

# ARTICLES

## MAN[’S BEST FRIEND] DOES NOT LIVE BY BREAD ALONE: IMPOSING A DUTY TO PROVIDE VETERINARY CARE

By  
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*Although all states outlaw cruelty to companion animals, most jurisdictions only prohibit causing unnecessary suffering as well as failure to provide food, water, and shelter. They do not address whether owners must obtain veterinary care. Even the few statutes that mention such treatment do not define exactly what kind and how much is required. This article highlights the deficiencies in these laws. It argues that keeping pets creates an obligation to get them medical treatment when they are sick or injured and also explains why such a duty is necessary. In addition, it proposes uniform legislation that creates an explicit obligation to provide health care to companion animals, imposes a duty on veterinarians to report cruelty, and establishes strict penalties for violations.*

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## I. INTRODUCTION

All states prohibit cruelty to companion animals.<sup>1</sup> Unfortunately, however, a majority of jurisdictions limit “cruelty” to unnecessarily causing suffering or the failure to provide food, water, and shelter.<sup>2</sup> They do not address the issue of veterinary care.<sup>3</sup> Moreover, the few statutes that mention medical attention fail to define exactly what treatment and how much is required.<sup>4</sup> This article highlights the deficiencies in these laws. It argues that owning pets creates an obligation on the part of the owner to seek veterinary care when companion animals are sick or injured and explains why such a duty is necessary.

Part II discusses the relationship between human beings and their companion animals.<sup>5</sup> It points out that the trend toward consid-

<sup>1</sup> Am. Humane, *Legislative Brief, Anti-cruelty Laws, What are anti-cruelty laws?* [http://www.americanhumane.org/site/PageServer?pagename=NR\\_legis\\_brief\\_anticruelty](http://www.americanhumane.org/site/PageServer?pagename=NR_legis_brief_anticruelty) (accessed Oct. 4, 2005). Commentators have begun to use “companion animal” rather than “pet” because it “more adequately encompasses the role that such animals play in people’s lives . . . .” Debra Squires-Lee, Student Author, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1099 n.2 (1995). The term also reflects the relational aspect of the human/animal bond. *Id.* at 1065. It refers to those animals that live and share their lives with human beings who are responsive to and interact emotionally with their guardians and who are valued as ends in themselves. *Id.* at 1098.

<sup>2</sup> *E.g.* Ariz. Rev. Stat. Ann. § 13-2910(H)(3) (West Supp. 2004); Cal. Penal Code Ann. § 597(b) (West 1999); Mass. Gen. Laws Ann. ch. 272 § 77 (West 2000 & Supp. 2005).

<sup>3</sup> *See infra* pt. V (discussing the few statutes that do mandate treatment).

<sup>4</sup> *See infra* pt. V (discussing the few statutes that do mandate treatment).

<sup>5</sup> The same arguments apply to birds or any other companion animal. This article, like many statutes, interprets pets broadly. *See e.g.* R.I. Gen. Laws §4-13-1.2 (2004) (defining pets to “mean[ ] domesticated animals kept in close contact with humans, which include, but may not be limited to dogs, cats, ferrets, equines, llamas, goats, sheep, and swine”). In fact, even goldfish may be considered companion animals. *See e.g. People v. Garcia*, 777 N.Y.S.2d 846, 850–53 (Sup. Ct. N.Y. County 2004) (upholding conviction for intentionally killing or seriously injuring a companion animal against a challenge that the statute was unconstitutionally vague as applied to a defendant who deliberately crushed goldfish under his heel because any person of ordinary intelligence

ering people with pets as “guardians” rather than “owners”<sup>6</sup> represents a move away from viewing animals as merely property to the realization that they are sentient beings with needs and rights.<sup>7</sup> Consequently, as is true with others who are vulnerable, a duty must be imposed on their custodians to procure medical services. Part III explores the expanding and improving treatment options<sup>8</sup> from which a veterinarian can choose. It also acknowledges that there are rising costs associated with these new procedures. Part III addresses the obvious reality that many people cannot afford to pay for all types of veterinary care and proposes possible alternatives. Part IV analyzes *People v. Arroyo*, a recent New York case where a court held that a man could not be criminally prosecuted for refusing to take his dog, who was terminally ill and suffering, to a veterinarian.<sup>9</sup> Part V reviews the state statutes enacted to protect companion animals. Part VI outlines in detail ways states could adequately protect pets. Part VII suggests uniform legislation that creates an explicit obligation to provide health care to companion animals, imposes a duty on veterinarians to report cruelty, and establishes strict penalties for violations.

## II. RELATIONSHIP CREATES DUTY

### A. *Relationship between Man and Companion Animals*

People “share enduring, intense, and deeply emotional relationships with their companion animals.”<sup>10</sup> Indeed, most Americans think of their dog or cat as a member of their families.<sup>11</sup> When their pet is sick or hurt, they take him to the veterinarian<sup>12</sup> and generally follow

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would know that this household pet was within the category of companion animals that legislators intended to protect).

<sup>6</sup> Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. Colo. L. Rev. 181, 197–200 (2003); but see Katie J.L. Scott, *Bailment and Veterinary Malpractice: Doctrinal Exclusivity, or Not?* 55 Hastings L.J. 1009, 1009 n.1 (2004) (acknowledging the “movement by some communities to change the title of ‘owners’ to ‘guardians,’” but noting “the present state of the law makes clear that animals are in fact owned by their owners”).

<sup>7</sup> See e.g. Peter Singer, *Animal Liberation* (Avon Books 1975) (arguing that the battle against tyranny towards animals is a struggle as important as any of the moral and social issues that have been fought in recent years); Cass R. Sunstein, *The Rights of Animals*, 70 U. Chi. L. Rev. 387 (2003) (commenting that if removing the property label from animals is helpful in reducing animal suffering, it ought to be done).

<sup>8</sup> Experts predict the trend is likely to continue. In fact, estimates are that veterinary services will grow forty-four percent by 2010. Battinto Batts, *We Love Our Pets*, Va. Pilot-Ledger Star D1 (Apr. 7, 2005).

<sup>9</sup> 777 N.Y.S.2d 836, 842 (Crim. Ct. N.Y.C. 2004).

<sup>10</sup> Squires-Lee, *supra* n. 1, at 1059–60.

<sup>11</sup> Elizabeth Paek, Student Author, *Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute*, 25 U. Haw. L. Rev. 481, 482 (2003) (noting that animal guardians assert that “little distinction” exists between their companion animals and their children, and that more than eighty percent of animal guardians consider their pets to be family members).

<sup>12</sup> In 2001, 78.1% of responding pet-owning households visited a veterinarian at least once. Am. Veterinary Med. Assn., *U.S. Pet Ownership & Demographics*

his advice even though doing so may be expensive.<sup>13</sup> Sadly, however, while many people are willing to spend enormous sums to maintain or restore their pet's health, others refuse to even take their sick animals to a doctor.<sup>14</sup> This raises the following important issues: First, does a duty to provide health care exist? Second, if this duty exists, what are the parameters of the obligation? Third, should violators face criminal prosecution?

### B. Duty to Obtain Treatment

Creating a responsibility for guardians to obtain and pay for medical attention for their companion animals makes sense for several reasons.

#### 1. Animals Are Not Just Property

While historically<sup>15</sup> pets were considered property,<sup>16</sup> a growing number of advocates insist that a dog or cat is much different than an inanimate object.<sup>17</sup> The case of a man whose will provided "his horses

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*Sourcebook* 30 (Am. Veterinary Med. Assn. 2002). Eighteen percent went to the office only once, another 19.9% twice, and 40.1% three or more times. *Id.* The average was three times. *Id.* The price tag was high. Estimates are that expenditures were \$278 per household and \$100 per visit. *Id.*

<sup>13</sup> Estimates are that, in 2005, Americans will spend \$35.9 billion on their pets. Of that, \$8.6 billion will be paid for veterinary care. Am. Pet Products Mfrs. Assn., *Industry Statistics & Trends*, [http://www.appma.org/press\\_industrytrends.asp](http://www.appma.org/press_industrytrends.asp) (accessed Oct. 2, 2005).

<sup>14</sup> See *e.g. infra* pt. IV (discussing a case where the court held an owner could not be prosecuted for cruelty to animals when he refused to provide veterinary care for his terminally ill dog).

<sup>15</sup> For an informative discussion of how animals were treated in ancient Persia, Greece, and other countries, see Orland Soave, *Animals, the Law and Veterinary Medicine* 4–9 (4th ed., Austin & Winfield Publishers 2000) (explaining that historically animals accused of killing or hurting humans were tried and punished for their actions). See also Jen Girgen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 *Animal L.* 97 (2003) (historical analysis of animal trials and executions arguing for a renewed emphasis on due process for those threatened with punishment for their "crimes").

<sup>16</sup> For an interesting review of the evolution of animals as property, see generally Harold W. Hannah, *Animals as Property Changing Concepts*, 25 *S. Ill. U. L.J.* 571 (2001). Professor Hannah explained that even though man's relationship with animals has always differed from that with inanimate objects, "an important development" in the way these nonhumans are treated was recognition that they "can suffer pain." *Id.* at 571. See also Gary L. Francione, *Animals, Property, and the Law* (Temple U. Press 1995).

<sup>17</sup> One commentator recently argued that recognizing the "fundamental distinctions" between animals and other personal property would permit the law "to fashion a more sophisticated set of legal responsibilities for, and rewards of, such ownership." Geordie Duckler, *On Redefining the Boundaries of Animal Ownership: Burdens and Benefits of Evidencing Animals' Personalities*, 10 *Animal L.* 63, 63 (2004). Thus, Professor Duckler created a jury instruction that would "list factors for determining the value and character of an animal, including testimony on aspects of its personality." *Id.* at 64. But the author also suggested "a sensible and realistic route by which the owner/animal relationship may be given a richer status in the law . . . involv[ing] not only the bestowal of

and his Cadillac be destroyed upon his death”<sup>18</sup> illustrates this distinction. No one protested demolishing the car, but people vehemently opposed killing the animals, and, predictably, the judge refused to enforce that provision.<sup>19</sup>

The very existence of anticruelty legislation demonstrates that animals are not just property.<sup>20</sup> A person can do just about anything to his couch without penalty, but he faces legal consequences if he mistreats his pet. Further, legislators are changing the language of anticruelty legislation to suggest additional legal obligations on the people with whom animals live.<sup>21</sup> For instance, in July 2000, Boulder, Colorado passed an ordinance that substituted “guardians” for all references to “owners.”<sup>22</sup> Within a few months, two California cities, Berkeley and West Hollywood, enacted similar municipal code sections, although the Berkeley ordinance combined both terms and refers to “pet owner/guardians.”<sup>23</sup> In 2001, Rhode Island also amended its animal statutes to state that the term “owner” shall also mean and may be interchanged with the term “guardian.”<sup>24</sup>

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new privileges on animal ownership, but the imposition of new obligations as well.” *Id.* See also Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 *Animal L.* 33, 47 (1998) (“If the economic value of companion animals was important to their human companions, as is normally the case with sofas, chairs, and other inanimate property, small animal veterinarians would close their doors, because human companions would never bring their companion animals for treatment. Instead, they would abandon them. They would throw them out. They would euthanize them upon any pretext rather than incur the high cost of feeding and caring for them. They would obtain newer, younger, and healthier companion animals, who are certainly plentiful and cheap enough.”).

<sup>18</sup> Sonia S. Waisman & Barbara R. Newell, *Recovery of “Non-Economic” Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 *Animal L.* 45, 56 (2001); see also Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 *Yale J.L. & Feminism* 97, 99–100 (2001) (explaining that the court received an outpouring of letters against destruction of the animals and not a single communication addressing owner’s desired destruction of his Cadillac); see also Lisa Kirk, *Recognizing Man’s Best Friend: An Evaluation of Damages Awarded When a Companion Pet is Wrongfully Killed*, 25 *Whittier L. Rev.* 115, 128–29 (2003) (noting that society’s attitude towards animals is different than toward other items typically categorized as property).

<sup>19</sup> Waisman & Newell, *supra* n. 18, at 56.

<sup>20</sup> Squires-Lee, *supra* n. 1, at 1071–72 (arguing that, by deciding people are not permitted to do whatever they want to their animals, lawmakers in all fifty states “have essentially acknowledged that animals are more than property and more than inanimate objects”).

<sup>21</sup> R. Scott Nolen, *J. Am. Veterinary Med. Assn. News, Owners or Guardians? Cities Change Identity of Pet Owners, Hoping to Promote Welfare*, <http://www.avma.org/onlnews/javma/apr01/s041501b.asp> (Apr. 15, 2001).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> R.I. Gen. Laws § 4-13-1.2 (2004).



Many veterinarians oppose this trend.<sup>25</sup> One reason might be that when an animal is considered mere property, recovery in a veterinary malpractice suit typically will be limited to the price paid for the pet.<sup>26</sup> This amount will be only a small fraction of the animal's importance to those who love and care for him.<sup>27</sup> This resistance from veterinarians is troubling and hypocritical. It would seem that people who devote their lives to helping sick and injured animals would be anxious to ensure that their patients receive the best care possible. Veterinarians benefit from owners' love for their pets and from the increased desire to do all that is possible to save them.<sup>28</sup> Their financial success actually depends on this type of sentiment.<sup>29</sup> In fact, a similar, earlier move toward recognizing animals' value to their owners was an important, necessary shift that allowed veterinarians to focus on dog and cat practices, upgrade their profession, and increase their incomes.<sup>30</sup> Yet, when the issue is whether these same creatures are property for purposes of a malpractice case, they hide behind the notion that an animal is property; consequently, even if they were negligent, liability should be limited to the cost of the pet.<sup>31</sup>

Practitioners claim that elevating companion animals' status would create troubling ethical and legal issues.<sup>32</sup> Their concern appears to be that if pets are viewed more like people rather than property, veterinarians would have a moral—possibly even a legal—duty to provide care regardless of the owner's financial situation.<sup>33</sup> For instance, just as a hospital or doctor in an emergency room cannot turn

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<sup>25</sup> Christopher Green, Student Author, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 *Animal L.* 163, 215 (2004) (highlighting the inherent contradiction in veterinarians opposing the elevation of animals from mere property status).

<sup>26</sup> *Id.* at 195; Kirk, *supra* n. 18, at 119.

<sup>27</sup> William Root, "Man's Best Friend": Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 *Vill. L. Rev.* 423, 443 (2002).

<sup>28</sup> See *id.* at 442–43 (acknowledging there would be "a tremendous impact" on the profession if animals were reclassified as something more than property but suggesting that because veterinarians "reap[] substantial benefits from the human-animal bond, it is logical and equitable" that they "absorb the total costs when they commit malpractice").

<sup>29</sup> *Id.* at 442.

<sup>30</sup> See e.g. Susan D. Jones, *Valuing Animals: Veterinarians and Their Patients in Modern America*, 7–8 (Johns Hopkins U. Press 2003) (regarding changes in the veterinary industry as the focus shifted away from farm animals). Ironically, it is now large animal doctors who are in short supply. John Flesher, *Fewer Vets Pursue Large-Animal Care*, *Miami Herald* 31A (Mar. 6, 2005) (noting that one reason for the increase in business is that "the owner of a beloved dog is more likely to spend \$600 to fix its blown-out knee than a farmer to invest in surgery for a hog destined for slaughter").

<sup>31</sup> Green, *supra* n. 25, at 215.

<sup>32</sup> Mike Stobbe, *They're Not Just Animals Anymore; In an Age of Specialists, Some Folks Give Their Pets Medical Care as Sophisticated as the Human Kind*, *Charlotte Observer* (N.C.) 1E (June 9, 2003).

<sup>33</sup> *Id.*

away someone because he cannot pay,<sup>34</sup> a veterinarian could not refuse to treat a dog that could be cured just because his guardian could not afford the fee.<sup>35</sup> While declining to help would be acceptable if the animal is considered property (certainly no one would expect a furniture repairman to fix a couch if the owner did not have money), if the pet is something more akin to humans than to an inanimate object, the rules presumably would be different and new requirements could be imposed on veterinarians.

Despite veterinarians' resistance, new legislation, including the aforementioned statutes and ordinances changing the nomenclature from owner to guardian, has begun to shift the perception that animals are property.<sup>36</sup> Advocates hope this recognition will lead to imposing additional duties on animal guardians and veterinarians.<sup>37</sup> For example, one result might be that eventually malpractice awards will include pain and suffering for the animal and the owner as well as damages for the guardian's emotional distress.<sup>38</sup> Such a change would probably substantially increase the amount the negligent practitioner must pay.<sup>39</sup> Of course, the possibility of a larger verdict is also likely to mean that the number of malpractice actions will also rise.<sup>40</sup>

## 2. *Companion Animals Help People*

Numerous scientific studies confirm that people who live with pets enjoy tangible benefits. These include but are not limited to: reduced stress and depression, lower blood pressure, decreased risk of heart disease, less loneliness, shortened recovery time from serious illnesses,<sup>41</sup> diminished chance of developing allergies in children,<sup>42</sup> increased learning of life skills and self esteem in young people,<sup>43</sup> and possibly cheaper life insurance.<sup>44</sup> An argument can be made that receiving these benefits creates an obligation to "pay back." Even without a legal or moral duty, however, it seems people would want the best care for their pets because keeping them healthy is in the owners' best interests.

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<sup>34</sup> *The Emergency Medical Treatment and Active Labor Act*, 42 U.S.C. § 1395dd (2000).

<sup>35</sup> Stobbe, *supra*, n. 32, at 1E.

<sup>36</sup> Nolen, *supra* n. 21.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Green, *supra* n. 25, at 216.

<sup>40</sup> *Id.* at 225.

<sup>41</sup> Allen M. Schoen, *Kindred Spirits: How the Remarkable Bond between Humans and Animals Can Change the Way We Live* 49–77 (Broadway Books 2001).

<sup>42</sup> Huss, *supra* n. 6, at 184.

<sup>43</sup> *Kids Learn Life Skills from Loving Pets*, Mercury (Hobart, Australia) 3 (Mar. 26, 2005) (available at 2005 WLNR 4717801).

<sup>44</sup> Christine Cave, *Trusts: Monkeying Around with Our Pets' Futures: Why Oklahoma Should Adopt a Pet-Trust Statute*, 55 Okla. L. Rev. 627, 629 n. 19 (2002).

### 3. *Fiduciary Relationship between Humans and Companion Animals*

Because a special relationship exists between a guardian and his companion animal,<sup>45</sup> and as the owner is in the best position to get help if something is wrong, he should be required to obtain needed veterinary care. Further, it is not necessary to argue for a whole panoply of rights to conclude that having a pet creates responsibility for his welfare. In fact, animal cruelty laws impose obligations on guardians, such as providing food, water, and shelter.<sup>46</sup> However, because most statutes do not explicitly mandate treatment,<sup>47</sup> they stop short of truly protecting animals. Analogous situations provide guidance in demonstrating the need for such a requirement.

#### a. *Companion Animals Are Like Children*

Animals and children are similar in many ways. First, of course, many adults treat their pets like members of their families.<sup>48</sup> They not only feed and play with them;<sup>49</sup> they dress them<sup>50</sup> and even take them on vacation.<sup>51</sup> Second, both are dependent on their caregivers and cannot get their own medical attention.<sup>52</sup>

Ironically, the first child abuse cases in the United States were actually brought under statutes prohibiting mistreatment of animals.<sup>53</sup> In the mid-1870s, Henry Bergh, the founder of the American Society for the Prevention of Cruelty to Animals (ASPCA), and an attorney for the group, relied on such a statute to successfully remove eight-year-old Mary Ellen Wilson from an abusive home.<sup>54</sup>

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<sup>45</sup> See Paek, *supra* n. 11, at 482–83 (analogizing the relationship to that between parent and child, concluding it thus “deserves similar protection,” and suggesting the legal concept that companion animals are property “is archaic and fails to reflect the modern social view”). Nevertheless, “[d]espite all of the proof that companion animals are loved and valued, and despite the evidence that a unique and irreplaceable relationship exists between human and animal, companion animals are legally defined as personal property in most states.” Squires-Lee, *supra* n. 1, at 1060.

<sup>46</sup> *E.g.* Ariz. Rev. Stat. Ann. § 13-2910(H)(3) (West Supp. 2004); Cal. Penal Code Ann. § 597(b) (West 1999); Mass. Gen. Laws Ann. ch. 272 § 77 (West 2000 & Supp. 2005).

<sup>47</sup> See *infra* pt. V (discussing the few statutes that do mandate treatment).

<sup>48</sup> Paek, *supra* n. 11, at 482–83.

<sup>49</sup> *Id.*

<sup>50</sup> *Pet Duds Are Big Business*, Cincinnati Post (Ohio) D5 (Sept. 11, 2004) (available at 2004 WLNR 1327812).

<sup>51</sup> Marty Becker, *Tips for Traveling with Pets during the Holiday Season*, Press of Atlantic City B3 (Nov. 22, 2004) (available at 2004 WLNR 17611673) (noting that, according to the Travel Industry Association of America, about fourteen percent of vacationers, or approximately twenty-nine million people, travel with their pets).

<sup>52</sup> Paek, *supra* n. 11, at 498.

<sup>53</sup> Melissa Trollinger, Student Author, *The Link among Animal Abuse, Child Abuse, and Domestic Violence*, 30 Colo. Law. 29, 29 (Sept. 2001).

<sup>54</sup> *Id.*



Obviously such a ruse is no longer necessary. Indeed, although language varies slightly, a majority of states presently require parents or guardians provide essential medical treatment for their children.<sup>55</sup> An exception exists if the custodian cannot afford care.<sup>56</sup> Courts assert that owners who cannot pay a doctor for their pets ought to be able to raise the same excuse.<sup>57</sup> “The legislature could not have intended to hold a person to a higher standard of conduct with respect to an animal than toward a fellow human being.”<sup>58</sup>

While this argument has superficial appeal, it is flawed for at least two reasons. First, government funds are available for sick children.<sup>59</sup> Obtaining the resources may be accomplished in a variety of ways. For example, parents can apply for aid<sup>60</sup> or go to free hospitals or clinics.<sup>61</sup> If they do neither, a state agency may take custody to provide care<sup>62</sup> or parents might actually give the children up to secure treatment for them.<sup>63</sup> Unfortunately, similar assistance is not availa-

<sup>55</sup> *E.g.* Ala. Code § 26-16-2(a)(5) (Supp. 2004); Mich. Comp. Laws Serv. § 722.602(1)(d) (LEXIS 2001); 11 Pa. Consol. Stat. Ann. § 2233 (West 1999). *See also* Thomas A. Jacobs, *Children and the Law: Rights & Obligations* vol. 2, §10:07 (West 2005) (noting that “[i]n all states, the withholding of necessary medical treatment from a child constitutes neglect or abuse”); Amy R. Applebaum, Student Author, *When Parental Autonomy Clashes with a Child’s Interest in the Advances of Science: The Case for the Future of Court-Ordered Gene Therapy*, 48 Wayne L. Rev. 1543, 1548 (2003) (explaining that the federal law mandates all states must develop a legal framework to provide necessary medical treatment for a child).

<sup>56</sup> *E.g.* Fla. Stat. Ann. § 39.01(30)(f) (West 2003) (defining neglect as when “that the parent or other person responsible for the child’s welfare fails to supply the child with adequate . . . health care, *although financially able to do so or although offered financial or other means to do so*”) (emphasis added); Cynthia R. Mabry, *Second Chances: Insuring That Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty*, 102 W. Va. L. Rev. 607, 616–17 (2000).

<sup>57</sup> *E.g. Arroyo*, 777 N.Y.S.2d 836, 844 n.3 (noting that the “[d]efendant’s decision not to provide medical care to his dog was not part of a pattern of neglect on his part but a conscious decision not to do it based on his moral beliefs and limited finances”).

<sup>58</sup> *Id.* (quoting *People v. Carr*, 703 N.Y.S.2d 868, 869 (Just. Ct. Erie Cty. 1999)).

<sup>59</sup> Anna Wermuth, Student Author, *Kidcare and the Uninsured Child: Options for an Illinois Health Insurance Plan*, 29 Loy. U. Chi. L.J. 465, 465–66 (1998).

<sup>60</sup> *Id.* at 479; *see also* Sylvia Guendelman & Michelle Pearl, *Children’s Ability to Access and Use Health Care*, 23 Health Affairs 235 (Mar. 1, 2004) (analyzing public insurance enrollment options) (available at 2004 WLNR 11334822).

<sup>61</sup> Katie Niekerk, *Gilroy Dispatch*, News, *RotaCare Back in Business*, <https://secure.gilroydispatch.com/news/contentview.asp?c=136593> (Dec. 21, 2004); *10 Questions*, *Muskogee Daily Phoenix & Times Democrat* (Okla.) 1 (Jan. 31, 2005) (available at 2005 WLNR 1369828). Some programs even provide free transportation to and from medical appointments. Julia Martinez, *Holes Being Ripped in Safety Net for Poor*, *Denver Post* E1 (Aug. 22, 2004) (available at 2004 WLNR 1013829).

<sup>62</sup> Kathleen Knepper, *Withholding Medical Treatment from Infants: When Is It Child Neglect?* 33 *Brandeis L.J.* 1, 3 (1995).

<sup>63</sup> *E.g.* Gwen Goodman, Student Author, *Accessing Mental Health Care for Children: Relinquishing Custody to Save the Child*, 67 *Alb. L. Rev.* 301 (2003) (explaining factors that drive parents to put their mentally ill children in the state’s care); *see also* Associated Press, *Ohio Parents Give Up Custody to Get Treatment: Care So Difficult, Costly That Mentally Ill Children Sometimes are Handed to Government Agencies*, *Akron Beacon J.* (Ohio) B5 (Mar. 22, 2004) (available at 2004 WLNR 2895262) (reporting that

ble for pets. Second, unlike humans, animals can be “put to sleep.”<sup>64</sup> Thus, as the price of medical care soars, there is a huge financial incentive to euthanize a sick pet, a procedure that is generally far less costly than treatment.<sup>65</sup>

On the other hand, similarities between child abuse and animal cruelty exist. For example, they are each general intent crimes.<sup>66</sup> In addition, the connection between the two crimes has been repeatedly demonstrated.<sup>67</sup> On a related note, in many cases defendants are charged with violating both. For example, in *Commonwealth v. Wise*, a jury found a father guilty of multiple counts of rape and abuse of a child without force, lascivious acts on a child under sixteen, crimes against nature, one count of assault and battery with a dangerous weapon, and two counts of cruelty to animals.<sup>68</sup>

Nevertheless, it is also important to note that currently all states mandate professionals and others report child abuse.<sup>69</sup> Realizing that

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parents of approximately eighteen hundred mentally ill children gave custody of their children to the Ohio government from 2001 to 2004).

<sup>64</sup> Jordan Curnutt, *Animals and the Law: A Sourcebook* 107–12 (2001) (revealing the methods different states use to euthanize dogs and cats and noting that, until mandatory sterilization policies are “universal, or nearly so,” animals will continue to be “put to sleep”).

<sup>65</sup> *Euthanasia Procedure at the Pound Called Inhumane*, News-Messenger (Freemont, Ohio) 4 (Mar. 25, 2004). Estimates are that it only costs \$1.27 for sodium pentobarbital to euthanize a dog and that shelter employees can be trained to administer the injection. *Id.* *But see* Green, *supra* n. 25, at 208 (noting that the “dollar-figure cutoff for ‘economic euthanasia,’ the point when treatment is suspended because of cost, rose [sixty-seven percent] between 1997 and 2003” and suggesting “[t]his dramatic reduction in such euthanasia verifies that pet owners increasingly are ‘willing to pay’ whatever it takes to maintain their relationships with companion animals”); Mary Battiatia, *How Much Is a Pet’s Life Worth*, Seattle Times A3 (Sept. 6, 2004) (explaining that euthanizing animals rather than providing expensive medical care “no longer is mainstream for American pet owners”).

<sup>66</sup> *Compare People v. Sargent*, 19 Cal. 4th 1206, 1215, 1222 (1999) (defining child abuse as a general intent crime even though statute uses terms “willfully causes or permits” because the *actus reus* is “infliction of unjustifiable pain or mental suffering on a child”) with *People v. Alvarado*, 125 Cal. App. 4th 1179, 1186–88 (4th Dist. 2005) (defining animal cruelty as a general intent crime in a statute prohibiting malicious and intentional maiming, mutilating, torturing, wounding, or killing an animal).

<sup>67</sup> *People v. Dyer*, 2004 WL 1759179 at \*2 (Cal. App. 3d Dist. 2004) (noting that the link between animal abuse and future human abuse has been well documented); *People v. Dyer*, 95 Cal. App. 4th 448, 456 (2d Dist. 2002) (explaining that “[i]f someone commits acts of violence against creatures that cannot defend themselves, it is possible that those actions are a precursor to abuse of children or elders. . . .”) (quoting Sen. Rules Comm., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 1991 (1997–1998 Reg. Sess.) Aug. 18, 1998); *see generally* Linda Merz-Perez & Kathleen M. Heide, *Animal Cruelty Pathway to Violence against People* (AltaMira Press 2003) (also connecting the link between child and animal abuse).

<sup>68</sup> 655 N.E.2d 643, 644 (Mass. App. 1995) (involving a dog and a cat); *see also People v. Cook*, 2003 WL 21500271 at \*1 (Cal. App. 4th Dist. 2003) (noting defendant entered negotiated guilty plea to child and animal abuse).

<sup>69</sup> Christopher R. Pudelski, Student Author, *The Constitutional Fate on Mandatory Reporting Statistics and the Clergy-Communicant Privilege in a Post-Smith World*, 98 Nw. U. L. Rev. 703, 706 (2004) (pointing out that by 1967 all fifty states had enacted

parents who abuse their children seldom do so in front of witnesses, legislators initially targeted physicians for mandatory reporting.<sup>70</sup> The idea was that a pediatrician is the person most likely to see the child victim and to recognize signs of mistreatment.<sup>71</sup> These laws were necessary because doctors had many excuses for why they failed to inform the authorities, including confidentiality, concerns about civil or criminal liability, general reluctance to get involved, fear of losing patients, and an understandable unwillingness to spend long hours in court rather than practicing medicine.<sup>72</sup> Because teachers, neighbors, and others might also identify troubled youngsters, statutes were expanded to impose a legal obligation on people who know or have reasonable cause to suspect a child is being abused.<sup>73</sup> Apparently the laws have been successful because the number of reports has increased.<sup>74</sup>

Like the pediatrician, the veterinarian is the person most likely to see and recognize abuse or neglect in his patient; he also has the same reasons for not wanting to contact the authorities.<sup>75</sup> However, few jurisdictions require veterinarians (or anyone) to report such incidents.<sup>76</sup> This is a problem because this type of mistreatment is difficult to discover.<sup>77</sup> Pets, like young children, can neither get help for themselves

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some form of legislation requiring specific professionals to report known or suspected cases of child abuse or neglect).

<sup>70</sup> Marjorie R. Freiman, *Unequal and Inadequate Protection under the Law: State Child Abuse Statutes*, 50 Geo. Wash. L. Rev. 243, 256 (1982) (explaining that “drafters of the [early] statutes reasoned that physicians have the expertise and training to recognize child abuse, and come into contact with the problem more often than other professionals”).

<sup>71</sup> *Id.*

<sup>72</sup> Phyllis Coleman, *Creating Therapist-Incest Offender Exception to Mandatory Child Abuse Reporting Statutes—When Psychiatrist Knows Best*, 54 U. Cin. L. Rev. 1113, 1119–20 (1986).

<sup>73</sup> Curt Richardson, *Physician/Hospital Liability for Negligently Reporting Child Abuse*, 23 J. Leg. Med. 131, 134–35 (2002).

<sup>74</sup> *Id.* at 134. In 1991, approximately 2,694,000 children were reported as abused or neglected in the United States. *Greenville County Dept. of Soc. Services v. Bowes*, 437 S.E.2d 107, 112 (S.C. 1993) (Toal, J., dissenting). In 2003, the number rose to an estimated 2,900,000. U.S. Dept. of Health and Human Services., *Child Maltreatment 2003: Summary of Key Findings*, <http://nccanch.acf.hhs.gov/pubs/factsheets/canstats.cfm> (updated June 1, 2005). Other changes that might have contributed to the rise are civil and criminal penalties for failing to report child abuse, broadening the scope of the standards governing reporting decisions, and expanding the definition of abuse from just physical to include “sexual, emotional, and mental abuse, neglect, and threat of future harm.” Richardson, *supra* n. 73, at 133–34.

<sup>75</sup> Green, *supra* n. 25 and accompanying text.

<sup>76</sup> See e.g. Mark J. Parmenter, Student Author, *Does Iowa’s Anti-Cruelty to Animals Statute Have Enough Bite?* 51 Drake L. Rev. 817, 834–36 (2003) (drawing an analogy between social worker’s requirements to report suspected child abuse and arguing for a similar requirement for veterinarians); see also Heather D. Winters, Student Author, *Updating Ohio’s Animal Cruelty Statute: How Human Interests Are Advanced*, 29 Cap. U. L. Rev. 857, 867–68 (2002) (also arguing in favor of requiring veterinarians to report animal abuse and noting that California, Minnesota, and West Virginia have such requirements in place).

<sup>77</sup> Winters, *supra* n. 76, at 867.

nor escape. Mandatory reporting laws would spark investigations that might prevent future harm. Although there are legitimate concerns about being sued or prosecuted if the cruelty cannot be proven, the child abuse statutes overcame this obstacle by providing protection from liability for good faith reports.<sup>78</sup> Using these laws as a model, all animal cruelty legislation should include reporting requirements, as well as immunity for civil and criminal liability for those who file reports in good faith, even if the charges are later determined to be unfounded.

*b. Similarity between Companion Animals and Prisoners*

It is impossible for people who are incarcerated to go to their own physician if they are sick or injured. Thus, in *Estelle v. Gamble*, the Supreme Court established that inmates are entitled to reasonable medical attention and can sue under the Eighth Amendment if provided inadequate treatment.<sup>79</sup> Similar to a prisoner, a companion animal is in the control of another and is not able to obtain his own medical attention. Therefore, the law should impose a duty on the person who owns or has custody of a pet to provide necessary health care.

*c. Comparison between Companion Animals and Seamen*

Likewise, a ship owner is responsible to his seamen to pay for their medical care.<sup>80</sup> The obligation to provide maintenance<sup>81</sup> and cure<sup>82</sup> was first discussed under American maritime law in 1823 by Justice Story in *Harden v. Gordon*.<sup>83</sup> Eighty years later, in *The Osceola*, the Supreme Court recognized “the law may be considered as settled” that owners and their vessels are liable for maintenance and cure to seamen who, in the service of the ship, get sick or injured.<sup>84</sup> The

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<sup>78</sup> See e.g. Richardson, *supra* n. 73, at 136–37 (discussing immunity granted to reporters that act in good faith).

<sup>79</sup> 429 U.S. 97, 103–04 (1976). The government has an obligation to obtain medical care for inmates when prison officials fail to provide necessary medical treatment. *Id.* The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common law view that “[i]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.” *Id.* (quoting *Spicer v. Williamson*, 132 S.E. 291, 293 (N.C. 1926)).

<sup>80</sup> Robert Force & Martin J. Norris, *The Law of Seamen* vol. 2, § 26:1 (5th ed. West 2004).

<sup>81</sup> Maintenance is a per day allowance providing seamen with compensation for food and lodging comparable to that received aboard the vessel until he reaches “maximum medical improvement.” *Costa Crociere v. Rose*, 939 F. Supp. 1538, 1548 (S.D. Fla. 1996).

<sup>82</sup> “Cure” is medical and nursing care costs during the seaman’s illness until he reaches “maximum improvement.” *Id.*

<sup>83</sup> 11 F. Cas. 480 (C.C. Me. 1823). However, the maintenance and cure doctrine dates back much further when, during the Middle Ages, it became part of British maritime law. *Costa Crociere*, 939 F. Supp. at 1547.

<sup>84</sup> 189 U.S. 158, 175 (1903); see Thomas C. Galligan, Jr., *The Dreadful Remnants of The Osceola’s Fourth Point*, 34 Rutgers L.J. 729, 729 (2003) (explaining that, while

seaman's right stems from the employer-employee relationship;<sup>85</sup> neither fault nor lack of seaworthiness is required.<sup>86</sup> Furthermore, based on the hazards of the job and "the unique relationship between a seaman and his ship or employer, Justice Story cautioned that '[e]very court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel.'"<sup>87</sup>

The comparison between seamen and animals seems obvious. Similarities exist with animals because, like seamen, they certainly are "unprotected and need counsel," even though their "unique relationship" is with their guardians rather than a ship owner/employer. The requirement in *The Osceola* that the injury or illness be "in the service of the ship" also would be satisfied because pets are always "serving their masters."<sup>88</sup> Consequently, as the ship owner is responsible for his seamen, owners should be required to obtain and pay for medical care for their animals.

### III. EVOLUTION IN VETERINARY PRACTICE

Veterinary medicine has experienced substantial changes since the early years. One is a major shift in focus—made possible by the increased value people assign to their pets—from treating livestock to providing medical attention for companion animals. More recently, new technology, a growing list of specialties, and an ever-increasing number of treatment options have greatly improved the quality of care.<sup>89</sup> However, to really appreciate the progress, it is necessary to understand the past.

#### A. *The Beginnings of Veterinary Medicine*

Initially the profession focused on agricultural animals.<sup>90</sup> In 1913, even while J.C. Flynn, a Kansas City veterinarian, advocated a shift to treating pets rather than livestock, he acknowledged that the majority of practitioners were "uninterested" in working with companion ani-

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problems with the opinion exist, the portion reasserting a seaman's right to maintenance and cure "has had a relatively healthy one hundred years of development").

<sup>85</sup> *Blige v. M/V Geechee Girl*, 180 F. Supp. 2d 1349, 1356 (S.D. Ga. 2001) (citing *Rutherford v. Lake Michigan Contractors, Inc.*, 132 F. Supp.2d 592, 599–600 (W.D. Mich. 2000)).

<sup>86</sup> *Costa Crociere*, 939 F. Supp. at 1548.

<sup>87</sup> *Id.* at 1547 (quoting *Harden*, 11 F. Cas. at 485).

<sup>88</sup> See e.g. Evelyn Tiffany-Castiglioni, *The Domestication of the Dog, Part I*, 84 Natl. Forum: Phi Kappa Phi J. 6 (July 1, 2004) (discussing the presence of dogs more than nine thousand years ago and the fact that they "dispersed rapidly after their domestication, presumably because of their usefulness to migrating human populations").

<sup>89</sup> Mary Margaret McEachern Nunalee & G. Robert Weedon, *Modern Trends in Veterinary Malpractice: How Our Evolving Attitudes toward Non-Human Animals Will Change Veterinary Medicine*, 10 Animal L. 125, 136–41 (2004).

<sup>90</sup> See generally O.H.V. Stalheim, *The Winning of Animal Health: 100 Years of Veterinary Medicine* (Iowa St. Press 1994) (discussing the history and evolution of veterinary medicine).

mals.<sup>91</sup> Despite the fact that veterinarians needed new patient populations, most did not want a dog practice. Another obstacle to change was that, before World War I, many schools did not provide the necessary training required for the treatment of companion animals.<sup>92</sup>

Nevertheless, the profession “gradually gravitated from its agrarian roots” and “utilitarian goals” to treating animals whose value was companionship.<sup>93</sup> This shift made veterinarians seem more like physicians who are viewed as humanitarians concerned with the welfare of their patients.<sup>94</sup> In addition, as society began to appreciate and understand the importance of the human-animal bond, veterinarians had the opportunity to provide broader and more comprehensive services to clients increasingly likely to invest in their pets’ health.<sup>95</sup>

### B. *Veterinary Medicine Today*

Demand for care grew as companion animals enjoyed longer lives due to better food, widespread vaccination, and an improvement in knowledge and technology.<sup>96</sup> However, one negative consequence is that the small practice, which could have been set up thirty years ago with “little more than a stethoscope and an Army surplus field X-ray machine,” now costs “upwards of five hundred thousand dollars” because of a new need for high tech equipment.<sup>97</sup> As a result, in the past decade the average vet bill has tripled.<sup>98</sup>

Additionally, with so much more to know, veterinarians, like medical doctors, are turning to specialties<sup>99</sup> such as dermatology, cardiology, dentistry, emergency medicine,<sup>100</sup> neurology, oncology, and ophthalmology.<sup>101</sup> Technological advances continue to spawn more and improved treatments for a host of illnesses, including organ transplants, chemotherapy, laser surgery, a variety of medications,<sup>102</sup> blood

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<sup>91</sup> Jones, *supra* n. 30, at 121–22.

<sup>92</sup> *Id.* at 122.

<sup>93</sup> Nunalee & Weedon, *supra* n. 89, at 138.

<sup>94</sup> Jones, *supra* n. 30, at 122.

<sup>95</sup> Nunalee & Weedon, *supra* n. 89, at 138.

<sup>96</sup> Battiata, *supra* n. 65.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See Am. Veterinary Med. Assn., *Veterinary Market Statistics*, <http://www.avma.org/membshp/marketstats/vetspec.asp> (Dec. 2004) (for a breakdown of the American Veterinary Medical Association’s membership by recognized specialists).

<sup>100</sup> Susan Gulliford, *ER for Animals: Animerge in Raritan Is Ready to Help Pets Whenever Regular Vets Are Off Duty*, *Courier-News* (Bridgewater, N.J.) S2 (Nov. 19, 2003).

<sup>101</sup> Teri Greene, *Human, Animal Bond Advances Pet Care, Costs*, *Montgomery Advertiser* (Ala.) A1 (Mar. 6, 2004) (available at 2004 WLNR 2748810).

<sup>102</sup> Rebecca J. Huss, *Valuation in Veterinary Malpractice*, 35 *Loy. U. Chi. L.J.* 479, 484–85 (2004).

transfusions,<sup>103</sup> hip and elbow replacements,<sup>104</sup> root canals,<sup>105</sup> microsurgeries, and “even programs like Pawspice—which offers home-based hospice-style care.”<sup>106</sup> Alternative therapies such as massage,<sup>107</sup> acupuncture, chiropractic, herbal medicine, and preventive nutrition are also available.<sup>108</sup> Not surprisingly, many of these choices “come with an expensive price tag” and have led to a sharp rise in costs.<sup>109</sup>

A simple illustration should suffice. While the number of veterinary visits for dogs grew from 98.7 million in 1996 to 117 million in 2001,<sup>110</sup> an increase of around twenty percent, expenditures more than doubled from \$4.9 to \$11.6 billion during the same period.<sup>111</sup> The jump also can be seen in the money spent for medical attention for all companion animals. In 2001, that number was more than \$19 billion per year, “an amount greater than the attendance receipts of all this country’s professional football, baseball, basketball, and hockey teams, and all college teams, and all movie theatres combined.”<sup>112</sup> Thus, when pets have serious medical problems, owners may face between \$10,000–\$30,000 in doctor bills.<sup>113</sup> Indeed, one couple recently spent \$45,000 on a stem cell transplant to treat their golden retriever’s lymphoma, a cancer that attacks the immune system.<sup>114</sup> Further, spiraling prices are not limited to paying for veterinary services. Drug expenses, for example, also are skyrocketing.<sup>115</sup>

<sup>103</sup> Kim North Shine, *Dogs Have Need for Blood Donors, Too*, Det. Free Press 11A (Dec. 4, 2004).

<sup>104</sup> *OTC: To Insure or Not to Insure?* Chemist & Druggist S35 (Feb. 5, 2005) (available at 2005 WLNR 1800418).

<sup>105</sup> Eileen Dempsey, *Trends; Insurance for Pets Starting to Take Off*, Columbus Dispatch (Ohio) 1B (June 7, 2004) (available at LEXIS, NEWS library, MAJPAP file).

<sup>106</sup> G. Jeffrey MacDonald, *Weighing Pet Medicine*, Christian Sci. Monitor 15 (Nov. 24, 2004) (available at 2004 WLNR 12147575).

<sup>107</sup> Josh Suiter, *Snapshots of People at Work; Re: Sara Beavin, Animal Masseuse; Her Doggone Good Techniques Help Rid Canines of Fears, Make Them Adoptable*, Courier J. (Louisville, Ky.) 6D (Nov. 29, 2004) (available at LEXIS, NEWS library, MAJPAPR file).

<sup>108</sup> Schoen, *supra* n. 41, at 96–144.

<sup>109</sup> Dempsey, *supra* n. 105 (The author quotes an Ohio veterinarian: “We are able to offer for pets the same kind of care you or I might receive if we had the same malady.” The doctor suggests insurance is “a way to make it a little more affordable for everybody to have quality care for their pets.” She does not, however, demonstrate how the average family can pay the premiums.)

<sup>110</sup> Am. Veterinary Med. Assn., *supra* n. 12, at fig. 36.

<sup>111</sup> *Id.* at fig. 37.

<sup>112</sup> Green, *supra* n. 25, at 170.

<sup>113</sup> Mindy Fetterman, *Pampered Pooches Nestle in Lap of Luxury \$34 Billion a Year Lavished on Food, Vet Bills, Even Hair Dye*, USA Today 1A (Feb. 11, 2005) (available at 2005 WL 1926424).

<sup>114</sup> Associated Press, *Sick Dog Gets \$45,000 Stem Cell Transplant*, <http://www.msnbc.msn.com/id/7417688/?GT1=6428&print=1&displaymode=1098> (updated May 26, 2005).

<sup>115</sup> Robert Dodge, *And Your Little Dog Too; More and More, Americans Are Buying Drugs for Their Pets in Canada to Save Money*, Charleston Gazette & Daily Mail (Charleston, WV) 3 (Sept. 5, 2004) (available at 2004 WLNR 11589427). This article reveals that, unable to afford medicine for their pets, Americans who want to provide for their sick animals are turning to the same, rapidly growing Canadian online pharma-

Obviously many Americans cannot afford to pay thousands of dollars for their companion animals. Some might question whether even those who have the means should spend that kind of money on a dog or cat when high prices have made health care unattainable for many people. Moreover, while the extremely controversial topic of physician-assisted suicide is currently before the Supreme Court,<sup>116</sup> in this country euthanasia has long been seen as an acceptable way to deal with sick or unwanted animals.<sup>117</sup> Therefore, paradoxically, improved treatment options might lead to more deaths.

When there is no hope for recovery, and the animal is suffering, euthanasia certainly is the moral and appropriate choice. Refusing treatment is far less understandable or supportable if the owner, as was the case in *Arroyo*, does not try to obtain help for a pet who is in pain.<sup>118</sup>

One answer to people who claim they cannot afford veterinary care is that, if true, they should not have a pet.<sup>119</sup> The person who owns an animal assumes the obligation to provide basic necessities.<sup>120</sup> Estimates are that dogs cost somewhere between \$800 and \$1,500 per year.<sup>121</sup> A cat is less expensive but the price tag is still around \$640 per year.<sup>122</sup> Simply put, the person or family who cannot comfortably spend at least these amounts should not have a companion animal.<sup>123</sup>

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cies as where they purchase their own pills. Thus, while drugs are prescribed during fewer than ten percent of annual veterinary visits, high prices are driving some to seek alternative ways of getting the medicine their companion animals need. Although the amount spent in 2002 on animal pharmaceuticals was “puny” next to the money for human drugs, the industry recorded a thirty percent gain in sales. *Id.* Interestingly, one important distinction between veterinarians and physicians is that animal doctors generally dispense as well as prescribe medication. Huss, *supra* n. 102, at 490–91.

<sup>116</sup> *Oregon v. Ashcroft*, 368 F.3d 1118 (9th Cir. 2004), *cert. granted*; *Gonzales v. Oregon*, 125 S. Ct. 1299 (2005).

<sup>117</sup> See *Euthanasia of the Companion Animal: The Impact on Pet Owners, Veterinarians, and Society* 3–63 (William J. Kay et al. eds., Charles Press Publishers 1988) (for a discussion of ethical and moral issues in euthanizing companion animals).

<sup>118</sup> 777 N.Y.S.2d at 838.

<sup>119</sup> *Pet Ownership Can Be Costly*, *Oakville Beaver* 30 (Jan. 29, 2005) (available at 2005 WLNR 1248297).

<sup>120</sup> See e.g. Ohio Rev. Code Ann. § 959.13 (West 2005) (indicating that a confined animal must be supplied with a sufficient quantity of good and wholesome food and water).

<sup>121</sup> Kristen Levine, *Prepare for Price of Pet Ownership*, *Tampa Trib.* 5 (Sept. 18, 2004) (available at 2004 WL 86433637). Of course, amounts vary a great deal, depending on size of the animal, types of food, and unanticipated medical conditions. *Id.* While puppies require more routine medical attention than adult dogs, older animals tend to need more veterinary care. John Williams, *What It Costs to Own a Dog*, <http://petplace.netscape.com/articles/artshow.asp?artID=1019> (accessed Sept. 6, 2005).

<sup>122</sup> Levine, *supra* n. 121.

<sup>123</sup> The ASPCA points out that people should consider the costs of having a companion animal. “In addition to the initial cost of adoption, there’s a whole litany of expenses that the average pet owner will incur within a year.” Am. Socy. for the Prevention of Cruelty to Animals, *Pet Ownership Costs*, [http://www.aspca.org/site/PageServer?pagename=adopt\\_petcarecosts](http://www.aspca.org/site/PageServer?pagename=adopt_petcarecosts) (accessed Sept. 23, 2005).



Pet insurance is one alternative that might defray guardians' expenses. Similar to policies for humans, coverage and costs vary.<sup>124</sup> Some provide a comprehensive health and accident indemnity.<sup>125</sup> The other form of insurance is similar to a preferred provider organization (PPO).<sup>126</sup> Frequently offered as an employee benefit,<sup>127</sup> PPOs for pets give owners discounts at network vets.<sup>128</sup> Examination fees, hospitalization, anesthesia, and surgical charges, as well as prescription medication, may be covered.<sup>129</sup>

Since 1982, Veterinary Pet Insurance, the industry leader in the United States, has sold in excess of one million policies;<sup>130</sup> more than three hundred thousand are still in effect.<sup>131</sup> As is true with medical insurance for people, coverage price for pets depends on age of the pet, the plan selected, and the state.<sup>132</sup> Consequently, determining an average is difficult. However, insurance for a two-year-old dog is typically estimated at about \$274 per year and generally covers up to \$14,000 for certain medical treatments.<sup>133</sup> Similar insurance for a two-year-old cat is estimated to be about \$188 per year.<sup>134</sup> Notably, despite the minimal expense, only an estimated one to five percent of those who have companion animals buy such policies.<sup>135</sup> Many people may not even be aware they are available.<sup>136</sup> Ironically, others might be too poor to afford it. Of course, given that forty-five million Americans also are uninsured,<sup>137</sup> the number of pets without such coverage is not surprising.

Nevertheless, people who have companion animals should be responsible for their welfare, including obtaining and paying for basic medical care. Further, while superficially understandable, defenses based on expense are not persuasive. The joy of owning a companion

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<sup>124</sup> Christina Olenchek, *Pet Insurance Not Popular Despite National Trend*, 20 C. Penn Bus. J. 29 (Aug. 6, 2004). Pet insurance started in Europe and was first sold more than thirty years ago. *Id.* Currently twenty percent of pets in England and almost fifty percent in Sweden are covered. *Id.* In the United States, the number of policies climbed by about twenty percent per year beginning in the late 1990s. *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Eileen Alt Powell, *Do Pets Need Insurance? It Can Provide Health, Accident Coverage, but Read Fine Print*, Cincinnati Post (Ohio) B10 (Sept. 28, 2004).

<sup>127</sup> Approximately 1,100 American companies offer Veterinary Pet Insurance's policies to employees. Fetterman, *supra* n. 113, at 1A.

<sup>128</sup> Powell, *supra* n. 126, at B10.

<sup>129</sup> *Id.*

<sup>130</sup> Kristen Weir, *Creature Comfort: The Doctors Are Vets and the Patients Are Pets at This New York City Hospital*, 89 Current Sci. 8 (Jan. 16, 2004).

<sup>131</sup> Olenchek, *supra* n. 124.

<sup>132</sup> Powell, *supra* n. 126, at B10.

<sup>133</sup> Weir, *supra* n. 130, at 8.

<sup>134</sup> *Id.*

<sup>135</sup> Donald W. Patterson, *Insurance . . . For Our Furry Family Members More Pet Owners Are Opting to Offset the Rising Cost of Veterinary Care by Purchasing Health Insurance Policies*, Greensboro News & Rec. (N.C.) E1 (June 19, 2005).

<sup>136</sup> Olenchek, *supra* n. 124.

<sup>137</sup> Jeanne Lambrew, *45 Million Uninsured Americans*, <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=173900> (Aug. 26, 2004) (reporting that the 2003 Census noted 45 million uninsured Americans, an increase of 1.4 million from 2002).

animal brings certain responsibilities. Defining these duties is the problem. While everyone seems to agree that failing to provide food and water constitutes mistreatment,<sup>138</sup> refusing to obtain necessary medical attention should also be illegal. The guardian who is unable or does not want to pay for a veterinarian should give his companion animal to someone who will get treatment or drop his pet off at a no-kill shelter. In either case, the animal will receive the medical care he needs.

#### IV. *PEOPLE V. ARROYO*

Although *Arroyo* is a lower court opinion, it is significant as the first—and to date the only—case to squarely face the issue of whether a guardian must provide veterinary care for his pet.<sup>139</sup> Unfortunately the judge concluded that no such duty exists.<sup>140</sup> Therefore, the common law has thus far proven insufficient in protecting the best interests of pets. To properly analyze the decision, it is important to begin by reviewing the details of the case.

##### A. *The Facts in Arroyo*

An ASPCA investigator responded to an anonymous call and noticed that Manuel Arroyo's dog was experiencing difficulty walking.<sup>141</sup> The investigator took the animal, who had a large bleeding tumor hanging from her stomach, to a hospital where surgeons discovered terminal cancer.<sup>142</sup> Defendant acknowledged he knew about the tumor but said he did not get the dog medical attention because of "limited finances" and his experience with a relative who had had the disease and had received painful chemotherapy.<sup>143</sup>

##### B. *Analysis of Arroyo*

The court held that an owner did not "commit an act of cruelty" because the statute did not give adequate legal notice that a pet owner is obligated to provide veterinary care to a terminally ill animal.<sup>144</sup> The primary questions for Judge Torres were (1) whether the law gave adequate warning of the proscribed conduct,<sup>145</sup> and (2) the "standards of morality" concerning the extent of an owner's duty to provide treatment to his dog.<sup>146</sup>

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<sup>138</sup> *E.g.* Ariz. Rev. Stat. Ann. § 13-2910(H)(3) (West Supp. 2004); Cal. Penal Code Ann. § 597(b) (West 1999); Mass. Gen. Laws Ann. ch. 272, § 77 (West 2000 & Supp. 2005).

<sup>139</sup> *People v. Arroyo*, 777 N.Y.S.2d 836 (Crim. Ct. N.Y.C. 2004).

<sup>140</sup> *Id.* at 845.

<sup>141</sup> *Id.* at 838.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 846.

<sup>145</sup> *Arroyo*, 777 N.Y.S.2d at 839.

<sup>146</sup> *Id.* at 844.

The opinion begins by stating the two-pronged test for a vagueness challenge to the constitutionality of a criminal law. Similar to the concerns the judge raised, the provision must be “sufficiently definite . . . to give a person of ordinary intelligence fair notice” of what behavior is prohibited,<sup>147</sup> and include standards so enforcement is not “arbitrary and discriminatory.”<sup>148</sup> Nevertheless, courts do not require “[o]bjective quantification, mathematical certainty, and absolute precision . . . .”<sup>149</sup> Thus, if the statute alerts the average person to the conduct it forbids, and establishes boundaries that judges and juries can interpret and administer uniformly, constitutional requirements are satisfied.<sup>150</sup>

These simple rules provide guidance as to when a vagueness challenge should prevail. Therefore, not surprisingly, the *Arroyo* decision initially focused on the statutory language. The first relevant section criminalizes depriving an animal of “necessary sustenance”;<sup>151</sup> the second defines “[c]ruelty” as causing “unjustifiable physical pain, suffering or death.”<sup>152</sup>

### 1. Necessary Sustenance

In ruling on defendant’s claim that the statute was vague as applied, the judge looked to the lawmakers’ intent that should be gleaned from “a literal reading” of the provision.<sup>153</sup> After concluding that the language “is anything but clear”<sup>154</sup> she turned to the legislative history. Unfortunately, this resource also failed to “shed any light” on the question.<sup>155</sup>

Notably, the court declined to follow the only case that had construed the provision under attack. *People v. O’Rourke*<sup>156</sup> explored an owner’s duty to provide needed medical care to his horse who, despite a limp, was forced to pull a hansom cab.<sup>157</sup> The judge in *Arroyo* distin-

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<sup>147</sup> *Id.* at 839.

<sup>148</sup> *Id.* (quoting *People v. Bright*, 520 N.E.2d 1355, 1358 (N.Y. 1988)).

<sup>149</sup> *Town of Baldwin v. Carter*, 794 A.2d 62, 66 n. 2 (Me. 2002).

<sup>150</sup> *Compare Malloy v. Cooper*, 592 S.E.2d 17, 20–22 (N.C. App. 2004) (noting statute prohibiting intentionally wounding or killing animals was unconstitutionally void for vagueness as applied to a gun club owner who shot a pigeon because a person of ordinary intelligence, without having scientific background, would not be able to either determine whether (1) a particular pigeon was domestic or feral or (2) that shooting a pigeon was a violation of the statute) with *State v. Witham*, 876 A.2d 40, 43 (Me. 2005) (finding statute survived constitutional challenge because defendant should have known that throwing his girlfriend’s cat out the window and driving over him created a “very high degree of risk” of causing the animal to suffer and die and was “conduct that, when viewed objectively, could be found by a reasonable jury to demonstrate an almost total lack of concern or feeling for the value of animal life”).

<sup>151</sup> *Arroyo*, 777 N.Y.S.2d at 839 (quoting § 353 Agric. & Markets Law).

<sup>152</sup> *Id.* (quoting § 350 Agric. & Markets Law).

<sup>153</sup> *Id.* at 840.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 841.

<sup>156</sup> 369 N.Y.S.2d 335 (Crim. Ct. N.Y.C. 1975).

<sup>157</sup> *Id.* at 341.

guished the situations because Arroyo's dog was not used for commercial purposes.<sup>158</sup> In addition, applying a "plain meaning" analysis, she simply refused to follow *O'Rourke* to the extent that it "appear[ed] to hold" that "sustenance" includes medical care.<sup>159</sup>

*Arroyo* also used language from the "highest appellate court in the nation" that had "interpret[ed] the meaning of the term" to support the notion that sustenance is limited to food and drink.<sup>160</sup> Interestingly, however, the issue in *Howell v. State* was whether failing to obtain medical attention for a child is denial of sustenance so as to constitute cruelty.<sup>161</sup> Thus, at least for this purpose, the *Arroyo* decision acknowledged that children and animals should be treated similarly.<sup>162</sup> Nevertheless, after rejecting *Howell*, the judge decided the statute was insufficient to "afford notice to a person of ordinary intelligence that not providing medical care for an animal" is illegal because the plain meaning of the phrase does not include medical care.<sup>163</sup>

## 2. Unjustifiable Physical Pain

In *Arroyo*, the definition of cruelty, specifically the language referring to "unjustifiable" pain, also did not alert an owner that withholding treatment was a crime.<sup>164</sup> In reaching this conclusion, the court addressed "common understanding, practice and moral standards and how these notions inform the meaning of the term 'unjustifiable' in the context of laws protecting animals."<sup>165</sup>

The opinion also refers to the biblical view that "man was given 'dominion over'" every other creature.<sup>166</sup> Further, it explains that while "anti-cruelty laws are meant to protect animals, the statutes are not intended to interfere with the owners' possession, use and enjoyment of their animals."<sup>167</sup> The case discusses branding, hunting, and fishing (which are all allowed even though they cause pain or death) to demonstrate that inflicting injury and suffering is not prohibited if it is "justified."<sup>168</sup> The exceptions are made based on arguments that they

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<sup>158</sup> *Arroyo*, 777 N.Y.S.2d at 841.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 842.

<sup>161</sup> 350 S.E.2d 473, 476 (Ga. App. 1986). Although *Howell* is a 1986 decision, the judge was actually referring to *Caby v. State*, 287 S.E.2d 200 (Ga. 1982), a Georgia Supreme Court opinion it cited.

<sup>162</sup> See *supra* pt. II(b)(3)(a) (for an explanation of the similarities between abused children and animals).

<sup>163</sup> *Arroyo*, 777 N.Y.S.2d at 842.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* (quoting *Genesis* 1:28).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 843. Of course, animal rights advocates would vehemently argue that these uses are cruel and should be outlawed. See *e.g.* Curnutt, *supra* n. 64, at 80–81 (explaining that hunting is generally exempted from anticruelty laws, and that, while nothing has been done to stop the killing, many people assert that the suffering of wild animals shot with arrows or guns "certainly qualifies as an 'unnecessary' and 'unjustifiable' in-

are necessary for some humans to (1) enjoy their property, (2) participate in recreational activity, or (3) wear pelts.<sup>169</sup>

Courts in other states have split on whether the term “unjustifiable” in child abuse statutes is vague. Although some conclude the term does not sufficiently define the proscription,<sup>170</sup> others uphold the statutes<sup>171</sup> and even suggest interpretations such as “exceeding the bounds of reasonable discipline.”<sup>172</sup>

Similar to the disagreement among the states, the two New York cases which preceded *Arroyo* also reached conflicting results on the issue. In *People v. Rogers*, the court held that the term “unjustifiable” was too vague when applied to an owner who docked his dog’s tail because doing so is ordinarily innocent and neither “prescribed [n]or proscribed by statute.”<sup>173</sup> In other words, according to the established test,<sup>174</sup> an individual of ordinary intelligence would not be able to figure out when this practice became criminal. As a result, enforcing the anticruelty statute against the defendant violated his due process rights because inserting the prefix “un” before “justified” failed to provide any additional guidance to the reasonable person about the legality of his conduct.<sup>175</sup>

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fliction of pain—even more so for trapping . . .”). It is interesting to note that the *Arroyo* court does not even refer to eating animals or experimenting on them, although these are also permitted despite the fact they could cause considerable pain and death.

<sup>169</sup> *Arroyo*, 777 N.Y.S.2d at 843.

<sup>170</sup> See e.g. *State v. Meinert*, 594 P.2d 232, 234–35 (Kan. 1979) (holding that the term “unjust,” without further definition, is too vague, and a defendant could not reasonably know what was or was not proscribed by the statute); *State v. Ballard*, 341 So. 2d 957, 960–62 (Ala. Crim. App. 1976) (holding that the term “unjust” is too vague to allow a defendant to prepare a defense to charges under the statute).

<sup>171</sup> See e.g. *Bludsworth v. State*, 646 P.2d 558, 560 (Nev. 1982) (finding that defendants who struck their child on the head could not reasonably claim they did not know the conduct was criminal).

<sup>172</sup> See e.g. *State v. Comeaux*, 319 So. 2d 897, 899 (La. 1975) (holding that the statute gives fair notice of what conduct is criminal).

<sup>173</sup> 703 N.Y.S.2d 891, 895 (N.Y.C. Ct. 2000). As another New York case explains, “Docking is a tail-removing procedure which is usually performed without anesthesia on certain breeds of newborn puppies.” *People v. Nelson*, 231 N.Y. L.J. 19, (col. 1) (May 28, 2004). Interestingly, the *Nelson* court did “not find the reasoning in *Rogers* to be persuasive.” *Id.* Instead Justice Allen explained that “there are literally dozens of penal statutes that use language which is as open-ended as the ‘unjustifiably injures’ language . . . [that] have passed constitutional muster.” *Id.* Moreover, “to the extent that the widespread practice in the community played a role” in the decision, expert testimony revealed that docking is not commonplace in Manhattan. *Id.* Further, just because conduct is frequently practiced does not necessarily mean it is legal. *Id.* Most importantly, *Rogers* was distinguished on the facts. “A person of ordinary intelligence would realize that there is a substantial difference in terms of health risks, not to mention the level of pain and discomfort, between docking the tiny tail of a newborn and the much larger tail of a three-month old, 26 pound puppy.” *Id.*

<sup>174</sup> See *supra* nn. 145–149 and accompanying text (discussing when a vagueness challenge should prevail).

<sup>175</sup> *Arroyo*, 777 N.Y.S.2d at 843 (discussing *Rogers*, 703 N.Y.S.2d 891).

On the other hand, in *People v. Bunt* a different New York court rejected a constitutional challenge to the same provision.<sup>176</sup> Here the defendant “brutally” beat a dog with a baseball bat.<sup>177</sup> Given his conduct, unlike in *Rogers*, the statute gave him sufficient notice that his behavior violated the law.<sup>178</sup>

So what does this really mean? Referring to these earlier opinions, as well as the statutory language, the judge in *Arroyo* explained that, in this context, “unjustifiable” is “what is not reasonable, defensible, right, unavoidable or excusable.”<sup>179</sup> She agreed with *Rogers* and determined that “conduct that is inherently innocent, like allowing an animal to die of natural causes without providing medical care,” cannot be turned into a crime simply by inserting the term into the law.<sup>180</sup> Further, she rejected the notion that either “society’s current practice or the moral standards of our community expand the meaning” to impose a duty to treat a pet, especially if he is terminally ill.<sup>181</sup> Comparing animals to humans, she concluded it would be “overreaching” to require treatment for a dog in light of the absence of a national consensus on the question of providing health care to poor people.<sup>182</sup> Moreover, a footnote explains that child neglect statutes include an exception if the reason parents do not obtain medical attention for their children is that they cannot afford it.<sup>183</sup> She suggests a similar excuse must be available for animals.<sup>184</sup>

Acknowledging that a small number of anti-cruelty statutes include a duty to provide veterinary care, the opinion distinguished those cases because in each the animals had been “severely neglected.”<sup>185</sup> Thus the situations were very different from defendant’s choice that “was not part of a pattern of neglect on his part but a conscious decision not to do it based on his moral beliefs and limited finances.”<sup>186</sup>

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<sup>176</sup> 462 N.Y.S.2d 142 (Just. Ct. N.Y. 1983) (holding that the term “unjustifiable,” though somewhat lacking in clarity, gave the defendant enough notice to know beating a dog with a baseball bat violated the statute).

<sup>177</sup> *Id.* at 142.

<sup>178</sup> *Id.* at 142–43. In another case, after rejecting a defendant’s explanation of why his dog was at “the end stage of starvation” in addition to suffering from a severe parasite problem, a Virginia appellate court affirmed his conviction for animal cruelty. *Buskey v. Commonwealth*, 2003 WL 1873643 at \*2 (Va. App. 2003). According to expert testimony, Brutus’s condition was so extreme that it could not be explained by the fact that he had run away even if he had not eaten anything during the entire three weeks he was allegedly gone. *Id.* Instead the problems resulted from the owner’s failure to provide emergency veterinary care as required by the statute. *Id.* at \*\*2–4.

<sup>179</sup> *Arroyo*, 777 N.Y.S.2d at 844.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 844.

<sup>184</sup> *Id.* at 844 n.3 (citing *People v. Carr*, 703 N.Y.S.2d 868 (Just. Ct. N.Y. 1999)).

<sup>185</sup> *Arroyo*, 777 N.Y.S.2d at 845.

<sup>186</sup> *Id.*

In addition, the judge admitted being “troubled” by imposing a duty to treat where the statute is “so general in its terms.”<sup>187</sup> The decision also raised “a myriad of logistical problems” including how to determine the required standard of care<sup>188</sup> and how to evaluate whether it had been met.<sup>189</sup> Such an obligation also raises knotty ethical issues that are difficult to resolve without legislative guidance. The opinion lists the following examples:

When is extending a pet’s life permissible? When is putting an animal to death mandated? Up to what point do we respect the owners’ choice to refuse invasive treatment for their pets and allow them to die at home in the company of their human and non-human companions, rather than in a strange and antiseptic environment?<sup>190</sup>

Finally, being “very mindful that animals are living creatures that feel pain and experience suffering,” the judge stated what appears to be the heart of her argument: if the public consensus is that failure to provide medical attention to a pet to either alleviate or avoid pain should be a crime, legislators need to pass a law “that clearly sets the standard for—and gives notice of—the proscribed conduct.”<sup>191</sup> A few states have done this; they made the behavior illegal.<sup>192</sup> However, although New York has imposed such a duty on companion animal dealers, it did not do so for owners.<sup>193</sup> Therefore, the court refused to “substitute its own sensibilities for those of the legislature and is constrained to find that a pet owner may not be prosecuted . . . for failure to provide an ill pet with medical care.”<sup>194</sup>

The conclusion is puzzling. It is certainly understandable to maintain that a guardian should not have to pay for expensive treatments if his animal is terminally ill. But if the pet is in pain, as the dog was in *Arroyo*, the owner should be prosecuted if he does not at least attempt to alleviate the pain. This decision thus shows the common law’s failure to adequately protect pets’ interests.

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.* In a parenthetical, the judge listed the following questions:

To what extent must treatment be provided to avoid prosecution? Is providing regular veterinary care sufficient? Or, in light of the sophisticated medical procedures that are now available for animals—chemotherapy, radiation therapy, organ transplants—will that level of treatment be required? Will mental health treatment be required?

*Id.*

<sup>189</sup> In other words, “What kind of expense is it mandated to be incurred to avoid prosecution?” *Id.* at 845.

<sup>190</sup> *Id.*

<sup>191</sup> *Arroyo*, 777 N.Y.S.2d at 845.

<sup>192</sup> See *infra* pt. V (discussing statutes prohibiting such behavior).

<sup>193</sup> *Arroyo*, 777 N.Y.S.2d at 845.

<sup>194</sup> *Id.*

## V. DEFICIENCIES IN CURRENT STATUTES

As Judge Torres pointed out, the states do not agree on whether owners should be prosecuted for failing to provide necessary veterinary care to their companion animals. Although the *Arroyo* court faced a “novel” question because the dog was in pain but terminally ill,<sup>195</sup> a few statutes make it a crime to fail to obtain needed treatment.<sup>196</sup> However, even these laws are deficient in several ways.

Some statutes which impose such a duty do not define the circumstances under which medical attention must be obtained.<sup>197</sup> For example, although these statutes impose a duty to seek medical attention, they fail to explain the parameters of that obligation. Delaware is illustrative. The statute mandates “[p]roper veterinary care”<sup>198</sup> which includes “care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.”<sup>199</sup> But it fails to define “proper” care. Moreover, while there has been a split in the cases, the phrase “unjustifiable . . . suffering” has also been vulnerable to constitutional challenges as vague.<sup>200</sup> Further, in addition to including the same ambiguous reference to “proper” veterinary care, the Louisiana legislation highlights another problem. It expressly extends the responsibility to include people “having charge, custody, or possession of any animal, either as owner or otherwise [who] unjustifiably fail[s] to provide . . . proper veterinary care.”<sup>201</sup> Thus, even if there is an obligation, this expansion raises questions as to whom it applies.

The fact that penalties vary widely suggests an additional objection based on equity. Neither an animal’s rights nor his owner’s responsibilities should depend on the jurisdiction where they reside. Nevertheless, because some statutes make failure to obtain treatment criminal, while others establish civil remedies, and most just ignore the issue, that is the result.

Indeed, even those states which make the conduct illegal view it with different levels of seriousness. For example, in the District of Columbia, such offenses are “punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding \$250, or by both.”<sup>202</sup> Compare this with Maryland, where the violator is guilty of a misde-

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<sup>195</sup> *Id.* at 837–38.

<sup>196</sup> See e.g. Md. Crim. L. Code Ann. § 10-604 (2002); 18 Pa. Consol. Stat. Ann. § 5511(c) (2000) (Maryland and Pennsylvania anticruelty statutes, both of which provide that depriving an animal of veterinary care is a crime).

<sup>197</sup> *Id.*

<sup>198</sup> *Crimes and Crim. Proc.*, Del. Code Ann. tit. 11, § 1325(a)(4) (1974).

<sup>199</sup> *Id.* at § 1325(a)(10). Louisiana has the same language defining proper veterinary care. *Crim. Law*, La. Stat. Ann. § 14:102(6) (2004).

<sup>200</sup> See e.g. *supra* nn. 165–95 and accompanying text (describing *Arroyo*).

<sup>201</sup> *Crim. Law*, La. Stat. Ann. § 14:102.1A(1)(c).

<sup>202</sup> D.C. Code Ann. § 22-1001(a) (Lexis 2001). The penalty is increased if the acts or omissions are done “with the intent to commit serious bodily injury or death to an animal,” or “under circumstances manifesting extreme indifference to animal life,” and they cause “serious bodily injury or death to the animal.” *Id.* In such cases, violators



meanor and subject “to imprisonment not exceeding 90 days or a fine not exceeding \$1,000 or both.”<sup>203</sup> Interestingly, as a condition of sentencing, “the court may order a defendant convicted of violating this section to participate in and pay for psychological counseling.”<sup>204</sup>

Other jurisdictions, like Georgia, look to civil remedies. The duty imposed on those who impound animals is to provide “humane care and adequate and necessary veterinary services”<sup>205</sup> by contracting to obtain the treatment “for a reasonable fee” or “as a volunteer and at no cost”<sup>206</sup> is illustrative. The owner remains financially responsible and the person who seized the animal has a lien for “reasonable costs” expended.<sup>207</sup> Similarly, in California, “a depository of living animals shall provide the animals with necessary and prompt veterinary care . . .” and violators “may be liable for civil damages.”<sup>208</sup>

Thus, even states that impose a duty to obtain needed medical attention do not provide sufficient protection to pets. Not only is the extent of the obligation unclear, but disparate treatment for breach of the responsibility is simply unfair to companion animals and their guardians. The answer is a uniform act that addresses and resolves these issues.

## VI. NECESSITY FOR UNIFORM ACT

Thus, while a few states recognize that failure to provide a sick or injured animal some level of medical treatment constitutes cruelty, the vast majority do not.<sup>209</sup> Another problem is that even the laws that mention veterinary care do not clearly establish what needs to be done.<sup>210</sup> Instead of continuing to allow a pet’s fate to depend on where he lives, the following language should be adopted in all jurisdictions. It would be best to add these provisions to existing animal cruelty leg-

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face “imprisonment not exceeding 5 years, or . . . a fine not exceeding \$25,000, or both.” *Id.* at 22-1001(d).

<sup>203</sup> Md. Crim. L. Code Ann. § 10-604(b)(1).

<sup>204</sup> *Id.* at § 10-604(b)(2) (This requirement makes sense because studies repeatedly demonstrate that a large percentage of individuals who commit violent crimes against people began by abusing animals.); see generally Merz-Perez & Heide, *supra* n. 67 (conducting a thorough scientific investigation into whether childhood cruelty to animals is a forerunner to violence against people).

<sup>205</sup> Ga. Code Ann. § 4-11-9.3(a) (2000).

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at § 4-11-9.3(b) (2005). The animal will be returned if the owner pays and agrees that he will provide veterinary care in the future. *Id.* at 4-11-9.3(c).

<sup>208</sup> Cal. Civ. Code § 1834 (2004).

<sup>209</sup> *Supra* pt. V; see also Arroyo, 777 N.Y.S.2d at 837, 844–45 (explaining that the question of whether failure to provide veterinary care to a terminally ill pet is a “novel” issue, noting that some states have “read into” their statutes such a duty but only where there was a “pattern of neglect constituting cruelty,” and pointing out two states that have specifically made depriving an animal of veterinary care a crime).

<sup>210</sup> See e.g. Md. Crim. L. Code Ann. § 10-604; 18 Pa. Consol. Stat. Ann. § 5511(c) (Maryland and Pennsylvania anti-cruelty statutes, both of which provide that depriving an animal of veterinary care is a crime).

isolation because doing so increases the chance that the requirements will be easily found and fairly applied.

This uniform act is designed to address several key problems resulting from the lack of guidance on the issue of medical attention for companion animals. It prohibits cruelty and aggravated cruelty<sup>211</sup> and explicitly defines both to include failure to provide “necessary veterinary care.”<sup>212</sup> But, unlike the few statutes that exist, it also lists the factors that need to be considered to determine whether treatment must be obtained and, if so, exactly what is required.<sup>213</sup> This is essential because, as a criminal statute, it must (1) be definite enough that a person of ordinary intelligence will have fair notice of the behavior prohibited and (2) provide specific standards courts can apply in deciding whether there has been compliance.<sup>214</sup>

Recognizing the importance and difficulty of discovering animal cruelty incidents, the proposed law mandates reporting at the same time as it provides immunity from civil and criminal liability for good faith reports.<sup>215</sup> It also includes stiff penalties for any violation and enhanced punishment if the guardian intentionally (or with reckless disregard) refuses to pay for needed treatment.<sup>216</sup> Additionally, the proposed statute compels those convicted of such offenses to attend counseling because, not only will it hopefully help prevent future animal abuse, it should also stop some violence against humans.<sup>217</sup>

Further, it requires that the victim be taken away from the perpetrator but continues to hold the perpetrator financially responsible for the animal.<sup>218</sup> The idea, of course, is to protect the dog or cat without rewarding the owner by permitting him to escape his obligations. Moreover, upon their second offense, abusers will be barred from ever having, or caring for, another pet.<sup>219</sup> Finally, veterinarians who are convicted of failing to report, or filing false reports, may be sentenced to jail time and/or fines.<sup>220</sup>

Thus, deficiencies in current laws are resolved in the proposed act. It makes clear when there is a duty to provide veterinary care and clarifies the extent of that obligation. Finally, the penalties are strong enough that both guardians and veterinarians should comply.

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<sup>211</sup> The distinction between the two is whether the omission was intentional. *Infra* app. A, § 4(a)–(b).

<sup>212</sup> *Infra* app. A, § 3(a)(2).

<sup>213</sup> *Infra* app. A, § 3(f).

<sup>214</sup> *See supra* nn. 145–49 and accompanying text.

<sup>215</sup> *Infra* app. A, § 4(a) and (b).

<sup>216</sup> *Infra* app. A, § 5(c).

<sup>217</sup> *Infra* app. A, § 5(a).

<sup>218</sup> *Infra* app. A, § 5(a)(3) and (4).

<sup>219</sup> *Infra* app. A, § 5(b)(5).

<sup>220</sup> *Infra* app. A, § 5(d) and (e).

## VII. CONCLUSION

As with legal duties that protect children, prisoners, and seamen, the proposed legislation imposes a responsibility to provide veterinary care to pets.<sup>221</sup> This is necessary because, at this time, laws are not adequate to ensure that companion animals receive essential medical treatment. Even where state statutes do address the issue, there are numerous problems that undermine the protections they supposedly afford. In contrast, this proposed uniform act makes clear when a duty to provide veterinary care exists, exactly what that duty is, and imposes sufficient penalties as an incentive for guardians and veterinarians to comply. Adoption would avoid a major threat to companion animal health and safety.

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<sup>221</sup> *Supra* pt. II(B)(3).

## VIII. APPENDIX A

## CRUELTY TO COMPANION ANIMALS

- (1) Cruelty to companion animals is prohibited.
- (2) Aggravated cruelty to companion animals is prohibited.
- (3) Definitions. The following words, phrases, and terms as used in [insert section numbers] shall be defined and construed as follows:
  - (a) Aggravated cruelty includes:
    1. [list all other offenses legislators think appropriate for their state]; or
    2. intentional or reckless deprivation of necessary veterinary care by any person who owes a duty to a companion animal.
  - (b) Any person who owes a duty to a companion animal includes a guardian or any other individual who has custody or possession of a companion animal.
  - (c) Companion animals are “animals who live and share their lives with human beings, who are responsive to and interact emotionally with their guardians, and who are valued as ends in themselves.”<sup>222</sup>
  - (d) Guardian is the owner of a companion animal.
  - (e) Cruelty includes:
    1. [list all other offenses legislators decide are appropriate for their state]; or
    2. deprivation of necessary veterinary care by any person who owes a duty to a companion animal.

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<sup>222</sup> Squires-Lee, *supra* n. 1, at 1059 n.2.

- (f) Necessary veterinary care includes determining whether a companion animal requires medical attention. If so, a guardian or any other individual who has custody or possession of a companion animal shall
1. take the animal to a licensed veterinarian for examination and treatment.
  2. provide the recommended treatment or, if more than one option is available, select whichever is in the best interests of the companion animal after carefully reviewing all alternatives. Fundamental to determining which choice is in the best interests of the companion animal is an evaluation of the risk and pain associated with the procedure compared to its potential success. Therefore, prior to making the decision, the following factors should be evaluated:
    - a. efficacy of the treatment and the companion animal's chance of survival with and without medical care.
    - b. comparison of the companion animal's pain with and without treatment and/or one option against the others.
    - c. nature of the treatments and their short- and long-term effect on the companion animal.<sup>223</sup>
  3. consider whether to euthanize the animal in cases where this is appropriate. This decision shall not be made solely for financial reasons. Companion animals should be "put to sleep" only if their injury or illness is terminal or they are suffering with very little chance for improvement. Guardians who do not want to pay for needed treatment can only protect themselves from legal responsibility for failure to do so if they find someone who adopts the companion animal or a no-kill shelter that will take the companion animal.

#### (4) Reporting Cruelty or Aggravated Cruelty.

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<sup>223</sup> This standard is loosely based on the somewhat analogous situation of parents who refuse medical treatment for their children on religious objections. *Newmark v. Williams*, 588 A.2d 1108, 1117 (Del. 1991). The Delaware Supreme Court held that, under the *parens patriae* doctrine, the State has a special duty to protect children, "its youngest and most helpless citizens." *Id.* at 1116. A similar argument could be made for animals, who are also helpless in obtaining their own medical treatment.

- (a) A veterinarian who knows or has reasonable cause to suspect a companion animal is or has been the victim of cruelty or aggravated cruelty has a duty to report the incident(s) to [insert the appropriate state agency].
  - (b) A veterinarian who, in good faith, reports incident(s) of cruelty or aggravated cruelty to a companion animal shall be immune from criminal or civil liability for such report even if the report is later determined to be unfounded.
- (5) Penalties.
- (a) A person who is convicted of cruelty to a companion animal is subject to:
    - 1. imprisonment not exceeding one year or a fine not exceeding \$5,000 or both;
    - 2. an order to participate in and pay for psychological counseling;
    - 3. an order to pay for any medical treatment the companion animal needs as a result of any illness, injury, or failure to obtain veterinary care;
    - 4. removal of the companion animal from his possession.
  - (b) A person who is convicted two or more times of cruelty to a companion animal is subject to:
    - 1. imprisonment not exceeding five years or a fine not exceeding \$25,000 or both, for each incident after the first;
    - 2. an order to participate in and pay for psychological counseling;
    - 3. an order to pay for any medical treatment the companion animal needs as a result of any illness, injury, or failure to obtain veterinary care;

4. removal of the companion animal from his possession;
  5. an order prohibiting him from ever owning or caring for a companion animal in the future.<sup>224</sup>
- (c) A person who is convicted of aggravated cruelty to a companion animal is subject to:
1. imprisonment not exceeding three years or a fine not exceeding \$15,000 or both, for each incident;
  2. an order to participate in and pay for psychological counseling;
  3. an order to pay for any medical treatment the companion animal needs as a result of any illness, injury, or failure to obtain veterinary care;
  4. removal of the companion animal from his possession;
  5. an order prohibiting him from ever owning or caring for a companion animal in the future.
- (d) A veterinarian who is convicted of failing to report known or suspected incident(s) of cruelty or aggravated cruelty on a companion animal, or of preventing another person from filing such a report, shall be subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.
- (e) A veterinarian who is convicted of knowingly filing a false report of cruelty or aggravated cruelty on a companion animal, or convinces another person to file such a false report, shall be subject to imprisonment not exceeding 90 days or a fine not exceeding \$1,000 or both.

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<sup>224</sup> A number of states restrict future animal ownership for a certain period of time after conviction for animal abuse. Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 Iowa L. Rev. 1, 70–71 (2001). However, it seems that after two convictions a lifetime ban is more appropriate.

