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The Abuse of Animals as a Method of Domestic Violence: The Need for Criminalization

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THE ABUSE OF ANIMALS AS A METHOD OF DOMESTIC VIOLENCE: THE NEED FOR CRIMINALIZATION

ABSTRACT

A substantial amount of research in recent decades has focused on the relationship between domestic violence and animal abuse. This research has shown that an abusive household often contains more than one victim, and that an abuser is likely to harm both his intimate partner and domestic animals in the home. The bulk of this research has focused on the degree to which these forms of abuse co-occur, the predictive utility of these statistics, and the effect that animal abuse has on a victim's decision to leave the abusive household. Research findings in these areas have spawned a number of efforts to build upon this link to protect both humans and animals, such as including animals in protective orders, encouraging women's shelters to accommodate companion animals, requiring cross-reporting between animal welfare and domestic agencies, and educating the public as to the potential risk implicated by an animal abuser in the home.

By contrast, relatively little attention has been paid to a different aspect of the problem: the intentional abuse of animals as a method of domestic violence. Often, abusers exploit the close, emotional bond shared by a victim and her companion animal to inflict harm upon the human victim. The abuser may harm or kill the animal in order to emotionally harm the human, use threats against the animal to gain compliance or control over the human, or use these methods to abuse the human or coerce her return after she leaves the household. These forms of abuse constitute one aspect of the broader pattern of control that characterizes an abusive relationship. The abuse of an animal is a potent source of harm and control: victims have described their anguish and despair at witnessing their partner torture their beloved animal in front of their eyes, and frequently speak of how their concern for the animal obstructs their ability to leave the home. Because domestic violence shelters typically do not accept animals, a departing victim must leave her animal in the household. By doing so, she is left vulnerable to harm through the ongoing abuse of the animal—abuse that may force her to return to her abuser just to protect it.

This Comment argues that domestic violence statutes must treat animal cruelty as a domestic violence offense when committed with the purpose of

harming or coercing the human victim. The law's failure to do so leaves a powerful method of harm underregulated, and thus leaves the significant abuse of both humans and animals underpunished. Designating animal abuse as a domestic violence offense would plug a prominent gap in the criminal approach to domestic violence and make available a large number of specialized protective and rehabilitative measures currently available to domestic violence victims, such as protective orders and mandatory therapy for the abuser. Moreover, implementing a domestic violence animal cruelty provision poses a relatively straightforward task, because the current statutory schemes of most states already recognize a variety of offenses as involving domestic violence. Ultimately, the frequency with which domestic violence and animal abuse co-occur, the severe harm that this abuse inflicts, and the substantial protective and remedial benefits that would follow together suggest the criminalization of this form of abuse is a necessary and highly effective approach against both domestic and animal abuse.

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INTRODUCTION

Women, children, and animals have long suffered abuse in the face of the law. Historically, these three groups shared a legal status of significant subordination or, worse, of property.¹ The law for centuries reflected common societal perceptions of hierarchy, depriving these groups of rights or significant legal protection, and thus served only to perpetuate and entrench their vulnerability to abuse and maltreatment.² The abuse of a woman was viewed as sacrosanct within the domain of marital relations;³ the abuse of a child was viewed as the prerogative of parents to treat and raise their property as they pleased;⁴ and the abuse of an animal was essentially viewed as the harmless destruction of property at best, or the needless but inconsequential causing of suffering at worst.⁵

As women and children became emancipated under the law, attention progressively began to focus on their abuse as worthy of some level of intervention,⁶ but the exploitation of these three categories of individuals was largely viewed as distinct and unrelated.⁷ Although the abuse of women, children, and animals may have often been committed by the same person, and despite the fact that their vulnerability could be attributed at least in part to common underlying factors, understandings of their abuse remained isolated from one another.⁸ The true extent to which these forms of violence are interrelated has only recently begun to be understood.⁹

Recent decades witnessed fundamental changes in both the legal status and the rights of women and children, along with a simultaneous shift in how their abuse is understood. Animals continue to be viewed primarily as property, and

¹ Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 6 (1998).

² See William M. Kunstler, *Foreword* to GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW, at ix, x–xi (1995).

³ See Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118 (1996).

⁴ See generally Barbara Bennett Woodhouse, “*Who Owns the Child?*”: *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 1044 (1992) (taking a critical look at the cases and circumstances surrounding the view of the child as property).

⁵ See Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 3 (2000).

⁶ Janet Mickish & Kathleen Schoen, *Protection Orders and Animal Abuse in Family Violence*, COLO. LAW., Sept. 2006, at 105.

⁷ See *id.* at 105–07.

⁸ See Lacroix, *supra* note 1, at 6–7.

⁹ Mickish & Schoen, *supra* note 6, at 106.

their independent interests continue to be subservient to the possessory, use, and enjoyment interests of their “owners.”¹⁰ This is despite the fact that animals may be of substantial emotional importance to their guardians, and that most individuals view their animals as family members.¹¹ The understanding of domestic abuse has shifted away from a fragmented understanding toward a more unified one: increasingly, the focal point of analysis has become the abuser, with various acts of violence and the victims against which they are committed being viewed through the lens of the abuser’s motivations.¹² At the same time, domestic violence has come to be understood as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner” instead of a series of individual violent incidents.¹³ Within this understanding, a broad range of physical, sexual, psychological, economic, and emotional acts and behaviors may constitute domestic violence when

¹⁰ See Lacroix, *supra* note 1, at 16. One author posits reasons for the general ignorance of or indifference to violence against animals: a societal perception that animals are of less importance; a low public perception because of infrequent reporting by the media; a view of animal abuse as isolated incidents rather than as a form of violence interconnected with other forms of violence, including against humans; and the prevalence of socially acceptable forms of violence, such as hunting and meat-eating, that fosters a broader indifference to animals’ welfare. Clifton P. Flynn, *Why Family Professionals Can No Longer Ignore Violence Toward Animals*, 49 FAM. REL. 87, 87 (2000). There are signs that this perspective of animals may be changing. For example, the word “guardian” was substituted for “owner” in domestic ordinances of Boulder, Colorado. See Boulder, Colo., Ordinance 7062 (Aug. 1, 2000) (codified as amended at BOULDER, COLO., REV. CODE ch. 6-1 (1981 & Supp. 118, 2014)); Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 99 (2001). Some courts have awarded substantial emotional distress damages for the death of an animal, recognizing that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.” *Corso v. Crawford Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (Civ. Ct. 1979).

¹¹ Jennifer Robbins, Note, *Recognizing the Relationship Between Domestic Violence and Animal Abuse: Recommendations for Change to the Texas Legislature*, 16 TEX. J. WOMEN & L. 129, 131 (2006). A majority of people with companion animals regard them as members of the family. Clifton P. Flynn, *Battered Women and Their Animal Companions: Symbolic Interaction Between Human and Nonhuman Animals*, 8 SOC’Y & ANIMALS 99, 105 (2000). Moreover, keeping a domestic animal is prevalent: six in ten households have at least one companion animal, and this figure rises to 78% for households with children over six years old. *Id.* at 101; see also Flynn, *supra* note 10, at 92 (noting the various ways in which animals may be of high emotional value and importance to their guardians).

¹² Various theories have been proposed as to the precise motivations and reasons behind domestic violence. See Jay Peters et al., *Understanding Domestic Violence Against Women: Using Evolutionary Psychology to Extend the Feminist Functional Analysis*, 17 VIOLENCE & VICTIMS 255, 256 (2002). Prominent among these theories, and most relevant to this Comment, is the assertion that domestic violence is a purposive method of gaining power and control. *Id.*

¹³ Joshua L. Friedman & Gary C. Norman, *Protecting the Family Pet: The New Face of Maryland Domestic Violence Protective Orders*, 40 U. BALT. L.F. 81, 82 (2009) (quoting U.S. Dept. of Justice, Office on Violence Against Women, *Domestic Violence*, U.S. DEP’T JUST., <http://www.ovw.usdoj.gov/domviolence.htm> (last updated Mar. 2013)).

committed with the purpose of harming the human victim.¹⁴ Under this new approach, the abuse of various victims appears interrelated, and researchers have begun to examine aspects and nuances of these relationships to guide efforts to prevent, detect, and mitigate abuse.¹⁵

One narrow subset of this unified understanding of domestic violence has focused on the relationship between intimate partner abuse and animal abuse, commonly referred to simply as “the link.”¹⁶ Although the commission of animal cruelty has long been identified as a potential risk factor for subsequent criminality,¹⁷ and as a possible indicator of psychological disorders,¹⁸ only in the past three decades has scholarship focused on the link between the two forms of abuse.¹⁹ This “movement”²⁰ has addressed several aspects of this relationship: animal abuse as an indicator of subsequent criminality,²¹ prior

¹⁴ *Id.*

¹⁵ This wave of research attention has also uncovered disturbing statistics of the prevalence of domestic violence in the general population. Each year, some 572,000 cases of violent attacks by intimate partners are reported, Peters et al., *supra* note 12, at 255, and an estimated 1.5 million women are raped or physically assaulted by an intimate partner. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NCJ 181867, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, at iii (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>. As many as one in four women experience domestic violence in their lifetime, and domestic violence is overwhelmingly committed against women. Friedman & Norman, *supra* note 13, at 82–83. At the same time, domestic violence is prevalent across race, ethnicities, and economic classes, and occurs in both heterosexual and homosexual relationships. *Id.* at 82; see Catherine A. Faver & Elizabeth B. Strand, *To Leave or to Stay? Battered Women’s Concern for Vulnerable Pets*, 18 J. INTERPERSONAL VIOLENCE 1367, 1370 (2003). Domestic violence is the leading cause of injury to women in the United States. Gentry, *supra* note 10, at 102.

¹⁶ See Jared Squires, *The Link Between Animal Cruelty and Human Violence: Children Caught in the Middle*, KY. CHILD. RTS. J., Winter 2000, at 2–6.

¹⁷ See FRANK R. ASCIONE, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, JUV. JUST. BULL. NO. NCJ 188677, ANIMAL ABUSE AND YOUTH VIOLENCE I (2001) (noting that Pinel first proposed viewing cruelty toward animals as a risk factor for future interpersonal violence in 1809).

¹⁸ Sarah DeGue & David DiLillo, *Is Animal Cruelty a “Red Flag” for Family Violence? Investigating Co-occurring Violence Toward Children, Partners, and Pets*, 24 J. INTERPERSONAL VIOLENCE 1036, 1037 (2009) (noting that animal cruelty was included in the *Diagnostic and Statistical Manual of Mental Disorders* as a symptom of conduct disorder).

¹⁹ ASCIONE, *supra* note 17, at 1; Clifton P. Flynn, *Woman’s Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women*, 6 VIOLENCE AGAINST WOMEN 162, 162 (2000). This scholarly attention has been international in character. See, e.g., Anne M. Volant et al., *The Relationship Between Domestic Violence and Animal Abuse: An Australian Study*, 23 J. INTERPERSONAL VIOLENCE 1277, 1278 (2008) (Australia); R.M. Youssef, M.S. Attia & M.I. Kamel, *Violence Among Schoolchildren in Alexandria*, 5 E. MEDITERRANEAN HEALTH J. 282, 289–90 (1999) (Egypt).

²⁰ Emily G. Patterson-Kane & Heather Piper, *Animal Abuse as a Sentinel for Human Violence: A Critique*, 65 J. SOC. ISSUES 589, 592 (2009).

²¹ See, e.g., Frank R. Ascione, *Emerging Research on Animal Abuse as a Risk Factor for Intimate Partner Violence*, in INTIMATE PARTNER VIOLENCE 3-1, 3-2 (Kathleen A. Kendall-Tackett & Sarah M.

abuse or neglect during the perpetrator's childhood,²² or having witnessed animal abuse;²³ the rate at which animal abuse correlates to the abuse of others in a household or vice versa;²⁴ and, last but not least, the emotional and practical effects of animal abuse on others in a household.²⁵

This research has demonstrated that there is a significant relationship between intimate partner abuse and animal abuse, showing that they are frequently perpetrated concurrently²⁶ and that the abuse of an animal may have significant practical implications for human victims' welfare and ability to protect themselves.²⁷ Building upon this research, several approaches have

Giacomini eds., 2007); Christopher Hensley et al., *The Predictive Value of Childhood Animal Cruelty Methods on Later Adult Violence: Examining Demographic and Situational Correlates*, 56 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 281, 281–82 (2012); Christopher Hensley & Suzanne E. Tallichet, *Childhood and Adolescent Animal Cruelty Methods and Their Possible Link to Adult Violent Crimes*, 24 J. INTERPERSONAL VIOLENCE 147, 148 (2009); Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 HUM. REL. 1113, 1114 (1985); Linda Merz-Perez et al., *Childhood Cruelty to Animals and Subsequent Violence Against Humans*, 45 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 556, 556–57 (2001); Joshua C. Overton et al., *Examining the Relationship Between Childhood Animal Cruelty Motives and Recurrent Adult Violent Crimes Toward Humans*, 27 J. INTERPERSONAL VIOLENCE 899, 899, 901 (2012).

²² See DeGue & DiLillo, *supra* note 18, at 1037; see also, e.g., Alexander Duncan et al., *Significance of Family Risk Factors in Development of Childhood Animal Cruelty in Adolescent Boys with Conduct Problems*, 20 J. FAM. VIOLENCE 235, 235 (2005).

²³ See, e.g., Eleonora Gullone & Nerida Robertson, *The Relationship Between Bullying and Animal Abuse Behaviors in Adolescents: The Importance of Witnessing Animal Abuse*, 29 J. APPLIED DEVELOPMENTAL PSYCHOL. 371, 371 (2008); Christopher Hensley et al., *Exploring the Age of Onset and Recurrence of Childhood Animal Cruelty: Can Animal Cruelty Be Learned from Witnessing Others Commit It?*, 56 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 614, 615 (2012).

²⁴ See, e.g., Frank R. Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals*, 1 J. EMOTIONAL ABUSE, no. 1, 1998, at 119, 119–20 [hereinafter Ascione, *Battered Women's Reports*]; Frank R. Ascione et al., *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13 VIOLENCE AGAINST WOMEN 354, 354–55 (2007) [hereinafter Ascione et al., *Women Experiencing Intimate Violence*]; Clifton P. Flynn, *Examining the Links Between Animal Abuse and Human Violence*, 55 CRIME L. & SOC. CHANGE 453, 453 (2011); Marie Louise Petersen & David P. Farrington, *Cruelty to Animals and Violence to People*, 2 VICTIMS & OFFENDERS 21, 21 (2007).

²⁵ See, e.g., Flynn, *supra* note 10, at 92. For a thorough survey of research in this field, see Alex Duncan & Catherine Miller, *The Impact of an Abusive Family Context on Childhood Animal Cruelty and Adult Violence*, 7 AGGRESSION & VIOLENT BEHAV. 365, 370–71 (2002).

²⁶ Studies have revealed rates of correlation that generally range from 40% to 70%. See *infra* Part I.A. For a brief overview of research on the correlation between the two forms of abuse, see Faver & Strand, *supra* note 15, at 1368–71.

²⁷ As with any set of research findings, some authors have noted methodological shortcomings and other criticisms of this research. See, e.g., Piers Beirne, *From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis*, 12 SOC'Y & ANIMALS 39, 39 (2004); Samara McPhedran, *Animal Abuse, Family Violence, and Child Wellbeing: A Review*, 24 J. FAM. VIOLENCE 41, 43 (2009); Patterson-Kane & Piper, *supra* note 20, at 592.

been developed to exploit the link between the two forms of abuse as a tool to curb intimate partner abuse and to facilitate efforts to protect both human and animal victims.²⁸ These initiatives represent pioneering efforts in a nascent but vitally important field. At the same time, current legal methods are primarily remedial in nature,²⁹ and others are developed and implemented by welfare organizations, shelter workers, and the researchers themselves.³⁰

One particular aspect of the link that has received relatively little attention—and that is the focus of this Comment—is the abuse of animals as a tool or method of domestic violence. Abusers frequently threaten or harm an animal as a method of harming a human victim, or as a method of establishing control, gaining revenge, or coercing compliance with a particular demand.³¹ The deep emotional bond that most individuals³²—especially those who are abused³³—share with their animals makes this a potent form of abuse;³⁴ indeed, it is the depth of the relationship between human and animal that enables the relationship to be exploited as a method of harm and control in the first place.³⁵ The victim's forced social isolation is a frequent aspect of intimate partner abuse, making the victim exceptionally reliant on an animal for emotional support and companionship.³⁶ The abuse or killing of an animal therefore inflicts significant harm upon the human victim and serves as a highly effective method of establishing control and of forcing the human victim to comply with demands.³⁷ In this context, the importance of the animal is limited to how it can be used to inflict harm upon the human: in other words, the human victim is the ultimate target of the animal abuse, notwithstanding that the animal may be the only individual suffering physical abuse.³⁸

²⁸ See *infra* Part II.

²⁹ See *infra* Part II.A–B.

³⁰ These efforts include shelters that accept the animals of abused women, awareness efforts, and the creation of research organizations and tools. See *infra* Part II.C.

³¹ DeGue & DiLillo, *supra* note 18, at 1041; Margreta 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, 234–35 (2011); Robbins, *supra* note 11, at 133–35.

³² See Flynn, *supra* note 11, at 105–06.

³³ See Flynn, *supra* note 19, at 169.

³⁴ See Carol J. Adams, *Woman-Battering and Harm to Animals*, in ANIMALS AND WOMEN: FEMINIST THEORETICAL EXPLORATIONS 55, 59 (Carol J. Adams & Josephine Donovan eds., 1995).

³⁵ See Faver & Strand, *supra* note 15, at 1371; Flynn, *supra* note 19, at 171.

³⁶ Robbins, *supra* note 11, at 132; see Adams, *supra* note 34, at 57–58.

³⁷ DeGue & DiLillo, *supra* note 18, at 1041; Vellucci, *supra* note 31, at 234–36; see Adams, *supra* note 34, at 56; Robbins, *supra* note 11, at 132.

³⁸ See Adams, *supra* note 34, at 59.

Despite the severity of the emotional harm that may be inflicted upon a human victim in this manner, the vast majority of states do not criminally address this form of domestic violence.³⁹ This Comment argues that states should treat the abuse of an animal, in certain circumstances and when committed with the intent of harming an intimate partner, as an act of domestic violence against the human victim. The law's failure to address this powerful source of harm leaves both humans and animals exposed to an ongoing source of severe harm, and thereby precludes the availability of numerous specialized domestic violence provisions designed to protect victims. Such provisions include criminal protective orders, the application of mandatory arrest and no-drop prosecutorial policies, and the judicial imposition of therapeutic, protective, and other rehabilitative remedies meant to prevent or mitigate further abuse.⁴⁰

Although this Comment focuses on the abuse of an animal as a method of abusing one's intimate partner, many (if not all) of the concepts and arguments presented here apply equally to other forms of domestic violence more generally. The abuse of an animal is a powerful tool—one that can be exploited just as easily against a child, a family member, an elder, or simply a cohabitant. These various forms of abuse present unique challenges of their own, precluding them from being effectively and collectively addressed in this Comment. At the same time, many states address the abuse of these various victims together under one domestic violence statute. Despite its narrower focus on intimate partner abuse, therefore, the statutory amendments argued for in this Comment would target domestic violence more broadly.

Part I surveys existing research on the link, shows that animal abuse frequently co-occurs with other forms of domestic violence, and explains that it has significant harmful effects and practical implications for victims' welfare. Part II evaluates current approaches to the link, showing that while each development is crucially important, the criminal law has been unresponsive. Part III demonstrates the clear need for, and numerous benefits of, addressing animal abuse as a domestic violence offense. It proposes elements of a model statute that would form a comprehensive and effective criminal approach.

³⁹ See discussion *infra* Part II.B. Only two states, Indiana and Maine, explicitly treat animal abuse committed to harm a domestic partner as a criminal offense. See discussion *infra* Part II.A.

⁴⁰ See *infra* Part III.A.

I. EMPIRICAL AND THEORETICAL PERSPECTIVES ON THE LINK BETWEEN DOMESTIC VIOLENCE AND ANIMAL CRUELTY

Broadly speaking, research in the field of domestic violence has focused on three aspects or manifestations of the link: the extent to which animal abuse and intimate partner abuse co-occur in the same household,⁴¹ the commission of animal abuse as an indicator of subsequent criminality or prior abuse,⁴² and the effects of exposure to animal cruelty.⁴³ Research investigating the rate at which animal abuse and intimate partner violence co-occur is needed to understand the scale of the problem, and therefore also the importance of a legal approach to it. Section A surveys research in this field, demonstrating that intimate partner and animal abuse co-occur at highly significant rates.

With an appreciation for the scale of the issue, section B focuses more narrowly on the concern of this Comment: the intentional abuse of animals as a tool of domestic abuse. Animals are both of emotional importance to domestic violence victims and exceptionally vulnerable to abuse.⁴⁴ This unfortunate combination makes animals powerful tools of abuse and aids abusers in effectuating numerous abusive goals and strategies.

A. *The Co-occurrence of Intimate Partner Abuse and Animal Cruelty*

Research conducted during the past three decades⁴⁵ has substantially established that intimate partner abuse and animal abuse co-occur at significant rates.⁴⁶ This finding comports with theoretical perspectives on domestic

⁴¹ E.g., Ascione, *supra* note 21; Ascione, *Women Experiencing Intimate Violence*, *supra* note 24. For research on the co-occurrence of animal abuse and child abuse or neglect, see Dana Atwood-Harvey, *From Touchstone to Tombstone: Children's Experiences with the Abuse of Their Beloved Pets*, 31 HUMAN. & SOC'Y 379 (2007); and DeGue & DiLillo, *supra* note 18.

⁴² See, e.g., Karla S. Miller & John F. Knutson, *Reports of Severe Physical Punishment and Exposure to Animal Cruelty by Inmates Convicted of Felonies and by University Students*, 21 CHILD ABUSE & NEGLECT 59, 74–75, 79–80 (1997); Petersen & Farrington, *supra* note 24. For a balanced overview of research on this particular aspect, see McPhedran, *supra* note 27, at 43–46.

⁴³ See, e.g., Flynn, *supra* note 10; Flynn, *supra* note 11, at 111–13. For a thorough survey of research in this field, see Duncan & Miller, *supra* note 25, at 370–71.

⁴⁴ See Flynn, *supra* note 11, at 105, 107.

⁴⁵ See *id.* at 99–100.

⁴⁶ See, e.g., Ascione, *Battered Women's Reports*, *supra* note 24, at 125 (finding 57% of batterers harmed or killed the victim's pet); Faver & Strand, *supra* note 15, at 1373–74 (finding 46.3% of women reported that their partner had harmed their pet); Flynn, *supra* note 11, at 103 (replicating the Ascione study and finding that 46.5% of abusers had harmed or threatened the victims' pets).

violence that view violence against various victims through a focus on the violent abuser, rather than as different phenomena centered on the victim.⁴⁷

One of the seminal studies addressing this relationship was conducted by Professor Frank Ascione in 1998.⁴⁸ Ascione surveyed thirty-eight women at a domestic violence shelter in Utah.⁴⁹ His research revealed that of those women who kept an animal,⁵⁰ 71% reported that their male partner had harmed or threatened to harm the animal, while 57% reported that actual harm or death to the animal had occurred.⁵¹ A replication study with a larger sample size of 107 women, relying on similar subjects and methodology, revealed that 46.5% of women with animals had experienced harm or the threat of harm to their animal,⁵² while 40% of these women had delayed shelter entry because of concern over their animal's welfare.⁵³ Similarly, in a study of forty-one abused women who had kept animals in the past twelve months, 48.8% reported threats to their animals, and 46.3% reported actual harm to their animals.⁵⁴ Women whose animals were threatened and abused were approximately seven and eight times more likely, respectively, to report that concern for their animals delayed their decision to leave.⁵⁵

Other studies have revealed varying but similar rates of animal abuse among domestic violence victims with animals: 68% of seventy-two respondents,⁵⁶ 72% of thirty-two respondents,⁵⁷ and 75% of seventy-two respondents.⁵⁸ Research has found this relationship in homosexual

⁴⁷ See, e.g., Petersen & Farrington, *supra* note 24, at 32, 34, 38 (“There is a growing recognition that domestic violence, child abuse, and animal cruelty often occur in the same households because they are all committed by the same person, an adult male.” (citation omitted)). See generally DeGue & DiLillo, *supra* note 18, at 1037–38, 1053 (finding that various forms of abuse simultaneously occur in the same household).

⁴⁸ Ascione, *Battered Women's Reports*, *supra* note 24.

⁴⁹ *Id.* at 123.

⁵⁰ The survey asked whether the woman had an animal currently or in the past twelve months. *Id.* at 124.

⁵¹ *Id.* at 125.

⁵² Flynn, *supra* note 11, at 103.

⁵³ Flynn, *supra* note 19, at 167, 169 tbl.2, 173.

⁵⁴ Faver & Strand, *supra* note 15, at 1373–74.

⁵⁵ *Id.* at 1374.

⁵⁶ *Id.* at 1369 (citing Jane Ann Quinlisk, *Animal Abuse and Family Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 168 (Frank R. Ascione & Phil Arkow eds., 1999)).

⁵⁷ *Id.*

⁵⁸ Marti T. Loring & Tamara A. Bolden-Hines, *Pet Abuse by Batterers as a Means of Coercing Battered Women into Committing Illegal Behavior*, 4 J. EMOTIONAL ABUSE, no. 1, 2004, at 27, 32.

relationships as well as heterosexual,⁵⁹ and one study found no statistically significant difference in co-occurrence rates between urban and rural settings.⁶⁰

These studies demonstrate that abusers often abuse their intimate partners and animals concurrently. These figures are not fully probative, however, without comparison statistics of the incidence of animal abuse among the general population.⁶¹ To remedy this deficiency in existing research, Professor Ascione conducted a study that involved a larger target sample size (101) along with a comparison sample of women (120) who “had not experienced intimate violence at the hands of an adult partner.”⁶² Having a companion animal within the past year was required for participation.⁶³ Ascione’s results found that 54% of the shelter women had experienced the actual harm or death of their animal at the hands of their partner.⁶⁴ The harm to the animal was significant in the majority of these cases: 72.7% of the reports of harm to the animal “involved injury, pain, torture, permanent loss of function, or death.”⁶⁵ By contrast, only 5% of the comparison sample reported a similar experience.⁶⁶

Ascione’s findings in this study underscore the significance of the correlation between intimate partner and animal abuse. The study also illuminates the severe harm inflicted on animals in this context—a point researchers often mention but rarely discuss. Because the abuser views abuse of the animal only as a means to an end, the animal is especially vulnerable to horrific acts, such as being skinned alive;⁶⁷ beaten against a tree with a crowbar; punched, beaten, or kicked; shot; fed gunpowder; hung; thrown across the room; or subjected to acts of bestiality.⁶⁸ Animals also suffer in abusive households in other ways. For example, animals often expose themselves to physical harm by rushing to protect their guardians during an abusive episode.⁶⁹ Moreover, animals are subject to severe anxiety and distress at witnessing the abuse of their guardian, and victims have reported that they

⁵⁹ Faver & Strand, *supra* note 15, at 1370 (citing CLAIRE M. RENZETTI, *VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS* (1992)). Thirty-eight percent of 100 battered lesbians with animals reported incidents of animal abuse in the household. *Id.*

⁶⁰ *Id.* at 1373–74.

⁶¹ Ascione, *Women Experiencing Intimate Violence*, *supra* note 24, at 358.

⁶² *Id.* at 358–59.

⁶³ *Id.* at 359.

⁶⁴ *Id.* at 361.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Ascione, *supra* note 21, at 3–5.

⁶⁸ Flynn, *supra* note 11, at 108, 115–17.

⁶⁹ *Id.* at 115.

immediately go to their animal after an episode, both for support and to comfort the animal.⁷⁰ Research also suggests that animals in homes where domestic violence occurs receive less veterinary attention and are inadequately vaccinated.⁷¹ These severe harms inflicted upon the animals are important to continually bear in mind; the alternative is to risk viewing them in a purely functional manner, similar to how abusers view them.

B. The Exploitation of Animals as an Intentional Tool of Domestic Abuse

The research presented above may be fairly characterized as establishing a substantial rate of co-occurrence of animal abuse and intimate partner abuse within households. The intentional abuse of animals as a method of intimate partner abuse, termed “triangling” by one researcher,⁷² represents a narrower subset within these statistics. The harm caused to the animal is not an end in itself; rather, it is committed solely or primarily because the suffering of the animal “inflicts psychological trauma” upon the ultimate victim.⁷³

To understand this dynamic, it is necessary to first appreciate the emotional depth and importance of the relationship between a victim of intimate partner abuse and the animal that she views as a companion. This is because “threats or harm to pets can be used to control or coerce a woman only to the extent that she cares about the animals.”⁷⁴ The emotional importance of victims’ relationships with animals is discussed in Part I.B.1. It is equally necessary to understand that animals are exceptionally vulnerable, both physically and in terms of their treatment under the law.⁷⁵ This vulnerability complements the power of animal abuse and is discussed in Part I.B.2.

The effect that animal abuse may have on a human victim allows the animal to be used as a tool of intimate partner abuse to achieve a variety of abusive goals. Intimate partner abuse is best described as a network of terror or

⁷⁰ *Id.* at 115–17.

⁷¹ Ascione, *Women Experiencing Intimate Violence*, *supra* note 24, at 359.

⁷² Elizabeth DeViney et al., *The Care of Pets Within Child Abusing Families*, 4 INT’L J. FOR STUDY ANIMAL PROBS. 321, 328 (1983), *quoted in* Squires, *supra* note 16, at 6.

⁷³ Adams, *supra* note 34, at 59.

⁷⁴ Faver & Strand, *supra* note 15, at 1371.

⁷⁵ Flynn, *supra* note 11, at 107 (“Given the dependent status of companion animals, their smaller physical stature, their lack of legal standing resulting from being considered property, their inability to protest against abusive treatment, the difficulty (and thus, frustration) in attempting to control them, and their emotional ties to other family members, it should come as no surprise that companion animals are often victimized by family members, especially by violent men.”).

a system of coercive control,⁷⁶ composed of a number of strategies meant to perpetuate this system.⁷⁷ Physical violence only “punctuates” this pattern, and may not occur at all.⁷⁸ What these strategies are, and the manner in which animal abuse factors prominently into them, is discussed in Part I.B.3.

1. *The Emotional Importance of Animals to Abuse Victims*

Numerous studies have explored the role that animals play in the lives of domestic violence victims. In interviews, abused women have described their companion animal as their “baby,” “child,” a part of the “family,” and the “center of our lives.”⁷⁹ Some victims have brought pictures of their animals to interviews, tearfully describing the relationship that they shared with their animal while simultaneously recounting the trauma of that same animal being threatened, harmed, or killed.⁸⁰ Another researcher stated that the “vast majority” of surveyed women viewed their animals as family members.⁸¹

One reason, perhaps, for this emotional attachment and for the anthropomorphizing characterizations may be that animals take on the role of a human, particularly for abused women. Jean Veevers has posited that one function an animal may assume is that of a surrogate, where it supplements or substitutes for a role typically filled by a human.⁸² The social and emotional

⁷⁶ See Friedman & Norman, *supra* note 13, at 83–84.

⁷⁷ See *id.*

⁷⁸ *Id.* (quoting Judith A. Wolfer, *The Changing American Family and the Law: Top 10 Myths About Domestic Violence*, MD. B.J., May/June 2009, at 38, 38–39). Physical abuse may be understood as another strategy, capable of establishing significant power through fear. Animal abuse inflicts physical harm on a proxy, achieving the same purpose without any actual physical harm to the human victim.

⁷⁹ Flynn, *supra* note 11, at 105–06.

⁸⁰ *Id.* at 105.

⁸¹ Amy J. Fitzgerald, “*They Gave Me a Reason to Live*”: *The Protective Effects of Companion Animals on the Suicidality of Abused Women*, 31 HUMAN. & SOC’Y 355, 360 (2007). Viewing an animal as a family member is also extremely common among the general population, with one study finding that 99% of people with animals considered them to be family members. Robbins, *supra* note 11, at 131–32 (citing Victoria L. Voith, *Attachment of People to Companion Animals*, 15 VETERINARY CLINICS N. AM. SMALL ANIMAL PRAC. 289, 290 (1985)). Another author reports that

- (1) eighty percent of pet owners have their pets for the companionship; (2) seventy-nine percent of owners celebrate their pets’ holidays or birthdays with gifts; (3) thirty-three percent of pet owners who are away from home, talk to their pets on the phone or through the answering machine; and (4) sixty-two percent of pet owners sign letters or cards from themselves and their pets.

Lacroix, *supra* note 1, at 7.

⁸² Flynn, *supra* note 11, at 101 (citing Jean E. Veevers, *The Social Meanings of Pets: Alternative Roles for Companion Animals*, 8 MARRIAGE & FAM. REV. 11 (1985)). The two other functions identified are sociability (aiding human–human interaction) and projective (an extension of the self). *Id.*

isolation typically imposed on a victim by her abuser renders her especially dependent upon alternative sources of support and interaction.⁸³

The likelihood of such reliance may be exacerbated where the victim does not have children. Professor Clifton Flynn's research reveals that women with no children were significantly more likely to report that their companion animal was "very important emotionally" than women with children (64% and 37%, respectively).⁸⁴ One victim interviewed stated that she had an animal because she was unable to have children, and that "[her] life revolve[d] around" her companion animal.⁸⁵ In another study by Professor Flynn, two victims also linked the importance of their animal to their lack of children.⁸⁶ Furthermore, women who reported animal abuse were less likely to have children than women with animals that were not abused, perhaps enforcing the notion that the relationship with the animal was particularly close, and thus particularly powerful as a method of abuse.⁸⁷ In a different study, the researcher described that several participants kept pictures of their animals in their wallets, and marked calendars with their animals' birthdays and other milestones.⁸⁸

Given these close, familial characterizations of animals, it is unsurprising that animals are frequently reported as important sources of emotional support. Professor Flynn's research provides quantitative measures of the importance and prevalence of such close relationships.⁸⁹ Eleven of twenty abused women whose animals had also been abused stated that their animal was a "very important" source of emotional support; only two reported that the animals were "not at all important."⁹⁰ Professor Ascione's 2007 study reported higher

⁸³ See Robbins, *supra* note 11, at 132.

⁸⁴ Flynn, *supra* note 19, at 169.

⁸⁵ *Id.* at 172.

⁸⁶ Flynn, *supra* note 11, at 105 ("He was our baby—mine and John's both—cause we don't have no children. . . . My pets were my children, so to speak. They filled that void because I had lost two children and didn't have any, so, you know.").

⁸⁷ Flynn, *supra* note 19, at 171. It is also possible that having both children and animals makes it more difficult for a woman to leave, seek help, or report the abuse. Further, where a child may otherwise have served as a tool of abuse, the absence of a child in the home might force the abuser to channel his abuse through the animal instead.

⁸⁸ Fitzgerald, *supra* note 81, at 364–65.

⁸⁹ See Flynn, *supra* note 19, at 169 & tbl.2.

⁹⁰ *Id.*

figures: of women surveyed at the shelter whose animals had been threatened or abused, 86.4% stated that they were “very close” to these animals.⁹¹

The close relationships between victims and animals are not driven purely by affection but are fostered by a shared sense of empathy and mutual suffering. One researcher reported that domestic violence victims consider their animals to be both “protectors and fellow sufferers.”⁹² Another author stated that victims she spoke with “saw similarities between the treatment of their pets and themselves, felt that their pets protected them in various ways, and believed that their pets were uniquely in tune with their emotional states.”⁹³ Women have also reported that they view their relationship with their animal as reciprocal, that is, the animal gives them the same love, care, and affection that they give to it.⁹⁴

It is possible that a cruelly cyclical pattern underlies these research findings. While the emotional bond between the victim and animal likely allows for the exploitation of that bond in the first place, the abuse itself may foster a closer relationship between the victim and the animal.⁹⁵ As the victim’s social support dwindles, mutual empathy between the human and the animal grows, and feelings of guilt and responsibility for the animal’s suffering manifest themselves.⁹⁶ The resultant strengthening of the bond between victim and animal may then increase the likelihood and severity of its exploitation. Any potential causal effect between emotional importance and abuse, therefore, may be bidirectional. Professor Flynn has observed a correlation between emotional importance and abuse,⁹⁷ and research showing that animals are more important to women in abusive relationships than to those who are not may be interpreted to support causation in both directions, perhaps simultaneously.⁹⁸

⁹¹ Ascione, *Women Experiencing Intimate Violence*, *supra* note 24, at 361. The survey choices were “very close,” “liked but not close,” and “not close at all.” *Id.*

⁹² Fitzgerald, *supra* note 81, at 366.

⁹³ *Id.* at 369.

⁹⁴ *Id.* at 360.

⁹⁵ See Flynn, *supra* note 19, at 169.

⁹⁶ Adams, *supra* note 34, at 72.

⁹⁷ Flynn, *supra* note 19, at 169.

⁹⁸ See *id.* Another possible factor behind the targeting of the victim–animal relationship is that of jealousy, where the abuser resents the bond shared by his partner and the animal and is jealous of the care and affection the animal receives from the victim. See Flynn, *supra* note 11, at 103; see also Loring & Bolden-Hines, *supra* note 58, at 33 (noting that many of the fifty-four women whose animals had been abused reported that jealousy and resentment played a role in their abuser’s actions against the animal). Research suggests that this factor is at least one component of this cycle, and anecdotal reports comport with this. One victim stated

The substantial role animals can play in victims' lives is underscored by the manner in which animals may influence a victim's decision to take her own life. In general, a network of effective social support has been identified as a "critical protective factor" in reducing the likelihood of suicide.⁹⁹ Animals may play a vital role in providing such a network, particularly for abused women who tend to be isolated from friends and family and who receive little or no emotional support from their abusive partner.¹⁰⁰ Abused women have described animals as part of their "lifeline," stating that their animals gave them support and a sense of a responsibility that played a significant role in their decision to not commit suicide.¹⁰¹ One victim stated that her animals "were part of my lifeline to stay alive."¹⁰² When asked to explain what that meant, she stated simply, "Oh, I used to sit down at the river front and debate every night whether I wanted to live or die."¹⁰³

The trauma and complete isolation that can follow the murder of a treasured animal can be overwhelming. When an abuser threatens or harms an animal, "it is a threat or actual destruction of a cherished relationship in which the animal has been seen as an individual"¹⁰⁴—a relationship upon which the victim may almost completely depend for support and hope. After her husband shot and killed her kitten and two cats despite her hysterical pleas not to, one victim wrote in her diary: "I wish I were dead. I wish I had been shot, too."¹⁰⁵

2. *The Vulnerability of Animals and the Ease of Their Abuse*

The severity of the harm and control that may be achieved through animal abuse is supplemented by animals' legal and physical vulnerability to abuse. In the first place, the physical abuse or killing of an animal is inherently less likely to come to the authorities' attention, particularly when committed in the privacy of the home. Whereas the abuse of a human may be self-reported to authorities, noticed by family members or medical professionals, or detected

that she was accused "of treatin' the cats better than him" and of "think[ing] more of them cats than" of her partner. Flynn, *supra* note 11, at 110 (internal quotation mark omitted).

⁹⁹ Fitzgerald, *supra* note 81, at 372.

¹⁰⁰ Robbins, *supra* note 11, at 132 ("[B]ecause it is common for batterers to isolate their victims from any human friends or family members[] [a] pet may take on the companionship role that human family or friends normally fill due to this isolation." (footnote omitted)).

¹⁰¹ Fitzgerald, *supra* note 81, at 370.

¹⁰² *Id.*

¹⁰³ *Id.* (internal quotation marks omitted).

¹⁰⁴ Adams, *supra* note 34, at 59.

¹⁰⁵ *Id.* at 64 (internal quotation marks omitted).

by neighbors during an assault, animal abuse involves few such risks of detection.

Even if knowledge of animal abuse does surface, legal repercussions are unlikely to follow.¹⁰⁶ Although the past two decades have witnessed a substantial strengthening of animal cruelty laws, including many felony provisions, these laws are not strictly enforced and are often met with prosecutorial or judicial disinterest.¹⁰⁷ Many cases that do result in conviction, moreover, involve paltry sentences that serve little deterrent value, particularly when combined with the unlikelihood of reaching the disposition stage in the first place.¹⁰⁸

The unlikelihood and lack of severity of legal repercussions is compounded by the animal's inherent physical vulnerability. An animal will rarely be able to do anything to protect itself from harm by a much larger human, particularly where the abuser uses a weapon. One victim's account succinctly portrays the significance of the emotional importance of the animal and its vulnerability:

I think he uses the dog big time to hurt us [One time he] picked the cat up and slung it across the room [because] he knew it would hurt me to see my cat fall He say [*sic*] he control me and the dogs and little Maurice [her son], too [I]t was like an extension of me [M]aybe he abused the dog cause he couldn't, didn't want to go to jail for abusing me, I guess [He] used the dog instead of us . . . as his punching bag [My husband] would sometimes do to Boomer what he wished he could do to us . . . like using the dog as a scapegoat, and, because there was plenty of times that we were in the middle of a huge fight and Boomer would just get in the way—just get in the way accidentally. He'd swat at him, kick him And the dog didn't even do anything, so I really felt like he was tryin' to intimidate the dog as much as he would try and intimidate the family . . . I guess he treated, uh, the dog just like family, too. That's how he treated the family.¹⁰⁹

3. *Strategies and Methods of Domestic Abuse*

Domestic abuse is properly understood as a pattern of behavior and a system of control, rather than as the combination of individual incidents of

¹⁰⁶ See Sauder, *supra* note 5, at 7–9.

¹⁰⁷ See *id.*

¹⁰⁸ See *id.*

¹⁰⁹ Mickish & Schoen, *supra* note 7, at 108 (alterations in original).

violence, with psychological control as a main objective.¹¹⁰ This system may be perpetuated through a number of strategies and involves different types of abuse.¹¹¹ Psychologist Anne Ganley classifies domestic violence into four categories: physical battering, sexual battering, psychological battering, and the destruction of property.¹¹² Author Carol Adams, a feminist author who has written extensively on the relationship between women and animals, argues that because of the unique nature and severity of animal abuse as a domestic violence tool, animal abuse should constitute a distinct category of domestic violence alongside the existing four.¹¹³

Through the abuse of an animal, Adams argues, an abuser can achieve nine distinct goals.¹¹⁴ He can (1) demonstrate his power, (2) teach submission, (3) isolate the victim from a network of support, (4) punish acts of self-determination, (5) perpetuate the context of terror, (6) preclude attempts of the victim to leave the home, (7) punish the victim for leaving the home, (8) harm the victim by forcing her to participate in abuse, and (9) confirm his power by denying her the ability to grieve after the harm or death of her animal.¹¹⁵ These psychological or emotional goals are not uniquely achievable via animal abuse; rather, they are broader aspects of abuse that may be furthered or complemented through the abuse of an animal. In keeping with the understanding that domestic violence is a system of control, an abuser who tortures an animal in front of the human victim “emphasizes the idea that he has all the power in the relationship. She can do nothing to protect her pet; or, taking it a step further, she could do nothing to protect herself should he decide to torture her as well.”¹¹⁶ If one views the physical abuse of a partner as rooted in the power, control, and fear that it fosters, it is easy to understand the effect of the physical abuse of an animal on a human victim. The abuse of an animal instills the same sense of fear and control sought through the abuse of the human victim, except that it does so in a fashion perceived as less severe, easier to perpetrate, and carrying fewer repercussions.

¹¹⁰ Robbins, *supra* note 11, at 137–38.

¹¹¹ See Friedman & Norman, *supra* note 13, at 83–84.

¹¹² Adams, *supra* note 34, at 58–59.

¹¹³ *Id.* at 73–75. Adams also argues that child abuse should be recognized as a distinct type of domestic battering. *Id.* at 75.

¹¹⁴ *Id.* at 71–73.

¹¹⁵ *Id.* These categories have gained traction among other writers in the field. See, e.g., Tara J. Gilbreath, *Where's Fido: Pets Are Missing in Domestic Violence Shelters and Stalking Laws*, 4 J. ANIMAL L. 1, 6 (2008); Mickish & Schoen, *supra* note 7, at 106–07. Other potential aims include the isolation of the human victim and the elimination of competition for attention. Vellucci, *supra* note 31, at 233–34.

¹¹⁶ Robbins, *supra* note 11, at 134 (footnote omitted).

Most acts of domestic abuse exploiting an animal involve the physical harm of the animal, perpetrated to inflict psychological harm upon, or to gain control of, the human victim. In some cases, however, both victims—the animal and the human—suffer simultaneous physical and psychological harm. Among the most degrading forms of abuse is the coercion of women to participate in sexual acts with animals.¹¹⁷ Abusers have forced animals to penetrate their partners and, in other cases, have trained their animal to do so.¹¹⁸ These acts of forced bestiality sometimes coincide with the production of pornography, whether for personal or commercial use.¹¹⁹ Other instances involve the abuser's own commission of sexual acts with the animal, where his partner is forced to watch or otherwise participate.¹²⁰ One victim of this type of abuse reported that her forcible rape with a dog left her feeling “totally defeated. There were no greater humiliations left for me.”¹²¹ Such acts represent the total control over the human victim, as her most basic moral principles have been completely violated.¹²² The resultant trauma is exacerbated by the fact that the animal abused may be one she depends on for support. And it is not to be forgotten that such acts, particularly where the animal is penetrated, involve harm to the animal itself.¹²³

In other cases, an animal may be used quite literally as a tool of abuse. There are reports of abusers physically assaulting their victims with a frozen squirrel, or with a four-month-old puppy.¹²⁴ Just as abusers may train their animals to rape the victim, they may also be trained to attack the victim. One abuser was convicted of murder for setting his dog upon his partner; the victim died after being bitten over a hundred times.¹²⁵ Such cases are beyond the strict scope of this Comment, but they illustrate the myriad of horrific ways an animal or its relationship with the victim may be exploited to inflict severe physical and psychological trauma.

Abusers also harm or threaten to harm animals to coerce victims into performing or complying with illegal acts. One study examining this issue

¹¹⁷ Adams, *supra* note 34, at 68.

¹¹⁸ *Id.* at 66.

¹¹⁹ *Id.*

¹²⁰ *Id.* One horrifying act of abuse involved the abuser “hump[ing]” the animal, while the animal simultaneously penetrated the human victim. *Id.*

¹²¹ *Id.* at 68 (citation omitted) (internal quotation marks omitted).

¹²² *Id.*

¹²³ *Id.* at 67.

¹²⁴ *Id.* at 60.

¹²⁵ *Id.*

found that of fifty-four women who had animals that had been threatened and harmed, 44% had been coerced into committing illegal acts by way of the threats or harm to their animal.¹²⁶ Each of these women stated that they committed the illegal acts to spare their animal the abuse that would inevitably follow if they did not, and also reported “a sense of desperation and anguish at having to violate their own value systems and become victim-perpetrators.”¹²⁷ Notably, the women all reported compliance with the threats of harm because the abuser had actually harmed an animal on at least one prior occasion, suggesting that threats do not necessarily predate actual harm.¹²⁸

The final aspect of this type of abuse to be considered is the effect of animal abuse on a victim’s decision to leave the abusive relationship. Studies that examined this effect find that for many victims, concern for their animal’s welfare played a significant role in delaying their decision to flee to a shelter.¹²⁹ In Professor Ascione’s 2007 study, 22.8% of 101 abused women stated that their decisions to enter the shelter where they were interviewed were delayed due to concerns over their animal.¹³⁰ Ascione’s previous study, which involved a sample of 38 women, revealed a rate of 18% among those who owned pets.¹³¹ In other studies, rates of abused victims whose concern for their animal delayed their decision to leave have been reported as 20% of those with pets and 40% of those whose pets were harmed (of 107 women)¹³² and 26.8% (of 41 women),¹³³ another summary of research reported rates of 48%, 48%, and 44%.¹³⁴

¹²⁶ Loring & Bolden-Hines, *supra* note 58, at 33. Only nine of these twenty-four women stated that the harm or threat to the animal occurred without any threats to other family members. *Id.* This finding reinforces findings of the co-occurrence of abuse against multiple members of the family, as well as the fact that the harm of an animal may have an effect comparable to the harm of a human, such as a child or parent.

¹²⁷ *Id.*

¹²⁸ *Id.* at 34.

¹²⁹ See Ascione, *Battered Women’s Reports*, *supra* note 24, at 125; Flynn, *supra* note 11, at 103; see also Faver & Strand, *supra* note 15, at 1373–74 (finding that concern for pets affected the women’s decision, “regardless of whether her concern hastened or delayed her departure”).

¹³⁰ Ascione, *Women Experiencing Intimate Violence*, *supra* note 24, at 358, 364. This percentage increased to 34.3% when the animal had been both threatened and harmed, and fell to 14.3% when the animal had been neither threatened nor abused. *Id.* This suggests a meaningful relationship independent of animal cruelty and supports greater consideration for animals by domestic abuse shelters even if the animal is unharmed or the correlation is otherwise undermined.

¹³¹ Ascione, *Battered Women’s Reports*, *supra* note 24, at 119, 125.

¹³² Flynn, *supra* note 11, at 103.

¹³³ Faver & Strand, *supra* note 15, at 1373–74.

¹³⁴ Fitzgerald, *supra* note 81, at 359.

Often, victims are unable to take their animal with them, because most battered women's shelters do not accept animals, and they might be unable to find a safe place for their animals to stay during their absence.¹³⁵ Some victims have had to stay in their cars for as long as four months until an opening at an animal-friendly women's shelter was found.¹³⁶ Being forced to leave the animal with the abuser ensures that the animal, and therefore the human, continues to be vulnerable to further abuse. In one study, 40% of victims with pets reported that their animal's welfare was an ongoing concern after they left the home.¹³⁷ Ongoing concern for the animal's welfare and guilt at having to leave it behind only exacerbate the psychological difficulties already being endured by the victim upon leaving the abusive home. Abusers may harm or kill animals after the human victim has left as a method of gaining revenge for the victim's departure or of coercing her into returning. Carol Adams has defined such acts "separation assault."¹³⁸ The trauma and guilt of having left one's animal behind to be tortured or killed is often too much to bear for victims, some of whom would rather continue to suffer abuse themselves than leave the animal unprotected and uncared for.¹³⁹ One victim reported remaining with her partner for almost two and a half years because her abuser had threatened to take her dog if she left.¹⁴⁰

One particularly gruesome report involves a victim who, after leaving for a shelter without her animal, received pictures of her dog's ears being cut off.¹⁴¹ Other victims have stated that they felt compelled to return to their abuser's home after they left, out of their fear for their animal's well-being.¹⁴² One case involves a woman named Karen, who was forced to visit the hospital because of several broken ribs and a damaged spleen following a violent incident with

¹³⁵ Vellucci, *supra* note 31, at 241.

¹³⁶ *Facts About Animal Abuse & Domestic Violence*, AM. HUMANE ASS'N, <http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html> (last visited May 3, 2014).

¹³⁷ Flynn, *supra* note 19, at 170.

¹³⁸ Adams, *supra* note 34, at 69–70 & tbl.1.

¹³⁹ See *Facts About Animal Abuse & Domestic Violence*, *supra* note 136 ("Between 25% and 40% of battered women are unable to escape abusive situations because they worry about what will happen to their pets or livestock should they leave."). Animals left behind at the mercy of the abuser may suffer in other ways. Some research indicates that homes in which domestic abuse occurs are associated with irregular veterinary care and out-of-date vaccinations. See Ascione, *Women Experiencing Intimate Violence*, *supra* note 24, at 356 (reporting that some abusers inflicted actual harm on pets, such as "prohibit[ing] the feeding of a starving animal or . . . not allow[ing] veterinary care for an injured or ill pet").

¹⁴⁰ Fitzgerald, *supra* note 81, at 366.

¹⁴¹ Quinlisk, *supra* note 56, at 168. The abuser in this case sent the actual ears to the victim's mother. *Id.*

¹⁴² See Adams, *supra* note 34, at 60 (describing two situations in which women had left an abusive situation but returned due to their concern for their pets).

her partner, Hal, who severely injured both her and her animal.¹⁴³ After calling a shelter and discovering that it did not accept animals, she returned home.¹⁴⁴ “The animal had survived [the attack], but it was badly hurt, and Karen felt responsible. She wanted to be there to take care of it; she knew Hal would kill it in retaliation if she left.”¹⁴⁵

Considered together, the research surveyed in this Part demonstrates that animal abuse is a both a prevalent and severe aspect of domestic violence—one that may have effects even after a victim has left the household. It is important to note, however, that the fact that individuals are abused in this fashion alone necessitates a criminal approach—the prevalence of this abuse only makes a criminal approach more urgent. Criminal proscriptions of socially undesirable acts are not predicated upon the frequency of their commission, and it is important to bear this perspective in mind when evaluating new and existing research in the field.

II. CURRENT APPROACHES TO ADDRESS THE LINK

The research surveyed above has precipitated several effective initiatives meant to address the abuse of animals in domestic violence situations. While effective, these measures are primarily remedial in nature, and thus represent only one part of the solution. A survey of these approaches and their benefits and limitations will demonstrate that a criminal approach to the link is necessary and that such an approach would plug a significant gap in the overall range of measures currently adopted.

A. *Punitive Provisions*

Only two states have addressed the link by specifically criminalizing animal abuse committed to harm a domestic partner—the approach generally advocated for by this Comment. Both states have done so by treating the act as an animal cruelty offense rather than an act of domestic or interpersonal abuse. By contrast, as will be discussed, the states surveyed in Part II.B have incorporated animal abuse committed with the intent of harming a human into domestic violence provisions.¹⁴⁶

¹⁴³ *Id.* at 61.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ The significance and implications of this decision will be discussed in depth in Part III, *infra*.

Indiana designates the crime of “domestic violence animal cruelty” under the statutory chapter pertaining to offenses against animals.¹⁴⁷ An individual is guilty of this offense when he “knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.”¹⁴⁸ The statute separately addresses the beating of a vertebrate animal committed with the intent of abusing a household member; this offense attaches the identical motives listed under domestic violence animal cruelty.¹⁴⁹ The beating of an animal is ordinarily treated as a misdemeanor,¹⁵⁰ but is escalated to a felony offense when perpetrated with the specific motive of abusing a household member.¹⁵¹

Maine has adopted a similar approach, but does not elevate the level of the offense or the applicable penalty. It provides that a person is guilty of animal cruelty if he “[k]ills or tortures an animal to frighten or intimidate a person or forces a person to injure or kill an animal.”¹⁵² This is punishable as a Class D crime;¹⁵³ if an offender who violates this subsection has two or more prior convictions of the same subsection, the offense is elevated to a Class C crime.¹⁵⁴

The brevity of this section demonstrates that the vast majority of states have yet to adopt any penal measures that address animal abuse as a method of domestic violence. At the same time, it is encouraging that two states have done so, particularly when these states are considered alongside the substantially larger number that have incorporated animal abuse into protective orders.

¹⁴⁷ IND. CODE § 35-46-3-12.5 (2012 & Supp. 2014). The term “domestic violence animal cruelty” will be used hereafter to refer to an act of animal abuse committed to harm an intimate partner.

¹⁴⁸ *Id.* It is important to note the scope of the provisions outlined here: as noted above, they each address domestic violence as committed against family and household members, and not only against intimate partners. For this reason, although the strict focus of this Comment is on intimate partner abuse, a statutory implementation of my proposals would apply to domestic violence more broadly.

¹⁴⁹ Compare *id.* § 35-46-3-12(b)(2), with *id.* § 35-46-3-12.5. Effective July 1, 2014, this offense will be classified as a “level 6 felony.” See *id.* § 35-46-3-12.5 (version b).

¹⁵⁰ *Id.* § 35-46-3-12(b).

¹⁵¹ *Id.* § 35-46-3-12(b)(2).

¹⁵² ME. REV. STAT. tit. 17, § 1031(1)(J) (2006).

¹⁵³ *Id.* A Class D crime is punishable by not more than twelve months imprisonment. ME. REV. STAT. tit. 17-A, § 1252(2)(D).

¹⁵⁴ ME. REV. STAT. tit. 17, § 1031(1)(J-1). A Class C crime is punishable by not more than five years imprisonment. ME. REV. STAT. tit. 17-A, § 1252(2)(C).

B. Protective Orders

One of the most significant areas of progress building upon the research surveyed in Part I has consisted of the availability and scope of court-issued protective orders. A protective order, commonly known as a restraining order, “is a court order that imposes legally binding restrictions on an offender’s future conduct.”¹⁵⁵ Protective orders may be granted within the civil process through stand-alone legal proceedings, or as a component of divorce or criminal domestic abuse proceedings.¹⁵⁶ The specific relief that may be granted in a protective order depends largely on the state in which it is sought and varies from case to case as the contents of an order are meant to represent individualized relief based on the facts of the situation and the wishes of the victim.¹⁵⁷ Fundamentally, a protective order may prohibit an alleged offender from making any contact with the victim.¹⁵⁸ A court may also enter an order to prohibit further abuse or violent contact, require the payment of child support dues or spousal support payments, and restrict the offender’s right to possess a firearm.¹⁵⁹

Protective orders are a common feature of the overall legal approach toward domestic violence.¹⁶⁰ Given that the infrastructure and legislation for such orders is already in place in most states, the incorporation of animals into protective order provisions typically involves a minor modification to existing statutes, and several states have introduced such amendments. To date, a total of twenty-five states, in addition to Puerto Rico and the District of Columbia, have enacted provisions that account for animals in protective orders.¹⁶¹

States that incorporate animals into protective order considerations mainly do so through two methods: by treating acts of animal abuse as a basis for the imposition or violation of a protective order (availability), and by including an animal within the protections of such an order when granted to a human victim

¹⁵⁵ 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, 1506 (2008).

¹⁵⁶ *Id.*

¹⁵⁷ *See id.* at 1507 (explaining that “differences among jurisdictions directly affect the accessibility and usefulness of protection orders”).

¹⁵⁸ *Id.* at 1507; *see, e.g.*, NEV. REV. STAT. § 33.030(1) (2013).

¹⁵⁹ *See* Goldfarb, *supra* note 155, at 1506–07; *see, e.g.*, NEV. REV. STAT. § 33.033. Part III, *infra*, discusses the contents and benefits of protective orders in detail.

¹⁶⁰ *See* Goldfarb, *supra* note 155, at 1506–07 (“[C]ivil protection orders are available in all jurisdictions . . .”).

¹⁶¹ Rebecca F. Wisch, *Domestic Violence and Pets: List of States That Include Pets in Protection Orders*, ANIMAL LEGAL & HIST. CTR. (2014), <http://www.animallaw.info/articles/ovusdomesticviolencelaws.htm>.

(scope).¹⁶² The former approach recognizes that “violence to an animal [is] considered a direct threat to a human victim’s future physical safety and present psychological well-being.”¹⁶³ This recognition of the harm to the human victim means that an act of animal abuse committed with the specific intent of harming the human victim may be valid grounds for the court to issue a protective order.

Broadly speaking, states that treat animal abuse as a possible basis for a protective order do so by expanding the definition of domestic violence to include particular acts against animals. Note that this is not equivalent to designating animal abuse as a domestic violence offense; rather, animal abuse is included in the statutory section dealing exclusively with protective orders and other related measures. These sections typically do not deal with penalization. For example, Nevada has a statutory section devoted to “Orders for Protection Against Domestic Violence.”¹⁶⁴ In the definitional article of this section, a domestic violence offense may comprise, *inter alia*, “[a] knowing, purposeful or reckless course of conduct intended to harass the other person.”¹⁶⁵ This label may attach to a variety of offenses, including arson, trespassing, and carrying a concealed weapon without a permit.¹⁶⁶ Nevada expanded this list to include “[i]njuring or killing an animal” as a “course of conduct” that qualifies as a domestic violence offense.¹⁶⁷ This designation has nothing to do with criminal sanctions, instead serving only to allow for the imposition of a protective order and related remedial measures. Similarly, Colorado expanded its definition of domestic violence to include “any other crime 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.”¹⁶⁸

¹⁶² See Robbins, *supra* note 11, at 138.

¹⁶³ *Id.*

¹⁶⁴ NEV. REV. STAT. §§ 33.017–.100.

¹⁶⁵ *Id.* § 33.018(1)(e).

¹⁶⁶ *Id.* § 33.018(1)(e)(1)–(7).

¹⁶⁷ *Id.* § 33.018(1)(e)(7). This definition applies to both protective orders and the criminal code. *Id.* § 200.485(8). Clearly, the crimes listed under this statute are not capable of inflicting equal harm. The fact that trespassing is treated as a potential domestic violence offense despite not involving actual harm to the victim only strengthens the sense of incongruity surrounding the exclusion of animal abuse from such statutes.

¹⁶⁸ COLO. REV. STAT. § 18-6-800.3 (2013).

The second method by which animals are incorporated into protective order statutes is by including them within the protective scope of the order.¹⁶⁹ Statutes authorizing such protection are more numerous than those treating animal abuse as a basis for the issuance of a protective order. Under this approach, courts are authorized to order an abuser not to abuse, mistreat, or otherwise harm an animal that belongs to the victim or that resides in her household, and to grant exclusive custody or possession of the animal to the victim.¹⁷⁰ California provides an excellent example: in the state, a court “may order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.”¹⁷¹ Colorado permits courts to make specific arrangements for the possession and care of the animal,¹⁷² and Massachusetts allows a court to “order the possession, care and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the plaintiff or petitioner.”¹⁷³ Several other states have enacted provisions to similar effect.¹⁷⁴

Both methods of accommodating animals into protective orders are vitally important. Neglecting to treat domestic violence animal cruelty as a basis for a protective order denies the victim the possibility of injunctive relief and leaves her vulnerable to ongoing domestic violence for longer than necessary. As with a court order, the violation of a protective order exposes the offender to a range of sanctions, including contempt of court, fines, civil sanctions, and incarceration.¹⁷⁵ More importantly, these legal consequences may be imposed

¹⁶⁹ Protective orders often cover children, other family members, and even the victim’s co-workers, in recognition of the fact that an abusive individual may be capable of harming multiple individuals, and that such abuse may also cross-victimize those not directly harmed. *See, e.g.*, CONN. GEN. STAT. ANN. § 46b-15(b) (West 2009) (protective order may cover petitioner’s children); 23 PA. CONS. STAT. ANN. § 6108 (West 2010) (same); N.J. STAT. ANN. § 2C:25-29(b)(6)–(7) (West 2005) (protective order may cover family members, as well as employers, employees, and co-workers).

¹⁷⁰ *See e.g.*, CAL. FAM. CODE § 6320 (West 2013 & Supp. 2014).

¹⁷¹ *Id.* Notably, the same California provision also affords relief to elders and minor children. *See id.*

¹⁷² COLO. REV. STAT. § 13-14-102, *repealed by* H.B. 13-1259, 69th Gen. Assemb., Reg. Sess. (Colo. 2013). Colorado adopts both approaches, by both affording affirmative protection to animals and by designating acts against an animal as a violation of an issued protective order. COLO. REV. STAT. § 18-6-803.5(1)(a) (2013).

¹⁷³ MASS. GEN. LAWS. ch. 209A, § 11 (2012).

¹⁷⁴ Nevada is among these states and provides for both approaches. *See* NEV. REV. STAT. § 33.030(1)(e) (2013). For a list of states’ provisions that accommodate animals in protective orders, see Wisch, *supra* note 161.

¹⁷⁵ Friedman & Norman, *supra* note 13, at 94–95.

much more readily than would be possible under an ordinary criminal prosecution.¹⁷⁶ This aspect lends a valuable punitive aspect to protective orders, particularly for states that do not contain provisions penalizing domestic violence animal cruelty. Research also suggests that domestic abuse through an animal typically represents an early stage in abusive behavior—making the possibility of early intervention in such cases particularly valuable.¹⁷⁷

Research shows that protective orders are effective: the subjects of protective orders report that they feel substantially safer, and the frequency and severity of abuse fall significantly.¹⁷⁸ States should ensure not only that protective orders are available for animals, but also that they are available because of animals. Affording animals (and, therefore, human victims) protection within an order recognizes the harm that animal abuse can cause; ignoring the same fact for the purposes of imposing an order is inconsistent and leaves victims unnecessarily vulnerable.

C. *Nonlegal Approaches*

Shelters and professionals have implemented initiatives to facilitate the detection of domestic and animal abuse, protect human and animal victims being harmed, and encourage the adoption of such measures through awareness and education. Given the manner in which the continued presence of an animal in the home leaves the victim vulnerable to ongoing abuse and control even after she leaves the home,¹⁷⁹ a crucial approach to this problem has focused on facilitating the accommodation of animals after victims decide to leave their abusers. Because the well-being of an animal often plays a strong factor in delaying or preventing a victim's decision to leave the abuser,¹⁸⁰ knowledge that the animal can be provided for may encourage a victim to

¹⁷⁶ See Goldfarb, *supra* note 155, at 1509 (“[P]olice are often more willing to arrest a batterer for abuse if a protection order is in place.”).

¹⁷⁷ See Friedman & Norman, *supra* note 13, at 85–86.

¹⁷⁸ Goldfarb, *supra* note 155, at 1510–11.

¹⁷⁹ Flynn, *supra* note 11, at 119; see also Gilbreath, *supra* note 115, at 5–6; Carol D. Raupp, *Treasuring, Trashing, or Terrorizing: Adult Outcomes of Childhood Socialization About Companion Animals*, 7 SOC'Y & ANIMALS 141, 143 (1999).

¹⁸⁰ Ascione, *Battered Women's Reports*, *supra* note 24, at 125 (finding 18% of women reported that concern for their animal caused them to delay leaving); Flynn, *supra* note 11, at 103 (finding 20% of women with pets and 40% of women whose pets had been abused reported that concern for their animal caused them to delay leaving).

decide to seek shelter and alleviate the trauma associated with doing so.¹⁸¹ Although several authors have called for shelters to inquire about and make accommodations for victims' animals upon their entry to the shelter,¹⁸² the vast majority of shelters still do not provide for victims' animals.¹⁸³ This is despite the fact that workers at some 85% of shelters report that they have heard or been informed of incidents of animal abuse in victims' homes.¹⁸⁴

One possible reason for the lack of adoption of this seemingly natural approach is that the accommodation of animals may present legal and logistical difficulties.¹⁸⁵ It is often legally problematic for a victim to enter a shelter or safe-haven program with her animal because animals, as property, are typically considered communal property: that is, the victim and her abuser would have equal ownership rights over the animal.¹⁸⁶

Some shelters have responded to this obstacle by facilitating ways for victims to either demonstrate unitary ownership or challenge joint ownership of the animal.¹⁸⁷ Options for doing so include presenting veterinary receipts in the victim's name and re-licensing the animal with the safe-haven program for the duration of the victim's stay.¹⁸⁸ Moreover, attempting to provide for animals in a shelter meant for humans may be complicated and expensive. While an efficient and logical solution would be for dedicated animal shelters to provide their services to safe-haven programs, many such shelters that receive governmental funding are required to maintain public records—which may allow for an abuser to track down his victim or, at least, her companion animal.¹⁸⁹

¹⁸¹ See Flynn, *supra* note 11, at 119–22 (discussing women's descriptions of their anxiety after leaving home).

¹⁸² See, e.g., *id.* at 122–23; Gilbreath, *supra* note 115, at 5–6; Joan E. Schaffner, *Linking Domestic Violence, Child Abuse and Animal Cruelty*, ABA-TIPS ANIMAL L. COMMITTEE NEWSL. (Am. Bar Ass'n Tort Trial & Ins. Practice Section, Chi., Ill.), Fall 2006.

¹⁸³ Flynn, *supra* note 11, at 123. An example of a shelter specifically catering to the animals of abused women is the Ahimsa House, located in Atlanta, Georgia. The House “provides emergency pet safehousing, veterinary care, pet-related safety planning, legal advocacy, a 24-hour crisis line, outreach programs, and other services to help the human and animal victims of domestic violence reach safety together.” AHIMSA HOUSE, <http://www.ahimsahouse.org> (last visited May 4, 2014).

¹⁸⁴ Frank R. Ascione et al., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered*, 5 SOC'Y & ANIMALS 205, 211 (1997).

¹⁸⁵ Ascione, *Battered Women's Reports*, *supra* note 24, at 126–27.

¹⁸⁶ Gilbreath, *supra* note 115, at 9–10.

¹⁸⁷ *Id.* at 10–11.

¹⁸⁸ *Id.* at 11.

¹⁸⁹ *Id.* at 11–12.

One prominent approach is cross-reporting the abuse of victims among agencies, shelters, and other organizations responsible for their welfare. Cross-reporting may help “to identify high-risk homes and prevent (further) victimization”¹⁹⁰ by recognizing the significant rates of co-occurrence of animal and human abuse within households. Reporting the mistreatment of one victim whose abuse has been detected may expose a hidden system of abuse involving multiple victims¹⁹¹ and allows for the efficient and timely engagement of organizations specifically equipped to handle each type of abuse. Although current cross-reporting measures tend to revolve around child abuse, states have extended cross-reporting to include adult victims of domestic violence.¹⁹²

Finally, some researchers have sought to raise awareness about the link. For example, the Humane Society of the United States launched the First Strike initiative, designed to educate prosecutors, law enforcement, shelter workers, veterinarians, and the general public about the significance and potential implications of animal cruelty, particularly when perpetrated by children or in a context of other domestic violence.¹⁹³ The American Humane Association founded and operates the National Resource Center on the Link Between Violence to People and Animals, which trains professional groups across the country on how to address the link and provides access to important resources.¹⁹⁴ Other educational efforts focus on children and attempt to “foster empathy and altruism towards animals” with the goal that this empathy will also “generaliz[e]” into “empathy toward human beings.”¹⁹⁵ Research suggests that such humane education can be effective.¹⁹⁶

Despite the promise and effectiveness of the approaches outlined in this section, it is clear that criminal sanctions are conspicuously missing. Addressing this type of abuse within the criminal system, as will be argued in Part III, would represent a highly effective and much-needed measure that

¹⁹⁰ DeGue & DiLillo, *supra* note 18, at 1038.

¹⁹¹ It may also expose abuse perpetrated by an individual other than the primary abuser. *See* Duncan & Miller, *supra* note 25, at 370 (surveying research that examined the perpetration of animal cruelty by children as a result of the children experiencing animal cruelty or domestic violence themselves).

¹⁹² DeGue & DiLillo, *supra* note 18, at 1038.

¹⁹³ *See* THE HUMANE SOCIETY OF THE U.S., FIRST STRIKE: THE VIOLENCE CONNECTION (2008), available at http://www.humanesociety.org/assets/pdfs/abuse/first_strike.pdf.

¹⁹⁴ *About the Link*, AM. HUMANE ASS'N, <http://www.americanhumane.org/interaction/professional-resources/the-link/about.html> (last visited May 4, 2014).

¹⁹⁵ *See* Duncan & Miller, *supra* note 25, at 380.

¹⁹⁶ *See id.* (citing Frank R. Ascione, *Enhancing Children's Attitudes About the Humane Treatment of Animals: Generalization to Human-Directed Empathy*, 5 ANTHROZOÖS 176 (1992)).

would significantly enhance and round out the overall framework of policies designed to deal with the abuse of animals as a tool of domestic violence.

III. ADDRESSING THE LINK WITHIN THE CRIMINAL JUSTICE SYSTEM

Thus far, this Comment has demonstrated that acts of animal abuse are often used as methods of inflicting harm and gaining control over human victims, and that, as such, these acts are acts of domestic violence directed against the human. Consequently, this recognition conceptually necessitates the treatment of domestic violence animal abuse as a domestic violence offense. Most states have adopted specialized domestic violence provisions that encompass a range of measures designed to protect victims, facilitate prosecution, and prevent or mitigate further abuse. Part III.A surveys these specialized measures and mechanisms, thereby demonstrating the significant benefits that would accompany the incorporation of animal abuse as a domestic violence offense. These benefits serve to reinforce the case against the method followed by Indiana, which recognizes the domestic violence dimension of animal cruelty while nonetheless treating it as an elevated animal abuse offense.

With the foundation that animal abuse must be addressed within domestic violence statutes, focus turns to the two primary methods by which this may be statutorily implemented. Part III.B discusses the approach relevant to states that designate specific domestic violence offenses: for example, second degree domestic battery. In such states, domestic violence animal cruelty would represent a distinct offense within the domestic violence scheme.¹⁹⁷

The second method of implementation is presented in Part III.C, and applies to states that broadly apply the label of domestic violence to various independent, conventional offenses when committed against certain individuals or under certain circumstances. Under this model, a variety of offenses may constitute a domestic violence offense; once a criminal act attains this label, specialized domestic violence provisions come into play and may impose special sentencing requirements and make available several nonpenal remedies. In these states, animal cruelty would be incorporated into the list of offenses that constitute domestic violence.

Finally, Part III.D will synthesize the legal and empirical considerations presented in this Comment and propose elements of a model statute that

¹⁹⁷ See, e.g., ALA. CODE §§ 13A-6-131(a), 132(a) (2005 & Supp. 2013).

addresses the perpetration of animal abuse as a domestic violence offense. Because of the variety among states' statutes, these elements are presented as principles, rather than as actual statutory language.

First, however, a brief note on the scope and applicability of domestic violence provisions is helpful. Domestic violence provisions typically apply to a variety of intimate and familial relationships and are not confined only to offenses between spouses or cohabitants. For example, Georgia addresses the issue as "family violence," which is defined as certain crimes committed between "past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household."¹⁹⁸ Under Alabama law, domestic violence offenses apply to acts committed against "a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant."¹⁹⁹ The domestic violence provisions of most states have similarly broad applicability, designed to counter household, familial, and spousal violence rather than solely intimate partner violence. The scope of this Comment, however, is confined to intimate partner violence, although it should be continuously remembered that the acts and abuses addressed herein are equally perpetrated against other household members and against children in particular.

A. Special Remedies and Provisions Applicable to Crimes of Domestic Violence

The conceptual propriety of criminalizing animal abuse as a form of domestic violence is complemented by the prospective applicability of a diverse range of special remedies, provisions, and safeguards available only to domestic violence cases. The true benefit of this criminal approach lies in the availability of these provisions, which offer protection to victims, ensure a diligent pursuit of complaints, and allow for the rehabilitation of the offender.

Even before the inception of a case, domestic violence offenses may fundamentally differ from other cases based on the forum in which they are handled. Several states have established specialized domestic violence courts:

¹⁹⁸ GA. CODE ANN. § 19-13-1 (2010).

¹⁹⁹ ALA. CODE § 13A-6-130(a) (2005 & Supp. 2013).

A specialized domestic violence court is an integrated system that can handle both civil protection orders and criminal domestic violence cases. In addition to its ability to allow for integrated adjudication of all issues related to the domestic violence occurring in a victim's environment, the court can address domestic violence from a community-wide perspective by incorporating into the judicial process referrals for counseling, batterers' intervention treatment programs, substance abuse programs, and other resources for victims, batterers, and their families. Domestic violence courts can thus constitute a comprehensive community response to domestic violence that integrates multiple services into a single court-based system. This multidisciplinary, comprehensive approach designed to promote both the rehabilitation of abusers and to assist victims to receive necessary services, can be seen as reflecting principles of therapeutic jurisprudence.

Such an integrated court can offer heightened responsiveness of the judicial system to individual domestic violence victims.²⁰⁰

Thus, many states have invested in substantive infrastructure toward developing a dedicated, distinct system to effectively address domestic violence offenses. Other extrajudicial systems and resources may also be available to handle domestic violence cases outside ordinary courtrooms.²⁰¹ Omitting a method of domestic violence that is substantial both in scope and severity undermines the purpose and cost-effectiveness of such systems by disregarding cases that should properly be handled by these systems.

Regardless of the type of court in which a domestic violence case is handled, courts have several measures at their disposal. Perhaps the most common alternative remedy or consequence is counseling or a similar form of therapy or education.²⁰² Some states require²⁰³ or permit²⁰⁴ a court to order the

²⁰⁰ Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 39–40 (2000) (footnotes omitted). The use of such courts has numerous other benefits, including allowing a court to monitor child support payments and compliance with orders of probation, coordinate case management, develop expertise, and play a larger role in rehabilitation. *Id.* at 40.

²⁰¹ See, e.g., Angela M. Killian, Comment, *Mandatory Minimum Sentences Coupled with Multi-Facet Interventions: An Effective Response to Domestic Violence*, 6 UDC L. REV. 51, 59 (2001); see also WASH. REV. CODE § 26.50.150 (2013) (describing domestic violence perpetrator programs).

²⁰² See, e.g., CONN. GEN. STAT. ANN. § 46b-38c(h) (West 2009 & Supp. 2013) (providing for a "pretrial family violence education program").

²⁰³ See, e.g., ARIZ. REV. STAT. ANN. § 13-3601.01(A) (2010); COLO. REV. STAT. § 18-6-801(1)(a) (2013); MISS. CODE ANN. § 97-3-7(6) (West 2011 & Supp. 2013); UTAH CODE ANN. § 77-36-5(5) (West 2004 & Supp. 2013).

²⁰⁴ KAN. STAT. ANN. § 21-5414(b)(1) (West Supp. 2013).

offender to attend such treatment programs, often in lieu of a conventional sentence for a first-time offender guilty of a low-level offense.²⁰⁵ An offender may also be ordered to receive treatment evaluations before trial, in order to enhance a judge's ability to impose an appropriate and effective sentence,²⁰⁶ as a condition of probation,²⁰⁷ or as a prerequisite to qualify for a pretrial diversion program.²⁰⁸ Treatment may focus, alternatively or concurrently, on substance abuse²⁰⁹: this is appropriate given the extent to which domestic violence is caused or exacerbated by underlying substance abuse issues.²¹⁰

Many state codes also contain special provisions for habitual or repeat domestic violence offenders.²¹¹ The current failure to account for animal abuse as a domestic violence offense implies that an individual may abuse a domestic partner through an animal for a long time, and even be convicted for it without those acts counting on his record toward a more severe penalty as a habitual domestic violence offender. This undue leeway exposes both animals and humans in the household to a period of abuse that is prolonged beyond the point at which the judicial system would otherwise be able to intervene.

²⁰⁵ This preference for batterer treatment is also evident in the federal Violence Against Women Act. *See* 18 U.S.C. § 3563(a)(4) (2012).

²⁰⁶ *See, e.g.*, COLO. REV. STAT. § 18-6-801(1)(b); OKLA. STAT. tit. 21, § 644(G) (2011). Some have responded to such pretrial measures with criticism.

One major concern with the criminalization movement is that evidentiary standards for proving abuse have been so relaxed that any man who stands accused is considered guilty. For example, in Florida, Judges Margaret Waller and Carol Draper require treatment for domestic violence as a condition of bail for almost everyone accused of the crime. The Florida ACLU is concerned that such pretrial conditions assume guilt without further proof, thus violating the presumption of innocence.

Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1516 (1998) (footnote omitted).

²⁰⁷ *See* ALASKA STAT. § 12.55.101(a)(1) (2012); CAL. PENAL CODE § 1203.097(a)(6) (West Supp. 2014); FLA. STAT. § 741.281 (Supp. 2014).

²⁰⁸ *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3601(I) (2010); MINN. STAT. § 518B.01(6)(a)(7) (2012); NEV. REV. STAT. § 200.485(3) (2013); OHIO REV. CODE ANN. § 2919.271 (West 2006).

²⁰⁹ Hanna, *supra* note 206, at 1519–20; *see also* MONT. CODE ANN. § 45-5-206(4)(a) (West 2009 & Supp. 2013) (requiring convicted offenders to complete an assessment evaluating, *inter alia*, “chemical dependency”).

²¹⁰ *See generally* Lisa Lightman & Francine Byrne, *Addressing the Co-occurrence of Domestic Violence and Substance Abuse: Lessons from Problem-Solving Courts*, 6 J. CTR. FOR FAMS. CHILD. & CTS. 53 (2005) (exploring potential legal and practical approaches focused on the co-occurrence of domestic violence and substance abuse).

²¹¹ *See, e.g.*, COLO. REV. STAT. § 18-6-801(7) (providing that a person convicted of a fourth domestic violence offense is designated a habitual offender, punishable as a Class 5 felony); UTAH CODE ANN. § 77-36-1.1(2)(c)(ii) (West 2004 & Supp. 2013) (elevating the penalty for domestic violence to a felony if the offender was convicted of domestic violence within the past five years).

Several states complement habitual offender provisions by attempting to restrict the discretion of law enforcement officials and prosecutors dealing with domestic violence cases. The purpose of such measures is to ensure that all claims of domestic violence are thoroughly investigated, prosecuted if necessary, and dismissed only for a lack of evidence. Thus, mandatory arrest provisions state that “officers must arrest when they have probable cause to believe that a domestic violence assault has occurred”; other states have adopted “policies [that] encourage officers to arrest but do not require them to do so.”²¹² Officers may also be required to take special steps to protect the victim during an investigation or arrest arising from an incident of domestic violence, such as ensuring that the victim may safely claim personal effects before leaving.²¹³

Further provisions address prosecutorial and judicial discretion. Some states restrict the availability of *nolo contendere* or guilty pleas in domestic violence cases, and effectively require the full prosecution and trial of a case unless it is clear that the case has very little chance of success.²¹⁴ Such policies are also advocated for under federal law.²¹⁵ In addition, many states have adopted “no-drop” provisions,²¹⁶ which aim to prevent the otherwise-frequent dismissal of domestic violence cases, whether due to lack of victim cooperation, lack of investigation, recantation, or otherwise.²¹⁷ There are strong arguments for the effectiveness of such policies;²¹⁸ moreover, their

²¹² Hanna, *supra* note 206, at 1519 n.47; see HAW. REV. STAT. § 709-906(2) (Supp. 2013) (permitting arrest without a warrant for domestic violence situations); UTAH CODE ANN. § 77-36-2.4 (mandating arrest for probable cause, even without a warrant). Research suggests that despite popular criticism, arresting batterers might be one of the most effective ways to address domestic violence. Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929, 929 (1994) (“[P]ublished studies show that arrest generally is the superior method of deterring future violence.”).

²¹³ See, e.g., UTAH CODE ANN. § 77-36-2.1(1) (requiring that officers confiscate weapons, arrange for shelter for the victim, and protect the victim while she removes personal effects).

²¹⁴ See, e.g., COLO. REV. STAT. § 18-6-801(3) (2013). Colorado’s provision to this effect bars a court from accepting guilty or *nolo contendere* pleas “unless the prosecuting attorney makes a good faith representation on the record” that he or she could not establish a prima facie case that the alleged victim and perpetrator were involved in an intimate relationship, as defined in the statute. *Id.*

²¹⁵ See Hanna, *supra* note 206, at 1516.

²¹⁶ *Id.* at 1520; see also Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 856 (1994).

²¹⁷ Hanna, *supra* note 206, at 1520–21; see also Corsilles, *supra* note 216, at 856–57 (“In many jurisdictions, prosecutors routinely drop domestic violence cases because the victim requests it, refuses to testify, recants, or fails to appear in court.”).

²¹⁸ See Winick, *supra* note 200, at 77–78. Such provisions do evoke controversy, with criticism generated from advocates on both sides of the issue. Compare Corsilles, *supra* note 216, at 856–57 (“The controversy surrounding no-drop policies, for the most part, revolves around both prosecutors’ and victims’ aversion to

effectiveness, or lack thereof, has little bearing on the propriety of recognizing animal cruelty as a domestic violence offense to bring it within the scope of such policies in the first place.²¹⁹

Finally, other provisions are aimed at protecting alleged victims from their abusers before and during the disposition of a case. Colorado law prevents a court from imposing home detention on an abuser in the home of the victim²²⁰ and from granting deferred prosecution;²²¹ it also requires that the court consider the interests of the victim and the victim's children before granting probation.²²² Similarly, Utah law prevents individuals arrested for domestic violence from contacting the alleged victim and permits release through bail or other methods only upon the alleged offender certifying that he shall not enter the premises of, contact, or harm the victim.²²³ While protective orders are always available to victims through the civil process despite the absence of criminal proceedings, their imposition is significantly easier and more comprehensive when imposed under the authority of a criminal prosecution.²²⁴ Federal and most states' laws prevent a convicted domestic abuser from owning or possessing a firearm, thereby mitigating the lethality of any subsequent abuse.²²⁵

The possible measures briefly outlined above reflect a sophisticated and comprehensive statutory scheme aimed specifically at domestic violence. The protection and other benefits these measures provide will remain unavailable to

relinquishing control of the legal process. Prosecutors fear that scarce prosecutorial resources will be stretched beyond limits and wasted in pursuit of unwinnable cases due to victim nonparticipation. Victims' advocates, on the other hand, fear that no-drop policies will further victimize battered women and undercut efforts at victim empowerment. Moreover, some critics contend that no-drop policies may cause unwanted 'side effects,' such as increasing risks of retaliation and discouraging victim reporting." (footnotes omitted), with Marion Wanless, Note, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. ILL. L. REV. 533, 535 ("Nevertheless, mandatory arrest laws remain controversial: some view them as a simplistic solution to a complex problem, while others fear that mandatory arrest will actually increase domestic abuse. Supporters believe mandatory arrest laws will curtail domestic violence and signify that society finally recognizes that domestic violence is a crime." (footnotes omitted)).

²¹⁹ Winick, *supra* note 200, at 77–78.

²²⁰ COLO. REV. STAT. § 18-6-801(4) (2013).

²²¹ *Id.*

²²² *Id.* § 18-6-801(5); *see also* UTAH CODE ANN. § 77-36-5.1(1) (West 2004 & Supp. 2013).

²²³ UTAH CODE ANN. § 77-36-2.5. Such a certification would be the functional equivalent of a protective order, except that it is ostensibly voluntary rather than imposed.

²²⁴ *See id.* § 77-36-5 (allowing electronic monitoring of a defendant subject to a protective order); *id.* § 77-36-5.1 (laying out possible conditions available to a court and imposing costs on a defendant).

²²⁵ *See e.g.*, MINN. STAT. § 609.2242(3)(b) (2012).

victims who suffer abuse through the abuse of an animal, despite the fact that the harm involved may exceed that of other recognized, proscribed acts.

B. Designating Animal Cruelty as a Distinct Domestic Violence Offense

A number of states' approaches to domestic abuse consist of designating distinct domestic violence offenses in an independent statutory section. Generally speaking, the definitions of these offenses mirror those of equivalent offenses perpetrated in a nondomestic context. For example, Alabama defines the crime of assault in the first degree²²⁶ and, under the article "Domestic Violence and Related Offenses," designates domestic violence in the first degree.²²⁷ Domestic violence in the first degree incorporates by reference the definition of assault in the first degree, except that it applies when such act is committed against "a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant."²²⁸ The same approach is followed for domestic violence in the second²²⁹ and third degrees.²³⁰

Similarly, Arkansas addresses domestic violence offenses under the subchapter "Domestic Battering and Assault." This subchapter designates the crimes of battering in the first,²³¹ second,²³² and third degrees,²³³ along with assault in three degrees,²³⁴ and aggravated assault.²³⁵ The definitions of these offenses mirror their ordinary counterparts, substituting that the offense is committed against a "family or household member" in place of an "individual."²³⁶ Several other states specifically designate at least some domestic violence offenses.²³⁷

²²⁶ ALA. CODE § 13A-6-20(a) (2005).

²²⁷ *Id.* § 13A-6-130(a).

²²⁸ *Id.* This offense can also be committed via aggravated stalking committed against the same list of individuals. *Id.*

²²⁹ *Id.* § 13A-6-131(a) (2005 & Supp. 2013).

²³⁰ *Id.* § 13A-6-132(a).

²³¹ ARK. CODE ANN. § 5-26-303 (2013).

²³² *Id.* § 5-26-304.

²³³ *Id.* § 5-26-305.

²³⁴ *Id.* §§ 5-26-307 to -309.

²³⁵ *Id.* § 5-26-306.

²³⁶ "Family or household member" includes a spouse, former spouse, parent, child, present or past cohabitants, persons having a child together, and persons presently or formerly in a dating relationship. *Id.* § 5-26-302(2).

²³⁷ These states include Georgia (GA. CODE ANN. § 19-13-1 (2010)), Hawaii (HAW. REV. STAT. § 709-906 (Supp. 2013)), Idaho (IDAHO CODE ANN. § 18-918 (West 2006 & Supp. 2013)), Illinois (720 ILL. COMP. STAT.

The majority of these states impose penalties for at least some of the designated domestic violence offenses that are harsher than the companion offenses not perpetrated in the domestic context. For example, Alabama elevates the penalty for second- and third-degree battery offenses by one level when committed against a domestic individual. Thus, assault in the first degree is ordinarily penalized as a Class B felony,²³⁸ by contrast, domestic violence in the first degree is punishable as a Class A felony.²³⁹ Domestic violence in the second degree is similarly elevated from a Class C to a Class B felony.²⁴⁰ Arkansas demonstrates a similar policy, elevating the penalty for domestic battering in the second degree by one felony level.²⁴¹ Treating domestic violence crimes more severely reflects the understanding that violent acts are inherently more severe when perpetrated against intimate partners or family members.

Under this model, certain acts of animal cruelty committed with the specific intent of harming, coercing, or harassing a domestic partner would be designated an offense under the domestic violence statute. Drawing upon Indiana's example for the sake of simplicity, this offense could be termed *domestic violence animal cruelty*.²⁴² Akin to the structure of the domestic violence statutes described above, animal cruelty would then be punishable either as an independent act, or separately as a crime against a domestic partner when committed against such an individual. This method represents a consolidated approach to offenses directed toward an intimate partner and the logical method of implementation in states whose statutory framework already designates special domestic violence offenses.

At the same time, this relatively straightforward approach poses implications that must be appropriately resolved for such a provision to be legal and effective. The designated crime of domestic violence animal cruelty

ANN. 5/12-3.2 (West 2002 & Supp. 2014)), Indiana (IND. CODE § 35-42-2-1.3 (2012 & Supp. 2014)), Iowa (IOWA CODE § 236.2 (2013)), Kansas (KAN. STAT. ANN. § 21-5111(i) (West Supp. 2013)), Kentucky (KY. REV. STAT. ANN. § 403.720 (West 2006)), Louisiana (LA. REV. STAT. ANN. § 14:35.3 (2007)), Michigan (MICH. COMP. LAWS § 400.1501 (2013)), Minnesota (MINN. STAT. § 609.2242 (2012)), Mississippi (MISS. CODE ANN. § 97-3-7 (1999)), Montana (MONT. CODE ANN. § 45-5-206 (West 2009 & Supp. 2013)), Nevada (NEV. REV. STAT. § 33.018 (2011)), and Utah (UTAH CODE ANN. § 77-36-1 (West 2004 & Supp. 2013)).

²³⁸ ALA. CODE § 13A-6-20(b) (2005).

²³⁹ *Id.* § 13A-6-130(a).

²⁴⁰ *Compare id.* § 13A-6-21(b), *with id.* § 13A-6-131(a).

²⁴¹ *Compare* ARK. CODE ANN. § 5-13-202(b) (2013) (battery in the second degree is a Class D felony), *with id.* § 5-26-304(b)(1) (domestic battering in the second degree is a Class C felony). The penalties between first and third degree battery and domestic battering are maintained, however.

²⁴² *See* IND. CODE § 35-46-3-12.5 (2012 & Supp. 2014).

is, by definition, animal cruelty committed with the additional intent of harming, coercing, or manipulating a human victim—the intimate partner. The underlying act of animal abuse, therefore, would represent a lesser included offense within the crime of domestic violence animal cruelty. A lesser included offense is “a crime where all elements of the lesser crime are identical to some of the elements of the crime charged.”²⁴³

This characterization is significant because an offender cannot be convicted of both a lesser included offense and the greater offense of which it is a part.²⁴⁴ This doctrine is rooted in the Double Jeopardy Clause of the Constitution, preventing an individual from being punished for the same act twice.²⁴⁵ The fact that an abuser would not be able to be convicted of both animal abuse and domestic violence presents two important implications that revolve around the manner in which domestic violence animal cruelty is penalized.

First, the sentencing available for the crime of domestic violence animal cruelty must adequately recognize and penalize the harm inflicted upon both victims. The crime of domestic violence animal cruelty involves two types of harm inflicted upon two victims: the animal and the human. The harm to the human victim is inflicted in addition to the base offense of animal abuse. In the absence of the lesser included offense doctrine, an offender could be convicted of both domestic violence and animal abuse and be cumulatively sentenced for both offenses. Because of the doctrine, however, a single conviction of domestic violence animal cruelty must simultaneously address and penalize the harm inflicted on both victims.

Viewing domestic violence animal cruelty as the base offense (harming the animal) plus the resultant harm to the human clarifies that the sentence for the crime, logically, should be equivalent to the current penalty for animal abuse plus the perceived punitive value of the harm to the human. This conceptualization ensures that the harm to both victims is recognized, and its methodology is inherently applicable to all states that designate distinct domestic violence offenses. Moreover, the use of a state’s current treatment as a baseline ensures that the sentence for domestic violence animal cruelty is internally consistent with the remainder of the statutory scheme and does not

²⁴³ KAN. STAT. ANN. § 21-5109 (West Supp. 2013).

²⁴⁴ *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008). He may, however, be charged with both offenses and only convicted of one. *Ball v. United States*, 470 U.S. 856, 865 (1985).

²⁴⁵ U.S. CONST. amend. V.

reflect either increased or decreased consideration for the welfare of the animal.

The most straightforward method by which this approach may be implemented is to designate domestic violence animal cruelty as an offense that is one level above the base crime of animal abuse. Thus, where the animal abuse in isolation would be penalized as a Class B misdemeanor, the overall act of domestic violence animal cruelty would correspondingly be penalized as a Class A misdemeanor. Indiana adopts this approach with the beating of a vertebrate animal, increasing the level of the offense from a Class A misdemeanor to a Class D felony.²⁴⁶ At the same time, because the focus here is on additional penalization, a provision that retains the level of the base offense but increases the maximum and minimum sentence would achieve the same purpose. This approach may be more desirable in certain situations, such as where state legislatures are uncomfortable with equating a domestic violence offense based on animal abuse with other offenses perceived as more severe, or where an increase in the level of the offense would involve a disproportionate increase in the available sentence.

The second implication of the lesser included offense doctrine also involves sentencing and effectively mandates the incremental sentencing approach advocated above. Although authority is divided on the issue, most state courts have held that a lesser included offense cannot carry a heavier penalty than the greater offense charged. Holdings to this effect have been based on both state constitutions²⁴⁷ and the Eighth Amendment of the U.S. Constitution, prohibiting cruel and unusual punishment.²⁴⁸ The common-sense rationale of this rule is apparent: an act that is a lesser included offense implies that it is of less or, at most, equal severity as the greater offense that subsumes it. It would be perversely inconsistent to convict a defendant of a crime that is simultaneously “lesser” and that also carries a stiffer penalty. Such an approach would also perversely incentivize the commission of the greater offense instead of the lesser.

²⁴⁶ IND. CODE § 35-46-3-12(b)(2) (2012 & Supp. 2014).

²⁴⁷ See *Rector v. State*, 339 N.E.2d 551, 554 (Ind. 1976); *Brown v. State*, 301 N.E.2d 189, 190 (Ind. 1973) (“[T]he legislature may not, consistent with the commands of the State and Federal Constitutions, provide a punishment for a lesser included offense which is greater in years on the face of the statute than the greater offense.” (emphasis omitted) (quoting *Dembowski v. State*, 240 N.E.2d 815, 817 (Ind. 1968)) (internal quotation mark omitted)); *Clark v. State*, 311 N.E.2d 439, 440 (Ind. App. 1974); *State v. McLain*, 974 P.2d 727, 729 (Or. Ct. App. 1999) (en banc); *State v. Kost*, 290 N.W.2d 482, 486–87 (S.D. 1980).

²⁴⁸ See *Roberts v. Collins*, 544 F.2d 168, 170 (4th Cir. 1976); *Brown*, 301 N.E.2d at 190.

Other courts have held, however, that given the legislature's exclusive prerogative to define and prescribe punishments for crimes, a greater punishment for a lesser included offense is unproblematic,²⁴⁹ including under the federal Constitution.²⁵⁰ Courts are further split as to whether the lesser offense must also carry a lesser penalty; it would appear that a majority of courts hold that this is not required, and that the sentences available for the greater and the lesser offense may permissibly be equal.²⁵¹

The foregoing considerations imply that a domestic violence animal cruelty provision based on an increase in the penalty for the foundational act of animal abuse is not only logical and desirable, but is legally necessary in most states in order to not run afoul of constitutional requirements. This basic approach guarantees penal treatment for the harm suffered by both victims; the purpose of incorporating animal abuse as a domestic violence offense is to ensure that the harm to the human victim is recognized, and to ensure the animal abuse offense is not relegated to simply being a means to punish the human abuse. The general principle articulated in this subsection—that domestic violence animal cruelty must be penalized more than the underlying act of animal abuse—applies in equal force to any approach that aims to consider animal abuse as a domestic violence offense, and thus also features prominently in the following section.

C. Including Animal Cruelty Within the Definition of Domestic Violence

The second approach is based on states that do not specify particular domestic violence offenses, but incorporate a broad range of offenses within the label of domestic violence. Only some such states enhance the penalties for

²⁴⁹ See *State v. Parker*, 118 P.3d 107, 111 (Idaho 2005) (citing *State v. Goodrick*, 641 P.2d 998, 1001 (Idaho 1982)); *Commonwealth v. Everett*, 705 A.2d 837, 839 (Pa. 1998) (upholding a conviction on the lesser included offense of aggravated assault rather than attempted murder despite fact that aggravated assault carried a lengthier sentence); *Zimmerman v. Commonwealth*, 759 A.2d 953, 958 n.2 (Pa. Commw. Ct. 2000) (“However, on those rare occasions where the lesser-included offense carries the greater penalty, the sentencing authority has discretion to impose the penalty attached to the lesser-included offense.”).

²⁵⁰ See *Goodrick*, 641 P.2d at 1000–01 (“[W]e disagree with *Goodrick*’s assertion that the Eighth Amendment to the United States Constitution requires proportionality and prohibits a greater penalty for a greater offense.”).

²⁵¹ See *United States v. Harley*, 990 F.2d 1340, 1343–44 (D.C. Cir. 1993); *Sanders v. State*, 944 So. 2d 203, 206–07 (Fla. 2006) (explaining that the lesser included offense need not be lesser in both degree and penalty); *Carle v. State*, 983 So. 2d 693, 695 (Fla. Dist. Ct. App. 2008); *Clark*, 311 N.E.2d at 440; *State v. Nguyen*, 197 P.3d 673, 678 (Wash. 2008). *But see* ME. REV. STAT. tit. 17-A, § 13-A(2) (2006); OHIO REV. CODE ANN. § 2945.74 (West 2006) (to qualify as a lesser included offense, the offense must carry a lesser penalty).

these offenses when committed as domestic violence offenses;²⁵² the remainder leave intact the original sentencing schemes and instead utilize the domestic violence designation to make available the range of procedural and protective measures discussed in Part III.A. Treating animal abuse as a domestic violence offense in such states would nonetheless require an enhancement in the penalties as compared to the independent act of animal abuse, for the reasons presented in Part III.B. Because this approach does not involve designating distinct offenses, the focus is instead on enhancing the punishment for existing offenses when committed in a domestic context; several options are available for doing so.

To examine the methods by which sentencing enhancements may be implemented, it is useful to examine the related topic of harm caused to children as a result of exposure to domestic violence. The two concepts share some rudimentary commonalities, and many states penalize domestic abuse and other violent crimes more severely when such acts are committed in the presence of a minor.²⁵³ These statutes reflect the understanding that witnessing domestic abuse can inflict significant emotional and long-term psychological harm on a child, even if such effects are unintentional.²⁵⁴ Despite the fact that only the domestic partner is directly and intentionally harmed, therefore, such statutes presumptively recognize the additional victimization of the child that results and increase the level of the crime or the sentence accordingly. Such child exposure enhancements provide illustrative guidance on how to implement increased sentences.

There are three primary methods by which state criminal statutes currently address a child's exposure to domestic violence. The first method is to elevate the level of an offense when the crime is committed in the presence of a child. This is similar to the system discussed in Part III.B, absent the creation of a distinct offense. Oregon adopts this approach, treating, for example, assault in the fourth degree as a Class C felony instead of a Class A misdemeanor when committed in the presence of a child of the victim or the offender.²⁵⁵ Under Utah law, the commission of domestic violence in the presence of a child is a

²⁵² See, e.g., GA. CODE ANN. § 16-5-23.1(f)(2) (2011) (increasing the penalty for a second conviction of family violence battery to a felony, punishable by a minimum of one year).

²⁵³ See, e.g., OR. REV. STAT. § 163.160(3)(c) (2011); UTAH CODE ANN. § 76-5-109.1 (West 2004 & Supp. 2013).

²⁵⁴ Lois A. Weithorn, *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes*, 53 HASTINGS L.J. 1, 4, 6–7 (2001).

²⁵⁵ OR. REV. STAT. § 163.160(3)(c).

distinct offense,²⁵⁶ punishable in addition to the underlying crime of domestic violence.²⁵⁷ In the animal context, Indiana adopts a similar approach: knowingly or intentionally beating an animal is classified as a Class A misdemeanor; however, this act is punished as a felony if “the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.”²⁵⁸

The second approach is to prescribe by statute that the offense committed shall receive a sentence that is a certain duration longer than otherwise would be available. This may be implemented by mandating a fixed increase or by increasing the minimum or maximum sentences possible. Alaska treats the presence of a child during the commission of certain felonies as a basis for imposing a sentence greater than the presumptive ranges provided by statute.²⁵⁹ Similarly, in Florida, the commission of a crime of domestic violence in the presence of a child increases the offender’s sentencing points by a factor of 1.5,²⁶⁰ and Idaho doubles the maximum permissible sentence.²⁶¹ Oklahoma punishes a first offense of domestic violence by a period not exceeding one year;²⁶² the same offense may not be punished by less than six months nor more than a year when committed in the presence of a child.²⁶³ Arkansas levies an enhanced sentence of up to ten years if domestic violence or, notably, aggravated animal cruelty is committed in the presence of a child.²⁶⁴

The third approach is to treat the fact that domestic abuse was committed in the presence of a minor as an aggravating factor at sentencing. This differs from the previous approaches in that the increase in sentence is subject entirely to the discretion of the trial judge; he or she may impose a greater sentence upon consideration of the aggravating factor, but is not compelled to do so.

²⁵⁶ UTAH CODE ANN. § 76-5-109.1(2).

²⁵⁷ *Id.* § 76-5-109.1(4). This statute is an example of a legislature explicitly stating that a crime is to be considered distinct from its lesser included offense, and that the two are to be treated separately, without merging. Because courts have prohibited such treatment on constitutional grounds, the validity of such a provision is unclear.

²⁵⁸ IND. CODE ANN. § 35-46-3-12(b)(2) (2012).

²⁵⁹ ALASKA STAT. § 12.55.155(c)(18)(C) (2012).

²⁶⁰ FLA. STAT. § 921.0024 (2006 & Supp. 2014).

²⁶¹ IDAHO CODE ANN. § 18-918(4) (West 2006 & Supp. 2013).

²⁶² OKLA. STAT. tit. 21, § 644(C) (2011).

²⁶³ *Id.* § 644(G).

²⁶⁴ ARK. CODE ANN. § 5-4-702 (2013). In addition, the offender “is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.” *Id.* § 5-4-702(e).

California,²⁶⁵ Hawaii,²⁶⁶ and Washington²⁶⁷ are examples of states that follow this approach.

Of the three options, treating the animal abuse as an aggravating factor would be the least effective and would not truly recognize the fact that the offense, by definition, involves double victimization. Unlike child exposure, which can vary greatly in degree and harm, the crime of domestic violence animal cruelty requires the abuse of the animal and the resultant harm of the human. Moreover, judges and prosecutors tend to be dismissive of animal cruelty cases, and this neglect is likely to only be exacerbated when they are simultaneously faced with a victimized human whose interests are perceived as far more significant.²⁶⁸

A more prudent choice, and one that appropriately recognizes the nature of the offense involved, would be to adopt one of the first two options proposed: to increase the order of the offense, or to mandate an increase in the sentence by a fixed amount. Both options would recognize the double victimization involved, introduce certainty into the process, and insulate the crime from misplaced prosecutorial or judicial dismissiveness.

Of these, the more straightforward approach would be to elevate the level of the offense committed. This method follows the approach broadly adopted by states that specifically designates domestic violence offenses, discussed in Part III.B. An elevation in the level of the offense would inherently involve an increase in an offender's sentence or, at a minimum, an increase in the maximum sentence.

From a national perspective, increasing the level of the offense would facilitate a loose consistency in states' approaches to domestic violence, animal abuse, and child maltreatment. The similar manner in which these three types of abuse may co-occur or be intentionally perpetrated simultaneously merits the eventual adoption of uniform enhancements across states. Basing this uniform system on an increase in the level of the offense by one order when one form of abuse co-occurs with another would best facilitate this uniformity because it would be both straightforward and inherently consistent within each state's overall sentencing scheme.

²⁶⁵ CAL. PENAL CODE § 1170.76 (West 2004).

²⁶⁶ HAW. REV. STAT. § 706-606.4(1)(a) (Supp. 2013).

²⁶⁷ WASH. REV. CODE § 9.94A.535(h)(ii) (2012).

²⁶⁸ See Sauder, *supra* note 5, at 8.

D. Elements of a Model Provision

The measures and approaches outlined above reflect the overall purposes of treating animal abuse as a domestic violence offense: to appropriately penalize the harm inflicted on both victims; to make available the full range of protective, remedial, and preventive measures currently available in domestic violence statutes; and to plug a prominent gap in the criminal law with a view toward countering the abuse of humans via the abuse of animals. The basic principles discussed, however, only reflect the core of any such provision. To be truly comprehensive and effective, a provision that treats animal abuse as a domestic violence offense must account for considerations revealed by current research in the field. Presented below are the elements of a model provision, designed to ensure that the criminal approach it embodies is comprehensive in its coverage, and that it affords the maximum protection possible to domestic violence victims abused through animal abuse.

First, as shown, the offense of domestic violence animal cruelty must be penalized more heavily than the base act of animal abuse. Regarding the specific intent of the crime, the statutory language Indiana currently uses serves as a good model: animal abuse qualifies as a domestic violence offense when committed with the “intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.”²⁶⁹ This language adequately covers the range of possible abuse without being over-inclusive.

Second, the types of animal abuse proscribed must not be limited to killing the animal. While witnessing the death of one’s animal will frequently be more traumatic than witnessing nonfatal abuse, the latter is highly capable of serving as a potent source of harm and manipulation. Moreover, nonfatal abuse allows for an animal to be exploited as a tool of abuse over a period of time, rendering it more powerful over the long term than a single incident of greater violence. Confining a statute to the killing of an animal would ignore the abusive pattern that culminates in the killing, and would fundamentally misunderstand the nature and effect of the abuse the statute purportedly covers.

Third, the statute should include not just the actual harm or killing of the animal, but an abuser’s threats to do so when the victim believes that the animal is in imminent danger of physical harm. Research has demonstrated that threats to animals are equally or more prevalent than the actual harm of

²⁶⁹ IND. CODE § 35-46-3-12(b)(2) (2012).

animals;²⁷⁰ such threats can be a method as effective as the actual harming of an animal for gaining compliance. Nebraska is an example of a state that has incorporated such threats into the definition of domestic violence, and thus serves as a valuable example that this element can and should be implemented.²⁷¹

Fourth, the statutory language employed should make clear that harming or threatening to harm an animal may qualify as an act of domestic abuse even after the victim has left the household. Fear and concern over an animal's welfare is cited alarmingly frequently as a factor preventing or delaying a victim's decision to leave an abusive household or forcing her to return to the household.²⁷² The necessity of this element is underscored by the legal and practical issues that often prevent a victim from being able to take her animal with her once she leaves or from placing her animal in a shelter.²⁷³

Fifth, states should adopt a provision that increases the penalty for animal abuse when the offender has one or more prior convictions for acts of domestic violence (in addition to existing enhancements for repeat animal abusers). This element is directly modeled on Oregon law, which contains such a provision.²⁷⁴ This approach recognizes the pattern that underlies both domestic and animal abuse and that, for a demonstrated regular abuser, animal abuse will rarely be committed in a manner that does not harm human members of the household. Because this provision would only apply to demonstrated domestic violence offenders, it is unnecessary to also make it a domestic violence offense.

Sixth, and finally, domestic violence animal cruelty should not be limited to certain species or types of animals. States vary significantly in the protections they afford to animals, with dogs and cats typically receiving the most protection. Not only is this approach improper, but its extrapolation to domestic violence animal cruelty would unduly exempt harm from its purview. Anecdotal reports show that animals other than traditional domestic animals

²⁷⁰ See *supra* Part II.A.

²⁷¹ NEB. REV. STAT. § 43-2922(8) (Supp. 2012) (“Domestic intimate partner abuse means . . . cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members.”).

²⁷² See *supra* Part I.C.

²⁷³ See *supra* Part II.C.

²⁷⁴ OR. REV. STAT. § 167.320(4)(a)(A) (2011). The act of animal abuse when committed by such an individual is then punished as a Class C felony.

have been abused and exploited in the same fashion.²⁷⁵ Imposing a species-based restriction on the scope of domestic violence animal cruelty improperly presumes that the abuse of omitted species will have no effect on the human victim. While the likelihood of a strong emotional bond may vary depending on the animal, the actual suffering caused and the control gained thereby is not species dependent. An abuser may harm and control a victim based on the victim's desire to not see the animal suffer, even in the absence of a particularly strong emotional relationship. Moreover, exemptions for agricultural and other institutionalized uses of animals would not be affected by a domestic violence animal cruelty provision that applies only in these narrow circumstances.

The six statutory elements proposed here are each vital to the effectiveness of any criminal provision that purports to address the abuse of an animal as a method of domestic violence. These elements are based upon research findings that demonstrate that the particular aspect each element covers does, in fact, occur in domestic violence situations. None of these statutory elements involve costs or investments in and of themselves; rather, they together represent a proposed approach to a particular criminal phenomenon that has thus far been largely ignored. The abuse of an animal may serve as a powerful source of harm and control over domestic violence victims, and it is the purpose of the criminal justice system to penalize criminal acts that cause harm. States' current failure to address this form of domestic violence represents a significant shortcoming in their efforts to curb domestic violence and appropriately sanction harmful criminal activity.

CONCLUSION

Animal cruelty and domestic violence unfortunately are both prevalent phenomena in the modern world. The achievement of one form of abuse through the other, then, represents a more severe and more disturbing synergy. In the face of growing research establishing that this type of abuse is committed and that it is a cause for substantial concern, for this abuse to remain unpunished under the law is increasingly unacceptable. States have made substantial and encouraging progress in the field of protective orders, with more than half granting some form of protection to animals and, thereby, to the domestic violence victims who have been abused through the abuse of their animal companions. It is hoped that this momentum, with the aid of

²⁷⁵ See Vellucci, *supra* note 31, at 242–43.

shelters and researchers, will progress to develop more comprehensive, sophisticated, and necessary measures designed to protect both animals and domestic violence victims. In few other areas do states turn as blind an eye to such a potent source of harm, and it has become abundantly clear that states can no longer justly afford to continue to do so. Indiana and Colorado are the first states to adopt criminal measures to approach the link, and this Comment hopes to demonstrate that other states must do the same.

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