



**ANIMAL LEGAL
DEFENSE FUND**



**THE HUMANE SOCIETY
OF THE UNITED STATES**

March 16, 2021

Senator Anne Carney, Chair
Representative Thom Harnett, Chair
Committee on Judiciary
State House, Room 438
100 State House Station, Augusta, ME 04333

Re: Support for *An Act To Provide for the Well-being of Companion Animals upon the Dissolution of Marriages* (LD 535)

Dear Chair Carney, Chair Harnett, and honorable members of the Committee on Judiciary,

On behalf of the Animal Legal Defense Fund (ALDF) and the Humane Society of the United States and our collective supporters in Maine, thank you for this opportunity to support *An Act To Provide for the Well-being of Companion Animals upon the Dissolution of Marriages* (LD 535), which would ensure the best interests of a companion animal are considered in divorce or separation proceedings by creating a “pet custody law.”

The Animal Legal Defense Fund (ALDF) is the nation's preeminent legal advocacy organization for animals. Our mission is to protect the lives and advance the interests of animals through the legal system. As a core component of that mission, we advocate to improve the efficacy of laws that protect animals from cruelty. Founded in 1954, the Humane Society of the United States fights for the protection of all animals and against all forms of animal cruelty to achieve the vision behind our name: A humane society. Our hands-on rescue and direct care work responds to today's cruelties; our education, legislative and policy work prevents tomorrow's.

We thank Senator Ben Chipman for introducing this legislation, and Representative Harnett for cosponsoring it along with Senators Bailey, Bennett, and Claxton and Representatives Cloutier, Dodge, and McCrea. We are grateful to the Maine State Legislature for your ongoing commitment to animal protection. Our annual state ranking (aldf.org/staterankings), released last month, recognizes Maine as first in the nation for its animal protection laws.

We strongly support LD 535, which would simply require a court, in a divorce or separation proceeding, to consider the best interests of the companion animal. Specifically, it would require the court to consider relevant factors, including certain enumerated factors regarding family members' attachment to and history with the animal as well as their ability to provide and interest in providing ongoing care for the animal.

Known as “pet custody laws,” this common-sense type of legislation seeks to protect animals, who are distinct from property in many ways, as well as protect the people involved in the proceedings,

particularly in situations involving domestic violence – an increasing concern during this period of lockdown, shelter-in-place, and physical and social distancing.

Our animal companions are family. So it's no wonder that when we split up with our spouses or move out of our family home disputes can arise about who gets to keep the animals.¹ Custody battles over animals have been on the rise in recent years, reflecting the important role that animals play in people's lives and families.

Currently, judicial processes determining companion animal custody in the wake of divorce or separation is a source of great strain for many families, and treats animals strictly like property — a view that most Americans have abandoned.² This can involve monumental legal fees, a great deal of courts' time, and inhibit victims of domestic abuse from escaping dangerous environments.

In response to this issue, several states have found solutions in ensuring the court considers the best interests of the animal in awarding custody in a divorce or separation. In 2016, Alaska was the first state to enact pet custody legislation that allowed the courts to consider companion animals' best interests in awarding custody.³ At the time, requiring consideration of animals' well-being when deciding their legal ownership was both groundbreaking and unique. Even though judges throughout the U.S. could (and can) already choose, in their discretion, to consider an animal's best interests, no other state legislature had required judges to do so when adjudicating property distribution upon the divorce or legal separation.

Illinois⁴, California⁵, and New Hampshire⁶ have since passed similar pet custody laws, and many state legislatures⁷ are considering related legislation.

Importantly, LD 535 outlines factors for the court to weigh when considering the companion animal's best interests in a proceeding for legal separation or divorce. Key factors include, but are not limited to, original ownership, who has assumed what caregiving responsibilities, amount of time spent with the animal, living arrangements, as well as children and their relationship with and responsibility for the animal.

Animals are living, feeling beings who need and deserve a legal status that reflects who they are.

For the last two decades, the ALDF has filed amicus briefs in custody cases throughout the country, asking courts to consider the best interests of the animal. In these briefs, we do not favor either side in the dispute, but rather argue that courts have the authority to treat animals more like dependents than property, and should do so. Despite not being generally mandated by legislatures — that an animal's well-being or treatment must be considered differently — a handful of cases have acknowledged that people have a special relationship with their companion animals that sets

¹ <https://aldf.org/article/what-to-do-if-you-are-involved-in-a-custody-battle-over-your-companion-animal/>

² <https://www.avma.org/javma-news/2019-01-15/pet-ownership-stable-veterinary-care-variable>

³ <https://aldf.org/article/alaska-legislature-becomes-first-to-require-consideration-of-animals-interests-in-custody-cases/>; <http://www.legis.state.ak.us/PDF/29/Bills/HB0147Z.PDF>

⁴ <https://aldf.org/article/illinois-becomes-second-state-require-courts-consider-wellbeing-companion-animals-custody-disputes/>

⁵ <https://aldf.org/article/californias-new-pet-custody-law-differentiates-companion-animals-from-other-types-of-property/>

⁶ http://gencourt.state.nh.us/bill_Status/bill_status.aspx?lsrc=0820&sy=2019&sortoption=&txtsessionyear=2019&txtbillnumber=hb361; <https://www.nhlawoffice.com/our-blogs/2019/july/who-gets-the-family-pets-in-a-divorce-/>

⁷ <http://nationallinkcoalition.org/wp-content/uploads/2019/05/Divorce-Custody-Laws-Summary-by-State-2019-5.pdf>

them apart from other types of property that must be fairly divided after a breakup such as furniture, cars, or a house.

The human connection between people and their companion animals far exceeds a monetary value.⁸ In fact, according to the American Veterinary Medical Association, 80 percent of pet owners in the U.S. consider animals to be a part of the family.⁹ In some instances, people put their lives at risk in order to protect their companion animals. For example, more than four-in ten survivors who refused to evacuate for the incoming Hurricane Katrina cited their companion animals as the reason they stayed.¹⁰

Although the increase in custody battles over companion animals demonstrates their evolving social importance as family members, courts typically resolve these disputes based on one criterion: the property status of the animal. In other words, which party is the more rightful “owner” under the law? This issue can get murky when a couple has been jointly caring for an animal for years and sharing veterinary expenses, food, and other custodial costs (as well as intangibles like time spent with the animal), despite who may have initially paid any fees in acquiring the animal.

Pet custody laws codify the otherwise inconsistently applied acknowledgement that animals are fundamentally different from other forms of property in a divorce or separation.

Determining custody of companion animals in terms of their best interests would more accurately reflect Mainer’s views.

Effective pet custody laws help domestic violence survivors with companion animals that are able to escape unsafe circumstances by ensuring courts will evaluate the interests of the animal in divorce and separation proceedings.

Although animal protection as an issue in its own right should not be glossed over, dozens of studies also document the strong link between animal cruelty and violence against humans,¹¹ such as intimate partner violence and child abuse, which has prompted a societal shift toward crimes against animals being taken more seriously by law enforcement, judges, and policymakers.

Recognizing this, in 2006, Maine became the first state to protect both domestic violence survivors and companion animals by ensuring companion animals could be included in protective orders, and amending the law in 2013 to clarify its application to temporary orders.¹² Survivors of abuse should never have to make the difficult decision to leave their beloved companion animal in the hands of their abuser in order to escape a dangerous relationship. This was a driving factor for the passage of Alaska’s similar law.

In states without statutory language addressing this issue, ownership of a companion animal is commonly determined according to who paid the animal’s adoption or purchase fee and whose name is on certain paperwork. Abusers often have companion animals filed under their name in veterinary records or registered under their name for dog licenses. In recognizing the best interest

⁸ <https://www.glamour.com/story/who-gets-pet-custody-divorce>; <https://time.com/5763775/pet-custody-divorce-laws-dogs/>

⁹ <https://www.avma.org/javma-news/2019-01-15/pet-ownership-stable-veterinary-care-variable>

¹⁰ <https://www.washingtonpost.com/news/animalia/wp/2017/08/31/how-the-chaos-of-hurricane-katrina-helped-save-pets-from-flooding-in-texas/>

¹¹ <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans/>; <http://www.cbc.ca/news/canada/windsor/women-with-pets-more-likely-to-endure-domestic-abuse-study-finds-1.4151113>; <http://nationallinkcoalition.org>

¹² 19-A M. R. S. A. § 4007

of animals when determining custody, courts will be empowered in situations involving domestic abuse to help prevent the animal's circumstance from being used to manipulate a domestic abuse survivor or deter their safe transition as well as to help remove the companion animal from a dangerous, abusive home.

Research clearly shows that offenders of domestic violence often have a pattern of abuse involving all members of the household – including pets, who are often caught in the crossfire. 71 percent of pet-owning women entering women's shelters reported that their batterer had injured, maimed, killed or threatened family pets for revenge or to psychologically control victims; 32 percent reported their children had hurt or killed animals.¹³

A domestic abuse victim should not be faced with the difficult decision of potentially giving up a pet when trying to leave an already dangerous and emotionally difficult situation. Not only are pets likely to be the target of abuse, but people who are the victims of abuse often refuse to seek shelter for fear of abandoning their pets. In fact, nearly 50 percent of domestic violence victims have delayed leaving their abuser out of fear of harm to their animals,¹⁴ and as many as 25 percent of domestic violence survivors have reported returning to an abusive partner out of concern for their pet.

Amid Coronavirus lockdowns, shelter-in-place, and social and physical distancing, domestic violence poses a particular risk and, in the wake of the crisis, a spike in divorces is predicted.

In 2020, the United Nations called on governments around the world to include addressing domestic violence in their response to the pandemic, considering the “horrifying surge in domestic violence” amid global coronavirus lockdown.¹⁵

Pet custody laws can help ease some of the fear for people with companion animals about divorce and separation proceedings.

Countries dealing with ongoing high rates of COVID-19 cases can look to those who have already endured the apex and decline of the virus to estimate its impacts. This applies to divorce rates as well; dramatic increases in rates of filing for divorce in China has led experts in other nations, including the U.S., to predict a spike in divorces in their respective countries as cooped-up couples emerge from quarantine.¹⁶

Prior to the pandemic, Americans were already losing thousands in legal fees over disputes regarding custody of companion animals, in several instances draining their life's savings.¹⁷ Issues like this exacerbated by pandemic and post-pandemic conditions have the potential to overwhelm already-overwhelmed courts.

The current legal framework for determining custodial rights over companion animals creates an environment in which domestic abuse, monumental legal fees, and overcrowded courts are nightmarish parts of proceedings that are already hard enough for families.

LD 535 has the potential to expedite companion animal custody decisions by providing a consistent legal framework for judges.

¹³ <http://www.hope-eci.org/documents/petsanddv.pdf>

¹⁴ <http://nationallinkcoalition.org/wp-content/uploads/2013/01/DV-PetsAsPawnsNZ.pdf>

¹⁵ <https://www.npr.org/sections/coronavirus-live-updates/2020/04/06/827908402/global-lockdowns-resulting-in-horrifying-surge-in-domestic-violence-u-n-warns>

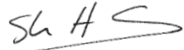
¹⁶ <https://www.bloomberg.com/news/articles/2020-03-31/divorces-spike-in-china-after-coronavirus-quarantines>

¹⁷ <https://www.nytimes.com/2017/03/23/us/divorce-pet-custody-dog-cat.html>

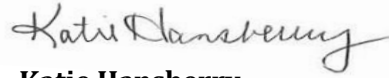
Maine, known as a leader in animal protection, has the opportunity to address these key issues by enabling judges to consider companion animals' best interests when determining custody in divorce and separation proceedings, by advancing LD 535.

Thank you for your time and consideration.

Sincerely,



Stephanie J. Harris
Senior Legislative Affairs Manager
Animal Legal Defense Fund
sharris@aldf.org
617-955-750



Katie Hansberry
Maine Senior State Director
The Humane Society of the United States
khansberry@humanesociety.org
207-999-2323