist and are readily available. The COAL supported – COAL Memo in Support #4.

(5) S.1659 (Bailey) / A.111 (L.Rosenthal)

Provides for court-appointed advocate for animals.

This bill adds new Article 22-B, Section 858-a to the Judiciary Law to provide that in any civil or criminal proceeding regarding the welfare of an animal, the court may appoint a volunteer special advocate to represent the interests of the animal and to help ensure the well-being of any living animal victim. The advocate will provide the parties and the court information and recommendations relating to the interest of the animal. The list of potential advocates, consisting of supervised law students and attorneys, would be maintained by the Office of Court Administration. The COAL supported – COAL Memo in Support #6.

(6) S.1673 (Addabbo) / A.420 (L.Rosenthal)

Requires the installation and testing of fire protection systems at pet stores.

This bill requires licensed pet dealers that house animals on their premises to have and maintain fire protection systems, including an automatic sprinkler system connected to municipal water supply, that meets the standards set forth in the legislation. Specifically, this bill amends the Agriculture and Markets Law by adding Section 409 (Fire protection requirements for pet stores.) The scope of the bill is restricted to buildings that are not zoned as residential. The COAL supported – COAL Memo in Support #9.

(7) S.1968 (Sepulveda) / A.3798 (L.Rosenthal)

Authorizes emergency medical care personnel to provide basic first aid to dogs and cats.

This bill authorizes emergency medical care personnel to provide basic first aid to dogs and cats found on the scene of an emergency. Although first responders frequently tend to animals, New York's law presently does not address this situation. Specifically, this bill amends Public Health Law Section 3103 (Immunity from liability) and adds a new Section 3018 (Basic first aid to dogs and cats). Additionally, the bill amends Education Law Sections 6702, 6703 and 6705 related to the practice of veterinary medicine by identifying the emergency first responders authorized to act and by allowing them to provide treatment to a dog or cat if no persons require medical attention at the time. The bill states that to be authorized to provide treatment to an animal, a first responder must be trained to provide the same treatment to a human. The proposed law strikes a balance between the need to provide life-saving medical care to dogs and cats in an emergency and the need to ensure that medical professionals treat humans first. A.3798 was passed by the Assembly in 2023. The COAL supported – COAL Memo in Support #7.

(8) S.3279 (Brisport) / A.790 (L.Rosenthal)

Prohibits fur products including the manufacture, sale, display for sale, trade, giving, donating, or otherwise distributing of fur products in NYS.

This bill adds new Section 399-bbbb to the General Business Law prohibiting, with exceptions, the sale and manufacture of fur products. The bill prohibits the commercial sale, procurement, manufacturing, retail display, giving, donating, trade, or other distributions of a new or used fur product within New York State. Violators would be subject to \$500 to \$1,000 fines with potential liability for attorney's fees. Definitions of fur and fur products include exceptions for types of leather, cowhide, and sheepskin products. Used furs held by individuals not normally engaged in the fur business, non-profit organizations, manufacturers of used fur products, thrift stores and pawn shops are also excepted. Subdivision 5 exempts manufacture, sale, and distribution of fur products that conform with a religious or cultural practice. The undefined terms, "religious" and "cultural practice," allowing for exemption from the prohibitions in the bill, are catch-all terms that can virtually eliminate the effect of the bill's prohibitions. Unlike the exceptions, subdivision 5 has potential for unintended, harmful consequences undermining the sponsors' intent and the bill's purpose. The COAL opposed the passage and enactment of this legislation in its present form. COAL Memo in Opposition was not distributed in 2023.

(9) S.3431A (Skoufis) / A.1148A (Zebrowski)

Regulates animal fighting and appropriately punishing individuals associated with such activities.

These bills, which are not identical due to amendments made late in the 2023 legislative session, propose significant revisions to the Agriculture and Markets Law related to the crimes of animal fighting and promoting animal fighting. They conform the associated penalties to New York's penal code. Two notable changes include the establishment of multi-layered offenses related to the facilitation of animal fighting, including the possession of bait animals, and the addition of Section 351-c (Promoting enterprise animal fighting), a felony. By increasing the penalties for all animal fighting related activities and defining the enterprise related offenses which establish grounds to invoke the federal Racketeer Influenced and Corrupt Organizations Act (RICO), this legislation addresses many of the weaknesses undermining the current law. S.3431-A was passed by the Senate in 2023. The COAL supported – COAL Memo in Support #13.

(10) S.4081 (Brisport) / A. 5499 (L.Rosenthal)

Provides financial assistance for guide dogs for social recipients.

This bill amends the Social Services Law (SSL) to increase eligibility and income deductions for disabled people who have guide dogs, hearing dogs and service dogs by repealing SSL Section 303-a and adding new SSL Section 131-y. This bill defines a service dog more broadly than the federal Americans with Disabilities Act (ADA). The bill affects deductions from declared income in two ways. First, a dog's veterinary expenses can be added to a dog's food expenses as necessary living expenses for the purpose of determining the amount of federal social security income benefits and/or additional state payments that eligible disabled people may receive. Second, the monthly minimum income deduction for eligible disabled people goes up from \$35 to \$50, although there is no limit on the actual amount that an eligible disabled person can deduct as necessary living expenses for the amount spent on veterinary care and dog food. The bill also expands the beneficiaries under the SSL by including those who receive supplemental nutrition assistance program benefits, medical assistance for needy persons, and/or additional state payments under the same SSL chapter. The COAL supported – COAL Memo in Support #11.

(11) S.4163 (Hoylman-Sigal/ A.1149 (L.Rosenthal)

Prohibits insurers from canceling renters' insurance based on ownership of a specific breed of dog.

This bill amends Insurance Law Section 3421 to make it unlawful for an insurance company to refuse to issue or renew, cancel or impose an increased premium, exclude, limit, restrict or reduce coverage under any renter's insurance policy on the basis of the ownership of any specific dog breed (or mixture of breeds) on the premises. The bill extends to renters in one, two, three or four family dwellings the same protections against arbitrary insurance cancellation provided to homeowners by the same section of law. The COAL supported – COAL Memo in Support #19.

(12) S.4363-A (Fernandez) / A4005-A (Glick)

Prohibits the use of wild animals in circuses aka traveling animal acts.

These bills, which are not identical due to an amendment to the Assembly bill made late in the 2023 legislative session, prohibit the use of wild animals in traveling animal acts, including circuses. The specific "uses" of animals prohibited by the bills include requiring wild animals to perform tricks, give rides to people, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience. Livestock and companion animals are not covered by the bill. The COAL supported – COAL Memo in Support #14.

(13) S.4533 (Harckham) / A.416 (L.Rosenthal)

Expands teaching humane education in schools.

This bill expands the existing requirement for teaching the humane treatment and protection of animals in schools to include publicly funded secondary schools. Current law, Section 809 of the Education Law, is limited to primary schools. The bill provides for the incorporation of curricula on the humane treatment and protection of animals, the importance they play in nature, the necessity of controlling animal populations so animals are not subject to abandonment and cruelty,

and the respect for animals into existing curricula in secondary schools. In addition, the bill requires the Commissioner of Education to maintain records verifying all schools' compliance with the existing humane education law and this expansion of it, a measure that will allow for better compliance and enforcement. The COAL supported – COAL Memo in Support #16.

(14) S.4717 (Sanders) / A.3149 (Hunter)

Authorizes the Department of Veterans' Affairs to provide eligible veterans with financial assistance for purchasing, training and upkeep of service and emotional dogs.

This bill authorizes the Department of Veterans' Services to provide eligible veterans with financial assistance for the purchasing, training and upkeep of service dogs as well as emotional support dogs. Specifically, this legislation amends the Veterans' Services Law by adding a new Section 29-b to provide grants to veterans suffering from PTSD and/or traumatic brain injury for the purchase and training of a service dog and/or an emotional support dog. It also provides monetary monthly assistance for the upkeep of the dog. The COAL supported – COAL Memo in Support #5.

(15) S.4976-A (Harckham) / A.2084A (Glick)

Prohibits the use of lead ammunition in the taking of wildlife on state-owned land and on land contributing surface water to the New York City water supply.

This bill prohibits the use of lead ammunition in the hunting or management of wildlife on state-owned land or land contributing surface water to the NYC water supply. Specifically, it amends Environmental Conservation Law Section 11-0901, Subdivision 3 by adding a new paragraph h prohibiting the use of lead ammunition on state owned/controlled lands. The proposed ban is limited in scope, applying only to public lands and to land area that contributes surface water to the water supply of New York City. It is not a ban on hunting in these areas -- rather, it requires the use of alternatives to lead ammunition. Its purpose is to reduce lead exposure in humans and wildlife. The bill also requires that the syllabus provided by DEC to localities that sell hunting licenses include information on this lead ammunition prohibition. A.2084-A was passed by the Assembly in 2023. The COAL supported – COAL Memo in Support #8.

(16) S.5203 (Skoufis) / A.1409 (Zebrowski)

Expands the definition of "dangerous" relating to a dog that caused death to a companion animal, farm animal or domestic animal while trespassing on property.

This bill expands the number of different circumstances under which a judge may order that a dog determined to be a "dangerous dog" be euthanized or permanently confined. Specifically, this legislation amends the Agricultural and Markets Law Section 123 to add an additional circumstance that would allow a dog to be required to be euthanized or permanently confined -- where the dog is considered to have caused the death of another animal without justification, and while trespassing on another person's property. The COAL OPPOSED – COAL Memo in Opposition #10

(17) S.5341 (Addabbo) / A.2718 (Paulin)

Provides for the licensing of pet grooming facilities, establishes standards of care and required record keeping.

This bill amends the General Business Law by adding a new article establishing licensing and regulation of pet grooming facilities. Pet shows, exhibitions and self-service facilities are exempt. Pet grooming is “big business” but is still largely unregulated in most states including New York. Preventable pet injuries and deaths are increasing as the demand for grooming services increases. The COAL supported – COAL Memo in Support #17

(18) S.6365 (Hinchey) / A.2881 (Lupardo)

Requires vacated property to be inspected for animals.

This bill amends Agriculture and Markets law Section 373 to require that certain newly vacant property be inspected for any animals that might be abandoned on the premises. The bill would require an owner, lessor, or designee of property that has become vacant as a result of an eviction, foreclosure, forfeiture or default on a mortgage, trust deed or land sales contract, or abandonment of the property, to inspect such property within three days of when such person knew or should have known of such vacancy to see if any animals were left behind in the premises. If an owner, lessor, or designee discovers an animal that appears to have been abandoned, that person must notify a dog control officer, a police officer, or an agent of a duly incorporated society for the prevention of cruelty to animals. The person who discovers the animal will not be deemed to be owner of such animal. Violators would be subject to fines of \$500 to \$1,000. S.6365 was passed by the Senate in 2023. The COAL supported – COAL Memo in Support #15.

(19) S.7287A (Brisport) /A.3505A (L.Rosenthal)

Requires higher education research facilities to make available certain information regarding the adoption of dogs or cats on their website.

This bill requires higher education research facilities to make available certain information regarding the adoption of retired research dogs or cats on their website. It amends Section 239-b of the Education Law, enacted in 2016 as the Research Animal Retirement Act, that provided for the adoption of dogs and cats used by research facilities in their research, and subsequently retired. It requires a research facility subject to the provisions of the 2016 law to provide information on its website that will make it easier for the public to find facilities that have dogs and cats formerly used in research that are eligible for adoption; and to provide information on the number of dogs and cats released to organizations that provide for such adoptions. The provisions of this bill are designed to ensure that the 2016 law providing for the adoption of retired research dogs and cats are being implemented by research facilities in the state, and that dogs and cats retired from research are given an opportunity to live the remainder of their lives with adoptive families. The COAL supported – COAL Memo in Support #20.

This report was provided by Rebecca Thompson, Esq. and Fiona Farrell, Esq., Vice Chairs of the COAL Legislation Subcommittee.

Spotlight On The Special Projects Subcommittee Part II: Guide to the Use of Service and Support Animals in New York State and New York City

Public Transportation with Animals

All public transportation is subject to the ADA regulations set forth by the United States Department of Transportation (DOT), which requires that all public and private entities providing transportation services allow service animals in both vehicles and facilities. 49 C.F.R. §37.167(d). New York’s Attorney General has similarly underscored that “under the ADA and New York law, businesses and facilities that serve the public may not discriminate against individuals with disabilities” and that while some local laws reference only seeing eye or guide dogs, those local laws may conflict with the federal ADA. *See*, <https://ag.ny.gov/sites/default/files/serviceanimals-english.pdf>

The Service Animal Exception

Most – but not all – New York State public transportation entities have a general prohibition against bringing “any animal on or into any conveyance or facility unless enclosed in a container and carried in a manner which would not annoy other passengers.” 21 N.Y.C.R.R. § 1050.9(h)(1), applicable to the New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority (MABSTOA).

Those public transportation entities contain an exception not only for police dogs, but also an exception pertaining to “service animals, or to animals which are being trained as service animals and are accompanying persons with disabilities, or to animals which are being trained as service animals by a professional trainer. All service animals and animals being trained as service animals must be harnessed or leashed.” 21 N.Y.C.R.R. § 1050.9(h)(2). Please note that if a trainer is accompanying an animal during training, he or she may be required to show proof of affiliation with a professional training school and that the animal is being trained or is trained. 21 N.Y.C.R.R. § 1050.9(h)(3)

In New York City, the service animal exception applies to virtually all public transportation:

1. New York City Transit Authority and MABSTOA (see above)
2. MTA Bus Company. 21 N.Y.C.R.R. § 1044.10
3. The Staten Island Ferry permits pets only if caged or muzzled, with an exception for “service animals as defined by the Americans with Disabilities Act” <https://siferry.com/information.html/>
4. All New York City ferries permit service animals, similar to the Staten Island Ferry. <https://www.ferry.nyc/safety-regulations/>

5. The New York City Taxi & Livery Commission expressly states the right to travel with a service animal in Yellow Taxis, Green Taxis and Livery vehicles. *See* <https://www.nyc.gov/site/tlc/passengers/passenger-rights.page>
6. The posted Commuter Van Passenger Bill of Rights does not specifically include the right to travel with a service animal. *See* <https://www.nyc.gov/site/tlc/passengers/commuter-van-passenger-bill-of-rights.page>

The same language applies to other major city transportation entities:

1. Rochester-Genesee Regional Transportation Authority. 21 N.Y.C.R.R. §4901.4
2. Capitol District Transportation Authority. 21 N.Y.C.R.R. § 5300.9(g)

It must be noted that the above expressly covers many of the largest public transportation entities, but anyone seeking to travel on public transportation operated by counties or local municipalities should consult those entities' rules and regulations in case there are additional restrictions.

“Seeing Eye Dog” Exceptions

The Metro-North Commuter Railroad Company permits police dogs, leashed or contained animals, and any “seeing eye or hearing ear dog”. 21 N.Y.C.R.R. §1085.10. The Long Island Railroad (LIRR) generally bars any non-police animals, “except a seeing eye or hearing ear dog or an animal properly confined for shipment.” 21 N.Y.C.R.R. 1097.10. The Niagara Frontier Transportation Authority (NFTA) generally prohibits animals except those “properly confined for shipment.” 21 N.Y.C.R.R. §1151.8. The NFTA exception includes only “a Seeing Eye dog, which shall be under control at all times.” *Id.*

Private Transportation Companies

As with the New York City Taxi & Limousine Commission, for-hire vehicle regulators outside of New York City typically include specific protections for people traveling with service animals. For example, the Westchester Taxi & Livery Commission prohibits For-Hire Vehicle Drivers from refusing to transport any persons with physical disabilities or their service animals provided the persons are otherwise able to physically enter and exit the vehicle. *See*, <https://tlc.westchestergov.com/images/stories/pdfs/2022rulesregv4.2.pdf>

In 2017, New York State enacted new legislation that permitted Transportation Network Company (TNC) Services to function in the state. In some ways analogous to traditional taxi services, TNC services are somewhat different in that the vehicles being used are not necessarily commercial vehicles but personal vehicles being used for this business purpose. The two main TNC companies, Uber and Lyft, have therefore provided additional specific guidance to their drivers, advising them of their requirements to accommodate service animals.

Uber defines a service animal as “an animal that is trained to work or perform tasks for an individual with a disability,” and advised that while drivers may ask if the animal is a service animal and what tasks it performs, “service animals are not required to wear a tag, be registered, or display any kind of proof that it is a service animal. Riders are not required to provide documentation to drivers.” <https://www.uber.com/legal/en/document/?name=service-animal-policy&country=united-states&lang=en>

Uber’s service animal and assistive device policy is also available in the Uber app by selecting Help from the menu bar, scrolling to Accessibility, and then to Riding with Service Animals and U.S. Service Animal Policy. There is also a posted grievance procedure if a driver improperly denies service.

Lyft advises its drivers that “it’s Lyft policy and the law that you accommodate service animals,” and that while a driver may ask about the animal’s service, refusing a service animal could result in the driver’s immediate and permanent deactivation from Lyft. *See*, https://assets.ctfassets.net/ecaxsf5u3xse/37rxua7DcxdyiAPFyVNN2s/3acbe37181e66fe3744f98ef1d3853c2/Service_Animal_Policy.pdf Lyft further advises its drivers that “it’s best that you accommodate animals when they’re reported to you by riders as being service animals.” *Id.*

Local Laws Specific to New York City

This section covers New York City-specific laws relating to Service Dogs. At the outset, the New York City Commission on Human Rights states that these laws are intended to protect people who are living with disabilities so that they – together with their service animal – can fully participate in public life.

New York City defines a “service dog” to mean a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. Rules of the City of New York Title 24 §32-01[g]. This tracks with the State definition, which essentially copies the definition of the Americans with Disabilities Act. (Chapter 6 of the NYS Civil Rights Laws, Article 4B, §47.7 specifically defines the “service dog” to mean any dog under the control, consistent with federal regulations implementing the Americans with Disabilities Act, Title III, at 28 CFR 36.302(c), of the person using or training it, and that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability).

Relevant Statutes:

Civil Rights Law. Chapter 6. Of the Consolidated Laws. Article 4-B. Rights of Persons with a Disability Accompanied by Guide Dogs, Hearing Dogs or Service Dogs.

§47. Use of public facilities by persons with a disability: (1) No person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because said person is a person with a disability and is accompanied by a guide dog, hearing dog or service dog. Section 2 defines essentially defines a “public facility” as any building/housing to which the public is

invited or permitted, whether public or private, permanent or temporary, all places where food is offered for sale, and all other places of public accommodations, convenience, entertainment, or business to which the general public or any classification of persons therefrom is normally or customarily invited or permitted.

§ 47-b.

1. Persons with a disability accompanied by service dogs shall be guaranteed the right to have such dogs in their immediate custody...provided such dog has been trained by a qualified person.

2. No person or legal entity, public or private, shall attempt to impose or maintain any direct or indirect additional charge for the admittance of service dog accompanying a person with a disability, nor shall any conditions or restrictions not specifically set forth in this article be imposed on the person's rights as set forth herein.

New York City Public Housing Law, Article 11 PBG § 223-a. Discrimination against persons who have certain household pets. No person...who is a severely physically handicapped person or who is a mute shall be denied occupancy in a dwelling in any project or be subjected to eviction from any such dwelling on the sole ground that such person owns a dog or cat which will or does reside with such person therein, provided, however, that if after occupancy a health hazard results on account of such dog or cat, the public health officer having jurisdiction may take such corrective measures as are appropriate.

New York Transportation Law. Chapter 61A. Article 6. Matters Relating to All Motor Carriers.

§147. Dogs accompanying persons with a disability. All common and contract carriers of passengers by motor vehicle shall permit a service dog accompanying a person with a disability to accompany, to guide, or otherwise to aid such person, to ride on all vehicles operated for transportation and no charge shall be made for the transportation of such dog.

Areas Where Service Animals Must Be Permitted

In summation, generally speaking, Service Animals must be permitted in: (1) In restaurants and other locations that serve food and in (2) Public facilities/businesses open to the public. However, Service Animals are specifically not pets or required to wear jackets or vests identifying them. As such, a facility may require the service dog to be removed if: (1) The dog is out of control and/or the handler cannot or does not take effective action to control it or (2) The dog is not housebroken.

A Business Owner may only ask: (1) If the service animal is required because of a disability AND (2) What work or task the service animal performs. A Business Owner MAY NOT:

1. Ask/inquire about the nature of the disability:
2. Exclude the person or dog because he/she claims to be allergic to the dog:
3. Charge extra fees, deposits, or surcharges for service animals.

However, if the service animal causes damage, a fee can be charged if it's also regularly charged to non-disabled people's pets for similar damages.

Emotional Support / Therapy Animals

Regarding animals labeled as Emotional Support/Therapy Dogs, restaurants have the right to refuse emotional support dogs and therapy dogs, since these are not service dogs. Emotional support dogs are only allowed in NYC restaurants that are willing to allow them on an individual basis, or if their premises are already "pet/animal friendly." **It is important to remember that Emotional support/Therapy dogs are not considered service dogs,** since they haven't been specially trained to help a person with their specific disability.

Housing providers, including shelters and other forms of temporary or supportive housing, must permit residents to keep emotional support animals as a reasonable accommodation for a disability, unless it would cause an undue hardship to the housing provider. Housing providers must exempt emotional support animals from "no dog/animal policies", unless the exemption would cause an undue hardship to the housing provider. A housing provider cannot preemptively charge any such fees or require additional insurance coverage. However, a housing provider may require a resident to pay for actual damage or excessive wear and tear caused by an emotional support animal.

What other things should I know?

If a person believes they have been the victim of discrimination, they are encouraged to call the NYC Department of Health; specifically: Jorge Martinez: 347-396-6067, jmartin4@health.nyc.gov, NYC Health Department disabilities accommodation coordinator/disabilities service facilitator (also referred to as the ADA Coordinator). He should also be contacted if a person needs a disability-related accommodation to participate in a program or receive health department services (other than employment).

Grievance Procedure: If a person is denied a request for a non-employment, disability-related accommodation, they may file a grievance. For example, a grievance may be filed if a person:

1. Is denied a request for a non-employment-related reasonable modification of policies and procedures that will allow a person to participate in programs, services, and activities.
2. Has a complaint about city policies and procedures concerning access to a particular program or activity.

If a person wishes to file a grievance for any of the above reasons, they or a designee must do so within 60 calendar days of the alleged violation. To file a grievance, contact Mr. Martinez. Within 15 calendar days after receipt of the complaint, the Health Department will contact the person to discuss the complaint and possible resolutions. Within 15 calendar days of that discussion, the Health Department will respond in writing and, when appropriate, in a format accessible to the grievant, such as large print, Braille, or audio tape. The response will explain their position and offer options for resolution.

Other Numbers/Agencies:

- NYC Commission on Human Rights 212-416-0197

- NYS Office of Attorney General Civil Rights Bureau 212-416-8250

Helpful Websites for More Information:

<https://www1.nyc.gov/assets/mopd/downloads/pdf/service-animal-flyer.pdf>

<http://www.nyc.gov/HumanRights>

https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/EmotionalSupportAnimals_Housing_FactSheet.pdf

<https://theservicedogs.com/new-york-service-dog-laws/>

Special thanks to COAL Special Projects Subcommittee member Aaron Meyer, Esq. for his work on the Public and Private Transportation sections of this Spotlight. Also special thanks to COAL Special Projects Subcommittee member Adam N. Lepzelter, Esq. for his work on the New York City Statutes relating to Service Dogs section of this spotlight.

Monkey Business: From Comic Book Ads to Primate Protection Laws, by Jim Sarlis, Esq.

In the 1960s and -70s, comic books were replete with intriguing advertisements for all kinds of interesting things. You could order a miniature submarine for yourself and a friend to ride in. Or a pair of X-ray glasses. Or even a packet of “sea monkeys” (which turned out to be brine shrimp). Various bodybuilding icons claimed that any skinny kid who got sand kicked in his face by bullies could become a muscular powerhouse by using their product.¹

One of the most memorable ads from that era said that, for a mere \$18.95 – prepaid, of course – you could order a pet monkey that would be sent to you by mail, complete with a cage, collar and leash, toy, and instructions.²

The monkey would be shipped in a carton about the size of a shoe box, with a wire mesh window to allow the animal to breathe and so that the monkey and the outside world could peek at each other.

Wait – could this really be true? Yes.³ I personally know this because my downstairs neighbor, Ellen, in our run-down tenement apartment building in Hell’s Kitchen, had three – yes, three! – pet monkeys that she had bought from such ads. Ellen would occasionally dress her monkeys in cute little outfits, complete with hats, and bring them outside to the front of the building so the neighborhood kids could see and interact with them. This was a real treat for us kids. And the monkeys seemed to react with some level of curiosity and enjoyment. The monkeys were relatively well-behaved ... most of the time. Ellen would hand the monkeys hard candy or Chiclets that they would roll around in their mouths without swallowing, and they’d prove it by opening their mouths to show us. On the other hand, they sometimes shrieked and threw things, and just plain stunk! Indeed, a noxious cloud of stench would seep out from Ellen’s first floor apartment and permeate the rest of our building.

And these monkeys could be dangerous. One of the oft-told stories from that era recounts how a boy named Jeff Tutthill surreptitiously ordered a pet monkey from one of these ads and had it sent to a friend’s house so that his mother would not know he had done so. When the box containing the monkey arrived, his friend called. Jeff joyously rode his bike over to his friend’s house, peeked



¹ See, e.g., Laura Legends on YouTube, “10 Items you REALLY got from comic book ads”, https://youtu.be/X-vh4_4msU.

² *Id.*; (See pet monkey ad).

³ In fact, between 1968 and 1972, more than 173,000 Spider Monkeys were imported to the U.S. from South America. *Id.*

at the monkey though the wire mesh on the carton, and brought the box home, anticipating the warm loving interaction his “darling pet monkey “would give him. He stealthily carried the box downstairs and hid it in his basement. Unfortunately, once freed, Chipper the monkey flew into a shrieking rage, leapt around and climbed the plumbing pipes in the basement ceiling, squirted urine and dropped feces all over the room, and bit the boy’s arm – repeatedly, “like a drill press” – so badly that blood spurt everywhere and it took a trip to the ER and 28 stitches to close up the wounds.⁴ A similar story was told by Tim Tate. Ordering this monkey was, he thought, the best idea he ever had. “Everybody at school will love us because we have a monkey on our shoulder,” Tim told his brother. When they freed their monkey from the box, they encountered a similarly horrifying experience, with Pepe the monkey jumping on and terrorizing the women who had gathered in their home for their mom’s bridge tournament party, and culminating in their aunt suffering vicious bites on her bosom. Pepe escaped and ran into the woods near the house. His desiccated body was finally found, and the boys placed him in the box he came in and buried him⁵

Clearly, since these situations illustrated the potential danger to humans, as well as a form of abuse to the monkeys, it became obvious that both species needed protection.

“MONKEYS AND PRIMATES AND APES – OH MY!” A VOCABULARY LESSON

We’ve all heard the terms “monkeys,” and “apes,” and “primates” and the like. Many of us have also heard the terms “[animal] kingdom,” “species,” and maybe even “genus.” They are often used interchangeably – and often incorrectly – by people in everyday speech. But what is the actual meaning of the various terms relevant here, and how are they interrelated?

The scientific system for the classification of organisms is called Taxonomy. The hierarchy of Taxonomy’s eight categories, from broader and more general to narrower and more specific, is as follows: Domain, Kingdom, Phylum, Class, Order, Family, Genus, and Species. The term “primates” is the name of the Order – i.e., for our purposes, the main, generic category – for all the animal species relevant to this discussion.⁶

Humans are primates. So are gorillas, chimpanzees and orangutans, the best known of the Great Apes. Monkeys are primates, too, including the squirrel monkeys of comic book ad fame. (A simple mnemonic to distinguish between monkeys and apes is that monkeys have a tail – like the tail of the letter y – while apes have no tail.)

Primates are distinguished from other mammals by one or more of the following traits:

- Relatively large brains (in relation to body size).

⁴ Jake Rossen, When Comics Sold Live Monkeys, Mental Floss, July 29, 2021, <https://www.mentalfloss.com/article/648321/when-comic-books-sold-live-monkeys>, [When Comic Books Sold Live Monkeys | Mental Floss](#).

⁵ Monkey Madness . April 25, 2014, <https://www.npr.org/2014/04/25/306868280/monkey-madness>, [Monkey Madness : NPR](#)

⁶ For a video portraying and explaining various primates, see, e.g., [\(6\) Go Ape - The Fascinating World of Primates | Free Documentary Nature - YouTube](#) <https://www.youtube.com/watch?v=V3auPw3Ee3M>

- A short muzzle.
- Vision more important than sense of smell.
- Acute vision with depth perception due to forward-facing eyes.
- Appendages adapted for grasping - prehensile five-digit hands and feet possessing flat nails instead of claws.
- Long life spans and slow growth.
- Few offspring, usually one at a time.
- Complex social groups.

The primates zoological order is one of the most diverse orders of mammals on Earth. It contains over 500 species. It includes the lemurs (more than 70 species in six families); the lorises (three or more species in one subfamily); the tarsiers (six or more species in one family); the New World monkeys, such as the squirrel monkeys of the pet monkey ads as well as spider monkeys, which were also popular as pets (almost 100 species in five families); the Old World monkeys, such as baboons (more than 100 species in one family); and the Great Apes, such as chimpanzees, gorillas, and orangutans, as well as humans (about 20 species in one family); and the Lesser Apes (gibbons in one family). (See the Primates Taxonomy diagram set forth below as Schedule “A”)

Whereas all other mammals have claws or hooves on their digits, only primates have flat nails; primates also have specialized nerve endings, called Meissner’s corpuscles, in their hands and feet, which increase their tactile sensitivity. Many primates have amazing manual dexterity and intelligence.⁷

THE CDC BANS THE IMPORT OF PET MONKEYS AND OTHER PRIMATES

In 1975, the U.S. Centers for Disease Control (“CDC”) enacted the Federal Quarantine Regulations (42 CFR 71.53), which prohibited monkeys and other nonhuman primates from being imported into the United States for use as pets because of the health and safety concerns. These regulations are carried out by the CDC’s Division of Global Migration and Quarantine.⁸

Nonhuman primates may carry infectious diseases that are dangerous and sometimes fatal to humans, including Shigella, Salmonella, Ebola virus, herpes B virus, Mycobacterium tuberculosis complex (bacteria that cause tuberculosis), yellow fever virus, and others. People working in temporary or long-term nonhuman primate holding facilities or involved in transporting nonhuman primates (e.g., cargo handlers and inspectors) are especially at risk. All nonhuman primates imported into the United States must be held in a CDC-approved quarantine facility for at least 31 days after arrival. During the quarantine period, the nonhuman primates must be tested for tuberculosis and monitored for signs of illness that could represent a zoonotic disease (a disease that can spread from animals to humans). Nonhuman primates that die of any cause other than

⁷ Encyclopedia Britannica [Primate | Definition, Species, Characteristics, Classification, Distribution, & Facts | Britannica](#)

⁸ See The Perils of Keeping Monkeys as Pets, National Geographic.com

injury during the quarantine period must have additional testing performed. These measures are intended to prevent zoonotic diseases from spreading to the public.

Strictly speaking, exotic animal ownership is not regulated by federal laws, it is governed by legislation in each state and locality. Many states, including New York, have comprehensive bans on exotic animal ownership, while others have limited bans.

NEW YORK BANS PET MONKEYS AND REGULATES NONHUMAN PRIMATES

In 2005, New York enacted New York Environmental Conservation Law Section 11-0512, which provides:

1. It shall be prohibited for any person to: (a) knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animal for use as a pet in New York state... ; or (b) intentionally release or set at-large any wild animal, authorized by this section for use as a pet, from the location where the animal is permitted to be possessed or harbored.

The term “wild animal” is defined at Section 11-0103 and includes “nonhuman primates and prosimians.” In fact, the squirrel monkeys of the pet monkey ads are specifically included among the animals covered by this law.⁹

THE EXCEPTIONS TO THIS BAN

There are a number of exceptions to this ban. For example, the ban does not apply to:

- Zoological facilities.
- Research facilities.
- Veterinarians and humane societies, animal shelters, societies for the prevention of cruelty to animals or animal welfare organizations in temporary possession of wild animals.
- Colleges and universities working with wild animals.
- People just passing through New York on their way to another state (their stay in New York may not exceed ten days).
- Anyone who had a pet monkey prior to the enactment of this statute is grandfathered and may retain the wild animal for the remainder of the animal’s life.

⁹ “Wild Animals,” as defined under § 11-0103, includes: Genus *Saimiri* *Saimiri oerstedii* - Red-Backed Squirrel Monkey, Central American Squirrel Monkey *Saimiri sciureus* - Squirrel Monkey, Common Squirrel Monkey, South American Squirrel Monkey *Saimiri boliviensis* - Bolivian Squirrel Monkey *Saimiri ustus* - Bare Eared Squirrel Monkey *Saimiri vanzolinii* - Black Squirrel Monkey

Notably excluded from the ban is “[any] person who is paralyzed from the neck down who possesses a New World monkey trained to perform tasks for its owner to improve the person’s quality of life....”¹⁰ [See also companion article in this issue of Laws and Paws entitled Helping Hands: The Transition From Service Monkeys To Emerging Technologies].

Similarly, New York Compilation of Codes Rules and Regulations, Title 6, Section 180.1 – Animals dangerous to health or welfare, provides:

(a) Purpose. The purpose of this section is to list species of animals which present a danger to the health or welfare of the people of the State, individual residents, or indigenous wildlife populations.

(b) Prohibitions. ... no person shall import, transport, possess, purchase, barter, transfer, sell, offer for sale, exchange, propagate or release or cause to be released within New York State any of the following live native or non-native dangerous animals including those which are captive bred in any of the following orders, families and individual species or subspecies including all subspecies and hybrids thereof: ... (9) all non-human primates and prosimians in the order primates.

(d) [the usual exceptions are listed for veterinarians, research, animal welfare organizations].¹¹

GREAT APES SUCH AS GORILLAS ARE AFFORDED FURTHER PROTECTIONS

In addition to the protections provided under the above statutes, which cover not only pet monkeys but also other nonhuman primates, Great Apes such as gorillas are afforded further protections under New York’s endangered species law, which provides that possession is prohibited without a license or permit issued pursuant to Environmental Conservation Law Section 11-0535 and any restrictions or regulations that may be promulgated governing the importation, transportation, possession or sale of any species of special concern as deemed necessary for the protection of such species.

OTHER LAWS AFFECTING PRIMATES

The Federal Animal Welfare Act, 7 U.S. Code Sections 2131-2159, provides standards, including but not limited to housing, temperature, ventilation, drainage, sanitation, food, water, exercise and veterinary care appropriate to the species and sufficient to maintain the wild animal in good health. It also provides that the wild animal will not be tied, tethered, or chained outdoors, allowed to run at large, and that the wild animal will not be brought to any public park or commercial or retail establishment unless it is being brought to a veterinarian or veterinary clinic.

New York General Municipal Law, Article 10, Section 209-CC provides that any person who knows of the presence of wild animals or dangerous dogs must disclose this information and the animals’ whereabouts by notifying the clerk of the city, town, or village in which the animal resides. A report in the form specified in the regulations at 19 NYCRR 820.1 to 820.3 is to be filed each year by April 1st with the clerk, who in turn must notify all local police, fire, and emergency medical service departments, to protect the safety of the public as well as the safety of the first responders who are likely to encounter the animals. The term “wild animals” includes nonhuman primates.

THE LACEY ACT AND ITS AMENDMENTS & CAPTIVE PRIMATE SAFETY ACT

¹⁰ NY Env. Cons. Law § 11-0512.

¹¹ 6 NYCRR § 180.1

The Lacey Act¹² is a federal conservation law making it unlawful to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the U.S. or in violation of any Native American tribal law, whether in interstate or foreign commerce. All plants or animals taken in violation of the Lacey Act are subject to forfeiture, as well as all vessels, vehicles, aircraft, and other equipment used in the process. President William McKinley signed it into law on May 25, 1900 and it has been amended several times since then, including in 1969, 1981, and 1988, to add, for example, invertebrates, mollusks, and various plants among the protected species.

The sweeping enforcement and criminal penalties of the Lacey Act make it a powerful and useful form of legislation protecting covered species. Unfortunately, bills proposing amendments that would add protections for nonhuman primates, such as by adding them to the definition of “Prohibited Wildlife Species” under the Lacey Act, have been introduced but thus far have not passed. The most recent example is the Captive Primate Safety Act, a bill introduced as H.R. 3135: Captive Primate Safety Act on May 21, 2021 and then incorporated into H.R. 263: Big Cat Public Safety on December 20, 2022, an amendment to the Lacey Act Amendments of 1981, to prohibit interstate commerce of any prohibited primate species. The amendments also end importation, exportation, transportation, sale, receipt, acquisition, and purchase, and expressly ban the possession of any prohibited primate species. Sadly, the Captive Primate Safety Act did not pass.

An emphatic summary of the issue put it as follows: “Primates are highly intelligent animals that are typically social with other primates. They have no business being someone’s pet, and there is no way to replicate their environment in a person’s home. They also can pose a considerable safety risk. The prohibited primate species list includes chimpanzees, galagoes, gibbons, gorillas, lemurs, lorises, monkeys, orangutans, tarsiers, or any hybrid of such species. Even though some identical provisions from the Captive Primate Safety Act were incorporated into the Big Cat Public Safety Act, it did not pass, and primates received no added protection. However, primates desperately still need this protection, so they no longer have to live unenriched lives as someone’s pet. The reintroduction of this bill is crucial for the future of primates.”¹³

REAL WORLD CONSEQUENCES

Summer was a baby macaque that was taken away from her mother a few days after birth and shipped thousands of miles in a tiny crate to the person who bought her. She was kept in a diaper, which she hated. When this led to Summer biting her humans, her owner had all of Summer’s teeth removed. As a result, Summer couldn’t keep her tongue in her mouth and could only eat mush. Summer’s owner kept her duct taped in a soiled diaper for days at a time, causing her serious genital and abdominal rashes. Summer was kept in a small cage, causing that her leg muscles to atrophy from non-use. Summer spent hours alone, rocking neurotically. The leash and collar around her abdomen were never taken off and became embedded into her skin. She was yelled at and yanked by her leash, making her so scared that she would vomit. This was Summer’s life for 17 years until she was finally released to a sanctuary to enjoy her remaining years.¹⁴

Travis the chimp was born on October 21, 1995 at what is now called the Missouri Chimpanzee Sanctuary in Festus, Missouri. At 3 days old, Travis was sold to Jerome and Sandra Herold for \$50,000. Beyond being a mere pet in their household, Travis was raised and lived with them

¹² 16 U.S.C. §§ 3371-3378.

¹³ Captive Primate Safety Act – National Humane Education Society, <https://www.nhes.org/captive-primate-safety-act-signed-into-law>, updated March 7, 2023.

¹⁴ [Captive Primate Safety Act | Animal Welfare Institute \(awionline.org\)](https://www.awionline.org/legislation/captive-primate-safety-act), <https://www.awionline.org/legislation/captive-primate-safety-act>

essentially like their child. Over time, he got to the point where he was able to dress himself; he did chores; he ate meals with the family at the dinner table, sometimes drinking wine from a stemmed goblet. He used a computer and watched TV – he was a big fan of baseball. He was able to use keys to open house and car doors. And he knew all the times that local ice cream trucks made their rounds. He was even an actor and celebrity, having appeared in commercials for Coca Cola and other products, and TV shows such as The Maury Povich show. But as he aged, and apparently was affected by a few deaths in the family, Travis had become overweight, growing into a huge strong primate of over 200 pounds, and his behavior had become increasingly erratic and violent. He attacked and bit a number of different people, and was being investigated along with Sandra. Then, on February 16, 2009, tragedy struck when Travis viciously attacked Sandra’s friend, Charla Nash, who was visiting. Sandra tried to stop Travis, even stabbing him with a kitchen knife several times, which turned out to be futile. In her 911 call to the police, Sandra screamed that Travis was killing her friend – and eating her face. Travis mutilated Charla Nash’s face and body so horribly that she lost her eyes, parts of her face, and both her hands, necessitating multiple surgeries and transplants, including a full-face transplant, with treatment still ongoing. When the police arrived, Travis attacked them too. He forcefully opened the patrol car’s door and lunged at them, baring his bloody fangs at the officers, causing them to shoot Travis. In the end, Charla Nash was left horribly disfigured and barely clinging to life; and Travis was dead.¹⁵

The bottom line to keep in mind is that these creatures are wild animals, not domesticated pets, and as such are prone to follow their instincts. An apartment or house full of restrictions, children, strangers visiting, and other temptations and provocations is no place for these creatures that should be free to live their natural lives.

CONCLUSION

We’ve come a long way since the days of pet monkey comic book ads. And a plethora of laws banning, restricting, or regulating all aspects of the importation, possession, and treatment of primates have been enacted. All of this represents a big step forward towards protecting the safety, health, and well-being of both humans and our nonhuman primate friends.

COMING UP IN OUR NEXT ISSUE OF LAWS & PAWS:

PART TWO OF MONKEY BUSINESS: THE CHIMP ACT AND THE QUESTION OF FUNDAMENTAL RIGHTS FOR PRIMATES

SCHEDULE “A”

PRIMATES

APES

Great Apes

MONKEYS

Old World Monkeys

PROSIMIANS

Tarsiers

¹⁵ Austin Harvey, [Charla Nash, The Woman Who Lost Her Face To Travis The Chimp \(allthatsinteresting.com\)](https://allthatsinteresting.com/charla-nash) <https://allthatsinteresting.com/charla-nash>, November 7, 2022, updated April 23, 2023.

(Family Hominidae)

Humans (Genus Homo)

Gorillas (Genus Gorilla)

Orangutans (Genus Pongo)

Chimpanzees (Genus Pan)

Bonobos (Genus Pan)

Lesser Apes

(Family Hylobatidae)

Gibbons

(Superfamily Cercopithecoidea)

Native to Africa and Asia

e.g., Baboons, Macaques

New World Monkeys

(Superfamily Ceboidea)

Native to Central and

South America

e.g., Spider Monkeys,

Squirrel Monkeys, Marmosets

(Family Tarsidae)

Lorises and Lemurs

(Superfamily

Strepsirrhini)

About the author:

Jim D. Sarlis, Esq. concentrates on Elder Law and Trusts & Estates, and recently presented a NYSBA CLE webinar on Pet Trusts. While his office is now in Rosedale, Queens, he was born and raised in Hell's Kitchen in Manhattan, where he attended Columbia University, Fordham University School of Law, and NYU School of Law's Master of Laws (LL.M.) program in taxation. Mr. Sarlis has been a guest lecturer at New York Law School on the subject of Will Drafting, and has taught Real Estate Law and Legal Writing in the ABA-governed paralegal program of the City University of New York. Mr. Sarlis is admitted to the New York State Bar, the Federal Courts for the Southern and Eastern Districts of New York, and the U.S. Tax Court. His household has included a lovable dog named Cody, and a playful cat named Snickers. His apartment while growing up in Hell's Kitchen was located right above a neighbor whose pets included monkeys, feral cats, pigeons and parrots. Mr. Sarlis is also a member of COAL.

Laws Protecting Service Animals in New York, by Adam N. Lepzelter, Esq.

In 2022, New York ranked 33rd amongst the 50 states in terms of its animal protection laws.¹ These include laws that protect not just companion animals, but also service animals. This note briefly looks at the protections of service animals in New York by first examining the definition of a service animal, reviewing specific criminal offenses against service animals, and then examining civil remedies.

I. Definitions

In New York, a “Service dog” is any dog that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability. Agriculture & Markets Law §108.22. New York, like eight² other states, tracks the language used in the Americans with Disabilities Act’s definition, which reads in part:

Dogs that are individually trained to do work or perform tasks for people with disabilities...Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.³

Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.⁴

Unlike New York, the majority of states (31) track the language of Title 28 Section 35, of the Code of Federal Regulations, Non-Discrimination on the Basis of Disability in State and Local Governments. In these states, the statutory definition either directly cites the CFR or the language is copied. 28 CFR §35.104 defines as Service Animal to mean:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.⁵

Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to

¹ 2022 U.S. State Animal Protection Laws Rankings. By Animal Legal Defense Fund (ALDF). Available at <https://aldf.org/project/us-state-rankings/>

² The other states are Arkansas, Colorado, Connecticut, Indiana, Iowa, Maryland, New Jersey, and North Carolina.

³ Americans with Disabilities Act of 1990; see, <https://www.ada.gov/topics/service-animals/>

⁴ *Id.*

⁵ 28 CFR §35.104

the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.⁶

Twenty-four of these thirty-one states expressly limit the language defining a service animal to a “dog” and another five states limit the language to a “dog” or “miniature horse.” In six other states that do not track either the CFR or the ADA language, a service animal is limited to a dog and in another two such states, the definition is limited to a dog or miniature horse. As of this writing, only South Dakota does not have a statutory definition of a “service animal.”⁷

In New York, like most states, there are subcategories of a “service dog.” Under Agriculture & Markets Law §108, these categories include:

“Guide dog” means any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.⁸

“Police work dog” means any dog owned or harbored by any state or municipal police department or any state or federal law enforcement agency, which has been trained to aid law enforcement officers and is actually being used for police work purposes.⁹

“War dog” means any dog which has been honorably discharged from the United States armed services.¹⁰

“Hearing dog” means any dog that is trained to aid a person who is deaf or hard of hearing and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.¹¹

“Working search dog” means any dog that is trained to aid in the search for missing persons and is actually used for such purpose.¹²

It is not uncommon to have subcategories of service animals. For example, Illinois defines an “Assistance Animal” trained to assist a physically impaired person in one or more daily life activities¹³ and Louisiana has definitions for Dogs that assist those with autism, assist during a medical crisis, and assist those with mental illness, specifically including veterans with TBI or PTSD.¹⁴

II. Laws Protecting Service Animals

⁶ *Id.*

⁷ Regarding federal transportation statutes, 14 CFR §382 (Non-Discrimination on the Basis of Air-Travel, pursuant to Title 49) defines a service animal is a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. As such, emotional support animals are recognized as pets, not service animals.

⁸ Agriculture & Markets Law §108.9.

⁹ Agriculture & Markets Law §108.18.

¹⁰ Agriculture & Markets Law §108.20.

¹¹ Agriculture & Markets Law §108.21.

¹² Agriculture & Markets Law §108.25.

¹³ IL ST CH 740 §13.5.

¹⁴ LSA-R.S. §46:1952.

As of 2022, 23 states (including New York) have felony-level laws regarding crimes specifically against service animals, increased from just 7 in 2007; 46 states currently have misdemeanor-level laws protecting service animals, increased from just 18 in 2007. Felonies generally involve the death, torture, or physical assault of the animal (in some States the maximum penalty is incarceration up to 10 years, but in most States the maximum penalty is incarceration up to 3 years); the misdemeanors generally involve harassing, interfering with, or harming the animal. As of 2022, the number of states that have civil fines/penalties for various intentional torts against service animals has more than doubled to 47, from just 20 in 2007. Currently, only Iowa, Montana, and West Virginia have no laws relating to the protection of service animals.

In New York, the Penal law has a section specifically relating to service dog-related offenses. Penal Law §242 is entitled “Offenses Against Service Animals and Handlers.” §242.00 defines a “service animal” as “any animal that has been partnered with a person who has a disability and has been trained or is being trained, by a qualified person, to aid or guide a person with a disability.” There are three specific crimes:

- §242.05 Interference, harassment, or intimidation of a service animal. A person is guilty of this crime when he or she commits an act with intent to and which does make it impractical, dangerous or impossible for a service animal to perform its assigned responsibilities of assisting a person with a disability. This is a Class B Misdemeanor.
- §242.10 Harming a service animal in the second degree. A person is guilty of this crime when, with the intent to do so, he or she causes physical injury, or causes such injury that results in the death, of a service animal. This is a Class A Misdemeanor.
- §242.15 Harming a service animal in the first degree. A person is guilty of this crime when he or she commits the crime of harming a service animal in the second degree **and** has been convicted of harming a service animal in the first or second degree within the prior five years. This is a Class E Felony (which carries a minimum sentence of incarceration of 1 year and a maximum of 5 years).

III. Civil Protections and Other Offenses

As of 2022, all states require that a service dog be licensed (and certified), although the requirements for certification/training vary widely among the states. Most states make it a crime (usually a misdemeanor) to fraudulently represent that a person has the right to be accompanied by a service animal or that the animal has been certified as such. Common violations include unauthorized use of a harness or vest (or identification of a service animal).

New York’s law relating to anti-fraud is found in Agriculture & Markets Law §118.1, which states: it shall be a violation for any person to knowingly affix to any dog any false or improper identification tag, special identification tag for identifying guide, service, therapy or hearing dogs or purebred license tag¹⁵; for any person to furnish any false or misleading information on any form required to be filed with any municipality pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto¹⁶; and for the owner or custodian of any dog to fail to exercise due diligence in handling his or her dog if the handling results in harm to another dog that is a guide, hearing or service dog.¹⁷

¹⁵ Agriculture & Markets Law §118.1[c].

¹⁶ Id. at [e].

¹⁷ Id. at [f].

Furthermore, “any person who owns an animal or possesses control of such animal and who, through any act or omission, recklessly permits his or her animal to interfere with the proper working of a service animal, exposing the handler and service animal to danger or resulting in injury or death of the service animal shall be subject to a civil penalty not to exceed one thousand dollars in addition to any other applicable penalties.”¹⁸ If the animal was previously determined to be a dangerous animal, the fine is not to exceed two thousand dollars, a period of imprisonment not to exceed fifteen days, or both.¹⁹ In addition, the handler of the service animal incapacitated, injured or killed shall have the right to pursue **any and all civil remedies** available to recover damages for medical and veterinary expenses, rehabilitation or replacement of the service animal, and lost wages, transportation expenses or other expenses directly related to the temporary or permanent loss of the service animal.²⁰

While these and other laws are a good start, more can be done to ensure the safety and wellbeing of these service animals who provide needed assistance. Over the course of the past 15 years, States’ laws have trended towards providing more protections for service animals. Hopefully, the trend will continue in the future to protect these important dogs.

About the author:

Adam N. Lepzelter, Esq. is a COAL member and Co-Editor of *Laws and Paws*. He is the Senior Attorney for Kaplan Lawyers, PC, focusing on civil litigation on behalf of Plaintiffs, and has taught in the areas of criminal law, constitutional law, and paralegal studies at several colleges and institutions in the New York City area.

¹⁸ Agriculture & Markets Law §123-b(2).

¹⁹ Agriculture & Markets Law §123-b(3).

²⁰ Agriculture & Markets Law §123-b(4).

The Court of Appeals Denies “Happy” The Elephant’s Release to an Elephant Sanctuary by Lydia S. Antoncic, Esq.

*When the majority answers, “No, animals cannot have rights,” I worry for that animal, but I worry even more greatly about how that answer denies and denigrates the human capacity for understanding, empathy and compassion. Nonhuman Rights Project, Inc. v. Breheny, et al, 2022 WL 2122141 at *34 (2022) (Wilson, J. dissenting).*

In May of 2021, Happy the elephant made history when her appeal was selected for review by the New York Court of Appeals, marking the first time in legal history that an English-speaking high court considered an appeal from a *habeas corpus* petition brought by a non-human animal.

Happy’s Case

Happy is a 51-year-old Asian elephant who has been held in captivity since 1977 in a one-acre exhibit in the Bronx Zoo, which is managed by the Wildlife Conservation Society. Happy is the first elephant in the world to demonstrate self-awareness via the mirror test¹. The Nonhuman Rights Project (NhRP) brought the *habeas corpus* petition on Happy’s behalf and sought her transfer to an elephant sanctuary. A total of 146 people or groups filed eighteen amicus briefs in support of Happy’s *habeas* petition, including Laurence Tribe, as well as philosophers Martha Nussbaum and Peter Singer. Six expert scientific affidavits from five of the world’s most renowned experts on the cognitive abilities of elephants also supported Happy’s petition, emphasizing that she is an autonomous being.

The New York Court of Appeals heard oral argument on Happy’s case on May 18, 2022, resulting in a perplexing 5-2 decision that not only denied Happy’s petition, but brought to an apparent halt the court’s “long and distinguished history of adapting the common law to reflect new

¹ According to Wikipedia, the “mirror test—sometimes called the mark test, mirror self-recognition (MSR) test, red spot technique, or rouge test—is a behavioral technique developed in 1970 by American psychologist Gordon Gallup Jr. as an attempt to determine whether an animal possesses the ability of visual self-recognition. The MSR test is the traditional method for attempting to measure physiological and cognitive self-awareness. However, agreement has been reached that animals can be self-aware in ways not measured by the mirror test, such as distinguishing between their own and others' songs and scents. In the classic MSR test, an animal is anesthetized and then marked (e.g., painted or a sticker attached) on an area of the body the animal cannot normally see. When the animal recovers from the anesthetic, it is given access to a mirror. If the animal then touches or investigates the mark, it is taken as an indication that the animal perceives the reflected image as an image of itself, rather than of another animal. Very few species have passed the MSR test. Species that have include the great apes, a single Asiatic elephant, rays, dolphins, orcas, the Eurasian magpie, and the cleaner wrasse. A wide range of species has been reported to fail the test, including several species of monkeys, giant pandas, and sea lions.” https://en.wikipedia.org/wiki/Mirror_test

knowledge, changed beliefs and economic and social transformations.” *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at *29 (2022) (Wilson, J. dissenting).

The Majority’s Decision

In essence, the writ of *habeas corpus* is meant to protect liberty and therefore one’s autonomy, which in human beings is defined as “self-determined behavior that is based on freedom of choice.” *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at *39. The undisputed science makes clear that Happy is autonomous, a point conceded by the majority. Rather than addressing this issue directly, the majority issued a troubling decision that essentially turned on its head black letter law as it applies to *habeas* writs in New York.

The majority based its decision on the arbitrary premise that an elephant cannot be a legal “person,” and that the autonomy, intelligence and emotion of a nonhuman animal is not determinative of whether the writ is available to them because only human beings are endowed “with certain fundamental rights recognized by law.” *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at *4. This conclusory holding simply elided the arguments set forth by NhRP and in the dissents.

While that holding would have been enough to deny the writ outright, the majority went on to turn the law of *habeas* on its head by citing *People ex.rel. Dawson v. Smith*, 69 N.Y.2d 689, 691, 512 N.Y.S.2d 19, 504 N.E.2d 386 (1986), for the extraordinary, and unsupported, proposition that the writ can only be used when “a person is entitled to immediate release from an unlawful restraint of confinement.” *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at *4.

The majority then concluded that because nonhuman animals cannot perform legal duties, they cannot have rights. *Id.* This would seemingly deny the writ to children and incapacitated humans as well, an issue not addressed by the Court.

Incredibly, the majority further noted that, because granting *habeas* relief to an animal has never been done before, it is the legislature’s role—and not that of the Court of Appeals—to interpret common law. *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at 5, 7. Lastly, the majority ponders the lack of any “intelligible standard” to resolve these issues without addressing the “functional intelligence” or autonomy standards laid out by Judge Wilson and Judge Rivera in their respective dissents. *Id.* at 6. In closing, the majority notes that, although animals are not legal persons, they are more than things and are protected by cruelty and other laws in New York State and appear flummoxed by the “extraordinary interest” in Happy’s case despite the “simplicity of the legal issue presented.” *Id.* at 6-7. Perhaps that’s because this issue is not so simple at all?

Personhood

The majority held that habeas relief is not available to Happy because “legal personhood is often connected with the capacity, not just to benefit from the provision of legal rights, but also to assume legal duties and social responsibilities.” *Id.* at *4. According to Judge Wilson, this is simply wrong. “When a decision below has been made under an incorrect legal standard, that alone is sufficient to require reversal and remittal.” *Id.* at *34 (Wilson, J. dissenting) He went on to quote Judge Fahey, who observed in another case that “[e]ven if nonhuman animals cannot bear duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one’s infant child or parent suffering from dementia” (*Lavery*, 31 N.Y.3d at 1057 [Fahey, J., concurring]).” *Id.* at fn 7 (Wilson, J. dissenting)

Incredibly, the majority’s decision appears, without explanation, to create a new standard by which infants or mentally incapacitated persons are no longer considered legal persons if they are unable to bear legal duties and social responsibilities. This cannot be the law.

Habeas’ Historical Use to Transfer Custody or Confinement

The majority held that, “under New York law, the writ may be sustained only when a person is entitled to immediate release from an unlawful restraint of liberty.” *Id.* at *4. This holding was based on an incorrect reading of precedent as pointed out in the dissents. The case relied upon by the majority, *People ex rel. Dawson v. Smith*, actually held that habeas “could be used to seek transfer from one facility to another.” *Id.* at *42 (Rivera, J. dissenting) (bold added) “Additionally, the writ was flexibly used to transfer custody when circumstances demanded it, particularly in the case of children—a point contrary to the majority’s view that the writ cannot be used to transfer custody from a miserable situation to one less fraught.” *Id.* at *14, *See also*, 19-20 (Wilson, J. dissenting)

This decision now calls into question whether human prisoners will still be able to seek transfer from one facility to another using *habeas*, and whether children, as well as incapacitated adults will ever be able to seek habeas relief².

An Incremental Approach

² “The majority’s contrary view is based on an erroneous reading of prior case law. In *People ex rel. Dawson v Smith*, this Court explained that habeas could be used to seek transfer from one facility to another (69 N.Y.2d 689, 691 [1986], citing *People ex rel. Brown v Johnston*, 9 N.Y.2d 482 [1961]; *see also Lavery*, 31 N.Y.3d at 1058-1059 [Fahey, J., concurring] [“(H)abeas corpus can be used to seek a transfer to ‘an institution separate and different in nature from the . . . facility to which petitioner had been committed,’ as opposed to a transfer ‘within the facility’”], quoting *People ex rel. Dawson*, 69 N.Y.2d at 691.” *Id.* at *42 (Rivera, J. dissenting)

The majority held that granting Happy’s petition would result in an “enormous destabilizing impact on modern society,” and essentially deflected this issue to the legislature. In doing so, the majority ignored the fact that using the writ to grant relief to one elephant is about as measured an approach as is possible. Judge Wilson skillfully undercut the palpable fear in “the majority’s parade of horrors,” by stating the obvious: “Happy is an elephant. Elephants do have an interest in liberty and have been granted rights against inhumane treatment. Whatever rights and interests Happy may have do not tell us anything about the rights my dog has. The majority complains that granting legal personhood and liberty rights to Happy ‘would not be an incremental step in “the slow process of decisional accretion” regarding the scope and flexibility of the writ of habeas’ ... but granting a single elephant—not the whole animal kingdom—the right to a full hearing on a writ of habeas corpus is about as incremental as one can get.” *Id.* at *31.

The majority cites the lack of “any intelligible standard” to resolve these issues. *Id.* at 6. Ignoring the fact that development of such a standard is the court’s role, the majority dismisses the standards suggested by NhRP and Judge Wilson. NhRP relies on the legal precedent that recognizes the importance of protecting an individual’s autonomy under the common law. Happy’s autonomy is not in dispute, and acknowledged by the majority, although it offers no explanation as to why this could not be the standard used to determine such cases. Judge Wilson outlined a similar standard that the majority coined as the “functional intelligence” test, where he notes that Happy established that she “is a being with highly complex cognitive, social and emotional abilities. She has self-awareness, social needs and empathy.” *Id.* at *31 (Wilson, J. dissenting) Judge Wilson makes clear that in making these determinations, he would rely on *science*. In fact, the science of animal cognition is exploding in profound ways. It is the duty of the law to keep up with it, not ignore it.

Punting to the Legislature

As should be obvious, Happy’s case involves a common law issue, and is meant to be determined by a court, not the legislature, as highlighted in both dissents. Judge Rivera noted that the “difficulty of the task . . . is no basis to shrink from our judicial obligation by recasting it as the exclusive purview of the legislative branch. The common law is our bailiwick.” *Id.* at *38 (Rivera, J. dissenting)

Similarly, Judge Wilson noted that the “novelty of an issue does not doom it to failure: a novel habeas case freed an enslaved person; a novel habeas case removed a woman from the subjugation of her husband; a novel habeas case removed a child from her father’s presumptive

dominion and transferred her to the custody of another.” *Id.* at *11 (Wilson, J. dissenting). He went on to note that “the writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence. Indeed, the various rights held by animals today, as partially cataloged by the majority, are far greater than those held by enslaved persons in England or America, who had none.” *Id.* at *14 (Wilson, J. dissenting).

The Dissents

Eviscerating the majority decision in his 70-page dissent, Judge Wilson noted that “[t]he majority’s argument—‘this has never been done before’—is an argument against all progress, one that flies in the face of legal history. The correct approach is not to say, ‘this has never been done’ and then quit, but to ask, ‘should this now be done even though it hasn’t before, and why.’” *Nonhuman Rights Project, Inc. v. Breheny, et al.*, 2022 WL 2122141 at *11 (2022). Both Judge Wilson and Judge Rivera then thoughtfully addressed each of the majority’s points.

Non-Human Rights Project Motion to Reargue

NhRP filed a motion to reargue on July 14, 2022 arguing that the majority “misapprehended and overlooked crucial points of law and fact . . . resulting in an unjust, arbitrary and irrational decision.”³ In addition to the issues discussed above, NhRP also argued that the majority misapprehended why Happy’s imprisonment violates her common law right to bodily liberty and deprives her of her right to express her autonomy meaningfully. NhRP pointed out that the majority ignored that the great writ has been used to challenge detentions that were legal but otherwise unjust. NhRP highlights that transfer of Happy to an elephant sanctuary would afford her an environment radically different than her current one and would allow her to express her autonomy and flourish.

NhRP’s motion to reargue was denied on December 13, 2022, thus ending Happy’s struggle for relief in the New York courts.

Conclusion

Animal rights advocates long awaited a well-reasoned, thoughtful and cogent decision on the issues presented in Happy’s case. Instead, they got a decision sadly similar to one in an earlier case

³ <https://www.nonhumanrights.org/content/uploads/Reargument-Motion-FINAL-7.13.pdf>

involving the same issue that was criticized by Judge Fahey: “[t]he Appellate Division’s conclusion that a chimpanzee cannot be considered a ‘person’ and is not entitled to *habeas* relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species.” *Nonhuman Rights Project, Inc. on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1057 (2018)(Eugene Fahey, J., concurring).

In bending over backwards to preserve the status quo, the majority essentially ignored that the zoo’s purpose in maintaining Happy’s confinement as a spectacle has no real value to society and “serves no purpose other than to degrade life.” “It is an affront to a civilized society, and every day she remains a captive—a spectacle for humans—we, too, are diminished.” *Id.* at *36 and 43 (Rivera, J. dissenting).

While this result was clearly a loss for Happy, the powerful dissents by the Judges Wilson and Rivera will no doubt serve as building blocks for the future of the animal rights movement, and hopefully will influence future cases. However, as a die-hard New Yorker, it is disappointing to see our great state so significantly miss the mark on what is one of the greatest moral questions of our time. It will be interesting to see what California will do with a similar case that has recently been filed there.

About the author:

Lydia S. Antoncic, Esq. is the Principal Court Attorney to the Honorable Tandra L. Dawson, Integrated Domestic Violence Court (IDVC) in Manhattan. She is an active member of the New York Women’s Bar Association and current co-chair of the NYWBA Animal Rights Committee, and a former member of the NYSBA Committee on Animals and the Law.”

Helping Hands: The Transition from Service Monkeys to Emerging Technologies, by Jim D. Sarlis, Esq.

Elsewhere In this issue,¹ we noted that New York’s Environmental Conservation Law Section 11-0512 makes it illegal to knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animal for use as a pet in New York State. The term “wild animal” is defined at Section 11-0103 and includes “nonhuman primates and prosimians” such as monkeys and apes.

The 2005 statute further provides, however, that its prohibitions “shall not apply to the following persons and entities with respect to wild animals owned or harbored by them solely for a purpose other than for use as a pet: ... [including any] person who is paralyzed from the neck down who possesses a new world monkey trained to perform tasks for its owner by an organization described in [IRC 501(c), which lists tax exempt entities] and dedicated to improving the quality of life of persons paralyzed from the neck down.”²

HELPING HANDS: MONKEY HELPERS

For 41 years, the premiere non-profit organization Helping Hands: Monkey Helpers for the Disabled Inc. trained capuchins – New World monkeys native to Central and South America – to be placed as service monkeys, also known as helper monkeys, to live with and assist people with quadriplegia, arm or hand amputations or paralysis, severe spinal cord injuries, or other mobility impairments. Why capuchins? Because they are known to be quick learners, highly intelligent, have manual dexterity, and have been observed using tools in the wild. They are also of relatively small size. The training progressed stepwise, starting with 8 to 12 years in Socialization Homes with foster families, then 3 to 5 years of training, culminating in the organization’s Monkey College in Boston. Once placed with their human, they would assist with various tasks, such as switching lights on and off, turning the pages of a book, retrieving a dropped or out of reach object, helping the person have a drink, pushing buttons, scratching an itch, and even repositioning the person’s limbs.

As their mission statement puts it:

Helping Hands: Monkey Helpers was founded in 1979 to raise and train capuchin monkeys to provide daily in-home assistance to people living with spinal cord injuries or other mobility impairments. We are the only organization in the world that has trained capuchin monkeys to be service animals. Helping Hands learned that these little animals delivered more than just a willing set of nimble hands to their recipients. The monkeys provided companionship, joy, and the renewed sense of purpose that comes from taking responsibility for the health and well-being of another creature. Our mission is to provide: outstanding, ongoing support for our current recipients and their monkey helpers; a safe, healthy, fulfilling environment for post-service monkeys for the rest of their lives.³

The benefits to humans with mobility issues are obvious. And there is lots of evidence of the affectionate nature of the relationship between humans and their monkey companions. But

¹ Monkey Business: From Comic Book Ads to Primate Protection Laws, by Jim D. Sarlis.

² NY Env. Cons. Law § 11-0512 (2)(j).

³ GoldStar guide to nonprofits, <https://www.guidestar.org/search>.

turning monkeys into the captive live-in helpers of disabled humans has also long been controversial and subject to criticism.⁴

THE PERENNIAL QUESTION: THIS IS GOOD FOR THE HUMANS, BUT IS IT BAD FOR THE MONKEYS?

As always, perspective is important. When people compare the relatively mundane lives of service monkeys to the danger and fatality rate of monkeys launched into space or used in medical and scientific experiments, clearly being a service monkey looks pretty good. But that is a false comparison.

The more instructive comparison is to the natural lives of monkeys such as capuchins in the wild. Baby monkeys form a strong bond with their mothers in the wild. Service monkeys are taken away from their mothers before that can happen, from when they are just a few days old. Monkeys are intricately interwoven with their extended families, from learning from the elders to interacting with the other monkeys and being part of the hierarchy of the group. Service monkeys are deprived of this. And almost all species of monkeys in nature live in large expanses of forests or savannas, roaming, exploring, climbing, moving freely. This does not even compare to being home-bound in an unnatural environment, where they live in “a human-constructed reality that is anathema to how they have evolved and how they deal socially with their surroundings and own species.”⁵

In addition, while the training methods ultimately became gentler and kinder, with positive reinforcement and rewards being the norm, it wasn’t always the case, including that early on, the monkeys’ front and canine teeth would be removed to help prevent dangerous bites by the animals. The monkeys, doing their best to understand human cues, were undoubtedly confused, stressed and fearful at times. And, of course, besides the possibility of bites and other aggressions, there was always the possibility of disease spreading between the species.

TRANSITION FROM SERVICE MONKEYS TO EMERGING TECHNOLOGIES

In response, the US Department of Justice in 2011 amended the Americans with Disabilities Act (ADA) definition of “service animal” so that it does not apply to wild animals such as monkeys.⁶ Helping Hands has stopped training and placing new service monkeys; it does “continue to support human-monkey teams that they have already placed.”⁷ The Helping Hands website now automatically feeds the user to the nonprofit’s new website, which explains that the organization has become Envisioning Access.⁸ It further explains that Helping Hands, which trained and placed capuchins from 1979 to 2020, now focuses on AI, robotics, and technology to assist the disabled. It continues: “Additionally, we will never forget our service animals, so [by renovating the Monkey College] we are providing a safe, healthy, fulfilling environment for post-service and medically challenged monkeys for the rest of their lives.”⁹

⁴ Barbara J. King, The Atlantic, “Is It Cruel to Have a Monkey Helper?”, <https://www.theatlantic.com/health/archive/2016/08/is-it-cruel-to-have-a-monkey-helper/493970/>, August 2, 2016.

⁵ King, *supra*, quoting Katherine MacKinnon, anthropologist and capuchin expert at St. Louis University.

⁶ Beginning on March 15, 2011, only dogs are recognized as service animals under Titles II and III of the ADA, although separate provision is also made for miniature horses that assist the disabled. See, ADA.gov; see, also, [Highlights of the Final Rule to Amend the Department of Justice's Regulation Implementing Title II of the ADA](#). United States Department of Justice, Civil Rights Division. Retrieved October 2, 2013.

⁷ Megan Talbert, Helping Hands Monkey Helpers, Abilities.com, Not Just Monkeying Around-Consider the Benefits of a Helping Hands Service Monkey, <https://www.abilities.com/community/assistance-animals-monkeys.html>

⁸ <https://www.envisioningaccess.org>, .Envisioning Access - Envisioning Access

⁹ *Id.*

So, the former Monkey College in Boston has been converted into a capuchin sanctuary which provides the monkeys with a more natural habitat and more natural existence with others of their species for the remainder of their lives.¹⁰ In addition, there are other Monkey Sanctuaries in the U.K. and in Gainesville, Florida.¹¹

CONCLUSION

The practice of training and placing monkeys as service animals has ended, with the advances in technology taking the place of the capuchins. How this impacts the humans is yet to be seen, since the monkeys also provided some companionship and affection as well. But we have all seen how rapidly technology advances, so it is reasonable to foresee that the sky is the limit. However, having the monkeys live out their remaining years in a sanctuary where they are free, and living and interacting in a more natural setting, is undoubtedly more evolved and ... humane.

About the author:

Jim D. Sarlis, Esq. concentrates on Elder Law and Trusts & Estates, and recently presented a NYSBA CLE webinar on Pet Trusts. While his office is now in Rosedale, Queens, he was born and raised in Hell's Kitchen in Manhattan, where he attended Columbia University, Fordham University School of Law, and NYU School of Law's Master of Laws (LL.M.) program in taxation. Mr. Sarlis has been a guest lecturer at New York Law School on the subject of Will Drafting, and has taught Real Estate Law and Legal Writing in the ABA-governed paralegal program of the City University of New York. Mr. Sarlis is admitted to the New York State Bar, the Federal Courts for the Southern and Eastern Districts of New York, and the U.S. Tax Court. His household has included a lovable dog named Cody, and a playful cat named Snickers. His apartment while growing up in Hell's Kitchen was located right above a neighbor whose pets included monkeys, feral cats, pigeons and parrots. Mr. Sarlis is also a member of COAL.

¹⁰ See, e.g., Christopher Gavin, Boston <https://www.boston.com/news/local-news/2020/02/05/capuchin-monkeys-allston-zba/?amp=1>, February 5, 2020.

¹¹ Meet the Capuchin Monkeys, Monkey Sanctuary, <https://www.monkeysanctuary.org/capuchin-monkeys/>; Jungle Friends Primate Sanctuary: Capuchins, <https://www.monkeysanctuary.org/capuchin-monkeys/>.

NYSBA Committee on Animals and the Law Member Spotlight: Rebecca Flynn Graham Thompson, Esq., by Breanna C. Reilly, Esq.

Tell us a little bit about your background, what makes you who you are today?

My parents made me who I am today. The combination of hometown/family upbringing and exposure to a cosmopolitan world shaped my perspective.

My parents met in Newport, Rhode Island while my dad was a sophomore at Providence College and my mom was a freshman at St. Rose College. During the summer, my mother was working for a New York family as a babysitter. My father was a local Newporter working at the shipyard. My mom completed two years of college before they married. After my dad graduated in 1961, they moved to NYC. My dad worked for an international company which required them to move frequently in the 1960s. My younger brother and I were born in Shreveport, Louisiana during the Civil Rights Movement.

When my parents divorced, my mom moved us to her hometown, Troy, to live near her family. My dad moved to Washington DC. I grew up in Troy with my mom and her family, spent my summers in Newport with my grandparents and visited my dad on Capitol Hill during school breaks.



Barbara Nugent and David Flynn, photo by The Lloyd Studio, Troy, NY 1990

What made you decide to become an attorney?

My dad, David **Flynn**. He treated all his children like sailboats. He continuously adjusted our “sails” to point us in the direction that he thought was best for us. When I was a sophomore in college, I applied to the School of Social Work. When my dad asked why, I responded that I wanted to help people. He said, “lawyers help people.” He encouraged me to take the LSATs during my junior year and apply to law school. A shout out to my mom here...she “hoisted” our sails. She did the heavy lifting. I moved home during law school and brought home classmates looking for dinner and a place to do laundry. My mom lived through my law school anxieties and melt downs. She drove me to school for exams including the NYS bar exam. Law school was my dad’s vision, and my mom lived the reality of it.

Take us through your legal career since graduating law school...

After law school graduation, I moved to NYC and worked for ten years at two large law firms that no longer exist. I was a member of a trial team for nine years after spending my first year researching and writing. My training at the big law firms was invaluable. We worked hard but also had fun. I continued on a traditional career path when a client hired me as a member of an in-house lawyer team. In 2003, the client dissolved its in-house lawyer team as a cost-cutting measure. This was my first major career crossroad, and I was lost.

My deceased husband, Jesse **Graham**, was a very successful trial lawyer and equity law partner at a big firm. Not so easy to find a litigation position that did not conflict with his firm’s clients. His competitors would not hire me. A colleague referred me to work as a project attorney defending in worldwide chip failure case. Next project was defending big pharma in a drug case. For the next

ten years, I moved from one client matter to the next...big pharma litigation, satellite radio merger, airline mergers, patent litigation. For that time in my life, it was perfect. When my husband was not on trial, I did not accept projects. When he was on trial, I worked. When my family needed me, I was there.

Tell us about your time serving as counsel in the NYS Legislature...

My husband Jesse **Graham** died in 2012 from cancer. Once again, I was lost. A very dear friend decided to run for the NYS Assembly. She said she needed help. We started her campaign in my Upper East Side apartment. I was her campaign manager and then legislative counsel from 2014 to 2019. I never would have been able to do that if my husband was alive due to law firm conflicts.

Loved the policy, hated the politics. Public policy impacts our lives every day. Constituents and advocates are passionate about their concerns. Effective lobbyists are well prepared and knowledgeable on their issues. The breadth of matters that come before the NYS Legislature is daunting. No one person could possibly be well versed in all the legislation that Senators and Assembly Members are required to vote on. Good legislators and staff learn who are reliable sources and who cannot be trusted.

NYSBA is a trusted source. On a late afternoon, I was working in the Legislative Office Building (LOB) preparing briefings for the Assembly Member's Committee meetings the next day where she would be required to vote on legislation from the committee to the floor. A NYSBA lobbyist poked his head in and asked if he could provide me with a packet of information for the Assembly Member. When I read the NYSBA briefing which included memos from numerous influential, knowledgeable experts in the field, I advised the Assembly Member that we needed more time before she could make an informed vote. The legislation was set aside the next day solely because of the information provided by NYSBA. It eventually passed into law during a subsequent session. I believe it is a better law because of NYSBA's work. My goal is the work we do as members of COAL will have the same impact on future legislation.

What does your current law practice consist of?

I serve as legal counsel to Steel Krafts Building Material and Supplies, Inc., a distributor of commercial doors and hardware. All my legal experience through the decades helps me every day. I can identify issues; I reach out to sources that can assist; I routinely resolve problems.

I moved to Saratoga County in 2019 before COVID. Steel Krafts went through an ownership transition in 2019 that I assisted in the legal work. Afterwards, they hired me. Disclosure here...my husband Richard **Thompson** is an owner of Steel Krafts.

What sparked your interest in animal law?

Animals are drawn to me. If there is an animal in the house, they are on my lap or at my feet. As I provide these responses, our dog Willie is next to me.

Is there a recent piece of animal law legislation that you are particularly passionate about? And why?

I am passionate about helping souls who cannot help themselves whether they are humans or animals. I am also a very practical person. The recent legislation that has caught my attention is the regulation of grooming facilities. Good grooming is not for looks but more importantly, good health. Animals need to be properly cared for...teeth, nails, ears, back sides, hair/fur. They can't do it themselves. My Welsh terriers lived to the ages of 15 and 17 partially because they were groomed on a regular schedule.



Me and KoKo, photo by Renate McKnight, Litchfield, CT 2017

What is one of your fondest or most rewarding memories from your career?

After September 11th, I successfully defended a personal injury case in Kings County, Supreme Court. The defendants were Muslim immigrants. The plaintiff's case was fraudulent. Everyone said the plaintiff would prevail because of prejudice. The General Counsel told me he did not care if we lost on the trial level, the company would not pay a fraudulent claim. He would rather pay defense costs and take up an appeal. I presented the truth. The jury found in favor of the defendants. The Muslim defendant brought his son to court. After the verdict, he introduced his son to me and said, "this is why we came to America...for fairness." Disclosure here...my deceased husband Jesse **Graham** was a talented, successful trial lawyer. I was the trial lawyer in court, and it is reported in the NY Jury Verdict Reporter. Jesse supported me every step of the way to develop a winning strategy. He even sat in the back of the courtroom during the trial.

Significantly, I learned so much more from my failures and losses than from my successes. When we succeed, we think we did everything right. When we fail, we think we did everything wrong. Neither is true. Our failures provoke us to reconsider.

Is there a particular area of animal law that you feel most passionate about?

Protecting animals while balancing the realities of nature.

Recently, I was involved in the rescue of a baby bear cub from a tree. The mother could not be found and was not confirmed dead. En Con advised euthanizing the cub because mama bears are known to be fiercely protected of their cubs. If a mama bear abandoned her cub, it was nature's course. Due to public pressure, En Con removed the baby cub from the tree and placed her in a bear sanctuary. The experience has given me pause. Did we do the right thing? Who is going to pay to care for that cub? Should public money be spent on animals rather than children?

How did you get involved in NYSBA COAL?

I attended the NYSBA annual meeting in NYC for the Commercial & Federal Litigation Section. While walking around, I met the COAL members outside a conference room. I submitted an application that I was interested in becoming a member.

In your opinion, what is one of the biggest benefits of being a member of NYSBA COAL?

Working with members who are dedicated advocates and good lawyers.

Do you have any specific goals in mind as an active member of NYSBA COAL going forward?

My goal is that COAL is a trusted source for information for legislators.

What pets do you currently have?

Willie the house dog. He is 11 years old. His father was a Jack Russell and his mother a Cairn terrier. My husband Richard **Thompson** named Willie after Yankees' player Willie Randolph.

What do you enjoy doing for fun?

I love being home...cooking, gardening, being outdoors. I have traveled. I was a member of the Roundabout Theater Club for 30 years. I had season tickets for the NYC Ballet for decades. We also had seats in Yankee Stadium for many years. Now we watch the Yankee games at home.

Tell us about your three last names...

Flynn is my maiden name. **Graham** was my married name. I said I would never marry again after Jesse died in 2012. Never say never. In 2022, I married Richard **Thompson**. I could not do less for Rich than I did for Jess. Rich and I grew up together in Troy. We reconnected in 2017. Life on earth is for those who live here. I am so fortunate for my dad, my deceased husband, and my living husband.

Recently, at a law school event, my classmates suggested I open a law firm named, "**Thompson, Graham & Flynn.**"

About the author:

Breanna C. Reilly, Esq. is a COAL Member and Co-Editor of *Laws and Paws*.

2022 Student Writing Competition 3rd Place Finisher:

Sealing the Deal: Continuing Protections for Cape Cod’s Seal Population Post-MMPA, by Bailey Soderberg

*“If you see those pretty things that nature likes to show,
Remember all those seals that sing and leave them there to grow.”*

(Stephen Cosgrove, Trapper)

INTRODUCTION

On Cape Cod, the dichotomy between locals and tourists is an accepted part of life on the peninsula. One particular animal divides the two groups: the seal. Many locals express their desire to cull the seal population, while tourists opt to take seal watching boat tours and post on travel forums to determine the best beaches for seal observation. Locals often suggest returning to a bounty system for population control, referencing the dark history of seal culling on Cape Cod. From the 1890s to the 1960s, hunters and fisherman on Cape Cod received \$5 in exchange the nose or skin of seals—mainly harbor and gray seals.

Similar bounties along New England’s coast and a robust seal-hunting tradition in bordering countries pushed the U.S. seal population to the brink of extinction. The promulgation of the Marine Mammal Protection Act (MMPA) officially ended the pursuit of seals for population control. After the recovery of the population in recent years, locals have expressed animosity towards the seals. The seals are a scapegoat for many local issues, including the dwindling numbers of fish available for commercial fishermen, the frequency of shark sightings shutting down beaches, and water pollution in areas where seals congregate. With tensions rising from resource competition between seals and humans, it is important to determine solutions that avoid a return to brutal culling methods.

This paper will first analyze the history of seals on Cape Cod in Part I, including their culling prior to the enactment of the MMPA and the role of trophy hunting in their population control. Part I will also cover the rebound of Cape Cod’s seal population under the protection of the MMPA. Part II will address the tension created by resource competition between humans and wildlife—in this case, the effect of seals on commercial fishing, recreation, and tourism. Finally, Part III will propose solutions to remedy the conflict between humans and seals, and a new perspective to frame the situation in a way that considers the interests of seals alongside human interests.

I. A HISTORY OF SEALS ON CAPE COD

Most seals that inhabit Cape Cod are either harbor seals or gray seals. Gray seals, usually weighing between 550 and 850 pounds, live on the Cape all year.¹ Gray seals feed on sand lance, hakes, flatfish, and squids.² Harbor seals live on Cape Cod between September and May, weighing between 100 and 300 pounds and preying on groundfish, redfish, herring, and squids.³ According to a 2016 study, approximately 425,000 gray seals and 75,000 harbor seals move up and down the

¹ NOAA FISHERIES, *Cape Cod Seals and Sharks: Shared Traits and Top 10 Facts* (Aug. 18, 2021), <https://www.fisheries.noaa.gov/feature-story/cape-cod-seals-and-sharks-shared-traits-and-top-10-facts#>.

² *Id.*

³ *Id.*

Atlantic coast.⁴ Aerial surveys of gray and harbor seal populations on Cape Cod over three years (2012–2015) indicated a population of 30,000 to 50,000 gray seals.⁵ The earth observation imagery focused on “haul-outs”—periods of time where seals leave the water and congregate in groups on land to interact, reproduce, and rest.⁶

A. State Seal Bounties

Although Cape Cod’s seals are flourishing now, the population once struggled to survive as humans placed bounties on their lives. Initially, Massachusetts introduced seal bounty laws in 1888, authorizing town clerks to pay one dollar per seal tail.⁷ By 1892, the amount increased to three dollars per seal tail.⁸ Massachusetts legislation repealed the bounty from 1908 to 1919, when it was reinstated as a two-dollar bounty for the whole skin and nose of the seal.⁹ In 1933, the bounty increased to five dollars for the delivery of a whole seal skin and nose.¹⁰ Massachusetts repealed the bounty system in 1962.¹¹ Leading the way towards ending seal deaths, Massachusetts solidified the recovery of the nearly extinct gray seal population in 1965, promulgating an act providing protection for the gray seal.¹² The law is still on the books today, prohibiting anyone in Massachusetts to “detain, hunt, kill or injure a gray seal.”¹³

According to bounty records in Massachusetts from 1888 to 1962, 15,690 bounties were paid for seal killings.¹⁴ Similar bounties existed along the Gulf of Maine, affording seals no safety as they traveled along the Atlantic Coast throughout the year as part of their natural behavior.¹⁵ Researchers combined the paid bounties in Massachusetts with the bounty records from Maine during the same time period and factored in potential fraud, missing data, and seals that were killed and lost.¹⁶ A total of 72,284 to 135,498 seals were likely killed during the period when the bounty hunts were permitted (1888–1962).¹⁷

B. The Marine Mammal Protection Act

In 1972, the enactment of the Marine Mammal Protection Act (MMPA) officially rendered any seal bounty off-limits, providing federal protections for seals and other marine mammals. Congress promulgated the MMPA after determining that human activities diminished the populations of marine mammals significantly.¹⁸ The MMPA establishes a moratorium on the “taking” and importing of marine mammals.¹⁹ “Take” is defined as “to harass, hunt, capture, or kill,

⁴ *Id.*

⁵ Jerry H. Moxley et al., *Google Haul Out: Earth Observation Imagery and Digital Aerial Surveys in Coastal Wildlife Management and Abundance Estimation*, 67 *BIOSCIENCE* 760, 765 (2017).

⁶ *Id.* at 762

⁷ Barbara Lelli et al., *Seal Bounties in Maine and Massachusetts, 1888 to 1962*, 16 *NE. NATURALIST* 239, 243 (2009).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 243

¹¹ *Id.*

¹² Stephanie A. Wood et al., *Rates of Increase in Gray Seal (*Halichoerus grypus atlantica*) Pupping at Recolonized Sites in the United States, 1989–2019*, 101 *J. MAMMALOGY* 121, 122 (2019).

¹³ MASS. GEN. L. ch. 130 § 101A (1965).

¹⁴ Lelli, *supra* note 6, at 239.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 16 U.S.C. § 1361.

¹⁹ *Id.*

or attempt to harass, hunt, capture, or kill any marine mammal.”²⁰ Certain exceptions and permits exist to allow for takings for scientific research, public display, photography for educational or commercial purposes, and efforts to enhance survival or recovery.²¹ As applied to the gray and harbor seals living on Cape Cod, the MMPA provides a blanket protection unless permits are obtained to interfere with the population.

Other factors contribute to seal mortality, including diseases, storms, predators, boat strikes, habitat loss, or fishing gear entanglement.²² However, the recovery of gray seals and harbor seals after the creation of the MMPA is undeniable. In 1994, a survey recorded 2,035 seal sightings in Cape Cod waters.²³ By 2011, National Marine Fisheries Service reported more than 15,700 seals along Cape Cod, hauling out by the hundreds on local beaches.²⁴ As noted above, aerial observances in recent years estimate about 30,000 to 50,000 gray seals live in the waters around Cape Cod.²⁵ Many locals remark on the significant rebound in numbers, recounting the steady incline of seal sightings in the last fifty years.²⁶

C. *Lingering Effects in the Post-Bounty Era*

Cape Cod used the seal bounties to eliminate competition for fishermen.²⁷ Despite a lack of scientific evidence, fishermen on the Cape strongly believe that seals are stealing fish off their lines and affecting their livelihoods.²⁸ The seals along the coast of New England were regarded as marine pests, and this sentiment still exists today—especially among fishermen.²⁹ Many fishermen advocate for the return of a bounty hunt or official cull, viewing the seals as a “nuisance” that “destroyed a lot of the inshore fish populations.”³⁰ However, researchers and biologists suggest that this effort would be futile because “killing a thousand—or even a few thousand—isn’t going to make a difference because there are so many of them.”³¹ Seals are not a discrete population restricted to Cape Cod and the ideal conditions in Cape Cod waters would continue to attract them to the area, even if killings occurred.³² Beyond that, data suggests that the seal population of Cape Cod is not at “carrying capacity” because the number of seals continues to grow each year.³³ Usually, when a species reaches carrying capacity, the resources available deplete and the population begins to decrease.³⁴

²⁰ *Id.*

²¹ *Id.*

²² Lelli et al., *supra* note 6, at 240.

²³ Lonny Lippsett, *The Return of the Seals: Growing Herds Raise Questions on Sharks, Fish, and Poop*, WOODS HOLE OCEANOGRAPHIC INST. (Nov. 26, 2013), <https://www.whoi.edu/oceanus/feature/the-return-of-the-seals/>.

²⁴ *Id.*

²⁵ Moxley et al., *supra* note 5.

²⁶ Jim Behnke, *Cape Cod’s Seal Problem*, ON THE WATER (May 4, 2021), <https://www.onthewater.com/cape-cods-seal-problem>.

²⁷ Elaine Quijano, *New England Fishermen Say Seals Are Eating Up Their Livelihood*, CBS NEWS (July 29, 2014, 7:14 PM), <https://www.cbsnews.com/news/fishermen-competing-with-seals-for-their-catch/>.

²⁸ Jason Brittel, *Cape Cod’s Gray Seal and White Shark Problem is Anything but Black-and-White*, NAT. RES. DEF. FUND (Nov. 9, 2018), <https://www.nrdc.org/onearth/cape-cods-gray-seal-and-white-shark-problem-anything-black-and-white>.

²⁹ Miriam Wasser, *Seals on Cape Cod Are More Than Just Shark Bait*, CONN. PUB. RADIO (Aug. 6, 2019, 2:06 PM), <https://www.ctpublic.org/environment/2019-08-06/seals-on-cape-cod-are-more-than-just-shark-bait>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

Other countries continue to hunt seals despite criticism and falling demand for seal products. In Canada, specifically along the Newfoundland and Labrador coasts, licensed commercial sealers are allotted a certain number of harp seals to slaughter.³⁵ The quota usually varies between 200,000 to 400,000 harp seals per year.³⁶ The Canadian Sealers Association promotes “best sealing practices,” including crushing seal skulls using picks, clubs, or rifles before cutting along the belly of the animal to kill them by bleeding out.³⁷ Seal imports are banned in over thirty-five countries as the result of anti-sealing campaigns and a loss of demand for seal products, and seal hunting is expected to decline as society’s values continue to change.³⁸ However, the threat of hunting and culling seals lingers in regards to resource competition and population management.

II. RESOURCE COMPETITION BETWEEN HUMANS AND WILDLIFE

While the bounties disappeared in the late 1960s and seal populations flourished under federal protections, the threat of culling and violence towards seals remains present. Cape Cod is a popular tourist destination, relying on the summer season to sustain the economy of the peninsula throughout the year. In 2018, 30.1 million domestic and international visitors visited Massachusetts.³⁹ During the same year, direct tourism spending in Barnstable County (Cape Cod) was \$1.32 billion.⁴⁰ One of the main attractions and exports of Cape Cod is seafood. Named for the once plentiful population of Atlantic cod, overfishing has depleted the species in the area.⁴¹ The culture and history of Cape Cod is rooted in the fishing industry; in the 1800s, immigrants moved to Massachusetts to work as fishermen because the state was thriving (despite economic struggles in other countries and U.S. states) due to demand for seafood.⁴² While some immigrant fishermen were West Indian, Canadian, and Italian, most were Portuguese.⁴³ Cape Cod still retains a large Portuguese population, a reflection of the deeply ingrained culture from the original fishing communities that settled the area.⁴⁴

A. Conflicts Between Fishermen and Marine Animals

In the mid–1900s, the fishing industry began to suffer due to overfishing.⁴⁵ The 1970s brought statewide catch restrictions in Massachusetts and federal protections governing marine

³⁵ Jani Hall, *Demand for Seal Products Has Fallen—So Why Do Canadians Keep Hunting?*, NAT’L GEOGRAPHIC (Apr. 5, 2017), <https://www.nationalgeographic.com/animals/article/wildlife-watch-canada-harp-seal-hunt?loggedin=true>.

³⁶ HARPSEALS.ORG, *Seal Hunt Quotas (Total Allowable Catch, TAC) and Official Number of Seals Killed Over the Years*, https://www.harpseals.org/about_the_hunt/quota_tac.php (last visited Dec. 17, 2021).

³⁷ CAN. SEALERS ASS’N, *Seal Hunt Procedures*, <https://www.sealharvest.ca/seal-hunt-procedures/> (last visited Dec. 17, 2021).

³⁸ HARPSEALS.ORG, *supra* note 36.

³⁹ *Statistics*, CAPE COD CHAMBER COM., <https://www.capecodchamber.org/members/membership/statistics/> (last visited Dec. 18, 2021).

⁴⁰ *Id.*

⁴¹ *Saving Atlantic Cod*, CONSERVATION L. FOUND., <https://www.clf.org/making-an-impact/saving-atlantic-cod/> (last visited Dec. 18, 2021).

⁴² Fiona Barrett, *Anthropology: The Fishing Industry’s Impact on Culture in Massachusetts*, YOAIR BLOG (June 23, 2021), <https://www.yoair.com/blog/anthropology-the-fishing-industrys-impact-on-culture-in-massachusetts/>.

⁴³ *Id.*

⁴⁴ *Id.* In 2010, Massachusetts recorded almost 320,000 people of Portuguese descent living in the state—the second highest concentration in the country, after California.

⁴⁵ *Id.*

fisheries, like the Magnuson-Stevens Fishery Conservation and Act.⁴⁶ The fish stocks slowly recovered under the new regulations, but the fishing industry shrank as commercial fishermen gave up while waiting for a replenished supply and multiple financial crises rocked the nation.⁴⁷ Commercial fishing for cod, haddock, pollock, and other fish has increased in recent years, but not to the same levels as before.⁴⁸

Although the industry is not as strong as it once was, a significant community of people on Cape Cod still rely on fishing as their livelihood.⁴⁹ Following the first year of the COVID-19 pandemic, Massachusetts Governor Charlie Baker announced \$23.8 million would be awarded to seafood processors, commercial fishermen, shellfish farmers, and for-hire recreational vessel owners through the Department of Fish and Game's Division of Marine Fisheries because "fishing and seafood industries are integral parts of the economy, history, and culture of Massachusetts."⁵⁰ Seafood restaurants in Massachusetts also suffered greatly during the pandemic with the lack of visitors causing a "big downturn in restaurant sales"—a perfect demonstration of the symbiotic relationship between tourism and fishing.⁵¹ When the catch doesn't meet expectations because fish populations are low, blame often lands on wildlife rather than overfishing or fishery management. Resource competition between humans and animals often leads to the blaming of natural predators like seals, dolphins, and even other fish—such as dogfish.⁵²

The increasing number of seals on Cape Cod and in New England waters is paralleled by an increase in violence. In 2004, four dead seals were discovered across New England over a period of seven months.⁵³ One of the deaths included a mutilated gray seal with their genitals removed.⁵⁴ Another seal washed up on Hampton Beach in New Hampshire, professionally skinned.⁵⁵ A harp seal died on Cape Cod in 2007 from head injuries inflicted by shotgun pellets.⁵⁶ After suffering head wounds from several gunshots, a gray seal was euthanized in Truro.⁵⁷ In 2011, six gray seals were found shot to death on Cape Cod beaches in Dennis and Chatham.⁵⁸ While the motives for the six seal killings remain unclear, there could be a connection to the disgruntled fishermen who call for renewed seal bounties.⁵⁹ At the least, there is "a quiet segment of the fishing population who consider

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Terry Gallagher, *The Counterintuitive Possibility of Becoming a Cape Cod Fisherman*, PROVINCETOWN INDEP. (Dec. 12, 2019), <https://provincetownindependent.org/news/2019/12/12/the-counterintuitive-possibility-of-becoming-a-cape-cod-fisherman/> (citing the Cape Cod Fishermen's Alliance, reporting 1,867 commercial fishermen in Barnstable County in 2017 who caught \$73.8 million worth of fish).

⁵⁰ MASS. DEP'T FISH & GAME, DIV. MARINE FISHERIES, EXEC. OFF. ENERGY & ENV'T AFF., BAKER-POLITO ADMINISTRATION ANNOUNCES \$23.8 MILLION IN FEDERAL RELIEF FUNDING FOR FISHING AND SEAFOOD INDUSTRIES (July 20, 2021).

⁵¹ *Id.*

⁵² Doug Fraser, *Fishermen Were Right: Dogfish are Eating Cod*, CAPE COD TIMES (Nov. 27, 2020, 7:44 PM), <https://www.capecodtimes.com/story/news/2020/11/27/dogfish-eating-cod-may-hindering-restoration-cod-population/6426182002/>.

⁵³ Beth Daley, *Shooting Deaths of Five Seals Under Investigation on Cape Cod*, BOS. GLOBE (June 10, 2011), http://archive.boston.com/news/local/massachusetts/articles/2011/06/10/shooting_deaths_of_five_seals_under_investigation_on_cape_cod/.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Abby Goodnough, *Anger and Mystery on Cape Cod in Wake of the Killing of Six Gray Seals*, N.Y. TIMES (June 20, 2011), <https://www.nytimes.com/2011/06/21/us/21seals.html>.

⁵⁹ *Id.*

the seal killer something of a vigilante hero.”⁶⁰ Whoever killed the seals harbored enough resentment to risk potential fines of over \$100,000 (up to \$10,000 in civil fines for each violation and up to \$20,000 in criminal fines for each knowing violation)⁶¹ and maximum imprisonment one year as penalties under the MMPA.⁶²

New England is not the only area reporting illegal seal killings in recent years. On the Hawaiian island of Molokai, National Oceanic and Atmospheric Administration (NOAA) officials reported the death of an endangered Hawaiian monk seal in September 2021.⁶³ The monk seal was intentionally shot in the head, one of three monk seal killings on Molokai in 2021 (the other two monk seals were killed in April 2021 by “blunt force trauma”).⁶⁴ NOAA stated that “intentional killing of this endangered species is devastating to the recovery of this population.”⁶⁵ Like Cape Cod’s seal population, Hawaii’s monk seals are “perceived as a nuisance or competition to people who are fishing.”⁶⁶ In the last ten years, seven endangered Hawaiian Monk seals have been killed by humans.⁶⁷ Incidents dating father back prove just as gruesome, including an incident in 2009 where a man on Kauai island was charged with “shooting a female monk seal twice with a .22; one round lodged in the fetus she was carrying.”⁶⁸

Other countries face similar outbreaks in violence towards seals. Ōhau Point in New Zealand serves as a fur seal sanctuary.⁶⁹ The fur seal colony at Ōhau Point is a well-known tourist attraction, and the area has a trail where people may glimpse seal pups playing in the stream or the waterfall.⁷⁰ However, the locals at the nearby seaside town of Kaikōura have a dark past with the seals.⁷¹ In June 2010, several seals were shot with a paint gun and bashed with a metal pole.⁷² Later that year, twenty-three seals at Ōahu Point were “found clubbed to death—including eight newborn pups.”⁷³ Two salmon-farm workers were convicted of the attack and told the court they “viewed the seals as pests.”⁷⁴ In July 2013, an adult female seal and pup were shot in the head at Ōahu Point.⁷⁵ A baby seal was stabbed to death north of Kaikōura in October 2020, and a local man was arrested “after

⁶⁰ Jimmy Fee, *Seal-rial Killer*, ON THE WATER (June 16, 2011), <https://www.onthewater.com/news/2011/06/16/seal-rial-killer>.

⁶¹ 16 U.S.C. § 1375.

⁶² Abby Goodnough, *Massachusetts: Six Seals Are Found Shot to Death*, N.Y. TIMES (June 10, 2011), <https://www.nytimes.com/2011/06/11/us/11brfs-Massachusetts.html> (referencing 16 U.S.C. § 1375).

⁶³ *Endangered Hawaiian monk seal is found shot in the head on Molokai*, NPR (Dec. 21, 2021, 9:23 PM), <https://www.npr.org/2021/12/21/1066616984/endangered-hawaiian-monk-seal-is-found-shot-in-the-head-on-molokai>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Jon Mooallem, *Who Would Kill a Monk Seal?*, N.Y. Times (May 8, 2013), <https://www.nytimes.com/2013/05/12/magazine/who-would-kill-a-monk-seal.html> (discussing a wave of monk seal killings around 2009–2013, including an eight-year-old male seal and a one-year-old female seal who were beaten to death or shot).

⁶⁹ Amber Allot, *Kaikōura seal slayings still a mystery in town which has a knotty history with the animal*, STUFF (Jan. 29, 2022, 5:00 AM), <https://www.stuff.co.nz/environment/127616592/kaikura-seal-slayings-still-a-mystery-in-town-which-has-a-knotty-history-with-the-animals>.

⁷⁰ *Visiting the Ōhau Point Fur Seal Colony*, WANDERING THE WORLD (Jan. 9, 2017), <https://wandering.world/visiting-the-ohau-point-fur-seal-colony/>.

⁷¹ Allot, *supra* note 69.

⁷² *Id.* The seals were attacked by 17-year-old Hayden Ingram. Tourists attempted to intervene, but he ran over a seal pup twice in his car, killing it.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

graphic footage of the attack was posted on Snapchat.”⁷⁶ Attacks on seals and a growing animosity toward their presence seem to be part of a pattern that extends far beyond the shores of Cape Cod.

Because of the MMPA’s protections, Cape Cod’s commercial fishermen view seals as “totally protected eating machines.”⁷⁷ Jeff Kadesh, owner of Aquarius Sportfishing in Barnstable, stated that both seals and sharks are eating the striped bass that fishermen want to catch.⁷⁸ He reported that he sees sharks stealing striped bass off fishermen’s charters, and implied this behavior only happens because sharks are drawn to Cape Cod to consume seals.⁷⁹ Along with this competition for striped bass, he conveyed his fears that tourism will suffer with further shark attacks.⁸⁰ Kadesh proffers numerous solutions to lower the seal population such as poison, reinstated bounties, and acoustic sound barriers.⁸¹ However, placing the blame on seals and sharks, natural predators of the Atlantic striped bass (in the case of seals, not even a prominent predator of striped bass), ignores a significant factor in the decreasing number of striped bass—overfishing.

The Atlantic States Marine Fisheries Commission (ASMFC) manages the coastal migratory striped bass stock in the coastal and estuarine areas from Maine through Virginia.⁸² In their 2019 Atlantic striped bass stock assessment, ASMFC reported that the striped bass stock was overfished in 2017 and 2018, and the female spawning stock biomass was continuing to decline as a result.⁸³ At the 2021 ASMFC Spring Meeting Webinar, overfishing was one of the most prominently discussed and acknowledged issues in managing the striped bass stock, while mentions of predation by sharks and seals were comparatively sparse.⁸⁴

B. Seals and Sharks Impacting Tourism and Recreation

After a fatal incident in 2018, local officials joined the conversation around Cape Cod’s seal population, calling for a new seal cull.⁸⁵ Arthur Medici, twenty-six, died after sustaining injuries from a shark bite—the first fatal shark attack in Massachusetts since 1936.⁸⁶ Officials believe a great white shark injured Medici when he was bodyboarding at Newcomb Hollow Beach.⁸⁷ Joining disgruntled locals and fishermen, county officials blamed the seals for luring sharks to the area.⁸⁸ Barnstable County Commissioner Ronald Beaty stated: “They don’t need protecting anymore.”⁸⁹ Local regulations cannot usurp the federal protections surrounding seals, but amendments or revocations of federal regulations may occur as populations, ecosystems, or U.S. administrations

⁷⁶ *Id.*

⁷⁷ Wasser, *supra* note 29.

⁷⁸ Alexi Cohan, ‘Put a Bounty on the Seals,’ *Cape Sport Fisherman Says*, BOS. HERALD (May 30, 2019, 7:50 AM), <https://www.bostonherald.com/2019/05/29/put-a-bounty-on-the-seals-cape-sport-fisherman-says/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² ASMFC STOCK ASSESSMENT OVERVIEW: ATLANTIC STRIPED BASS, ATL. STATES MARINE FISHERIES COMM. 1 (2019).

⁸³ *Id.* at 4.

⁸⁴ See generally 2021 Spring Meeting Webinar, Atlantic Striped Bass Management Board (May 5, 2021), <http://www.asafc.org/files/Meetings/2021SpringMeetingWebinar/AtlanticStripedBassBoard.pdf> (discussing various reasons for depletion of fish stock and how to manage fish populations).

⁸⁵ *Cape Cod Official: Culling Seal Population ‘Unavoidable,’* CBS BOS. (Sept. 17, 2018, 11:42 PM), <https://boston.cbslocal.com/2018/09/17/cape-cod-culling-seals-shark-attack/>.

⁸⁶ Sarah Mervosh, *Fatal Shark Attack Off Cape Cod Is First in Massachusetts Since 1936*, N.Y. TIMES (Sept. 17, 2018), <https://www.nytimes.com/2018/09/17/us/cape-cod-shark-attack.html>.

⁸⁷ Doug Fraser, *Study shows Cape Cod sharks spend nearly half their time in shallow water*, CAPE COD TIMES (Mar. 26, 2021 4:45 AM), <https://www.capecodtimes.com/story/news/2021/03/26/cape-cod-sharks-spend-half-their-time-in-shallow-water/7000271002/>.

⁸⁸ *Id.*

⁸⁹ *Id.*

change. One group of Massachusetts citizens, the Seal Action Committee, is calling to eliminate the federal protection of seals altogether to allow for “management.”⁹⁰ Cape Cod’s Democratic Representative, Bill Keating, commented that he discussed the issue with top scientists and determined “culling seals in this region is not effective in controlling these populations because they would be immediately repopulated by the migration of gray seals from Canada.”⁹¹

The relationship between Cape Cod’s “megafauna”—sharks and seals—and the tourist industry that supports Cape Cod’s economy is nuanced.⁹² Many attractions on Cape Cod are centered around nature: the Cape Cod National Seashore, the Cape Cod Museum of Natural History, wildlife refuges and sanctuaries, whale watching, and more. While tourists are drawn to observing the wildlife, sharks are drawn to shallow waters to hunt seals and the glimpse of a fin along the shore can shut down beaches for hours or days. Tourists and locals alike struggle to strike a balance between respecting the wildlife and pursuing their own recreational activities in the same locations.

Some beaches on Cape Cod are periodically shut down to avoid shark encounters. In the summer of 2021, various beaches closed throughout the season as shark sightings a popular beach in Truro—Head of the Meadow Beach—closed briefly after a great white shark sighting.⁹³ Another highly frequented swimming and surfing area, Nauset Beach, closed several times throughout August as great white sharks hunted along the coast.⁹⁴ If you visit any heavily trafficked beach on Cape Cod, chances are high that you will encounter a sign warning the public about the risks of swimming with the sharks that live in the waters.

Recently, the International Fund for Animal Welfare (IFAW) posted over 100 signs warning beachgoers to keep their distance from seals on multiple beaches across Cape Cod.⁹⁵ The new seal signs emerged as a product of workshops between IFAW, Cape Cod National Seashore staff, and NOAA.⁹⁶ The signs are posted to encourage a distanced co-existence between humans and seals, protecting the seals from disturbances or interactions that may cause them stress.⁹⁷ Additionally, the signs recommend that humans maintain a distance of 150 feet from marine mammals for the safety of all parties.⁹⁸ Representatives from IFAW also stated the signs tell people to leash their dogs to reduce the “chance for disease transfer” between seals and dogs—perhaps a reflection of the relatively new caution around zoonotic diseases following the COVID-19 pandemic.⁹⁹

C. Pollution of Beaches and Placement of Blame

⁹⁰ *Massachusetts Group Wants to End Federal Protection for Seals to Mitigate Cape Cod Sharks*, ASSOC. PRESS, MASSLIVE (July 18, 2019, 9:49 AM), <https://www.masslive.com/capecod/2019/07/massachusetts-group-wants-to-end-federal-protection-for-seals-to-mitigate-cape-cod-sharks.html>.

⁹¹ *Id.*

⁹² Jason Bittel, *Cape Cod’s Gray Seal and White Shark Problem Is Anything but Black-and-White*, NAT’L RES. DEF. COUNCIL (Nov. 9, 2018), <https://www.nrdc.org/onearth/cape-cods-gray-seal-and-white-shark-problem-anything-black-and-white>.

⁹³ Frank O’Laughlin, *Cape Cod Beach Closed to Swimming Following Shark Sighting*, WHDH TV, 7NEWS (Aug. 16, 2021), <https://whdh.com/news/cape-cod-beach-closed-to-swimming-following-shark-sighting/>.

⁹⁴ Maria Elena Little Endara, *Great White Shark Sighting Reported 30 Feet Off Cape Cod Beach*, BOS. GLOBE (Aug. 17, 2021, 1:24 PM), <https://www.bostonglobe.com/2021/08/17/metro/great-white-shark-sighting-reported-30-feet-off-cape-cod-beach/>.

⁹⁵ Rick Sobey, *Cape Cod Seals: New Signs Warn Beachgoers to Stay 150 Feet Away from Seals*, BOS. HERALD (May 28, 2021, 7:33 PM), <https://www.bostonherald.com/2021/05/28/cape-cod-seals-new-signs-warn-beachgoers-to-stay-at-least-150-feet-away-from-seals/>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

Another common complaint stemming from the return of the seal population is alleged pollution of beaches and waters. In an interview with WBUR, Andrea Bogomolni, chair of Northwest Atlantic Seal Research Consortium, stated that scientific studies show impacts on water quality are largely public misconceptions and the “explosion” in population that fishermen and beachgoers complain about is a result of the seal population returning from near extinction during the last forty years.¹⁰⁰ There is no explosion at all; Cape Cod citizens are not used to the presence of seals because they were nearly eliminated by bounty hunts. As Bogomolni explains, any increase in numbers would be noticeable when the population was decimated only decades earlier.¹⁰¹ Bogomolni specifically expounds on the water quality claims, citing studies from the Department of Public Health showing that the water along beaches where seals congregate is *cleaner*, largely because the water where seals do not gather is polluted by human fecal matter from poorly designed septic tanks.¹⁰²

Research from the Woods Hole Oceanographic Institution confirms that the complaints of seal feces contaminating Cape Cod beaches is unfounded.¹⁰³ WHOI studies found that “beaches within five miles of seal haul-out spots actually showed a slight decreasing trend of contamination incidences and beach closures” over ten years of data collection, while beaches “more than five miles away from seal haul-outs showed a slight increasing trend in beach closures due to contamination.”¹⁰⁴ The misconception that seals are polluting waters around Cape Cod just continues the false narrative that paints seals as a nuisance. To allow seals to thrive without human interference or the threat of aggressive acts, it is time to take one step further and commit to protecting seals by creating real, effective boundaries—we must draw a line in the sand.

III. PROPOSAL

As we learn about the importance of marine ecosystems to global health, caution in managing or interacting with populations of marine animals is imperative. Humans are causing mass species extinction, and issues of biodiversity are threatened by extreme methods of population control, such as culling and hunting. Climate change threatens both human and non-human animals. Marine ecosystems are essential to solving climate crises because they can serve as carbon sinks and cooling agents.¹⁰⁵ At a time when the ocean-climate nexus could serve a critical role in combatting climate change, humans should tread lightly in our interactions with marine wildlife—one misstep could upset the balance of entire ocean ecosystems.

Hunting or culling for population control can lead to undesirable results. As researchers observed, the seal population around Cape Cod and New England nearly vanished at the height of the seal bounties in the twentieth century.¹⁰⁶ Hunting can alter the behavior of a targeted species and inflict physiological stress, as the animals change their feeding or traveling routines to avoid

¹⁰⁰ *Does Cape Cod Have a Gray Seal Problem? We Dig into the Science*, WBUR RADIO BOS. (Aug. 20, 2019), <https://www.wbur.org/radioboston/2019/08/20/seals-cape-cod-science>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Lippsett, *supra* note 23.

¹⁰⁴ *Id.*

¹⁰⁵ Hans-Otto Pörtner et al., *The Role of the Ocean in a Changing Climate*, WORLD METEOROLOGICAL ORG., https://public.wmo.int/en/resources/bulletin/Ocean_Climate_Nexus/The_Role_Ocean (last visited Dec. 18, 2021).

¹⁰⁶ Lelli et al., *supra* note 6, at 249.

injury.¹⁰⁷ The selective nature of regulated hunting and culling for population management also disrupts natural ecology and evolution of the target species.¹⁰⁸ Hunting often targets certain ages, sexes, or traits in animals based on the regulations or guidelines imposed.¹⁰⁹ Populations of targeted animals that normally self-regulate through natural evolutionary behaviors suffer as humans select which members of the species survive to procreate.

A. Sterilization

A promising management option for population control is sterilization. Exploration of sterilization as a humane method of population control is expanding as the human population grows and infringes on wildlife and their habitats. One organization, the Botsiber Institute for Wildlife Fertility Control, funds research grants in wildlife fertility control and educates on wildlife fertility control through events and publications. Since its founding in 2016, the Botstiber Institute has approved grants for fertility control projects focused on animals like elephants, primates, horses, white-tailed deer, donkeys, and prairie dogs.¹¹⁰ Other countries are considering sterilization as a potential solution to management of the growing presence of seals. In 2020, sterilization was proposed as a solution to the flourishing number of gray seals off the coasts of Ireland.¹¹¹ These proposals follow a call for official cull of the seals by Irish fishermen, mirroring their American counterparts on Cape Cod.¹¹²

Sterilization of seals might also require extra steps to ensure that controlling the seal population by preventing reproduction would not violate the MMPA in “taking” or “harassing” a marine mammal.¹¹³ Under the MMPA, harassment includes an act that can “disturb a marine mammal” by causing “disruption of behavioral patterns,” including “breeding.”¹¹⁴ To “take” means to “harass, hunt, capture, or kill any marine mammal.”¹¹⁵ By definition, interfering with the breeding of seals directly would constitute a take. Presumably if the state or some other entity did undertake the task of controlling the reproduction of seals on Cape Cod, they would consult the Marine Mammal Commission, NOAA, and other agencies involved in ensuring the MMPA is followed.¹¹⁶ Permits would be necessary to create “take” exceptions, which could be a lengthy process and result in ultimate denial of the proposed action by overseeing agencies.¹¹⁷

Beyond human concerns or environmental impact, another factor for consideration in opting for sterilization is the interests of seals. Seals and sharks are native inhabitants of the waters surrounding Cape Cod.¹¹⁸ Long before humans lived on the peninsula and started harvesting the waters, these animals enjoyed their habitat without conflict.¹¹⁹ Archaeological records along the New

¹⁰⁷ Enrico Di Minin et al., *Consequences of Recreational Hunting for Biodiversity Conservation and Livelihoods*, 4 ONE EARTH 238, 241 (2021).

¹⁰⁸ MARCO FESTA-BIANCHET & MARCO APOLLONIO, ANIMAL BEHAVIOR AND WILDLIFE CONSERVATION 196–198 (2013).

¹⁰⁹ *Id.* at 192.

¹¹⁰ *Meet Our Grantees*, BOTSTIBER INST. WILDLIFE FERTILITY CONTROL, <https://www.wildlifefertilitycontrol.org/grantees/> (last visited Dec. 17, 2021).

¹¹¹ Brian Mahon, *Sterilise growing grey seal population ‘to avoid need for cull,’* THE TIMES (Feb. 14, 2020, 12:01 AM), <https://www.thetimes.co.uk/article/sterilise-growing-grey-seal-population-to-avoid-need-for-cull-xxswddpqn>.

¹¹² *Id.*

¹¹³ 16 U.S.C. § 1372 (2018).

¹¹⁴ 16 U.S.C. § 1362 (2018).

¹¹⁵ *Id.*

¹¹⁶ MARINE MAMMAL COMM’N, <https://www.mmc.gov/about-the-commission/> (last visited Mar. 14, 2022).

¹¹⁷ 16 U.S.C. § 1374 (2018).

¹¹⁸ NOAA FISHERIES, *supra* note 1.

¹¹⁹ *Id.*

England coast show that gray seals populated the waters of the northeast as far back as 2500 BCE–1600CE.¹²⁰ In 1792, a resident of Nantucket (an island next to Cape Cod) reported a “bounty of gray seals.”¹²¹ Though the interests of animals are not officially considered by the U.S. legal system, other countries are increasingly adding animal interests into their laws and constitutions.¹²² If the movement for animal interests gains significant traction, we may begin to recognize that animals have a right to reproduce freely, as we do with humans.¹²³ Although this is probably not a moral consideration by the standard of today’s average citizen, future generations may discover ethical conflicts in restricting animals’ ability to procreate.

B. Seals as Beach Owners

Another solution to the conflict between humans and seals on Cape Cod is a proposal suggested by Karen Bradshaw in the book *Wildlife as Property Owners, a New Conception of Property Rights*. Bradshaw suggests that we incorporate wildlife into existing property law, creating a trust system that allows animals to own land which is managed by a trustee acting in the best interests of animal beneficiaries.¹²⁴ Animal property trusts could be managed by human trustees with expertise in maximizing animal interests, such as foresters, land managers, and wildlife and conservation biologists.¹²⁵ Bradshaw categorizes biodiversity loss as a “property-based problem,” detailing the exponential levels of human land development that lead to large-scale habitat loss for wildlife and eventual extinction as ecosystems fall victim to human expansion.¹²⁶ Congress attempted to address this problem in the 1970s through provisions in the ESA requiring agencies to identify habitats of endangered species on public and private lands.¹²⁷ But landowners and conservative commentators have pushed back against these regulations aggressively, resulting in severe underenforcement on private lands.¹²⁸ Furthermore, species that are not endangered lack any habitat protection, unless they are fortunate enough to exist in the same ecosystem with a protected endangered species.¹²⁹

Multiple case studies of resource competition between humans and animals are included in Bradshaw’s analysis: conflicts between cattle ranchers and wild horses in the American West; outsourcing thick-billed parrot recovery by moving them from the United States to Mexico; and scientific management of caribou in Alaska.¹³⁰ These scenarios parallel the clash between seals and humans on Cape Cod; this is a universal problem that will only continue as the humans encroach on wildlife habitats and “exist in constant competition for the Earth’s most basic resources.”¹³¹ The response to resource competition cannot simply be eliminating the “competition.” As Bradshaw emphasizes, “we have thrown things out of balance, forgetting the greater whole of which we are

¹²⁰ Wood, *supra* note 12, at 121.

¹²¹ *Id.*

¹²² See Jessica Eisen, *Animals in the Constitutional State*, 15 INT’L J. CONST. L. 909 (2018).

¹²³ For a deeper discussion of animals and reproductive justice, see Marya Torrez, *Combating Reproductive Oppression: Why Reproductive Justice Cannot Stop at the Species Border*, 20 CARDOZO J. L. & GENDER 265 (2014).

¹²⁴ KAREN BRADSHAW, WILDLIFE AS PROPERTY OWNERS 3 (2020).

¹²⁵ *Id.* at 74.

¹²⁶ *Id.* at 32-33.

¹²⁷ *Id.* at 34.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 95–119.

¹³¹ *Id.* at 95.

part” and ongoing human-animal conflicts reveal the “failure of laws, policies, and theories that neatly divorce humans from the real, biological, natural world.”¹³²

Bradshaw proposes that trusts should be managed at the ecosystem level, considering the interconnection of all living things within different regions.¹³³ This approach advances beyond the abilities of current federal animal protections like the Endangered Species Act (ESA), which only target certain species without addressing their essential relationships with the other species within their ecological community.¹³⁴ In the case of Cape Cod’s seals, Bradshaw’s ecosystem considerations are ideal because the seals affect and interact with many other animals, including sharks and various fish species. Given the interwoven nature of local concern over seals, sharks, and fish, solutions that only address seals would be inefficient. Moreover, if the approach were individual, Congress would likely grant land for popular megafauna like sharks and seals, ignoring less popular species. Such “preferential policies” would harm both, because “the survival of the former depends on the existence of the latter.”¹³⁵

Public lands could also be co-titled with animal trusts to allow for human use of the land.¹³⁶ Beaches are an integral part of Cape Cod’s characteristics and tourist industry; management that allows for recreational human use while protecting non-human interests would preserve Cape Cod’s economic composition. However, while it would be favorable to maximize human and non-human interests by allowing humans to recreate on lands where animals are provided property rights, we should consider giving total title to animals if human activity interferes with their lives to their extreme detriment. If seals haul out on specific beaches, trusts could be created in those areas.

In other states, increased seal activities have resulted in beach closures of specific areas. On San Francisco’s Drakes Beach, over fifty weanling elephant seal pups are settled in a cove as of March 2022.¹³⁷ Officials from the Point Reyes National Park Service closed the beach until further notice to prevent unsafe interactions between wildlife and the public.¹³⁸ For the last few years, elephant seals have returned to Drakes Beach periodically and officials have regularly restricted public access to protect humans and seals.¹³⁹ In 2019, the elephant seal colony made headlines when they amassed on Drakes Beach in large numbers during the federal government shutdowns due to COVID-19.¹⁴⁰

Even in other countries, there have been calls to close beaches for long periods of time to allow seals to rest and reproduce without interference. Seal Rescue Ireland, an organization that rehabilitates rescued seals, called for an annual nine-month closure of a Bride’s Head beach in Wicklow, Ireland to protect the grey seal colony that uses the beach to haul-out.¹⁴¹ In 2019, Wicklow County Council agreed to close the beach during mating season from August through December, but

¹³² *Id.*

¹³³ *Id.* at 67.

¹³⁴ *Id.*

¹³⁵ *Id.* at 68–69.

¹³⁶ *Id.* at 69.

¹³⁷ Lauren Hernández, *Elephant seal pups prompt temporary closure of Drakes Beach*, S.F. CHRON. (Mar. 11, 2022, 6:33 PM), <https://www.sfchronicle.com/bayarea/article/Elephant-seal-pups-prompt-temporary-closure-of-16996290.php>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Elephant Seals Take Over California Beach During U.S. Shutdown*, REUTERS (Jan. 30, 2019, 9:13 PM), <https://www.reuters.com/article/us-usa-shutdown-seals-idUSKCN1PP06E>.

¹⁴¹ Ian Begley, *Close Wicklow Beach Nine Months a Year to Protect Seals, Animal Welfare Charity Says*, INDEPENDENT.IE (Jan. 7, 2020, 8:57 PM), <https://www.independent.ie/irish-news/news/close-wicklow-beach-nine-months-a-year-to-protect-seals-animal-welfare-charity-says-38842885.html>.

Seal Rescue Ireland believes beach closure should extend into April to allow the seals to molt—a process where the seals rest on land for weeks at a time without eating or swimming.¹⁴² In Norfolk, England, Horsey Beach is closed periodically by an organization of self-appointed volunteer wardens called Friends of Horsey Seals to protect the seals from disturbances and allow the seals to raise their pups in relative seclusion.¹⁴³

Cape Cod already closes certain beaches and off-road vehicle (ORV) trails to protect another iconic part of Cape Cod wildlife—the piping plover. The piping plover (a small, sand-colored shorebird) was “federally listed as threatened and endangered in 1986,” with the Northern Great Plains and Atlantic Coast populations categorized as threatened, and the Great Lakes Population listed as endangered.¹⁴⁴ Shortly after their listing, oversand vehicle regulations were created to protect the shorebirds, which nest in and near ORV corridors.¹⁴⁵ Certain areas of outer beaches along Truro and Provincetown are roped off and use of ORVs are restricted until August to allow plover chicks to hatch and grow.¹⁴⁶ As expected, certain locals are “tired of the Cape Cod National Seashore ORV being closed due to the nesting shorebirds” and show “mistrust” of the ORV rules.¹⁴⁷ Ryan Bailey (a resident of Western Massachusetts who vacations in Wellfleet during the summer) created a petition in 2020 to combat the conservation measures for piping plovers. 621 people signed the petition.¹⁴⁸ Mark Faherty, coordinator of Audubon’s Wellfleet Bay Wildlife Sanctuary, stated: “People and vehicles have to be managed. And it’s not always easy because people don’t like to be managed.”¹⁴⁹

Giving seals beach ownership and committing to limited human access may be the only way to effectively manage people and create a meaningful boundary that humans can learn to respect. Animals—including seals—are sentient, independent, complex; “not human creations, not necessarily designed to serve human interests, and with an existence outside the human capacity to imagine.”¹⁵⁰ Maybe—after years of prosecution, killing, and bounties—the time has come to place the lives of seals above our human desires to swim in certain waters, walk along specific beaches, or eat unlimited amounts of fish.

CONCLUSION

Federal protections provided by the MMPA revived the seal population of New England after barbaric local bounty hunting systems lowered their numbers close to extinction. While seals may appear safe under federal regulation, the threat of violence from humans competing for resources is still present—and growing. As overfishing depletes the seafood supply, fishermen place blame on their non-human competitors rather than reflecting on their own unsustainable practices. Given the importance of biodiversity to the survival of both humans and non-humans in the face of mass extinction and climate change, returning to bounty hunting or state-sanctioned culling is not a viable

¹⁴² *Id.*

¹⁴³ Jasper King, *Beach to be Closed Off to the Public to Protect Seals*, E. DAILY PRESS (Nov. 22, 2020), <https://www.edp24.co.uk/news/horsey-beach-closed-seals-pupping-season-6396970>.

¹⁴⁴ Caitlin Townsend, *Beach Buggies Return After Waiting for Plovers to Fledge*, PROVINCETOWN INDEP. (Sept. 1, 2021), <https://provincetownindependent.org/news/2021/09/01/beach-buggies-return-after-waiting-for-plovers-to-fledge/>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ BRADSHAW, *supra* note 124, at 74.

option for population control or resource management. A solution must be reached that accounts for the interests of all parties and allows seals to continue to live along the beaches that ultimately belong to them.

2022 Student Writing Competition 4th Place Finisher:

Felines and Felons: The Purrfect Pair A Call to Introduce Prison Cat Programs, by Nora Sullivan

INTRODUCTION

Over the past forty years, there has been a five-fold increase in the prison population to over two million people currently in the nation's prisons and jails.¹ Generally, the public has been motivated by one overriding notion when dealing with prisoners: punishment.² There has been a recent trend of questioning whether these "harsh prison conditions are doing more harm than good."³ In response, "innovative and alternative forms of correctional programming have developed and grown in popularity,"⁴ including programs with animals. As of 2019, prison-based animal programs (PAPs) were being administered in all 50 states at more than 330 correctional institutions.⁵ The most common types of PAPs are dog training programs (DTPs).⁶ To prison administrators and inmates, the advantages are clear: "reduced prison tensions and increased social interactions surrounding the dogs; development of valuable skills including patience, responsibility, compassion, and self-esteem; and well trained, low-cost service dogs to those in need."⁷

This note briefly covers the historical origins of animals in prisons and gives an overview of contemporary PAPs. The note then provides a rationale for the implementation of cat visitation rooms in prisons, focusing on the physiological, psychological, and psychosocial benefits to be derived from such a program, while acknowledging potential barriers. The proposal contains detailed descriptions of an ideal cat visitation room, discusses common objections to PAPs, and illustrates how these objections can be more easily overcome with cat programs than dog programs.

¹ *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts> (last visited Apr. 15, 2022).

² Earl O. Strimple, *A History of Prison Inmate-Animal Interaction Programs*, 47 AM. BEHAV. SCIENTIST 70, 70 (Sept. 2003).

³ Leslie Hill, *A Touch of the Outside on the Inside: The Effect of Animal Contact on the Pains/Strains of Imprisonment*, 59 J. OFFENDER REHAB. 433, 433 (2020).

⁴ Barbara J. Cooke, *Exploring Types of Programs: Dog Rescue, Rehabilitation and Training*, in PRISON DOG PROGRAMS: RENEWAL AND REHABILITATION IN CORRECTIONAL FACILITIES 37, 37 (Mary Renck Jalongo ed., 2019).

⁵ *Id.* at 37-38.

⁶ Jennifer Furst, *Prison-Based Animal Programs: A National Survey*, 86 PRISON J. 407, 420 (2006) [hereinafter *National Survey*].

⁷ Rhiana Kohl & Alexandria Wenner, *Prison Animal Programs: A Brief Review of the Literature*, MASS. DEP'T CORRECTION OFF. STRATEGIC PLAN. & RES., 4 (2012) <https://www.mass.gov/doc/prison-animal-programs-a-brief-review-of-the-literature-december-2012>.

The proposed cat visitation room program focuses on the enrichment of the participant prisoners and cats as its primary goal.⁸

BACKGROUND AND OVERVIEW: HISTORICAL ORIGINS

The positive benefits of interacting with animals has “seemingly obvious implications for the carceral environment,”⁹ where incarcerated individuals face harsh conditions with both social and physical deprivations.¹⁰ There is a long history of inmates seeking out the company of animals to cope with the prison environment. Documented examples range from the care of bunnies,¹¹ birds,¹² and wild animals like squirrels, raccoons, and even bear cubs.¹³ Modern accounts from the last fifty years include the introduction of pets at a facility for those deemed criminally insane,¹⁴ the first formal prison based dog training program at a women’s prison,¹⁵ and the start of formal PAP studies.¹⁶ All of the accounts juxtapose the seemingly incompatible traits of prisoners with supposed violent dispositions with the extreme care, curiosity, and diligence exhibited in regards to small innocent creatures.

In 2006, the first national survey of PAPs was conducted to document the growing trend in animal programming.¹⁷ PAPs were found to take on multiple designs, including programs focused on visitation, wildlife rehabilitation, livestock care, pet adoption, service animal socialization, vocational programs, community service programs, and multimodal programs.¹⁸ There are a

⁸ Cf. Gennifer Furst, *Prison-based Animal Programs: Self-Reported Effects of Participation and Implications for Desistance*, 172 PRISON SERV. J. 38, 38 (2007) [hereinafter *Desistance*] (describing how prison-based animal programs usually do not have the treatment of the participant prisoners as their primary goal; instead, they are implemented to provide a service to the community, and any benefits to the participants are purely collateral).

⁹ Gennifer Furst, *The Empirical Evidence Supporting Dog Training Programs for Incarcerated People*, in PRISON DOG PROGRAMS, *supra* note 4, 17, at 22 [hereinafter *Empirical Evidence*].

¹⁰ Hill, *supra* note 3, at 433.

¹¹ In 1829, Charles Dickens documented a prisoner who adopted bunnies at the Eastern State Penitentiary. *Id.*

¹² The infamous “Birdman of Alcatraz” cared for up to 300 canaries at Leavenworth Federal Prison in Kansas. Robert Stroud, ENCYCLOPEDIA BRITANNICA (Jan. 1, 2022), <https://www.britannica.com/biography/Robert-Stroud>.

¹³ During WWII, prisoners at POW camps in North America adopted domestic animals and wild animals that wandered into their enclosures or were captured. Michael O’Hagan, *Held Captive: Prisoners of War and Their Pets in Canada during the Second World War*, NETWORK IN CANADIAN HIST. & ENV’T (Apr. 23, 2020), <https://niche-canada.org/2020/04/23/held-captive-prisoners-of-war-and-their-pets-in-canada-during-the-second-world-war>.

¹⁴ Inmates at Oakwood Forensic Center in Ohio (formerly known as the Lima State Hospital for the Criminally Insane) adopted an injured sparrow. In response, staff conducted a year-long study comparing identical wards – one with animals, the other without. The ward with animals had a reduced need for medication, reduced violence, and a reduction in suicide attempts. Cooke, *supra* note 4, at 39.

¹⁵ This revolutionary program was founded in 1981 at the Washington Correction Center for Women. Its success spurred the proliferation of more DTPs throughout the U.S. and worldwide. Cooke, *supra* note 4, at 40.

¹⁶ In 1991, MoneyMaker and Strimple studied the People, Animals, and Love (PAL) program at Lorton Correctional facility in Virginia. Trained participant prisoners cared for animals and reported lower rates of isolation and frustration, reduced number of disciplinary infractions, and change in their outlook, self-worth, and goals. James M. MoneyMaker & Earl O. Strimple, *Animals and Inmates: A Sharing Companionship Behind Bars*, 16 J. OFFENDER REHAB. 133, 140 (1991).

¹⁷ *National Survey*, *supra* note 6, at 417.

¹⁸ *Id.* at 420.

number of reasons for the explosive growth of PAPs. They meet multiple goals of benefiting inmates by providing a treatment and/or vocational program, providing a positive image of the facility and encouraging positive community relations, contributing to larger social issue of rescuing unwanted pets and relieving overcrowded animal shelters, and providing a source of revenue for the facilities.¹⁹ Additionally, PAPs are extremely flexible and can react to the limitations of each facility and respond to the unique needs of their communities.²⁰ The key component to a PAP is that it should mutually benefit the human and the animal.²¹

BENEFITS OF HUMAN-ANIMAL INTERACTIONS

The benefits of human-animal interactions come in many forms, including physiological benefits²² and psychiatric benefits.²³ These are specifically relevant to the carceral setting due to the heightened prevalence of chronic health conditions²⁴ and high rates of mental illness²⁵ among incarcerated individuals than non-incarcerated individuals. Animals can also help with the pains and strains of imprisonment.²⁶ PAPs often cited is the potential for to increase the employability of prisoners²⁷ and reduce recidivism.²⁸ Additionally, PAPs can lead to rehabilitation,²⁹ transformation and increased desistance.³⁰ Symbolically, there are similarities between prison inmates and stray

¹⁹ *Id.* at 412-13.

²⁰ Most PAPs involve dogs; program focus and designs vary ranging from traditional rescue dogs, to training specifically breed Labradors, to rescuing greyhounds from the race track. Cooke, *supra* note 4, at 41.

²¹ Amy Johnson & Laura Bruneau, *Caring for and About Dogs: Animal Welfare Considerations, in PRISON DOG PROGRAMS*, *supra* note 4, 79, at 80.

²² Studies have examined the effects of pets on prisoners' blood pressure and prisoners have reported physical changes like weight loss, increased energy, increased exercise, and improved sleep. Lauren Humby & Elaine Barclay, *Pawsitive Solutions: An Overview of Prison Dog Programs in Australia*, 98 *PRISON J.* 580, 583 (2018).

²³ Interacting with animals can improve depression, anxiety, and post-traumatic stress disorder symptoms. Additional benefits include improved social skills, enhanced social interactions, increased empathy, more effective communication, and increased motivation and self-esteem. *Desistance*, *supra* note 8, at 43.

²⁴ Chronic health conditions are more prevalent among prisoners than the general population and include hypertension, diabetes, asthma, and arthritis. Seena Fazel & Jacques Baillargeon, *The Health of Prisoners*, 377 *THE LANCET*, 956, 959 (2011).

²⁵ Studies show high rates of depression, personality disorders, post-traumatic stress disorder, severe trauma and abuse among incarcerated individuals. *Id.* at 956-57.

²⁶ Pets can have a real impact on the loneliness and rejection experienced by inmates in correctional facilities. Animals give inmates the opportunity to interact "with a living being with no interest in their past actions or mistakes." *National Survey*, *supra* note 6, at 411-12.

²⁷ Proponents suggest the practical skills acquired while working with dogs could lead to post-release employment in animal care services, but there is a lack of statistical data regarding how many individuals involved in PAPs go on to find this type of work. *Empirical Evidence*, *supra* note 9, at 30.

²⁸ Recidivism studies have mixed results that should be interpreted cautiously. Recidivism is a multi-dimensional topic; to parse out a single variable like PAP participation is difficult to statistically measure. Selection bias of participants can skew statistical data. See generally Barbara J. Cooke & David P. Farrington, *The Effectiveness of Dog-Training Programs in Prison: A Systematic Review and Meta-Analysis of the Literature*, 96 *PRISON J.* 854, 860-64 (2016) (comparing ten quantitative recidivism studies).

²⁹ Some argue that rehabilitation should not be the measure of success, as rehabilitation aims to change the way a person behaves and "restore the individual to some former state that may or may not have worked for the individual in the first place." *Ending the Culture of Street Crime*, 84 *PRISON J.* 48S, 64S (2004).

³⁰ Desistance is a type of future oriented growth and is a major benefit from participating in PAPs. Desistance can lead to an "offender to reject his 'past offender identity' and adopt 'a new identity and a new self and a new set of goals.'"

or abandoned animals. Both groups are “unwanted by society and are put in places (prisons and shelters, respectively) where they are contained until deemed worthy of release by society, or put to death.”³¹ This synergy can lead to very meaningful interactions between the prisoners and the animals.

While the anecdotal evidence of the success of PAPs and its beneficial effects on prisoners continues to stack up, it is not without criticism. Systematic analysis of programs and their measured impact can be limited.³² Most studies have small sample sizes, qualitative data relying on self-reporting by prisoners, and encompass a wide range of programs and populations.³³ These limitations make it difficult to accurately identify which type of program is most effective and which inmate population can benefit the most.³⁴ On the other hand, the flexibility in types of format, settings, and populations of both inmates and animals is one of the features that makes PAPs so adaptable to any institution, prisoner, and animal need.

CAT PROGRAMS IN PRISONS

There is a long history of cats inside prisons, traditionally taking the form of feral cat colonies. Over time, the level to which feral cats have been accepted by staff and prisons varies.³⁵ At the time of the 2006 national survey, only one PAP included cats in their program model.³⁶ However, as of 2019, over twenty-five correctional facilities had implemented cat programs.³⁷ Cat program participants typically care for and socialize kittens and cats from local animal shelters with behavioral and health issues.³⁸ Once the cats are rehabilitated, they are adopted out through the cat program or the partnering animal shelter.³⁹

An innovative cat program is the Felines and Offenders Rehabilitation with Affection, Reformation and Dedication (FORWARD) program at Pendleton Correctional Facility in Indiana. The more than twenty cats in the program come from local shelters and are placed in the prison’s “cat sanctuary,” an open room with scratching posts, climbing structures and nooks the cats can hide in.⁴⁰ Caring

Desistance, *supra* note 8, at 40 (citing Hans Toch, *Altruistic Activity as Correctional Treatment*, 44 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 270, 276 (2000)).

³¹ Jennifer Furst, ANIMAL PROGRAMS IN PRISON: A COMPREHENSIVE ASSESSMENT 68, 155 (2011) [hereinafter *COMPREHENSIVE ASSESSMENT*].

³² The complex logistics of visiting prisons including the required permissions from prison authorities are proposed reasons as to this lack of analysis. Humby, *supra* note 22, at 582.

³³ Alan Kunz-Lomelin & Anne Nordberg, *Assessing the Impact of an Animal-Assisted Intervention for Jail Inmates*, 59 J. OFFENDER REHAB. 65, 68 (2020).

³⁴ *Id.*

³⁵ San Quentin State Prison in California attempted to control their feral cat population by banning the feeding of cats, sending hundreds of cats off-site to be euthanized, and eventually adopting a trap-neuter-release (TNR) program. *COMPREHENSIVE ASSESSMENT*, *supra* note 31, at 68.

³⁶ *National Survey*, *supra* note 6, at 419

³⁷ Cooke, *supra* note 4, at 43.

³⁸ *Id.* at 42.

³⁹ *Id.* at 43.

⁴⁰ Jordan Erb, *Behind Prison Walls, Cats and Inmates Rehabilitate Each Other Through Animal Care Program*, INDIANAPOLIS STAR (Oct. 19, 2020), <https://www.indystar.com/story/news/local/indianapolis/2020/10/19/cats-inmates-rehabilitate-each-other-through-animal-care-program/5798291002>. See *infra* app. fig 4.

for the cats is considered a work assignment for the participants who spend six hours a day, every day, in the cat visitation room and receive twenty cents an hour.⁴¹ Their responsibilities include cleaning the sanctuary, cleaning litter boxes, providing food and water, trimming nails, and brushing the cats.⁴² The cat sanctuary takes a strain off the local shelters which are overwhelmed and provides an opportunity for the cats to not be euthanized.

PROPOSAL: CAT VISITATION ROOMS

This note proposes a potential design for a PAP in the form of a cat visitation room that correctional centers could implement at their facilities. The cat visitation room would be modeled after existing “cat cafe” establishments which allow paying patrons to visit, watch, and play with resident cats.⁴³ The proposal would include an enclosed space dedicated to a number of resident cats that live at the facility, preferably cats from local shelters that are awaiting adopting or facing euthanasia. The cat visitation room would be similar to the “cat sanctuary” design in place at Pendleton Correctional Facility.⁴⁴ However, instead of limiting cat sanctuary access to the prisoners who are there for their work assignment, the proposed cat visitation room would be accessible to any qualified prisoner with a scheduling system in place so that only a few prisoners visit at a time. The scheduling system would allow a large number of inmates to participate as a whole without overwhelming the cats. Once a successful program is established with resident cats, the program could consider expanding to introduce cats or kittens that need to be socialized with the end goal of adopting them out to new homes.

This proposal suggests the program be initiated at a women’s prison.⁴⁵ Women experience the pains and strains of imprisonment more intensely than men.⁴⁶ While there are significantly less women in prison than men,⁴⁷ over 58% of all women in U.S. prisons are mothers.⁴⁸ There is a “deeply emotional reality of separation, loss, and grief that characterizes the experiences of so many

⁴¹ *Id.*

⁴² *Id.*

⁴³ Much of the background information and proposed program ideas come as a result of the author’s visits to and interviews conducted at KitTea Cat Lounge in San Francisco, California (Feb. 27, 2022) and Cat Town in Oakland, California. (Mar. 25, 2022). *See infra* app. fig. 1-3.

⁴⁴ *See supra* Section IV.

⁴⁵ In 2014, women comprised just over 7% of the U.S. prison population. BARBARA OWEN ET AL., *IN SEARCH OF SAFETY: CONFRONTING INEQUALITY IN WOMEN’S IMPRISONMENT* 1 (2017).

⁴⁶ *See supra* Section III.

⁴⁷ Between 1980 and 2019, the number of incarcerated women increased by more than 700%, from just 26,000 in 1980 to over 222,000 in 2019. *Fact Sheet: Incarcerated Women and Girls*, THE SENTENCING PROJECT, 1 (Nov. 2020), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>.

⁴⁸ Most are the primary caretakers of their children and incarceration tears the mothers away from their children. Wanda Bertam & Wendy Sawyer, *Prisons and Jails Will Separate Millions of Mothers from Their Children in 2021*, PRISON POLICY INITIATIVE (May 5, 2021), <https://www.prisonpolicy.org/blog/2021/05/05/mothers-day-2021>.

mothers behind bars”⁴⁹ that could be partially eased by the presence of cat visitation rooms.⁵⁰ With the rapid growth of the incarceration of women, access to programs and diversions are lacking in women’s facilities.⁵¹ It would be easier to implement a new program at a women’s facility because they lack some of the complexities of men’s prisons.⁵² Women’s facilities are typically smaller than men’s prisons, making an innovative program easier to establish. Further, women’s prisons and jails are less violent than male prisons.⁵³ The first dog training program was founded at a women’s prison with much success and led the way for the hundreds of DTPs that have come since. It is both possible and probable that a cat visitation room could do the same.

NEEDS OF STAKEHOLDERS

Cat visitation rooms would benefit the institution, the inmates, and the cats in the community.⁵⁴ Some of the needs that would be met for appropriate stakeholders for cat visitation rooms are as follows:

Correction Facilities Need:⁵⁵

1. Interventions capable of transforming thinking and habits in positive directions.
2. Recreational opportunities that function as a reward system for inmates.
3. Cost-Effective strategies to promote rehabilitation.
4. Evidence-based initiatives that reduce recidivism.
5. Programs that support successful reentry upon release.
6. Tangible evidence of contributions to the large community that counteract stereotypes.
7. Cost-effective ways to improve to overall physical health and mental health of inmates.

Inmates Need:

1. Opportunities to discover talents, acquire marketable skill sets, and advance learning.
2. Opportunities that contribute to the formation of new identities and contribute to desistance.
3. More occasions for positive interactions with corrections administrators and staff.

⁴⁹ RICKIE SOLINGER ET AL., *INTERRUPTED LIFE: EXPERIENCES OF INCARCERATED WOMEN IN THE UNITED STATES* 65 (2010).

⁵⁰ This is not to say that the presence of a cat can replace the loss of a child, but the opportunity to watch, pet, cradle, play with and love on a cat could have a profound effect on the women. Online Interview with Michele Scott (Apr. 24, 2022).

⁵¹ Aleks Kajstura, *States of Women’s Incarceration: The Global Context 2018*, PRISON POLICY INITIATIVE (Jun. 2018), <https://www.prisonpolicy.org/global/women/2018.html>.

⁵² For example, women are not assigned to different yards based on security level and there are no segregated special needs yards based on sexuality, gang involvement, or sex crimes. Instead, the general population of women prisoners is blended. Scott Interview, *supra* note 50 (basing generalizations on women’s facilities in California, particularly CCWF).

⁵³ OWEN, *supra* note 45, at 15-16.

⁵⁴ Mary Renck Jalongo et al., *Planning and Implementing a Prison Dog Program*, in PRISON DOG PROGRAMS, *supra* note 4, 53, at 58 [hereinafter *Planning and Implementing*].

⁵⁵ Adapted from *Id.* at 59 tbl. 4.2.

4. Opportunities to collaborate with dedicated and altruistic community members supporting the program.
5. Opportunities to exhibit altruistic behavior.

Communities Need:

1. A reliable and safe location to place cats when local shelters become overwhelmed.
2. Cats that are socialized and well-behaved for families that are considering adopting a cat.
3. Support if a cat adoption does not work out and it has to be rehomed or returned to a shelter.

Cats in the Community Need:

1. Treatment consistent with enlightened views of animal welfare.
2. Investments of time, attention, patience, and care from humans.
3. Lives lived in loving environments; in some cases, second or subsequent chances at homes
4. Socialization that reflects enlightened, evidence-based practices.

PRISON CONSIDERATIONS

There are a number of things to consider in regards to the prison administration, staff, and inmates that follow:

Considerations from the Perspective of Inmates and Staff⁵⁶:

1. The health and safety of all prisoners, staff, and animals.
2. Allergies experienced by inmates or staff.⁵⁷
3. Fear of animals or unfamiliarity of interacting with animals.⁵⁸
4. All cats must be vaccinated, clean, and free from parasites and zoonotic diseases; the cats should be pre-screened and treated medically at a partnering veterinary office prior to arrival.
5. There is a need for pet visitation process and rules, which will need to be communicated clearly to all those involved in the pet visitation process.
6. Access to training and instruction in regards to interacting with the cats.

DESIGN REQUIREMENTS

⁵⁶ Adapted from Gerardo Perez-Camargo & Edward T. Cregan, *The Design of Visitation Facilities to Engage Patients with Their Own Cats and Dogs*, 31 *COMPLEMENTARY THERAPIES IN CLINICAL PRAC.* 193, 194 tbl.2 [hereinafter *Design of Facilities*].

⁵⁷ See *infra*.

⁵⁸ See *infra*.

Many concepts must be considered when designing a cat visitation room or repurposing an existing room at correctional facility into a cat visitation room.⁵⁹ The following are some items that are absolute minimum requirements, while other items are suggestions for an ideal scenario, such as if a new space were to be constructed for the cat visitation room.⁶⁰

- The room should be easy to clean and cleaned on a regular basis.
- A deep-clean should be conducted once/week.⁶¹
- Access to a sink with hot and cold water, disinfectant wipes, trash bin, paper towels or rags.
- To facilitate cleaning of litter boxes, appropriate materials will be required like poop scoops and trash bags. It is suggested that immediately after cleaning the cat waste, it is taken to a separate trash location, such as dumpster, outside of the cat visitation room.
- Laundry facilities should be accessible to facilitate washing of blankets, beds, or toys.⁶²
- Provide a locker for cleaning items like detergents, disinfectants, paper towels, wipes, broom, dustpan, and vacuum cleaner if available.
- Floors and walls should be of nonabsorbent materials to be cleaned and disinfected easily.
- Doors should be closed securely so cats do not escape.
- If possible, a double door system should be at the entrance (so that if a cat escapes into the small breezeway between the two doors, they do not escape into the main facility).⁶³ Ideally the doors have a glass window allowing for visibility between doors. If this is not possible, a door bell of some type could be installed to alert others the door is about to be opened.⁶⁴
- If the room has windows, they should be low enough to see through. However, if they are very large, it is suggested to have some way to add to privacy like curtains or shades which can be closed to help stressed cats relax.⁶⁵
- Air ventilation in the room is a must. At the minimum, fans should be purposefully placed to prevent any odor build-up. Air outlets should be placed above litter boxes to avoid sending unpleasant odors across the room.
- Provide pets with continuous access to fresh, clean water.
- Cats that are anxious may benefit from commercially developed calming pheromones.
- If a pet eliminates outside the litter box or vomits, it should be cleaned as soon as possible. Remove the organic matter and clean using enzymatic products to break down any residue.
- Provide furniture for visitors like chairs and tables of nonabsorbent materials. Do the same for cat furniture, cat houses, shelves, and cubbies.⁶⁶

⁵⁹ *Design of Facilities*, *supra* note 56, at 197.

⁶⁰ *Id.* at 195 tbl. 5.

⁶¹ Interview with staff at Cat Town, in Oakland, Cal. (Mar. 25, 2022).

⁶² Interview with staff at KitTea Cat Lounge, in S.F., Cal. (Feb. 27, 2022).

⁶³ Cat Town Interview, *supra* note 61 (describing the doors as an “air lock” double door system).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Scott Interview, *supra* note 50 (suggesting that furniture be made in-house via work orders sent to the cabinet making vocation program inside the prison).

- Consider having a climbing/exploration area and scratching surfaces for cats.⁶⁷
- Provide pet beds.⁶⁸ Elevated beds work well for cats, as these make them feel safe, and they can be in view of participants.⁶⁹ Cat beds at multiple different heights is ideal to give the cats a choice of where to go.⁷⁰
- Provide ways for inmates and cats to interact, such as laser pointers, pet treats, and items like dangling cat toys, balls, and fetch toys.
- Install security cameras so rooms can be monitored without the physical presence of a guard.
- Perform security sweeps in between visits to check for contraband.

CAT REQUIREMENTS

All cats, but especially adult cats, will be unfamiliar with a prison environment. Animals can get stressed by a high number of new individuals in an unfamiliar place.⁷¹ Cats may also be stressed when being approached by unfamiliar people who are looking to alleviate their own stress.⁷² Whenever possible, cats should not be immediately introduced to the large visitation room.⁷³ Instead, they should be given an adjustment period in a smaller space, ideally a kennel, within a smaller room. This room could be adjacent to the large cat visitation room so that cat can adjust to new noises and smells. If no adjacent room exists, the kennel could be within the cat visitation room itself. The kennel should not expose the cat so that it is highly visible; cats like to be able to hide, and it is important the cat can feel secure in its enclosed space. The kennel would need to include food, water, litter box, and something soft like a blanket or cat bed.

OTHER IDEAS

A schedule will need to be arranged for who can visit the cats when. The prison might initiate a sign-up program to allow inmates to visit the cats at staggered times as to not overwhelm the cats or exceed capacity of the cat visitation room. Capacity will have to be decided based on the physical space, but it is suggested to start small and increase over time. Passes from the facility will need to be given to participants in the form of a “ducat” which serves as an appointment slip authorizing inmate movement around a facility without an escort.⁷⁴

A team of individuals will need to be assembled to take care of daily responsibilities of cat care like feeding, replenishing water, and cleaning litter boxes.⁷⁵ It is suggested that inmates volunteer

⁶⁷ *Id.*

⁶⁸ *Id.* (suggesting that cat beds be made in-house via work orders sent to the upholstery vocation program).

⁶⁹ *Design of Facilities*, *supra* note 56, at 195 tbl.5.

⁷⁰ KitTea Interview, *supra* note 62.

⁷¹ *Design of Facilities*, *supra* note 56, at 194 tbl.1.

⁷² *Id.*

⁷³ Mikel Maria Delgado, *Cat Cafes Can Be a Force for Good. Here's How*, THE DODO (Apr. 6, 2014), <https://www.thedodo.com/cat-cafes-should-be-a-force-fo-499716333.html>.

⁷⁴ Scott Interview, *supra* note 50.

⁷⁵ See generally Tyler M. Han et al., *Prison-Based Dog Training Programs: Standard Protocol*, DENVER: INSTITUTE FOR HUMAN-ANIMAL CONNECTION 31-38 (2018),

for this role of “cat porter,” be interviewed, and scheduled for the duties. The prison can either allow this team to be a volunteer position or a paid prison job. If it is a volunteer position, the prisoner’s existing work schedules and ducat passes should adequately allow for the feeding and cleaning to happen every day. Multiple people should be on the team, even if that means alternating days between who is on duty. This allows for there to be backup porters in case someone is sick, transferred, or released.

A procedure will need to be put in place to ensure cats are still fed, given water, and litter boxes cleaned in the case of a prison lock-down. While cats can go for days without human socialization, the basic care requirements of food, water, and clean litter boxes must be met on a daily basis. In the case of a lock-down, it would be ideal to perform a visual check on the cat room approximately every eight hours to ensure no problems have erupted, for example accidents, vomit, or issues among the cats.⁷⁶

NEEDS OF RURAL ANIMAL SHELTERS

Over the past few decades, the huge increase in prison population has meant the need for more prison facilities. A large and disproportionate number of these facilities have been built in rural areas.⁷⁷ Animal shelters in rural areas “struggle with excess animals, and communities with broader economic burdens”⁷⁸ and the challenges that rural residents face often trickle down and have an impact on pets.⁷⁹ Rural shelters struggle with low demand and more animals than can possibly be given homes. Enlisting a local animal shelter in close proximity to rural prisons would likely be mutually beneficial.

COMMON OBJECTIONS TO ANIMAL PROGRAMS & OVERCOMING WITH CAT VISITATION ROOMS

ALLERGIES

A common objection to implementing PAPs has to do with allergies.⁸⁰ In dog training programs, the dogs often traverse through a large area of the facility.⁸¹ However, with a cat visitation room,

<https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1001&context=anitobe> (detailing how to train and select dog handlers for dog training programs).

⁷⁶ KitTea Cat Lounge indicated that staff left the facility overnight, leading to the conclusion that cats could safely be left alone for 8-12 hours. KitTea Interview, *supra* note 62.

⁷⁷ Sonya R. Porter et al., *Correctional Facility and Inmate Locations: Urban and Rural Status Patterns*, U.S. CENSUS BUREAU CTR. ADMIN. REC. RES. & APPLICATIONS 1 (July 2017), <https://www.census.gov/content/dam/Census/library/working-papers/2017/adrm/carra-wp-2017-08.pdf>.

⁷⁸ Andrew Blum, *How America Saved Millions of Dogs – By Moving Them*, TIME (Feb. 3, 2022) <https://time.com/6144366/dog-adoption-relocation-aspca/>.

⁷⁹ Liz Finch, *Finding Pathways to Success for Rural Shelters*, BEST FRIENDS ANIMAL SOC’Y, <https://network.bestfriends.org/proven-strategies/program-spotlights/finding-pathways-rural-shelters> (last visited May 5, 2022).

⁸⁰ As many as 15-30% of people are allergic to cats and dogs. *Planning and Implementing*, *supra* note 54, at 56.

⁸¹ This includes sleeping in individual cells and walking through the facility to go outside which exposes the dogs to a large number of inmates. Todd Harkrader et al., *Pound Puppies: The Rehabilitative Uses of Dogs in Correctional*

the cats will be kept inside a designated room, enclosed with walls and doors. Therefore, exposure to dander and irritants may be less severe because unlike the dogs which have a wide range of movement in a facility, the cats are in an enclosed space. It is possible that dander and allergens will pass through the clothing of participants after they visit the cats into the air which could affect non-participants, but dander is typically less potent when dispersed.⁸² Suggested ways to address this concern include surveying inmates and personnel to determine their allergies and severity, using air cleaners with high-efficiency particulate air (HEPA) filters, seeing if individuals are interested in taking medication to interact with the cats, and determine if using PPE like gloves and hand washing helps alleviate symptoms.⁸³

FEARS, PHOBIAS, CULTURAL CONCERNS

Another common issue related to the implementation of prison animal programs has to do with inmates' fear of animals.⁸⁴ While fear of cats is a legitimate concern to consider before implementing a program, fears of cats may be less severe than fear of dogs. By having cat visitation rooms enclosed, individuals who do not want to encounter the cats will not be subjected to seeing or hearing the cats; all participants will visit the room on an opt-in basis.

In studies assessing animal fears, cats have actually been chosen to represent “low-fear animals,” along with other small mammals like rabbits, guinea pigs, and ducks.⁸⁵ Fears that do exist may come from unfamiliarity with cats, hearing negative stories about cats, believing they are associated with evil, or other cultural stereotypes and superstitions.⁸⁶ Not every culture encourages pet keeping, and these concerns should be handled respectfully for inmates or staff who do not want contact with the animals.⁸⁷ To address this concern, inmates and staff should be given an opportunity to privately disclose these fears.⁸⁸

HAZARDS

Slip and Fall Hazards

A number of factors with dog training programs create potential hazards.⁸⁹ Given cats' smaller size and lack of leashes, the risk of slip, trip, or fall hazards likely decreases with cat visitation rooms.

Facilities, 66 CORRECTIONS TODAY, 74, 78 (2004) (describing how some facilities with PAPs have special areas designated for puppy and dog training away from the general population, like in an Honor Dorm).

⁸² *Planning and Implementing*, *supra* note 54, at 56.

⁸³ *Id.*

⁸⁴ Over 10% of people self-report that they are afraid of dogs and 3-7% of people have phobias – irrational fears of dogs.

⁸⁵ Jason M. Armfield, *Understanding Animal Fears: A Comparison of the Cognitive Vulnerability and Harm-Looming Models*, BMC PSYCHIATRY (Dec. 1, 2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2217538>.

⁸⁶ *Ailurophobia (Fear of Cats)*, CLEVELAND CLINIC (Nov. 19, 2021), <https://my.clevelandclinic.org/health/diseases/22083-ailurophobia-fear-of-cats>.

⁸⁷ *Planning and Implementing*, *supra* note 54, at 58.

⁸⁸ *Id.* at 56.

⁸⁹ Due to the size of dogs and the use of leashes, people can easily be knocked down by a boisterous dog, or a dog that is not leash-trained very well. Dog leashes also create tripping hazards. *Id.* at 57.

While there is always a chance cat can get underfoot by accident, a program should provide materials to actively prevent tripping hazards like access to cleaning supplies to clean up spills or accidents immediately.⁹⁰ Additionally, there should be a designated place to put toys after they are used to prevent them from being stepped on or tripped over.⁹¹

Bites, Scratches, and Fights

Dog bites can be common and are of concern when implementing DTPs. Cat bites may not be as obvious of a concern as with dogs, but they should not be overlooked. Even though cat bite puncture wounds may be small, bacteria can enter the wound and easily get sealed over when the wound heals.⁹² Inmate participants should have the ability to immediately wash a wound with soap and water and seek medical care if necessary to prevent serious infection.⁹³ All participants should be educated and trained before interacting with the cats to learn about cat body language; stressed cats often show obvious signs before resorting to a bite. Inmates should be encouraged to leave the space if cat temperaments seem to be elevated. This training could be completed via pamphlets, photographs, pre-recorded videos, or volunteers.⁹⁴

Another incident that may be encountered with cats is the potential to be scratched. Scratches should be washed immediately and inmates should be allowed access to first aid materials. The easiest way to prevent cat scratches is to make clear rules that the inmates should never pick up a cat. While the cats should be allowed to freely roam and interact with the inmates, the inmates should not attempt to move the cat themselves.⁹⁵

Humans can be injured if there is a fight between animals and the individuals try to separate the animals. This is more common with dogs than cats.⁹⁶ While a small skirmish may erupt occasionally, it is unlikely that cat fights are as big of a risk as dog fights. Teach participants to be observant, how to interpret animal body language, and to not insert themselves in the middle of the animals if a fight erupts.

OTHER CONSIDERATIONS

To participate in a dog training programs, participants are often required to have a specific amount of time left to serve; for example, two years before release.⁹⁷ Unlike DTPs, there is no behavioral training component to participate in cat visitation rooms (although participants should be trained

⁹⁰ *Planning and Implementing*, *supra* note 54, at 57.

⁹¹ *Id.*

⁹² Krista Williams & Ernest Ward, *Cat Bite Injuries to Humans*, VCA ANIMAL HOSPITAL, <https://vcahospitals.com/know-your-pet/wounds-cat-bite-injuries-to-humans> (last visited May 5, 2022).

⁹³ A reporting procedure must also be in place to alert administration of any bites. *Planning and Implementing*, *supra* note 54, at 57.

⁹⁴ *Id.*

⁹⁵ Cat Town has a strict rule that patrons are not allowed to pick up the cats. Cat Town Interview, *supra* note 61.

⁹⁶ Cat hierarchy can exist in a room, but cats can sort this out themselves. KitTea Interview, *supra* note 62.

⁹⁷ Reasons for this include the time it takes for inmate handlers to develop the skills to train a puppy. Prison administrators prefer to use the same inmates for several rotations instead of having to train inmate handlers every year. Harkrader, *supra* note 81, at 78.

on how to approach and handle cats and learn the basics of cat body language).⁹⁸ Therefore, more inmates will be able to participate. Inmate participants should still be screened before being allowed to interact with the cats. However, no specific offenses (with the exception of animal cruelty) should bar an inmate from participating.

Inmates with emotional or psychological disabilities may need to be supervised with the cats, but their status should not disqualify them from visiting the cats. It is individuals with mental illness and physical illness who may benefit from the cat visitation room the most!

Some participants in DTPs have reported that they feel they are under heightened scrutiny when training dogs and that they are being closely watched by inmates and staff⁹⁹ and problems may arise due to jealousy from non-participants.¹⁰⁰ With a cat visitation room, these problems can be avoided. The opportunity to visit the cat room should be treated as a privilege that is earned, but participation will not single out participants from other inmates.

FUNDING

Funding considerations must be evaluated prior to starting a cat visitation room. Programs may receive donations from staff, fundraisers, the public, veterinarians, or pet supply stores.¹⁰¹ When compared to other types of programs and interventions, the costs of PAPs are relatively low and cited as one of the appealing factors in establishing them.¹⁰²

PUSHBACK

Animal Welfare

Cat cafes have become increasingly popular, most notably in Japan.¹⁰³ However, in the United Kingdom, some animal charities have opposed cat cafes due to animal welfare considerations.¹⁰⁴ The two arguments against cat cafes are that cats may become stressed from living in such close proximity to other cats and from the high number of visitors coming and going.¹⁰⁵ However, cats are “no strangers to shop life – they’ve lived in bookstores and libraries for ages,” and in those locations, cats can do what they do best: embrace their role as solitary predator by “lounging in the background, snoozing on bookshelves and catching rodents.”¹⁰⁶ And that is how a cat visitation

⁹⁸ Cooke, *supra* note 4, at 43.

⁹⁹ *Empirical Evidence*, *supra* note 9, at 24.

¹⁰⁰ COMPREHENSIVE ASSESSMENT, *supra* note 31, at 118.

¹⁰¹ As of 2007, over half of existing PAPs received donations from stores like Walmart, PetCo, PetSmart, Iams, and Purina. In many programs, annual checkups are performed free of charge by local vets. Kohl, *supra* note 7, at 2.

¹⁰² *Planning and Implementing*, *supra* note 54, at 69.

¹⁰³ Natasha Geiling, *Pay Purr Pet at Japan's Cat Cafes*, SMITHSONIAN MAGAZINE (Feb. 3, 2014), <https://www.smithsonianmag.com/travel/paying-purrs-japans-cat-cafes-180949536>.

¹⁰⁴ John Bradshaw, *Are Britain's Cats Ready for Cat Cafes?*, 173 THE VETERINARY RECORD, 554, 554 (2013).

¹⁰⁵ *Id.*

¹⁰⁶ Delgado, *supra* note 73.

room should be designed and promoted: as a “low-key, almost library-like environs to relax and be around cats.”¹⁰⁷

Cats vary in temperament and personality; some are more willing to engage with other cats and humans. But it need not be assumed that putting numerous cats in a cat visitation room will lead to animal welfare issues.¹⁰⁸ Critics opine that having a rotating population of cats – coming and going based on their adoption status – could create unnecessary stress on the cats.¹⁰⁹ KitTea Cat Lounge’s model includes a mixture of resident cats and some cats up for adoption which was described as a stabilizing factor in the relationships among the cats.¹¹⁰

This proposal centers around resident cats.¹¹¹ Once a stable resident cat program is established, slowly over time, new cats could be introduced with the goal of adopting out some of the cats. When choosing cats for the cat visitation room, it may be difficult to not give in to selection bias. The cats with the “best” temperaments are already the cats that are most likely to be adopted from shelters. Adult cats may adjust slower to a new space than kittens, but those are often the cats that need the most help. Ideally, cats in the program should have previously been indoor cats.¹¹² It is important to balance the needs of the cats and the needs of the program to ensure it is implemented successfully. Once a stable program is built over a period of months or years, the program model could be reassessed to include more “difficult” and “less adoptable” cats.

To reduce any stress arising due to human visitors, a schedule should control the number of people in the room at one time with strict rules like no picking up the cats, no chasing, roughhousing, or waking sleeping cats.¹¹³ Incorporate design suggestions so that the space is successful. Provide places for the cats to “hide and get away from visitors if they’re feeling stressed.”¹¹⁴ This includes things like “high shelves along the walls, tunnels and boxes to hide.”¹¹⁵ Further, only allow participants to play with cats by using cat toys, and instruct participants to never pursue a cat if it has “had enough and walks away.”¹¹⁶ Set expectations with participants that cats sleep a lot and

¹⁰⁷ *Id.*

¹⁰⁸ KitTea staff explained that some cats are more or less social, but all do generally well in shared living space with multiple cats. KitTea Interview, *supra* note 62.

¹⁰⁹ Delgado, *supra* note 73.

¹¹⁰ KitTea Interview, *supra* note 62.

¹¹¹ See *Cats 101: Domestic Housecat*, ANIMAL PLANET (Dec. 21, 2013), <https://www.youtube.com/watch?v=9iTFTYtRT4g> (describing how resident cats will need regular veterinary checkups and to stay up to date on vaccinations).

¹¹² Delgado, *supra* note 73. See Cat Town Interview, *supra* note 61 (explaining that an exception would be feral kittens who could easily adjust to indoor settings).

¹¹³ Debra Kelly, *The Dirty Truth About Cat Cafes*, MASHED (Jan. 5, 2021), mashed.com/118733/dirty-truth-cat-cafes.

¹¹⁴ “Catification” designs are purposeful adjustments to meet cats’ needs and let them satisfy their urges like jumping, perching, climbing, playing, and claiming territory. *What is Catification?*, Jackson Galaxy, <https://www.jacksongalaxy.com/blog/what-is-catification/> (last accessed May 6, 2022).

¹¹⁵ Delgado, *supra* note 73.

¹¹⁶ *Id.*

may not always be active when the participants visit the room during the day. Cats need alone time,¹¹⁷ but a visitation room will provide many hours of the day when humans are not around.

Another animal welfare argument is that connecting animals with inmates creates a heightened risk for harm or abuse. However, across a wide review of literature, there were no documented reports of animal abuse in prison animal programs.¹¹⁸ Animals in prisons are no more at risk of cruelty or abuse than in the general public.¹¹⁹ In fact, they could be safer in prisons due to the high number of participants observing and interacting with the animals, making any abuse more easily detected than it would be in a private home. It is the author's view that felines will be safe in the presence of felons.

Other Criticisms

For all the praise that prison animal programs receive, they are not without critics. Large chunks of society do not believe that "inmates in prison should be given the opportunity to appreciate and show concern, love and compassion to another living being, animal or human."¹²⁰ Some worry that PAPs might send the message that being locked up in prison is enjoyable or easy.¹²¹ These criticisms are "clearly short-sighted and vengeful and ignores that participation in PAPs may provide some individuals with an opportunity for a unique pathway to change."¹²²

A valid criticism of PAPs is in regards to the exploitation of free or extremely cheap prison labor, especially in dog training programs.¹²³ This proposal will include volunteers, which some might consider to also be exploitative. However, it is the author's view that the benefits of the opt-in cat visitation room far outweigh this criticism.¹²⁴

Another issue with DTPs is that it may be considered unnecessarily cruel that inmates are allowed to form close connections to dogs which are then taken away from the prisoners once training is complete. Inmates are already a vulnerable community in regards to loss and grief.¹²⁵ Giving up a dog after working with it day and night for months at a time can bring up feelings of powerlessness,

¹¹⁷ Kelly, *supra* note 113.

¹¹⁸ Dana M. Britton & Andrea Button, *Prison Pups: Assessing the Effects of Dog Training Programs in Correctional Facilities*, 9 J. FAM. SOC. WORK 79, 82 (2005).

¹¹⁹ Jennifer Billock, *Cats Find Homes in Prisons – And Reform Inmates*, MENTAL FLOSS (Aug. 6, 2015), <https://www.mentalfloss.com/article/66916/cats-find-homes-prisons-and-reform-inmates>.

¹²⁰ Moneymaker, *supra* note 16, at 133-34.

¹²¹ *Desistance*, *supra* note 8, at 44.

¹²² *Id.*

¹²³ Dog training is a labor-intensive job and very expensive. Some critics says the government is exploiting prisoner labor, but this must be viewed on a spectrum.

¹²⁴ Even cat programs that do employ inmates such as the FORWARD Program at Pendleton pay a mere 20 cents an hour. While this is undoubtedly the exploitation of prison labor, it is typical of all prison jobs, and must be viewed in relation to other possible labor-intensive jobs in prison. *See supra*.

¹²⁵ Mary Renck Jalongo & Mary-Ann Sontag-Bowman, *Exploring Themes of Relinquishment and Loss, in PRISON DOG PROGRAMS*, *supra* note 4, 233, at 233.

voiceless, and deep emotional distress.¹²⁶ Although the inmates are not experiencing the exact type of grief coming from a death, it should be regarded in the same light because the inmates are ultimately losing the dogs.¹²⁷ While this should not be overlooked, it is a negative among many positives in participating in a dog training program.

With a cat visitation room, the presence of resident cats will help relieve the cycle of grief and loss frequently experienced by inmates in dog training programs.

CONCLUSION

It has been shown that starting and implementing prison animal programs requires vision, commitment, and creativity. There has been success starting programs in women's prisons, who are at a particularly high risk of distress while incarcerated. Prison animal programs are extremely flexible and can be altered to meet the needs of specific facilities, inmate populations, and the surrounding communities. Initial dog training programs were cited as helping spread the joy of dogs to inmates. It is the sincere hope this note can help facilitate and encourage the construction and implementation of cat visitation rooms in prisons to spread the joy of cats and bring together felines and felons who are, truly, the purrfect pair.

¹²⁶ *Id.* at 234.

¹²⁷ *Id.* at 235.

APPENDIX

Figure 1. KitTea Cat Lounge¹²⁸



Note: KitTea Cat Lounge is a single room with furniture for visitors, cat houses, and catification fixtures like cat stairs, ledges, and beds secured to the walls. Twenty-four cats live in the room and fourteen visitors are allowed in the room at once. An adjacent utility room has a sink, laundry, cleaning supplies, and kennels where cats acclimate to the area. Six litter boxes are in the room, along with countless beds, toys, and bowls for food and water.

Figure 2. Cat Town Visitation Room¹²⁹



Note: Cat Town is separated into two rooms, a large cat visitation room (pictured) and a second room with small cat studios. Between thirteen to fifteen cats live in the room.

¹²⁸ See *supra* note 43 and accompanying text.

¹²⁹ *Id.*

Figure 3. Cat Town Quiet Room¹³⁰



Note: Cat Town’s cat visitation room has an alcove called the “Quiet Zone” with cubby beds for cats to sleep and get some privacy, along with storage for cleaning supplies.

Figure 4. Pendleton Correctional Facility’s Cat Sanctuary¹³¹



Note: Two inmates appear with eleven cats in the cat sanctuary. The room includes cat houses, cat trees, cubbies secured to the walls, blankets, toys, beds, table, and chairs. The corner of the room has a locker with cleaning supplies like brooms. The cat houses and cubbies appear to have been made at the prison because they lack some of the characteristics of store-bought products.

¹³⁰ *Id.*

¹³¹ Erb, *supra* note 40.

Laws & Paws Word Search, by Adam N. Lepzelter, Esq.

Instructions:

Each of the words in the word bank below can be found in the puzzle horizontally, vertically, diagonally, or backwards. Circle the letters of each of the words below when found. When all the words have been found, the remaining non-circled letters will reveal a special message.

L	C	T	I	P	R	O	J	E	C	T	S	E	M
A	E	O	W	U	I	T	H	Q	O	P	E	C	L
W	G	E	A	B	S	Y	N	U	M	T	R	I	E
S	L	R	S	L	T	G	M	I	M	S	V	T	G
A	A	I	I	I	A	O	A	N	I	P	I	S	I
N	W	A	R	C	T	R	R	E	T	E	C	U	S
D	Y	V	E	A	U	F	K	L	T	C	E	J	L
P	E	I	B	T	T	L	E	A	E	I	D	S	A
A	R	A	M	I	E	W	T	W	E	A	O	E	T
W	S	N	E	O	S	A	S	U	L	L	G	L	I
S	S	P	M	N	C	O	L	T	R	E	S	N	O
T	B	A	R	B	A	R	A	A	H	E	R	N	N

WORD BANK:

Agriculture

Avian

Barbara Ahern

Cat

COAL

Committee

Colt

Equine Law

Frog

Justice

Laws and Paws

Lawyers

Legislation

Markets

Member

NYSBA

Projects

Publication

Service Dogs

Special

Statutes

SPECIAL MESSAGE:
