

## Memorandum in Support

### COMMITTEE ON ANIMALS AND THE LAW

Animals #6

April 29, 2019

S. 3027  
A. 25

By: Senator Bailey  
By: M. of A. L. Rosenthal

Senate Committee: Judiciary  
Assembly Committee: Judiciary  
Effective Date: Immediately

**AN ACT** to amend the Judiciary Law, in relation to the creation of a court-appointed advocate for animals.

**LAW & SECTION REFERRED TO:** New Article 22-B of the Judiciary Law.

This bill would amend the Judiciary Law by adding a new Article 22-B, entitled: Special Advocates for Animal Welfare Program. New Section 858-a, which makes up the entirety of the new Article 22-B, would provide for a court-appointed special advocate in proceedings regarding animal welfare.

Subdivision (1) of Section 858-a provides that a court, on its own initiative or at the request of any party or counsel to a party, may appoint a special advocate to represent the interests of justice in court proceedings under the Judiciary Law, Agriculture and Markets Law, or any other proceeding regarding the welfare of an animal. Denial of a request to appoint such an advocate is not subject to appeal.

Subdivision (2) provides for the court-appointed advocate to monitor the case, attend hearings, consult with individuals such as veterinarians, police and animal control officers, review records, and to present information and make recommendations concerning the animal's condition and the defendant's actions that relate to the interests of justice.

Subdivision (3) provides for a list of attorneys and law students with knowledge of animal issues as they relate to the legal system who are eligible to serve as voluntary advocates under this article to be maintained by the Department of Agriculture and Markets. A judge who decides to appoint an advocate to represent the interests of justice will make that appointment from this list.

Not all lawyers and judges are experienced in the area of animal welfare, and in the impact of crimes against animals. The sponsors of the bill correctly point out that crimes against animals often go unprosecuted or result in lenient punishments, and that both outcomes can put animals in danger. While the animal advocate provided under this bill would be appointed "to represent the

interests of justice,” justice for animals is served by ensuring that there is an understanding of the severity of the crime committed, the need for the perpetrator to be held to account, and the welfare of the animal involved to be a primary consideration in the deliberations of the court.

All of society is benefitted when animal crimes are treated with the seriousness they deserve in the legal system. Data collected on crimes is showing that those who abuse animals will often go on to harm humans. In 2016, the Federal Bureau of Investigation began tracking cases of animal abuse in the National Incident-Based Reporting System (NIBRS) because of the demonstrated link between animal abuse and human violence<sup>1</sup>.

The New York State legislature has long recognized that animals suffer and has been at the forefront of enacting state legislation that embraces the commitment to *the truth that animals require legal protections*. The anti-cruelty statute, Section 353 of the Agricultural and Market Law, is one of the oldest sections of this statute. As amended by the addition of Section 353-a describing crimes that constitute aggravated cruelty to animals that are punished more severely, the prohibitions against animal fighting in Section 351, and other acts of cruelty and neglect against animals specifically prohibited by other sections, New York law contains numerous provisions prohibiting cruel acts that constitute crimes against animals. As victims of crimes under the law, animals should have a path to justice under the law, and we must endeavor to ensure that path is not thwarted solely because a lack of resources to adequately manage animal abuse cases.

When an animal is harmed by any of the cruel behaviors prohibited under the law, that harm is exacerbated when a legal system that intends to protect these animals is unable to provide the necessary advocacy to ensure that those protections are carried out through the legal process. Without a legally authorized advocate to ensure that the animal’s interests are recognized and taken into account, the innocent animal can be further victimized by the process. In the worst cases, the animals’ needs are entirely discounted when the case fails to be properly prosecuted solely because the necessary context that a knowledgeable animal advocate can provide is absent.

This bill, which is substantially similar to recent legislation enacted in Connecticut<sup>2</sup>, would enable New York State judges to appoint special advocates to represent the interests of animals in cases regarding the welfare of an animal, much like the courts do for children and other vulnerable crime victims who cannot speak for themselves. The advocates, appointed based upon their: i) understanding of animal law; ii) understanding of the veterinary and ancillary needs of the animal; and iii) their ability to provide the necessary context to the judiciary while a case progresses through the courts; will help ensure that the animal victim’s basic daily living needs

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<sup>1</sup> “Tracking Animal Cruelty: FBI Collecting Data on Crimes against Animals” (February 1, 2016, located at <https://www.fbi.gov/news/stories/-tracking-animal-cruelty>) in which the National Sheriffs’ Association’s John Thompson urged people to shed the mindset that animal cruelty is a crime only against animals. “It’s a crime against society,” he said, urging all law enforcement agencies to participate in NIBRS. “By paying attention to [these crimes], we are benefiting all of society.”

<sup>2</sup> See Connecticut Public Act No. 16-30 at <https://www.cga.ct.gov/2016/ACT/pa/2016PA-00030-R00HB-05344-PA.htm>

are met and medical attention is provided. They would, as well, review pertinent information and documents from veterinarians, animal control, and police officers; they are permitted to attend hearings where they can bring this information to the attention of the court. Ultimately, these advocates would provide a voice for abused and neglected animals within the courtroom and ensure that the best interests of the animals are served.

An example in New York of the successful implementation of such a program already exists in the Volunteer Advocate Lawyer for Animal Abuse Court in Onondaga County<sup>3</sup>. This program provides that the arresting officer is responsible for triggering notification to the program's chief advocate in every animal abuse case before the courts, thereby ensuring that an animal advocate will appear in every case. In the VALAC Program, the local bar association provides for volunteer advocate training, and implementation of the program. The VALAC advocate monitors the animal from the beginning of the legal process, and may ultimately recommend that an animal's ownership be changed. We applaud this program for its focus on eliminating the risk that abused animals, with seemingly benign outward appearances, might be returned to abusive settings.

S.302 /A.25 would initiate a statewide program, and provide for the court-appointed animal advocate to serve on a voluntary basis, from a list that will be maintained by the Department of Agriculture and Markets. While the Committee on Animals and the Law supports this bill, we would respectfully urge the sponsors to consider the following recommendations, which would further promote judiciary economy as well as the animal protective intent of this bill:

- while the bill recognizes that the interests of justice are served by ensuring that the court consider facts related to the welfare of the animal, the animal advocate should be specifically authorized to present information and recommendations related to the best interests of the animal;

- consider whether the list of potential animal advocates might better be maintained by the Office of Court Administration instead of the Department of Agriculture and Markets; OCA already has a system in place for appointments in court proceedings (see 22 NYCRR Part 36) that would apply to the appointments authorized by this legislation; and

- clarify whether the legislation would apply to all animals, terminology used in most of the bill, or just to a "cat and dog," as cited in new Judiciary Law Section 858-a(2)(b).

It is time to put an end to the sufferings of animal victims of crimes by providing a legal structure for the appointment of an animal advocate, and we applaud the sponsors' efforts to ensure that an advocate be considered every time an animal is a victim of cruelty.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation.

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<sup>3</sup> See Volunteer Advocate Lawyer For Animal Abuse Court ("VALAC") <https://www.onbar.org/about-us/committees/volunteer-advocate-lawyer-animal-abuse-court/>