Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence

Dianna J. Gentry
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The time is coming, however, when people will be astonished that mankind needed so long a time to learn to regard thoughtless injury to life as incompatible with ethics.¹

I. INTRODUCTION

Barbara Beardsley, a forty-four-year-old woman, works as a receptionist in Portland, Oregon. Barbara grew up in Beaverton and has lived in the Portland area her entire life. She met Dick when she was only eighteen years old and they were married with a baby by the time she was twenty. Prior to marriage, Dick never hit Barbara. Within a month of getting married, that changed. For the next twenty years, Dick would systematically abuse, threaten, beat and choke Barbara. In addition to the violence against his wife, Dick also perpetrated violence upon his two daughters and many of the companion animals that shared their home.² Barbara, her daughters, and their companion animals represent the classic 'link' between domestic violence, child abuse, and animal abuse. This paper – the research and proposed change to statutory law – is dedicated to Barbara, her daughters, and all the victims of domestic violence, both human and non-human.

Barbara Beardsley's story is not uncommon. Nationwide, state laws fail to provide assistance to domestic violence victims by failing to safely remove and place their companion animals in a safe environment. This paper analyzes the problematic lack of assistance to domestic violence victims regarding their companion animals and offers model legislation, proposed in Oregon, which legislators should adopt in jurisdictions throughout the country.

Currently, the relevant Oregon statute allows one-time police assistance to domestic violence victims to return to their home to pick-up "essential personal

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2. Interview with Barbara Beardsley, Receptionist, Northwestern School of Law of Lewis and Clark College, in Portland, Or. (June 21, 2000) (transcription and tape on file with author).
The law allows for removal of "essential personal effects" of children if the person seeking a protective order (petitioner) is their legal custodian. The statute does not include assistance with removal of the family pet. This gap in the law may stem from the fact that typically, both parties—abuser and victim—maintain co-ownership of the family's companion animals. The failure of the statute to include companion animals means that these animals are at risk of injury or even death while remaining with the abuser. The animals are at risk because abusers often use animals as tools to control women and children in the domestic violence setting. Additionally, studies reveal that many violent individuals are likely to perpetrate violence upon both human and non-human living beings. Therefore, the law does not adequately protect animals when intervening in a battering relationship.

The first purpose of this paper is to address the problem of animal abuse in the domestic violence setting. Second, the paper proposes a change to statutory law. Part II of this paper offers a brief legal history of animals in the law. Part III discusses the link between domestic violence, child abuse and animal abuse. This includes survey data as well as common law and statutory recognition of the link. Part IV includes an overview of current statutory law in each of the fifty states. Part V enumerates public policy reasons for amending current statutes. Part VI proposes model legislation for defining and including companion animals in protective orders. Because the law classifies animals as property, Part VII addresses due process concerns and why the 'best interest of the animal' should be the standard for awarding custody. Part VIII concludes that companion

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3. Family Abuse Prevention Act, OR. REV. STAT. § 107.718 (1)(d) (1999) (allowing that when a victim of domestic violence files a petition, a peace officer may accompany the party who is leaving or has left the parties' residence to remove essential personal effects, including those of the party's children, including but not limited to clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade), OR. REV. STAT. § 107.719 (1), (2) (1999) (stating that a peace officer who accompanies a party removing essential personal effects pursuant to an order shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time; party removing essential personal effects from the residence pursuant to an order is entitled to be accompanied by a peace officer on one occasion only).

4. OR. REV. STAT. § 107.718 (5) (1999) (describing petition form that "shall be available from the clerk of court" with the following check-list language included:

[ ] 6. Respondent shall move from and not return to the residence located at________ except with a peace officer in order to remove essential personal effects of the respondent, and if the respondent is the legal custodian, essential personal effects of respondent's children, including, but not limited to: clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade.

[ ] 7. A peace officer shall accompany the petitioner to the parties' residence in order to remove essential personal effects of petitioner, and if the petitioner is the legal custodian, essential personal effects of the petitioner's children, including, but not limited to: clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade) (emphasis added).

5. The terms "pet" and "companion animal" are used interchangeably throughout the paper.

6. See FRANK R. ASCIONE, SAFE HAVENS FOR PETS; GUIDELINES FOR PROGRAMS SHELTERING PETS FOR WOMEN WHO ARE BATTERED 1 (2000). A female client at a women's shelter in Wisconsin had to return home to try and save her dog's life, while she was at the shelter, her abusive husband took photos of himself chopping of the ears of her dog with gardening shears and mailed both the photos and ears to the client's mother.


8. Id. at 59.
animals are sentient beings usually considered members of the family and as such, deserve removal from violent households when victims seek police assistance. Minor amendment to current domestic relations’ law is an important step in assisting domestic violence victims. Oregon has the opportunity to lead this effort, and other jurisdictions should follow.

II. A BRIEF LEGAL HISTORY OF ANIMALS

_There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe._

Historically, statutes have classified animals as property. However, both courts and legislatures have recognized that animals are more than mere chattel. For example, Boulder, Colorado recently amended its animal ordinances to incorporate use of the word animal “guardian” rather than animal “owner.”

State jurisdictions are also beginning to recognize that animals are not property in the same way that cars or furniture are property. In _Corso v. Crawford Dog and Cat Hosp., Inc._, a pet funeral business lost a dog’s body. The dog owner discovered this when she opened the pet’s casket and discovered a dead cat instead. The court, explicitly overruling previous New York law, held that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”

In another case, the court refused to enforce a will ordering the destruction of decedent’s horses. Less than one month before his death, Howard Brand amended his will, instructing his executor to crush his Cadillac and destroy his horses. The court maintained that, while Brand’s animals fell “within the realm of property law,” they were nevertheless a “unique type of ‘property’” and merited special consideration. The court supported this conclusion based on similar findings in other state jurisdictions and the fact that the court received an outpouring of letters against destruction of the animals and “not a single communication addressing Mr. Brand’s desired destruction of his perfectly good

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9. _WILLIAM BLACKSTONE, COMMENTARIES_ *2.
10. _Id. at *4._
11. _Boulder, Colo., Ordinance 4719 (2000)._ 
13. _Id. at 183._ 
14. _Id. (emphasis added)._ 
15. _In re Estate of Brand, No. 28473 (Vt. Prob. Ct., Chittenden County, Mar. 17, 1999)._ 
16. _Id. slip op. at 2._ 
17. _Id. slip op. at 4._
Cadillac.\textsuperscript{18} The court held the will’s clause ordering destruction of the horses void on public policy grounds.\textsuperscript{19}

The oldest recorded laws prohibiting animal abuse date to 1641 in the Massachusetts Bay Colony.\textsuperscript{20} Most Americans recognize that kindness to animals, or at least an aversion to the intentional infliction of animal suffering, is one of the core values in a civilized society.\textsuperscript{21} Unfortunately, animal abuse is often just another form of violence for the perpetrators of violence against humans. Nowhere is this more prevalent than in the domestic violence setting—where abusers use animals as a tool to control human victims.\textsuperscript{22} The degree to which women and children are emotionally attached to a family pet is the degree to which an abuser can harm them by harming the animal.\textsuperscript{23}

III. “THE LINK”

_When children are taught from the beginning by watching the adults around them and from interaction with their peers they learn the proper way to behave around animals. . . It involves care and love._\textsuperscript{24}

“The link” refers to the connection between some forms of violent antisocial behavior towards women and children and the abuse of animals.\textsuperscript{25} Society has recognized the link concept for several centuries.\textsuperscript{26} Animal abuse is part of a continuum of family violence and legislators, and courts should consider it an indicator of other problems in dysfunctional and violent households.\textsuperscript{27}

Victims of family violence share common traits. Women, children, and family pets share the abuse from the male perpetrator’s misuse of power and control. They share economic dependence, strong emotional bonds, and an enduring sense of loyalty to their abusers.\textsuperscript{28}

\begin{itemize}
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id. slip op. at 6.
\item \textsuperscript{20} ANIMAL WELFARE INSTITUTE, ANIMALS AND THEIR LEGAL RIGHTS 1 (4th ed. 1990) (discussing the Massachusetts Bay Colony “Body of Liberties” – Nos. 92 & 93).
\item \textsuperscript{21} David Favre & Vivien Tsang, The Development of Anti-Cruelty Laws During the 1800s, 1993 DET. C.L. REV. 1 (1993).
\item \textsuperscript{22} ADAMS, supra note 7, at 56.
\item \textsuperscript{23} Id. at 77.
\item \textsuperscript{24} Mother Hildegard George, The Role of Animals in the Emotional and Moral Development of Children, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 380, 390 (Frank R. Ascione & Phil Arkow eds., 1999).
\item \textsuperscript{25} Phil Arkow, The Evolution of Animal Welfare as a Human Welfare Concern, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE, supra note 24, at 19, 23.
\item \textsuperscript{26} Randall Lockwood, Animal Cruelty and Violence Against Humans: Making the Connection, 5 ANIMAL L. 81, 82 (1999).
\item \textsuperscript{27} Phil Arkow, Breaking the Cycles of Violence: A Practical Guide 3 (Latham Found., Alameda, Cal. 1995).
\item \textsuperscript{28} Charlotte Lacroix, Another Weapon for Combating Family Violence: Prevention of Animal Abuse, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE supra note 24, at 62, 64.
\end{itemize}
Some scholars of feminist jurisprudence believe that framing the law around family issues in terms of privacy is detrimental to victims of domestic violence.

"The patriarchal oppressive contexts to keep human male sexual violence toward women, children, and pets out of the higher status political areas and in the inferior, out-of-police-concern private arena... is to the detriment of women, children, pets, and the entire culture."

Domestic violence and animal abuse configure together in three significant ways. The first is the threatening, injuring or killing of an animal, usually a pet, as a way of establishing or maintaining control over women and children. Second is the use of animals to sexually violate women or children, or the use of animals to gain some sort of sexual gratification, i.e., bestiality. Third is injury to animals by children who are themselves the victims of abuse.

Acknowledgement and documentation of the link exists in nationwide studies, case law from jurisdictions around the country and state statutory laws. This paper documents each of these three sources, illustrating existing data and legal precedent. Study data, common law, and current statutory law support the notion that state statutes need strengthening to protect domestic violence victims. Section III A explores several key studies, conducted and published in the past two decades, in order to better understand the link and associated social consequences. Section III B looks at case law regarding domestic violence and animal abuse. Finally, Section III C discusses legislative acknowledgement of the link.

A. Studies on Domestic Violence and Animal Abuse

Studies of the link illustrate some of the key concerns surrounding violence perpetrated upon women, children and animals. Included is the problem of women refusing to leave a domestic violence situation or postponing leaving because of fear for an animal's safety.

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30. Adams, supra note 29, at 76.
32. Id.
33. Id.
34. Frank R. Ascione, Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology, in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE, supra note 31, at 96 (parental reports of cruelty to animals were 33% for abused boys and 27% for abused girls; the percentages were 5% for non-abused boys and 3% for non-abused girls).
35. See Ascione, supra note 6, at 1; Ascione, supra note 31; C.F. Flynn, Animal Abuse in Childhood and Later Support for Interpersonal Violence in Families, 7 SOC'Y & ANIMALS 161 (1999).
In 1998, current or former spouses, boyfriends, or girlfriends committed about one million violent crimes against their partners.\textsuperscript{36} The overwhelming majority of intimate partner violence, 85\%, was against women.\textsuperscript{37} National studies on domestic violence estimate that male partners assault 1 out of every 9 to 12 women.\textsuperscript{38} The U.S. Surgeon General cites violence against women as the leading cause of injury to American women – and a national epidemic.\textsuperscript{39}

Many Americans, including the victims of domestic violence, have significant relationships with animals. A 1983 study designed to determine the role of pets in the family system revealed that 87\% of the respondents considered their pet to be a member of the family.\textsuperscript{40} Seventy-nine percent of individuals celebrate a pet’s birthday.\textsuperscript{41} Like our relationships with other humans, our relationship with our companion animals continues even after death of the animal, as evidenced by more than 600 pet cemeteries in the United States.\textsuperscript{42}

It is because of this relationship with animals that abusers readily have the ability to exercise control over domestic violence victims through their pets.\textsuperscript{43} A family pet may be the one and only source of love that a domestic violence victim receives. Consequently, the relationship between victim and companion animal is a vulnerable one and an easy target for the abuser.

The majority of domestic violence victims seek assistance from a friend or family member.\textsuperscript{44} Obtaining data on domestic violence from these victims is next to impossible. For those who are unable to seek refuge with family or friends, women’s crisis shelters are sometimes available.\textsuperscript{45} Researchers can obtain data more readily from this population of identifiable victims. One study reveals that 18\% of women seeking shelter at a crisis center would have done so...
sooner, except that they feared for the safety of their companion animals.\textsuperscript{46} In one study, almost three-quarters (71\%) of women entering the shelter who were pet owners reported that their male partner had threatened to, or actually had hurt or killed one or more of their pets.\textsuperscript{47} While overwhelmingly the problem is male violence directed at female victims, there are some cases in which the female is the perpetrator.\textsuperscript{48}

A 1998 study of battered women seeking shelter in safehouses revealed that 74\% were pet owners, and of those, 71\% reported that their partners had threatened or actually done harm to or killed a companion animal.\textsuperscript{49} Of these women, 62\% reported that their children had witnessed animal abuse, and 32\% reported that their children were also abusive towards animals.\textsuperscript{50}

A survey conducted by the author illustrates that women entering Oregon shelters are concerned about the safety of their companion animals.\textsuperscript{51} On average, 40\% of women entering Oregon shelters in March 2000 were concerned about the safety of their companion animals.\textsuperscript{52} One shelter reported that as many as 80\% of women entering the shelter shared the concern about the safety of their pets.\textsuperscript{53}

In addition to nationwide and state studies and surveys, case law supports the proposition that domestic violence, child abuse (including sexual abuse), and animal abuses are serious problems. The extent of common law on issues of domestic violence involving pets reflects a small fraction of the occurrence of these violent incidents. This is primarily because most cases of domestic violence never reach the level of the court system that reports case law.\textsuperscript{54}

\textbf{B. Common Law Recognition of "The Link"}

\textit{[T]he evidence before the jury showed . . . the microwave contained a large volume of cat hair and fluids stuck to the door and interior walls.}\textsuperscript{55}

\begin{itemize}
\item \textsuperscript{46} Ascione, \textit{supra} note 31, at 296 (finding that 18\% of 38 women surveyed in a Utah battered women's shelter reported that their concern for their animals' welfare had prevented them from coming to the shelter sooner).
\item \textsuperscript{47} \textit{Id.}
\item \textsuperscript{48} Telephone Interview with Julie Justman, Peace Officer, Humane Society of Pikes Peak Region, Or. (Mar. 13, 2000) (Officer Justman stated that she recently responded to a call regarding a woman who had a history as a domestic violence perpetrator, and on this occasion she had placed the family cat in a microwave for 30 minutes, killing it); see also Alan B. Felthous & Bernard Yudowitz, \textit{Approaching a Comparative Typology of Assaultive Female Offenders}, in \textit{CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE}, \textit{supra} note 31 at 278.
\item \textsuperscript{49} Ascione, \textit{supra} note 31, at 290, 296.
\item \textsuperscript{50} \textit{Id.} at 296.
\item \textsuperscript{51} \textit{SURVEY RESULTS FOR DOMESTIC VIOLENCE SHELTERS IN OREGON COMMUNITIES, CONDUCTED MAR. 2000 AND COMPILED MAY 22, 2000 (PARTICIPATING SHELTERS AND ORIGINAL RESULTS ON FILE WITH AUTHOR).}
\item \textsuperscript{52} \textit{Id.} (survey questions and responses on file with author).
\item \textsuperscript{53} \textit{Id.}
\item \textsuperscript{54} Telephone Interview with Josh Marquis, District Attorney in Clatsop County, Or. (Oct. 23, 2000) (District Attorney Marquis stated that 90\% of criminal cases are settled in the plea bargain phase and that 95\%-98\% of animal cases are plea-bargained, never reaching the trial phase).
\item \textsuperscript{55} Celinski v. State, 911 S.W. 2d 177, 180-81 (Tex. Ct. App. 1995).
\end{itemize}
Under the current criminal charging process, parties settle most animal cruelty charges in the plea bargaining phase. 56 This happens for several reasons. First, when prosecutors include animal abuse with more serious offenses, such as assault and battery or homicide, the prosecutor may drop the animal abuse charges as part of a negotiating strategy. 57 Second, most perpetrators of animal abuse do not want to go to trial on this issue because it is unpalatable, even to most abusers, to publicly disclose facts surrounding animal abuse. 58 Additionally, even if the prosecutor elects to include animal abuse in the charging instrument, a judge may decide that the victim is "just an animal" and not worth the court's time. 59

Available written court opinions including animal abuse in the domestic violence context often exhibit similar fact patterns. In a Texas case, the male perpetrator testified that he believed his live-in girlfriend paid more attention to her cats than to him. 60 Celinski describes the type of suffering that the two cats endured at the hands of defendant Celinski. 61 Autopsies revealed the defendant poisoned both cats with acetaminophen and had cooked one in the microwave long enough to burn his flesh without immediately killing him. 62 Both cats died from their injuries. 63 In addition to illustrating a "classic" form of animal abuse in domestic violence situations, Celinski illustrates the importance of an adequate veterinary exam and report following animal cruelty. 64 A handful of states, including Oregon, protect veterinarians from liability arising from good faith reporting of suspected animal abuse to the police, animal control officers or humane societies. 65

In another case, a court linked animal abuse with child sexual abuse. 66 Floyd and Barbara Schambon were found guilty of eight counts of first degree sodomy, three counts of first degree criminal abuse, twenty-one counts of second degree sodomy, and twenty-eight counts of second degree cruelty to animals. The court also convicted appellant Barbara Schambon of one count of incest. 67 The Schambons lived in a residential neighborhood with their four children and dozens of sick and malnourished animals including dogs, cats and guinea pigs. 68 On appeal, the Schambons argued, in part, that the trial court erred when it

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56. Marquis, supra note 55.
57. Id.
58. Id.
60. Celinski, 911 S.W.2d at 179.
61. Id. at 179–180.
62. Id.
63. Id.
64. PAMELA FRASCH ET AL., ANIMAL LAW 616 (2000).
67. Id.
68. Id. at 806.
declined to sever the animal cruelty charges from the sexual assault charges. When two or more offenses arise from the same act or transaction and are part of a common scheme or plan, Kentucky statutory law permits joinder of the offenses. The trial court concluded that the animal abuse was intertwined with the sex offenses and the appellate court agreed. Both Barbara and Floyd Schambon had been sexually assaulting their children for years. Included in this deviant behavior was the use of animals for sexual gratification.

In an Oregon case, the jury convicted Charles Smith of the aggravated felony murder of his pregnant 27-year old wife, Alice Smith. Charles was undergoing therapy at a treatment facility as a condition of his probation for an assault conviction, and obtained a pass to leave the treatment facility. He phoned his wife Alice, to pick him up. When Alice arrived, a witness saw Charles getting into the car with a length of electrical wire. That same day, Charles drove his wife to a remote area of Coos County, “hog-tied” her feet and hands behind her back, and left her to die of exposure. One month later, a man out walking his dog discovered Alice’s body. The District Attorney presented Charles Smith’s long and disturbing history of criminal violence at the trial. In Smith, the court described both the repeated acts of violence against women and animals. The defendant had been married twice before his marriage to Alice. Throughout the course of these relationships, Smith abused his partner’s animals. He killed six of his first wife’s ducklings by throwing them against a tree in her presence; he severely beat a dog that got in the way of his bicycle; he threw a kitten into a burning woodstove; and he kicked Alice’s puppy to death. Many of these acts occurred more than a decade before Smith murdered his wife Alice.

There were warning signs throughout Smith’s life of his violence towards both human and non-human animals. Currently, laws surrounding violence and cruelty focus on the victim rather than the perpetrator. Several prominent authorities on the issue of domestic violence believe that the solution to a violent society should focus on characterization of the offender and not the victim. Legislatures have the power to pass laws that prevent opportunities for perpetrators to continue their abuse.

69. Id. at 808.
70. Id.
71. Id. at 811.
73. Id. at 848.
74. See generally Lacroix, supra note 28, at 62; Tischler, supra note 60, at 299 (arguing that judges and prosecutors should focus on the course of conduct rather than the victim; violent behavior is violence whether the victims are human or non-human sentient beings); cf. ELIZABETH PLECK, DOMESTIC TYRANNY, THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 187 (1987) (rejecting the idea that the wife should go into hiding while the assailant goes free).
C. Recognition of “The Link” by State Legislatures

State anti-cruelty laws reflect, in part, recognition of the link. In addition to anti-cruelty statutes, states are beginning to recognize the need for cross-reporting. Traditionally, animal protection organizations, child welfare services, and domestic violence agencies have been isolated from one another; there are few program protocols to connect human services with humane services. This situation has spurred some states to pass cutting-edge legislation requiring or allowing for cross-reporting between organizations that serve child welfare and those that serve animal welfare.

Currently, only California has mandatory cross-reporting requirements, where laws include state humane officers as one of the mandated reporters of child abuse. Three other states and the District of Columbia have discretionary cross-reporting laws that permit animal humane officers to report suspected or known child abuse. In Oregon, the Oregon Veterinary Medicine Association (OVMA) is spearheading an effort to introduce mandatory cross reporting legislation in 2001. Many experts on the connection between violence against humans and other animals, as well as others that work in the domestic violence field, believe that in order to progress, cross-reporting is necessary.

In addition to lack of mandatory cross-reporting requirements, resources for animal welfare groups, child services and domestic violence programs are typically strained. Therefore, an integration of the strengths of all three domains might achieve more effective utilization of limited resources and pull more political weight.

IV. NATIONWIDE LAWS CONCERNING PEACE OFFICER ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS

One or more areas of a state’s statutory code may address assistance to domestic violence victims. In the broadest sense, there are two categories of

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76. See Hearings on Or. H. 3377 Before the Senate Comm. on the Judiciary, 1995 Leg., 68th Reg. Sess. (May 10, 1995), http://arcweb.sos.state.or.us (statement from Sharon Harmon, Director, Oregon Humane Society, testifying that in 80% of homes in which child abuse occurs, animal abuse also occurs).
77. PAMELA FRASCH ET AL., ANIMAL LAW 695 (2000).
78. Arkow, supra note 25 at 26 (discussing the challenges of cross-reporting with respect to animal welfare).
79. CAL. PENAL CODE § 11165.16 (West 1999) (amended in 1993 to add “Humane Society Officer” and “Animal Control Officer” to the list of those mandated to report child abuse). Needs to be fixed—Westlaw indicates that this statute was repealed by Stats.2000, c. 916 (A.B.1241), §§ 13 to 15.
81. Interview with Dr. Bob Franklin, Past President, Oregon Veterinary Medicine Assoc., in Keiser, Or. (May 3, 2000).
82. E.g., Lacroix, supra note 28 at 67-71.
statutes. First are the statutes that address assistance from peace officers to domestic violence victims at the scene. The second broad category addresses assistance under a protective order. Under the second category, some states expressly describe peace officer duties under the protective order while other states do not have express language regarding peace officer duties under the protective order.

Some states' statutes address assistance by the peace officer with the removal of personal effects. When victims of domestic violence flee abusive situations, they frequently leave without any possessions. Many states provide in some way for the victim to regain possession of the home, an automobile, and “essential personal effects” such as medications, clothing, diapers and the like. Currently, no state has statutory language that specifically names assistance with removal of a companion animal, at the scene or later, in a protective order along with personal effects.

A. Duties of Peace Officers – Assistance at the Scene of Domestic Violence

Under the category of states that focus on duties of the police at the scene, there are two sub-categories: 1) states that do not provide for assistance with essential personal effects and 2) those that do. For those states that provide for police assistance at the domestic violence scene, the duties of police officer are limited to things like providing information to the victim of her legal rights, providing prevention information, and offering transportation to receive medical treatment or to seek shelter. In these states, there is no mention of police assistance with removal of essential personal effects.

The second subcategory under police assistance at the scene are those states that provide for police investigation of a crime of domestic violence in order to remove essential personal effects.

B. Later Peace Officer Assistance under a Protective Order

The second broad category focuses on the protective order rather than police assistance at the scene. Within this category are several subcategories: 1) protective orders that do not specifically address personal property or assistance by police; 2) protective orders which exclude the abuser from use of the residence, but say nothing about law enforcement assistance for those who do
not want to return to the residence;\(^\text{86}\) 3) protective orders that may provide exclusive possession of the property and assistance of a peace officer;\(^\text{87}\) 4) protective orders that provide for assignment of specified personal property (or personal property generally) but do not mention assistance of the police;\(^\text{88}\) 5) assistance from the police for removal (or transfer) of essential personal effects or property—subcategories here may include states providing no definition for personal effects/property\(^\text{89}\) and those enumerating lists (at least in-part);\(^\text{90}\) and 6) a final subcategory that focuses on the respondent rather than assisting the petitioner.\(^\text{91}\)

V. PUBLIC POLICY SUPPORTS INCLUSION OF COMPANION ANIMALS IN PROTECTIVE ORDERS

State legislatures need to amend current statutes that provide assistance to domestic violence victims to include naming companion animals in protective orders. No statute currently exists that adequately addresses this issue. Because this is an issue of first impression, public policy considerations should be included in constructing the statute and in later interpretation of the statute. Courts have defined the term "against public policy" as "that which conflicts with the morals of the time and contravenes any established interest in society."\(^\text{92}\)

It is currently against public policy to condone domestic violence.\(^\text{93}\) Animal

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86. CAL. FAM. CODE §§ 6321(a), 6324 (West 1999); COLO. REV. STAT. § 14-4-103(3)(b) (1999); IOWA CODE ANN. § 236.5(2)(b) (West Supp. 1999); MD. CODE ANN. FAM. LAW §§ 4-505, 4-506 (1999); TENN. CODE ANN. § 36-3-606 (a)(4) (1998).


91. IDAHO CODE § 39-6308(1)(b),(d),(g) (1998); IND. CODE ANN. § 34-26-2-2, § 2(3)(C), (D) (Michie Supp. 1999).

92. Eyerman v. Mecantile Trust Co., 524 S.W.2d 210, 217 (Mo. 1975).

93. See, e.g., 42 U.S.C. §§ 13931-14040 (1994) (Violence Against Women Act of 1994, Pub.L. 103-322, Title IV, 108 Stat. 1902 (1994)); Navarro v. Block, 72 F.3d 712 (9th Cir. 1995) (court made decision in part on "good public policy" to allow relatives of murdered domestic violence victim to move forward with their equal protection claim, because no rational basis existed for alleged policy of affording victims of domestic violence less police protection than other victims when calling 911); Soto v. Flores, 103 F.3d 1056, 1068 (1st Cir. 1997) (Puerto Rico's Domestic Abuse Prevention and Intervention Act recognizes that the problem of domestic violence impacts women most heavily, and in developing the public policy on this matter the legislature gave special attention to the difficulties that domestic abuse presents, especially for women and children); Blackman v. Commissioner, 88 T.C. 677, 683 (1987) (Maryland has an articulated public policy against domestic violence—court refused to encourage couples to settle their disputes with fire).
abuse, both neglect and cruelty, are also against public policy. State common law recognizes that mistreatment of animals is against public policy.

When a victim of domestic violence obtains a restraining order, the law in Oregon, for example, allows for removal of "essential personal effects" and one-time assistance of the police. The police are routinely involved in assisting with and enforcing restraining orders. Presently, assistance with "essential personal effects" does not include companion animals. This presents problems for many domestic violence victims and their companion animals because the law is silent or unclear. Neither the courts nor the police have received direction from the legislature on the status of companion animals in a domestic violence situation.

One experience of a domestic violence victim's advocate illustrates the problem. The advocate reported including companion animals in a majority of the restraining orders she prepared. The reviewing Clackamas County judge allowed inclusion of the companion animal about one-third of the time but decided two-thirds of the time not to include the animal. It was never clear to the victim's advocate why the judge allowed inclusion in some cases but not in others. Later discussion with the judge revealed that inclusion of the animal under "other relief" was acceptable. When the terms of custody named the animal along with the children, the judge routinely refused to allow including the animal in the order.

The Oregon legislature needs to amend current law because helping domestic violence victims is the right thing to do and animal cruelty is an indicator of other types of violent behavior in the home—typically towards women and children. There is an overriding public interest in 1) making sure companion animals are not at risk of injury or death; 2) assisting victims of domestic violence who may not leave an abusive situation if they are unable to take their animals with them; 3) refusing to 'reward' the perpetrator by allowing him to keep the animal; and 4) preventing further victimization of both the animal and the co-owner—the domestic violence victim.

94. This is evidenced by the fact that every state in the country has some form of animal anti-cruelty statute. See Frasch, supra note 76, at 69; see generally Ascione, supra note 34, at 85 (defining working definition for cruelty to animals as "socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal").

95. See, e.g., In re Estate of Brand, No. 28473 (Vt. Prob. Ct., Chittenden County, Mar. 17, 1999).

96. OR. REV. STAT. § 107.719 (1997) (peace officer who accompanies a party removing essential personal effects pursuant to an order shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time; party removing essential personal effects from the residence pursuant to an order is entitled to be accompanied by a peace officer on one occasion only).

97. GOVERNOR'S COUNCIL ON DOMESTIC VIOLENCE, supra note 45, at 19 (22% of physically abused women obtain a restraining order) (on file with author).

98. OR. REV. STAT. § 107.718(1)(d) (1999) (stating that essential personal effects include but are not limited to "clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade").

99. Interview with Char Palnes, Victim's Advocate, Victims Assistance, Clackamas County District Attorney's Office, in Keiser, Or. (May 3, 2000).

100. Id.

101. Telephone Interview with Char Palnes, Victim's Advocate, Victims Assistance, Clackamas County District Attorney's Office (June 1, 2000).
VI. PROPOSED STATUTORY CHANGE

Every state has some form of statutory law, criminal or civil, addressing procedures for assisting domestic violence victims under a protective order—an ex parte emergency order and/or an order issued after notice.102 Because assistance to domestic violence victims’ law varies among jurisdictions, amended language will also need to vary to meet the needs of each state.

Companion animal and domestic violence advocates, seeking to amend current state code, will need to be both thorough and creative: thorough, because protective orders appear in different sections of state codes, and the codes do not always cross-reference other relevant sections; and creative, because each state’s approach to code construction varies, and in some cases amending current code will be more challenging than others. There is also a catch-22: assisting non-human victims of domestic violence may reinforce the concept that animals are property. Drafting amended language to current code may be a simple task, but it will continue to categorize animals with inanimate property. If this is the case, an individual writing new language may decide to go beyond simply adding the words “companion animal” to a broadly written statute. California code serves as an example. Specifically, California Family Code Section 6324 states, “The court may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties . . . “103 If the language “including companion animals” were added to follow “personal property” the code section would fail to distinguish animals from inanimate property. In lieu of simply adding the words “companion animal,” a drafter may need to go a little further. The same California code section might read something like “the court may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties. The court may determine which of the parties shall take possession and care of companion animals co-owned by the parties.” Going one step further, a third and better alternative would leave companion animals out of the “real or personal property” section altogether. A code drafter might simply add a new category to California Family Code — something like — “Section 6328. Ex parte order regarding companion animals.” Once again, statutes need to express language regarding companion animals because current law provides little or no direction to courts and peace officers on assisting domestic violence victims with the safe removal of their pets.

Every state, with the exceptions of Alabama, Colorado, Nebraska, Oklahoma, and Vermont, expressly provides a category for “other relief” under an ex parte order and/or order issued after notice.104 Therefore, a majority of

102. LEONARD KARP & CHERYL L. KARP, DOMESTIC TORTS, FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE § 1.17, at 33 & n.110 (West Supp. 2000).
103. CAL. FAM. CODE § 6324 (West 1999).
104. Id. at App. A. I can’t find what this footnote is referring to.
states could amend the “other relief” section to include language about companion animals.

New York law serves as a good example of multiple possibilities for companion animal inclusion in protective orders. Under New York’s code, a petitioner may remove personal property pursuant to protective orders included in the child custody section. Section 240 of New York domestic relations law permits “a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act.”\(^{105}\) The New York legislature could amend section 240 by inserting, “including companion animals,” following “remove personal belongings.” Section 240 also cross-references the “Family Court Act:” an order may require the petitioner or respondent “(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings . . . .”\(^{106}\) Again, the legislature could amend the Family Court Act to include protection for companion animals. Section 842 (i) states, “to observe such other conditions as are necessary to further the purposes of protection . . . .”\(^{107}\) “Other conditions” should include directing courts to order the removal of companion animals from the custody and control of the abuser.

Oregon statute provides a direct and simple opportunity for amending current language because Oregon is one of the states that offers police assistance with removal of “essential personal effects.” The following section details how Oregon, which allows removal of property under an ex parte emergency order, can amend current law to assist victims of domestic violence with safe removal of companion animals from the abusive setting.

A. Defining Companion Animal

The legislature should amend the Family Abuse Prevention Act\(^{108}\) to include the term companion animal. ‘Companion animal’ means any non-human mammal, bird, or reptile. Obviously, this definition is broad. It raises issues concerning things like farm animals and commercial livestock. An alternative and narrower definition of ‘companion animal’ might be any non-human mammal, bird, or reptile for the primary purpose of providing companionship to the owner, rather than for business or agricultural purposes.

B. The Model Statute

The legislature should amend\(^{109}\) ORS 107.718(1)\(^ {110}\) to read:

\(^{105}\) N.Y. DOM. REL. LAW § 240.3(4) (McKinney Supp. 2001).
\(^{106}\) N.Y. FAM. CT. ACT § 842(d) (McKinney 2000).
\(^{107}\) N.Y. FAM. CT. ACT §842(i) (McKinney 2000).
\(^{109}\) Proposed language in brackets.
\(^{110}\) OR. REV. STAT. § 107.718.
When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the petitioner, the court shall, if requested by the petitioner, order, for a period of one year or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner . . . . (d) That a peace officer accompany the party who is leaving or has left the parties’ residence to remove [the companion animal(s)] and any essential personal effects of the party or the party’s children, or both, including but not limited to clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade. . . .

The legislature should amend ORS 107.719\textsuperscript{111} to read:

(1) A peace officer who accompanies a party removing [companion animals, and] essential personal effects pursuant to an order issued under ORS 107.718 shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time. Nothing in this subsection shall affect a peace officer’s duty to arrest under ORS 133.055 and 133.310.

(2) The party removing [companion animals, and] essential personal effects from the residence pursuant to an order issued under ORS 107.718 is entitled to be accompanied by a peace officer on one occasion only.

(3) A peace officer who accompanies a party removing [companion animals, and] essential personal effects pursuant to an order issued under ORS 107.718 shall have immunity from any liability, civil or criminal, for any actions of the party committed during the removal of essential personal effects.

A law instructing the police to assist victims of domestic violence with the removal of their companion animals while affording the police immunity from liability is a modest extension of already existing domestic relations law. Inclusion of companion animals in the Family Abuse Prevention Act does not extend police power beyond what the current law already directs them to do—assist victims when returning to the home to obtain essential personal effects. Yet, the benefits to victims of domestic violence, both human and non-human, are potentially significant.

\textsuperscript{111} OR. REV. STAT. § 107.719.
Because some shelters are not equipped to handle companion animals, concerns may arise regarding the placement of pets for those women entering shelters. However, some communities, including Portland and Bend have well-organized pet fostering programs for domestic violence victims. Additionally, numerous and detailed examples of how to set-up a community program for sheltering pets are available.

In addition to the concern for animal placement is the concern surrounding animal ownership. Companion animals in the family setting are typically co-owned by the household's adults. Therefore, due process issues may arise.

VII. DUE PROCESS

*Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.*

Generally, the two requirements of procedural due process are notice and hearing. In some circumstances the hearing may be post rather than pre-seizure. In most cases where the court grants an ex parte protective order to a petitioner, the respondent will have an opportunity to respond to the order. In Oregon, prior to the hearing, the petitioner—with the assistance of a peace officer—is entitled to remove "essential personal effects" from the home. If the respondent chooses to contest removal of the items, he will have an opportunity to do so at the contest hearing. Companion animals warrant removal under emergency protective orders, and thus pre-hearing seizure, because of the probability of danger to the animal when left with the abuser.

A. Procedural Due Process Regarding Removal of Companion Animals

First, due process may only become an issue in a post-seizure hearing, if the co-owners contest ownership of the animal. At the time the police are assisting the victim with removal of the animal, the State is merely present to protect the rights of the victim co-owner, not to take possession of companion animals and essential personal effects itself. In other words, it is the victim acting, not the State.

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112. Survey Results for Domestic Violence Shelters in Oregon Communities, *supra* note 53. Survey conducted by author shows evidence that several of Oregon's women's shelters provide some type of assistance with an animal—either in house care or pet foster care placement.
113. Dove Lewis Animal Hospital.
114. Central Oregon Humane Society.
115. *E.g.,* Ascione, *supra* note 6, at *app.*
118. *Id.* at 82. Due process requires "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event" (quoting Boddie v. Connecticut, 401 U.S. 371, 378-79 (1971)).
Second, while the procedural due process provisions of the federal 119 and Oregon state constitutions 120 impose constraints on State actions that deprive individuals of their private property, companion animals are not the same as inanimate objects. When a court "determines what is due process of law [it must] consider the nature of the property, the necessity for its sacrifice, and the extent to which it has... been regarded as within the [State's] police power." 121 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.

Increasingly, modern courts recognize that pets generally do not fit neatly within traditional property law principles. 122 As personal property, companion animals may have a monetary market value. 123 However, some jurisdictions recognize a heightened "actual or intrinsic value" in companion animals for their owners. 124 Because animals are not inanimate objects like the vast majority of property, state legislatures and courts must fashion rules that protect the interests of both owners and animals. Later, at a post-seizure hearing, if the abuser decides to assert ownership interest in the animal, the court should adopt a "best interest of the animal" approach.

B. Companion Animal Custody Rights - Best Interest of the Animal

The current legal system presumes that an individual is entitled to notice and opportunity for a hearing prior to the State's permanent deprivation of a property interest. 125 In some cases of domestic violence, notice and opportunity for a hearing prior to depriving an abuser of the animal may be possible. However, it is when the victim needs to return home briefly to remove essential items, including an animal that may be at risk, that a pre-deprivation hearing may not be in the best interest of the co-owner victim or the animal.

In most cases of domestic violence victims seeking court orders, there is a need to act quickly. A dangerous time for victims of domestic violence—when they are at increased risk—is the period immediately after fleeing the abuser. 126

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120. OR. CONST. art. I, § 9.
122. E.g., Corso v. Crawford Dog and Cat Hosp., Inc., 415 N.Y.S.2d 182 (1979) (recognizing that animals are not like other property in landlord tenant cases, tort actions, and domestic relations/custody cases).
123. Green v. Leckington, 236 P.2d 335 (Or. 1951).
124. Corso, 415 N.Y.S.2d at 183 (stating that dog owner is entitled to more than market value of dog); [A] pet is not just a thing.... [a]n heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response.... [B]ut a dog is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness.
126. See Barbara Hart, Battered Women and The Criminal Justice System, in DO ARRESTS AND RESTRAINING ORDERS WORK 98, 99 (Eve S. Buzawa & Carl G. Buzawa, eds., 1996) (stating that fifty percent of...
The law already recognizes the necessity for police assistance to victims in returning to the home to retrieve belongings. It logically follows that animals, typically loved and cherished by the victims, are also at increased risk during this period.

While the State may be depriving one owner of a property right, it is also assisting a co-owner with protection of that same right. If the victim believes an animal is at risk of injury or even death, how harmful can the deprivation be to the perpetrator?

So long as the victim’s safety is not in jeopardy, the law should allow a post-deprivation hearing. In other words, there is no reason not to provide the co-owner with a post-deprivation hearing opportunity, unless extenuating circumstances exist that would place the victim in harms way – such as the abuser being able to find out where the victim resides.

When there is a hearing and a co-owner challenges custody of the animal, courts should award custody based on best interest of the animal.

VIII. SUMMARY

Domestic violence touches each of us. Over 50% of all women will experience physical violence in an intimate relationship, and for 24-30% of those women, the battering will be regular and ongoing. In the United States, the crime of battering occurs every 15 seconds. Violence begets violence. Included in the battering against women is the physical abuse of children and companion animals. The American Bar Association’s Commission on Domestic Violence believes that domestic violence arises in so many areas of legal practice that, as a matter of professional competency, lawyers must screen for domestic violence, and all law schools must require law students to study domestic violence.

With America’s ever-growing awareness of domestic violence issues, people must realize that victims need assistance and relief. Historically, the legal system has been a source of that relief, but more needs to be done.

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battered women fear retaliation if they participate in prosecution and 32% of women are re-victimized within six months of criminal justice intervention as opposed to 13% of victims of stranger-committed crimes).

128. Raymond v. Lachmann, 695 N.Y.S.2d 308, 309 (1999) (ordering the parties to work out a visitation schedule that did not shift custody of their cat back and forth, because moving the cat around all the time was not in cat’s best interest); see also Brooke A. Masters, In Courtroom Tug of War Over Custody, Roommate Wins the Kitty, Wash. Post, Sept. 13, 1997, at B1 (reporting that the court had decided that it was in best interest of their cat to award the animal to the roommate that provided the most care).
130. Id.
With some exceptions, the law of domestic relations traditionally belongs to state jurisdictions.\textsuperscript{132} Therefore, the responsibility for preventing domestic violence and protecting its victims lies within the power of the state legislature and judiciary.

Currently, however, there is no direction from either the legislature or the judiciary regarding assistance to victims with the safe removal of their companion animals from an abusive situation. Because of this lack of assistance, victims are remaining in violent households or returning to violent households in order to protect their beloved companion animals. The Oregon legislature has the opportunity to lead the nation by amending existing domestic relations law in order to provide needed assistance to victims of domestic violence.

Including the term “companion animal” in the Family Abuse Prevention Act\textsuperscript{133} is a minor amendment with a potentially significant impact. Currently, the law entitles domestic violence victims who have fled an abusive relationship to retrieve items such as dresses, diapers and deodorant—surely the family dog, cat or hamster is worth including in the list of items necessary to the victim. Additionally, ensuring that the victim and not the abuser maintain custody of the family pet is in the best interest of the animal.

This paper offers a simple and straightforward approach to amending a current statute. By simply adding the term “companion animal” to a current statute, both human and non-human victims of domestic violence will benefit.

\textsuperscript{132} Ankenbrandt v. Richards, 504 U.S. 689 (1992) (finding an exception to the general rule that federal courts have no diversity jurisdiction over domestic relations in an action for alleged sexual and physical abuse of children committed by their father and his girlfriend).

\textsuperscript{133} OR. REV. STAT. § 107.718 (1)(d) (1999).