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Laws and Policy to Address the Link of Family Violence

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the link
between ANIMAL
ABUSE and HUMAN
VIOLENCE

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CHAPTER

18

Laws and Policy to Address the Link of Family Violence

JOAN E. SCHAFFNER

While the social science data supporting the link has been around for many years, the law has been slow to acknowledge it and even slower to capitalize upon it. The early animal cruelty laws were enacted to protect humans' interests directly – owners' interest in their property and society's interest in promoting morality.¹ More recently, the link between animal cruelty and human violence has provided the incentive for legislators and prosecutors to take animal cruelty seriously.² The laws criminalize behaviour that directly harms animals but in turn might lead to, or coincide with, violence against other humans. However, currently the law *independently* addresses animal abuse, domestic violence, child abuse, and elder abuse but does not directly target *the relationships among these abuses* and thus inadequately protects citizens from these crimes.

Why Law and Policy Should Directly Target the Link

It is time for the law and policy directly to target the link. By doing so, violence can be prevented and more effectively prosecuted. The complex relationship among animal abuse, spouse abuse, child abuse, and elder abuse create serious problems for victims. First, one act of violence often comprises multiple forms of abuse. For example, the abuser may abuse the family pet not only to harm the pet but to intimidate and/or psychologically harm other members of the family.³ In this manner, the direct act of animal abuse is also an indirect form of spouse abuse, child abuse, and/or elder abuse. Second, the threat of one type of abuse may be used to silence the victim from reporting other abuses. For example, the abuser may threaten to kill the family pet if the child he has abused tells anyone about her own abuse.⁴ Third, multiple abuses may delay or prevent the victim from escaping the abusive environment. For example, many victims of spouse abuse/domestic violence refuse to leave an abusive home because

they are unable to take their pet and fear that the abuser will harm or kill their pet in retaliation if they leave.⁵ Fourth, the multiple abuses may create liability for the victim. For example, a mother who is a victim of domestic violence and does not leave the home may find herself guilty of child neglect and at risk of losing her child.⁶ The victim is in a no-win situation, the pet may be killed if she leaves but her child may be taken from her if she does not leave. Fifth, a victim of abuse often feels responsible for her own abuse and guilt for not being able to protect other family members from abuse.⁷ For example, the victim of spouse abuse may be reluctant to discuss her own abuse and feel additional pain from witnessing the suffering of her pet.

The law can and should help these victims rather than create roadblocks to safety. With laws that directly target the link, victims can seek safety more easily, additional violence can be prevented, and prosecution of the abuser enhanced.

How Law and Policy Can Directly Target the Link

The law can target and capitalize upon the link between animal abuse and human violence at every step along the cycle of violence – from before the abuse starts through sanction and rehabilitation after the abuser is found guilty. The District of Columbia (DC) has recently introduced comprehensive legislation to reform the District’s animal welfare and cruelty statutes – the Animal Protection Amendment Act of 2007.⁸ Several provisions of the APAA specifically target the link to accomplish these goals. Other reforms directed at the courts or federal entities are also necessary to complete the legal reform. By recognizing the link, law and policy properly implemented can (1) prevent all forms of abuse through humane education, (2) prevent human abuse through effective animal cruelty laws, (3) detect abuse earlier through reporting, (4) enhance protection of family abuse victims through comprehensive protective orders and safe havens, (5) facilitate prosecution of the abuser through evidentiary rules, and (6) avoid further abuse through appropriate sanctions.

Teach Compassion

Humane education programmes in schools teach compassion for all living beings from an early age and may prevent a child from becoming violent.⁹ Characteristics taught through a humane education programme include ‘respect for others, responsibility, honesty, kindness and compassion’.¹⁰ Several states mandate or encourage humane education. For example, New York requires in elementary schools ‘the humane treatment and protection of animals and the importance of the part they play in the economy of nature as well as the necessity of controlling the proliferation of animals which are subsequently abandoned and caused to suffer extreme cruelty’.¹¹ California mandates that teachers ‘endeavor to impress upon the minds of pupils . . . kindness toward domestic pets and the humane treatment of living creatures’.¹²

While humane education may appear to be a non-essential aspect of public education it addresses a critical component of childhood development – compassion.

Prevent Human Abuse through Effective Animal Cruelty Laws

Devoting resources to legislate effectively against and prosecute animal cruelty can prevent future violence towards human victims, since animal cruelty is often the first step towards violence against humans.

First, the legislature must enact adequate animal cruelty laws that properly indicate the seriousness of the crime. Forty-three states, the District of Columbia, Puerto Rico, and the Virgin Islands define certain types of animal cruelty as a felony offence.¹³ Acts of animal cruelty in the District include knowingly overloading, torturing, depriving of necessary sustenance, cruelly chaining, or mutilating an animal.¹⁴ If the offender ‘with the intent to commit serious bodily injury or death to an animal . . . under circumstances manifesting extreme indifference to animal life, commits any of the[se] acts or omissions . . . which results in serious bodily injury or death to the animal’ the offender is charged with a felony and ‘shall be punished by imprisonment not exceeding 5 years, or by a fine not exceeding \$25,000, or both’.¹⁵ To reflect the seriousness of the offence properly, the law should impose a minimum sentence.

Second, prosecutors must aggressively enforce animal cruelty laws by prosecuting animal cruelty cases to the fullest extent of the law. If the legislature signals the seriousness of the crime adequately through the laws and sanctions, prosecutors will have greater incentive to devote adequate resources to these cases.

Finally, the law should grant judges the authority to impose more creative sentences to help rehabilitate the offender. Twenty-eight states include psychological counselling for those convicted of animal cruelty.¹⁶ In particular, the APAA states that ‘the court may order a person convicted of animal cruelty to participate in an animal cruelty prevention program’.¹⁷ One such programme is the AniCare Model.¹⁸ This model is the first professionally developed psychological intervention programme for adult animal abusers. The model ‘uses a cognitive-behavioral approach with direct interventions emphasizing the client’s need to acknowledge accountability for his or her behavior’.¹⁹ The developers have also created the AniCare Child Model for children who abuse animals.²⁰ Additionally, the court should monitor attendance to improve the effectiveness of the programme.

Detect Abuse Earlier

There are several ways in which the law may capitalize upon the inter-related nature of animal abuse and human violence to detect abuse earlier. First, information concerning incidents of animal cruelty must be gathered and maintained in an accessible database for analysis.²¹ Although every state

collects data on incidents of animal cruelty, the national database maintained by the FBI, the Uniform Crime Reporting Program (UCR) does not segregate this information from other crimes.²² As a result, no statistical evidence of the incidents of animal cruelty is available in the US. The solution to this problem is simple – create a separate category for animal cruelty data within the UCR.²³

Second, perhaps the most direct method for capitalizing on the link is to mandate direct reporting and cross-reporting among social service agencies responsible for investigating and reporting family abuses in order to detect family abuse before it escalates.²⁴ Mandated direct reporting of suspect child abuse by physicians, teachers, and other professionals is common.²⁵ Five states include animal control officers among the professionals required to report suspected child abuse and neglect.²⁶ Some have discussed extending this requirement to veterinarians given the demonstrated link between child abuse and animal abuse within the family.²⁷

Several states require or encourage veterinarians to report suspected animal abuse to humane enforcement.²⁸ Issues of confidentiality and privilege may arise when veterinarians report abuse. States that mandate reporting also protect the confidentiality of the informing veterinarian.²⁹ Further, while there is no common law veterinarian-client privilege, some states statutorily require that veterinarians keep their client information confidential.³⁰ Since both mandated reporting of suspected animal abuse and confidentiality of client information are statutorily created there is likely no conflict between these competing duties for veterinarians.

The APAA does not contain a mandatory reporting requirement for veterinarians because of the possible effect of deterring the abusers (or their family) from seeking medical attention for their injured pet. Unfortunately it is unclear whether the benefit of mandated reporting would outweigh the cost of avoiding medical help out of fear of retribution. While the same argument was made for mandated reporting of child abuse, no serious problem has been detected in the child abuse context. However, it is more likely to occur with pets. Abusers (or their family) in a child abuse case would be more likely to seek medical attention for their child when necessary and risk prosecution than in an animal abuse case. While veterinary reporting is certainly a viable option, it was not proposed in DC.

Cross-reporting among the respective agencies can enhance early detection of family abuse; however, no state currently mandates two-way reporting.³¹ Child and adult protective services workers and animal cruelty officers visit homes frequently investigating complaints of abuse; however, they rarely communicate with each other. Since it has been shown that where there is one form of family abuse, it is likely that there are others, these professionals should work together to identify multiple abuses in the home.

The APAA imposes cross-reporting. When a humane officer investigating animal cruelty in the home reasonably suspects child or elder abuse, the officer is to report the suspicion and grounds therefore to the appropriate agency and vice versa.³² The bill adds an additional reporting requirement, an animal pres-

ence report, for child or adult protective service investigators when they observe an animal in the home.³³ This second report is not treated by the Washington Humane Society (WHS), the entity responsible for enforcing the District's animal cruelty laws, as a complaint of animal abuse but rather as a warning to be alert to possible animal abuse in that home. The anticipated need for the animal presence report is based upon the assumption that the weakest member of the family, the pet, is the most vulnerable and thus the more likely target to be a victim of abuse if other abuses are also present. Moreover, the abuser may be abusing the pet to intimidate or control the child, spouse, or elder whose abuse is being investigated even if outward signs of animal abuse are not detected.

Enhance Protection of Family Victims

Protecting victims of family abuse is paramount. Capitalizing on the link can facilitate the early securement of an intrafamily offence protective order by authorizing courts to award protective orders upon a showing of cruelty against the family pet.³⁴ In DC, an 'intrafamily offence' is defined as a criminal act committed by an offender upon a person to whom the offender is related or with whom the offender shares a mutual residence or maintains a romantic relationship.³⁵ By definition, an intrafamily offence involves only human members of the family. However, by recognizing that abuse of the family pet is often used to emotionally abuse a human family member, the APAA authorizes the judge to grant a protective order if, after a hearing, there is good cause to believe that the alleged abuser has committed or is threatening to commit animal cruelty against the household pet with the effect of emotionally or physically injuring a human family member.³⁶ This provision is designed to provide earlier protection for all family members before the abuse escalates to physical violence against a human family member, and to facilitate the securement of a protective order if the adult victims of domestic violence are more willing to report their pet's abuse than their own physical abuse.

The protective order, however, is merely the first step to providing comprehensive protection for all family victims. Three additional components must be in place: (1) women's shelters and/or social services agencies must expand intake information to identify when protection is needed for a family pet; (2) courts must be given express authority to issue a protective order to direct the care, custody, or control of a companion animal residing in the home; (3) there must be a safe haven created for all family members by designating at least one human shelter as 'pet friendly' to maintain family unity during the transition and/or by coordinating with veterinarians and local shelters to provide shelter for the family pet until the family can be reunited.

The District is working to achieve all three. First, animal welfare advocates and the DC Coalition Against Domestic Violence are working to improve communication. Because victims of domestic violence often delay leaving an abusive home because they do not want to leave their pet behind, identifying

women with pets in need of shelter and informing them of options available to protect their pet is crucial. Specifically, intake forms should include questions about the family pet.³⁷ Second, the APAA gives authority to judges when issuing an intrafamily protective order to direct ‘the care, custody or control of a common household pet . . . owned, possessed, leased, kept or held by the respondent, complainant, or a minor child’.³⁸ Anyone in violation of such order ‘shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment for not more than 180 days, or both’.³⁹ Finally, the Washington Humane Society offers safe haven for the pets of victims of domestic abuse.⁴⁰ Interestingly, in 2002 the Shelter for Abused Women and Children in Naples, Florida, opened its new family violence shelter allowing shelter for family pets as well.⁴¹ While it is rare for a human shelter to allow pets given the potential for health and safety problems, allowing the family to remain united during this time can significantly help all victims of the family abuse, especially the children.

Facilitate Prosecution of Abuse

Proving guilt of the abuser can be difficult under any circumstance, given the standard of proof in a criminal case is ‘beyond a reasonable doubt’ and motive and/or intent often lack objective evidence. However, recognizing the relevance of one form of family abuse to another during trial, and allowing introduction of evidence of these related abuses will facilitate prosecution of the offender.⁴² The rules of evidence in both criminal and civil trials limit evidence of other bad acts against the offender.⁴³ Specifically, the rules disallow such evidence ‘to prove the character of a person or to show that the person acted in conformity therewith’⁴⁴ but allow it ‘as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident’⁴⁵ at the discretion of the trial judge. ‘The evidence must be relevant to an issue other than the defendant’s propensity to commit the crime charged, the other act must be similar enough and close enough in time to be relevant, there must be sufficient evidence that the defendant committed the similar act, and the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice’.⁴⁶

A review of the published cases uncovered only two cases in which the court directly addressed the propriety of introducing evidence of animal abuse in a case involving human abuse.⁴⁷ Both cases involved charges of sexual abuse in the home where the defendant abused an animal in front of the victim.⁴⁸ The courts allowed the evidence in only as proof of the victim’s state of mind – to prove that she was afraid of her abuser and/or to explain why she never reported all of the incidents of abuse to others⁴⁹ – or to impeach the credibility of the defendant after he denied doing anything in front of the victim to intimidate her.⁵⁰ The court expressly determined that evidence of animal abuse by the defendant not performed in the presence of the victim would be inadmissible.⁵¹

Because these courts were introducing the evidence of animal abuse as proof of the victim's state of mind, it is arguably correct to require that the abuse take place in the victim's presence. However, one could argue that proof of the victim's knowledge of the pet's abuse by the abuser and/or threats of abuse of the family pet by the abuser if proven should also be admissible. Moreover, given the link between animal abuse and spouse, child, or elder abuse in the home, the relevance of pet abuse should be sufficient to outweigh its prejudicial effect under 404(b) in order to establish identity, intent, and/or motive of the abuser in abusing the human victim.⁵²

Avoid Further Abuse through Sanction

Finally, sanctions against the abuser that directly address the link complete the cycle. First, in addition to requiring that the owner forfeit an animal that he has abused, the APAA adds that: 'The court may order the defendant not to own or possess an animal for any period of time'.⁵³ While the offender is still capable of abusing others' animals or humans if determined to do so, at least one form of family abuse is removed from his arsenal.

Second, when the family dissolves, important issues of child custody and visitation are raised. By recognizing that all abuse in the family is related and thus relevant to these issues, the court should allow evidence of animal abuse of the family pet by the offender in order to make a better-informed determination of custody or visitation rights of the offender.⁵⁴ The issues of relevance are similar to those discussed above in the criminal trial context.

Notes

- 1 See Margit Livingston, 'Desecrating the ark: Animal abuse and the law's role in prevention', *Iowa Law Review* 87, 1 (2001): 21–28; Bernard Rollin, 'An ethicist's commentary on whether veterinarians should report cruelty', in R. Lockwood and F.R. Ascione (eds), *Cruelty to animals and interpersonal violence: Readings in research and application* (West Lafayette, IN: Purdue University Press, 1998), p. 413.
- 2 See Joseph Sauder, 'Enacting and enforcing felony cruelty laws to prevent violence against humans', *Animal Law* 1 (2000), p. 6.
- 3 Jennifer Robbins, 'Recognizing the relationship between domestic violence and animal abuse: Recommendations for change to the Texas legislature', *Texas Journal of Women and the Law* 16 (2006), p. 129, citing Carol Adams, 'Women battering and harm to animals', in C. Adams and J. Donovan (eds), *Animals and women* (Durham, NC: Duke University Press, 1995), pp. 55, 62.
- 4 *Ibid.*
- 5 See Dianna J. Gentry, 'Including companion animals in protective orders: Curtailing the reach of domestic violence', *Yale Journal of Law and Feminism* 97 (2001), p. 13.
- 6 See *Nicholson v. Scopetta*, 3 N.Y.3d 357, 820 N.E.2d 840 (2004). In this class action on behalf of mothers and their children challenging the constitutionality of New York City's policy of finding child neglect and removing children from their mothers' custody solely on ground that the mothers had failed to prevent children

from witnessing domestic violence, the court held that (1) allowing child to witness domestic abuse is insufficient, without more, to satisfy statutory definition of 'neglected child'; and (2) emotional injury from witnessing domestic violence can justify removal of the child, but does not, by itself, give rise to a presumption of injury.

- 7 See Judge Roger Dutson, 'Domestic violence', *Utah Bar Journal* 7 (1994), p. 43.
- 8 DC Council Bill 17-0089 (introduced 6 February 2007, hearings held 6 June 2007, referred to Committees on Health and Public Safety and the Judiciary) [hereinafter APAA]. As the Co-Director of the GW Animal Welfare Project, I worked with Professor, and now DC Council member, Mary Cheh and our students on this legislation. Council member Cheh introduced the legislation in February 2007 and hearings were held June 2007. The legislation is slated to be voted upon by the Council in July 2008. Several amendments have been made to the bill and where appropriate are incorporated here. All citations are to the June 10, 2008 Committee Print version of the Bill.
- 9 See Meena Alagappan, 'Revitalizing interest in humane education', ABA-TIPS, *Animal Law Committee Newsletter* (Spring 2007): 8-10; World Animal Net, *The need for humane education*, at <http://www.worldanimal.net/hme-need.html>. Several programmes are devoted to humane education - see, for example, Humane Education Advocates Reaching Teachers (HEART) at <http://www.teachhumane.org/>; Humane Education Programs at <http://www.humaneedu.com>; Institute for Humane Education at <http://www.humaneeducation.org>; The National Humane Education Society at <http://www.nhes.org/>; National Association for Humane and Environmental Education at <http://www.nahee.org/>.
- 10 Lynda Antoncic, 'A new era in humane education: How troubling youth trends and calls for character education are breathing new life into efforts to educate our youth about the value of all life', *Animal Law* 9 (2003), pp. 183, 189.
- 11 NY Educ. Law § 809.
- 12 West's Ann. Cal. Educ. Code § 233.5.
- 13 HSUS Fact Sheet, *State Animal Anti-cruelty Law Provisions* (June 2007): hsus.org/web-files/PDF/state_cruelty_chart.pdf.
- 14 DC Code § 22-1001(a).
- 15 DC Code § 22-1001(d).
- 16 HSUS Fact Sheet (see note 14).
- 17 APAA § 101(b).
- 18 See Society & Animals Forum web site at <http://www.psyeta.org/AniCare.htm> for a description of the model.
- 19 *Ibid.*
- 20 *Ibid.*
- 21 For discussion of the early FBI uniform crime reporting programme, see Marvin Wolfgang, 'Uniform crime reports: A critical appraisal', *University of Pennsylvania Law Review* 11 (1963), p. 708.
- 22 Naseem Stecker, *Domestic violence and the animal cruelty connection*, 83 Sep-Mich. B. J. (2004) (citing Dr Mary Lou Randour).
- 23 See House Report 108-576, Dept. Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations Bill, Fiscal Year 2005, 108th Congress, to Accompany H.R. 4754.
- 24 Phil Arkow, 'The correlations between cruelty to animals and child abuse and the implications for veterinary medicine', in R. Lockwood and F. R. Ascione (eds),

- Cruelty to animals and interpersonal violence*, p. 409 (discussing the implications for veterinarians to report child abuse). See also, for example, Cal. Penal Code § 11166(a) (West 1999); Conn. Gen. Stat. § 46b-129(a) (1995); see also 'First strike: The connection between animal cruelty and human violence', Humane Society of the United States, at http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/.
- 25 Arkow, 'The correlations', p. 409.
- 26 Mary Lou Randour and Howard Davidson, *A common bond: Maltreated children and animals in the home* (Englewood, CO: American Humane Society, 2007) p. 16 (the five states are California, Colorado, Indiana, Maine, and Ohio).
- 27 Arkow, 'The correlations', p. 409.
- 28 AVMA, State Legislative Resources, 'Required reporting of animal abuse for veterinarians', available at http://www.avma.org/advocacy/state/issues/sr_animal_abuse.asp; see also Rollin, 'An ethicist's commentary', p. 413.
- 29 Heather Winters, 'Updating Ohio's animal cruelty statute: How human interests are advanced', *Capital University Law Review* 29 (2002), pp. 857, 867.
- 30 Rebecca Huss, 'Valuation in veterinary malpractice', *Loyola University Chicago Law Journal* 35 (2004), pp. 79, 490; see also Harold W. Hannah, 'Communications, privilege, and the veterinarian', *Journal of American Veterinary Medical Association* 219 (2001), p. 32.
- 31 See for example Cal. Penal Code § 11166(a) (West 1999) (animal control officers must report suspected child abuse); Tenn. C.A. § 38-1-402 (protective services agency workers must report suspected animal abuse).
- 32 APAA § 113.
- 33 APAA § 101.
- 34 See Robbins, 'Recognizing the relationship', p. 138.
- 35 DC Code § 16-1001(5).
- 36 APAA § 115.
- 37 See Frank R. Ascione, *Safe havens for pets: Guidelines for programs sheltering pets for women who are battered* (Logan, UT: Utah State University Press, 2000).
- 38 APAA § 115. The first states to enact such legislation in 2006 were Vermont, Maine, and New York. See Vermont Bill H.0373 § 4; Maine Bill LD 1881 (HP 1321) § 12; New York Bill 10767A. See Gentry, 'Including companion animals', p. 12.
- 39 DC Code § 16-1005(g).
- 40 *Ibid.*; see also <http://www.washhumane.org/programs.htm> (WHS Safe Haven Program). For a directory of safe haven programs in the US see Humane Society of the United States web site at http://www.hsus.org/acf/cruelty/publiced/safe_havens_for_animals/_safe_havens_directory.html.
- 41 Allie Phillips, 'The dynamics between animal abuse, domestic violence and child abuse: How pets can help abused children', 38 OCT Prosecutor 22, 28 n. 11 (Sept./Oct. 2004).
- 42 See Angela Campbell, 'The admissibility of evidence of animal abuse in criminal trials for child and domestic abuse', *The Boston College Law Review* 43 (2002), p. 463.
- 43 *U.S. v. Curtin*, 489 F.3d 935, 944 (9th Cir. 2007).
- 44 Fed R Evid. 404(b).
- 45 *Ibid.*
- 46 *U.S. v. Hurn*, 2007 WL 2215765 at *2.
- 47 *People v. Singleton*, 2002 WL 31022398 (Cal.App. 4 Dist.); *State v. Thompson*, 533

S.E.2d 834 (Ct app NC 2000); *see also State v. Pugsley*, 911 P.2d 761, 773 (Idaho app. 1995); *State v. Foster*, 915 P.2d 567, 571 (Wash. App. 1996) (mentioning animal abuse in case of human abuse but no evidentiary analysis).

- 48 Singleton, 2002 WL at *1–2, 15, Thompson, 533 S.E.2d at 302, 305.
- 49 Thompson, 533 S.E.2d at 305.
- 50 Singleton, 2002 WL at *15.
- 51 Thompson, 533 S.E.2d at 305–06.
- 52 See Campbell, ‘The admissibility of evidence’.
- 53 APAA § 101(b). Several States currently address future ownership of pets by convicted animal abusers. See, for example, 11 Del. C § 1325(c) (prohibited from owning animal for 5 years after misdemeanour conviction, and 15 years for felony conviction).
- 54 Campbell, ‘The admissibility of evidence’, p. 482; Melissa Trollinger, ‘The link among animal abuse, child abuse, and domestic violence’, *University of Colorado Law Review* (September 2001), pp. 29, 31.