

Note

*129 RECOGNIZING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND ANIMAL ABUSE: RECOMMENDATIONS FOR CHANGE TO THE TEXAS LEGISLATURE

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I. Introduction

A woman left the battered women's shelter where she had been staying to return to her abusive husband. [FN1] She decided to leave the shelter after receiving pictures of her husband cutting off her dog's ears with gardening shears. [FN2] He sent the ears too. [FN3] In another family, Jamie O'Farrell forced his girlfriend's daughter, Christine, to watch as he repeatedly *130 punched his dog, Princess, in the face and kicked her across the room for chewing on his telephone, mini-blinds, and pornographic magazines. [FN4] O'Farrell said that it was "what you do to dogs or kids who don't do what they are supposed to." [FN5] Later, O'Farrell again forced Christine to watch as he punched and kicked Rocko, a friend's dog. [FN6] O'Farrell also threw

bottles at the dog so that they broke and cut Rocko's face and body. [FN7] That time, he used the abuse to threaten Christine. He told her that if she ever reported his sexual abuse of her, he would do the same to Dusty, her beloved dog. [FN8] When a different woman left her husband, she was unable to take her pet with her. [FN9] After the pet died a few months later, the woman woke up to find the frozen body of her pet, soaked in gasoline and set on fire, hanging in a tree outside her new home. [FN10] In a final example, Mary J. shot her abusive husband as he entered their home one day because he was going to force her to hold down another puppy while he had sex with it. [FN11]

These true stories have common characteristics. Each has a batterer; each has victims. These stories are different from many common domestic violence [FN12] accounts in that the victims include not only wives, girlfriends, [FN13] and children, but also animals. Although research has continued to show that there is a high correlation between incidents of domestic violence and incidents of animal abuse, [FN14] Texas legislation does not reflect it.

*131 This note provides background on the relationship between domestic violence and animal cruelty in order to persuade the reader that Texas law and domestic violence protocol should reflect the possibility, and importance, of animal abuse in order to provide adequate assistance to battered women. Part II of this note addresses the psychology of person and animal abuse, including the motivations of batterers, effects of witnessing person and/or animal abuse, and how a woman's decision to leave her batterer is influenced by abuse of her pet. Part III discusses current legislation in Texas with brief reference to the laws of other states. This section also offers recommendations for amendments to Texas laws and family violence protocol. There is particular emphasis on laws relating to protective orders, animal cruelty, and the possibility of interagency communication.

II. Psychology of Abuse: Motivations and Effects

A. Pets as Family Members

Pet owners in the United States spent \$36.3 billion on their pets in 2005; it is estimated that in 2006 the figure will climb to \$38.4 billion. [FN15] Furthermore, out of the over 600 pet cemeteries in the United States, 400 are active businesses. [FN16] To understand how animal abuse affects victims of domestic violence, one must recognize that, while pets are legally defined as personal property, [FN17] pet owners more commonly view them as family members. [FN18] One study showed that ninety-nine percent of cat and dog *132 owners thought of their pets as members of their family. [FN19] In San Francisco's Marina district, for instance, dog owners make appointments for their dogs to see masseurs and acupuncturists, sit for portraits, and have their future read by astrologers. [FN20] Local businesses cater to the "young, single, 'doggie' crowd" with products like specialty dog biscuits. [FN21] The bond between domestic violence victims and their pets may be even more pronounced than with ordinary pet owners [FN22] because it is common for batterers to isolate their victims from any human friends or family members. [FN23] A pet may take on the companionship role that human family or friends normally fill due to this isolation.

In addition to providing close, familial companionship, having pets has been shown to provide owners with psychological and physical benefits. Having a pet can increase survival among coronary artery disease patients, [FN24] decrease medication usage and doctor visits, [FN25] reduce loneliness, assist in making human friends, and provide comfort when "things go wrong."

[FN26] Additionally, one study found that ninety-seven percent of the 13,000 people surveyed thought it was good for children to have pets because they provide pleasure and companionship while teaching gentleness and responsibility. [FN27] Given these benefits and the fact that most pets are viewed as family members, one wonders about the motivation behind the abuse.

*133 B. Motivations and Correlations: Person and Animal Abuse

When we hear about men who wrap duct tape around a cat's entire body and leave it in its litter box for his wife to find, [FN28] beat a dog until it is unconscious and then bury it alive, [FN29] or twist a cow's tail until it breaks and bleeds, [FN30] we wonder why anyone would choose to do these things. The answer is simple. Animal abuse is just another way for batterers to assert power and control over their victims [FN31]--be they pet, woman, or, most often, both. Most of the motivations for battering pets are the same as those for battering women, including discipline, retaliation, demonstration of power or omnipotence, and instillation of fear and the habit of compliance. [FN32] Furthermore, cruelty to animals has been recognized as a warning sign for future interpersonal violence. [FN33] Ascione argues that while there may not be a causal relationship between domestic violence and animal abuse, abuse of animals may increase the likelihood of interpersonal violence. [FN34] This is because animal abuse may result in the desensitization of the abuser to the negative emotive effects often felt by others viewing suffering, as well as result in the desensitization of the abuser to suffering and a reduction in his ability to empathize with either animal or human victims. [FN35]

*134 C. Animal Abuse as a Tool for Person Abuse

Once the interpersonal violence begins, a batterer can use animal abuse as a tool for either psychological or physical abuse. One example of this type of physical abuse is striking the victim with the animal--for instance, when a puppy or a frozen squirrel is used as a weapon. [FN36] Another example is when an attack dog is turned loose on the victim, or when the victim is forced to have sex with the family dog or snake. [FN37] Instances in which animal abuse is used to psychologically torture the human victims differ from those involving physical abuse in that there is no direct contact between the animal and human victims' bodies. [FN38] When a batterer forces a woman to watch as he tortures her pet, it emphasizes the idea that he has all the power in the relationship. [FN39] She can do nothing to protect her pet; or, taking it a step further, she could do nothing to protect herself should he decide to torture her as well. [FN40] It is easy to see how motivations such as discipline and retaliation are satisfied through animal abuse. The abuser might, explain to his human victim that people or animals are abused when they do not obey, as O'Farrell did to his girlfriend's daughter, [FN41] or that the animal will be tortured or killed if the victim ever tries to leave. [FN42] Similarly, killing a pet increases a woman's feeling of isolation because her batterer has likely forced her to sever relationships with friends and family, leaving only the bond she had with her pet. [FN43] All of the violence resulting from these different motivations leads to increased fear and an increased likelihood that the victim will attempt to change her behavior in order to appease her abuser. [FN44] This power over his victim is, of course, the purpose of the batterer's manipulative actions. [FN45]

*135 D. Effects of Witnessing Person and/or Animal Abuse

Besides the increased fear, isolation, and compliance with a batterer's rules, unintentional effects of witnessing animal abuse have been noted. For instance, a victim may make the traumatic

decision to take the animal to the pound, [FN46] or worse, kill the animal herself before more harm can come to it. [FN47] Victims may react to the loss or death of their pets with intense anger--a dangerous emotion when primary coping mechanisms for abuse victims include denial or intentionally flat affect. [FN48] As with domestic violence in general, children may imitate actions of the abuser, thereby increasing the chances that not only aggression towards humans will be passed on from generation to generation, [FN49] but also the propensity to engage in animal cruelty. [FN50] Finally, it follows that the effects generally experienced by child witnesses of domestic violence are likely present in situations where their pets, as well as their mothers, are abused. [FN51] One study indicated that effects of domestic violence on children may include stuttering, headaches, stomachaches, asthma, bed-wetting, suicidal behavior, clinging behavior, aggressive behavior, passivity, insomnia, phobias, withdrawal, anxiety, or depression. [FN52]

E. A Woman's Decision to Leave

Finally, one of the most important effects of cruelty to animals in *136 domestic violence situations, for purposes of this note, is how it affects a victim's decision to leave her batterer. For example, when an abuser harms a pet through apparently negligent or careless actions, a victim will be hesitant to leave the animal behind; [FN53] this trepidation would assumedly increase when the animal abuse has obviously been intentional. Shelter workers have many stories about women who felt they could not seek safety at a shelter because they were not allowed to take their pets with them. [FN54] One study found that nearly twenty-five percent of the 101 battered women surveyed had delayed their search for shelter out of fear for their pets. [FN55] Meanwhile, other women enter shelters only to return home a short time later [FN56] in response to the legitimate fear that their abusers will torture or kill the animals that are left behind. [FN57] Victims of domestic violence face overwhelming obstacles in leaving their abusers, including financial dependence on batterers, denial, and believed cultural stereotypes (i.e., the idea of machismo entitles Mexican men to beat their wives or girlfriends). [FN58] Fear of retaliation is an obstacle deserving of special note because violence often intensifies when victims try to leave. [FN59] This separation violence is the batterer's reaction to the victim's attempt to gain independence from his control, and it leads to heightened risk of murder of the victim, any children, [FN60] and, arguably, their pets. Because the fear of retaliation against pets can cause a delay in seeking shelter, [FN61] it is apparent that ensuring the safety of pets is a necessary part of realizing true safety for victims of domestic violence. As long as pets are publicly ignored, victims will continue to make the *137 decision to stay, sacrificing their own physical and psychological health in an attempt to protect their animals, despite the possible resources available to help themselves. [FN62]

III. Legislation & Protocol: Recommended Changes

Texas must respect the emotional attachment victims have to their pets by including animals in protective orders, available causes of action against abusers, and domestic violence and animal shelter protocol.

A. Protective Orders

In Texas, a victim is entitled to a protective order if “the court finds that family violence has occurred and is likely to occur in the future.” [FN63] Family violence includes violence in dating

relationships and between household members, and is defined as acts that are “intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault.” [FN64] Although threats of physical injury or bodily harm are included in this statute, there is no direct mention of psychological abuse. This is problematic because many victims assert that their psychological abuse was at least as harmful as the physical abuse, if not more so. [FN65] Furthermore, given that all batterers who engage in physical abuse also engage in psychological abuse, [FN66] and that a main objective of domestic violence is psychological control over the victim, [FN67] a court's finding of non-physical abuse should give rise to entitlement to a protective order. One cannot forget that threats of violence to pets can have a psychological impact to such an extent that a woman would risk her own safety to protect the animal. [FN68] Therefore, when a batterer uses threats of, or actual abuse of a pet as a tool of psychological torture, the human victim should be entitled to a *138 protective order. The protective order is necessary not only to guard the victim from further psychological abuse, but also to protect her from the escalation of violence that would probably result in injury to her and any children in the relationship. [FN69]

In order to provide this protection, the family violence statute must be amended in one of two ways. One approach would be to change the definition of either “family” [FN70] or “household” [FN71] to include animals, thereby incorporating animal abuse into the criteria for eligibility of a protective order. [FN72] Changing the definition in this manner does not put animals on par with humans or give animals the same rights as humans. Rather, it asserts that pets are not ordinary personal property and are entitled to additional protection. This change reflects the fact that most owners regard their pets as family members. [FN73] Alternatively, the definition of “family violence” could be changed to include acts of violence against an animal. In so doing, the legislature would publicly acknowledge the fact that violence to an animal should be considered a direct threat to a human victim's future physical safety and present psychological well-being. Similarly, among the listed items that the court can compel in a protective order, [FN74] a specific requirement should be listed regarding possession of animals. The purpose of such a requirement is to decrease the likelihood that batterers will be able to continue their psychological abuse and attempted control over their victims through the torture, or threat of torture, to animals. The item could be placed under Texas Family Code § 85.021(1)(A) [FN75] simply by changing the language from “prohibit a party from removing a child who is a member of the family or household” to “prohibit a party from removing a child or animal who is a member of the family or household.” That is assuming, of course, that the recommended *139 change to the definition of either “family” or “household” was also made.

If no change in the definition of either “family” or “household” is made, then prohibition of possession of an animal by a batterer could be ordered by the court under § 85.022(b) [FN76] by adding an additional subsection with language specific to possession of animals. For example, the new language could prohibit the batterer from “going near an animal currently, or formerly, possessed by the person protected by an order, or a member of the family or household of a person protected by an order.”

If the court finds that there has been animal abuse, in addition to the person abuse required in the present definition of family violence, the abuser should be denied all property rights to the family's animals. If the applicant for the protective order does not want to keep the animals, they should be sold, sent to a shelter, or humanely destroyed (if it is in the best interest of the animal) in accordance with the animal cruelty regulations under the Texas Health and Safety Code.

[FN77] Change in Texas legislation is definitely possible, especially if legislators are willing to look to other states' statutes for guidance. For instance, Maine recently passed the first statute in the nation that expressly allows judges to consider animal abuse in protective orders. [FN78]

B. Animal Seizure

In addition to changes in the wording of the Family Code sections on protective orders, minor amendments to the Texas Health and Safety Code could lessen domestic violence victims' anxiety about the safety of their pets. Currently, a peace officer or animal control officer may apply for a warrant to seize an animal where there is reason to believe it “has been, is being, or may be cruelly treated.” [FN79] In interpreting this statute, the District Court for the Eastern District of Texas stated that “the Texas Legislature has not directed that an animal control officer must secure a warrant prior to impounding mistreated animals” and that “the obligation to do so remains discretionary.” [FN80] This interpretation of the statute should not only be codified, but also expanded to include, in addition to animal control officers, peace officers, and officers of Child Protective Services (CPS).

Codification of the Eastern District's opinion would give statewide authority to the approved officers to seize animals at the first sign of abuse, *140 even without a warrant. This immediately takes the animal victim of domestic violence out of harm's way, perhaps giving a human victim of domestic violence an opportunity to seek safety for herself without worrying about the well-being of an animal that would have otherwise been left behind.

The expansion of authority to include peace officers and CPS caseworkers is necessary to increase the chances of removal of animal victims from violent environments. Because instances of child abuse and domestic violence often occur in the same households as animal abuse, [FN81] peace officers and CPS officers occasionally see signs of animal abuse, or even witness the abuse firsthand. When this occurs, they should have the authority to remove the animal, or apply for a warrant for animal control to do so, not only for the animal's safety, but also for the safety and psychological well-being of other family members. When law enforcement takes action against animal abuse, it serves as a sign to batterers that neither abuse to animals, nor abuse to people, will be tolerated. It is also a necessary precondition for required interventions aimed at preventing the intergenerational spread of animal abuse and escalation of violence from animals to humans. [FN82]

C. Causes of Action/Enforcement

When abuse has been committed, there are several courses of action a victim might pursue. First, if the abuser violates a protective order by commission of an act prohibited by the order, he can be punished for contempt of court with either a fine, or up to one year in jail, or both. [FN83]

Because abusers regularly attempt to scare their victims into returning through the torture, death, or threats of torture and death, to pets, [FN84] the courts must recognize this as exactly the kind of threatening behavior that is in violation of a protective order. No wording in the current protective order statute needs to be changed. It would be sufficient for judges to recognize actions against victims' animals as direct threats to the victim, [FN85] *141 or at least as “conduct . . . reasonably likely to . . . alarm, abuse, [or] torment.” [FN86]

An abuser who tortures animals to psychologically abuse a human could be charged with animal cruelty. Texas' current animal cruelty statute reads, in relevant part:

- (a) A person commits an offense if the person intentionally or knowingly:
 - (1) tortures an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in the person's custody; . . .

(5) kills, seriously injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; . . .

(9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; . . . [FN87]

Unfortunately, the wording of this statute may cause problems in domestic violence situations. First, this statute allows an owner of an animal to “kill, seriously, injure, or administer poison” to his own animal. Because Texas is a community property state, [FN88] and animals are legally defined as personal property, [FN89] this allows abusers to successfully make the argument that the animal is his property as well as his wife's; [FN90] and, therefore, he is entitled to kill, seriously injure, or poison the animal. The fact that an abuser can threaten to kill, injure, or poison a pet, carry out that threat, and not be held accountable is unacceptable. We have given no recourse to victims of domestic violence in this situation unless the conduct toward the animal is so egregious that it can be labeled torture.

Witnesses to animal abuse experience detrimental psychological effects that should be taken into account in drafting legislation. By allowing owners to seriously injure their animals, the state continues to permit use of animal cruelty as a tool for manipulation and control. [FN91] When a victim finds out that she cannot seek justice for the death, injury, or poisoning of her beloved animal, it can be one of the most demoralizing, *142 and frightening, moments. At that time, there is not only a realization that the abuser will go without punishment for his emotionally traumatizing conduct, but also the re-enforcement of the idea that the abuser is powerful [FN92] and could possibly get away with the physical and psychological torture of his human victims. This may contribute to a woman's decision not to leave her abuser for fear of further reprisals. [FN93]

Second, given the negative effects of animal abuse, not only on the animal victim, but also on the human victims who may be forced to witness or take part in the conduct, [FN94] the penalty level associated with the crime of animal cruelty in Texas is inappropriate. Texas is among the forty-one states making cruelty to animals a felony offense under certain circumstances. Still, in Texas, intentionally or knowingly failing to provide food, care, or shelter to an animal in the person's custody, or injuring an animal without the owner's consent, is only a Class A misdemeanor unless the person has already been convicted of cruelty to animals twice, in which case it is a state jail felony. [FN95] This means that, in terms of animal cruelty, if an abuser carries out his threat to feed and milk only “his half” of the herd if the victim leaves him, [FN96] the resulting deaths of the victim's half of the herd would only be a misdemeanor. Fortunately, killing, severely injuring, or poisoning animals (without consent of the owner), or torturing them are state jail felonies the first time the person is convicted. [FN97] If the person has been convicted of these offenses twice before, then a third offence is a third-degree felony [FN98] punishable by imprisonment of two to ten years and a fine of up to \$10,000. [FN99] Although these crimes are punishable as felonies, important changes must be made.

The Texas animal cruelty statute should be amended so that situations in which an animal is used to threaten or torment a person are addressed specifically. The statute should also mandate relinquishment of any rights to the animals that were abused and prohibition of ownership or possession of any other animals in the future. These amendments would show that Texans refuse to allow animals to be used as a means for torturing victims of domestic violence, even if an abuser's livelihood (e.g. a rancher or animal trainer) is put in jeopardy.

Texas would not be alone in making these changes. For instance, in Maine, one way a person violates the cruelty to animals statute is if he *143 “kills or tortures an animal to frighten or intimidate a person or forces a person to injure or kill an animal.” [FN100] The attorney for the state has discretion whether to prosecute the violator civilly or criminally. [FN101] Under a civil conviction, the court can prohibit the violator from owning, possessing, or having an animal on his premises permanently. [FN102] In addition, the Maine criminal statute, unlike that of Texas, includes the crime of aggravated cruelty to animals in which there is no exception for the killing or injuring of an animal based on ownership. [FN103] Other states where courts can prohibit ownership or possession of animals for some period of time include Alaska, Delaware, Michigan, Minnesota, New Hampshire, Tennessee, Utah, West Virginia, and Wisconsin. [FN104] The recommended changes to the Texas animal cruelty statute must be made if the state is to take psychological abuse through the use of animals seriously. In doing so, it is stating that all types of domestic violence, no matter how they are committed, are worthy of stringent criminal penalties.

To conclude this discussion of causes of action, brief mention of the tort of intentional infliction of emotional distress must be made. [FN105] In a 1993 decision, a plurality of the Texas Supreme Court voted to recognize the tort of intentional infliction of emotional distress (IIED) in the marital context. [FN106] Arguments against the use of the tort under marital circumstances still seem to have won out. Since *Twyman*, IIED has been used only as a “gap-filler” tort that cannot be used “to circumvent the limitations placed on the recovery of mental anguish damages under more *144 established tort doctrines.” [FN107] In his concurring and dissenting opinion in *Twyman*, Chief Justice Phillips argued against the recognition of the tort between spouses. [FN108] He reasoned that it would be difficult for a court to distinguish between actionable claims and those inherent in the marriage relationship since “[w]hen discord arises, it is inevitable that the parties will suffer emotional distress.” [FN109] The problem with this reasoning is that the difference between everyday marital discord and actions like sending a spouse pictures of a dead pet or an audiotape of a pet being tortured [FN110] does not seem hard to discern. The legislature should trust the courts in their ability to differentiate between those spouses deserving of relief because they have indeed suffered severe emotional distress at the hand of their partner, and those filing frivolous causes of action. [FN111]

D. Interagency Endeavors and Shelter Protocol

Animal abuse has been described as a problem worth examining from an ecological perspective. [FN112] It is a problem on individual, interpersonal, and societal levels because it has been linked to mental disorders, family violence, and issues of public health. [FN113] In accepting animal abuse as a problem connected to domestic violence and child abuse, [FN114] one also accepts the need for domestic violence and child abuse personnel to work in concert with animal welfare advocates.

The best way for agencies to work together is through cross-reporting. *145 Through cross-reporting, social workers for CPS would be trained to recognize animal abuse and would have a duty to report it. [FN115] In the same way, animal control officers would be trained to recognize and report child abuse and partner abuse; just as peace officers would be trained to recognize animal abuse in addition to other forms of family violence. [FN116] The benefits of cross-reporting include overcoming societal indifference to animal abuse and domestic violence, [FN117] earlier exposure of abuse, and a better conception of what personal and environmental factors contribute to these acts of abuse--perhaps resulting in higher success rates of

interventions. [FN118] The American Humane Association, Latham Foundation, and the Humane Society of the United States have already held conferences, printed numerous articles, and conducted training workshops for the purpose of facilitating cross-training and reporting. [FN119]

Texas should require statewide cross-training of child abuse, domestic violence, and animal welfare personnel and mandate cross-reporting and systematic recording of information in a statewide database. To counter the argument that cost may prevent implementation of these recommended regulations, it should be noted: (1) that although CPS resources are limited to an extent that not all reports of child abuse are investigated, repeal of reporting laws has not been advocated; [FN120] and, (2) there is a real possibility that interagency communication and training will result in increased efficiency because these forms of violence often include common victims and perpetrators. [FN121] Indeed, cross-reporting has been judged by some to be important enough that local shelters, agencies, and even schools should take part in referring cases and maintaining statistics until a reporting system is put into place. [FN122]

Besides referring cases, Texas animal and domestic violence shelters can work together to help domestic violence victims find safety for their pets. Ascione's Safe Havens for Pets provides guidelines and recommendations for programs providing shelter for the pets of battered women. [FN123] Issues particular to sheltering pets for victims of domestic *146 violence include safety (of shelter staff, animals, and victims), confidentiality, pet ownership (most victims do not want to give up their pets permanently), publicity, and post-shelter housing (if the victim decides to return to her abuser, a move likely to result in further animal cruelty). [FN124] When these issues are added to the everyday animal shelter challenges such as having adequate space, access to veterinary care, and funding for shelter programs, taking on the added concerns related to animals of victims of domestic violence may seem overwhelming. For instance, while some domestic violence shelters are able to house pets throughout the owner's stay, others can only offer temporary animal housing in pet carriers, or no pet housing at all due to possible staff and victim allergies, public building regulations, or financial difficulties. [FN125]

Still, there are animal shelters nationwide that have committed themselves to helping abused women by offering safety for their pets. For instance, in Texas, the Society for the Prevention of Cruelty to Animals of Texas and Austin Pets Alive! both provide short-term foster care for pets of domestic violence victims. [FN126] These shelters provide an invaluable service to the women who might have otherwise decided not to seek shelter for themselves or safety for their animals because they feared having to surrender their pets permanently.

IV. Conclusion

Much is to be done if the use of animal abuse as a form of domestic violence is to be stopped and aid is to be provided to victims in their fight for justice and safety. Texas must recognize that pets are often considered family members by victims of domestic violence and adjust the laws and personal perspectives accordingly. The link between interpersonal violence and animal abuse must be publicly acknowledged, especially the fact that animal abuse is a weapon often used by batterers. The adverse impact of this psychological abuse on a woman's decision to seek safety must be acknowledged. Changing laws governing protective orders and animal seizure so that they specifically address the unique connection between domestic violence and animal abuse could aid a woman in making the decision to seek shelter. Amending animal cruelty statutes and allowing the use of the tort of intentional infliction of emotional distress in these circumstances

could provide a powerful morale booster for victims by demonstrating that their batterer is not omnipotent after all. Persons *147 committed to justice for the these victims must advocate for change in agency protocol to provide for cross-reporting between CPS, law enforcement, domestic violence caseworkers, and animal control. They must also support those domestic violence and animal shelters that have taken on the task of aiding victims by providing safety for their pets and encourage other shelters to do the same.

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[FN1]. Jane Ann Quinlisk, *Animal Abuse and Family Violence*, in *Child Abuse, Domestic Violence, And Animal Abuse* 168, 168 (Frank R. Ascione & Phil Arkow eds., 1999).

[FN2]. *Id.*

[FN3]. *Id.*

[FN4]. Marsha Millikin, *Life and Death inside the Cycles of Violence*, in *Child Abuse, Domestic Violence, and Animal Abuse* 176, 178 (Frank R. Ascione & Phil Arkow eds., 1999).

[FN5]. *Id.*

[FN6]. *Id.* at 179.

[FN7]. *Id.*

[FN8]. *Id.* See also 185.

[FN9]. Star Jorgensen & Lisa Maloney, *Animal Abuse and the Victims of Domestic Violence*, in *Child Abuse, Domestic Violence, and Animal Abuse* 143, 153 (Frank R. Ascione & Phil Arkow eds., 1999).

[FN10]. *Id.*

[FN11]. Quinlisk, *supra* note 1, at 171.

[FN12]. When one intimate partner uses physical violence, threats, stalking, harassment, or emotional or financial abuse to control, manipulate, coerce, or intimidate the other partner, it is 'domestic violence.' Roberta Valente, the American Bar Association Commission on Domestic Violence and the Law, *Domestic Violence and the Law*, in *the Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook* 1-3, (1996).

[FN13]. I will use feminine words such as 'wife' or 'girlfriend' in addition to 'abuse victim' not to discount the fact that there are battered men, but simply because a majority of the victim

population is female. See Callie Marie Rennison, U.S. Dep't Of Justice, Intimate Partner Violence and Age of Victim, 1993-99, at 3 (Bureau of Just. Stat. Special Rep. NCJ 187635, Oct. 2001) ('Women were victimized in 85% of the 791,210 intimate partner violent crimes in 1999.') available at <http://www.ojp.usdoj.gov/bjs/absract/ipva99.htm>.

[FN14]. See, e.g., Frank R. Ascione, Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals, 1 *J. of Emotional Abuse* 119, 125 (1998) (reporting seventy-one percent of battered women at shelter said their pets were threatened, hurt or killed) [hereinafter Ascione, Battered Women's Reports]; Quinlisk, *supra* note 1, at 169 (finding sixty-eight percent of women at domestic violence shelters who had pets reported abuse to pets); Elizabeth DeViney et al., The Care of Pets within Child Abusing Families, 4 *Int'l J. for the Study of Animal Probs* 321, 327 (1983) (finding abuse of pets in eighty-eight percent of families where child physical abuse occurred).

[FN15]. Am. Pet Products Manufacturers Ass'n, 2005/2006 Appma Nat'l Pet Owners Survey, http://www.appma.org/press_industrytrends.asp (last visited May 27, 2006).

[FN16]. Int'l Ass'n of Pet Cemeteries And Crematories, <http://www.iaopc.com/pageDisplay.jsp?pageid=12990> (last visited October 9, 2006).

[FN17]. Tex. Prop. Code Ann. § 42.002 (2000); *Desanctis v. Pritchard*, 803 A.2d 230, 232 (Pa. Super. Ct. 2002) ('Despite the status owners bestow on their pets, Pennsylvania law considers dogs to be personal property. '); *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W.Va. 2005) ('[O]ur law categorizes dogs as personal property and as a result sentimental attachment of an owner to his or her dog cannot be considered in the computation of damages. '); but see *Corso v. Crawford Dog and Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (1979) (stating that 'a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.').

[FN18]. Alexa Albert & Kris Bulcroft, Pets, Families, and the Life Course, 50 *J. of Marriage and the Fam.* 543, 547 (1988) (finding that eighty-seven percent of urban pet owners surveyed thought of pet as family member); Bruce Heady, Health Benefits and Health Cost Savings Due to Pets: Preliminary Estimates from an Australian National Survey, 47 *Soc. Indicators Res.* 233, 238-239 (1999) (finding that ninety-one percent of pet owners surveyed reported feeling 'very close' to their pets); Millikin, *supra* note 4, at 177 ('Whiskers was not our cat, we were his family. '); Tamara Barnes, Out of the Ashes ... A Program of Hope, in *Child Abuse, Domestic Violence, and Animal Abuse* 190, 190 (Frank R. Ascione & Phil Arkow eds., 1999) ('I consider my pets my children. They are precious members of my family, and an important part of my support group. '); Michael Mason, Where Dogs Have Their Day, *Nat'l Geographic* 148, 154 (April 2006) ('Our dogs are our babies; we never leave them home.').

[FN19]. Victoria L. Voith, Attachment of People to Companion Animals, 15 *Veterinary Clinics of N. Am.: Small Animal Prac.* 289, 290 (1985).

[FN20]. Mason, *supra* note 18 at 150-51.

[FN21]. *Id.* at 154.

[FN22]. Carol J. Adams, *Woman-Battering and Harm to Animals*, in *Animals & Women* 55, 62 (Carol J. Adams & Josephine Donovan eds., 1995).

[FN23]. Angela Browne, *Courtship and Early Marriage: From Affection to Assault*, in Clare Dalton & Elizabeth M. Schenider, *Battered Women and The Law* 97, 101 (Robert C. Clark et al. eds., 2001).

[FN24]. Erika Friedmann & Sue A. Thomas, *Pet Ownership, Social Support, and One-Year Survival After Acute Myocardial Infarction in the Cardiac Arrhythmia Suppression Trial (CAST)*, 76 *Am. J. Of Cardiology* 1213, 1215 (1995).

[FN25]. Heady, *supra* note 18, at 238.

[FN26]. *Id.*

[FN27]. Jack C. Horn & Jeff Meer, *The Pleasure of Their Company: A Report on Psychology Today's Survey on Pets and People*, *Psychology Today*, Aug. 1984, at 53-54.

[FN28]. Barnes, *supra* note 18, at 192.

[FN29]. Laurel Lagoni, Carolyn Butler & Patricia Olson, *Why the Link is Important to Animal Care, Animal Control, and Veterinary Personnel*, in *Child Abuse, Domestic Violence, and Animal Abuse* 209, 210 (Frank R. Ascione & Phil Arkow eds., 1999).

[FN30]. Lisa Lembke, *Animal Abuse and Family Violence in a Rural Environment*, in *Child Abuse, Domestic Violence, and Animal Abuse* 228, 234 (Frank R. Ascione & Phil Arkow eds., 1999).

[FN31]. K.J. Wilson, *When Violence Begins at Home* 17 (1997) (stating that one of the main motivations for abusing women is to retain the power and control in the relationship).

[FN32]. Frank R. Ascione, *Children & Animals* 54 (2005) [hereinafter Ascione, *Children & Animals*]; Adams, *supra* note 22, 70-73.

[FN33]. Frank R. Ascione, *The Abuse of Animals and Human Interpersonal Violence*, in *Child Abuse, Domestic Violence, and Animal Abuse* 50, 51 (Frank R. Ascione & Phil Arkow eds., 1999) [hereinafter Ascione, *Interpersonal Violence*]; Frank R. Ascione, *Animal Abuse and Youth Violence*, *Juv. Just. Bull.* (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention) Sept. 2001, at 1, 5 [hereinafter Ascione, *Youth Violence*] (stating that cruelty to animals is now included in the symptom list for Conduct Disorder in the Diagnostic and Statistical Manual of Mental Disorders); Neil Jacobson & John Gottman, *When Men Batter Women* 149 (1998) ('[T]he most violent batterers in our sample also tended to behave sadistically toward pets. '); Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 *Hum. Rel.*, 1113, 1119-1120 (1985) (reporting

that twenty-five percent of violent, incarcerated men admitted to substantial cruelty to animals in childhood, as opposed to zero percent in non-incarcerated men).

[FN34]. Ascione, *Interpersonal Violence*, supra note 33, at 51.

[FN35]. *Id.*

[FN36]. Adams, supra note 22, at 60.

[FN37]. *Id.* at 60, 66-67.

[FN38]. *Id.* at 63.

[FN39]. *Id.* at 71.

[FN40]. *Id.*

[FN41]. Millikin, supra note 4, at 178-179; see also Quinlisk, supra note 1, at 171 (discussing how husband told wife and children they should obey him because he had beaten a cow to death when it wouldn't do what he wanted and, 'That's what happens when you disobey me!').

[FN42]. Adams, supra note 22, at 62. Recently, a man reportedly argued with his girlfriend, snapped the necks of ten puppies in front of her, and then threatened, 'I'll do to you what I done to the dogs.' Heron Marquez Estrada, *Witnesses Say St. Paul Man Killed 10 Puppies; St. Paul Police Are Looking for the Man, who Witnesses on the East Side Said Snapped the Puppies' Necks in Front of His Girlfriend During an Argument With Her*, *Star Tribune* (St. Paul), Aug. 4, 2006, at 5B.

[FN43]. *Id.* at 72.

[FN44]. *Id.* at 57.

[FN45]. *Id.*

[FN46]. Adams, supra note 22, at 65.

[FN47]. Ascione, *Children & Animals*, supra note 32, at 59-60.

[FN48]. Adams, supra note 22, at 65.

[FN49]. Elaine Hilberman & Kit Munson, *Sixty Battered Women*, 2 *Victimology* 460, 463 (1978) (finding that boys who witness domestic violence, through either visual or auditory means, are at an increased risk of engaging in aggressive behavior like fighting).

[FN50]. Barbara W. Boat, *Abuse of Children and Abuse of Animals: Using the Links to Inform Child Assessment and Protection*, in *Child Abuse, Domestic Violence, and Animal Abuse* 83, 86

(Frank R. Ascione & Phil Arkow eds., 1999) (stating that the intergenerational problem of cruelty to animals is a problem that harms society); Adams, *supra* note 22, at 76 (asserting that batterers may coerce children into abusing pets); Ascione, *Children & Animals*, *supra* note 32, at 60; Quinlisk, *supra* note 1, at 170 (finding that children committed similar acts of cruelty to animals as the abuser between thirty-nine and fifty-seven percent of cases where the animals were abused in front of the children); but see *id.* (stating that some children reacted to witnessing animal abuse with an increase in love and protection of pets rather than aggression).

[FN51]. Certainly children are likely to feel fear and sadness as a result of witnessing animal abuse, just as they do when they witness the abuse of their mothers. See, e.g., Jorgensen & Maloney, *supra* note 9, at 147 ('I am scared when I see my kitten with blood on his neck. I think he [my dad] did it. ' ' ... My mom got a 101 Dalmatians dog for us--his name was Ice, but we had to give him away when we came to the Safehouse. I miss him because he listens to me.').

[FN52]. Hilberman & Munson, *supra* note 49, at 463.

[FN53]. Adams, *supra* note 22, at 73 (describing a situation where the abuser 'accidentally' spilled bleach into the cat's water dish).

[FN54]. *Id.* at 62; Jorgensen & Maloney, *supra* note 9, at 148.

[FN55]. Ascione, *Children & Animals*, *supra* note 32, at 132.

[FN56]. Adams, *supra* note 22, at 62.

[FN57]. See Ascione, *Children & Animals*, *supra* note 32, at 133-134 (discussing how one shelter resident was sent pictures of her cat in which the cat looks dead while another woman was sent an audio recording of her abuser torturing her dog); Anne Grant, *Resistance to The Link at a Domestic Violence Shelter*, in *Child Abuse, Domestic Violence, and Animal Abuse* 159, 162 (Frank R. Ascione & Phil Arkow eds., 1999) (describing how after wife and son left, husband put a pet snake and pet ferret next to each other in glass boxes so that the ferret 'was forced to live in a state of constant anxiety next to the eye of the ever-hungry snake'); Quinlisk, *supra* note 1, at 168 (describing how abuser sent pictures of himself cutting the dog's ears off); *id.* at 170 (reporting that an abuser threatened to feed and milk only 'his half' of the herd if victim left).

[FN58]. Sarah M. Buel, *Fifty Obstacles to Leaving*, a.k.a., *Why Abuse Victims Stay*, 28 *the Colo. Law.*, Oct. 1999, at 19, 19-20 [hereinafter Buel, *Fifty Obstacles*].

[FN59]. See Sarah M. Buel, *The Impact of Domestic Violence on Children*, *Tex. Bar Ass'n. Advanced Family Law Conference Manual* 7 (updated July 2005).

[FN60]. *Id.*

[FN61]. Adams, *supra* note 22, at 62; Ascione, *Children & Animals*, *supra* note 32, at 132; Jorgensen & Maloney, *supra* note 9, at 148.

[FN62]. In the wake of Hurricane Katrina, the federal government recognized the attachment between humans and their pets when the Pet Evacuation and Transportation Standards Act passed in the House 349-24 and similar legislation was introduced into the Senate. Jim Abrams, House Bill Requires Pets to be Considered in Disaster Plans, AP Worldstream, May 22, 2006. The Act requires state and local offices to include pets and service animals in evacuation plans or lose funding from the Federal Emergency Management Agency. Id.

[FN63]. Tex. Fam. Code Ann. § 81.001 (2002).

[FN64]. Tex. Fam. Code Ann. § 71.004 (2002).

[FN65]. Wilson, *supra* note 31, at 10.

[FN66]. Id.

[FN67]. Id. at 17; Ascione, Children & Animals, *supra* note 32, at 54; Adams, *supra* note 22, at 70-73.

[FN68]. Adams, *supra* note 22, at 62; Ascione, Children & Animals, *supra* note 32, at 132; Jorgensen & Maloney, *supra* note 9, at 148.

[FN69]. Ascione, Interpersonal Violence, *supra* note 33, at 51; Ascione, Youth Violence, *supra* note 33, at 5; see Jacobson & Gottman, *supra* note 33, at 149.

[FN70]. The current definition of a ‘family‘ includes people who are related by consanguinity or affinity, former spouses, parents of the same child without regard to marriage, and foster children and foster parents regardless of whether they live together. Tex. Fam. Code Ann. § 71.003 (2002).

[FN71]. A household is currently defined as ‘a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.’ Tex. Fam. Code Ann. § 71.005 (2002).

[FN72]. The definition of ‘animal‘ in this case should correspond with the definition in the Texas Penal Code such that it includes any ‘domesticated living creature and wild living creature previously captured.’ Tex. Penal Code Ann. § 42.09 (2003).

[FN73]. Albert & Bulcroft, *supra* note 18, at 547; Heady, *supra* note 18, at 238-239; Voith, *supra* note 19, at 290.

[FN74]. Tex. Fam. Code Ann. §§ 85.021-22 (2002).

[FN75]. Tex. Fam. Code Ann. § 85.021 (2002) (stating, in relevant part, a court may, in a protective order, ‘(1) prohibit a party from: (A) removing a child who is a member of the family or household from (i) the possession of a person named in the order; (ii) or the jurisdiction of the court ...’).

[FN76]. Tex. Fam. Code Ann. § 85.022(b) (2002) (stating in relevant part, ‘In a protective order, the court may prohibit the person found to have committed family violence from’).

[FN77]. Tex. Health & Safety Code Ann. § 821.023 (2003).

[FN78]. Me. Rev. Stat. Ann. tit. 19, § 4006 (2005).

[FN79]. Tex. Health & Safety Code Ann. § 821.022 (2003).

[FN80]. *Gall v. City of Vidor*, 903 F. Supp. 1064 (E.D. Tex. 1995).

[FN81]. See, e.g., Ascione, *Battered Women's Reports*, supra note 14, at 125 (reporting seventy-one percent of battered women at shelter said their pets were threatened, hurt or killed); Quinlisk, supra note 1, at 169 (finding sixty-eight percent of women at domestic violence shelter who had pets reported abuse to pets); DeViney et al., supra note 14, at 327 (finding abuse of pets in eighty-eight percent of families where child physical abuse occurred).

[FN82]. See generally Ascione, *Interpersonal Violence*, supra note 33.

[FN83]. Tex. Fam. Code Ann. § 85.026 (2002).

[FN84]. See Ascione, *Children & Animals*, supra note 32, at 133-134; Grant, supra note 57, at 162; see e.g., Quinlisk, supra note 1, at 168 (victim felt the need to return to an abusive husband after he sent pictures of himself cutting off her dog's ears).

[FN85]. In a survey conducted about the Safe Havens for Pets Project, a domestic violence agency responded that ‘judges don't always see the importance of animal abuse in domestic violence cases’ Frank R. Ascione, *Safe Havens for Pets* 4 (Nov. 8, 1999) (not formally published) [hereinafter Ascione, *Safe Havens*].

[FN86]. Tex. Fam. Code Ann. § 85.022(b)(5) (2002).

[FN87]. Tex. Penal Code Ann. § 42.09 (2003).

[FN88]. Tex. Const. art. XVI, § 15.

[FN89]. Tex. Prop. Code Ann. § 42.002 (2000).

[FN90]. That is, if the animal was not the wife's personal property before the marriage, or acquired by her during the marriage by gift, devise, or descent, it is community property. See Tex. Const. art. XVI, § 15.

[FN91]. See Adams, supra note 22, at 73; Jorgensen & Maloney, supra note 9, at 144-45.

[FN92]. See Adams, supra note 22, at 57.

[FN93]. See Buel, *Fifty Obstacles*, *supra* note 58, at 19-20.

[FN94]. See e.g., Ascione, *Children & Animals*, *supra* note 32, at 60; Adams, *supra* note 22, at 65, 76; Boat, *supra* note 50, at 86; Quinlisk, *supra* note 1, at 170.

[FN95]. Tex. Penal Code Ann. § 42.09(d) (2003).

[FN96]. Quinlisk, *supra* note 1, at 170.

[FN97]. Tex. Penal Code Ann. § 42.09(i) (2003).

[FN98]. *Id.*

[FN99]. Tex. Penal Code Ann. § 12.34 (2003).

[FN100]. Me. Rev. Stat. Ann. tit. 7, § 4011 (2006); see also Minn. Stat. Ann. § 343.21(f) (2004) (including under animal cruelty ‘substantial bodily harm to a pet or companion animal, and the act is done to threaten, intimidate, or terrorize another person’).

[FN101]. Me. Rev. Stat. Ann. tit. 7, § 4016 (2006).

[FN102]. Me. Rev. Stat. Ann. tit. 7, § 4016(1)(C) (2006).

[FN103]. ‘A person is guilty of aggravated cruelty to animals if that person, in a manner manifesting a depraved indifference to animal life or suffering, intentionally, knowingly or recklessly: A. Causes extreme physical pain to an animal; B. Causes the death of an animal; or C. Physically tortures an animal.’ Me. Rev. Stat. Ann. tit. 17, § 1031 (2006).

[FN104]. Alaska Stat. § 11.61.140 (2004) (permitting prohibition or limitation of ownership, possession, or custody of animals up to ten years); Del. Code Ann. tit. 11 § 1325 (2005) (mandating prohibition from owning or possessing animals for five years from conviction); Mich. Comp. Laws § 750.50b (2004) (permitting prohibition of ownership or possession of animals for any length of time, even permanent); Minn. Stat. § 343.21 (2004); N.H. Rev. Stat. Ann. § 644:8 (1996); Tenn. Code Ann. § 39-14-202 (2003); Utah Code Ann. § 76-9-301 (1953); W. Va. Code Ann. § 61-8-19 (2005) (mandating prohibition of possession, ownership, or residence with any animal for five years after misdemeanor conviction and fifteen after felony conviction); Wis. Stat. § 951.18 (2005).

[FN105]. Liability for IIED is incurred when: ‘(1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions of the defendant caused the plaintiff emotional distress; and (4) the emotional distress suffered by the plaintiff was severe.’ *Twyman v. Twyman*, 855 S.W.2d 619, 621 (Tex. 1993).

[FN106]. *Twyman*, 855 S.W.2d, at 622.

[FN107]. *Creditwatch, Inc. v. Jackson*, 157 S.W.3d 814, 818 (Tex. 2005); *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004); *Standard Fruit & Vegetable Co. v. Johnson*, 985 S.W.2d 62, 68 (Tex. 1998).

[FN108]. *Twyman*, 855 S.W.2d, at 627 (Phillips, J., concurring and dissenting).

[FN109]. *Id.*

[FN110]. Ascione, *Children & Animals*, *supra* note 32, at 133-34.

[FN111]. See Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 *Or. L. Rev.* 945, 979-80 (2004) (discussing courts' trepidation about prohibiting certain conduct between spouses and her disagreement with Chief Justice Phillips' rationale).

[FN112]. Ascione, *Interpersonal Violence*, *supra* note 33, at 52.

[FN113]. *Id.*

[FN114]. Phil Arkow, *The Evolution of Animal Welfare as a Human Welfare Concern*, in *Child Abuse, Domestic Violence, and Animal Abuse* 19, 25-26 (Frank R. Ascione & Phil Arkow eds., 1999) (stating that animal control officers investigating an animal abuse claim might see conditions that would prompt a report, were one mandated, such as children with inadequate shelter, clothing, or nutrition, or with burns or bruises; or that child protection or domestic violence caseworker might see pets or livestock with inadequate shelter or food, or women who don't want to leave because of threats to their pets); Charlotte A. Lacroix, *Another Weapon for Combating Family Violence*, in *Child Abuse, Domestic Violence, and Animal Abuse* 62, 64-66 (Frank R. Ascione & Phil Arkow eds., 1999) (discussing empirical data pointing to connection between animal abuse and interpersonal violence).

[FN115]. See Lacroix, *supra* note 114, at 71.

[FN116]. See *id.*

[FN117]. Arkow, *supra* note 114, at 27.

[FN118]. Lacroix, *supra* note 114, at 72; Ascione, *Youth Violence*, *supra* note 33, at 10.

[FN119]. Arkow, *supra* note 114, at 23-24.

[FN120]. Lacroix, *supra* note 114, at 71.

[FN121]. Arkow, *supra* note 114, at 29-31.

[FN122]. Ascione, *Youth Violence*, *supra* note 33, at 10 (suggesting that local humane societies, animal control, and societies for the prevention of cruelty to animals should habitually refer

cases of animal abuse to law enforcement and social welfare agencies while keeping records for later review; suggesting the use of materials from the U.S. Department of Education and American Psychological Association to inform teachers about the importance of animal abuse with regard to youths).

[FN123]. Ascione, *Safe Havens*, supra note 85.

[FN124]. *Id.* at 2.

[FN125]. *Id.* at 8.

[FN126]. SPCA Of Texas, <http://www.spca.org> (follow 'Programs' hyperlink to 'Social Services' to find Pet Haven) (last visited Nov. 8, 2005); Austin Pets Alive!, <http://www.geocities.com/~austinpetsaliv/> (last visited Nov. 8, 2005).

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