

ANIMAL LAW IN NEVADA: ALL BARK AND NO BITE

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"[O]f all the creatures that were made [man] is the most detestable. Of the entire brood he is the only one—the solitary one—that possesses malice. . . . He is the only creature that inflicts pain for sport, knowing it to be pain.¹ The fact that man knows right from wrong proves his intellectual superiority to the other creatures; but the fact that he can do wrong proves his moral inferiority to any creature that cannot."²

—Mark Twain

I. INTRODUCTION

The law struggles with defining household pets consistently.³ As one author described them, pets are “[s]omewhere [b]etween a [c]hild and [c]hattel.”⁴ Nevada, like all other states, currently defines pets as personal property,⁵ which, essentially, means that a dog is no different from a toaster. However, this simplistic categorization fails to recognize that pets cannot be valued the same way as inanimate objects.⁶ Unlike toasters, household pets are living creatures, with independent interests and the capacity to form relationships with their human companions.⁷ Likewise, human beings are far better at developing bonds with domestic animals than with inanimate objects.⁸ By fail-

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¹ 19 MARK TWAIN, *The Character of Man*, in *The Works of Mark Twain* 60, 60 (Paul Baender ed., 1973).

² 19 MARK TWAIN, *What is Man?*, in *THE WORKS OF MARK TWAIN*, *supra* note 1, at 124, 198-99.

³ Although I personally am uncomfortable with the notion of “pets” and prefer terms like non-human family members, I use the traditional term for the sake of convenience.

⁴ T. Christopher Wharton, Study Note, *Fighting Like Cats and Dogs: The Rising Number of Custody Battles Over the Family Pet*, 10 J.L. & FAM. STUD. 433, 434 (2008).

⁵ Peter Barton & Frances Hill, *How Much Will You Receive in Damages from the Negligent or Intentional Killing of Your Pet Dog or Cat?*, 34 N.Y.L. SCH. L. REV. 411, 411 (1989).

⁶ See Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 ANIMAL L. 199, 217 (2002) (discussing the literal absence of litigation on the value of jackets and snow cones, even though they are also categorized as personal property).

⁷ Lauren Magnotti, Note, *Paving Open the Courthouse Door: Why Animals’ Interests Should Matter When Courts Grant Standing*, 80 ST. JOHN’S L. REV. 455, 457-58 (2006) (“Animals are living beings capable of feeling physical pain, experiencing varying degrees of rational thought, and forming seemingly emotional attachments.”).

⁸ *Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (Wis. 2001) (“Labeling a dog ‘property’ fails to describe the value human beings place upon the companionship that they enjoy with

ing to recognize the unique qualities of pets, Nevada law harms both pets and those who care for them.

This Note proposes changes to Nevada law by evaluating the importance of legal measures to protect pets.⁹ Part I explains why everyone, not just pet guardians,¹⁰ should be concerned about the treatment of pets. Part II describes and evaluates current Nevada animal law. Part III examines Nevada's and other states' legal successes and failures in addressing protection of pets. Part IV proposes several goals for the Nevada legislature that will not break the budget or overwhelm the judicial system. Because this Note focuses on Nevada, it will provide a working guide for state legislators in amending and proposing laws.

II. WHY CARE ABOUT PETS?

A. Public Attitudes Toward Animal Cruelty

The American populace generally responds strongly to animal mistreatment. For example, in 2000, when a motorist killed a small dog, named Leo, in an act of road rage, people from across the country raised \$120,000 to find the culprit.¹¹ After the judge sentenced the aggressor to three years imprisonment for animal cruelty, spectators in the courtroom applauded.¹² More recently, in 2007, a majority of football fans supported the imprisonment of Michael Vick for his involvement in dog fighting¹³ and believed the National Football League commissioner should have prohibited his return to the NFL.¹⁴ Even after Vick's release from prison and return to the league in 2009, some individuals continued to protest his reinstatement.¹⁵

a dog."). Although the *Rabideau* case specifically discussed dogs, the same reasoning could apply to other types of pets.

⁹ Although I recognize the importance of protecting animals in other contexts, this Note focuses on household pets because of their unique companionship qualities. In the words of Dr. Duckler, "[W]e tend to treat the value of our meals and the value of our friends very differently." Duckler, *supra* note 6, at 199.

¹⁰ I use the term *pet guardian* rather than the conventional *pet owner* to emphasize that pets are not objects that are owned, but living beings that require care. See discussion *infra* Part V.A.1.

¹¹ See Elizabeth Paek, Recent Development, *Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute*, 25 U. HAW. L. REV. 481, 481-82 (2003) (noting that the reward donated on Leo's behalf exceeded the average donated for suspected child molesters or rapists).

¹² Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIM. L. 1, 34 (2006).

¹³ Specifically, fifty-one percent of fans believed Vick deserved a short prison sentence and thirty-five percent believed Vick deserved a long prison sentence. Jeffrey M. Jones, *Most NFL Fans Say Vick Shouldn't Be Allowed to Play Again*, GALLUP (Aug. 29, 2007), <http://www.gallup.com/poll/28540/Majority-NFL-Fans-Say-Vick-Should-Allowed-Play-Again.aspx>.

¹⁴ Fifty-eight percent of NFL fans surveyed believed Vick should not have been allowed to return to the NFL and seventy-five percent did not want Vick to play for the team they rooted for. *Id.*

¹⁵ Mark Maske, *Amid Few Protests, Vick Makes His Debut*, WASH. POST, Aug. 28, 2009, at D1.

Strong public sentiment about animals shows that Americans generally do not think of pets as just another form of property.¹⁶ Although there is no single explanation for why people love pets, it is often suggested that people bond well with animals because they are anthropomorphized¹⁷ as having the best of human traits without the worst of them.¹⁸ Even many individuals who do not have pets in their family readily acknowledge that animals are just like humans in many important ways.¹⁹ It is also probable that strong beliefs about protecting animals stem from the prevalence of pet guardianship²⁰ and widespread recognition that “animals are sentient and emotive beings.”²¹ Similarly, animals play a wide variety of roles in human lives, ranging from playmates and friends to helpers and protectors.²²

B. *The Devotion of Pet Guardians to their Pets*

The majority of Americans have at least one pet in their family. As of September 2010, there were 71.4 million pet-owning homes in the United States.²³ This means approximately sixty-two percent of the United States population has one or more pets.²⁴ Compared with 2000, pet guardianship increased nearly fifteen percent.²⁵

Pet guardians are willing to invest time, money, and other resources into their pets as emotional investments that rarely net financial gain. The American Pet Products Association (APPA) survey estimates that, in 2010, pet guardians will spend \$47.7 billion on their pets.²⁶ The great deal of money spent on pets has led some scholars to question what pets give their guardians in return.²⁷ As one court explained, “[A pet’s] worth is not primarily financial, but emotional; its value derives from the animal’s *relationship* with its human

¹⁶ Britton, *supra* note 12, at 34.

¹⁷ *Anthropomorphized* means the giving of human characteristics to non-human beings. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 53 (11th ed. 2003).

¹⁸ Bueckner v. Hamel, 886 S.W.2d 368, 377 (Tex. App. 1994) (Andell, J., concurring) (“Many people who love and admire dogs as family members do so because of the traits that dogs often embody. These represent some of the best of human traits, including loyalty, trust, courage, playfulness, and love. . . . At the same time, dogs typically lack the worst human traits . . .”).

¹⁹ Debra Squires-Lee, Note, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1059-60 (1995).

²⁰ See *infra* Part II.B.

²¹ Paek, *supra* note 11, at 488.

²² Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 NEB. L. REV. 783, 806-07 (2004).

²³ *Industry Statistics & Trends*, AM. PET PRODUCTS ASS’N, http://americanpetproducts.org/press_industrytrends.asp (last visited Jan. 5, 2011) [hereinafter *APPA Survey*].

²⁴ *Id.*

²⁵ See Lynn A. Epstein, *Resolving Confusion in Pet Owner Tort Cases: Recognizing Pets’ Anthropomorphic Qualities Under a Property Classification*, 26 S. ILL. U. L.J. 31, 31 (2001) (noting sixty-one million pet-owning households in the United States).

²⁶ *APPA Survey*, *supra* note 23.

²⁷ See generally John Archer, *Why Do People Love Their Pets?*, 18 EVOLUTION & HUM. BEHAV. 237 (1997) (discussing pets as a form of social parasite because human beings spend resources on pets that would ordinarily go toward human young, although they fail to receive any evolutionary advantage in return).

companions.”²⁸ A recent survey found that eighty-six percent of pet guardians consider their pets a member of the family and fifty percent consider their pets comparable to human family members.²⁹ Pet guardians also largely believe their pets are able to understand human emotions and are receptive to communication.³⁰ Furthermore, one study found that grief responses for the loss of a pet are comparable to the grief experienced following the loss of a spouse, parent, or child.³¹

The depth of human emotion for animals has been documented strongly in recent years. In a fascinating study of war-torn Lebanon, researchers found that fifty-six percent of pet guardians surveyed remained in dangerous areas because of their pets, fifty-three percent took their animals with them to bomb shelters, and twenty-seven percent of guardians sacrificed their own food consumption in order to feed their pets.³² Similarly, during evacuations for Hurricane Katrina in 2005, forty-four percent of people who refused to evacuate did so because of concern for their pets.³³ Thus, even in emergency situations, pet guardians give significant consideration for their pets’ well-being.

C. Religious Considerations About Pets

For many people, religious doctrine dictates what is morally right in all aspects of life. Because religiosity regularly influences legal decision makers and their constituents, understanding the ways in which different religions interpret the role of animals provides insight into an additional reason why it is important to protect animals.

Several religions recognize that animals deserve respect and lives that are free from suffering. For example, Buddhist teachings hold that all life forms are interrelated, and, as such, a person who harms an animal also harms himself or herself and all creation.³⁴ Similarly, because Hindus believe that souls are reincarnated and that all creation is unified, they also believe that pets must be cared for particularly well.³⁵

A variety of naturalist religions also include core beliefs about animals. For example, many Pagans and Native American tribes believe that animals have valuable symbolism and energy that can inspire a broad range of spells,

²⁸ Morgan v. Kroupa, 702 A.2d 630, 633 (Vt. 1997).

²⁹ GfK Roper Pub. Affairs & Media, *The AP-Petside.com Poll*, GfK (May 28, 2009-June 1, 2009), http://www.ap-gfcpoll.com/pdf/AP-GfK_Petside_Topline.pdf.

³⁰ Archer, *supra* note 27, at 251-52 (Seventy-nine percent of pet guardians talked to their pet as if it were a person and eighty percent believed their pet was sensitive to their feelings).

³¹ William C. Root, Note, “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, 440 (2002).

³² Squires-Lee, *supra* note 19, at 1066.

³³ Megan McNabb, *Pets in the Eye of the Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes*, 14 ANIMAL L. 71, 103 (2007).

³⁴ Rebecca J. Huss, *Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQ. L. REV. 47, 63 (2002).

³⁵ *Id.* at 58.

help connect with sacred wisdom, or promote spirituality.³⁶ Notably, many practicing Pagans are animals lovers and might be vegetarians out of respect for nature.³⁷ Similarly, some Native American tribes, such as the Choctaw, historically practiced vegetarianism and continue to incorporate meatless dishes into important celebrations.³⁸ For some tribes, creation stories describe people as naturally vegetarian, with beginnings in a kind of “Garden of Eden” where humans, plants, and animals lived in “equality and mutual helpfulness,” and where the needs of all were met without killing one another.³⁹ Interestingly, the Christian creation story diverges significantly from the vegetarian “Garden of Eden.”⁴⁰ Christian thinkers fall into two opposing belief categories regarding the human duty to care for and respect animals.⁴¹ The first theory, stewardship, teaches that human beings are to be loving caretakers of all of God’s creation, in the same way God Himself cared for His creation.⁴² Because God created animals with His own hand, on the same day He created humans, the logic goes that humans and animals are both products of the divine creation.⁴³ The second approach, dominion theory, focuses on a later verse of Genesis, which instructs that God created man to rule over other forms of animals.⁴⁴ People who support the dominion theory tend to believe humans are superior to other animals because God created human beings in His own image and only humans must focus on the preservation of their immortal souls.⁴⁵

D. *Philosophical Considerations About Pets*

Philosophers and theorists have long contemplated how human beings should interact with animals. As far back as 500 BC, the Greek philosopher Pythagoras condemned all cruelty to animals.⁴⁶ He practiced vegetarianism and felt it was immoral to harm animals: “As long as man continues to be the

³⁶ *What is a Witchcraft and Wicca Symbol?*, WICCA SPIRITUALITY, <http://www.wicca-spirituality.com/wicca-symbol.html> (last visited Jan. 5, 2011) (citing JAMIE SAMS, *Medicine Cards: The Discovery of Power Through the Ways of Animals* (1999)).

³⁷ Tara M. Clapper, *The Relationship Between Paganism and Veganism*, ASSOCIATED CONTENT (Mar. 7, 2007), http://www.associatedcontent.com/article/162487/the_relationship_between_paganism_and.html?cat=22.

³⁸ *History of Vegetarianism: Native Americans and Vegetarianism*, INT’L VEGETARIAN UNION, http://www.ivu.org/history/native_americans.html (last updated Apr. 18, 2001).

³⁹ *Id.*

⁴⁰ See generally *Genesis* 1-2 (Oxford Study Bible).

⁴¹ TOM REGAN, *DEFENDING ANIMAL RIGHTS* 7 (University of Chicago Press 2001).

⁴² *Id.* at 8.

⁴³ *Id.* (citing *Genesis* 1:24-26 (Oxford Study Bible)) (“God said, ‘Let the earth bring forth living creatures, according to their various kinds: cattle, creeping things, and wild animals’ Then God said, ‘Let us make human beings’”).

⁴⁴ *Id.* at 7; see also *Genesis* 1:26 (Oxford Study Bible) (“Then God said, ‘Let us make human beings in our image, after our likeness, to have dominion over the fish in the sea, the birds of the air, the cattle, all wild animals on land, and everything that creeps on the earth.’”).

⁴⁵ *Genesis* 1:27 (Oxford Study Bible) (“God created human beings in his own image”); see also BERNARD E. ROLLIN, *ANIMAL RIGHTS & HUMAN MORALITY* 44-45 (Prometheus Books 3d ed. 2006) (noting the use of soullessness as a common reason to exclude animals from moral consideration).

⁴⁶ Kelly Wilson, Note, *Catching the Unique Rabbit: Why Pets Should Be Reclassified as Inimitable Property Under the Law*, 57 CLEV. ST. L. REV. 167, 171 n.17 (2009).

ruthless destroyer of lower living beings he will never know health or peace. For as long as men massacre animals, they will kill each other.”⁴⁷

Later thinkers, particularly Jeremy Bentham and John Stewart Mill, also were animal advocates.⁴⁸ Bentham, in particular, dreamed of a time “when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny.”⁴⁹ As a Utilitarian, Bentham recognized only one good—pleasure—and only one bad—pain.⁵⁰ The duty of a Utilitarian is to act to maximize pleasure and minimize pain for the greatest number.⁵¹ Because Utilitarians focus on sentience, it is not important that animals are physically different from human beings or use different forms of communication.⁵² Instead, Bentham believed that animals, as beings with the capacity to experience feelings such as suffering and joy, are entitled to consideration equal to that given human beings.⁵³ For Bentham, before a person acts in a way that will affect animals, he or she should actively assess whether the action will cause suffering.⁵⁴

In contrast, thinkers such as Rene Descartes believed animals are unworthy of any moral consideration because they lack consciousness and are the functional equivalent of machines.⁵⁵ As Professor Rollin, a respected philosopher and animal rights proponent, explained, Cartesian thinking can be summed up in three steps: (1) “only humans are rational,” (2) “only humans possess language,” and (3) “only humans are objects of moral concern.”⁵⁶ Similarly, Contractualists, such as Thomas Hobbes, disregarded animals as morally insignificant.⁵⁷ Although Hobbes willingly accepted that animals have individual interests, he still did not think they are morally relevant because animals are unable to express their interests in a way consistent with the social contract.⁵⁸ For Hobbes and other Contractualists, the meaning of morality stems from

⁴⁷ The great writer and poet Ovid attributed this quote to Pythagoras. See *Pythagoras*, INT’L VEGETARIAN UNION, http://www.ivu.org/history/greece_rome/pythagoras.html (last updated May 31, 2010).

⁴⁸ REGAN, *supra* note 41, at 13-14.

⁴⁹ Magnotti, *supra* note 7, at 464 (quoting JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 283 (J.H. Burns & H.L.A. Hart eds., 1982)).

⁵⁰ REGAN, *supra* note 41, at 14.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Huss, *supra* note 34, at 63.

⁵⁴ *Id.*

⁵⁵ Magnotti, *supra* note 7, at 461.

⁵⁶ ROLLIN, *supra* note 45, at 50.

⁵⁷ REGAN, *supra* note 41, at 9-10.

⁵⁸ The social contract is a theory loosely stating that individuals give up some of the rights they would have in the state of nature in order to possess the benefits of living in organized society. For comprehensive discussions about the social contract, see, for example, THOMAS HOBBS, LEVIATHAN (J.C.A. Gaskin ed., Oxford Univ. Press 1996) (1651); JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Ian Shapiro ed, Yale Univ. Press 2003) (1690); JEAN JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT (Drew Silver ed., G.D.H. Cole trans., Dover Publ’ns, Inc. 2003) (1762).

agreements reached between people within a voluntary social contract.⁵⁹ Morality simply does not apply for those unable to negotiate.⁶⁰

Interestingly, modern political theorist John Rawls appealed to the social contract for an entirely different reason—humans must treat animals humanely.⁶¹ Although Rawls did not believe animals were moral beings, he did believe that humans recoil from animal suffering, and, therefore, acts of cruelty toward animals breach the social contract people have with each other.⁶² Similarly, the German philosopher Immanuel Kant did not recognize moral worth for animals as individuals.⁶³ Instead, Kant believed that animals were a “means to an end,”⁶⁴ and “the end is man.”⁶⁵ Nonetheless, Kant stated that “‘a person who already displays . . . cruelty to animals is also no less hardened towards men. We can already know the human heart, even in regard to animals.’”⁶⁶ Essentially, he believed that people have a duty to animals because animal mistreatment degrades an individual’s humanity and exposes others to their ugly behavior.⁶⁷ As is discussed in Subsection E, research indicates that Kant theorized correctly—mistreating animals is correlated with mistreating people.

E. *The Link Between Hurting Animals and Hurting People*

Individuals who hurt animals are prone to harming human beings as well.⁶⁸ Some scholars suggest animal abuse is part of a circle of violence where children witness animal abuse in the home, then imitate violence later in life against animal or human victims.⁶⁹ Alternatively, others describe violence as a continuum that ranges from cruelty to animals on one end to cruelty to humans on the other.⁷⁰ Statistics demonstrate that individuals with a history of abusing animals are more likely to escalate into harming human beings. For example, animal abusers are five times more likely than are non-abusers to

⁵⁹ Scott Wilson, *Animals and Ethics*, INTERNET ENCYCLOPEDIA PHIL., <http://www.iep.utm.edu/anim-eth/#SH1d><http://www.iep.utm.edu/anim-eth/#SH1d> (last updated Jan. 13, 2010) (scroll down to “Contractualist Theories”).

⁶⁰ *Id.*

⁶¹ Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1, 15-16 (2001).

⁶² *Id.*

⁶³ Huss, *supra* note 34, at 61.

⁶⁴ *Id.* Kant might be referred to as a consequentialist. Consequentialists base moral judgments on the end result or consequence of an action. Thus, in the example discussed above, animals are only important where they help create a good consequence, such as providing human beings with a warm fur or a hearty meal.

⁶⁵ *Id.*

⁶⁶ Livingston, *supra* note 61, at 7 (quoting IMMANUEL KANT, *Of Duties to Animals and Spirits*, in LECTURES ON ETHICS 212 (Peter Heath & J.B. Schneewind eds., Cambridge Univ. Press 1997) (1780-1781)).

⁶⁷ Huss, *supra* note 34, at 61 & n.80.

⁶⁸ See, e.g., Livingston, *supra* note 61, at 56.

⁶⁹ Angela Campbell, Note, *The Admissibility of Evidence of Animal Abuse in Criminal Trials for Child and Domestic Abuse*, 43 B.C. L. REV. 463, 466 (2002).

⁷⁰ *Id.* at 468.

commit violent crimes, including rape, robbery, and assault.⁷¹ In a 1966 study of incarcerated adults, researchers found that approximately fifty-two percent of the individuals charged with aggressive crimes had histories of animal abuse.⁷² By comparison, the same study showed that only seventeen percent of individuals charged with nonaggressive crimes had engaged in animal cruelty.⁷³

The connection between animal abuse and aggression toward human beings is also prevalent amongst history's most-notorious serial killers. The "Boston Strangler," known for murdering thirteen women, spent his youth trapping dogs and cats in crates and torturing them by shooting arrows through the crates.⁷⁴ Eric Harris and Dylan Klebold, the teenagers who killed twelve people and committed suicide at Columbine High School, spoke of mutilating animals.⁷⁵ Kipland Kinkel, who at age fifteen killed both of his parents before shooting two students at his high school, also expressed his delight in torturing animals as a child.⁷⁶ Jeffrey Dahmer, who brutalized, murdered, and cannibalized seventeen men, spent his youth dissecting animals and staking their bodies to trees in his backyard.⁷⁷ In recognition of cases such as these, the FBI considers animal cruelty to be one of the predictors of violence and uses animal abuse as a factor when profiling serial killers.⁷⁸ The reasoning is simple: the behavior of serial killers does not change; only the object of their violence changes.⁷⁹

Moreover, animal abuse is common in family violence situations.⁸⁰ Abuse is mainly about the misuse of power and control,⁸¹ and pets, women, and children share a similar position because of their economic dependence, emotional bonds, and enduring senses of loyalty to an abuser.⁸² Although a pet might not be the targeted victim, abusers often threaten or hurt pets as a coercive technique to induce fear in other family members.⁸³ This technique is particularly effective because domestic violence victims often lack sources of comfort other than their family pets.⁸⁴ Furthermore, studies show that children

⁷¹ Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 13 (2000).

⁷² Livingston, *supra* note 61, at 47.

⁷³ *Id.*

⁷⁴ *Id.* at 43.

⁷⁵ *Id.* at 44.

⁷⁶ Sauder, *supra* note 71, at 1 n.1. For further information about Kipland Kinkel, see Sam Howe Verhovek, *Teen-Ager Pleads Guilty in School Shooting*, N.Y. TIMES, Sep. 25, 1999, at A9.

⁷⁷ James Barron & Mary B.W. Tabor, *17 Killed, and a Life Is Searched for Clues*, N.Y. TIMES, Aug. 4, 1991, at 1.

⁷⁸ See Sauder, *supra* note 71, at 14-15; see also *The Animal Abuse—Human Violence Connection*, PAWS, <http://www.paws.org/human-violence-connection.html> (last visited Jan. 5, 2011).

⁷⁹ Sauder, *supra* note 71, at 14.

⁸⁰ See, e.g., Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 97 (2001).

⁸¹ Campbell, *supra* note 69, at 481 (“[N]o matter whether abuse is targeted at an animal or a person, the issue is still the same: power, control, and preying on the vulnerable.”).

⁸² *Id.* at 465.

⁸³ *Id.* at 466.

⁸⁴ Gentry, *supra* note 80, at 102.

who live in abusive homes might commit cruel acts upon animals when the children witness domestic violence⁸⁵ or are victims of sexual abuse.⁸⁶ In fact, animal abuse is one of three warning signs in the Macdonald triad that mental health experts correlate with sociopathy and a history of sexual abuse.⁸⁷ As one social anthropologist concluded, “One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it.”⁸⁸

Social science statistics affirm the troubling correlation between pet abuse and family abuse. For example, a 1983 study showed that in homes where child abuse occurred, at least eighty-eight percent of the pets in the homes were abused, too.⁸⁹ Similarly, twenty-eight percent of individuals charged with animal abuse are simultaneously charged with criminal domestic violence.⁹⁰ The vast majority of battered women who own pets claim their abusers threatened or actually harmed their pets.⁹¹ As a result, eighteen percent of female victims who later escaped from an abusive situation claimed they hesitated to do so for fear of leaving their pets behind.⁹² In addition, sixty-two percent of the women who later escaped claimed that their children witnessed animal abuse within the home and thirty-two percent of their children later engaged in abusive behavior toward pets themselves.⁹³ In conclusion, these studies demonstrate that investigating animal abuse might reveal serious underlying human crimes and provide an opportunity for preventing harm.

F. *The Benefits People Receive From Pets*

Whereas abuse of animals causes negative consequences in human lives, the inverse also appears to be true—pet guardianship is associated with longer, healthier lives.⁹⁴ Scientists suggest some of the benefits associated with pets include lower cholesterol, lower triglycerides, and lower blood pressure⁹⁵—all of which are associated with improved heart health and longevity.⁹⁶ In a study about heart health, researchers found that ninety-four percent of heart attack survivors who owned pets were alive one year later.⁹⁷ By contrast, only forty-four percent of heart attack survivors without a pet remained alive one year later.⁹⁸ In terms of mental health, pet guardianship is also associated with

⁸⁵ Campbell, *supra* note 69, at 481.

⁸⁶ J.M. Macdonald, *The Threat to Kill*, 120 AM. J. PSYCHIATRY 125, 126-27 (1963).

⁸⁷ See, e.g., *id.*

⁸⁸ Campbell, *supra* note 69, at 466.

⁸⁹ *Id.* at 464-65.

⁹⁰ Sauder, *supra* note 71, at 11 (citing Anita Manning, *Hurting Animals Often Sign of Abuse*, USA TODAY, Sept. 10, 1997, at 4D).

⁹¹ Gentry, *supra* note 80, at 103 (noting seventy-one percent of female victims who owned pets reported that “their male partner had threatened to, or actually had hurt or killed one or more of their pets”).

⁹² *Id.* at 103 n.46.

⁹³ *Id.* at 103.

⁹⁴ Epstein, *supra* note 25, at 35.

⁹⁵ Archer, *supra* note 27, at 245.

⁹⁶ See generally *Heart Health Center*, WEBMD, <http://www.webmd.com/heart/default.htm> (last visited Jan. 5, 2011).

⁹⁷ Squires-Lee, *supra* note 19, at 1067.

⁹⁸ *Id.*

decreased depression and decreased need for physician visits.⁹⁹ The correlation between mental health and pets is so strongly recognized that federal law has made strides to allow companion animals as disability accommodations for those with mental health issues.¹⁰⁰

Interestingly, animals can play an important role in recovering from abuse and emotional difficulties as well.¹⁰¹ Studies show that child victims of sexual abuse who have animal companions for comfort are less likely to become abusers themselves.¹⁰² They also suffer from less anger and negative emotions than do victims who do not have animal companions.¹⁰³ Child-development specialists have also used the unique ability of children to bond with pets not only in abuse situations, but to help socialize children with autism and other diseases that inhibit social interaction with people.¹⁰⁴ These benefits likely occur because “pets can facilitate emotional and social development in children by providing uncritical and nonjudgmental affection and by fostering nurturing skills.”¹⁰⁵

III. CURRENT NEVADA LAW ABOUT ANIMALS

A. *Progressive Animal Laws in Nevada*

Nevada is surprisingly progressive in recognizing the important role animals play in domestic violence situations.¹⁰⁶ Under Nevada Revised Statutes (NRS) § 33.018, injuring or killing an animal is a type of harassment that constitutes domestic violence.¹⁰⁷ Moreover, NRS § 33.030 gives judges authority to enjoin abusers from “injuring, threatening to injure, or taking possession of any animal.”¹⁰⁸ Judges may also make specific arrangements for pets through court orders.¹⁰⁹ The most impressive feature about Nevada’s protection of animals is the support and promotion of the Shade Tree Women’s Shelter and Noah’s Ark Animal Shelters.¹¹⁰ Unlike facilities in any other western states,

⁹⁹ R. Lee Zasloff, *Measuring Attachment to Companion Animals: A Dog Is Not a Cat Is Not a Bird*, 47 APPLIED ANIMAL BEHAV. SCI. 43, 47 (1996).

¹⁰⁰ See, e.g., 29 U.S.C. § 794 (2006) (prohibiting discrimination of disabled persons by any program that receives federal funding); 42 U.S.C. § 3604 (2006) (prohibiting discrimination in housing and requiring reasonable accommodations for disabled individuals).

¹⁰¹ See, e.g., Livingston, *supra* note 22, at 807-08.

¹⁰² *Id.* at 807.

¹⁰³ *Id.* at 807-08.

¹⁰⁴ Nat’l Insts. of Health, *Can Pets Keep You Healthy?*, NEWS HEALTH, Feb. 2009, at 1, 2, <http://newsinhealth.nih.gov/2009/February/feature1.htm>.

¹⁰⁵ Livingston, *supra* note 22, at 807; see also *Can Pets Keep You Healthy?*, *supra* note 104, at 1-2.

¹⁰⁶ Nevada is one of only seventeen states that currently include pets in protective orders. Rebecca F. Wisch, *Domestic Violence and Pets: List of States that Include Pets in Protection Orders*, ANIMAL LEGAL AND HISTORICAL CENTER 2010, <http://www.animallaw.info/articles/ovusdomesticviolencelaws.htm>.

¹⁰⁷ NEV. REV. STAT. § 33.018 (2009).

¹⁰⁸ *Id.* § 33.030(1)(e).

¹⁰⁹ *Id.* § 33.030(2)(b).

¹¹⁰ See *Noah’s Animal House*, THE SHADE TREE, http://noahs.theshadetree.org/about_us.html (last visited Jan. 5, 2011) (describing resources provided to domestic violence survivors).

these two neighboring locations coordinate to allow victims of domestic violence to bring their pets with them when escaping abusive environments.¹¹¹

An additional progressive law in Nevada mandates psychological treatment or counseling for juveniles who by any act, omission, or neglect, cause unjustifiable physical pain, suffering, or death to an animal.¹¹² Only twelve states have laws that include mental health services as a rehabilitative measure for youth that hurt animals.¹¹³ Impressively, Nevada is one of only two states that mandates treatment instead of allowing counseling at a judicial officer's discretion.¹¹⁴ Consistent with the abuse statistics discussed previously,¹¹⁵ Nevada appears to recognize that youths who injure animals are at high risk to injure human beings and are likely victims of mistreatment themselves.¹¹⁶

Lastly, Nevada, like many states,¹¹⁷ validates trusts made for the benefit of animals. Although courts have often refused to honor trusts for pets, on the theory that animals cannot stand on their rights as beneficiaries,¹¹⁸ Nevada law specifically allows a trustee or other person who has demonstrated interest in the welfare of the animal beneficiary to enforce the trust as necessary.¹¹⁹ With the exception of trustee enforcement, Nevada treats animal beneficiaries the same as human beneficiaries and gives settlers the same rights to provide for their pets as for other beneficiaries.¹²⁰ Especially considering that Nevada law does not recognize a trust to care for a toaster, dining room set, or even classic car,¹²¹ this law shows an impressive recognition of the special role animals play in their guardians' lives and continue to play after death.

B. *Statutory Definitions and Inconsistencies*

Despite its progressive treatment of animals in domestic violence situations and estate planning, the Nevada legislature defines pets within the meaning of personal property in NRS § 193.021.¹²² Essentially, Nevada law places a pet dog and all "domestic animals and birds" in the same category as household appliances and other chattel.¹²³ Unfortunately, this simplistic category creates numerous problems in applying laws to pets.

¹¹¹ *Id.*

¹¹² NEV. REV. STAT. § 62E.680.

¹¹³ Am. Humane's Office of Pub. Policy, *State Laws for Convicted Animal Abusers*, AM. HUMANE ASS'N, <http://www.americanhumane.org/assets/docs/advocacy/ADV-laws-state-counseling-animal-abuse.pdf> (last updated June 2008).

¹¹⁴ Am. Humane's Office of Pub. Policy, *State Laws Establishing Psychological Evaluations for Convicted Animal Abusers*, AM. HUMANE ASS'N, <http://www.americanhumane.org/assets/docs/advocacy/ADV-laws-state-eval-animal-abuse.pdf> (last updated June 2008).

¹¹⁵ See *supra* Part II.E.

¹¹⁶ *Id.*

¹¹⁷ JESSE DUKEMINIER, ROBERT H. SITKOFF, & JAMES LINDGREEN, *WILLS, TRUSTS, AND ESTATES* 587 (8th ed. 2009) (noting that many state statutes follow the Uniform Trust Code or Uniform Probate Code in allowing trusts for pet animals).

¹¹⁸ *Id.* at 585.

¹¹⁹ NEV. REV. STAT. § 163.0075(3) (2009).

¹²⁰ *Id.* § 163.0075.

¹²¹ *Id.* § 163.006 (defining a beneficiary).

¹²² *Id.* § 193.021.

¹²³ *Id.* ("'Personal property' includes dogs and all domestic animals and birds . . . all kinds or descriptions of money, chattels, and effects . . .").

An additional problem involves the very definition of *pet*. NRS § 574.300 defines a pet as “a domestic cat or dog commonly kept for pleasure.”¹²⁴ By limiting the definition of pets to dogs and cats, Nevada law denies a large number of pet guardians the protections and responsibilities of the law. A study of the APPA pet surveys from 2003 until 2009 indicates that guardianship of small mammals, birds, and reptiles has increased steadily.¹²⁵ For example, reptile guardianship increased a remarkable fifty-one percent in just six years.¹²⁶ Reports for 2009-2010 indicate Americans own 13.6 millions reptiles, 15.9 million small mammals, such as rodents, and fifteen million birds.¹²⁷ Although fewer people keep nontraditional animals as pets versus cats and dogs, their history of companionship with human beings dates back to ancient Egypt and Greece.¹²⁸ For example, in Babylonia and Assyria, royalty kept exotic pets as a symbol of their political power.¹²⁹ Leaders believed that the ability to maintain exotic animals, as opposed to ordinary, domestic pets, symbolized that they were able to dominate all manner of creature, including human beings.¹³⁰ Moreover, as early as the sixteenth century, several Native American tribes routinely kept raccoons, bears, birds, and a wide assortment of animals purely for companionship.¹³¹ As the court in *Rabideau* noted in the context of a negligent infliction of emotional distress case, humans are capable of bonding with a wide variety of other living beings and there is little basis for rationally distinguishing dogs from other categories of animal companions.¹³²

One of the biggest issues in Nevada animal law is the inconsistent definitions of animals and pets throughout the Nevada Revised Statutes. For purposes of animal mistreatment, NRS § 574.050 defines an animal as any living creature except for a human being.¹³³ Thus, the crime of participating in animal fights applies to all types of animals,¹³⁴ although dog fighting is a separate offense with higher penalties.¹³⁵ By comparison, NRS § 574.195, which prohibits leaving a pet in a vehicle during extreme heat or cold, applies only to cats and dogs.¹³⁶ Similarly, NRS § 574.360 requires housing facilities for cats and dogs to be safe and clean and requires guardians to provide potable water,

¹²⁴ NEV. REV. STAT. § 574.300 (2009).

¹²⁵ Compare Lianne McLeod, *American Pet Ownership Statistics*, ABOUT.COM: EXOTIC PETS, <http://exoticpets.about.com/cs/resourcesgeneral/a/petstates.htm> (last visited Jan. 5, 2011) (discussing pet guardianship statistics from 2003 through 2006), with APPA Survey, *supra* note 23 (listing pet ownership statistics for 2009-10).

¹²⁶ McLeod, *supra* note 125 (showing that Americans owned nine million reptiles in 2003 and 13.6 million reptiles in 2009); APPA Survey, *supra* note 23.

¹²⁷ APPA Survey, *supra* note 23.

¹²⁸ Squires-Lee, *supra* note 19, at 1064.

¹²⁹ Duckler, *supra* note 6, at 205.

¹³⁰ *Id.*

¹³¹ Squires-Lee, *supra* note 19, at 1064.

¹³² *Rabideau v. City of Racine*, 627 N.W.2d 795, 798-99 (Wis. 2001).

¹³³ NEV. REV. STAT. § 574.050 (2009) (defining animal); *id.* § 62E.680(3)(a) (For purposes of juvenile delinquency involving an animal, an animal is defined as any living creature outside the human race.).

¹³⁴ *Id.* § 574.060.

¹³⁵ *Id.* § 574.107.

¹³⁶ *Id.* § 574.195.

but does not apply to other types of animals.¹³⁷ These inconsistencies are problematic because they imply that leaving a pet in inhospitable conditions is only abuse if that animal is a cat or a dog, which leaves a wide range of pets unprotected.

C. *Lax Animal Cruelty Laws and Lack of Civil Remedies*

Nevada law is lax on individuals who engage in animal abuse. Although public offenses related to animal fighting carry serious sentences,¹³⁸ private torturing, abandoning, or neglecting animals remains a minor misdemeanor unless categorized as “malicious mischief.”¹³⁹ Moreover, the very definitions of abuse and neglect require forms of mistreatment to be extreme before being considered unlawful. For example, the Nevada legislature recently amended NRS § 574.100 to include tethering as a form of mistreatment.¹⁴⁰ Unfortunately, NRS § 574.100 defines tethering as keeping an animal outdoors on a restraint less than twelve feet long or keeping an animal restrained outside more than *fourteen* hours a day.¹⁴¹ Although legislators applauded this amendment as a step in the right direction, this watered-down¹⁴² law does not realistically protect animals for three main reasons. First, it is very difficult to determine when a person has tethered a dog for the required amount of time. Second, the law makes no comment on weather conditions, which means an animal can be tethered outside for fourteen hours in snow, flooding rains, or 120-degree heat. Third, because dogs are particularly social animals, it is emotionally damaging for them to be isolated for the entirety of their waking lives.¹⁴³

¹³⁷ *Id.* § 574.360.

¹³⁸ *See id.* § 574.060 (Keeping premises used for animal fighting is punishable by a gross misdemeanor for first offenses and felony punishment for all subsequent offenses.); *id.* § 574.070 (Witnessing animal fights is punishable by a misdemeanor for first offenses, gross misdemeanor for second offenses, and felony punishment for third or subsequent offenses. Instigating animal fights is punishable by a gross misdemeanor for first offenses and felony punishment for all subsequent offenses, unless the animal involved is a dog, in which case even the first offense is charged as a felony.).

¹³⁹ *Compare id.* § 206.150(1) (“any person who willfully and maliciously kills, maims or disfigures any animal belonging to another, or exposes any poison or noxious substance with intent that it should be taken by the animal is guilty of a category D felony . . .”), *with id.* § 574.100(2) (The first two offenses for overdriving, torture, or cruelty, are punishable as misdemeanors with no more than six months in county jail. Only upon a third offense is an offender subject to class C felony charges and a potential imprisonment of one to five years.).

¹⁴⁰ S.B. 132, 2009 Leg., 75th Sess. (Nev. 2009) (Governor Gibbons signed this bill into law on May 26, 2009, and it became effective Oct. 1, 2009.).

¹⁴¹ NEV. REV. STAT. § 574.100(2).

¹⁴² S.B. 132 (The Amendment as originally proposed by Senator Townsend on February 12, 2009, opposed tethering for greater than nine hours in a twenty-four hour period.)

¹⁴³ During debates before the Nevada legislature on S.B. 132, several animal enthusiasts expressed similar concerns. *Minutes of the Meeting of the Assemb. Comm. on Natural Res., Agric., & Mining*, 2009 Leg., 75th Sess. 7-8, 13, Exhibit G (Nev. 2009) available at <http://www.leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=339> (statements of Dr. Frank McMillan and Tami Simon, representing Best Friends Sanctuary).

Even if NRS § 574.100 included more-protective language, animal abusers get “two strikes” before they are eligible for felony charges.¹⁴⁴ Prior to the third prosecuted offense, animal mistreatment is a misdemeanor punishable by a maximum of 180 days in jail.¹⁴⁵ Because Nevada law does not allow prosecutors to use discretion when deciding how to charge animal abuse, even the most egregious acts are misdemeanors for first and second offenses. For example, when a Las Vegan was accused of sealing kittens into a wall at a construction site, the Clark County District Attorney’s Office was only able to indict the abuser for animal cruelty, a misdemeanor.¹⁴⁶ Furthermore, because animal abuse is often a cry for help before an individual commits serious crimes against humans,¹⁴⁷ the state of Nevada essentially forfeits an opportunity to prevent crime escalation.

Because Nevada criminal animal abuse and neglect laws are ineffective, individuals whose pets are injured have a particularly strong interest in civil remedies.¹⁴⁸ Unfortunately, civil remedies are virtually impossible under NRS § 41.740.¹⁴⁹ Under NRS § 41.740, pet guardians may recover only limited damages for the intentional, willful, reckless, or negligent injury of a pet.¹⁵⁰ Included in these damages, guardians may collect veterinary costs and loss of market value for their pets.¹⁵¹ During the state legislature’s debate on NRS § 41.740, state senators and even so-called animal advocates heralded the law as a step forward for pet guardians, but it actually represents little, if any, progress.¹⁵² Because pets essentially have no market value,¹⁵³ this law realistically provides no compensation to an injured pet guardian. Even if an animal is particularly valuable, NRS § 41.740 prohibits market value damages in excess

¹⁴⁴ See discussion *supra* note 139; see also Gail Connors, “Three Strikes and You’re Out” in Nevada for Animal Cruelty and Abuse, 8 NEV. LAW. 32, 32 (2000).

¹⁴⁵ See discussion *supra* note 139.

¹⁴⁶ KVBC, *Testimony Begins at Kitten Cruelty Trial*, NEWS 3 (Feb. 13, 2009, 7:04 AM), <http://www.kvbc.com/Global/story.asp?S=9840607&nav=15MV>; KVBC, *Update: Arrest Made in Animal Cruelty Case*, NEWS 3 (June 5, 2008, 4:34 PM), <http://www.kvbc.com/Global/story.asp?s=8433139> [hereinafter KVBC, *Update*].

¹⁴⁷ See *supra* Part II.E.

¹⁴⁸ See Squires-Lee, *supra* note 19, at 1072.

¹⁴⁹ See NEV. REV. STAT. § 41.740 (2009).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* § 41.740(1)(a)-(c) (2009).

¹⁵² *Minutes of the Meeting of the Assemb. Comm. on Judiciary*, 2007 Leg., 74th Sess. 13-17 (Nev. 2007), available at <http://www.leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=339> (showing how little congresspersons care about pets because the bulk of debates is on how little to actually give aggrieved pet guardians).

¹⁵³ See *Thompson v. Lied Animal Shelter*, No. 2:08-cv-00513, 2009 U.S. Dist. LEXIS 96383, at *5 (D. Nev. Oct. 14, 2009) (“The replacement value of a puppy is almost certainly less than \$1,000.”); *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1086 (Ill. App. Ct. 1987) (“The courts have recognized, however, that there are a number of items of personal property that have no market value. Included in this group are . . . pets.”); *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 286-87 (N.Y. Civ. Ct., 1980) (noting that market value of a pet decreases as it ages, but the value to the guardian increases over time); *Burgess v. Shampoo Pet Indus., Inc.*, 131 P.3d 1248, 1251 (Kan. Ct. App. 2006) (“The fair market value of ordinary pets, unless they have special qualities as breeding or working animals, is usually close to zero . . .”). For a great critique of market value, see Wilson, *supra* note 46, at 192-96 (suggesting increased value for pets as inimitable property instead of the market value approach).

of \$5,000 per pet,¹⁵⁴ which restricts such claims to the realm of small claims court, and away from the interest of attorneys.¹⁵⁵ Lastly, the law prohibits punitive or non-economic damages to compensate pet owners for their emotional damages or to punish offenders.¹⁵⁶ Because the bulk of a pet's worth is emotional,¹⁵⁷ the inability of a pet guardian to recover for pain and suffering caused by injury or death of a pet means that a pet guardian will never be made "whole" within the confines of Nevada civil law. The absence of punitive damages means individuals who partake in especially egregious conduct escape civil liability, providing little deterrence for even the most outrageous behavior. Moreover, in monetary terms, this means wronged plaintiffs might be better off paying for their own damages, because court and attorney costs are often quite expensive and there has never been a successful case of recovery in Nevada history.¹⁵⁸

Pet guardians are unlikely to be successful if they pursue alternative outlets such as intentional infliction of emotional distress, negligent infliction of emotional distress, or punitive damages. As the United States District Court for the District of Nevada noted in *Thompson v. Lied Animal Shelter*, "[A] plaintiff cannot make out a prima facie case of intentional infliction of emotional distress . . . or negligent infliction of emotional distress . . . in Nevada based on the death of an animal."¹⁵⁹ Specifically, intentional infliction of emotional distress claims ordinarily will fail because harm to or killing of a person's animal "cannot be found to be 'unquestionably violent and shocking.'"¹⁶⁰ Because intentional infliction of emotional distress requires extreme and shocking behavior,¹⁶¹ it is improbable that a case involving injury to an animal, even in egregious circumstances, will succeed. Moreover, claims of negligent infliction of emotional distress require an alleged victim to be related to the injured party by blood or marriage.¹⁶² Because human beings are not related to animals within the "first degree of consanguinity,"¹⁶³ they will never be able to prove negligent infliction of emotional distress.

Given this sad state of the law, it is unsurprising that few pet guardians ever seek legal redress.

¹⁵⁴ NEV. REV. STAT. § 41.740(3) (2009).

¹⁵⁵ Pursuant to NRS § 73.010, damages for small claims cases in Nevada may not exceed \$5,000. *Id.* § 73.010.

¹⁵⁶ *Id.* § 41.740(2).

¹⁵⁷ *Morgan v. Kroupa*, 702 A.2d 630, 633 (Vt. 1997) ("[A pet's] worth is not primarily financial, but emotional; its value derives from the animal's *relationship* with its humans companions.").

¹⁵⁸ A search of Justice Court and District Court records reveals no active animal law cases as of September 15, 2010. Moreover, a ten-year search in both the *Las Vegas Review Journal* and *Reno Gazette* shows very few examples of animal mistreatment where a guardian pursued legal remedies, and no instances of a successful lawsuit.

¹⁵⁹ *Thompson*, 2009 U.S. Dist. LEXIS 96383, at *20.

¹⁶⁰ *Id.* at *22 (citing *Nelson v. City of Las Vegas*, 665 P.2d 1141, 1145 (Nev. 1983)).

¹⁶¹ *Id.* at *21.

¹⁶² *Id.* at *22-23 (citing *Grotts v. Zahner*, 989 P.2d 415, 416 (Nev. 1999)).

¹⁶³ *Id.* at *26 (quoting *Grotts*, 989 P.2d at 416 & n.1).

D. Problem with Nevada Pet Stores

Nevada law fails to protect pets while they are in pet stores or similar facilities where pets may be “bought.” Strikingly, state law does not require a pet store or shop to obtain a license to sell pets. Although statutory law requires operators or dealers to provide cats and dogs¹⁶⁴ with access to food once a day,¹⁶⁵ water twice a day,¹⁶⁶ and “a minimum amount of floor space,”¹⁶⁷ no penalties are enumerated for violations, other than the misdemeanor provisions that apply to all Nevadans. Thus, under Nevada law, a pet may wallow in a pet store for months without exercise, socialization, or even basic necessities without any legal consequence.

Furthermore, under Nevada law, pet guardians receive very little information about a potentially adoptable pet. NRS § 574.480 only requires pet stores to provide the pet’s date of birth, source, lineage, and medical history for dogs or cats.¹⁶⁸ By contrast, California appropriately requires stores to give customers written information on animal’s housing, equipment, cleaning, feeding, and environmental requirements.¹⁶⁹ This means that Nevada pet guardians that adopt their pet from a pet store¹⁷⁰ are not entitled to guidance when picking out a potential new companion. Given that pet adoption is a life-long commitment,¹⁷¹ it is simply unacceptable to allow potential guardians to go into such a big decision without appropriate information.

E. Enforcement of Nevada Animal Laws

Even if Nevada’s animal laws were effective as written, the law ceases to have any meaningful value without proper enforcement. One of the biggest problems in Nevada with regard to laws that concern animals involves confusion over which enforcement agency has authority to handle problematic situations involving animals. Although county animal control is often the first line of defense against animal abuse and cruelty, animal control officers may only act pursuant to state laws and local ordinances, which mainly regulate animal capture and fee or fine collection.¹⁷² Where the state legislature or a compara-

¹⁶⁴ NEV. REV. STAT § 574.370 (specifying that pet shops are not required to provide for animals other than cats and dogs.).

¹⁶⁵ *Id.* § 574.420.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* § 574.400.

¹⁶⁸ *Id.* § 574.480.

¹⁶⁹ CAL. PENAL CODE § 5971(b)(1) (West 2010).

¹⁷⁰ See KERRY S. KLEYMAN & VERONICA BLAS DAHIR, CTR. FOR RESEARCH DESIGN & ANALYSIS, A SURVEY OF NEVADA RESIDENTS’ ATTITUDES REGARDING PETS, VETERINARIANS, AND ANIMAL SHELTERS, 4 (2008), available at <http://www.maddiesfund.org/Documents/Funded%20Projects/Nevada%20Resident%20Survey%20Final%20Report%20.pdf> (stating that only twenty percent of pet guardians obtained all of their cats and dogs from animal shelters).

¹⁷¹ Am. Soc’y for the Prevention of Cruelty to Animals, *Questions to Ask Yourself Before Adopting*, ASPCA, <http://www.aspc.org/adoption/adoption-tips/questions-to-ask-before-adopting.html> (last visited Jan. 5, 2011).

¹⁷² See *Animal Control*, CITY OF LAS VEGAS NEVADA, <http://www.lasvegasnevada.gov/information/4189.htm> (last visited Jan. 5, 2011); *Washoe County Regional Animal Services*, WASHOE COUNTY NEVADA, <http://www.co.washoe.nv.us/animal> (last visited Jan. 5, 2011).

ble county authority has not acted, animal control officers often are unable to help animals because they only have authority to enforce established rules and regulations.¹⁷³ Even if statutory law clearly prohibits a behavior, there is often confusion about whether the offense against the animal is a minor violation that animal control can handle or a serious criminal offense that requires support from the police department.¹⁷⁴

Moreover, even where animal control or other law enforcement personnel investigate an animal-related matter, it is unlikely that prosecutors will ever pursue criminal charges. In Reno, for example, Animal Services fully investigates ten to twelve cruelty cases a year, but only three or four result in legal action.¹⁷⁵ In Clark County, approximately fifteen percent of the four thousand calls about animal cruelty actually result in prosecution.¹⁷⁶ One explanation for the drop-off is that the main form of evidence in offenses against animals is the animal itself, and the proper keeping of the animal and preservation of evidence is particularly challenging.¹⁷⁷ For example, during a 2006 cock-fighting bust in Las Vegas, police confiscated 177 fighting roosters.¹⁷⁸ Because the animals were unruly, the animal shelter where they were housed decided to euthanize all of the roosters.¹⁷⁹ Since the euthanasia of the roosters in 2006, the Clark County District Attorney's Office has not pursued charges for criminal animal fighting.¹⁸⁰ Even where a case is properly investigated, draws media attention, and is eligible for criminal charges, it is highly unlikely that a perpetrator of animal mistreatment will ever be brought to justice.

In addition to institutional problems, weak to non-existent penalties for offenses against animals undermine enforcement.¹⁸¹ Prosecutors are already overburdened and operating on tight budgets, so they are largely unwilling to handle animal abuse cases unless the charge is bootstrapped to a "more serious" criminal offense, namely one involving human victims.¹⁸² For example, when

¹⁷³ For example, animal control officers in Las Vegas, Nevada, have "power and authority" to enforce rules and regulations within ordinance Title 7.04. Essentially, this means that officers may investigate animal-related threats to public health and safety, barking dogs, and certain instances of animal cruelty. See LAS VEGAS, NEV., CODE § 7.04.060 (Supp. 2010). Similarly, in Washoe County, animal control officers are largely in charge of capturing animals, maintaining pounds, and collecting fees and fines. See WASHOE COUNTY, NEV., CODE § 55.040 (Supp. 2009).

¹⁷⁴ Confusion occurs because both state criminal law and local ordinances may concurrently penalize certain behavior. Compare LAS VEGAS, NEV., CODE § 7.04.065 (Supp. 2010) (defining an animal fighting venture), with NEV. REV. STAT. § 574.060 (2009) (criminalizing animal fighting).

¹⁷⁵ Connors, *supra* note 144, at 33.

¹⁷⁶ KVBC, *Update*, *supra* note 146.

¹⁷⁷ See Rebecca J. Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 78-79, 85 (2008).

¹⁷⁸ Maggie Lillis, *Coming Home to Roost: 300 Roosters, Hens Seized in LV*, LAS VEGAS REV. J., Sept. 22, 2009, at 2B.

¹⁷⁹ *Id.*

¹⁸⁰ NEV. REV. STAT. § 574.060 (2009) (Although the Clark County District Attorney could have pursued multiple accounts of unlawfully keeping a place for fighting birds, a search of Justice Court and District Court records reveal no charges as of December 16, 2009.).

¹⁸¹ See discussion *supra* Part III.C.

¹⁸² This might be considered a form of interest-convergence because a privileged group, namely humans, provides legal protection to a disadvantaged group, namely animals, where

Nye County officers arrested three individuals involved in a cock-fighting ring, the District Attorney's Office did not pursue charges.¹⁸³ By comparison, when Judge Stephany Miley's husband choked the family's cocker spaniel in addition to battering the judge in front of their minor sons, the Clark County District Attorney charged him with animal cruelty, felonious child abuse and neglect, and domestic violence.¹⁸⁴

Other states prove that tight budgets are no excuse for failing to enforce laws that protect animals. In California, for example, animal abuse may result in a felony conviction on the first offense.¹⁸⁵ Under California Penal Code § 597(b), even first-time offenders are subject to up to three years imprisonment.¹⁸⁶ As a result, California courts are more likely to take animal offenses seriously. In one case, a California judge upheld a three-year prison sentence and felony conviction after a man killed a dog in an act of road rage.¹⁸⁷ Appellate Judge Premo reasoned that three years was more than reasonable and cited, with favor, the trial judge's statement that any attempted defense claiming accidental killing was "insulting to the intelligence of any person who thinks."¹⁸⁸

IV. ANIMAL LAW IN OTHER JURISDICTIONS

A. *Legal Achievements in Animal Law*

California is not the only state making strides to improve animal law. Currently, there are 121 law schools across the United States that teach animal law classes and a smattering of schools that offer hands-on animal law clinics.¹⁸⁹ More than twenty state bar associations have animal law sections,¹⁹⁰ and an increasing number of books and journals discuss the subject at length.¹⁹¹

their interests converge. For a more comprehensive discussion of animal laws as the product of interest-convergence, see Ani B. Satz, *Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property*, 16 *ANIMAL L.* 65, 68-70 (2009).

¹⁸³ KLAS-TV, *Nye County Breaks Up Cock Fighting Ring*, 8 NEWS NOW (Mar. 4, 2008, 5:16 PM), <http://www.lasvegasnow.com/global/story.asp?s=7966105>. Although the police investigations resulted in the arrest of three suspects, a search of Justice Court and District Court records reveal no charges as of December 16, 2009.

¹⁸⁴ Antonio Planas, *Judge Miley Receives Protective Order; Husband Ordered to Stay Away from Family*, LAS VEGAS REV. J., Oct. 6, 2009, at 5B., available at <http://www.lvrj.com/news/judge-miley-receives-protective-order-63585162.html>; *Judge's Divorce Filing Follows Arrest of Her Husband, a Lawyer*, LAS VEGAS SUN, Nov. 26, 2009, at 2, available at <http://www.lasvegassun.com/news/2009/nov/26/judges-divorce-filing-follows-arrest-her-husband-1/>.

¹⁸⁵ CAL. PENAL CODE § 597(b) (West 2010).

¹⁸⁶ *People v. Burnett*, 110 Cal. App. 4th 868, 873, 885 (Cal. Ct. App. 2003).

¹⁸⁷ *Id.* at 870-71, 873, 885.

¹⁸⁸ *Id.* at 884.

¹⁸⁹ *Animal Law Courses*, ANIMAL LEGAL DEF. FUND, <http://www.aldf.org/article.php?id=445> (last visited Jan. 5, 2011). Interestingly, the number of schools with animal law courses is increasing rapidly. Compare Wharton, *supra* note 4, at 440 (noting that, in 2008, ninety-five law schools had animal law classes).

¹⁹⁰ Wharton, *supra* note 4, at 440.

¹⁹¹ Examples of animal-specific law journals include the *Stanford Journal of Animal Law and Policy*, <http://sjalp.stanford.edu/>; *Lewis and Clark Law School Animal Law Review*, <http://legacy.lclark.edu/org/animalaw/>; *Michigan State University Journal of Animal Law*, <http://animallaw.info/policy/pojournalanimallawindex.htm>; and *University of Pennsylvania*

Moreover, some states have made impressive strides in animal law through progressive legislation. For example, the Illinois Humane Care for Animals Act allows pet guardians to bring civil actions to recover for mistreatment of their pets.¹⁹² Unlike Nevada law codified in NRS § 41.740,¹⁹³ Illinois allows damages for emotional distress in addition to punitive damages up to \$25,000 for each act of abuse or neglect.¹⁹⁴ In Tennessee, state Senator Steve Cohen authored the “T-Bo Act” after a large, aggressive dog, running loose, killed his twelve-year-old Shih Tzu, T-Bo, and the Senator was unable to recover damages.¹⁹⁵ Now codified as Tennessee Code § 44-17-403, pet guardians may recover market value as well as \$5,000 in non-economic damages, such as emotional distress.¹⁹⁶

The federal government has also created an incentive for states to think carefully about the value of pets. Enacted in 2006, the Pet Evacuation and Transportation Standards Act¹⁹⁷ requires states to create disaster plans that include arrangements for family pets¹⁹⁸ as well as disability assistance animals.¹⁹⁹ The Act also gives explicit authority to the director of the Federal Emergency Management Agency to fund emergency animal facilities and to withhold funds from states that fail to provide plans for the care of animals.²⁰⁰ Some states, like California, have already enacted laws in order to comply with the PETS Act. For example, California Health and Safety Code § 122354(9) requires all pet stores and similar facilities to plan for the humane care of animals in the event of a natural disaster.²⁰¹

Journal of Animal Law & Ethics (now discontinued). Although a comprehensive listing of books would be too extensive, examples of excellent books include: BRUCE A. WAGMAN, SONIA WAISMAN & PAMELA D. FRASCH, *ANIMAL LAW: CASES AND MATERIALS* (4th ed. 2010); DAVID S. FAVRE, *ANIMAL LAW: WELFARE, INTERESTS, AND RIGHTS* (2008); and TAIMIE L. BRYANT, REBECCA J. HUSS, & DAVID N. CASSUTO, *ANIMAL LAW AND THE COURTS: A READER* (2008).

¹⁹² 510 ILL. COMP. STAT. ANN. 70/16.3 (West 2004).

¹⁹³ NEV. REV. STAT. § 41.740 (2009).

¹⁹⁴ 510 ILL. COMP. STAT. ANN. 70/16.3.

¹⁹⁵ *Honoring Animal Victims: Landmarks in Legislation*, ANIMAL LEGAL DEF. FUND (Feb. 10, 2009), http://www.aldf.org/downloads/ALDF_Honoring_Animal_Victims_Landmarks.pdf.

¹⁹⁶ TENN. CODE ANN. 44-17-403 (West 2010).

¹⁹⁷ Pets Evacuation and Transportation Standards Act of 2006, P.L. No. 109-308, § 2, 120 Stat. 1725, 1725 (2006) (codified as amended at 42 U.S.C. § 5196 (2006)).

¹⁹⁸ Oddly, the Federal Emergency Management Agency (FEMA) defines a family pet as “[a] domesticated animal, such as a dog, cat, *bird*, *rabbit*, *rodent*, or *turtle* that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.” See *Eligible Costs Related to Pet Evacuations and Sheltering*, FEMA (Oct. 24, 2007), http://www.fema.gov/government/grant/pa/9523_19.shtm (emphasis added).

¹⁹⁹ Pets Evacuation and Transportation Standards Act of 2006, § 2.

²⁰⁰ *Id.* § 3.

²⁰¹ CAL. HEALTH & SAFETY CODE § 122354(b)(9) (West Supp. 2010) (“In the event of a natural disaster, an emergency evacuation, or other similar occurrence, the humane care and treatment of each animal is provided for, as required by this chapter, to the extent access to the animal is reasonably available.”).

State courts have also been receptive to legal recognition for animals, despite the misguided classification of animals as property. In divorce cases, for example, some courts have begun treating pets comparably to children, considering the pet's best interests in custody disputes²⁰² or even appointing a guardian ad litem for the animal.²⁰³ Some courts have even included "reasonable visitation" of a pet as part of a divorce decree.²⁰⁴

Tort law has also seen increased recognition of the value of animals. In Florida, for example, judges have been particularly receptive to tort cases requesting compensatory and punitive damages for torts against animals. As early as 1964, the Florida Supreme Court allowed a plaintiff to recover damages for mental suffering after the defendant maliciously killed the plaintiff's pet dachshund.²⁰⁵ In 1978, the Florida Court of Appeals affirmed \$12,000 in punitive damages after a veterinarian negligently burned a dog, which led to the dog's death;²⁰⁶ in 1992, the same court reaffirmed that punitive and emotional damages can be appropriate for egregious killing of animals, even by veterinary professionals.²⁰⁷ Going a step further, Hawaii law allows pet guardians to receive emotional damages when their pets are negligently killed, even if the guardian is not a witness to the event.²⁰⁸

Most significantly, federal courts are beginning to recognize the value of pets. To date, three federal circuit courts of appeal have noted that the shooting of a dog by police is a seizure under the Fourth Amendment, and police may not be immune to claims of intentional infliction of emotional distress or civil rights violations for killing a person's animals.²⁰⁹

The Court of Appeals for the Ninth Circuit recently recognized this issue in *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*.²¹⁰ In *Hells Angels*, police officers spent a week planning the execution of warrants in the motorcycle gang's members' homes.²¹¹ Although the police officers knew that two of several persons of interest had dogs, the officers never considered non-lethal means to isolate the animals.²¹² Upon executing

²⁰² *Raymond v. Lachmann*, 695 N.Y.S.2d 308, 309 (N.Y. App. Div. 1999).

²⁰³ *In re Estate of Ronald W. Callan, Jr.*, No. D-2252 (Prob. Ct. of Shelby Cnty., Tenn. Mar. 20, 2007) (order appointing guardian ad litem), available at http://www.animallaw.info/pleadings/pb_pdf/pbustncallan_guardian_appointment.pdf.

²⁰⁴ *Arrington v. Arrington*, 613 S.W.2d 565, 569 (Tex. Civ. App. 1981).

²⁰⁵ *La Porte v. Associated Indeps., Inc.*, 163 So. 2d 267, 267-69 (Fla. 1964).

²⁰⁶ *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37, 38 (Fla. Dist. Ct. App. 1978).

²⁰⁷ *Johnson v. Wander*, 592 So. 2d 1225, 1226 (Fla. Dist. Ct. App. 1992).

²⁰⁸ *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1067 (Haw. 1981).

²⁰⁹ *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 210 (3d Cir. 2001) ("[W]e join two of our sister courts of appeals in holding that the killing of a person's dog by a law enforcement officer constitutes a seizure under the Fourth Amendment.").

²¹⁰ *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 976 (9th Cir. 2005) (holding that killing of a person's dog by law enforcement is a seizure under the Fourth Amendment).

²¹¹ *Id.* at 967.

²¹² *Id.* at 977 ("As the district court explained, the officers 'created an entry plan designed to bring them into proximity of the dogs without providing themselves with any non-lethal means for controlling the dogs. The officers, in effect, left themselves without any option but to kill the dogs in the event they—quite predictably—attempted to guard the home from invasion.'").

the warrant, a police officer shot two dogs twice each to make sure the dogs would not “be a problem.”²¹³ Although the officers involved in the case claimed safety reasons justified their actions, the judge quickly rejected their argument because the police officers effectively created their own exigency, which resulted in unnecessary destruction of the pets.²¹⁴ Circuit Judge Paez held that police officers are not immune from civil rights suits for needlessly killing a suspect’s dog and added that “dogs are more than just a personal effect. The emotional attachment to a family’s dog is not comparable to a possessory interest in furniture.”²¹⁵

B. Cases in the Animal Law Hall of Shame

Despite the progressive cases noted above, the vast majority of courts still cling to outdated ideas.²¹⁶ For example, the Restatement (Third) of Torts explicitly rejects liability for emotional disturbance caused by destroying a pet.²¹⁷ Although the Restatement is a secondary authority, it is well respected by courts and generally accepted for its accurate summaries of black letter law used in the majority of states.

Following the majority trend, several courts have reached appalling conclusions about animal law. In *Miller v. Peraino*, a plaintiff pet guardian was unable to recover damages after a veterinarian maliciously beat the plaintiff’s dog to death.²¹⁸ Relying on a Pennsylvania law that prohibits damages against veterinarians for intentional infliction of emotional distress based upon their behavior towards an animal, the Superior Court of Pennsylvania reasoned that even cases of abuse are ineligible for recovery.²¹⁹ The court further rejected any claims of emotional distress because state law only allowed emotional damages by immediate family members, and “[dogs] are not members of one’s family.”²²⁰ As a result, a senseless killing by a trusted professional went completely unpunished and no deterrent precedent was set.

In another outrageous case, the Indiana Appellate Court rejected a plethora of claims, including intentional infliction of emotional distress and a request for an injunction, after the defendant’s German shepherd and English bulldog killed the plaintiff’s Jack Russell terrier.²²¹ The case was particularly egregious because the attack occurred in the presence of the plaintiff and was the first in a series of three vicious attacks by the larger dogs.²²² Holding that the

²¹³ *Id.* at 969.

²¹⁴ *Id.* at 976-77.

²¹⁵ *Id.* at 975 (internal citation omitted).

²¹⁶ See *Thompson v. Lied Animal Shelter*, No. 2:08-cv-00513, 2009 U.S. Dist. LEXIS 96383, at *5 (D. Nev. Oct. 14, 2009) (“Traditionally, and in the majority of states today, pets are considered to be personal property . . .”).

²¹⁷ RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 46 cmt. j (Tentative Draft No. 5, 2007) (“Although there can be real and serious emotional disturbance in some cases of harm to pets (and chattels with sentimental value), lines, arbitrary at times, that limit recovery for emotional disturbance are necessary.”).

²¹⁸ *Miller v. Peraino*, 626 A.2d 637, 638 (Pa. Super. Ct. 1993).

²¹⁹ *Id.* at 640.

²²⁰ *Id.*

²²¹ *Lachenman v. Stice*, 838 N.E.2d 451, 454-55, 468 (Ind. Ct. App. 2005).

²²² *Id.* at 454-55.

terrier was only worth its fair market value, the court precluded evidence of the dog's sentimental value to the plaintiff.²²³ Lastly, the appellate court upheld the lower court's refusal to order a protective injunction to protect the plaintiff and her other pets from further injury by the German shepherd and English bulldog.²²⁴

Nevada also has ugly precedent in animal law. In *Armstrong v. Riggi*, the Eighth Judicial District Court allowed a pet guardian, whose two Pomeranians were killed in the care of the defendant groomer, to recover a mere \$100 for breach of bailment²²⁵ for dogs valued at \$10,000.²²⁶ Under ordinary circumstances, a bailment allows one party to keep legal title to an item, while other parties have control and possession over the item.²²⁷ "When a bailee . . . is intrusted [*sic*] with the care and custody of goods, it is his duty to return them at the end of the bailment, or account for their loss, and show that it happened without legal negligence upon his part."²²⁸ If a bailee breaches the duty to return the item, the injured bailor is entitled to damages to compensate for the damage caused by the breach.²²⁹ In *Armstrong*, the Eighth Judicial District Court did a great disservice to pet guardians by holding that a pet dog is worth even less than its market value and has no sentimental or emotional value whatsoever.²³⁰ To make matters worse, the Nevada Supreme Court in a unanimous opinion suggested that the defendant was entitled to receive attorney's fees and costs pursuant to NRCP 68.²³¹ This case shows how badly an injured plaintiff can fare when he or she seeks justice on behalf of an injured or killed pet.

A recent decision by the United States District Court for the District of Nevada interpreted Nevada law to prohibit nearly any type of claim based on the death of an animal.²³² In *Thompson v. Lied Animal Shelter*, a veterinary hospital called Animal Control to pick up a disagreeable puppy.²³³ Animal Control called and notified the puppy's guardian, who was vacationing in Cali-

²²³ *Id.* at 467-68.

²²⁴ *Id.* at 455, 468.

²²⁵ Although the use of a breach of bailment claim shows creative lawyering, it contributes to the objectification of animals. Ordinarily, bailments include leaving a car at a mechanic's shop or dropping clothes off at the dry cleaner. By comparing pets to clothes or cars, the bailment cause of action fails to recognize the unique emotional and companionship value of a pet. In the author's opinion, leaving a pet with a groomer is no more of a bailment than when a parent entrusts a day care facility to care for a child.

²²⁶ *Armstrong v. Riggi*, 549 P.2d 753, 754 (Nev. 1976).

²²⁷ David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473, 489 (2000).

²²⁸ *Manhattan Fire & Marine Ins. Co. v. Grand Cent. Garage*, 9 P.2d 682, 683 (Nev. 1932).

²²⁹ 8A AM. JUR. 2D BAILMENTS § 254 (2009) ("[T]he value of property for purposes of ascertainment of damages is ordinarily determined by reference to its fair market value at the time of the loss or the expiration of the lease, if it has such a value. If, however, valuing the bailed property at the time of conversion does not afford the bailor just compensation, the general rule may not be followed. . . . In the case of property that does not have any fixed market value, as, for example, household goods or wearing apparel, the measure of damages generally is the value of the goods to the owner or bailor . . .").

²³⁰ See *Armstrong*, 549 P.2d at 754.

²³¹ *Id.* at 754 & n.1.

²³² *Thompson v. Lied Animal Shelter*, No. 2:08-cv-00513, 2009 U.S. Dist. LEXIS 96383, at *20 (D. Nev. Oct. 14, 2009).

²³³ *Id.* at *2.

fornia, that his dog was being held at the Lied Animal Shelter.²³⁴ Various officials at the shelter assured the plaintiff that he had ten days to pick up his dog, but, one day later, the shelter euthanized the dog for being “uncooperative.”²³⁵ Distraught that “the only thing close to a child he’d ever had”²³⁶ was destroyed, the plaintiff sued the veterinarian’s office and animal shelter for a series of claims, including intentional and negligent infliction of emotional distress.²³⁷ In an opinion granting the defendant’s motion to dismiss, the court noted that a plaintiff cannot make out a prima facie case of emotional distress for the death of an animal.²³⁸

V. PROPOSALS FOR CHANGE

A. *The Nevada Legislature Needs to Act*

It is essential that the Nevada legislature take serious notice of the need to improve protection for pets in order to avoid more outrageous decisions like *Armstrong* and *Thompson*. The legislature is the appropriate government branch to implement changes to animal law because courts “defer to the Legislature to create . . . remed[ies]”²³⁹ and legislatures are usually quicker and more efficient.²⁴⁰ Legislators, who are elected democratically in Nevada, also might be interested in proposing changes because seventy-five percent of Americans surveyed indicated they would re-elect government representatives who are “tough on animal cruelty.”²⁴¹

1. *Six Goals for the Legislature*

The legislature needs to address animal mistreatment in order to prevent unnecessary animal suffering and recognize the important relationships between pets and their human companions. As a starting point, the following six goals should be high priorities for future legislative sessions: (1) consistently refer to pet *owners* as pet *guardians*; (2) define “pet” and “animal” consistently throughout the Nevada Revised Statutes; (3) provide harsher criminal penalties for animal abusers; (4) further regulate pet stores; (5) improve enforcement of existing laws; and (6) allow greater compensation for torts against animals.

First, all language in the Nevada Revised Statutes referring to *pet owners* should be amended to read *pet guardian* in order to emphasize that animals companions are not chattel. Studies show that changing statutory language to read *pet guardian* improves attitudes about pets and promotes more-responsible

²³⁴ *Id.*

²³⁵ *Id.* at *2-3.

²³⁶ *Id.* at *3.

²³⁷ *Id.* at *4.

²³⁸ *Id.* at *1, 20.

²³⁹ *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000).

²⁴⁰ *Root*, *supra* note 31, at 448.

²⁴¹ *Sauder*, *supra* note 71, at 16 (citing HSUS: *Public Wants Tougher Laws, Enforcement, Tracking of Animal Abuse*, U.S. NEWSWIRE, Mar. 11, 1997).

relationships with pets.²⁴² In one study comparing pet *owners* to pet *guardians*, researchers found guardians are significantly more likely to spay or neuter their pet and are also more likely to register and identify their pets to prevent loss.²⁴³ Although this is a minor semantic change, the underlying message is important: pets are more than mere property. Humans own chairs, but they are guardians to those who are unable to care for themselves. By emphasizing that animals are companions and members of a household, the legislature will send a message that animals are due respect and their mistreatment will not be tolerated.

Second, the Nevada Revised Statutes must be amended to consistently define animals and pets throughout. For abuse and neglect purposes, an *animal* should remain a broadly defined term because the depravity of injuring an animal is the same, whether it is wild animal or a domestic pet. For provisions that specify *pet*, the legislature needs to add a broader definition that specifies that a pet may be any type of animal kept for the primary purpose of companionship. Specifically, Nevada laws need to include provisions for non-traditional pets such as rodents and reptiles in order to protect the growing number of pet guardians who choose animals other than cats and dogs. This change is also important to recognize the value of all companion animals, even those that are not as “cute” or charismatic as dogs and cats. Lastly, it is important to treat animals consistently because “inconsistencies undermine the form and function of animal laws, making it difficult for owners, users, and advocates of animals alike to understand . . . legal boundaries.”²⁴⁴

Third, criminal laws designed to protect animals must include harsher penalties to deter abusers and increase the likelihood of enforcement. So long as state law punishes animal offenses with miniscule penalties, such as fifteen days in jail, it lacks the teeth to seriously deter offenders. Because prosecuting attorneys and judges are not interested in pursuing low-grade misdemeanors,²⁴⁵ all animal-related offenses must include the possibility of felony charges on the first offense. This increase in punishment is justified considering the strong correlation between offenders who hurt animals and those who hurt human beings.

Fourth, the legislature needs to expand state law regulating pet stores. In addition to criminal penalties for failing to provide food and water pursuant to NRS § 574.360, Nevada law should monetarily penalize any facility that fails to provide housing appropriate to an animal’s size- and species-related needs. For example, failure to provide a dog or cat with nutritious food, clean water, space to grow and exercise, medical attention, and regular social interaction are all forms of abuse because they undermine a pet’s quality of life and cause unnecessary risk to health and wellness.

²⁴² Found. for Interdisciplinary Research & Educ. Promoting Animal Welfare, *The Guardian Study: An Examination of the Attitudes, Perceptions and Behaviors of Companion Animal Guardians and Pet Owners*, FIREPAW, <http://www.firepaw.org/guardianstudynov.html> (last visited Jan. 5, 2011).

²⁴³ *Id.*

²⁴⁴ Satz, *supra* note 182, at 72.

²⁴⁵ *See supra* Part III.C.

Moreover, the law should require pet stores to provide up-front information about specific care-taking needs for every animal it intends to sell.²⁴⁶ This information is critical so that soon-to-be pet guardians are better able to make an informed choice about selecting a pet appropriate to their skill levels and lifestyles. Ideally, stores should provide potential guardians with the following specific details about a pet and its needs: (1) species or breed (if known); (2) life expectancy; (3) size upon maturity; (4) housing requirements; (5) food requirements; and (6) other information relevant to potential costs or health and safety concerns for both human beings and pets alike.

An example illuminates why this type of information is critical. In Nevada, most non-poisonous reptiles are legal.²⁴⁷ A consumer looking for a new family pet might be wowed by the bright coloring and docile nature of a baby albino Burmese python. When newly hatched, such pythons weigh less than a pound and require a ten-gallon tank. However, within a couple of years, an adult Burmese python might weigh an astonishing 200 pounds and require at least a 4-foot by 8-foot space.²⁴⁸ Appropriately handling such a large, powerful animal requires skill that a first-time buyer lacks and usually includes a great deal of expense. Where a guardian cannot handle his or her responsibilities to a pet, the unfortunate results include various forms of mistreatment and abandonment.²⁴⁹ Although increased information will not altogether eliminate undesirable pet selection by humans, it is a simple step in the right direction.

Fifth, enforcement needs to be a priority for animal control officers, police officers, and prosecuting attorneys. Because having an unenforced law is as effective as having no law, this goal is essential to empowering current Nevada law and new laws the legislature might consider. It is also critical that executive officers in varying departments open up lines of communication with each other to better protect animals and their human companions. The legislature can assist with this goal by clearly demonstrating that animal protection is an important Nevada policy and by appropriating funds for animal-friendly initiatives.

Lastly, NRS § 41.740 must be eliminated entirely and replaced with a provision that allows comprehensive civil damages for injury to, or destruction of, a pet. The legislature needs to include damages for negligent infliction of emotional distress and intentional infliction of emotional distress where a pet is intentionally injured or killed, or negligently harmed with a guardian present in order to compensate injured pet guardians fully. Additionally, the legislature should allow punitive damages for particularly heinous behavior as a way to punish offenders.

²⁴⁶ Ideally, all facilities that provide humans with animal companions should follow these guidelines. However, I focus on pet stores because the majority of Nevadans purchase their pets as opposed to adopting strays off the street or from assorted shelters. See KLEYMAN & DAHIR, *supra* note 170, at 13.

²⁴⁷ See NEV. ADMIN. CODE § 503.110(1) (2010) (listing restrictions in importation, transportation, and possession of certain reptile species, excluding venomous or endangered reptiles, crocodiles, and alligators).

²⁴⁸ Bob Clark, *The Burmese Python: Making It at Home in Your Home*, REPTILES MAGAZINE (1998), available at http://www.bobclark.com/aAN_98.asp.

²⁴⁹ Gerri Hirshey, *In Animal Shelters, Reminders of the Economy*, N.Y. TIMES, May 11, 2008, at CT1.

Tort law is particularly important to animal law because efficiency dictates that losses should fall on the party who can avoid harm most easily.²⁵⁰ Because pet guardians are rarely able to prevent harm from veterinarians, dangerous drivers, or malicious criminals, it is appropriate that the costs of injury to a pet, both in terms of market value and emotional harm, fall on those who can prevent damage in the first place.²⁵¹ Furthermore, tort law promotes compensation for victims and is particularly useful in affirming social values.²⁵² Until the legislature is willing to allow greater damage awards than mere market value for a pet, pet guardians will never receive full compensation. Considering that human guardians often primarily value their pets for affection and companionship, telling guardians they can “buy a new dog” with the market-value damages would be the emotional equivalent of telling the parents of a deceased child they can simply “make another one.” Guardians also deserve emotional damages as a way of reaffirming that many in our society value pets as friends and family members.

B. Addressing Counterarguments

Undoubtedly, many will be unwilling to expend the time and resources necessary to improve animal law in Nevada. Many critics of animal law would prefer to see resources used on human concerns rather than on “lesser” life forms that are arguably of minimal practical usefulness. A similar popular sentiment is that “placement of pets on the same level as humans by compensating their loss similarly would devalue humanity.”²⁵³ These arguments fail to recognize that the inherent value of a living being is not based on practical usefulness, but rather on avoiding needless suffering and respecting the inherent value of life. For example, modern society recognizes the importance of protecting all human beings, even those who are not fully functional, such as children and the disabled. We do so because we recognize that hurting society’s most-innocent members severely undermines our humaneness.

A particularly popular criticism of animal law reform is that allowing non-economic damages will “open the floodgates” and allow fraudulent or fake claims.²⁵⁴ There are three reasons the “floodgates” rationale is flawed. First, it fails to recognize that juries are more sophisticated than scholars and legal professionals give them credit for being.²⁵⁵ Moreover, courts in other jurisdictions have already shown that they are quite capable of marking boundaries and reigning in juror passions.²⁵⁶ Second, as Professor Livingston, co-director of the Center for Animal Law, noted, “[t]o refuse to entertain valid claims because others might be fraudulently brought is an argument of expediency rather than

²⁵⁰ See Livingston, *supra* note 22, at 831-32.

²⁵¹ Squires-Lee, *supra* note 19, at 1086-87.

²⁵² *Id.* at 1081.

²⁵³ Jason R. Scott, *Death to Poochy: A Comparison of Historical and Modern Frustrations Faced by Owners of Injured or Killed Pet Dogs*, 75 UMKC L. REV. 569, 587 (2006).

²⁵⁴ Victor E. Schwartz & Emily J. Laird, *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 PEPP. L. REV. 227, 240-41 (2006).

²⁵⁵ Squires-Lee, *supra* note 19, at 1097-98.

²⁵⁶ Livingston, *supra* note 22, at 836 n.265.

of justice.”²⁵⁷ Third, the complexity of the litigation process combined with the expense of having “a day in court” filter out frivolous lawsuits.²⁵⁸

A similar argument is that non-economic damages and massive tort claims will harm veterinarians, drug manufacturers, and, ultimately, pets themselves.²⁵⁹ The theory is that expensive lawsuits will increase insurance premiums for veterinarians and manufacturers, who, in turn will raise the costs of goods and services. Then, less people will be able to pay to care for their pets.²⁶⁰ The problem with this argument is that it is a slippery slope that fails to recognize that veterinarians and manufacturers of pet products have extremely low insurance premiums and make substantial profits.²⁶¹ Even if increased lawsuits raised premiums, it is unlikely the increase would be unmanageable.²⁶² Furthermore, increased premiums may be passed on to pet guardians because many would be willing to pay extra in order to make sure their pets are safer.²⁶³ As noted above,²⁶⁴ pet guardians are quite agreeable to spending money on their pets and it is unlikely that a devoted caregiver would stop doing so because of minor cost increases. Lastly, companies and veterinarians that provide goods and services exist because of the bond that exists between pet guardians and animals.²⁶⁵ It is unreasonable for these professionals to reap the benefits of their business without being held to standards of care and liability like professionals in other industries.

VI. CONCLUSION

Protecting pets from harm is important not only to pet guardians, but also for a compassionate and progressive society. To compare a dog to a table makes some sense on a surface level: both have four legs, both are usually kept for human enjoyment and use, and both are readily obtainable at fairly low market value. However, this simplistic comparison fails to recognize that breaking a table’s leg hurts no one, but breaking a dog’s leg causes the animal needless pain, undermines humane compassion, and harms pet guardians. Furthermore, although a table can be replaced with an exact replica, all animals by virtue of their unique DNA and life experiences are irreplaceable. An individ-

²⁵⁷ *Id.* (quoting 12 F.F. STONE, LOUISIANA CIVIL LAW TREATISE: TORT DOCTRINE §170, at 217 (1977)).

²⁵⁸ Kristen Stuber Snyder, *No Cracks in the Wall: The Standing Barrier and the Need for Restructuring of Animal Protection Laws*, 57 CLEV. ST. L. REV. 137, 150-51 (2009).

²⁵⁹ Schwartz & Laird, *supra* note 254, at 261-64.

²⁶⁰ *Id.* at 266.

²⁶¹ Root, *supra* note 31, at 445 (emphasizing that veterinarians “typically pay less than \$200 a year for \$1 million of malpractice coverage” while veterinary medicine is a multi-billion dollar industry) (quoting Richard Willing, *Under Law, Pets Are Becoming Almost Human*, USA TODAY, Sept. 13, 2000, at 1A).

²⁶² See Livingston, *supra* note 22, at 840 (arguing that market forces will keep insurance premiums manageable because businesses pass along the costs of liability to consumers, but where a provider of goods and services tries to raise prices to cover damage awards, that provider will be driven from the market).

²⁶³ *Id.* at 833.

²⁶⁴ See *supra* Part II.B.

²⁶⁵ Root, *supra* note 31, at 442.

ual might obtain a similar dog, even of the same breed and appearance; the *personality* of a dog cannot be replicated.

Although some states have begun to make important changes to their animal laws, much work remains. This is particularly true in Nevada, where criminal law penalizing animal mistreatment is rarely enforced and civil remedies for pet guardians are so outlandishly low that they fail to deter tortfeasors and compensate victims. In order to implement much-needed change, the legislature needs to take action to implement the six goals specifically laid out in Part V. These goals must be a priority because pets are “perhaps the most vulnerable of all sentient beings,”²⁶⁶ and in the words of Mohandas Gandhi, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.”²⁶⁷

²⁶⁶ Satz, *supra* note 182, at 80.

²⁶⁷ CLIVE PHILLIPS, *THE WELFARE OF ANIMALS: THE SILENT MAJORITY* 63 (2009).