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THE DANGEROUS “WAITING GAME” CAUSED BY THE FAILURE TO RECOGNIZE ANIMAL ABUSE IN
THE FORMAL DEFINITION OF DOMESTIC VIOLENCE

By Jessica Kalafut

Introduction

Although many may view the home as a place where individuals are the safest, the reality for those who are affected by domestic violence, also called “intimate partner violence,” is that “home” is where torture occurs — of wives, of children, and even the family pet. A real life incident illustrates the horror that some experience. A man abused not only his wife and his children but also the family pet to scare the others into keeping silent about the abuse.¹ He showed his family, whom he was supposed to protect, what would happen if they told anyone about the abuse he subjected them to, by starting a fire on a barbeque grill and roasting the family puppy alive in front of his children.² Other batterers have severed a pet’s ears and mailed them to a victim who has left or run over a family pet in front of his family as a way of terrorizing them.³

It is crucial to the administration of civil protection orders to precisely define “abuse” since a court is unable to issue protection orders unless it finds that what occurred fits within what the statute considers “abuse.”⁴ Such orders could help in shielding those who experience the type of abuse mentioned above. Typically, a predicate act of “domestic violence” must occur in order for there to be a basis to issue an order.⁵ Most commonly, domestic violence involves

¹ Travis Whitehead, *Experts Warn of Ties Between Domestic, Animal Abuse*, THE BROWNSVILLE HERALD, Nov. 28, 2011. Available from: Westlaw; Accessed 2/8/13.

² *Id.*

³ CT General Assembly. Connecticut Judiciary Committee Transcript, Mar. 5, 2007. Available from: Westlaw; Accessed 1/18/13 (statement of Rep. Urban).

⁴ Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 35 (2008) (providing a background of domestic violence).

⁵ *Id.*

the “physical, sexual, or psychological harm by a current or former partner or spouse.”⁶ The staples of domestic violence — power and control — often are present long before a physical attack takes place, therefore a system based on the issuance of protection orders in response to physical harm is an intervention that comes too late.⁷ Expanding statutes to include animal abuse in states’ statutory definitions of abuse is a necessary preventative measure. Such recognition takes into account the dynamics of domestic violence as a cycle of abuse that is predicated on power and control by the batterer. Similarly, recognition reduces the potential lethality that could result for a victim since batterers who exert aggression on helpless animals are likely to transfer the torture to human victims. Defining animal abuse as a form of domestic violence is an important step that should be taken by state legislatures in order to afford victims the maximum protection under the law.

This Note will begin with an overview of the epidemics of both animal abuse and domestic violence as well as their connection to each other in Part I. Part II will explain the present state of legislation and the remedies it affords by discussing the general process of obtaining protection orders and the current trend to include pets on such orders. Limitations of the current trend are analyzed in Part III; formal recognition of animal abuse as a form of domestic violence is proposed to ensure maximum protection of victims with a specific focus on New Jersey legislation. Part IV enumerates additional benefits of formal recognition of animal abuse as a form of domestic violence with Part V finally summing up this Note’s discussion.

Part I: Overview of the Epidemics of Domestic Violence and Animal Abuse and the Interplay Between the Two

⁶ Centers for Disease Control and Prevention, *Intimate Partner Violence: Definitions*, Injury Center: Violence Prevention. <http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/definitions.html> (last visited Jan. 18, 2013).

⁷ Baker, *supra* note 4, at 35.

This section provides a short overview of two types of violence — domestic violence and animal abuse — as well as their common presence within homes throughout the United States. The tendency for the two types of violence to co-occur raises great concerns for safety. Examples are provided to show how animal abuse can present a barrier for victims of domestic violence in leaving an abusive relationship and provide an avenue for batterers to further control their victims. Additionally, the likelihood that the batterer will transfer his torture from a helpless animal to a human victim is well established. This potential is a major lethality factor suggesting a victim is at a high risk for significant, maybe even fatal, abuse. Therefore, the legislature should afford greater weight to the presence of animal abuse when providing orders to protect victims of domestic violence.

*A. Domestic Violence*⁸

The epidemic that has previously been a private home matter is still kept a secret in many homes across the United States.⁹ “Often domestic abuse is a dark secret, and frequently the general public is unaware how far the violence extends.”¹⁰ Although both men and women experience abuse at the hands of an intimate partner, about 73 percent of victims are female. The National Coalition Against Domestic Violence reports that one out of every four women will become a victim of domestic violence during their lives.¹¹ Of all the causes of injury to women

⁸ For the purposes of this article, a female pronoun will be used since women experience domestic violence at higher rates. This, however, is not meant to minimize the reality that men also experience domestic violence.

⁹ See generally MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY (1981) (discussing the tendency for domestic violence to be kept quiet and within the home).

¹⁰ CT General Assembly. Connecticut Judiciary Committee Transcript, Mar. 5, 2007. Available from: Westlaw; Accessed 1/18/13 (statement of Amy Stegall, President of Connecticut Horse Council).

¹¹ Public Policy Office. *Domestic Violence Facts: New Jersey*, National Coalition Against Domestic Violence, <http://www.ncadv.org/files/NewJersey.pdf> (quoting Bureau of Justice Statistics, *Family Violence Statistics*. U.S. Department of Justice (2005)); *Id.* (quoting P. Tjaden & N. Thoenned, *Extent, Nature and Consequences of Intimate Partner Violence Against Women Survey*. National Institute of Justice and the Centers of Disease Control and Prevention (2000)).

in the United States, domestic violence is the primary cause.¹² It involves “a pattern of abusive behavior . . . that is used by one partner to gain or maintain power and control over another intimate partner” through violence and coercion.¹³

Although many may envision the type of abuse experienced by domestic violence victims as physical, imagining black eyes and bruises, it extends beyond that to also include “sexual, emotional, economic, or psychological actions or threats of actions.”¹⁴ The batterer’s goal often is to humiliate, intimidate, isolate, or terrorize the victim.¹⁵ Domestic violence transcends all lines which are commonly used to segregate individuals within society — race, gender, socioeconomic class, sexual orientation, and religion.¹⁶ There seems to be no characteristic that predicts who is safe from being affected by domestic violence. However, some research suggests a correlation between witnessing abuse as a child and then later either becoming abusive towards a partner or becoming a victim of abuse.¹⁷ Additionally, a correlation seems to exist between incidents of domestic violence and poverty which may be caused by greater patterns of reporting of abuse in less affluent communities.¹⁸ The reach of effects is not limited to the batterer and the

¹² NANCY K. D. LEMON, DOMESTIC VIOLENCE LAW 8 (3rd ed. 2008) (quoting Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970–1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 46 (1992)).

¹³ U.S. DEPARTMENT OF JUSTICE – OFFICE ON VIOLENCE AGAINST WOMEN. www.ovw.usdoj.gov/domviolence.htm (last visited Jan. 18, 2013).; Lemon, *supra* note 12, at 26 (citing Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991)).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 652 (Elizabeth M. Schneider, et al., ed., 2nd ed. 2008).

¹⁸ BATTERED WOMEN AND THE LAW 185–186 (Clare Dalton & Elizabeth M Schneider, eds., 2001). The editors state that once advocates started seeing the connection between welfare receipt and domestic violence, the realization was made that “in fact poor women *are* more likely to be battered . . . and that poor men *are* more likely to abuse their partners than their wealthier counterparts.” It is not, however, proven to be a cause of violence. The reports of domestic violence in these communities might be skewed as women with higher incomes likely have the resources to privately remedy the experience of abuse. Similarly, the greater prevalence of law enforcement in poor communities and higher arrest rates can contribute to the higher numbers. See Cheryl Hanna, *Domestic Violence*, in ENCYCLOPEDIA OF CRIME AND JUSTICE 544 (Joshua Dressler, vol. 2., 2nd ed. 2002).

victim. Rather, others, including friends and family, are affected with an especially great impact on those closest to the violence, such as children and even the family pet.¹⁹

Nationally, more than 12 million victims annually experience abuse at the hands of an intimate partner.²⁰ Specifically, New Jersey police reported 74,244 domestic violence offenses in 2010.²¹ These figures show the great number of individuals who suffer annually from domestic violence. Such a pervasive epidemic affecting society results in various future implications including its impact on children within the home. Children who either personally witness the abuse or observe its effects through physical manifestations such as broken furniture or black eyes often exhibit disruptive and aggressive behavior including violence towards other children as well as animals.²² Some evidence indicates that the harm caused to such child witnesses — behavioral and psychological issues — can be improved by removing the batterer from the household.²³ The children are also at risk because of the potential of a batterer transferring his abuse to them. Some research suggests that approximately half of those who abuse their partners also abuse their children.²⁴ If a batterer is not removed and the children's exposure to the violence continues, there is an increased chance that a child will grow to either be a perpetrator of domestic violence or a future victim because of the pattern of abuse they have experienced.²⁵

¹⁹ Lemon, *supra* note 12, at 26 (citing Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991)); Public Policy Office. *Pets and Domestic Violence Factsheet*. National Coalition Against Domestic Violence, www.hope-eci.org/_documents/petsanddv.pdf.

²⁰ Division of Violence Prevention, *Understanding Intimate Partner Violence Factsheet*, National Center for Injury Prevention and Control. http://www.cdc.gov/ViolencePrevention/pdf/IPV_Factsheet2012-a.pdf. (citing Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).

²¹ Uniform Crime Reporting Unit. *Domestic Violence in New Jersey: For the Year Ending December 31, 2010*. State of New Jersey, Department of Law and Public Safety, Division of State Police 1, http://www.state.nj.us/njsp/info/ucr2010/pdf/2010_domestic_violence.pdf.

²² Schneider, *supra* note 17, at 523 (citing Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL. U. L. REV. 403 (2005)).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 652.

B. Animal Abuse

Animal abuse is defined as the “nonaccidental, socially unacceptable behavior that causes pain, suffering or distress to and/or death of an animal” that can be either deliberate or simply a failure to take proper care of the animal.²⁶ A broad definition encompasses the extent of “abuse” to which an animal may be subjected — “any cruel and unwarranted treatment of an animal, including . . . the intentional infliction of physical pain or injury (beating, hitting, kicking, shooting, drowning, . . . engaging in sexual acts with an animal, excessive confinement, allowing an animal to live in unsanitary conditions, [and] exposing an animal to extreme conditions).”²⁷ There is no set way to determine who will become a perpetrator of such abuse.

C. Scope of Problem: Co-Occurrence of Animal Abuse and Domestic Violence

The scope of the issue of co-occurrence of animal abuse and domestic violence is broad, affecting many victims. Surveys conducted nationally by various universities and the Humane Society report about 74 percent of female victims have an animal and 75 percent of those animals have been threatened, harmed or killed by their partners.²⁸ The prevalence of this issue raises additional safety concerns since up to 40 percent of victims are hindered in the ability to escape abuse because of their concern of what will happen to their animals if they leave.²⁹

²⁶ Frank Ascione & Kenneth Shapiro, *People and Animals, Kindness and Cruelty: Research Directions and Policy Implications*, 65 JOURNAL OF SOCIAL ISSUES 569, 570 (2009).; *Animal Abuse and Neglect*, THE HUMANE SOCIETY OF THE UNITED STATES, http://www.humanesociety.org/issues/abuse_neglect/ (last visited Oct. 26, 2012).

²⁷ Margeta Vellucci, *Restraining the (Real) Beast: Protective Orders and Other Statutory Enactments to Protect the Animal Victims of Domestic Violence in Rhode Island*, 16 ROGER WILLIAMS U.L. REV. 224, 228 (2011). A distinct form of animal abuse and one that is particularly disturbing is bestiality which involves a sexual relation between a human and an animal. At the hands of batterers, animals may be sexually violated for sexual gratification or used to also sexually violate women and children. Rebecca R. Wisch, *Overview of State Bestiality Laws*, ANIMAL & LEGAL HISTORICAL CENTER, <http://www.animallaw.info/articles/ovuszoophilia.htm> (2008) (last visited Sept. 11, 2012).

²⁸ Amy Sacks, *When Pets are Caught in Middle of Domestic Abuse*, N.Y. DAILY NEWS, Apr. 28, 2007, available at Westlaw at 2007 WLNR 8069380.

²⁹ *Facts About Animal Abuse and Domestic Violence*, AMERICAN HUMANE ASSOCIATION, <http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html> (last visited Jan. 18, 2013).

In a study done by Frank R. Ascione, Ph.D., 38 women who actually did seek shelter at a safe house were surveyed and more than half reported their batterer had either threatened or actually abused an animal.³⁰ They provided disturbing accounts of their batterer's acts towards the family pet: placing a kitten in a blender, burying a cat up to its head and mowing it, pouring lighter fluid on a kitten and igniting it, drowning animals in a bathtub, shooting and starving them, and depriving them of medical care.³¹

As previously stated, children may themselves become violent as a consequence of witnessing abuse in the home. Ascione's study highlights this point. Of the women surveyed, 32 percent stated that one of their children had either harmed or killed a pet or pets.³² Examples of the types of abuse that children engaged in included "throwing a kitten against a wall, . . . pulling a kitten's head out of its socket, and sodomizing a cat."³³

D. Interplay Between Domestic Violence and Animal Abuse

³⁰ Frank Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animal*, 1 J EMOT. ABUSE 119, 119–120 (1998). The American Humane Society also reports a high rate of co-occurrence of animal abuse and domestic violence stating that "71 percent of pet-owning women entering women's shelters reported that their batterer had injured, maimed, killed or threatened family pets for revenge or to psychologically control victims." *Facts About Animal Abuse and Domestic Violence*, AMERICAN HUMANE ASSOCIATION. <http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html> (last visited Jan. 18, 2013).

³¹ Ascione, *supra* note 30, at 125.

³² *Id.* About 71 percent of the children who abused animals had themselves witnessed the batterer's abuse or threats against a pet.

³³ *Id.* Animal cruelty is also included in the Diagnostic and Statistical Manual of Mental Disorders as a symptom of conduct disorder which involves the "repetitive and persistent pattern of behavior in which the basic rights of others . . . are violated." Conduct disorder in childhood can develop into antisocial personality disorder in adulthood. *See* AM. PSYCHIATRIC ASS'N, QUICK REFERENCE TO THE DIAGNOSTIC CRITERIA FROM THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IV-TR 291 (2000). Those with antisocial personality disorder can be particularly dangerous because of their lack of remorse and indifference in harming others and the high tendency to participate in physical assaults or homicides at times involving spouses. *See* DONALD W. BLACK AND NANCY C. ANDERSEN, INTRODUCTORY TEXTBOOK OF PSYCHIATRY, 300–01 (5th ed. 2011). "Some of the most notorious serial killers, including Jeffrey Dahmer and Ted Bundy, tortured and killed animals in their youth before turning to human victims." Emma Ricaurte, Comment, *Son of Sam and Dog of Sam: Regulating Depictions of Animal Cruelty Through the Use of Criminal Anti-Profit Statutes*, 16 ANIMAL L. 171, 181 (2009).

“Animals constitute a helpless, silent majority of living creatures . . . [which] serve as an easy target of an abuser’s aggression.”³⁴ As stated, this aggression may also transfer to other family members. “Mistreating animals is no longer seen as an isolated incident that can be ignored: it is often . . . a ‘red flag’ warning sign that other family members in the household may not be safe.”³⁵ Animal abuse serves as “one of the first warning signs of a potential for violence against humans, particularly in the home.”³⁶ Some have explained this connection as a result of desensitization — “a person who abuses animals may then become desensitized to the pain felt by another living creature, which in turn makes it easier to inflict harm on a human victim.”³⁷

Aside from a transfer of physical abuse to human victims, batterers may also utilize animal abuse to further abuse their partners in other ways, as their main goal is to exert power and control.³⁸ “Through abusing a pet, a batterer exerts power . . . over his victim vicariously, as the victim experiences the abuse of the animal through sympathy.”³⁹ A batterer’s reasons for abusing a pet may include any or all of the following: to “confirm power or control over the family, to isolate the victim and children, to force the family to keep violence a secret, to perpetrate the context of terror, to prevent the victim from leaving or coerce her/him to return, to punish the victim for leaving, and to degrade the victim through involvement in [the animal’s] abuse.”⁴⁰ Batterers also “send a powerful message to . . . victims about their own helplessness”

³⁴ Vellucci, *supra* note 27, at 233.

³⁵ THE NATIONAL LINK COALITION, <http://nationallinkcoalition.org/> (last visited Jan. 5, 2013). The connection between animal abuse and physical violence has long been recognized by FBI profilers who recognize animal abuse as one of four indicators of future violent behavior. See Jeremy Wright & Christopher Hensley, *From Animal Cruelty to Serial Murder: Applying the Graduation Hypothesis*, 47 INT’L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY, 71, 73 (2003).

³⁶ Vellucci, *supra* note 27, at 233.

³⁷ *Id.* (quoting Frank R. Ascione, *The Abuse of Animals and Human Interpersonal Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE AND ANIMAL ABUSE 50–51 (Frank R. Ascione & Phil Arkow eds., 1999)).

³⁸ Tara J. Gilbreath, *Where’s Fido: Pets are Missing in Domestic Violence Shelters and Stalking Laws*, 4 J. ANIMAL L. 1, 2 (2008).

³⁹ *Id.*

⁴⁰ *Id.* at 6 (quoting The Humane Society of the United States, First Strike Campaign 2003 Report of Animal Cruelty Cases, at 3 (2003) <http://files.hsus.org/webfiles/PDF/2003AnimalCrueltyRprt.pdf> (last visited Oct. 30, 2007)).

through such abuse by providing a “preview” of what could occur to the human victim if the batterer is disobeyed.⁴¹

One incident described by a battered woman, who eventually killed her husband in fear for her life, illustrates her husband’s use of animal abuse as a “preview” of what he might do to her and their children. In addition to abusing her and their children, he also terrorized the family’s pet rabbit.⁴² On one particular occasion, he had taken the pet rabbit, hung him in the garage, and made his wife and children watch as he skinned the animal alive.⁴³ He then grabbed his son, held him next to the screaming rabbit, and stated “[s]ee how easy it would be?.”⁴⁴

Even in the face of such abuse, victims are hindered in their ability to leave because of their attachment to their animals. The presence of an emotional bond between humans and animals categorizes pets as more than mere property, making it difficult for victims to simply leave pets behind like they would furniture or antique heirlooms.⁴⁵ The presence of such an attachment is often exploited by batterers to further abuse victims who cannot bring themselves to leave. In homes where domestic violence is present, the bond with an animal may be greater, as a pet may provide the sole source of “love and companionship that a victim has available.”⁴⁶ The batterer’s actions in torturing one of the only sources of support a victim may have can cause significant psychological harm to a victim forced to witness the abuse.⁴⁷ The victim’s bond with the pet can be compared to the attachment some victims have to their children as, for many,

⁴¹ *Id.* at 17.

⁴² Ascione, *supra* note 30, at 128 (quoting Stephen Hunt, *Battered Wife is Acquitted of Murder*, THE SALT LAKE TRIBUNE, Nov. 15, 1996, at B8).

⁴³ *Id.* at 130 (quoting Stephen Hunt, *Battered women’s syndrome?*, THE SALT LAKE TRIBUNE, Nov. 13, 1996, at B3).

⁴⁴ *Id.*

⁴⁵ Gilbreath, *supra* note 38, at 2.

⁴⁶ *Id.*

⁴⁷ *Id.* at 6 (citing Catherine A. Faver & Elizabeth B. Strand, *To Leave or to Stay? Battered Women’s Concern for Vulnerable Pets*, 18 J. INTERPERS VIOLENCE 1367, 1371 (2003)).

the last straw which finally pushes a victim to flee an abusive relationship, is when the batterer starts abusing the children. The greater difficulty with this type of attachment however, is that unlike children, shelters generally do not permit pets.

As previously discussed, just as there is no profile of the typical victim, there is similarly no set profile of those who are batterers or who exert their aggression on helpless animals. However, individuals who previously observed the inhumane torture of animals are more likely to engage in animal abuse themselves.⁴⁸ Also, those who tend to be controlling or seek to exert authority over their partners or others may victimize animals who are easily overpowered and often cannot fight back; their emotional problems make them more likely to exert force on helpless animals.⁴⁹ The correlation of animal abuse to domestic violence is therefore evident as they both involve exerting “power and control” over a victim.⁵⁰

Advocates working within the domestic violence sector have acknowledged the correlation that exists between animal abuse and domestic violence. Many assessment tools used in analyzing victims’ cases have asked about the presence of animal abuse to help determine the potential danger of a partner and the level of lethality that might occur.⁵¹ Collecting information about the presence of animal abuse is crucial since those who engage in cruelty to animals “use[] more forms of violence and employ[] more controlling behaviors toward their female victims than [those] who did not abuse their pets.”⁵² One victim detailed the killing of the family dog by her husband who, angry that the dog had strayed outside the yard, loaded one of his nine guns

⁴⁸ Ascione & Shapiro, *supra* note 26, at 572.

⁴⁹ *Animal Abuse and Neglect*, THE HUMANE SOCIETY OF THE UNITED STATES, http://www.humanesociety.org/issues/abuse_neglect/ (last visited Oct. 26, 2012).

⁵⁰ See Schneider, *supra* note 17, at 328.

⁵¹ Ascione, *supra* note 30, at 122.

⁵² Vellucci, *supra* note 27, at 233 (quoting Sarah DeGrue & David K. DiLillo, *Is Animal Cruelty a “Red Flag” for Family Violence?: Investigating Co-Occurring Violence Toward Children, Partners, and Pets*, 24(6) J. OF INTERPERSONAL VIOLENCE 1036, 1039 (2009)).

and shot the dog dead.⁵³ When their devastated children began to sob, he grabbed one child's hair and slapped another child before starting to cry himself.⁵⁴ The wife recounts being terrified that "in a moment of rage . . . [he] could kill any one of them and cry about it afterward."⁵⁵ A prosecutor noted the severity of the potential risk of ignoring animal abuse stating, ". . . it is unacceptable to excuse and ignore acts of cruelty towards animals. Anyone who can commit such cruelty is in desperate need of incarceration, counseling, or other immediate attention. We cannot afford to accept such violence . . ." ⁵⁶

Part II. Present State of Legislation and Legal Remedies Available

Victims of domestic violence can ask the court to provide a shield from their batterer's abuse through the issuance of a civil protection order, often called a restraining order. It is defined as "an order restricting a person from harassing, threatening, and sometimes merely contacting or approaching another specified person."⁵⁷ A court may grant such an order if "it is necessary to achieve the government's interest in protecting victims of [domestic] violence from further abuse [or] . . . where there is an immediate threat of danger."⁵⁸ The idea behind granting a protective order is to provide those who are victimized with "safety, space, time and the wherewithal to escape and to establish themselves independently and safely."⁵⁹ Some reports suggest protective orders greatly reduce or completely stop abuse in about 86 percent of cases.⁶⁰

⁵³ Ascione, *supra* note 30, at 120 (quoting LENORE E. WALKER, *TERRIFYING LOVE* 20–21 (1989)).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 128 (quoting A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, THE PROSECUTOR, Jan./Feb., 1996, at 31).

⁵⁷ BLACK'S LAW DICTIONARY (9th ed. 2009); Vellucci, *supra* note 27, at 227.

⁵⁸ BLACK'S LAW DICTIONARY (9th ed. 2009).

⁵⁹ Baker, *supra* note 4, at 39 (citing Tamara L. Kuennen, "No-Drop" Civil Protection Orders: Exploring Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN'S L.J. 39, 47–48 (2007)).

⁶⁰ Vellucci, *supra* note 27, at 233 (quoting Julie Henderson Gist, et al., *Protection Orders and Assault Charges: Do Justice Interventions Reduce Violence Against Women*, 15 AM. J. FAM. L. 59 (2001)). Other research, however, provides some contradiction to this figure, showing that protective orders may not be this effective. See Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without*

A. Process of Obtaining a Protective Order Generally

A protective order is a civil remedy that is provided by the courts upon a petition submitted by the victim.⁶¹ As a civil remedy, a hearing involving a protective order permits both parties (the batterer and the victim) to present their sides to the judge, in contrast to a criminal remedy where the prosecutor acts as the opposing party to the batterer. In some cases, the state may urge the issuance of a criminal protective order following an incident of abuse.⁶² However, a civil order, sought by the victim, provides her with more control over the proceedings and more possibilities for relief, as the civil statute surpasses the remedy of a criminal protective order which merely instructs the batterer to have no contact with the victim.⁶³

Although the remedies available differ from state to state, civil orders can mandate a batterer to enter batterer's intervention programs or substance abuse counseling, enumerate specifics as to family matters (visitation or removal from shared premises), and grant custody of children as well as, more recently, custody of pets.⁶⁴ "Civil protection orders have emerged as the most frequently used and, in the view of many experts, the most effective legal remedy against domestic violence."⁶⁵ Upon presentation of facts as evidence of "domestic violence" and a finding by the courts that "domestic violence" as defined statutorily did occur, victims petitioning for a protection order are usually granted a temporary emergency order without involving the batterer. Therefore, defining "domestic violence" and the various forms of abuse it

Ending the Relationship?, 29 CARDOZO L. REV. 1487, 1511–12 (2008) (illustrating the contrast between multiple studies regarding compliance with protective orders that showed both high compliance and high levels of reabuse).

⁶¹ The involvement of the court in such a way is relatively new. Before 1980, a majority of states did not provide such orders. Those who previously desired to obtain protective orders could only do so after initiating divorce proceedings. Dalton & Schneider, *supra* note 18, at 498.

⁶² Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 320 (2011).

⁶³ *Id.*

⁶⁴ *Id.*; See Scott Malone, *US Laws Consider Pets in Domestic Violence Cases*, REUTERS (Aug. 11, 2006), <http://news.oneindia.in/2006/08/12/us-laws-consider-pets-in-domestic-violence-cases-1155355380.html>.

⁶⁵ Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1503–04 (2008).

entails “is central to every civil protection statute.”⁶⁶ A final hearing is then set during which each side presents their case and the court determines whether a final order should be granted to the victim.⁶⁷ If the victim, during the final hearing, has met the required statutory threshold, a final order is issued by the court in which the remedies provided in the domestic violence statute can be granted.⁶⁸

Protection orders are sought by victims who look to the legal system for help because they believe that it holds the power to end their abuse and provide protection.⁶⁹ A protection order, however, does more than provide mere physical protection. It can shift the power dynamic that is at the center of abusive relationships by sending a message to a batterer that enough is enough.⁷⁰ “Receiving the court’s protection . . . [is a] key element to sustained freedom from terror and bodily harm” and can reinforce a victim’s decision to leave a batterer.⁷¹ Since a protection order serves as a possible form of empowerment, a victim suffers additional defeat when she is denied an order as such denial might reinforce for both parties the victim’s helplessness.⁷² Feeling betrayed, a victim may be less likely to seek future protection from the authorities while a batterer’s “win” might exacerbate his abuse if he feels he is “untouchable.” Therefore, those who experience domestic violence but fail to meet what the state defines as a

⁶⁶ Baker, *supra* note 4, at 40.

⁶⁷ *Id.*

⁶⁸ *Id.* at 42. The relationship required between the parties is typically one that involves a present or past dating relationship. Additionally, some states, such as New Jersey, extend their statutory reach to include family members and those residing in the same household.

⁶⁹ Leigh Goodmark, *Law is the answer? Do we know that for sure?: Questioning the efficacy of legal interventions for battered women*, 23 ST. LOUIS U. PUB. L. REV. 7, 33 (2004).

⁷⁰ Baker, *supra* note 4, at 36, 54.

⁷¹ Stoever, *supra* note 62, at 319; Baker, *supra* note 4, at 54.

⁷² Stoever, *supra* note 62, at 335.

“victim” are subjected to “secondary victimization” — feeling helpless not only by the actions of their batterer but also the actions of the courts who have denied to afford the victim protection.⁷³

Additionally, some victims experience a possible impediment to obtaining an order because of misperceptions that domestic violence primarily consists of physical abuse.

“Legislative findings, policy statements, and the scope of domestic abuse definitions in the protection statutes demonstrate an intentional fixation on physical violence.”⁷⁴ Such a fixation misses the mark since physical harm is often the end result of an “escalating cycle of abuse and violence, typically increasing in frequency and severity over time to maintain and enforce control.”⁷⁵ Research supports the view that physical harm is not the root of the epidemic, rather it is merely a symptom or consequence of a cycle of oppression and abusive coercion.⁷⁶

Such a fixation on physical abuse delays steps that could be taken to remedy victimization until violence has already occurred. The need for violence to have already occurred risks the possibility that the first incident of violence will be fatal or otherwise significantly harmful both physically and emotionally to a victim. This is an example of the assertion that domestic violence as it is defined by our criminal justice system – most often the need for physical violence – “bears little resemblance to the (different forms of) abuse inflicted on over half a million women by intimate partners each year.”⁷⁷ University of Maine School of Law Professor Deborah Tuerkheimer advanced the theory that domestic violence does not merely consist of violent acts; rather battering involves a “course of conduct” which is “woven together

⁷³ Goodmark, *supra* note 69, at 23 (quoting JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSE 151 (1999)).

⁷⁴ Baker, *supra* note 4, at 43.

⁷⁵ *Id.* at 44 (citing Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 7 (1999)).

⁷⁶ Baker, *supra* note 4, at 45.

⁷⁷ Deborah Tuerkheimer, Reply, *Renewing the Call to Criminalize Domestic Violence: An Assessment Three Years Later*. 75 GEO. WASH. L. REV. 613 (2007).

by the thread of control” and includes both physical and non-physical exertions of power.⁷⁸ Her theory involves the suggestion that statutes should more broadly define what constitutes “domestic violence” and the required predicate acts to better reflect the reality that the batterer acts with the desire to exert power and control more than he does to physically harm the victim, although physical harm does occur.⁷⁹

Her push for such reform is a consequence of her experience as a domestic violence prosecutor which exposed her to the array of criminal offenses that are committed by batterers in their “domestic torture” of their victims.⁸⁰ Specifically, she enumerates violations related to “stalking, criminal contempt (based on violations of protection orders), larceny, arson, and *abuse of pets*.”⁸¹ This list supports the notion that states’ current statutory enumeration of specific predicate acts may not be expansive enough as it fails to cover the array of acts which a batterer may take to victimize his partner.⁸² Of particular interest, given the correlation of animal abuse and domestic violence, is a general failure to locate animal abuse within the ambit of the available predicate acts to provide grounds for a protection order.⁸³

B. Inclusion of Pets/Animals on Domestic Violence Protection Orders

Previously, protection orders protected only the victim and children (if necessary). A current movement in legislation, which began in 2006, has allowed for judges in some states to include animals on orders to provide victims with custody and bar the batterer from having contact or a right to a pet.⁸⁴ Orders of protection which allow judges to include pets have helped

⁷⁸ Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959, 962–63 (2004).

⁷⁹ Tuerkheimer, *supra* note 77, at 618.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Only four states recognize acts against animals as a form of domestic violence.

⁸⁴ Vellucci, *supra* note 27, at 242.

“bridg[e] an important gap in providing for the safety of both animal and human victims.”⁸⁵ Such legislation is a new trend which, although lacking in some ways, has provided some relief for victims trying to flee abusive homes with pets who may face two legal challenges related to pets: ownership and confidentiality.

The Constitution ensures that individuals are entitled to due process of law before they can be deprived of their private property.⁸⁶ “If a companion animal is not specifically included in a protection order, the abusive partner may claim sole or co-ownership of the animal, thereby allowing him to maintain possession of the pet.”⁸⁷ The batterer may attempt to control the victim or retaliate against her for leaving him by bringing an action to retrieve the pet or filing a claim for the theft of property (the pet).⁸⁸ Although protection orders usually contain a generic catch-all that allows the victim to remove “personal effects” from the shared residence, legislation that allows judges to clearly grant custody of the pet is more beneficial to the victim. Without an explicit order permitting a victim to remove a pet, a batterer can dispute that the animal is a “personal effect” and in so doing, subject a victim to further abuse in the form of a legal dispute over ownership. A victim would have to prove sole ownership of the pet which is often difficult to do.⁸⁹ Therefore, clarity as to what possessions (like the pet) a victim is permitted to retain avoids future conflict by allowing a victim to quickly leave the premises, preempting the need for courts to later resolve ownership disputes, and minimizing a victim’s contact with a batterer.

Secondly, as mentioned, this new legislation helps in terms of protecting confidentiality. For those fleeing abuse, the most dangerous time is directly before or during their escape because

⁸⁵ *Id.*

⁸⁶ *See* U.S. CONST. amend. XIV, § 1.

⁸⁷ Vellucci, *supra* note 27, at 242.

⁸⁸ Gilbreath, *supra* note 38, at 10.

⁸⁹ *See Id.* at 11.

the batterer is most enraged.⁹⁰ Confidentiality of the identity of both pets and victims is therefore important because it minimizes the possibility of an enraged batterer tracking down their location.⁹¹ Since publicly funded entities are required to make records public, disclosure of a pet's identity in publicly run animal shelters would make it possible for a batterer to find a pet.⁹² A protection order giving custody to the victim permits the pet to be categorized as "already adopted" in records which prevents disclosure of identifying information.⁹³ In this way, such new legislation helps to remove victims' barriers to leaving an abusive relationship.⁹⁴

In addition to protecting confidentiality and the victim's ownership claims, a victim also gains peace of mind as to the well-being of the animal when courts grant custody through the protection order. As stated, a main reason why some do not flee abuse, or stay at a shelter, is the concern of what will happen to their pets.⁹⁵ This change to the law of protection orders may, as Senate Majority Leader Diane Rosenbaum (a proponent of such a bill in Oregon) stated, "encourage some . . . to seek help sooner" because it takes away the paralyzing fear that prevents some from leaving abusive relationships.⁹⁶ Although the trend to include pets on protective orders recognizes the connection between animal abuse and domestic violence, such a move by state legislatures, as previously mentioned, may not be enough. Statutory gaps remain that inhibit

⁹⁰ *Id.* at 12.

⁹¹ *Id.*

⁹² *Id.* at 11.

⁹³ *Id.* at 12.

⁹⁴ Although an obvious benefit is the secondary motivation of protecting animals, commentary from various states indicates the primary goal of legislation including pets on protective orders is to afford protection to human victims. North Carolina General Assemblyman Grier Martin, in supporting such legislation in his state, indicated that the focus is not on "animal rights" but rather, such bills are meant to protect human victims - to "help save human women's lives." Gary D. Robertson, *Monday at the North Carolina General Assembly*, ASSOCIATED PRESS, July 28, 2009.

⁹⁵ Schneider, *supra* note 17, at 328.

⁹⁶ Press Release, Oregon State Legislature, Oregon: Animals protected under changes to Family Abuse Prevention law (May 2, 2011) (available at http://www.leg.state.or.us/press_releases/sdo_050211.html).

maximum protection under the law for victims of abuse in a majority of states who fail to enumerate animal abuse and threats of animal abuse as predicate acts of domestic violence.

C. Survey of Those States that Extend Protection of Protection Orders to Encompass Animals

In 2006, Maine was the first state to permit judges to include pets in protection orders.⁹⁷ Its statute allows the court to grant a protection order to a victim if it finds “abuse” occurred as it is defined in Section 4005(1).⁹⁸ The relief as to the pet which can be granted in a protection order includes “directing the care, custody or control of any animal . . . residing in the household.”⁹⁹ In signing the bill to provide such relief in protection orders, former Maine Governor John Baldacci stated, “with this new law, we hope to help remove another tool for emotional and physical violence used by the abuser to exert power and control over their victims” since batterers use animal abuse “as a means of keeping the victim from leaving the relationship.”¹⁰⁰ Other states followed Maine’s lead in allowing judges to specifically grant custody of pets to victims in protective orders as a supplemental remedy. For example, Vermont and New York followed shortly after in enacting similar legislation.¹⁰¹ Subsequently, more than twenty-three additional states, including New Jersey, passed similar legislation.¹⁰²

D. New Jersey’s Inclusion of Animals on Protection Orders

⁹⁷ Vellucci, *supra* note 27, at 242 (citing Jennifer Fiala, *Safe Haven- Maine Shelters Pets Under Domestic Violence Protection*, DVM MAGAZINE, May 1, 2006).

⁹⁸ Me. Rev. Stat. tit. 19-A, § 4007 (1).

⁹⁹ Me. Rev. Stat. tit. 19-A, § 4007 (1)(N).

¹⁰⁰ Pam Belluck, *New Maine Law Shields Animals in Domestic Violence Cases*, N.Y. TIMES, (Apr. 1, 2006), http://www.nytimes.com/2006/04/01/us/01pets.html?_r=0.

¹⁰¹ Emily Bazar, *Law shield pets form domestic violence*, USA TODAY, (Aug. 23, 2006, 11:38 PM), http://usatoday30.usatoday.com/news/nation/2006-08-23-pets-violence_x.htm.

¹⁰² The twenty-three additional states include among them Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Maryland, Minnesota, Nevada, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Vermont, Washington, and West Virginia. See Rebecca R. Wisch, *Domestic Violence and Pets: List of States that Include Pets in Protective Orders*, ANIMAL & LEGAL HISTORICAL CENTER, <http://www.animallaw.info/articles/ovusdomesticviolencelaws.htm> (2013) (last visited Mar. 30, 2013).

On January 17, 2012, Governor Christie signed a bill stating that all protection orders issued by New Jersey courts may grant possession to a victim and restrict all contact by batterers “of any animal owned . . . by either party or a minor child residing in the household.”¹⁰³ A presumption is afforded to the non-abusive party for possession of the animal.¹⁰⁴ In proposing the legislation two years ago, New Jersey Senator Thomas Kean, Jr. echoed what other officials have expressed in enacting such legislation, that “successful enforcement of this bill would remove one of the levels of control that abusers use frequently over their spouse.”¹⁰⁵ But as stated below, this legislation has not wholly accomplished what Senator Kean indicated the New Jersey Legislature intended to accomplish.

Part III: Limitations of the Current Statutory Protection and the Importance of Recognizing Animal Abuse as a Form of Domestic Violence

The requirements imposed by domestic violence statutes on victims before they are eligible to receive a protection order can create a barrier to ensuring safety. Those whose victimization by their batterers is not acknowledged are left without access to the shield afforded by protective orders. Some state’s statutes which permit the issuance of protection orders are narrow in what they consider “abuse” which increases the difficulty for victims in establishing their need for such an order. An unfortunate consequence of such narrow “abuse” definitions is the need for the victimization experienced to meet what a judge, in their discretion applying statutory language, deems sufficient to grant a protection order. The impact is potentially great since it is only upon the granting of an order that a judge can then stipulate as to the supplemental remedy of providing a victim with custody of the pet. The fact that only four states

¹⁰³ N.J.STAT. ANN. § 2C: 25-28(j). Identical language appears in N.J.STAT. ANN. § 2C:25-29(b)(19) providing the statutory provisions for final protective orders; N.J.STAT. ANN. § 2C:25-27(b).

¹⁰⁴ *Id.*

¹⁰⁵ Jennifer Goldson, *Awareness of Pets Victimized in Domestic Abuse Cases Grows*, NJ NEWS (May 30, 2010 11:12AM) http://www.nj.com/news/index.ssf/2010/05/nj_officials_begin_to_grasp_ho.html.

include animal abuse as a form of “domestic violence” illustrates that torture or murder of an animal might not be enough in many states to obtain a protection order. This is true despite the risk that an abuser’s next target may be an intimate partner or the children.

A. States that Explicitly Consider Animal Abuse as a Form of Domestic Violence

Out of fifty states, only four states (Colorado, Indiana, Nevada, and Tennessee) have explicitly recognized animal abuse as grounds for entry of a civil protection order.¹⁰⁶ Although all four states’ statutes include animal abuse within the ambit of defined “domestic violence,” the approaches of the states in doing so differ. Both Colorado and Indiana consider harming an animal to exert control, coercion, or intimidation of an intimate partner to be a form of “domestic violence.”¹⁰⁷ Such statutory language reiterates the conclusion that animal abuse is simply a form of power and control exerted by a batterer. Nevada categorizes animal abuse as a type of harassment while Tennessee considers animal abuse to be destruction of personal property reminiscent of criminal mischief.¹⁰⁸

B. Locating Animal Abuse under the Predicate Acts of Harassment or Criminal Mischief

¹⁰⁶ The statutory provisions of these four states which increase the protection of domestic violence victims are as follows: **Colorado**: “‘Domestic violence’ means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. ‘Domestic violence’ also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.” COLO. REV. STAT. § 18-6-800.3 (2010)(emphasis added); **Indiana**: “‘Domestic or family violence’ means ... the occurrence of at least one of the following acts committed by a family or household member: ... beating, torturing, mutilating, or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.” IND. CODE ANN. § 34-6-2-34.5 (West 2007)(internal citations omitted); **Nevada**: “Domestic violence occurs when a person commits one of the following acts against or upon his spouse, former spouse, ... any other person with whom the person has had or is having a dating relationship ... : (e) A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to...: (7) injuring or killing an animal.” NEV. REV. STAT. § 33.018 (2010)(emphasis added); **Tennessee**: “‘Abuse’ means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, ...malicious damage to the personal property of the abused party, including inflicting or attempting to inflict, physical injury on any animal owned, possessed, leased kept or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor. TENN. CODE ANN. § 36-3-601 (2010) (emphasis added).

¹⁰⁷ COLO. REV. STAT. § 18-6-800.3 (2010); IND. CODE ANN. § 34-6-2-34.5 (West 2007).

¹⁰⁸ NEV. REV. STAT. § 33.018; TENN. CODE ANN. § 36-3-601.

The statutory definitions of the four states discussed above show that for the forty-six states which fail to include animal abuse in their formal definition of domestic violence, it may be possible to locate it under the reach of other predicate acts, particularly “harassment” and “criminal mischief.” However, without specific enumeration in statute, no guaranteed exists that courts will locate animal abuse under either. Additionally, victims can be precluded from obtaining an order because of the general fixation on physical abuse, over other acts, which individuals have in assessing the presence of domestic violence. This fixation curtails the number of states which include even criminal mischief and harassment as predicate acts in their statutes.¹⁰⁹ Furthermore, the necessity to locate animal abuse within one of these predicate acts might provide judges, who might be unfamiliar with the dynamics of domestic violence, with too much discretion. This is particularly worrisome since some judges have failed to issue orders even upon hearing victim’s accounts of physical abuse because of an inability to fathom that such events can actually take place. In one example, a judge denied a final protection order to a victim whose husband had threatened her with a gun, stating his disbelief that the story she had recounted could actually happen.¹¹⁰ The disbelief may also stem from the innate reluctance to accept that humans are capable of such repulsive acts; it is more comforting to believe that a victim is exaggerating or lying, attributing it to a “psychological abnormality or pathology in victims,” then to believe that individuals are capable of abusing their partners in such way.¹¹¹

¹⁰⁹ States that include harassment as a predicate act: New Jersey, Alaska, Illinois, New Hampshire, New York, North Carolina, Oklahoma, Massachusetts. States that include criminal mischief as a predicate act: Alaska, New Jersey, New York.

¹¹⁰ Stoeber, *supra* note 62, at 338.

¹¹¹ *Id.* at fn 166. See generally Dhammika Dharmapala, Nuno Garoupa, and Richard H. McAdams, *Belief in a Just World, Blaming the Victim, and Hate Crime Statutes*, 9 (The University of Chicago Law School, Pub. Law & Legal Theory Working Paper Grp., Paper No. 242, 2008) (mentioning an interpretation of some psychological scholars of the “Belief in a Just World” theory that causes individuals to equate bad experiences of others to a fault of the victim as a “means of self-deception to relieve anxiety about the arbitrariness of the world...”.) available at <http://www.law.uchicago.edu/files/files/LE438.pdf>.

Although mandatory training on the dynamics of domestic violence does exist for judges, such instruction is not extensive and therefore cannot solve all problems. Responses such as the one cited above to allegations of abuse might be less prevalent now since public awareness of the issue has increased, but these responses still exist. The possibility of a misinformed judge exercising his or her discretion in a way that is counter to the legislature's goal of affording to victims the "maximum protection" available under the law should be minimized through formal recognition. Therefore, clear and specific statutory language naming animal abuse as a form of domestic violence would afford the greatest guarantee of protection.

Without formal recognition, the aim of the current trend in legislation - reducing the tools a batterer can invoke (such as a beloved pet) to emotionally and physically abuse a victim - is only accomplished if a victim suffers enough abuse to convince a judge that she is worthy of protection.¹¹² As mentioned, it is difficult for some victims to meet the threshold requirements of some states' domestic violence statutes. It is therefore likely that no remedy will be provided even if the batterer has threatened, tortured, mutilated, or killed an animal regardless of the red flag that such conduct raises that the abuse will transfer to humans making it a remedy of limited usefulness. The court does not seem to step in to ease the victim's ability to flee by affording her custody of a pet until the batterer has actually transferred his aggression to human victims.¹¹³ In effect, this makes the current legislative trend reactive rather than preventative. Such a delayed reaction can prove detrimental to both a human victim and a helpless family pet. Formal

¹¹² Maine's Governor, who with such legislation paved the way for other states, stated the goal the law was meant to accomplish was to "remove another tool for emotional and physical violence used by a batterer." Pam Belluck, *New Maine Law Shields Animals in Domestic Violence Cases*, N.Y. TIMES (Apr. 1, 2006) http://www.nytimes.com/2006/04/01/us/01pets.html?_r=0.

¹¹³ See generally Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 81 (1999). Lockwood reports that findings of a study conducted indicated the primary reason for supporting stronger laws against animal cruelty was the fact that animal abuse is an indicator or a predictor of violence occurring within the home.

recognition, however, would provide a solution by preventing a victim from being subjected to such a “waiting game.” It would expand the possible predicate acts, including animal abuse, upon which an order can be issued therefore allowing the relief to come before the victim is herself abused.

Legislatures, in expanding the reach of their statutes in such a way, would also be giving due consideration to the cycle of violence which is inherent in domestic violence. Lenore Walker explained that domestic violence consists of a cycle with three distinct phases: “the tension-building phase; the explosion or acute battering incident; and the calm, loving respite.”¹¹⁴ Walker stated “understanding this cycle is very important if we are to learn how to stop or prevent battering incidents.”¹¹⁵ The first phase involves minor incidents motivated by the batterer’s “need to control, his low self-esteem, and his excessive jealousy” which build the tension in the relationship.¹¹⁶ Phase two involves the “uncontrollable discharge of the tensions” by a batterer who may experience blind rage and inflict injury on a partner to teach a victim a “lesson” which in reality has nothing to do with anything she has done.¹¹⁷ Immediately following the incident of excessive rage by a batterer, phase three is characterized by loving behavior, apologies, and promises to improve.¹¹⁸ The length that each phase lasts is not set. It cannot be determined when the victim can expect — and therefore protect herself from — the violent outburst.¹¹⁹

¹¹⁴ Lenore R. Walker, BATTERED WOMAN, 55 (1980). Lenore Walker’s theory, although still extensively used to explain the dynamics of domestic violence both in the courtroom and scholarly works, has received criticism of possibly being an inadequate representation of the experience of all domestic violence victims because of the size and makeup of her study sample. See David L. Faigman, Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619, 636–43 (1986).

¹¹⁵ *Id.* at 55.

¹¹⁶ Susan E. Bernstein, Note, *Living Under Siege: Do Stalking Laws Protect Domestic Violence Victims?*, 15 CARDOZO L. REV. 525, 555 (citing Lenore R. Walker, BATTERED WOMAN, 57–58 (1979)).

¹¹⁷ Walker, *supra* note 114, at 60.

¹¹⁸ *Id.* at 61.

¹¹⁹ *Id.* at 55.

This well established theory supports the need to include animal abuse as a predicate act or within the definition of “abuse” in domestic violence statutes. As previously mentioned, batterers partake in animal abuse to exert power and control over their victims.¹²⁰ According to Walker’s theory, such behavior predicts that a relationship has the potential of entering the second phase of the cycle, putting the victim in danger of a batterer’s rage and a violent attack. Therefore, animal abuse should be recognized as an indication of a batterer’s potential escalation towards abuse of the victim. Walker’s theory supports the view that not acknowledging animal abuse forces victims to play a “waiting game” and wait until they suffer through the torture of phase two before protection will be afforded.

An additional concern is the inability for victims to put forth the pet’s victimization for consideration by the court in their assessment of the batterer’s dangerousness to determine the victim’s need for protection. Such a practice of not acknowledging such abuse is detrimental to the wellbeing of victims because of the high correlation that exists between these two types of abuse. Victims’ accounts of animal abuse should therefore be considered by judges along with threats, stalking, and other behaviors already acknowledged as falling within the power and control dynamics of domestic violence to afford maximum protection.

C. Locating Animal Abuse in New Jersey’s Current Domestic Violence Statute

New Jersey follows the general procedure for obtaining a protection order discussed above. The intention of the New Jersey Legislature is “to assure . . . victims of domestic violence the maximum protection from abuse the law can provide.”¹²¹ Although the exact meaning of such a purpose is not explicit, one New Jersey court expanded on the notion stating, “[p]hysical

¹²⁰ Gilbreath, *supra* note 38, at 2.

¹²¹ N.J.STAT. ANN. § 2C: 25-18 (West 2012).

safety is not all that the Legislature intended to protect.”¹²² Rather the legislature also meant to protect, as the court in *Carfagno* states, the mental and emotional harm a victim experiences as a result of her fear of a defendant which “is the center of the cycle of power and control existing in domestic violence situations.”¹²³ This goal can only be accomplished if the official response to domestic violence shows that domestic violence will not be excused or tolerated.¹²⁴ The courts therefore play a crucial role because of their ability to issue orders to remedy violence. In issuing such orders, courts assure both the victims’ and the public’s safety and therefore should utilize such orders to the full extent of their authority.¹²⁵ In fact, the Legislature encourages a broad application of the remedies available under the Domestic Violence Act.¹²⁶ Second to the protection of physical well-being is the benefit to a victim’s psychological well-being:

“[protection] orders have the effect of empowering the victim to stand up to the defendant.”¹²⁷

In New Jersey, cases involving the issuance of civil protection orders are heard by family court judges because of their expertise in dealing with family matters.¹²⁸ The New Jersey Supreme Court indicates the Legislature “has reposed grave responsibilities on Family Part judges to ensure the safety and well-being of women and children,” confident that these judges can “successfully balance the interests of society in deterring the evils of domestic violence and caring for families.”¹²⁹ Such judges issue a protection order if a victim shows by a preponderance of the evidence that one of the listed predicate acts in New Jersey’s statute — an act of “domestic violence” — has occurred and that an ongoing need for protection exists.¹³⁰

¹²² *Carfagno v. Carfagno*, 288 N.J. Super. 424, 436–37 (Ch. Div. 1995)

¹²³ *Id.*

¹²⁴ *Stevenson v. Stevenson*, 314 N.J. Super. 350, 361 (Ch. Div. 1998).

¹²⁵ *Id.*

¹²⁶ *Id.*; *See* N.J.STAT. ANN. § 2C: 25-18.

¹²⁷ *Carfagno*, 288 N.J. Super. at 436–37.

¹²⁸ *Cesare v. Cesare*, 713 A.2d 390, 399 (N.J. 1998).

¹²⁹ *Id.* (citing *Brennan V. Orban*, 678 A.2d 667, 678 (N.J. 1996)).

¹³⁰ *Silver v. Silver*, 387 N.J. Super. 112, 127 (App. Div. 2006); *See* N.J.STAT. ANN. § 2C:25-29b.

New Jersey includes both “criminal mischief” and “harassment” as predicate acts composing its statutory definition of “abuse.”¹³¹ Victims may potentially assert that batterer’s abuse of a pet falls under one of these two acts.

The New Jersey legislature finds criminal mischief when an individual:

- (1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means . . . ; or
- (2) Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property, including the damaging or destroying of a rental premises by a tenant in retaliation for institution of eviction proceedings.¹³²

The New Jersey Criminal Code finds harassment when an individual:

- (a) makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- (b) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- (c) Engages in any other course of alarming conduct—or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.¹³³

1. Criminal Mischief

The applicable portion of New Jersey’s criminal mischief statute would require a batterer to destroy the property of *another* (the victim) to qualify as a predicate act.¹³⁴ Although pets are considered property, it is often difficult to secure a protective order upon the predicate act of criminal mischief because, as mentioned, it is difficult for a victim to meet the burden of proving

¹³¹ See N.J.STAT. ANN. § 2C: 25-19 (listing all of New Jersey’s predicate acts).

¹³² N.J.STAT. ANN. § 2C: 17-3(1)-(2).

¹³³ N.J.STAT. ANN. § 2C: 33-4(a) – (c).

¹³⁴ N.J.STAT. ANN. § 2C: 17-3(1).

sole ownership of the pet.¹³⁵ In a case involving a complaint brought on the basis of criminal mischief after a defendant broke a glass window, the Superior Court of New Jersey vacated a protection order, holding the ownership was shared and therefore “one cannot be found guilty . . . for damaging one’s own property.”¹³⁶ It is possible a similar finding might result upon a claim of animal abuse. No case law exists that would support a victim’s request for a protective order on the basis of animal abuse constituting criminal mischief.

In fact, the court’s conduct in *C.M.F. v. R.G.F.*¹³⁷ illustrates such a claim is likely to be unsuccessful. In that case, the judge failed to afford any consideration to the fact that a defendant allegedly bashed in the head of a cat and left the dead animal on the hood of the victim’s car in his analysis as to whether a protection order should be granted.¹³⁸ The court’s use of its discretion in that case is somewhat alarming because its failure to acknowledge the disturbing abuse of the animal, even if just an allegation, shows the court’s lack of recognition of this serious lethality factor in assessing the potential danger to human victims.¹³⁹ These examples show the unlikelihood that animal abuse would constitute criminal mischief to warrant issuance of a protective order.

2. Harassment

Subsection (c), the applicable subsection in claiming harassment as a predicate act, finds harassment when an individual “with the purpose to harass another . . . engages in *any other course* of alarming conduct . . . with the purpose to alarm or seriously annoy such other

¹³⁵ N.J.STAT. ANN. § 2C: 17-3.

¹³⁶ *Ortiz v. Ortiz*, No. A-1742-06T3, 2007 WL 2089267, at * 4 (N.J. Super. Ct. App. Div. July 24, 2007).

¹³⁷ *C.M.F. v. R.G.F.*, 418 N.J. Super. 396 (App. Div. 2011).

¹³⁸ *Id.* at 404.

¹³⁹ *Id.* The facts of the case indicate that the day immediately after a verbal assault by her husband, the victim discovered a dead cat, with its head pummeled, on her trunk and her home’s front window shattered. The court refused to consider these acts as part of the victim’s evidence of showing a need for the court’s protection indicating sufficient evidence was not shown, despite the close proximity of the acts to the argument, to connect the batterer to the alleged acts of criminal mischief. *Id.* at 399-401.

person.”¹⁴⁰ This seemingly covers a very wide array of activities. Therefore, courts must consider the policy implications when determining what forms of “harassment” constitute “domestic violence” since protection orders can greatly impact defendants by, among other consequences, excluding them from a shared dwelling and restricting their contact with their children.¹⁴¹

In New Jersey, case law creates an additional potential obstacle to recognition of animal abuse as a form of harassment. Specifically, New Jersey courts have repeatedly failed to grant protection orders to victims seeking such orders arguing the batterer harassed them by abusing their child or another third party. In *M.A. v. E.A.*,¹⁴² a mother sought a protection order against her husband before his release from prison on the grounds of sexual assault, harassment, and terroristic threats.¹⁴³ The court however refused to grant the order to the mother, who had also previously been slapped and kicked by her husband, rejecting her allegation of harassment from her husband’s repeated rape of her teenage daughter because the court found that the rape of a child does not constitute “harassment” against a mother.¹⁴⁴ In the court’s opinion, the fact that the stepfather’s sexual assault of the daughter may have been “alarming” to the mother was overshadowed by the fact that his main purpose was his own sexual gratification.¹⁴⁵ Therefore, adopting a narrow view of the statute, the court determined that the sexual assault of the plaintiff’s daughter was not enough to issue a protective order under the predicate act of harassment.¹⁴⁶

¹⁴⁰ N.J.STAT. ANN. § 2C: 33-4(c).

¹⁴¹ See *Murray v Murray*, 267 N.J. Super. 406, 410 (App. Div. 1993).

¹⁴² *M.A. v. E.A.*, 388 N.J. Super. 612 (App. Div. 2006).

¹⁴³ *Id.* at 616.

¹⁴⁴ *Id.* at 615, 619.

¹⁴⁵ *Id.* at 615.

¹⁴⁶ *Id.*

The New Jersey judiciary similarly adopted a narrow interpretation of what constituted “harassment” in *E.K. v G.K.*¹⁴⁷ The court deemed that even if the defendant, mother of the parties’ daughter, had purposely harmed their child, such action would not constitute harassment of the plaintiff, the child’s father, as statutorily required to issue a protection order.¹⁴⁸ Determining that harm to a child, to whom a victim has a greater connection than to a family pet, does not “harass” the victim clearly illustrates that animal abuse would likely not fall under this predicate act.¹⁴⁹

Although harassment is the predicate act that most frequently is used as the basis for seeking a protection order, it is the “the most challenging basis” and remains a “vexing issue for the judges responsible for adjudicating domestic violence complaints in [New Jersey].”¹⁵⁰ The difficulty comes from the necessity of applying the criminal statute to the domestic realm.¹⁵¹ Courts have indicated that it is hard to “draw[] the line between acts that constitute harassment for purposes of issuing a domestic violence protection order and those that fall instead into the category of ordinary domestic contretemps . . .” which hinders the “ability to fix clear rules of application.”¹⁵²

Part IV: Benefits of Formal Recognition

Including animal abuse in New Jersey’s formal statutory definition of “domestic violence” would more closely accomplish the New Jersey legislature’s goal of reducing a

¹⁴⁷ *E.K. v G.K.*, 241 N.J. Super. 567, 570 (App. Div. 1990).

¹⁴⁸ *Id.*

¹⁴⁹ Other cases have held that the threats and verbal abuse of a plaintiff’s new partner did not constitute harassment of the plaintiff by the defendant. *See DC v. TH*, 269 N.J. Super. 458, 461–62 (App. Div. 1994) (threats to a plaintiff’s current boyfriend by former boyfriend do not constitute harassment of plaintiff); *See also State v. LC*, 283 N.J. Super. 441 (App. Div. 1995) (ex-wife’s name-calling of husband’s “paramour” did not constitute harassment of husband by ex-wife as statutorily defined).

¹⁵⁰ *L.M.F. v. J.A.F.*, 421 N.J. Super 523, 533 (App. Div. 2011); *J.D. v. M.D.F.*, 25 A.3d 1045, 1056 (N.J. 2011).

¹⁵¹ *J.D. v. M.D.F.*, 207 A.3d at 1056.

¹⁵² *Id.* (citing *Corrente v. Corrente*, 218 N.J. Super. 243, 249–50 (App. Div. 1995)).

victim's barriers to safety. This was the goal the legislature sought to further with its most recent legislation adding animals to protection orders. As mentioned, the potential that judges deciding cases for protection orders may not have a complete understanding of the dynamics of domestic violence and therefore, fail to make a connection between animal abuse and the potential lethality to a victim, can present a significant risk to victims.¹⁵³

A. Formal Recognition of Animal Abuse as a Form of Domestic Violence is an Important Next Step

As stated, a major flaw in many states' definition of domestic violence is that it often doesn't include the totality of the battered women's experiences of abuse – “the daily reality of their abuse is so much more than physical violence.”¹⁵⁴ Although the New Jersey domestic violence statute seems to offer the opportunity for a victim to argue that animal abuse falls under harassment or criminal mischief, it is not explicitly included in the definition of these two predicate acts nor present in the case law interpreting them.¹⁵⁵ As discussed above, formal recognition would recognize and help protect against the potential harm, which may prove fatal, that one who exerts abuse on an animal might transfer to human victims.

Formal recognition also minimizes potential retaliatory harm to a victim whose batterer is angered by her involvement of authorities. Victims are often warned by batterers not to involve the authorities which makes seeking assistance dangerous especially if, in the end, no protective order is issued.¹⁵⁶ This is the risk that exists and is likely to come to fruition without formal recognition because a victim seeking protection after a batterer's savage murder of her pet will

¹⁵³ See Kin Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 210 (1993).

¹⁵⁴ Goodmark, *supra* note 69, at 29.

¹⁵⁵ N.J.STAT. ANN. § 2C:17-3.

¹⁵⁶ Goodmark, *supra* note 69, at 23.

likely be denied an order. This leaves a victim to deal with a batterer, who is angered because of her involvement of the courts and therefore more likely to retaliate, without legal protection.

In addition, recognition of animal abuse as a predicate act would help in raising public awareness of the connection between the two forms of abuse. Increased public awareness would shed light on the barrier to leaving which exists for many victims who stay in abusive relationships to ensure their pet's welfare.¹⁵⁷ Even though judges in about half the states can now award custody of pets in protection orders, a fleeing victim who has been granted possession may still be hindered in her escape finding herself with nowhere safe to go since many shelters that exist to assist battered women do not permit pets.¹⁵⁸ Such victims become homeless with some living in their cars until an opening becomes available at a pet-friendly safe house.¹⁵⁹ Therefore, a formal recognition could also motivate individuals to provide more funding to set up alternative animal housing and solve the present shelter issue.¹⁶⁰ Such funding would also reduce the likelihood that victims would return to their batterers upon learning they began

¹⁵⁷ Ascione, *supra* note 30, at 126.

¹⁵⁸ Frank R. Ascione, *Safe havens for pets: Guidelines for programs sheltering pets for women who are battered*. (2000), www.vachss.com/guest_dispatches/ascione_safe_havens.pdf. In a survey of shelters done in 1999 by Frank R. Ascione, Ph.D., only about 14.3 percent of crisis housing was able to house pets at their shelters.; *See* Gilbreath, *supra* note 38, at 7–8 (animals are often not permitted in shelters to protect against the risk of disease or injury and because of the often cramped conditions which restrict domestic violence shelters from being able to house victims' pets.).

¹⁵⁹ *See Facts About Animal Abuse and Domestic Violence*, AMERICAN HUMANE ASSOCIATION, <http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html> (last visited Jan. 18, 2013).

¹⁶⁰ Alternative accommodations have already emerged, although they are not extensive, through the collaboration of both animal protection and domestic violence agencies which have attempted to remove the barrier by offering options for sheltering victim's pets. Ascione, *supra* note 158, at 1. These include temporary safe shelters for pets, placement with foster families, and "safe haven programs" to provide temporary housing which "allows victims to make their decisions about their own safety knowing their animals are safe." Schneider, *supra* note 17, at 328. Such alternatives permit both animal victims and human victims to escape the abuse of batterers. The Animal Welfare Institute lists locations of "safe havens" on their website. ANIMAL WELFARE INSTITUTE, <http://www.awionline.org/safe-havens> (last visited Mar. 18, 2013).

torturing the family pet or that they would be forced to abandon their pets instead of leaving them behind for their batterer to torture.¹⁶¹

B. Why Some May Argue Against this Recognition

Some may argue that formal recognition would permit abuse of the domestic violence system and lead to the granting of protection orders which could be categorized as either unnecessary — brought by individuals being hypersensitive — or those seeking to use the system to deliberately and maliciously harm innocent individuals. However, public policy argues against this and favors officials to err on the side of caution to provide the maximum possible protection to victims, as is the stated purpose of the Prevent of Domestic Violence Act.¹⁶² Additionally, some may argue that since abuse of children does not constitute domestic violence of a parent, animal abuse should similarly not qualify as a predicate act against a plaintiff. However, the fact that animal abuse is a lethality factor is evidence that animal abuse is important because of the possible risk that it predicts for human victims. Therefore, a statute naming animal abuse that is used to exert power and control over a victim as a form of domestic violence is concerned mainly with abuse that is intended to vicariously harm the human victim. Recognition of animal abuse as domestic violence permits the courts to consider such abuse in determining if a pattern of controlling behavior exists making it easier for a victim to meet the statutory requirements of showing an ongoing need for protection.¹⁶³

Part V: Conclusion

Current legislation, including pets on protective orders, is a step in the right direction. However, it falls short of completing the goal that the New Jersey legislature intended - affording

¹⁶¹ Ascione, *supra* note 30, at 126.

¹⁶² N.J.STAT. ANN. § 2C: 25-18.

¹⁶³ Silver, 387 N.J Super. at 128.

the “maximum protection” for victims under the law.¹⁶⁴ “Maximum protection,” because of the well-established correlation between domestic violence and animal abuse, can therefore be best achieved by states such as New Jersey with a formal recognition including animal abuse in statutes as a form of domestic violence. Currently, the failure to do so inhibits a victim’s ability to obtain a protection order because judges cannot consider animal abuse as seriously as they would the destruction of property (criminal mischief), harassment, or other qualifying predicate acts in their determination of whether protection of a specific victim is necessary.

Without such recognition, a victim who has already suffered the torture or murder of her animal is likely to be afforded no protection against the possibility of the batterer transferring his domestic torture to the victim. There is virtually no case law that would suggest such a victim would be deemed worthy of the court’s protection. The unfortunate consequence of a judge’s failure to pay attention to such red flags is the need for a victim to engage in a “waiting game” until enough abuse is inflicted by her batterer to qualify her for protection under the statute. This results in a victim feeling trapped in the abuse because of an inability to meet the statutory requirements to obtain a protective order which precludes the relief of the current trend in legislation – being granted custody of a pet - as it can only be afforded if a protective order is granted. As discussed, without custody of a pet, the victim is faced with many barriers to escaping which can be enough to force them to remain in the abusive relationship.

For these reasons, New Jersey should follow suit with Colorado, Tennessee, Nevada, and Indiana, which all have formally recognized animal abuse as a form of domestic violence. Such recognition is the best way to protect both the human victim as well as the animal victim, who both experience torture at the hands of batterers in the context of domestic violence.

¹⁶⁴ N.J.STAT. ANN. § 2C: 25-18.