

## WHERE'S FIDO: PETS ARE MISSING IN DOMESTIC VIOLENCE SHELTERS AND STALKING LAWS

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*"He 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."<sup>1</sup>*

### I. INTRODUCTION

Many people respond to a woman's choice of remaining with her batterer by asking "Why doesn't she just leave?"<sup>2</sup> There are many well-recognized reasons a woman may choose to stay, ranging from fear of punishment to money to her children. There is, however, one potential reason a domestic violence victim may

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<sup>1</sup> Immanuel Kant, *Duties in Regard to Animals* 23, 24 (Tom Regan ed., *Animal Rights and Human Obligations* 1989).

<sup>2</sup> For the purposes of this article, a feminine pronoun will be used when describing victims of domestic violence and stalking. Recognizing that both men and women are victims of domestic violence, in the United States a woman is far more likely to be a victim of domestic violence than a man. In fact, studies have shown that one in four women will be victim of domestic violence during her lifetime. Thus, for the limited purpose of this article, the use of the feminine pronoun will be used.

choose to stay that has largely been ignored by domestic violence advocates and by the law. That reason is her pet.

The emotional bond shared between humans and animals positions pets above mere property, thus, pets are not as easily left behind as furniture, or even antique heirlooms. Furthermore, there is a well-recognized link between domestic violence and animal abuse, such that a woman may not only stay to be with her pet, but may also choose to stay to protect the animal from her batterer as well.

In the United States today, pets play a greater role within a family than that of property. A majority of homes that own pets consider them to be a member of the family, and many celebrate a pet's birthday in much the same way they do for any other family member.<sup>3</sup> The same bond exists in households where domestic violence, is present. In fact, the bond may even be more important to a victim of domestic violence since pets are often an important source of comfort and emotional support. In fact, pets may be the only source of love and companionship a victim has available to her.

Ironically, this same bond may place the animal in greater risk of abuse at the hands of a batterer wishing to exert power and control. Through abusing a pet, a batterer exerts power not only over the animal, but also over his victim vicariously, as the victim experiences the abuse of the animal through sympathy.

Victims of domestic violence are not only forced to choose whether to stay or to go based on a multitude of other important reasons, but they now too are faced with the decision whether to leave their animal at the mercy of their batterer, or to stay and protect their pet. There are numerous studies and anecdotal reports verifying that batterers threaten or harm pets. It is a direct result that women may remain with the batterer, or postpone entering a domestic violence shelter, because of concern for pets they would be forced to leave behind.<sup>4</sup>

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<sup>3</sup> See Charlotte Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 6 (1998). This cite does not seem to support the information.

<sup>4</sup> See Catherine A. Faver & Elizabeth B. Strand, *To Leave or to Stay? Battered Women's Concern for Vulnerable Pets*, 18 J. INTERPERSONAL VIOLENCE 1367, 1367 (2003).

Nationwide, state and federal laws have failed to provide assistance to domestic violence victims by ignoring a victim's bond with her companion animal.<sup>5</sup> Laws governing protection orders, stalking, and abuse fail to acknowledge that bond: they in effect leave the victims' animals out of the equation.

This article will address two key areas of domestic violence law where disregard for the bond shared by an animal and owner places both the animal and the domestic violence victim in danger. The first of these situations is the majority of domestic violence shelters' refusal or inability to allow victims to bring their animals with them. The second is the law's blatant omission of a stalker's threat of violence, and actual violence, towards animals from coverage by the nation's anti-stalking laws. Both of these situations illustrate how refusal by the law to recognize the bond shared by human and animal place both in peril.

## II. ANIMALS: MERE PROPERTY

Animals have been and continue to be considered personal property. While animals once shared this historical status with women and children, women and children have had this distinction erased from the law through their respective reform movements. Animals, however, remain property and thus their interests are weighed against the "possessory, use, and enjoyment interests of their owners."<sup>6</sup>

In fact, even in the face of contradictory evidence, most courts continue to define animals as property regardless of the bond shared with humans. In *Obershlake v. Veterinary Assoc. Animal Hosp.* plaintiff dog owners brought a veterinary malpractice suit against a veterinary hospital.<sup>7</sup> When the plaintiffs dropped off their dog to have her teeth cleaned, the veterinarian also attempted to spay the dog, even though she had been spayed as a puppy.<sup>8</sup> The plaintiffs' case cited numerous articles

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<sup>5</sup> For purposes of this article the term "companion animal" is defined as domesticated animals kept for their companionship value including, but not limited to dogs, cats, hamsters, ferrets, guinea pigs, and chinchillas.

<sup>6</sup> Lacroix, *supra* note 3, at 7.

<sup>7</sup> See *Oberschlake v. Veterinary Assoc. Animal Hosp.*, 785 N.E.2d 811, 812 (Ohio Ct. App. 2003).

<sup>8</sup> See *id.* at 812.

contending that limiting recovery for the harm done to pets “ignores the fact that the relationship between a human and his companion animal is no more based upon economics than is any other family relationship.”<sup>9</sup> Yet, the court affirmed the hospital’s award of summary judgment based solely on an Ohio statute defining animals as merely personal property.<sup>10</sup>

Some courts have begun to change this strict interpretation by holding that animals are not merely property, but occupy a higher status. In New York, a court held in *Corso v. Crawford Dog and Cat Hosp., Inc.*, that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”<sup>11</sup> The defendant in that case, a pet funeral business, mistakenly placed a cat’s body in a casket meant for the plaintiff’s dog’s body. In so holding, the court awarded the plaintiff a greater sum of damages than was possible if the animal was only deemed worth its commercial value. The commercial value of the plaintiff’s dog’s body was exceedingly minimal, and yet, because the court recognized the special status of animals, the court awarded the plaintiff seven hundred dollars.

In addition, a Vermont court held in *In re Estate of Howard H. Brand* that regardless of an animal’s categorization as personal property, “observation and logic illustrate the unique quality of the living breathing property in comparison to most other forms of inanimate property.”<sup>12</sup> While these courts have begun to recognize that animals are not just property, they are in the minority among courts.

Some animal rights advocates have proposed a new “middle ground” property classification for animals. Under the new system, animals would be classified as “sentient property.” Proponents argue this classification would grant a recognizable right to animals, and yet still fall short of declaring animals as

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<sup>9</sup> Steven M. Wise, *Recovery of Common law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 93 (1998).

<sup>10</sup> See *Oberschlake*, 785 N.E.2d at 812.

<sup>11</sup> *Corso v. Crawford Dog and Cat Hosp.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979).

<sup>12</sup> Sonia Waisman, Pamela Frasch & Bruce Wagman, *Animal Law: Cases and Materials* 595 (3rd ed. 2006).

“legal persons.”<sup>13</sup> However, courts and legislatures have refrained from either adopting or imposing this new property classification, and thus animals remain property.

Because animals have traditionally been and continue to be thought of as property, pets and the bond they share with their human companions are often ignored by the law. Examples where the bond has been ignored range from tort law to property law to estate planning. But, it is the ignoring of the animal-human bond in the area of domestic violence that poses a great threat to both animals and humans alike.

### III. LINK BETWEEN ANIMAL ABUSE AND DOMESTIC VIOLENCE

The link between abuse against animals and abuse against humans is long documented both in psychological and sociological studies as well as anecdotal reports. A 1983 study of New Jersey families with documented child abuse found that, in sixty percent of the cases, at least one family member had physically abused nonhumans.<sup>14</sup> Another study, focusing on residents of a battered woman's shelter in South Carolina, showed that almost half of 107 women who owned pets reported their pets had also been victimized through threats or physical harm by their batterers.<sup>15</sup> A third study found an even higher percentage of animal abuse in homes with domestic violence. That study, focusing on women entering a shelter, showed that almost three-quarters reported their batterers' had threatened or actually harmed one of their pets.<sup>16</sup>

The commonality between animals and victims of domestic violence is they both experience abuse inflicted by a batterer's attempt to exercise power and control.<sup>17</sup> In fact,

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<sup>13</sup> See Animal Legal Reports Services, *Sentient Property: A Novel Proposal for Animal Law: More than Property, Less than Persons*, <http://animallegalreports.com/press.asp> (last visited Oct. 30, 2007).

<sup>14</sup> See Waisman, Frasc & Wagman, *supra* note 12, at 529.

<sup>15</sup> See Faver & Strand, *supra* note 4, at 1368.

<sup>16</sup> See Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 103 (2001).

<sup>17</sup> See Lacroix, *supra* note 3, at 7. this cite is not exactly what is said in the original source.

relationships between the batterer and a pet and between the batterer and his woman partner can be “characterized by economic dependenc[y], strong emotional bonds and an enduring sense of loyalty.”<sup>18</sup> Nevertheless, batterers threaten, abuse, or kill their animals for a myriad of reasons. These include the desire to:

confirm power and control over the family, [t]o isolate the victim and children, [t]o force the family to keep violence a secret, [t]o perpetuate the context of terror, [t]o prevent the victim from leaving or coerce her/him to return, [to] punish the victim for leaving, [and] [t]o degrade the victim through involvement in the abuse.<sup>19</sup>

A batterer may abuse his victim or a pet in order to achieve one, many or all of these goals.

The link between victims of domestic violence and the abuse of animals is not solely established through their commonalities as victims of abuse. In fact, battered women whose pets have been the target of abuse also stated the pet was an important source of emotional support.<sup>20</sup> A 2000 study of women living in a shelter showed that victims who reported their pets had been abused also noted their pets had been a crucial source of emotional support.<sup>21</sup> The authors of the study believed one possible interpretation of their findings was that batterers targeted the animals because they provided important emotional support for their human victims, and therefore abusing the animal was a successful weapon in abusing the women as well.<sup>22</sup>

While laws may not yet reflect the unique and emotional bond between humans and animals in their operation, the link between violence against animals and violence against humans is already taking root. That link becomes even more important in the

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<sup>18</sup> *Id.*

<sup>19</sup> The Humane Society of the United States, *First Strike Campaign 2003 Report of Animal Cruelty Cases*, at 3 (2003) <http://files.hsus.org/web-files/PDF/2003AnimalCrueltyRprt.pdf> (last visited Oct. 30, 2007).

<sup>20</sup> See Frank R. Ascione, Claudia Weber, & David Wood, *The Abuse of Animals and Domestic Violence: A National Survey of Shelters of Women Who Are Battered*, 5 SOCIETY & ANIMALS 205, 218 (1997). [could not find original]

<sup>21</sup> See Faver & Strand, *supra* note 4, at 1371.

<sup>22</sup> See *id.*

context of domestic violence. An abuser's attempt to exert power and control over his victim is shared by a woman and her animal. A batterer may recognize the emotional bond between his human victim and her pet and exploit it by threatening, physically harming, or killing an animal. It is this link between the violence and the bond shared by the victims, that places both the woman and the animal in a dangerous situation if the woman ever seeks to leave her batterer.

#### IV. BARRING ANIMALS IN DOMESTIC VIOLENCE SHELTERS

##### *a. Shelters under current law*

Because victims of domestic violence share a kinship with their animals and because the animals, too, have a high risk of abuse while living with a batterer, a perilous situation occurs when a human victim decides to leave. If a woman is able to find support and aid from family or friends, there is a chance that she might rescue her pets as well and remove them from the violence.

Regardless, the reality for many women across the country is that there is no other option but to seek help from a domestic violence shelter. However, the vast majority, if not all, domestic violence shelters bar animals from shelter premises and neglect to even ask about family pets. In fact, a study by the Humane Society of the United States found that ninety-one percent of adult domestic violence victims mention pet abuse when they enter the shelter.<sup>23</sup> Despite this, only eighteen percent of shelters surveyed even routinely ask about pets when a victim enters the shelter.<sup>24</sup>

Traditionally, animals have been barred from most domestic violence shelters because they can pose a risk of disease or injury to other victims living in the shelter. Allowing animals to live with humans in a shelter increases the possibility that scared animals harm their owners, other people, or other pets through biting or scratching.<sup>25</sup> Furthermore, in a shelter where living areas

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<sup>23</sup> See The Humane Society of the United States, *supra* note 19, at 2-3.

<sup>24</sup> See *id.*

<sup>25</sup> See Centers for Disease Control and Prevention, *Animals in Public Evacuation Centers*, <http://www.bt.cdc.gov/disasters/animalspubevac.asp> (last visited Oct. 30, 2007).

are cramped, it may be difficult to properly provide care for the animals. Other shelter residents may suffer from allergies, and this situation might only get worse when they may not have access to their usual medications.<sup>26</sup> However, barring of animals from domestic violence shelters can delay or completely deter victims from leaving their batterers and entering a shelter.

While a domestic violence shelter's decision to bar animals may delay or deter victims from leaving their batterer, simply allowing women to bring their animals with them presents a myriad of legal problems, including increased liability for the behavior of those animals. In Louisiana, the owner of an animal is liable for any harm or damages caused by that animal when it can be shown the owner either knew or should have known their animal could cause damage, the damage could have been prevented by the exercise of reasonable care, and such care was not used.<sup>27</sup>

While the Louisiana code places the liability on the owner of the animal, when a domestic violence shelter allows a woman to bring her pet with her into the shelter, that liability will extend to the shelter as the de facto "landlord." While most domestic violence shelters do not require a victim to pay "rent," the same relationship as between a landlord and a tenant still exists. A landlord can be held liable for injuries caused by a tenant's pet either in the common areas or if there was a reasonable foreseeability that the animal could cause injury. This same liability can be inferred onto the owner or operator of a domestic violence shelter.<sup>28</sup> A domestic violence shelter must take such liability into account when choosing whether to allow a victim to bring along companion animals.

Even potential solutions to increased liability pose additional problems for domestic violence shelters. One potential solution is for shelters to take out additional insurance to cover the added liability allowing pets would bring. However, taking out additional insurance is not a simple task for domestic violence shelters. Domestic violence victims and shelters, both, face

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<sup>26</sup> *Id.*

<sup>27</sup> La. Civ. Code. Ann. art. 2321 (1996).

<sup>28</sup> J. H. Cooper, *Liability of Landlord to Tenant or Member of Tenant's Family, for Injury by Animal or Insect*, 67 A.L.R.2d 1005 (2007).



challenges when attempting to obtain insurance. While they are protected from insurance discrimination, victims and shelters are already high risks for insurance companies. This means shelters seeking additional insurance to cover companion animals could find it difficult to obtain and unaffordable.<sup>29</sup>

Another potential solution for shelters wanting to allow companion animals is to ask victims entering the shelter to sign waivers relieving the shelter of liability for any harm or damage an animal causes. However, this solution could also present potential legal difficulties. A waiver, presented to a victim when she is attempting to leave her batterer, might be challenged legally based on questions of whether the victim was under duress and felt it necessary to sign any waiver to protect herself from her batterer.

b. "Safe Haven" Programs

In some areas of the country, battered women's shelters have recognized the important bond between a woman and her pet and begun to seek out alternatives to simply turning animals away from the shelter.<sup>30</sup> One such alternative that has begun to catch on across the country is "safe havens" for pets of domestic violence victims. While some programs have been in existence for decades, they were very informal and operated mostly through word of mouth.<sup>31</sup> The vast majority of today's safe haven programs have only been founded in the past few years.<sup>32</sup>

The essence of a safe haven program is that battered women shelters partner with local veterinary hospitals, foster families, animal shelters, or private kennels to allow human victims of domestic violence to relinquish pets to these facilities temporarily while victims are residing at the shelter. While safe haven programs separate a woman from her animal, they also

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<sup>29</sup> Ellen J. Morrison, *Insurance Discrimination Against Battered Women: Proposed Legislative Protections*, 72 IND. L.J. 259, 273 (1996).

<sup>30</sup> See Gentry, *supra* note 16, at 113.

<sup>31</sup> See Frank R. Ascione, *Safe Haven for Pets: Guidelines for Programs Sheltering Pets from Women who are Battered*, 5 (The Geraldine R. Dodge Foundation, 2000)

[http://www.vachss.com/guest\\_dispatches/ascione\\_safe\\_havens.pdf](http://www.vachss.com/guest_dispatches/ascione_safe_havens.pdf) (last visited Oct. 30, 2007).

<sup>32</sup> See *id.*

provide a victim with a chance to place her pet in a protected environment away from the likely abuse of her batterer.

While safe haven programs appear on the surface to be an ideal solution for battered women's shelters wishing to provide women with a safe place for their pets, these programs face many legal problems, not just for the animal, but also for the human victim. The problems range from that of whether due process is owed to a batterer before sheltering his animal, whether a batterer could find his victim through tracking his animal, and who would bear the cost of animals being sheltered. However, the two most difficult legal issues victims and shelters face when a woman enters her companion animal into a safe haven program are of ownership and confidentiality.

It is a fundamental aspect of property law that a person cannot be deprived of his private property without due process of law.<sup>33</sup> When a victim of domestic violence seeks to remove an animal that is either co-owned or solely owned by the batterer, there is a potential to violate the batterer's right to due process. In most households, companion animals are co-owned by the household's adults.<sup>34</sup> Under the current law that categorizes animals as only property, a batterer may be entitled to either retrieve the animal from a safe haven program or may have a claim against his human victim for the theft of his property.

The problem is further complicated by the fact that many safe haven programs, battered women shelters, and animal shelters are unsure or unadvised as to how to handle situations where a companion animal is the property of a batterer.<sup>35</sup> In fact, some agencies have even concluded that a woman might not be able to retrieve an animal once it has entered into a safe haven program if that pet was the batterer's legal property.<sup>36</sup>

Thus, because some animals are considered property of the batterer, it is legally difficult to deprive him of his possessory rights to the animal by allowing the pet to be entered into a safe haven program. The few safe haven programs that have dealt with this situation have focused on how a victim of domestic violence

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<sup>33</sup> See U.S. Const. amend. XIV, §1.

<sup>34</sup> See Gentry, *supra* note 16, at 113.

<sup>35</sup> See Ascione, *supra* note 31, at 38.

<sup>36</sup> See *id.* at 37.

can establish evidence that she is the sole owner of the animal.<sup>37</sup> This is done through a number of ways, including obtaining an animal license and/or proof of vaccinations or veterinary receipts in the victim's name.<sup>38</sup> Some safe haven programs have procedures to re-license the pet to the program while the victim remains in the shelter as a way of challenging ownership of the pet.<sup>39</sup> These programs make the welfare and safety of victims and their pets their utmost priority, yet they must also remain respectful of ownership issues.<sup>40</sup>

Because the legal issue of ownership does present such a challenge to safe haven programs, the procedures established by the programs may not be enough to provide a complete, prophylactic solution. The solution should also come from the courts. While some courts may choose to push the bounds of precedent to find in the best interest of the animal and allow the safe haven to continue to protect the animal, the better solution would be for all courts to recognize that companion animals are not inanimate objects.

When a court 'determin[es] what is due process of law [it must] consider the nature of the property, the necessity of its sacrifice, and the extent to which it has . . . been regarded as within the [State's] police power.' Here, the nature of the property is that of a living animal, a sentient being. Living animals warrant removal in emergency situations because they are not like a piece of antique furniture or a boat.<sup>41</sup>

If courts could look beyond the property status of animals to recognize their sentience, then a victim of domestic violence would no longer violate the law by protecting their companion animal through entering it into a safe haven program.

The second major legal issue facing safe haven programs is confidentiality. Since many publicly funded animal shelters are required by law to keep their records open to the public, if that

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<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> See *id.* at 40.

<sup>41</sup> Gentry, *supra* note 16, at 114 (quoting *Sentell v. New Orleans & Carrollton R.R. Co.*, 166 U.S. 698, 704 (1897)).

shelter also participated in a safe haven program it could provide a batterer with a means to track down either his human or animal victim. And since the time immediately following a battered woman's escape from a batterer is the most deadly, it is logical that it would be the most lethal for her pet as well. Therefore, confidentiality of identities of both human and animal victims is of utmost importance.

While there is no absolute legal solution to this issue, safe haven programs do have a number of options that can help maintain confidentiality. These include filing a safe-haven pet as already adopted in their records, and in the case of private shelters, refusing to release any information about those pets to the public. Programs can also restrict the number of individuals who interact with the animals within the shelter or utilize a fostering system to place animals in a different community than that of the batterer's residence to minimize accidental contact.<sup>42</sup>

Since these options are not fool-proof, even when a shelter engages in these procedures to help maintain the secrecy of the victims, issues of confidentiality and ownership still continue to plague the safe haven programs.

*c. New Legislation As the Answer*

While shelters are in the best position to undertake small steps to help battered women and their pets avoid these legal pitfalls, courts and legislatures can perhaps provide the most effective relief. Since courts have not shown a propensity for categorizing animals as anything other than property, the solution may have come from the legislature. While no state legislature to date has mandated battered women shelters must allow entrance of companion animals into their facilities, that may present the best solution possible.

A comparison can be drawn to Louisiana's new law mandating the Governor's Office of Homeland Security to identify emergency disaster shelters equipped to accept and house pets.<sup>43</sup> The legislation was passed in 2006 in response to a public outcry over thousands of needless deaths of animals left behind during

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<sup>42</sup> Ascione, *supra* note 31, at 40-41.

<sup>43</sup> See La. Rev. Stat. Ann. §29:726(E)(20)(a)(ii)(aa) (2007).

mandatory evacuation during Hurricane Katrina. Because animals were not allowed in the shelters provided for humans, hundreds of people stayed behind to be with their animals; those left behind either died in the flood, or were forced to try and survive without food or water for up to six weeks.<sup>44</sup>

The Louisiana legislature responded to the crisis by passing a new law, which requires emergency preparedness agencies to formulate evacuation plans to transport and temporarily shelter service animals and household pets in a humane manner.<sup>45</sup> The new statute provides that the Governor's Office of Homeland Security must assist in the "development of guidelines . . . which may include standards or criteria for admission to such shelters, health and safety standards, basic minimum animal care standards regarding nutrition, space, hygiene, and medical needs, protocols, and procedures for ensuring adequate sheltering, management, and veterinary staffing for such shelters."<sup>46</sup>

Furthermore, and perhaps most important, the law limits the liability of shelters who take in animals during an emergency.<sup>47</sup> Under the new law, an owner or operator of a shelter that permits homeland security or other emergency agencies to use its facility to shelter both people and household pets or service animals, during an emergency without compensation, is granted limited liability, except in situations where the owner's or operator's gross negligence or willful misconduct is the proximate cause of death, injury, loss or damage occurring during the sheltering period.<sup>48</sup>

Courts and shelters have been reluctant to change laws and protocols related to sheltering, and safe haven programs, while they present a solution, also present many legal issues. Therefore, it would be a more efficient and reasonable alternative for state legislatures to pass a law similar to the Louisiana statute that

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<sup>44</sup> See Hurricane Katrina Animal Rescue, <http://hurricaneanimalrescue.blogspot.com/> (last visited Oct. 30, 2006).

<sup>45</sup> La. Rev. Stat. Ann. §29:726(E)(20)(c). The statute defines "household pets" to mean "any domesticated cat, dog, and other domesticated animal normally maintained on the property of the owner or person who cares for such domesticated animal."

<sup>46</sup> *Id.* at §29:726(E)(20)(a)(ii)(bb).

<sup>47</sup> See *id.* at §29:726(E)(20)(a)(ii)(aa).

<sup>48</sup> LA B. Dig., Resume, 2006 Reg. Sess. S.B. 607. (what is this source?)

authorizes shelters to take in household animals with their owners during national emergencies. The domestic violence statute would authorize animal welfare and health agencies to work with shelters to develop guidelines and standards for dealing with hygiene, medical needs, and animal care standards that would be required in the housing of animals with humans. Examples of such standards would be requiring proof of current vaccinations against rabies or vaccination upon entry, flea and tick treatment, and regular dog-walking.

The statute would also confront the critical question of the shelter's liability for the actions of the animals. Similar to Louisiana's new national emergency law, the ideal domestic violence statute would also limit a shelter's liability for any death, injury, loss or damage that occurred during an animal's stay at the shelter, except for gross negligence or willful misconduct on the part of the shelter.

A statute that encompassed all of these provisions would give victims of domestic violence a viable, reasonable, and preferable alternative to either leaving their beloved animals behind or placing them with strangers in a safe haven program. Under this statute, a victim could bring her companion pet with her for emotional support and to protect the animal from the potential abuse it would receive if left behind. The statute would serve both to benefit the human victims of domestic violence and also to protect the lives of innocent companion animals.

#### V. FAILURE OF STALKING LAWS TO INCLUDE ANIMALS AS THREAT TARGETS

Although domestic violence law has expanded in recent years in response to awareness to of the intense danger that stalking poses to women, the law has continued to ignore exactly how vulnerable animals are as well. Only in the past twenty years have state legislatures begun to pass statutes criminalizing stalking. Thirty-six states have recognized the widespread and extensive nature of stalking and thus adopted legislation defining the act and penalties associated with the crime. In fact, research has

determined that at least one million women and close to four hundred thousand men are stalked annually.<sup>49</sup>

Stalking has been defined by most states legislatures to include “willfully, maliciously, and repeatedly following and harassing another person,” and those convicted can include ex-lovers, former spouses, rejected suitors, co-workers, as well as complete strangers.<sup>50</sup> In addition, stalking is directly tied to domestic violence. Domestic violence experts estimate as many as ninety percent of women murdered by their former lovers or spouses were stalked beforehand.<sup>51</sup>

Of the thirty-six state anti-stalking laws, including the model anti-stalking code developed by the National Institute of Justice, not one includes threats or violence to companion animals as a basis for instilling fear or harassing victims. In 1993 the National Institute of Justice developed the model anti-stalking code in order to create a legal framework for dealing with the crisis of stalking. The code defines a stalker as:

any person who: (a) purposefully engages in a course of conduct directed at a specific person that would create a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family.<sup>52</sup>

In every state that has passed anti-stalking legislation, the statutes have been similar to that of the model code: every statute ignores the bond between a victim and her pets and have neglected to include threats or harm to one’s animal as evidence of stalking.

Because of the emotional bond between women and their companion animals, threats and violence towards these animals are a powerful message to domestic violence victims. No one who has watched the Paramount film, Fatal Attraction, could forget the

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<sup>49</sup> Clare Dalton & Elizabeth M. Schneider, *Battered Women and the Law* 665 (1st ed., 2001).

<sup>50</sup> Kathleen G. McAnaney, Laura A. Curliss, & C. Elizabeth Abeyta-Price, *From Imprudence to Crime: Anti-Stalking Law*, 68 NOTRE DAME L. REV. 819, 821-23 (1993).

<sup>51</sup> See *id.* at 838.

<sup>52</sup> Dalton & Schneider, *supra* note 49, at 669. (also cite to Code if possible)

impact of actress Glenn Close's character boiling the pet rabbit of the man she was stalking.<sup>53</sup>

However, most states have ignored just how powerful a message a threat or injury to a pet can be. In Louisiana the anti-stalking statute explicitly limits acts of stalking to threats or harm towards the victim or any member of her family.<sup>54</sup> The statute further defines "family member" as "[a] child, parent, grandparent, sibling, uncle, aunt, nephew, or niece of the victim, whether related by blood, marriage, or adoption."<sup>55</sup> Louisiana has explicitly ignored the bond between victims and their animals.

But Louisiana, as stated above, is not alone. Tennessee's anti-stalking statute limits the covered parties (the statute does not expressly define family) to "the victim's child, sibling, spouse, parent or dependents."<sup>56</sup> Mississippi's statute goes even further than Louisiana or Tennessee, by completely limiting acts of stalking to the harassment of the human target herself.<sup>57</sup> Thus, while states vary as to whether or not they include threats or harm to a victim's family, all states exclude a victim's companion animals.

The refusal by both the creators of the model code and state legislatures to include companion animals in the anti-stalking laws leaves the victims and their pets vulnerable to threats and attacks of their stalkers. States should begin to amend their anti-stalking statutes to include threats and harm done to the victim's companion animals. An adequate statute would look as follows:

- (A) Stalking is the willful and repeated harassment or following of another individual that would cause a reasonable person to feel frightened, intimidated, harassed, or to suffer emotional distress and that actually causes the individual to feel frightened, harassed, or to suffer emotional distress.
- (B) Stalking includes, but is not limited, to:
  - (i) the willful and repeated unconsented contact at the victim's home, workplace, school, or any other

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<sup>53</sup> See *Fatal Attraction* (Paramount Pictures 1987). (ask West)

<sup>54</sup> See La. Rev. Stat. Ann. §14:40.2 (2007).

<sup>55</sup> *Id.* at §14:40.2 (D)(2)(a)

<sup>56</sup> Tenn. Code Ann. §39-17-315(C)(1)(d) (2005).

<sup>57</sup> Miss. Code Ann. §97-3-107 (2006).



location that would cause a reasonable person to feel frightened, intimidated, harassed, or to suffer emotional distress.

- (ii) Verbal or implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to the victim, any member of his family, any companion animal, or any person with whom he is acquainted.

This statute should incorporate provisions of existing anti-stalking statutes that are adequate in protecting human victims and families and add a new vital clause that would also protect companion animals. By including threats and harm towards companion animals, this new statute would recognize the vulnerability of companion animals when their owners are being stalked; it would act upon that recognition and protect those animals. By adopting a statute that includes companion animals, states would no longer be ignoring the incredible link between humans and their companion animals, and instead would be protecting them.

## VI. CONCLUSION

The emotional bond between humans and their companion animals can provide unlimited love and support to victims of domestic violence and stalking. But that bond can also make a victim more vulnerable to her batterer or stalker. A victim of domestic violence find emotional support and love in her companion animals, something lacking in the human relationship with her batterer. A victim may feel compelled to stay with her batterer in order to remain close to her pet. A victim may also choose to stay to protect her pet. In the majority of the reports given by women entering domestic violence shelters, their batterers abused their pets as well. Therefore in situations of domestic violence, a victim's bond with her companion animal can force her to stay with her batterer, and places her in even more danger.

The same bond is also a source of vulnerability for a victim of stalking. A companion animal is an easy target for threats and physical harm. Those threats and physical injuries send a powerful message to stalking victims about their own helplessness.

Human and nonhuman victims of domestic violence and stalking not only share a common vulnerability because of this bond, but also a lack of protection under existing law. Presently, a domestic violence victim who wants to leave her batterer has to choose whether to protect herself by entering a shelter or to stay and protect her pet. Stalking victims are also unprotected by the law when it comes to their pets. A stalker can threaten or injure a victim's pet without consequences under existing anti-stalking law. The law has ignored the crucial bond between victims and their animals and because of that the law has left these victims vulnerable to their attackers.

Although the law's omission has helped to create this vulnerability for victims for domestic violence and stalking, the solution also lies in the law's purview. State legislatures have the power to correct their previous omissions and protect human victims and their companion animals. By passing new laws allowing animals entrance into domestic violence shelters and including them in anti-stalking legislation, legislatures can mitigate the vulnerability under the current law. While the law has contributed to the current problem by ignoring the importance of animals in domestic violence and stalking cases, the law can also help solve it. It is up to legislatures to correct the mistakes and to start protecting victims and their pets.