

ARTICLES

ANOTHER WEAPON FOR COMBATING FAMILY VIOLENCE: PREVENTION OF ANIMAL ABUSE

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In this article, the author postulates that there is more than a mere coincidence between various forms of family violence. Furthermore, that acts of cruelty towards family pets are a form of family violence that has been largely unrecognized by the legal community. Admitting that much research still needs to be done to establish that there is a link between abuse towards people and abuse towards animals, the author invites the reader to consider this multi-victim approach to family violence and offers the strengthening of animal cruelty laws as a solution to this grave societal problem.

I. INTRODUCTION

A long-standing philosophical belief is that one's treatment of animals is closely associated with the treatment of fellow human beings. "[H]e who is cruel to animals becomes hard also in his dealings with men. We can judge the heart of a man by his treatment of animals."¹

If America's goal is to rid our society of family violence,² then violent acts against animals³ is conduct that cannot be tolerated. In fact, such

¹ Immanuel Kant, *Duties in Regard to Animals*, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS 23, 24 (Tom Regan & Peter Singer eds., 2d ed. 1989).

² The term "family violence" as used in this article refers to violent acts towards family members, including spousal abuse, child abuse, elder abuse, and sibling abuse. Family violence is a form of violence that occurs in the domestic environment and reflects a societal problem partly rooted in the social norms regarding the roles of women, children and men in society and domestic settings. See, ROBERT T. SIGLER, DOMESTIC VIOLENCE IN CONTEXT: AN ASSESSMENT OF COMMUNITY ATTITUDES 72-75 (1989).

³ The terms, "animal," "pet," and "companion animal" are frequently used within the context of abuse and cruelty without an explanation as to why one term is used in lieu of another. These terms may be distinguished on the basis of the type of relationship they represent between the animals and the humans. The use of the term "animal" has broad connotations and includes both those animals with whom humans have an emotional attachment as well as those animals that only represent an economic interest to humans. "Pets" and "companion animals" can be thought of as a subset of the term "animal," and they are used to represent a closer bond between the animal and human characterized by the emo-

conduct merits judicial attention and community resources equal to that devoted to acts of violence against humans. A national and aggressive response to abusive treatment of animals is not a distortion of priorities but rather a recognition that the solution to a violent society does not lie in the characterization of the victim but in the characteristics of the offender. Society's historical focus on the differences among victims of family violence and dismissal of their similarities has led to a worrisome result: violence with a double standard. Under this double standard, egregious acts of violence towards humans are usually characterized as felonies, whereas they are too often mere misdemeanors when directed towards animals.

Protecting animals from abuse promotes the interests of both humans and animals. While the issue of whether animals should have rights is beyond the scope of this article, one cannot ignore the legal theory that animals have interests independent from humans that entitle them to protection under our laws.⁴ Nevertheless, the breadth of this article is limited to the human interests that are fostered by laws that protect animals from cruelty and abuse.⁵

tional attachment humans have towards these animals. See MINN. STAT. ANN. § 346.36 (West 1997) (defining pet or companion animal as a "nonhuman mammal, bird, or reptile impounded or held for breeding, or possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another"). Within the veterinary industry, companion animals are animals whose role is to serve physical and emotional needs for the humans who care for such animals. Telephone interview with James F. Wilson DVM, JD, Adjunct Faculty, University of Pennsylvania, School of Veterinary Medicine (Feb. 23, 1997). In this article, it is not necessary to make a distinction among these terms because the focus is on perpetrators' violent acts towards family members regardless of whether the victims are children, women, elders, animals, pets, or companion animals.

⁴ GARY L. FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* 7 (1995) (stating the animal rights theory views "animals not merely as means to ends but as beings with value and with interests that should be respected"). For additional references that focus on the legal rights of animals see, CHARLES PATTERSON, *ANIMAL RIGHTS* (1993); *ANIMAL RIGHTS AND HUMAN OBLIGATIONS* (Tom Regan & Peter Singer eds., 2d. 1989); Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and The "Humane" Treatment of Animals*, 46 *RUTGERS L. REV.* 721 (1994).

⁵ Neither the state anticruelty laws nor the literature that focuses on animal maltreatment have led to consistent and widely accepted definitions for cruelty or abuse. As a result, it is not clear whether these terms are distinguishable and if so, whether they reflect differences in the acts that cause the mistreatment or in the type of harm suffered by the animal. For examples of statutory definitions see, MINN. STAT. ANN. § 346.36 (West 1997) (defining abuse as "intentionally causing unnecessary pain, injury, suffering, or harassment to a pet or companion animal" and cruelty as "causing or allowing unnecessary pain, suffering, or unjustifiable injury or death to a pet or companion animal"). For examples in the literature see: Frank Ascione, *Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology*, 6 *ANTHROZOOS* 226, 228 (1993) (defining cruelty to animals "as socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal"); Elizabeth Deviney et al., *The Care of Pets Within Child Abusing Families*, 4 *INT'L. J. STUD. ANIMAL PROBS.* 321, 325 (1993) (defining abuse as: "(1) observable or reported pain or suffering due to inflicted pain beyond forms of discipline commonly accepted in our society; [or] (2) causing the death of an animal in an inhumane manner; [or] (3) abandoning an animal in an environment which is not natural to it or in which it is incapable of surviving; [or] (4) failing to provide care as indicated by poor sanitary conditions, lack of proper nutrition, lack of shelter or inhumane confinement").

The protection of animals furthers several human interests including the preservation and promotion of societal morals and the protection of the general welfare of society.⁶ Specifically, anticruelty laws foster the moral principle that nonhuman animals should be treated humanely, provided adequate food and shelter, and not subjected to needless pain.⁷

An additional purpose and one with which all legal professionals should be familiar is that these protective laws have been enacted to prevent humans from acting cruelly towards other humans.⁸ It would behoove those judges, prosecutors and other legal professionals who deal with family violence cases on a daily basis to become aware of this purpose and include animal anticruelty statutes among their arsenals in combating family violence.

II. FAMILY VIOLENCE:⁹ A MULTI-VICTIM APPROACH

Violence exhibited by one family member against another rarely involves a single act of abuse against one type of victim. In fact, where there is one form of family violence, there are likely to be others.¹⁰ This means that where there is spousal abuse, there is likely to be child abuse. Likewise, where there is animal abuse, there is likely to be child and/or spousal abuse.

A multi-victim approach to understanding family violence focuses on the similarities between the different forms of family violence, such as: (1) the abuse usually results from perpetrators' misuse of power and control over their victims; (2) the psychological and sociocultural factors that lead

This article uses animal abuse and cruelty interchangeably and adopts these two definitions as representative of both terms.

⁶ *Peck v. Dunn*, 574 P.2d 367, 369 (Utah 1978), *cert. denied*, 436 U.S. 927 (1978) (stating that protecting animals from abusive treatment regulates morals and promotes "the good order and general welfare of society." In this case, the court upheld a county ordinance that prohibited the keeping or use of game cock, for the purpose of fighting, or being party to or present as a spectator as such fighting). *See also* *Commonwealth v. Higgins*, 178 N.E. 536, 538 (Mass. 1931) (stating that the offense of animal cruelty "is against public morals, which the commission of cruel and barbarous acts tends to corrupt . . . It is directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt morals of those who observe or have knowledge of those act"); *FRANCIONE, supra* note 4, at 125 (stating that "the primary rationale for the anti-cruelty statutes is essentially that cruelty to animals has a detrimental impact on the moral development of human beings").

⁷ For a comprehensive statute regulating the food, water, shelter and transportation of dogs, cats, birds, equines and rodents see, *MINN. STAT. ANN. § 346.38-42* (West 1997).

⁸ *FRANCIONE, supra* note 4, at 123 (stating that courts recognize that cruelty to animals leads to cruelty to humans and agree that animal cruelty statutes play a role in prohibiting such conduct). *See also* *Stephens v. State*, 3 So. 458, 459 (Miss. 1887) (stating that cruelty to animals "manifests a vicious and degraded nature, and it tends inevitably to cruelty to men").

⁹ Since the majority of the research and literature on family violence focuses on child and spousal abuse, this article concentrates on these forms of family violence to persuade the reader of the importance of preventing animal cruelty. By omitting discussion of elder and sibling abuse, the article does not imply that these forms of family violence are unrelated to incidents of animal abuse.

¹⁰ *VIOLENCE AND THE FAMILY, REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY v* (1996).

to the violence are often the same regardless of the type of victim; and (3) the psychological effects and symptoms experienced by victims of family violence are similar.¹¹

Studying the similarities between victims and the relationship between various forms of family violence, including a close examination of the correlation between abused spouses, children, and pets, will lead to a comprehensive solution to family violence. Such an examination is necessary to justify a departure from the current approach of dealing with family violence: using victim-specific remedies focusing on protecting one victim while failing to identify and protect other family members who also may be at risk.

A. *The Link Between Child Abuse and Spousal Abuse*

The law has historically treated child abuse¹² and spousal abuse as two separate, distinct and unrelated offenses. Evidence of their concurrence has had little influence on the judicial decisions which have emanated from these cases.¹³ Yet, there are a number of studies that indicate that domestic violence and child abuse are linked within families, and that either form of abuse can be a strong predictor of the other.¹⁴ This linkage lends support to the proposition that prosecutors, judges and law makers should seriously consider this correlation in their daily decisions because these decisions ultimately will impact how society understands and remedies family violence.¹⁵

¹¹ *Id.* at 3.

¹² Child abuse as described in the literature has many forms: physical abuse, sexual abuse, psychological abuse, neglect, severe physical punishment, and abandonment. *See*, ROBERT T. SIGLER, DOMESTIC VIOLENCE IN CONTEXT: AN ASSESSMENT OF COMMUNITY ATTITUDES 27 (1989); Ascione, *supra* note 5, at 228; Cathy Spatz Widom, *Does Violence Beget Violence? A Critical Examination of the Literature*, 106 PSYCHOL. BULL. 3, 4 (1989).

¹³ *See* Bernadine Dohm, *Domestic Violence, Child Abuse, and the Law: Bad Mothers, Good Mothers, and the State: Children on the Margins*, 2 U. CHI. L. SCH. ROUNDTABLE 1, 4 (1995) (stating that the courts that hear battered spouse cases do not communicate or share information with the courts that hear child abuse cases). "Thus, a woman with a protective order from domestic violence court may be petitioned simultaneously into juvenile court where the judge is unlikely to be aware of the domestic violence case or the fact that the woman herself was battered. Similarly, when a child appears with her mother in domestic violence court, the court may be unaware that the child herself has been the victim of abuse or that the child has an active legal case in another court." *Id.* *See also* V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure To Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 251-52 (1996) (stating that judges presiding over child custody hearings all "too often view the abuser's violence toward the mother as completely unrelated to abusive behavior toward the children").

¹⁴ Mary McKernan McKay, *The Link Between Domestic Violence and Child Abuse: Assessment and Treatment Considerations*, 73 CHILD WELFARE 29 (1994). *See also* SIGLER, *supra* note 12, at 37 (stating "in most cases a person who abuses his or her children will also abuse his or her spouse and others in the family environment"); Bonnie E. Rabin, *Violence Against Mothers Equals Violence Against Children: Understanding the Connections*, 58 ALB. L. REV. 1109, 1111 (1995) (stating that the correlation between battered spouses and child abuse has existed for a long time).

¹⁵ Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1093-94 (1991) (stating that judges who

The numerous research studies supporting the correlation between spousal abuse and child abuse leave little doubt that children raised in homes where their mothers are beaten have an increased risk of being physically abused by the batterer.¹⁶ One study involving one thousand battered women, found that child abuse was present in seventy percent of the families in which there was spousal abuse.¹⁷ These findings have been corroborated in studies examining abused children. For example, a 1986 study of abused children found that about sixty percent of their mothers were also victims of family violence.¹⁸ In some instances, violence against the child has also been perpetrated by the battered spouse. Several studies have found that battered women are more likely to abuse their children than women who are not abused.¹⁹

In addition to suffering from physical abuse, children who witness violence towards their mothers often suffer from emotional, behavioral and psychological problems. These other forms of abuse may have a profound and lasting effect on the child's ability to cope with the normal stages of development. Studies have shown that the children who observe parental violence are more aggressive and behave differently than children raised in non-violent households.²⁰

This growing body of research, showing an occurrence correlation between these two forms of violence, should cause us to pause and consider whether child and animal victims have greater similarities than differences. If domestic violence workers, child protection workers, prosecutors, and judges focused on the connection between these two forms of violence, the effectiveness in detection, prosecution, and sentencing of these crimes would likely be enhanced.²¹

B. Family Pets Are Just Another Victim of Family Violence

The shared characteristics of women and children as victims of family violence can easily be extended to family pets. Victims of family violence share common traits, irrespective of their age, gender or species characteristics. Common to women, children, and animals is their historical status under the law as property, which means their rights under the law have been superseded by the conflicting rights of their abusers. Unlike women and children who have had their rights increased by reform move-

understand the link between spousal abuse and custody decisions will be more effective in ordering custody arrangements that are in the best interest of the child).

¹⁶ *Id.* at 1041, 1055-58 (1991); McKay, *supra* note 14, at 29.

¹⁷ Cahn, *supra* note 15, at 1041, 1056 & n.89 (1991) (citing Bowker et al., *On the Relationship Between Wife Beating and Child Abuse*, FEMINIST PERSP. ON WIFE ABUSE 133, 158 (1988)).

¹⁸ *Id.* at 1056 & n.91 (citing McKibben, DeVos & Newberger, *Victimization of Mothers of Abused Children: A Controlled Study*, 84 PEDIATRICS 531, 533 (1989)).

¹⁹ *Id.* at 1056-57 & n.93.

²⁰ *Id.* at 1057 & nn.95-96.

²¹ McKay, *supra* note 14, at 29 (1994) (recognizing the link between domestic violence and child abuse is necessary to understanding and accurately assessing the risks a child faces in families where there is domestic violence).

ments, animals continue to be the losers when their interests are weighed against the possessory, use, and enjoyment interests of their owners.

Women, children, and family pets also share their abusers' misuse of power and control. But, more importantly, the relationships family pets share with their abusers are the same as those the abusers share with other family members. These relationships are characterized by economic dependence, strong emotional bonds and an enduring sense of loyalty.

C. *Pets are Members of the Family*

With close to sixty percent²² of all American households owning pets, it follows that these pets should be considered among the other vulnerable victims of family violence: children, wives, siblings, and elders. To those of us who are pet owners, it seems intuitive that pets should be regarded as family members. In fact, this intuition is well documented in literature that discusses the human-animal bond.²³ Results from one study designed to determine the role of pets in the family system revealed that eighty-seven percent of the respondents considered their pet to be a member of the family.²⁴

Multiple surveys focusing on the relationship between pet owners and their pets have corroborated this finding. A veterinary marketing study, conducted by the American Animal Hospital Association (AAHA) found that seventy percent of the questioned pet owners considered their pets as children.²⁵ A 1995 national survey of 1,019 pet owners, also conducted by AAHA, elicited responses which exemplify the degree to which pet owners anthropomorphize their pets: (1) eighty percent of pet owners have their pets for the companionship; (2) seventy-nine percent of owners celebrate their pets' holidays or birthdays with gifts; (3) thirty-three percent of pet owners who are away from home, talk to their pets on the phone or through the answering machine; and (4) sixty-two percent of pet owners sign letters or cards from themselves and their pets.²⁶

The multi-victim approach to understanding the dynamics of family violence is incomplete unless all potential victims are identified. Inceas-

²² Brad C. Gehrke, *Results of AVMA Survey of US Pet-Ownning Households on Companion Animal Ownership*, 211 J. AVMA 169 (1997) (stating "that 58.2 million (58.9%) US households owned > 1 companion animal at some time during 1996").

²³ See L. LAGONI ET AL., *THE HUMAN ANIMAL BOND AND GRIEF* 5 (1994) (the "human-animal bond" refers to the types of attachments and relationships that exist between people and their pets).

²⁴ See James S. Hutton, *Animal Abuse as a Diagnostic Approach in Social Work: A Pilot Study*, in *NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS* 444 (Aaron H. Katcher & Alan M. Beck eds., 1983) (stating that "many people would readily agree that the companion animal is 'part' of the family unit").

²⁵ *THE 1995 AMERICAN ANIMAL HOSPITAL REPORT: A STUDY OF THE COMPANION ANIMAL VETERINARY SERVICES MARKET* 84 (1995). See also Alexa Albert & Kris Bulcroft, *Pets, Families, and the Life Course*, 50 J. MARRIAGE & FAM. 543, 550 (1988) (findings from this study indicated that pets tend to be viewed as family members by people who live in the city and can be emotional substitutes for family members such as children and spouses).

²⁶ *The 1995 American Animal Hospital Report National Survey of People And Pet Relationships*, Press Release (November 10, 1995).

ing the pool of potential victims is likely to increase the probability of identifying families at risk and enhance early intervention. Given the weight of evidence indicating that people have "human-like" relationships with their pets, it would be an act of ignorance not to include family pets among this pool of potential victims.

III. THE CORRELATION OF ANIMAL ABUSE AND VIOLENCE TOWARDS PEOPLE

Until recently, the theory that violence against animals may be associated with violence against people has been overlooked by law-enforcement agencies, legislators, officers of the court, and social services agencies.²⁷ Contemplating the existence of this link may be important in understanding family violence since such acts of violence may lead to future violence or be a "red flag" of ongoing violence within the household.

The existence of the correlation between spousal abuse and child abuse, where either form of abuse can be an indicator of the other, sets a strong precedent for the intuition that abuse of the family pet may also be a predictor of other forms of family violence. Fortunately there is no need to rely solely on intuition since there are several reports which support the link between animal abuse and violence towards people.

A. *Animal Abuse as a Predictor of Violence Against People*

There is ample evidence to suggest that individuals who engage in acts of animal cruelty have a greater probability of committing acts of violence against people as compared to individuals who have no history of committing acts of violence against animals.²⁸ Early evidence that supports this correlation has come from single anecdotal case histories of serial and mass murders. Such criminals include: Albert DeSalvo, also known as the "Boston Strangler", who in his youth trapped dogs and cats in crates and subsequently shot arrows through the boxes; Ted Bundy, who was executed in 1989 for one of a possible fifty murders, spent much of his childhood torturing animals; and serial killer Jeffrey Dahmer who, in his youth, impaled frogs and staked cats to trees in his backyard.²⁹ These case histories are consistent with the numerous anecdotal stories from animal welfare officers, social workers, and prosecutors that have con-

²⁷ Randy Lockwood & Guy R. Hodge, *The Tangled Web of Animal Abuse: the Links Between Cruelty to Animals and Human Violence*, HUMANE SOC'Y NEWS 2 (Sum. 1986); See also A. William Ritter, *The Cycle Of Violence Often Begins With Violence Toward Animals*, 30 PROSECUTOR 31, 32 (1996) (stating that "[v]iolence wreaked on animals by adults should no longer be viewed as an isolated incident, but a warning that the humans in the family may be at risk or even already abused"); 142 CONG. REC. 59 (daily ed. May 2, 1996) (statement of Sen. Cohen) (stating that "[v]iolence is not an isolated event and animal abuse is often part of a larger cycle of violence . . . Cruelty to animals can be a predictor of future violence and an indicator of the violence already in the perpetrator's life").

²⁸ Ritter, *supra* note 27, at 31, 32; see also Lockwood & Hodge, *supra* note 27 at 2; PHIL ARKOW, *BREAKING THE CYCLES OF VIOLENCE* 5 (1995).

²⁹ Lockwood & Hodge, *supra* note 27, at 2-4.

firmed the link between the cruel treatment of animals and other forms of violence and antisocial behavior.³⁰

Evidence derived from empirical research studies has indicated that this correlation is more than a random coincidence. One of the first research studies in this area was conducted in 1966 by Doctors Daniel Hellman and Nathan Blackman, who looked at the life histories of eighty-four prison inmates.³¹ The results showed that seventy-five percent of the inmates that had been charged with committing a violent crime also had a history of cruelty to animals, fire-setting, and bed-wetting.³² Other research conducted by psychiatrist Doctor Alan Felthous and Stephen Kellert, has supported this correlation of cruelty to animals and violence toward people.³³ This study consisted of a survey among three groups of men: noncriminals, aggressive criminals, and nonaggressive criminals. Of the aggressive criminals, twenty-five percent reported five or more childhood acts of cruelty toward animals, compared to less than six percent of the nonaggressive criminals and none of the noncriminals.³⁴ This study also shed light on some of the motives for animal abuse. Such reasons included: (1) a need to control the animal's behavior; (2) retaliation either against the animal or other individuals; (3) fear and hatred of the animal; and (4) for the impact it had on others who witnessed the cruelty.³⁵

In spite of this evidence, the association between childhood cruelty to animals and future violent acts against people remains a matter of debate.³⁶ Certainly not all children who harm animals will grow up to be violent criminals.³⁷ It is common for children to go through a developmental phase during which time they injure animals in the process of learning about themselves and exploring their world.³⁸ When these acts are coupled with proper role modeling from parents and guardians, these children learn about the consequences of their behavior and develop empathy and

³⁰ See Ritter, *supra* note 27, at 31; see also Linda Wheeler, *A Pattern of Abuse: Animal Mistreatment Linked to Child Neglect*, WASH. POST, April 21, 1994, at J1.

³¹ Daniel S. Hellman, M.D. & Nathan Blackman, M.D., *Enuresis, Firesetting and Cruelty to Animals: a Triad Predictive of Adult Crime*, 122 AM. J. PSYCHIATRY 1431 (1966).

³² *Id.* at 1435.

³³ See Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 HUM. REL. 1113, 1127 (1985). Compare with Karla S. Miller & John F. Knutson, *Reports of Severe Physical Punishment and Exposure to Animal Cruelty by Inmates Convicted of Felonies and by University Students*, 21 CHILD ABUSE & NEGLECT 59 (1997) (finding that there is an association between punitive childhood histories and antisocial behavior but that the exposure to animal cruelty is not importantly related to engaging in criminal activity in general or violent activity in particular).

³⁴ Kellert & Felthous, *supra* note 33, at 1120.

³⁵ *Id.* at 1123-24.

³⁶ Recent research results have not supported the theory that exposure to animal cruelty leads to criminal behavior or violent conduct. Miller & Knutson, *supra* note 33, at 79.

³⁷ Cf., Widom, *supra* note 12, at 3 (finding that whether abused children tend to become abusive and violent adults has not been conclusively determined. Many other experiences through childhood, adolescence and adulthood mediate the effects of childhood victimization).

³⁸ See PATTY A. FINCH, *BREAKING THE CYCLE OF ABUSE* (1989).

compassion for animals.³⁹ However, children who grow up in violent, abusive or negligent families learn that aggressive behavior is a means of solving problems and getting obedience and compliance.⁴⁰

B. The Link Between Animal Abuse and Child Abuse

Since violence towards family pets may be a warning that the humans in the family may be at risk of abuse or are already being abused, abusive treatment of animals is integral to the study of family violence. Whether the abuse of a companion animal in a household is directly related to the risk of child abuse in the same household is an area of research that is largely uncharted and in need of more investigation. Nevertheless, there are three studies that specifically address this correlation and raise the suspicion that these two forms of violence are directly linked.

In 1980, a pilot study conducted in England found evidence suggesting that children are at risk of abuse or neglect in households that abuse their family pet.⁴¹ The results indicated that of the twenty-three families that had a history of animal abuse, eighty-three percent had been identified by human social service agencies as having children at risk of abuse or neglect.⁴² Based on these findings, the researcher concluded that the evaluation of companion animals in the family might be a useful diagnostic tool for social workers during their investigations of alleged child abuse.⁴³

In Pennsylvania, a similar study comparing records of Bucks County Society for the Prevention of Cruelty to Animals with those of the same county's Youth Social Services Agency found that the behavior patterns towards one's children were similar to those towards one's pets.⁴⁴ The hypothesis that the presence of an abused pet may indicate other forms of violence within the family has been corroborated by a subsequent empirical study. In 1983, Elizabeth DeViney reported the results of a study which surveyed the treatment of animals in fifty-three families in which child abuse had occurred.⁴⁵ The findings indicated: (1) in sixty percent of the families, at least one family member had abused the family pet;⁴⁶ and, (2) of the families that had pets and had physically abused children, eighty-eight percent of these families also had animals that had been abused.⁴⁷

Further evidence linking animal abuse to child abuse is commonly found in the form of anecdotal reports compiled by animal protection

³⁹ *Id.*

⁴⁰ Lynn Loar, *I Liked the Policeman Who Arrested That Dog!*, THE LATHAM LETTER, Spring 1996, at 1, 4.

⁴¹ Hutton, *supra* note 24, at 444-47.

⁴² *Id.* at 446.

⁴³ *Id.*

⁴⁴ Janet R. Walker, A Study on the Relationship of Child Abuse and Pet Abuse 1, 5 (May 1980) (unpublished professional project, University of Pennsylvania School of Social Work, on file with author).

⁴⁵ DeViney et al., *supra* note 5, at 321.

⁴⁶ *Id.* at 325.

⁴⁷ *Id.* at 327.

agencies, protective child agencies, and prosecuting attorneys.⁴⁸ One need only look at the public awareness campaigns put on by the humane organizations across the country to see the agency awareness. For example, the Washington Humane Society (WHS) hosted a campaign in 1994, publicizing the connection between cruelty of animals and abuse of children.⁴⁹ The WHS launched its campaign with a poster that had a picture of a face where the top half represented that of a little girl and the bottom half that of a cocker spaniel.⁵⁰ The poster is designed to encourage residents to report animal abuse because the call may lead to the detection of an abused child.⁵¹ Likewise, the American Humane Association has launched its Campaign Against Violence to inform humane investigators, social workers, media personnel, educators, judicial officials, law enforcement personnel, and the public about the correlation between animal abuse and violence towards people.⁵² Although awareness is increasing, additional publicity may bring the link to the forefront of social concern.

C. *The Link Between Animal Abuse and Partner Abuse*

Given the data suggesting a link between animal abuse and child abuse, it is not difficult to imagine that a similar link exists in families that have battered partners.⁵³ In fact, the literature on domestic violence is filled with anecdotal reports of incidents of cruelty to family pets where partner battering occurs.⁵⁴

At least three studies have been conducted in this area and appear to support these anecdotal findings. Results from one of the first empirical analyses of the prevalence of animal abuse among battered women were obtained through a survey of thirty-eight women seeking shelter from their batterers.⁵⁵ The researchers found that of the seventy-four percent of women who reported either currently or recently owning pets, seventy-one percent reported that the batterer had either threatened to hurt or kill their pets or had actually hurt or killed their pets.⁵⁶

The second and third studies represent unpublished survey results obtained by domestic violence agencies in Wisconsin and Colorado. The results from the Community Coalition Against Violence in La Crosse, Wis-

⁴⁸ See Barbara W. Boat, *The Relationship Between Violence to Children and Violence to Animals: an Ignored Link?*, 10 J. INTERPERSONAL VIOLENCE 229, 230 (1995) (stating that "nearly everyone who works with childhood abuse and trauma has a story to share about the animal abuse connection").

⁴⁹ Wheeler, *supra* note 30, at J1.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² AMERICAN HUMANE ASSOCIATION, *GROWING UP HUMANE IN A VIOLENT WORLD: A PARENT'S GUIDE 2* (1996).

⁵³ Partner in this context includes spouses as well as individuals that have an intimate relationship with the batterer.

⁵⁴ Frank R. Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals* (1996) (unpublished manuscript, on file with the Psychology Department, Utah State University).

⁵⁵ *Id.*

⁵⁶ *Id.*

consin showed that eighty percent of the battered partners who had family pets, reported violence towards the animals.⁵⁷ The Colorado Springs Center for Prevention of Domestic Violence survey had a deceptively low rate (less than twenty-four percent) of the battered women who reported animal cruelty.⁵⁸ The Colorado results appear low because the percentage was based on all the women who sought refuge in the shelter, including those who did not own family pets.⁵⁹

D. *More Research Must Be Conducted*

Studies documenting the correlation between animal abuse and family violence are subject to the same criticisms as studies that look at whether abused children grow up to be abusive parents.⁶⁰ The research in this area can be criticized on several grounds. First, the retrospective nature of some of these studies may lead to distorted findings because the information sought may have been forgotten, inaccurately recollected, or provided by someone who has only second-hand knowledge. Second, few studies define animal abuse and thus lack direct evidence of the severity, frequency or chronic nature of the alleged animal abuse. Finally, few studies use control groups which are necessary to assess the independent effects on individuals who abuse animals.

While these criticisms should cause us to scrutinize the correlation of animal abuse to other forms of violence, they should not invalidate these research efforts. Rather, the studies and their problems should provide the foundation and impetus for further research in this area.

IV. PREVENTION OF ANIMAL CRUELTY

In light of the evidence supporting a correlation between abusive treatment of animals and acts of violence against human family members, it follows that improving the detection and enforcement of violence against animals is likely to enhance society's detection and enforcement of violence towards other family members. Including the prevention of animal cruelty among the current methods used to combat family violence transforms what is currently a victim-specific solution to one that is comprehensive. The comprehensive scheme is superior to the current approach, because it is based on the acknowledgment that acts of violence against family members do not occur in a vacuum. It forces us to focus on the repetitive nature of the violent acts and enhances our detection of the perpetrator's chronic violent behavior. The benefits arising from a comprehensive approach to the analysis and resolution of family violence can only be maximized when each potential victim receives adequate protection under our laws. Working towards a comprehensive solution will re-

⁵⁷ DOMESTIC VIOLENCE INTERVENTION PROJECT, 1994/95 SURVEY RESULTS (1995).

⁵⁸ Phil Arkow, *Animal Abuse and Domestic Violence: Intake Statistics Tell a Sad Story*, THE LATHAM LETTER, Spring 1994, at 17.

⁵⁹ *Id.*

⁶⁰ See Widom, *supra* note 12, at 3, for a critical examination of the evidence supporting the hypothesis that abuse leads to abuse or that abuse is transmitted across generations.

duce incidents of family violence and increase the seriousness with which our society perceives animal abuse.

Preventing animal cruelty is primarily addressed through educational campaigns conducted by local and national humane societies and by anticruelty laws enacted by state governments. This current scheme fails to provide adequate protection, because the type of educational information and the form in which it is disseminated varies greatly among the regions of the country, and the laws as written are ineffective deterrents.⁶¹ The detection and prosecution of animal cruelty offenses would be significantly enhanced by drafting clearer, stricter, and enforceable animal cruelty laws, mandating the reporting of animal abuse, developing a national consensus on the criteria for animal cruelty, and maintaining central reporting registries.

A. *The Basics of Cruelty Statutes*

Each of the fifty states has legislated criminal laws primarily designed to punish individuals who commit acts of cruelty against animals.⁶² Since the driving force for the enactment of these laws has historically been the preservation of a moral society as opposed to a genuine interest in the protection of animals, such laws as currently written and enforced afford animals only minimal protections.

Most state anticruelty laws are comprised of the following six elements: (1) the types of animals protected, (2) the types of acts prohibited or duties imposed, (3) the mental culpability required to impose liability, (4) the defenses to liabilities, (5) certain activities exempted from the law, and (6) the penalty for each offense.⁶³ Although the specifics of each element may differ significantly among the states, common trends exist.

The first element to address in assessing whether an offense of animal cruelty has been committed is to determine whether the animal is covered by the statute. Most states define "animal" to include all nonhuman vertebrates.⁶⁴ Some states, however, have a narrowed definition of "animal" such that certain living creatures may be excluded, such as, fowl, livestock, insects, and pests.⁶⁵ Other states fail to provide definitions alto-

⁶¹ See *infra* notes 62-105 (various statutes and articles show the variety and ineffective nature of animal cruelty laws).

⁶² ANIMAL WELFARE INSTITUTE, *ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAWS FROM 1641 TO 1990*, 7 (4th ed. 1990) [hereinafter *ANIMAL LEGAL RIGHTS SURVEY*]. All 50 states, the District of Columbia, American Samoa, Guam, the Canal Zone, the Virgin Islands and Puerto Rico have enacted animal cruelty laws which protect animals from (1) cruel treatment, (2) abandonment, (3) poisoning, and (4) deprivation of food, water and shelter. See generally DAVID S. FAVRE & MURRAY LORING, *ANIMAL LAW* (1983); FRANCIONE, *supra* note 4; DANIEL S. MORETTI, *ANIMAL RIGHTS AND THE LAW* (1984) (additional sources on cruelty statutes).

⁶³ See FAVRE & LORING, *supra* note 62, at 129.

⁶⁴ See generally *ANIMAL LEGAL RIGHTS SURVEY*, *supra* note 62, at 13-47 (collection of statutes).

⁶⁵ See, e.g., HAW. REV. STAT. §§ 711-1109 (1997) (excluding insects, vermin, or other pests); IOWA CODE ANN. § 717B.1 (West 1997) (excluding livestock); LA. REV. STAT. ANN. § 102.1 (West 1997) (excluding fowl).

gether, leaving it up to the courts to infer which species are covered by the statute.⁶⁶

The second question consists of assessing whether the person's specific act, failure to act, or neglect falls within the scope of the statute. Generally, anticruelty statutes protect against at least one of these three forms of cruelty. The most common type of statute is one which prohibits the willful, deliberate or intentional commission of certain acts, which often include beating, torturing, or mutilation.⁶⁷ The second most frequently encountered statute imposes a duty on animal owners or their custodians to provide food, water, and adequate shelter.⁶⁸ The third type of cruelty prohibited by statute is the participation in, the witnessing of, the aiding in, or in any way engaging in the furtherance of any fight between animals.⁶⁹

In most states, the third component of the offense requires that the prohibited act, omission, or neglect be performed with a state of mind that indicates a high degree of culpability.⁷⁰ For there to be a conviction, states usually require that the act of cruelty be committed maliciously, willfully, intentionally, knowingly, or recklessly.⁷¹ A few of the modern statutes have lowered the degree of culpability required to that of ordinary negligence or criminal negligence, which has the effect of increasing the likelihood of a conviction.⁷²

The fourth and fifth elements of the offense, defenses and exempted activities, are bars to a conviction of animal cruelty. Defendants have been excused where their acts of cruelty were committed to protect humans, protect property, or were incidental to the disciplining or training of animals.⁷³

Exempted activities fall within the cruelty definition of most states, but are not violations of the law because they are deemed by society to be necessary or justifiable practices that outweigh the interests of the animals and serve to promote the general public welfare.⁷⁴ Activities which usually qualify as exceptions include (1) animal research (2) veterinary

⁶⁶ See, e.g., ALA. CODE § 13a-11-14 (1997); FLA. STAT. ANN. § 828.12 (West 1998); MONT. CODE ANN. § 45-8-211 (1997).

⁶⁷ See, e.g., HAW. REV. STAT. §§ 711-1109 (West 1997).

⁶⁸ See, e.g., OKLA. STAT. tit. 21 § 1685 (West 1997).

⁶⁹ See, e.g., HAW. REV. STAT. §§ 711-1109.3 (West 1997) (cruelty to animals; fighting dogs).

⁷⁰ See, e.g., HAW. REV. STAT. §§ 711-1109(1) (West 1997).

⁷¹ See, e.g., HAW. REV. STAT. §§ 711-1109 (West 1997) (requiring intentionally, knowingly or recklessness); OKLA. STAT. tit. 21 § 1685 (West 1997) (requiring willfully or maliciously).

⁷² See, e.g., IDAHO CODE §§ 25-3502 (West 1997) (requiring negligence for certain acts); LA. REV. STAT. ANN. § 102.1 (West 1997) (requiring intentionally or with criminal negligence); N.H. REV. STAT. ANN. § 644:8 (West 1997) (requiring negligence for certain acts).

⁷³ See, e.g., ALASKA STAT. § 11.61.140 (Michie 1997); MD. ANN. CODE art. 27, § 59 (1997); S.C. CODE ANN. § 47-1-40 (Law. Co-op 1997).

⁷⁴ See, e.g., MD. ANN. CODE art. 27, § 59 (1997) (statute states "that no person shall be liable for criminal prosecution for normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable").

and animal husbandry practices such as dehorning, castration and tail dockings, and (3) hunting, trapping, and slaughtering animals.⁷⁵

Finally, violations of anticruelty statutes in most states are categorized as only misdemeanors which may result in a fine of up to one thousand dollars and up to one year imprisonment.⁷⁶ Within the last decade, however, at least fifteen states have upgraded the penalty for intentional cruelty offenses to a felony crime.⁷⁷ Still other states have supplemented their prison and fine penalties with sentences that focus on the rehabilitation of offenders by requiring psychiatric, psychological, or behavioral counseling.⁷⁸ Some states also may require that the mistreated animal be surrendered to the local Society for the Prevention of Cruelty to Animals (SPCA) and the offender be prohibited from future ownership, custody, or control of any pet or companion animal.⁷⁹

B. Stricter Animal Cruelty Laws and Consistent Enforcement

Scholars of animal law agree that the current anticruelty statutes fail to provide adequate protection for animals and have had little, if any, deterrent effect on the perpetrators committing acts of animal abuse.⁸⁰ There are two fundamental reasons why these laws have been ineffective in protecting animals: (1) the primary goals of these laws have not been to protect animals; and (2) legal professionals have been reluctant to legislate and enforce these laws.

1. Primary Goals of Animal Cruelty Laws

First, a brief analysis of the legal theory behind the origin of state anticruelty statutes leads us to conclude that the primary focus of such laws has not been the protection of animals. State animal cruelty statutes are criminal laws, not civil laws.⁸¹ The main objective of civil laws under the tort system is to compensate victims for any wrongs they have suf-

⁷⁵ See, e.g., ALASKA STAT. § 11.61.140 (Michie 1997); MD. ANN. CODE art. 27, § 59 (1997); S.C. CODE ANN. § 47-1-40 (Law Co-op 1997).

⁷⁶ See, e.g., ALASKA STAT. § 11.61.140 (Michie 1997); COLO. REV. STAT. ANN. § 18-9-202 (West 1997).

⁷⁷ See, e.g., FLA. STAT. ANN. § 828.12 (West 1997); N.H. REV. STAT. ANN. § 644:8 (1997); OKLA. STAT. ANN. tit. 21 § 1685 (West 1997). The other states that have felony animal anticruelty statutes include: California, Delaware, Louisiana, Maine, Michigan, Missouri, Montana, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin.

⁷⁸ See, e.g., MINN. STAT. § 343.21 (West 1997) (requiring behavioral counseling); UTAH CODE ANN. § 76-9-301 (1997) (giving courts discretion to order defendants to receive psychiatric and psychological counseling); W. VA. CODE § 61-8-19 (1997) (requiring psychiatric or psychological evaluation).

⁷⁹ See, e.g., MASS. GEN. LAWS ANN. ch. 272 § 77 (West 1997); MINN. STAT. ANN. § 343.21 (West 1997).

⁸⁰ FRANCIONE, *supra* note 4, at 12 (stating that anticruelty statutes fail to protect animals but are effective in protecting human property rights in animals); FAVRE & LORING, *supra* note 62, at §§ 9.1-9.25 (discussing the problems posed by the draftsmanship of the anticruelty statutes which has led to lax prosecution and a less-than-supportive judicial attitude).

⁸¹ FAVRE & LORING, *supra* note 62, at 121.

ferred due to the actions of the wrongdoer. In contrast, the purposes of criminal laws under the criminal legal system are to, (1) punish perpetrators for what a human society considers to be dangerous and undesirable behavior, (2) protect the same human society from such perpetrators, and (3) deter similar activities in the future.⁸² Since animals are property and have no legal standing or rights under the American legal system, the protections animals receive from these statutes are secondary to the threefold goals of the criminal justice system. These protections also are limited since they are weighed against the owners' interests in the possession, use, and enjoyment of their animals. Therefore, since these laws were primarily enacted to protect humans from other humans with an intent to minimally interfere with owners' property rights, it should be no surprise that these laws have proved relatively ineffective at protecting animals from acts of cruelty and neglect.⁸³

2. *The Reluctance to Enforce Animal Cruelty Laws*

A second explanation for why anticruelty laws have been ineffective in protecting animals is that legislators, prosecutors, and the courts have historically been reluctant to legislate and enforce these laws. Several reasons exist for this reluctance. First, the general attitude that members of society, policy makers, and legislators have towards animals and their welfare has resulted in minimal activity in this legislative arena. Second, the difficulty state legislators have in defining and agreeing on what is abusive and cruel treatment has led to difficulties in the interpretation and subsequent enforcement of these statutes. Third, the penalties imposed by anticruelty statutes are generally misdemeanors which fail to be prosecuted aggressively because felony offenses generally receive the majority of the prosecution's limited time and resources. Finally, enforcement has been plagued by a lack of funding, manpower and confusion resulting from states delegating the authority to enforce such laws to humane organizations.

a. *Attitude Towards Animal Cruelty*

Since their enactment in the mid-1800's, a majority of the anticruelty statutes have remained largely unchanged.⁸⁴ This absence of legislative activity may be a result of prioritization of political agendas which has left the concern for animal welfare close to the bottom of the list. Under the current law, this result is inevitable since animals have no independent legal status and are no more than chattel subject to the laws of personal property.⁸⁵ In a society faced with epidemic proportions of crime, poverty and violence, with a judicial arena consumed by a clogged court system,

⁸² CHARLES E. TORCIA, 1 WHARTON'S CRIMINAL LAW § 1, at 2 (1993) (noting that criminal law's purpose is generally two-fold (define criminal conduct and punish), but that part of punishment is deterrence).

⁸³ FRANCIONE, *supra* note 4, at 12.

⁸⁴ See *supra* notes 65-80 (citing to various state animal cruelty statutes).

⁸⁵ FRANCIONE, *supra* note 4, at 12.

with politicians aggressively competing to stay in office, it is not difficult to imagine why legislators appear to be reluctant to spend taxpayers' money on petitioning the state to limit animal owners' property rights.

b. Definitions of Animal Cruelty

Determining what acts are prohibited and which duties are imposed has caused great difficulties in the application of animal cruelty laws. A majority of the states define cruelty with such vague and ambiguous language that unless the alleged act or omission is extreme and outrageous it is unlikely that it will violate the statute.

Throughout the state statutes cruelty is commonly referred to as the "needless" mutilation, "unjustifiable" infliction of injuries, failure to provide "proper" sustenance, and infliction of "unnecessary" pain and suffering.⁸⁶ Additionally, some states continue to use definitions, in some cases over one hundred years old, that inadequately represent current uses of animals and contemporary society's attitude towards their welfare.⁸⁷ For example, referring to cruelty as overdriving, overloading, and overworking an animal may have been effective in protecting draft horses prior to the days of the tractor, but provides little protection for companion animals today.⁸⁸ The use of such imprecise and outdated terms with little additional statutory guidance has left law enforcement officials, prosecutors and judges confused and in disagreement as to what acts fall within the scope of the statute. As a result, the enforcement of anticruelty laws has been inconsistent and unpredictable.

Another problem with the current definitions of animal cruelty is their sole focus on the acts of the offender. No statute refers to cruelty from the perspective of the injuries suffered by the animal.⁸⁹ Yet, this is not surprising since, at this point in time, there is no medical profile for animal abuse analogous to the "battered child syndrome"⁹⁰ model which could provide physical symptoms from which to make a diagnosis of animal abuse. Although a "battered animal syndrome"⁹¹ is not essential to improving anticruelty laws, it would help to distinguish accidents from incidents of abuse.

Redefining what constitutes cruelty is essential to the effectiveness of the protection afforded by these laws. Before the acts of individuals

⁸⁶ See, e.g., CAL. PENAL CODE § 597 (West 1997) (using the terms, "needless," "unnecessary," "proper" within the cruelty to animals statute).

⁸⁷ See, e.g., N.J. STAT. ANN. § 4:22-17 (West 1997) (using the terms "overdrive," "overload" and "overwork" in the cruelty statute).

⁸⁸ *Id.*

⁸⁹ See generally FRANCIONE, *supra* note 4, at 122-33. Certainly, cruelty to animals should include physical injury and sexual abuse.

⁹⁰ C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 *AMA* 17-24 (1962).

⁹¹ A model for diagnosing injuries resulting from animal abuse may be available in the near future. The University of Pennsylvania, School of Veterinary Medicine is currently considering offering a forensic pathology residency which would focus on identifying symptoms characteristic of abusive treatment. James Serpell & Tom Van Winkle, Remarks at the Veterinary Hospital of University of Pennsylvania Discussion Workshop on Animal Abuse and Neglect (Sept. 16, 1997).

charged with or convicted of animal cruelty can be considered by prosecutors and judges to be relevant evidence of conduct that places other family members at risk, the statutes must reflect a clear and current understanding of what is meant by cruel treatment.

c. Penalties Under Animal Cruelty Statutes

Another weakness of criminal cruelty statutes is their failure to provide a punishment that fits the crime.⁹² Most states continue to categorize their animal cruelty offenses as misdemeanors and, as a result, fail to effectively deter animal abuse.⁹³ There is a reluctance to prosecute these misdemeanors, because such offenses have little plea bargain value and compete with felonies for prosecutors' limited time and resources.⁹⁴

Within the last decade, however, some states have strengthened their anticruelty statutes by imposing higher fines and longer prison terms. In at least fifteen states, it is now a felony for a person to intentionally commit an offense of animal cruelty.⁹⁵ This renewed activity in the legislative arena of animal cruelty statutes reflects a greater effort by states to deter and punish those who commit violent acts against animals as well as to effectively protect the welfare of animals. The potential correlation between animal abuse and family violence, the increased publicity given to animal abuse cases, the public outcry that follows acts of cruelty,⁹⁶ an awareness of the human-animal bond, and the critical role animals play in our daily lives have all fueled the emerging view that abused and neglected animals should be afforded greater legal protections.

In addition to imposing harsher sanctions, state legislators should re-draft their laws to differentiate among the different forms of animal cruelty and impose corresponding penalties to reflect the severity of the offense. Laws should distinguish between violent acts of abuse, mistreatment, and neglect. These crimes are generally distinguishable in the degree of pain and suffering they cause to the animal as well as the requisite level of criminal culpability. Oregon's legislature adopted such changes in 1995. Its anticruelty statute now distinguishes between animal abuse and neglect, and, depending on the culpability of the offender, separates the offenses into Class A and B misdemeanors.⁹⁷

⁹² Cf. FRANCIONE, *supra* note 4, at 134 (stating that violation of most of the anticruelty statutes leads to relatively minor penalties, which has the effect of indicating to society that the conduct is not viewed as particularly deviant).

⁹³ See FAVRE & LORING, *supra* note 62 § 9.3, at 127 (stating that the ultimate weakness of anticruelty statutes is that the insufficient punishment fails to deter the acts).

⁹⁴ See *id.* § 9.1, at 121.

⁹⁵ See DOMESTIC VIOLENCE INTERVENTION PROJECT, *supra* note 57.

⁹⁶ See, e.g., Steve A. Chambers, *Animal Cruelty Legislation: The Pasado Law and Its Legacy*, 2 ANIMAL L. 193 (Spring 1996) (stating that the brutal killing of a pet donkey, named Pasado, in a local petting zoo provided a platform for the reform of Washington's anticruelty statute); AM. HUMANE ASS'N, WHAT YOU SHOULD KNOW BEFORE CHANGING YOUR ANTI-CRUELTY LAWS (Jane Ehrhardt ed., 1996) (stating that the brutal torture and killing of a dog led to a community's outrage that drove a revised anticruelty statute through the Pennsylvania legislature in just a few months).

⁹⁷ OR. REV. STAT. §§ 167.315-330 (West 1997).

States' anticruelty laws should also go beyond punishing animal abusers. Prison terms and fines need to be supplemented with sentences that focus on the rehabilitation of the offender and protection of the animal. Some states such as Utah, Minnesota, and West Virginia have incorporated such provisions in their laws.⁹⁸ For example, after a conviction in Utah, courts have the discretion to order defendants to receive and pay for psychiatric and psychological counseling.⁹⁹ Additionally, a convicted defendant in Utah may have to forfeit any ownership rights to the animal and reimburse reasonable costs incurred by any person or agency in caring for each animal subjected to the violation.¹⁰⁰

The message to society that acts of violence will not be tolerated, irrespective of the victims' status, can only get louder if more states follow the example set by the fifteen states that have recently rewritten their animal cruelty laws. Upgrading these crimes to felonies will increase the gravity of the offense in the eyes of judges and prosecutors who will respond by devoting more time and consideration to the prosecution and sentencing of the defendants. Including provisions that require counseling for the offenders and protections for the animal victims may stop the violence before it escalates and affects other family members.

d. Enforcement of Animal Cruelty Laws

Due to the criminal nature of animal cruelty statutes, it is in the province of the state or local law enforcement officials to enforce these laws. However, recognizing that resources are limited, many state legislatures have authorized nonprofit SPCAs, humane societies, or municipal animal control agencies to aid in the enforcement of these laws.¹⁰¹ Depending on the state, these organizations may be granted the authority to (1) intervene and prevent the commission of acts of cruelty, (2) take custody of mistreated animals, with or without a warrant, (3) make arrests, with or without a warrant, and (4) carry weapons.¹⁰²

This delegation of authority has been problematic in at least two ways. First, the lack of state funding has left these organizations with limited resources to hire and train investigators needed to respond to allegations of animal cruelty.¹⁰³ These organizations generally obtain nonprofit and tax exempt status which aids them in procuring the donations to fund their activities, but this is usually not enough.¹⁰⁴ Second, most states have no programs to train humane officers in identifying and investigating

⁹⁸ UTAH CODE ANN. § 76-9-301 (West 1997); MINN. STAT. § 343.21 (West 1997); W. VA. CODE § 61-8-19 (West 1997).

⁹⁹ UTAH CODE ANN. § 76-9-301 (West 1997).

¹⁰⁰ *Id.*

¹⁰¹ CAL. CIV. CODE § 607f(a) (West 1997); PA. STAT. ANN. tit. 3 § 456.4 (West 1997).

¹⁰² ANIMAL LEGAL RIGHTS SURVEY, *supra* note 62, at 254.

¹⁰³ *See, e.g.*, N.J. STAT. ANN. § 4:22-1 (West 1997) (creating the New Jersey Society for the Prevention of Animal Cruelty, but not funding it).

¹⁰⁴ *See, e.g.*, *Pitney v. Bugbee*, 118 A. 780 (N.J. 1923) (allowing a benefactor to contribute to the New Jersey Society for the Prevention of Animal Cruelty).

animal cruelty cases.¹⁰⁵ This has left the training to the humane societies that have the delegated authority to enforce the animal cruelty laws. The variation in quality and degree of training among officers of different organizations is so substantial that it has resulted in inconsistent and unpredictable enforcement of these states' cruelty statutes.

C. *Mandating the Reporting of Animal Abuse*

Mandated reporting is common in the context of child abuse. Such laws were enacted to maximize the identification of abuse cases so as to protect children from physical and psychological abuse.¹⁰⁶ Under such state laws, people who come into contact with children as part of their occupational duties are required to report suspected cases of child abuse.¹⁰⁷ This affirmative duty is usually imposed on teachers, day care providers, counselors, doctors, and other health care providers who work with children.¹⁰⁸ As long as there is a reasonable cause to suspect that there is child abuse, and the report is made in good faith, the law will grant the reporter immunity from liability.¹⁰⁹

While every state mandates the reporting of child abuse, only Minnesota and West Virginia mandate the reporting of animal abuse.¹¹⁰ Such laws must be adopted by every state before any significant progress can be made in reducing the incidence of animal abuse and family violence. Nationwide adoption of animal abuse reporting laws would provide data to quantify the animal cruelty problem and protect animal victims by facilitating the identification and investigation of animal abusers.

1. *Criticisms of Mandated Reporting Laws*

In considering whether all fifty states should mandate the reporting of animal abuse, one should be cognizant of some of the criticisms directed at child abuse reporting laws. The general vagueness of child abuse reporting laws has left mandated reporters confused about what types of maltreatment are reportable and the level of certainty that must be reached before reporting is required.¹¹¹ Furthermore, mandated reporters often lack the training to recognize child abuse and understand their responsi-

¹⁰⁵ California and Florida are among the few states that require humane officers to receive training in animal cruelty investigations. CAL. CIV. CODE § 14502(i) (West 1998); FLA. STAT. ANN. § 828.27(3)(a) (West 1997).

¹⁰⁶ See Murray Levine, *A Therapeutic Jurisprudence Analysis of Mandated Reporting of Child Maltreatment by Psychotherapists*, 10 N.Y.L. SCH. J. HUM. RTS. 711, 717 (1993).

¹⁰⁷ SETH C. KALICHMAN, MANDATED REPORTING OF SUSPECTED CHILD ABUSE: ETHICS, LAW AND POLICY 23-24 (1993).

¹⁰⁸ *Id.*

¹⁰⁹ See *id.* at 24.

¹¹⁰ Both Minnesota and West Virginia impose a duty on veterinarians to report known or suspected cases of animal abuse. MINN. STAT. ANN. § 346.37(e) (West 1997); W. VA. CODE § 7-10-4a (1997). *But cf.* IDAHO CODE § 25-3514A (West 1997) (providing veterinarians with immunity from criminal and civil liability without imposing an affirmative duty).

¹¹¹ See KALICHMAN, *supra* note 107, at 186.

bilities under the statute.¹¹² Finally, the utility of such statutes has been questioned since child protective agencies are so limited in resources that many reports fail to be investigated.¹¹³

In spite of these problems, most critics have not called for the repeal of reporting laws, but rather that the laws be redrafted to increase the accuracy of reporting.¹¹⁴ This continued faith in the value of child reporting laws supports the undertaking of drafting analogous reporting laws to protect animals. Drafters of laws requiring the reporting of animal abuse should closely examine the history of child abuse reporting laws so as to avoid making similar mistakes.

2. *Cross-reporting*

Cross-reporting is a multidisciplinary approach to reporting incidents of child and animal abuse. Under this scheme, social workers are trained to recognize and report animal abuse in the event they encounter animal abuse during their investigations of child abuse. Similarly, humane officers are trained to recognize and report child abuse in the event they encounter child abuse during their investigations of animal abuse. The implementation of such a program has at least two attributes. First, it would place us in a better position to substantiate the link among victims of family violence which would lead to a better understanding of the etiology of such acts and ultimately result in more effective solutions.

Second, cross-reporting expands the pool of trained personnel who are likely to encounter abuse. This will enhance early detection of family violence and eventually improve the success of intervention and therapy. The recognition by some state legislators that the prevention of child abuse can be improved by mandating cross-reporting is shown by California's 1993 amendment to its Child Abuse and Neglect Reporting Act which mandates that animal control officers and humane society officers report known or suspected instances of child abuse to child protective agencies.¹¹⁵ Although there are no laws that require social workers to report animal abuse, several jurisdictions have child and animal protective agencies that voluntarily participate in a cross-reporting partnership.¹¹⁶

D. *National Criteria and Reporting Registry*

National confusion as to what constitutes animal abuse is reflected in the states' numerous definitions of animal cruelty and the various standards that must be met for a conviction. These differences compromise efforts to prevent animal abuse and relate it to other forms of family vio-

¹¹² *Id.* at 187.

¹¹³ *Id.* at 188.

¹¹⁴ *Id.* at 38.

¹¹⁵ CAL. PENAL CODE § 11166 (West 1997). Similarly, Colorado's Child Abuse and Neglect Statute includes veterinarians among the health professionals that are required to report known or suspected cases of child abuse or neglect. COLO. REV. STAT. ANN. § 19-3-304 (West 1997).

¹¹⁶ See discussion *infra* Part V.A.2.

lence. A serious commitment to the prevention of animal abuse is likely to require a general consensus among the states and the national humane organizations as to what constitutes animal cruelty. A general consensus could be achieved in one of the following two ways: federal legislation or nationwide cooperation among the states.

1. *Federal Scheme*

There is no companion animal analog to the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).¹¹⁷ The federal statutes that deal with the protection of animals only address specific sectors of the animal industry and fail to take a comprehensive approach to the cruel treatment of animals.¹¹⁸ In spite of the conflict between the interests of man and those of animals, and the widely accepted belief that animals may be used for specific purposes, it would be possible to narrowly tailor federal legislation to address animal cruelty on a national scale. Such a law could be drafted to provide national standards for defining animal abuse and set up a national registry to monitor the incidence of animal abuse. The jurisdictional issue could be addressed either by enacting an independent law pursuant to Congress's taxing and spending power or by amending a federal law that is already in existence.

Under the Spending Clause, the federal government could provide federal assistance to states that implement programs for the reporting and prosecution of animal abuse cases. Such a law could look very similar to CAPTA.¹¹⁹ CAPTA provides federal funding to states that establish child abuse programs aimed at identifying and preventing child abuse and neglect. The Act provides a model definition for child abuse and neglect and sets the standard for state mandatory reporting laws. States must adopt CAPTA's definitions and standards in order to receive federal child protection funds.¹²⁰ Such a proposal is likely to attract a significant amount of criticism given the current political trend to downsize government. As with addressing so many other social problems, the issue will be whether to spend resources now and focus on prevention or spend a lot more money later trying to cure an epidemic.

Alternatively, the federal government could provide funding for states that implement programs of identification, prevention, and treatment of animal abuse and neglect by amending an existing federal law, such as the

¹¹⁷ 42 U.S.C. §§ 5101 et seq. (1988).

¹¹⁸ See Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (1994) (providing guidelines for the humane treatment, care and transportation of animals by dealers, exhibitors and researchers); Horse Protection Act, 7 U.S.C. §§ 1821-1831 (prohibiting the showing, exhibition, or selling of lame horses); Humane Slaughter Act, 7 U.S.C. §§ 1901-1906 (1994) (providing for humane guidelines in the slaughtering of livestock and the handling of livestock in connection with slaughter); Twenty-Eight Hour Law, 49 U.S.C. § 80502 (1994) (requiring transportation companies (excluding truckers) to follow guidelines in transporting cattle, sheep and swine). For further discussion of federal laws see Henry Cohen, *Federal Animal Protection Statutes*, 1 ANIMAL L. 143 (1995).

¹¹⁹ 42 U.S.C. §§ 5101 et seq.

¹²⁰ KALICHMAN, *supra* note 107, at 11-12.

Victims of Child Abuse Act of 1990 (VCAA).¹²¹ VCAA provides grants to states that develop and implement multidisciplinary child abuse investigation and prosecution programs that increase the reporting of child abuse.¹²² Although unlikely to have been contemplated during the legislative sessions which preceded the enactment of this Act, it could be argued that cross-reporting and strengthening animal cruelty laws are multidisciplinary approaches to preventing child abuse, which qualify for federal funding.

2. State Cooperation

In lieu of a federal law that would provide an incentive for states to adopt a uniform scheme to prevent animal abuse, a nationwide plan could be achieved through cooperation among the states. Coordination of such an undertaking would not be easy, but could be facilitated by the participation of the national humane organizations that have already become leaders in this area.¹²³ Specifically, these organizations could draft model laws, provide standards for training investigators, set up regional registries to record reports of abuse, and use their influence to persuade state legislators to redraft their animal cruelty laws.

V. PREVENTION OF CHILD ABUSE THROUGH THE PREVENTION OF ANIMAL ABUSE

The management of child abuse cases has enough in common with the management of animal abuse cases that both processes would benefit from mutual cooperation. The earliest case of cooperation was in 1871, when a social worker sought the assistance of the SPCA in the removal of a child from the custody of her abusive foster parents.¹²⁴ Having been unsuccessful in getting help from law enforcement officials, the social worker solicited the help from the founder of the New York SPCA that led to the earliest documented conviction of child abuse and the establishment of the first society for the protection of cruelty to children.¹²⁵

Since nonhuman animals are the lowest on the totem poll of living creatures to be worthy of rights, it seems ironic that laws protecting animals preceded laws protecting children. This paradox may be indicative of a society that has a lower tolerance for animal abuse than for child abuse.¹²⁶ In fact, the public's perception that abused animals may be more helpless and innocent than abused children continues in modern society.

¹²¹ 42 U.S.C. §§ 13001 et seq. (1994).

¹²² 2 LEGAL RIGHTS OF CHILDREN § 16.22, at 81 (Donald T. Kramer ed., 2d ed. 1994).

¹²³ Three humane organizations that have been working actively to prevent animal abuse and have disseminated information informing the public of the potential link between animal abuse and family violence are The Latham Foundation of Alameda, California, The American Humane Association in Englewood, Colorado, and The Humane Society of the United States in Washington D.C.

¹²⁴ See LELA B. COSTIN ET AL., THE POLITICS OF CHILD ABUSE IN AMERICA 51-57 (1996).

¹²⁵ *Id.*

¹²⁶ Boat, *supra* note 48, at 231.

How else can one explain the public's response to an incident in California which involved a female mountain lion killing a jogger, the mother of two children? The mountain lion was subsequently killed and her cub was placed in a zoo. Two funds were set up and donations to the cub's fund exceeded the family's fund by three thousand dollars.¹²⁷

Society's increased sensitivity to incidents of animal abuse and the potential correlation between animal abuse and child abuse should be a basis for the cooperation between child protection agencies and humane organizations. The detection and treatment of abusive individuals could be enhanced through interagency collaboration and the sharing of evidence between child abuse and animal abuse proceedings.

A. *Interagency Cooperation*

The protection of children and animals may be improved by joining the forces of child abuse and animal abuse prevention agencies. Since its founding in 1877, the American Humane Association (AHA) has embraced this concept, striving to protect both children and animals from cruelty, abuse, and neglect.¹²⁸ Recognizing that abuse in the home can affect both people and animals, AHA has fostered interagency cooperation by providing training to humane agents to recognize child abuse and social workers to recognize animal cruelty.¹²⁹ The advantage of such cooperation is that more perpetrators can be identified without increasing the number of investigators. Once trained, humane officers can assess the condition of the children while they investigate allegations of animal cruelty. Child protection workers can reciprocate by evaluating the condition of the family pets when investigating their child abuse cases.

1. *Child Protection Workers and Animal Welfare Officers Have Similar Duties*

While child protection workers and animal welfare officers work with different victims, the parallelism in their duties facilitates their cross-cooperation. Once each is trained to recognize maltreatment of both children and animals, the ability to protect these victims is enhanced due to the increased probability of detecting and monitoring abusive behavior.

Generally, each state has child protective agencies that employ social workers responsible for investigating allegations of child abuse or neglect. If the investigation leads the social worker to conclude that the child should be removed from the household, a complaint is filed with the juvenile court requesting that the state take legal custody of the child.¹³⁰ The court then evaluates the state's case against the parents and makes a de-

¹²⁷ *Id.*

¹²⁸ KALICHMAN, *supra* note 107, at 10.

¹²⁹ AMERICAN HUMANE ASS'N, WHAT YOU SHOULD KNOW BEFORE CHANGING YOUR ANTI-CRUELTY LAWS (1996).

¹³⁰ Walker, *supra* note 44, at 2.

termination as to the parents' fitness and what custodial arrangement is in the best interest of the child.¹³¹

Although animal humane officers help different victims, their methods of investigating abuse and neglect are very similar to those of child protection workers. Humane officers receive complaints, assess which allegations require visits, work with the owners to correct the problem, secure warrants for the removal of the animal, and maintain records on their cases.¹³² In fact, humane officers may have a better opportunity to detect child abuse and monitor the status of a child who has been abused. This is because animal welfare cases often result in greater supervision requirements than child welfare cases, and the animal welfare worker may be the only person checking on the welfare of abused victims in the home.¹³³

2. *Cross-Reporting and Cross Training; Grass Roots Projects*

Several communities around the country have instituted these cooperative programs.¹³⁴ These communities have recognized that social workers and humane officers are in a position to help each other in reducing violence in the home. What is obvious to agencies that have joined forces and resources to combat both child abuse and animal abuse is that there are tremendous benefits in sharing information about cases involving violence against animals and children.

Following the passage of the California law¹³⁵ mandating humane organizations to report suspected incidents of child abuse, the San Diego Department of Animal Control and the Department of Social Services Children's Bureau entered into an agreement.¹³⁶ This agreement complemented the newly passed legislation by requiring social service workers in San Diego to report suspected cases of animal cruelty to the San Diego County Department of Animal Control.¹³⁷ Similarly, the San Francisco Child Abuse Council and San Francisco Department of Animal Care and Control have joined hands to combat violence and have formed the Humane Coalition Against Violence, an advocacy effort to examine the link between child abuse and animal abuse.¹³⁸ Focusing on education, this coalition has hosted training seminars for child welfare workers, animal con-

¹³¹ Dayle D. Dearduff, *Representing the Interests of the Abused and Neglected Child: the Guardian Ad Litem and Access to Confidential Information*, 11 U. DAYTON L. REV. 649, 650-51 (1986).

¹³² Walker, *supra* note 44, at 5.

¹³³ Lynn Loar, *Congratulations. . .and Welcome!*, 7 C.H.A.I.N. LETTER 9 (1994).

¹³⁴ See, e.g., *Child Abuse/Animal Abuse*, ANIMALFARE, Mar.-Apr. 1996, at 3 (describing the development of an interagency agreement in San Diego, California).

¹³⁵ CAL. PENAL CODE § 11166 (West 1997).

¹³⁶ *Child Abuse/Animal Abuse*, *supra* note 134, at 3.

¹³⁷ *Id.* See also Letter from Rhonda A. Guaderrama, Shelter Coordinator, Battered Women's Services of the YWCA of San Diego County, to Laurie Joniaux, of the San Diego SPCA (Oct. 25, 1991) (on file with author) (thanking the San Diego SPCA for agreeing to temporarily house pets belonging to women who are the victims of domestic violence).

¹³⁸ Lynn Loar & Kenneth White, *Connections Drawn Between Child and Animal Victims of Violence*, THE LATHAM LETTER, Summer 1992, at 3.

trol and state humane officers, social workers, veterinarians, and police inspectors.¹³⁹

Such coalitions are not unique to California. The Michigan Humane Society, one of the largest shelters in the country, and Orchards Children's Services have also formed a partnership to address violence against children and animals on a comprehensive basis and to raise public awareness on this issue.¹⁴⁰ Under this association, both agencies have agreed to look for signs of animal abuse or child abuse during their investigations.¹⁴¹

B. *Proving Child Abuse with Evidence of Animal Abuse*

Each state provides two avenues for the adjudication of child abuse cases. Depending on numerous factors, including the weight of the evidence against the perpetrator and the severity of the abuse at issue, the petitioning party may seek the protection of either the civil or criminal laws.¹⁴² While the decision of whether to pursue civil or criminal sanctions remains debatable, there is a tendency to favor the civil process.

The use of criminal courts to adjudicate cases of child abuse has been criticized because of the higher level of proof required to get a conviction, the difficulty in proving the perpetrator had the requisite level of intent for the offense, and courts' failure to adequately address family rehabilitation once a conviction has been obtained.¹⁴³ In contrast, the use of juvenile and family courts has been preferred because a lower standard of proof is required to prove the elements of the offense¹⁴⁴ and the remedial measures implemented by these courts focus on rehabilitation of the perpetrators and provide better protections for the victimized children.¹⁴⁵

1. *Evidentiary Problems in Child Abuse Cases*

Regardless of whether child abuse actions are pursued criminally or civilly, the judicial process is usually plagued with evidentiary problems.¹⁴⁶ The evidence available to prove the offense is often solely

¹³⁹ *Id.* See also Lynn Jordan, *Bless the Beasts and the Children*, 4 C.H.A.I.N. LETTER 6 (1991) (providing specific suggestions on how animal control officers and state humane officers can assist child protective agencies and juvenile divisions while performing their duties).

¹⁴⁰ *Conference Launches Effort to Protect Our Future*, 16 MICH. HUMANE SOC'Y NEWS 1 (1995).

¹⁴¹ Greg Kowalski, *2 Agencies Team up to Fight Child, Animal Abuse*, THE WEST BLOOMFIELD-LAKES ECCENTRIC, Feb. 2, 1995, at 9A.

¹⁴² 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.23, at 83-84.

¹⁴³ Kathleen M. Burke, Comment, *Evidentiary Problems of Proof in Child Abuse Cases: Why Family and Juvenile Courts Fail*, 13 J. FAM. L. 819, 826 (1974).

¹⁴⁴ During the adjudicatory hearing, the child protective agency is required to prove the parents' mistreatment either by a preponderance of the evidence or by clear and convincing evidence. 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.26, at 94-95.

¹⁴⁵ For a more complete discussion of the civil and criminal approaches to sanctioning child abuse, see 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.23, at 83-84; Burke, *supra* note 143, at 826.

¹⁴⁶ For a more complete discussion of the evidentiary problems in proving child abuse cases see 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, §§ 16.28-16.33, at 98-119; Burke,

circumstantial. Direct evidence is lacking because child abusers typically commit their acts of violence within the privacy of their homes, ensuring that there are no witnesses to the abuse.¹⁴⁷ Furthermore, the abused children rarely testify on their behalf either because they corroborate the perpetrator's story of innocence or of the fear that the testimony will further endanger the children or have serious adverse psychological effects.¹⁴⁸

Circumstantial evidence often comes in the form of expert medical testimony, testimony from investigators or social workers, proof of prior abuse or neglect of siblings, and hearsay statements.¹⁴⁹ Such circumstantial evidence often falls short of establishing a *prima facie* case of abuse: that the injury was non-accidental and caused by the accused.¹⁵⁰ Additionally, a case brought in criminal court based solely on circumstantial evidence is frequently doomed because the petitioners must prove their case beyond a reasonable doubt.

2. Admitting Evidence of Animal Abuse

Given the circumstantial nature of the evidence available in child abuse cases, petitioners must stack their cases with sufficient evidence such that the trier of fact can make the necessary inferences to support an allegation of child abuse. Some jurisdictions have facilitated the stacking of circumstantial evidence by relaxing their rules of evidence.¹⁵¹ In particular, some jurisdictions have allowed evidence of prior misconduct, where such misconduct was the prior abuse of the victim's sibling,¹⁵² even though strict adherence to the rules of evidence bar its use.¹⁵³ Other courts have focused on balancing the interests between the parties and have concluded that such evidence's probative value along with the need to protect the children outweighs any prejudicial effect on the accused.¹⁵⁴

By allowing evidence of prior abuse of a sibling, courts are recognizing that there is a correlation between the prior abuse of a sibling and the current abuse of the victim. The use of such evidence in building a case

supra note 143, at 826; Lloyd Leva Plaine, Comment, *Evidentiary Problems in Criminal Child Abuse Cases*, 63 GEO. L.J. 257 (1974).

¹⁴⁷ 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, §16.28, at 99.

¹⁴⁸ *Id.* § 16.28, at 99, § 16.31, at 106; Plaine, *supra* note 146, at 258.

¹⁴⁹ 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.28, at 99.

¹⁵⁰ Burke, *supra* note 143, at 838.

¹⁵¹ "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." FED. R. EVID. 404(b)

¹⁵² See N.J. STAT. ANN. § 9:6-8.46 (West 1997) (providing that "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child"); *In re R.A.M.*, 755 S.W.2d 431, 435 (Mo. App. 1988) (stating that "the abuse of one child may justify the termination of parental rights not only with respect to the victim but also with respect to the sibling"); *In re L.B.*, 416 N.W.2d 598, 599 (S.D. 1987) (affirming "that the abuse of one child is relevant to the care a parent will provide to other siblings").

¹⁵³ *Morgan v. Foretich*, 846 F.2d 941, 944 (4th Cir. 1988) (allowing the admission of evidence that the sibling was sexually abused on the grounds that it tended to identify the defendants as the perpetrators, since only the defendants had access to both siblings).

¹⁵⁴ 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.30, at 104.

against an alleged child abuser therefore serves as a precedent for the admission of other forms of similar evidence. Such similar evidence would include prior abuse of other family members, specifically family pets. Certainly, the common circumstances among victims of family violence supports using the same reasoning for admitting evidence of prior abuse, regardless of whether the prior victims were siblings, spouses, grandparents, or family pets. For example, where the reasoning for admitting evidence of prior abuse of a sibling is that it tends to establish the identity of the perpetrator, such identification is equally supported where the prior abuse was of the family pet.

Fearing they will lose the case and thus further endanger victims of child abuse, many petitioners may be reluctant to pursue allegations of child abuse because of the lack of direct evidence and insufficient circumstantial evidence to support their allegations. The evidentiary difficulties in building a case against a child abuser may be overcome by presenting sufficient circumstantial evidence such that the trier of fact may infer the child was abused and the accused was responsible for the abuse. Increasing the sources of circumstantial evidence by including among the admissible evidence prior acts or convictions of animal abuse would increase the number of child abuse cases brought before the courts and result in greater protection for abused children.

C. Including Evidence of Animal Abuse in Custody Hearings

In addition to using evidence of prior acts or convictions of animal abuse in the adjudication phase of civil or criminal child abuse cases, the use of such evidence in child custody proceedings would be instrumental in protecting abused children. In a child custody proceeding resulting either from child abuse or from a divorce, a judge determines where and with whom a child should reside and under what conditions such custody arrangement should take place.¹⁵⁵

1. Child Abuse and Protection Hearings

During civil child protection proceedings, the child protection agency presents evidence against the parents who have been charged with child abuse, in an attempt to prove that children have been mistreated and that the mistreatment was caused by the parents.¹⁵⁶ Depending on the jurisdiction, the agency will either have to prove the parents' mistreatment by a preponderance of the evidence¹⁵⁷ or by clear and convincing evidence.¹⁵⁸

Once the state has met its burden of proving child abuse or neglect in the adjudication proceeding, it will assert jurisdiction over the child and a dispositional hearing will follow where a judge will determine whether the

¹⁵⁵ *Id.* § 16.24-27, at 85-98.

¹⁵⁶ *Id.* § 16.26, at 95 n.472.

¹⁵⁷ *Id.* See, e.g., N.Y. Fam. Ct. Act § 1046(b)(i) (West 1997); *In re A.S.*, 643 A.2d 345, 347 (D.C. 1994).

¹⁵⁸ 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.26, at 95 n.472. See, e.g., IOWA CODE ANN. § 232.96 (West 1997); *In re Jonathan*, 415 A.2d 1036, 1039 (R.I. 1980).

child should remain with the parent(s) or the state should be granted custody of the child.¹⁵⁹ The dispositional hearing is necessary to determine which custody arrangement is in the best interest of the child and which arrangement will best assist ultimate family reunification.¹⁶⁰ Where the judge determines that the parents are unfit because of abuse or neglect, it is well settled that the state can deny parents custody if the well-being of the child requires it.¹⁶¹ But, where the judge allows the child to remain with the parent(s), the judge may order the parent(s) to submit to psychological therapy or participate in parent training classes.¹⁶² The judge also may order periodic reports to the court in an effort to monitor parental rehabilitation and cooperation.¹⁶³

2. *Hearings Incident to Custody Disputes*

Child custody hearings are also necessary when separating or divorcing parents cannot agree on issues such as with whom the child will live or who will have primary care responsibilities.¹⁶⁴ Under such circumstances, where there is an unresolved custody dispute between the parents, a judge will determine a custody arrangement that is in the best interest of the child.¹⁶⁵ Before awarding child custody, judges will consider many factors in assessing which arrangement is in the best interest of the child, which often includes evaluations from psychiatrists, social workers, and health professionals.¹⁶⁶ Additionally, some states require that judges take into consideration evidence of family violence.¹⁶⁷

3. *The Relevant Evidence*

Whether the child custody proceeding is pursuant to a private dispute between parents or the determination that a child has been abused or neglected, the decision making process involves the consideration of evidence that will have a direct impact on the custodial arrangement. In resolving private custody disputes between parents, judges generally consider this evidence in evaluation of the criteria under the "best interests of the child" standard.¹⁶⁸ Similarly, during dispositional hearings where re-

¹⁵⁹ William W. Patton, *The World Where Parallel Lines Converge: The Privilege Against Self-Incrimination in Concurrent Civil and Criminal Child Abuse Proceedings*, 24 GA. L. REV. 473, 483 (1990).

¹⁶⁰ *Id.*

¹⁶¹ See 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 2.04, at 39.

¹⁶² *Id.* § 16.27, at 97.

¹⁶³ *Id.*

¹⁶⁴ Naomi Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1042 (1991) (stating that child custody hearings are conducted to determine the suitability of both the parents as well as which custody arrangement is in the best interest of the child).

¹⁶⁵ *Id.* at 1059.

¹⁶⁶ *Id.* at 1059 n.104.

¹⁶⁷ MARTIN GUGGENHEIM ET AL., RIGHTS OF FAMILIES 13 (1996).

¹⁶⁸ The best interest of the child is determined by analyzing those factors that directly relate to the child or the child's relationships. Relevant factors state courts consider include: (1) the wishes of the child's parent or parents as to the child's custody; (2) the child's prefer-

removal of a child from his or her home is at issue, judges will consider evidence that will aid in assessing which custodial arrangement is in the best interests of the child.¹⁶⁹

While there are many factors that are taken into consideration during both forms of child custody hearings, none look at whether there is evidence of animal abuse in the family. Yet, the accuracy in weighing the risk of future violence in custody determinations may well be enhanced by considering all forms of family violence, including abusive acts toward family pets.

Several states have recognized that domestic violence and custody decision making are interrelated and should affect child custody determinations.¹⁷⁰ In response to this recognition, some states have gone so far as to statutorily mandate that where there is evidence of domestic violence, it should be considered as a factor in custodial decisions.¹⁷¹ By analogy, if acts of violence against other humans committed by a parent and witnessed by a child are relevant in assessing the child's best interests,¹⁷² it follows that acts of violence against family pets are equally relevant. Certainly, acts of violence or abuse against animals would be relevant in those states where courts must consider past violent acts or abusive conduct when determining custody arrangements.¹⁷³

The rationale used by courts and legislatures for including evidence of family violence as a factor in custodial decision making are the same as those for including evidence of animal abuse. First, both forms of violence are evidence that the parent has a propensity for violent and abusive behavior, which may be directly correlated with the safety of the child's environment. Evidence in the form of convictions or filed charges of animal cruelty could aid juvenile court judges in assessing the seriousness and dangerousness of the adult's behavior.¹⁷⁴ Second, the recognition of the harmful effects suffered by children who witness family violence has resulted in the use of such evidence to influence the outcome of child cus-

ence as to his or her custodian; (3) the interaction and interrelationship of the child with his family members; (4) the child's adjustment to his home, school, and community; and (5) the mental and physical health of all individuals involved. *E.g.*, MINN. STAT. ANN. § 518.17(1)(a) (West 1997).

¹⁶⁹ Although the *best interest of the child* principal originated in the private custody disputes arising from divorce proceedings, it has been borrowed by the area of child custody hearings dealing with charges of abuse and neglect. 2 LEGAL RIGHTS OF CHILDREN, *supra* note 122, § 16.01, at 9. *E.g.*, *In re R.A.M.*, 755 S.W.2d 431 (Mo. App. 1988) (concluding that termination of mother's parental rights was in the best interests of the children).

¹⁷⁰ *E.g.*, MINN. STAT. § 518.17 (West 1997); OR. REV. STAT. § 107.131 (West 1997); 23 PA. CONS. STAT. ANN. § 5303 (West 1997).

¹⁷¹ *E.g.*, MINN. STAT. § 518.17(2) (West 1997); OR. REV. STAT. § 107.131(1) (West 1997).

¹⁷² *E.g.*, 23 PA. CONS. STAT. ANN. § 5303 (West 1997) (requiring the court to consider past violent or abusive conduct including, but not limited to the crimes of murder, rape, sexual abuse of a child, endangerment of the welfare of a child, kidnapping).

¹⁷³ *E.g.*, 23 PA. CONS. STAT. ANN. § 5303 (West 1997) (stating that in making custodial decisions "the court shall consider each parent and adult household member's present and past violent or abusive conduct.").

¹⁷⁴ Jordon, *supra* note 139, at 6.

tody decisions.¹⁷⁵ Similarly, the history of acts of cruelty and violence towards animals may be helpful in measuring the amount of violence to which a child is exposed in the household.

In some respects, the evidentiary value of acts of animal abuse has advantages over the use of prior acts of family violence. First, evidence of animal abuse may be detected more easily, thus prompting a report. Abused animals are more likely to be detected than abused children because animals commonly go outdoors. Furthermore, unattended and neglected animals have a tendency to become a neighborhood nuisance, which may also prompt a reporting. This is in contrast to family violence that usually occurs in the privacy of the home. Second, violent acts against animals are not accorded the same privacy protection that shield most intimate family disputes. Third, animal abuse does not invite the frequent argument that the battered spouse failed to mitigate her abuse by failing to leave. Animals, like children, are entirely dependent on their caretakers and they cannot be blamed for allowing the abuse to continue.

Since judges have broad discretion in custody cases to decide the weight to accord each factor, it is unlikely that the inclusion of evidence of animal abuse as an additional factor would lead to absurd results. Furthermore, if the only evidence of violence is that of animal cruelty, it is unlikely to lead to removal of a child since custodial decision making does not rely on any one factor.¹⁷⁶

A custodial decision can only be made in the best interest of the child when proper weight is accorded to the different forms of family violence that a child witnesses. Evidence of parental violence directed towards animals should be used to make better decisions, thus enhancing the protection afforded to children in custody hearings. Legislation and court decisions should reflect the willingness to accept evidence of animal abuse as probative in determine whether a child's welfare is at risk. Judges, lawyers, and legal scholars should heighten their understanding of family violence and strive to improve the mechanisms by which human and non-human members of the family may best be protected.

VI. CONCLUSION

Family violence has plagued this country for years and, despite of the efforts of many different protective agencies, it continues to be an epidemic. While the problem is not clearly understood and there are no obvious solutions, it appears that success in abating family violence lies in a multidisciplinary approach. It is not enough to look at a single victim. Often the violence extends to other members of the family, who will remain unidentified and unprotected unless protective agencies work together.

¹⁷⁵ See Cahn, *supra* note 164, at 1044 n.11 (noting the increased awareness of the impact of spousal abuse on children). See also Widom, *supra* note 12, at 3 (an analysis of studies indicating that the witnessing of marital violence by children of battered women may be as harmful to the child as physical abuse).

¹⁷⁶ Cahn, *supra* note 164, at 1059 n.104.

Family pets, often considered by their owners to be members of the family, can suffer the same terrible injuries as other victims of family violence. The evidence correlating child abuse and spousal abuse, animal abuse and abuse towards children and spouses strongly supports the inclusion of animals among the victims of family violence. As laws are drafted to protect children, spouses, and the elderly from abuse, care should be taken not to overlook how animal abuse is related to these forms of violence.

By strengthening this nation's animal cruelty laws, mandating the reporting of animal abuse, establishing clear guidelines for recognizing abuse, and setting up regional reporting registries, we can better understand and prevent animal abuse. Preventing animal abuse can then benefit other victims of family violence. Specifically, detection of child abusers and effective intervention can be enhanced through interagency cooperation and the sharing of evidence. Only if we resist the temptation to prioritize the victims, can the prevention of animal abuse become another weapon for combating family violence.