Detailed Discussion of Feral Cat Legal Issues

- **Author:** David Fry
- **Place of Publication:** Michigan State University College of Law
- **Publish Year:** 2010
- **Primary Citation:** Animal Legal & Historical Center

Country of Origin: United States

Summary:
This article addresses three primary legal questions. First, the article discusses issues related to ownership of and responsibility for feral cats, analyzing the treatment of ownership and responsibility under both feral cat statutes and common law. Second, the article addresses the question of whether feral cat keepers or caretakers can be held civilly liable for the actions of feral cats. Third, the article discusses the ways in which feral cat keepers or caretakers may be exposed to criminal liability for abandonment, neglect, or failure to comply with state or local animal ownership requirements.

Table of Contents

I. Introduction

When a person sees a malnourished kitten roaming her neighborhood, her first instinct is often to stop and help. In doing so, it is unlikely that the individual will carefully consider the legal ramifications of her actions before giving the cat food and water or bringing it into her garage to give it shelter from the cold. Will the kindhearted bystander wonder whether feeding the cat will cause her to become the cat's legal

owner? Will she consider the possible rights and responsibilities that might arise from her caretaking? Will she attempt to prevent the cat from trespassing on her neighbor's property or bringing other cats to the neighborhood? If she moves to a new neighborhood, might she be held criminally liable for abandoning the cat she once cared for? Is she subject to other ownership requirements, such as ordinances requiring registration or sterilization?

The answers to these questions can vary widely depending on where the individual lives. Although some state and local governments have enacted statutes and ordinances attempting to resolve some of these issues, most jurisdictions do not have any laws governing the care and ownership of feral cats. This article attempts to clarify the answers to these questions, giving feral cat caretakers, property owners, and others interested in the issue a clearer understanding of their legal rights and obligations. (For further discussion of general issues pertaining to feral cats and feral cat colonies, see Anthony B. Lacroix, *Feral Cats* , Animal Legal & Hist. Center (2006)) .

This article addresses three primary legal questions. First, the article discusses issues related to ownership of and responsibility for feral cats, analyzing the treatment of ownership and responsibility under both feral cat statutes and common law. Second, the article addresses the question of whether feral cat keepers or caretakers can be held civilly liable for the actions of feral cats. Third, the article discusses the ways in which feral cat keepers or caretakers may be exposed to criminal liability for abandonment, neglect, or failure to comply with state or local animal ownership requirements.

Top of page

II. Ownership of and Responsibility for Feral Cats

A. Solutions of State and Local Governments

What does it mean to "own" a feral cat? At common law, the answer to this question is unclear. Subject to some limitations, a person typically owns an animal when she has possession over it (for wild animals, ownership is subject to obtaining proper title from the state; for domestic animals, ownership is often subject to the property interest of the animal's prior owner). *See* David Favre & Murray Loring, Animal Law 21–25 (1983) . The problem, however, is that people do not generally "possess" a feral cat in the same way that they would possess a dairy cow, a housecat, or a parrot. They typically do not care where the feral cat spends most of its time, they rarely try to confine it, and their interaction is generally limited to providing the animal with food and water. As discussed below, this diminished level of control makes it difficult to determine how feral cat ownership should be determined in common law jurisdictions. To ameliorate this problem, several states have enacted laws that modify this common law view of ownership and enable local governments to impose specific requirements on keepers and caretakers of feral cats.

1. Specific Statutory Solutions

Many state and local governments have not directly addressed the issues of ownership and responsibility related to feral cats. In fact, only thirteen states and the District of Columbia have any laws that even mention feral cats (California , Connecticut , Delaware , the District of Columbia , Illinois , Indiana , Kentucky , Maine , Nebraska , New York , Rhode Island , Texas , Vermont , and Virginia). Generally, the state laws that do address these issues do not

create substantive guidelines. Rather, they typically authorize local governments to enact their own ordinances. The result of this approach is that the law of feral cats can, and often does, vary drastically within the same state.

To understand the varying approaches taken by each state, it is instructive to look at those states that authorize local governments to enact ordinances regulating feral cat ownership. Connecticut allows municipalities to require feral cat "keepers" to register with the local animal control officer. C. G. S. A. § 22-339d. The statute defines a "keeper" as "any person or organization, harboring, regularly feeding or having in his or its possession any feral cat." The law further clarifies that an individual is more likely to qualify as a "keeper" if she attempts to prevent an animal control officer from impounding feral cats. After registering with the municipality, the feral cat keeper must vaccinate and sterilize the cats in her care. Finally, the statute permits local municipalities to enact separate ordinances prohibiting cat owners—including feral cat keepers—from "substantially damag[ing] property" or "caus[ing] an unsanitary, dangerous or unreasonably offensive condition." *Id.*

Similarly, Delaware defines a "keeper" of a stray cat as any person who has possession of or control over the animal and has fed the cat for three or more consecutive days. 3 Del. C. § 8217. The statute further defines "keepers" as "owners." *Id.* Maine's animal welfare law is structured in much the same way, although it requires an individual to feed an animal for ten consecutive days before she becomes a "keeper" and, by extension, an owner. 7 M.R.S.A. § 3907.

Like Connecticut, Delaware, and Maine, Rhode Island states that any individual "who permits a cat to habitually be or remain on or be lodged or fed within such person's property or premises" qualifies as an owner. RI ST § 4-22-2. Further, the statute provides that "any refusal to permit any animal control officer to impound such cat shall be deemed evidence of ownership . . . ." *Id.* Rhode Island then allows local governments to implement permitting requirements for feral cat caretakers. RI ST § 4-24-3.

At least one other state, however, has taken a different approach. Illinois explicitly exempts feral cat caretakers from its definition of animal ownership, as long as the caretaker is participating in an authorized trap-neuter-release program ("TNR program"). 510 I.L.C.S. 5/2.16. This may reflect the legislature's intent to solve the problem of discouraging good Samaritans. As discussed below, some individuals may be disinclined to care for feral cats if they believe that doing so may expose them to civil or criminal liability. By identifying particular, positive programs—such as TNR programs—and explicitly exempting participants from the definition of "owner," Illinois attempts to ensure that (1) fear of potential liability does not create a disincentive to participate in such a program, and (2) other individuals who might qualify as "caretakers" or "keepers" are held responsible for the actions.

In general, though, these state laws are strictly definitional. They do not address specific issues related to liability, but rather (1) help to resolve the problem of classifying feral cats and (2) enable local governments to enact their own solutions. For example, by defining keepers as "owners" and authorizing municipal permitting requirements for feral cat caretakers, a state like Rhode Island is able to address issues related to feral cats without imposing substantive requirements on the entire state.

2. Interpreting Feral Cat Legislation

Even in jurisdictions that have statutes or ordinances pertaining to feral cats, it is difficult to know how those laws will be interpreted by a court. Cases are scarce, and the cases that do exist are unpublished and highly fact-specific. For example, an Indiana trial court recently found that a woman who fed feral cats and participated in a TNR program was not liable for negligently allowing the cats to damage the plaintiff's property. *Baker v.*

Middleton , C.A. No. 29D05-0605-SC-1055 (Ind. Super. Ct. Mar. 2, 2007) (pdf file - 628.01 KB). In *Baker* , the defendant fed and watered four cats that lived in the neighborhood. These cats damaged the plaintiff's home, destroying insulation, a vapor barrier, and duct work. The cats also urinated and defecated in the crawl space of the home. The court found that the total amount of damage caused by the cats to the plaintiff's property was approximately $2000. *Id* . at 2.

The court held that the defendant did not owe a duty to the plaintiff to prevent the feral cats from causing this damage, and therefore, the defendant's failure to prevent the cats from damaging the plaintiff's property did not constitute negligence. The plaintiff argued that a town ordinance and a county ordinance independently imposed a duty on the defendant to control the cats and prevent them from damaging the plaintiff's property. The town ordinance required "[e]very person responsible for an animal located within the City to ensure that such animal . . . [d]oes not become a public nuisance," does not run at large, and "[d]oes not defecate on the property of another . . . ." The county ordinance, which the court found to be the controlling law in the case, stated that "[i]t shall be unlawful for a person to provide food, water or shelter to a colony of feral cats." However, the county ordinance explicitly exempted individuals who provide food, water or shelter in conjunction with an authorized TNR program. Thus, because the defendant was participating in a TNR program, the county ordinance could not serve as a basis for finding that the defendant was negligent in caring for the feral cats. *Id.* at 2–6.

The court went on to reject two alternative theories of negligence proffered by the plaintiff. First, the plaintiff argued that the defendant was responsible for the damage caused by the cats because the defendant returned the altered cats to the plaintiff's neighborhood with the knowledge that the cats would likely return to the plaintiffs' home. The court rejected this argument because, as a factual matter, the record showed that a local organization returned the cats to the neighborhood—not the defendant. The court further noted that the county ordinance appears to contemplate and accept the possibility that feral cats, once altered, will be returned to the colonies from which they were captured. *Id.*

Second, the plaintiff argued that the defendant was responsible for the damage caused by the cats because feeding and watering an animal serves as an invitation to stay in the area. Relying on testimony from the director of Indy Feral, a local organization that works with feral cat colonies, the court found that feral cats will stay with their colonies in a specific location regardless of whether they are fed and watered. In fact, the court noted that Indy Feral's website, offered as an exhibit by the defendant, states that feral cats will become an even greater nuisance if they are not fed on a regular basis, since this will require to the cats to forage for food. Finally, the court dismissed the plaintiff's trespass claim for lack of evidence. *Id.*

The *Baker* court concluded its opinion, however, by raising an important concern about the balance between animal protection statutes and private property rights. The court noted that the plaintiff could have prevented most—if not all—of the damage caused by the feral cats if the plaintiff had simply been notified of the colony's presence in the neighborhood. The court further suggested that counties might resolve this problem by modifying their feral cat ordinances to require feral cat caretakers to notify neighbors "of the colony's existence, the potential for damage from such a colony, and appropriate preventative measures that could be taken." *Id.*

This case illustrates the careful balancing act involved in crafting a feral cat statute or ordinance. Concern for animal welfare is typically the driving force behind feral cat legislation, but it is important that animal welfare advocates adequately address the concerns of property owners who may be adversely affected by feral cat colonies. At the same time, an overly burdensome notice requirement could easily become a strong disincentive to individuals who may have otherwise considered becoming feral cat caretakers. Therefore, a notice

requirement like that suggested by the *Baker* court would have to be drafted carefully to avoid creating a significant burden on potential feral cat caretakers.

B. Jurisdictions Without Feral Cat Statutes or Ordinances

Part of the difficulty in determining the default state of the law in the absence of a feral cat statute or ordinance arises from the fact that there are very few court decisions addressing issues related to feral cats. Of the judicial opinions written, most of them involve interpretations of feral cat ordinances—like the one at issue in *Baker*—further complicating the question of what happens when no such law exists. However, at least two sources, the *Baylor Law Review* article and *Baker*, indicate that courts and juries may be unwilling to afford protection to feral cats or assign responsibilities to their caretakers when those rights and responsibilities have not been explicitly outlined by a statute or local ordinance. It is possible, then, that individuals who care for feral cats in these jurisdictions would not be required to comply with any of the requirements imposed on animal owners, nor would they be liable for any damages caused by the animals' behavior. Further, feral cat caretakers in these jurisdictions may have a difficult time protecting feral cat colonies from animal control agencies and the actions of private citizens.

According to one source, the law in Texas prohibiting cruelty to animals did not specifically protect feral cats until 2007. Jeremy Masten, Note, *Don't Feed the Animals: Queso's Law and How the Texas Legislature Abandoned Stray Animals, a Comment on H.B.2328 and the New Tex. Penal Code § 42.092*, 60 Baylor L. Rev. 964, 973–74 (Fall 2008). As a result, many criminal defendants who were arrested on animal cruelty charges were acquitted because their alleged crimes had been committed against feral animals. Arguably, the Texas statute already protected feral cats, since it protected "domesticated animals." However, the failure to explicitly include feral animals in the definition of domesticated animals apparently compelled an interpretation—at least in the minds of many jurors and legislators—that those animals were excluded from the law's protection. *See id.* at 966–67.

C. Do Statutes Abrogate the Common Law Duties of Caretakers?

Another indicator that courts may be unwilling to independently determine the rights and responsibilities of feral cat caretakers is the Indiana Superior Court's decision in *Baker v. Middleton*, C.A. No. 29D05-0605-SC-1055 (Ind. Super. Ct. Mar. 2, 2007) (pdf file - 628.01 KB). As discussed above, the issue in *Baker* required the court to interpret a feral cat ordinance. This ordinance clearly outlined the rights and duties of feral cat caretakers, giving the judge a legal basis for deciding whether the defendant was liable for damage to the plaintiff's property. Despite the fact that a feral cat ordinance was the controlling law in the case, the judge still held in favor of the defendant because that ordinance did not specifically create a duty owed by the defendant to the plaintiff. A statute conferring certain rights and responsibilities was not enough; the court would not find the existence of a general duty unless such a duty was explicitly defined by the law. *See id.* at 4–5; *see also* *McElroy v. Carter*, No. M2005-00414-COA-R3-CV, 2006 WL 2805141, at *6 (Tenn. Ct. App. Sept. 29, 2006) (holding that a domestic cat owner is not under a general duty to prevent property damage caused by the cat unless the damages were foreseeable).

Although the *Baylor Law Review* article and the Indiana Superior Court case suggest that a court may not hold caretakers responsible for the behavior of feral cats, the case law on this issue is nearly nonexistent. Further, the

cases that do exist have been based on specific local laws, making it more difficult to determine what a judge might do in the absence of such a statute. This interpretation of the law may be further supported, however, by the fact that state and local governments found it necessary to enact feral cat legislation in the first place. Generally, legislatures pass laws to correct perceived deficiencies in existing law, particularly when there is no indication that the new legislation is intended to codify the current common law rule. Therefore, in the absence of a specific statute defining the rights and responsibilities of feral cat caretakers, an individual who regularly cares for feral may not qualify as an owner or a legally designated caretaker

D. The Nature of the Feral Cat and Varying Degrees of Ownership

A further problem is the relatively limited degree of control exercised by the defendant in *Baker*. The caretaker in that case merely fed and watered the cats. She did not provide shelter or veterinary care, and she never relocated or confined the animals. The question, then, is what will a court in a common law jurisdiction do when faced with a feral cat keeper or caretaker who has exhibited greater evidence of ownership than the defendant in *Baker*?

Feral cats do not fit neatly within the common law categories of animal ownership. The first problem is the question of whether feral cats are wild or domestic animals. "A wild animal is an animal that belongs to a category of animals that have not been generally domesticated and that are likely, unless restrained, to cause personal injury." Restatement (Third) of Torts: Physical and Emotional Harm § 22(b) (2005) . An animal is feral if it "[e]xist[s] in a wild or untamed state, either naturally or having returned to such a state from domestication." The American Heritage Science Dictionary (Houghton Mifflin 2002). Feral domestic cats would almost certainly not be considered wild animals, since domestic cats have, by definition, been generally domesticated and are generally unlikely to cause personal injury. However, it is possible that individual members of a domestic species could be considered wild if those individual animals have not been domesticated. David Favre & Murray Loring, Animal Law 8 (1983). If an animal has never been owned or directly cared for by any human, then it may be classified as wild even if it is a member of a domesticated species. *See id.* at 10. So while feral cats are part of a domesticated species, it is possible that a court might find that specific feral cats qualify as wild animals, which would subject their owners and keepers to different requirements than owners and keepers of domestic cats. The most significant responsibility would be the imposition of strict liability on keepers and caretakers of feral cats in jurisdictions where keepers and caretakers are considered "owners." *See* Restatement (Third) of Torts: Physical and Emotional Harm § 22(a) (2005).

The fact that classifying feral cats as wild animals would expose feral cat caretakers to strict liability would probably make a court less likely to find a feral cat to be a wild animal. The policy rationale supporting strict liability is that a wild animal is so inherently dangerous that the burden should be on the owner, who made a conscious decision to possess the animal, to control the animal at all times. *See* David Favre & Murray Loring, Animal Law 7 (1983); *see also* Eyrich v. Earl , 495 A.2d 1375, 1377 (N.J.Super. Ct. App. Div., 1985) (stating that keepers of wild animals are strictly liable). This rationale is less persuasive when applied to feral cats for two reasons. First, feral cats are members of the same species as domestic cats. In that sense, they are unlikely to pose a serious threat to humans, and any risk that they do pose is likely to be understood by the general public. *See* David Favre & Murray Loring, Animal Law 7 (1983) . *But see* Allen v. Cox , 942 A.2d 296, 304 (Conn. 2008) (holding that when a cat's owner knows that the cat has a propensity to be violent, the owner may be liable for reasonably foreseeable injuries caused by the cat's aggressive behavior). Second, keepers and caretakers do not

exercise the level of control over feral cats that owners of wild animals exercise over those animals. Owners of wild animals intentionally possess those animals, knowingly exposing themselves to the risks that a wild animal's presence might pose to the local community. In contrast, keepers and caretakers usually care for feral cats where they find them, exercising a limited degree of control over the animals. These important distinctions would explain why some states have specifically excluded feral cats from their statutory definitions of "exotic" or "wild" animals. *See, e.g.* , Exotic Mammal, Ind. Code § 14-8-2-87 (2009); Wild Mammals, Defined, Neb. Rev. St. § 37-246 (2008).

At the same time, the level of control exercised by feral cat keepers and caretakers is often significantly less than the control exercised by an owner of a domestic housecat. Someone who cares for a feral cat is likely to limit her activity to feeding, watering, and in some cases spaying or neutering the animal. She is unlikely to provide shelter or regular veterinary care, and she would presumably be less likely to assert ownership over the cat or try to keep it from straying. And a feral cat, generally speaking, is less likely to be tame than a domestic housecat. Therefore, feral cats do not quite fit within the common understanding of domestic cat ownership.

E. The Sliding Scale of Feral Cat Ownership

The question, then, is if a feral cat is not quite a wild animal and not quite a domestic animal, how will a court determine ownership? As discussed above, there are serious policy concerns that would likely preclude the imposition of strict liability on feral cat keepers or caretakers, making it implausible to define feral cats as wild animals. Although feral cats do not necessarily fit within the common understanding of domestic animal ownership either, the ordinary liability imposed on domestic animal owners does not present the significant policy problems raised by strict liability. Thus, the most rational way to determine ownership of feral cats is to use a modified version of the legal regime for owners of domestic animals, in which courts look at the extent to which a particular keeper or caretaker has exercised control over a feral cat and then imposes limited liability in a way that reflects that level of ownership.

Under this regime, if a keeper or caretaker has given a feral cat food and water every day for several years and has provided the animal with periodic veterinary care, that person is more likely to be viewed as an owner—and subject to liability—than a person who has merely fed a feral cat once a day for six months. This type of sliding scale would enable courts to hold feral cat keepers and caretakers responsible when their actions reflect a relatively high degree of ownership. Simultaneously, this system would allow the casual good Samaritan to feed a feral cat without fear of liability. This rule would effectively advance two competing policy goals: (1) encouraging people to care for feral cats and (2) holding caretakers more responsible when their actions begin to look more like those of an owner than those of a caretaker.

Top of page

III. Potential Exposure to Civil Liability

In states that have not addressed feral cats in their laws, to what extent can a caretaker be liable for tort damages caused by feral cats? The answer to this question is likely to depend on the degree of control that the individual exercises over the cats. In states and local jurisdictions where caretakers or keepers of feral cats are considered

"owners," it is quite possible that a feral cat caretaker could be subject to tort liability for trespass and nuisance claims.

A. Nuisance Claims

In one recent case, a California appellate court recently held that the plaintiffs' nuisance claim, which was based on the defendants' alleged failure to cease activity that resulted in the attraction of feral and domestic cats to the plaintiffs' backyard, survived summary judgment. *Kyles v. Great Oaks Interests , No. H028774, 2007 WL 495897 (Cal. Ct. App. Feb. 16, 2007)*. In *Kyles* , the plaintiffs were members of a family residing in a home located next to an apartment complex. Upon moving into the home, the family noticed that many domestic and feral cats were frequently coming onto their property, and the cats had been defecating and urinating in the plaintiffs' yard. Although the plaintiffs attempted to trap the cats and bring them to animal control, the animal shelter ultimately told the plaintiffs that the shelter did not have room to house any more cats. The cats continued to come to the plaintiffs' yard, and the plaintiffs claimed that the cats were attracted due to the failure of the neighboring apartment complex to ensure that its tenants placed lids on the trash receptacles. The family brought suit against the apartment complex, the city, the county, and the garbage disposal company servicing the apartment complex, alleging, among other things, that attracting the cats constituted a nuisance. *Id.* at *1–4.

The trial court granted summary judgment for the defendants, but the appellate court rejected the trial court's analysis of the plaintiffs' nuisance claim. In determining whether the nuisance claim could be decided on summary judgment in favor of the defendants, the appellate court evaluated whether the plaintiffs had adequately shown that the defendants owed them a legal duty of care, that the defendants breached that duty, and that the breach was the cause of the plaintiffs' damages. The court noted that there was evidence presented to the trial court that the defendants had "caused a large number of cats to be attracted to the area and frequent Plaintiffs' backyard," thereby interfering with the plaintiffs' use and enjoyment of their property. Further, the court stated that the plaintiffs' claim of "severe emotional distress that arises out of the alleged nuisance of having to deal with a large number of cats on their property . . . also survives summary adjudication." Thus, the appellate court partially reversed the trial court's grant of summary judgment, holding that the defendants could, in fact, be liable under a nuisance theory for damages arising from actions that caused "the presence of [a] large number of cats on Plaintiffs' property." *See i d.* at *1, *5–6, *13–14.

It is important to note, however, that very few cases have addressed the issue of civil liability for feral cat keeping or caretaking. Further, cases like *Kyles* are limited in their usefulness since they do not present a single, bright-line legal rule for determining ownership of feral cats. Rather, the cases look closely at evidence of ownership to determine whether the keeper or caretaker should be subject to liability. As discussed above, this varying degree of control over feral cats is why common law jurisdictions are likely to determine liability based on the amount of control that a particular keeper or caretaker has exercised.

B. Damage to Property or Injury to Persons

In jurisdictions where feral cat keepers or caretakers are considered the cats' legal owners, keepers and caretakers may also be liable for damage caused by feral cats to property or persons. The key question in either case is whether the owner has a duty to control the cat's behavior. Unless the cat has vicious tendencies that are

known to the owner, a court is likely to find a duty only if the damages caused by the cat were reasonably foreseeable. The Tennessee Court of Appeals recently held that a cat's owner did not owe a duty to prevent her cat from trespassing on her neighbor's property. *McElroy v. Carter , No. M2005-00414-COA-R3-CV, 2006 WL 2805141, at *6 (Tenn. Ct. App. Sept. 29, 2006)* . The cat allegedly scratched the paint on the neighbor's truck, but because this kind of property damage was not reasonably foreseeable, the court held that the owner was not liable for any damages that her cat may have caused. *Id.*

In another case, a New York state trial court held that a store owner could be liable for personal injuries caused by a stray or feral cat in the store. *Fiori v. Conway Org. , 746 N.Y.S.2d 747, 750 (N.Y. App. Div. Dec. 14, 2001)* . In *Fiori* , a customer sued a store owner after the customer was attacked by a cat that had taken up residence in the store and was being fed by store employees. The plaintiff argued that the store owner was liable under a common law negligence theory for breaching his duty to provide a safe environment for customers. The court accepted the plaintiff's claim that the aggressive tendencies of stray and feral cats pose certain risks that domestic housecats do not, especially when they are cornered by human. It could be foreseeable, then, that a stray or feral cat in a store could injure customers who came on the premises. Based on these unique risks, the court articulated a limited exception to the general rule that the negligence standard does not apply to injuries caused by domestic animals, holding that the store owner could be liable for failing to maintain safe premises for his customers. *Id.* at 748–50.

The reasoning in these cases could be applied to feral cat keepers in caretakers in jurisdictions that consider keepers and caretakers to be owners. When damage to property or persons is reasonably foreseeable, a court in these jurisdictions could impose civil liability on keepers and caretakers for breaching their duty to control the feral cats in their care. On the other hand, in cases like *McElroy* where the owner had no reason to foresee any damage or injury that her cat might cause, a court may be unlikely to find that such a duty exists.

Top of page

IV. Potential Exposure to Criminal Liability

Determining when a feral cat caretaker may be criminally liable is a complex issue that has not been extensively addressed. One commentator who has analyzed the issue in Texas raised the possibility that an individual who cares for a feral cat could be held criminally liable for abandonment if that individual ceased to provide the cat with food and water or failed to pay for the cat's necessary medical treatment. *See generally* Jeremy Masten, Note, *Don't Feed the Animals: Queso's Law and How the Texas Legislature Abandoned Stray Animals, a Comment on H.B.2328 and the New Tex. Penal Code § 42.092 , 60 Baylor L. Rev. 964 (Fall 2008)* . In 2007, the Texas legislature amended its animal protection statute to include feral cats and dogs in the statute's definition of "animal." This amendment was passed in response to several instances in which juries acquitted defendants who were accused of cruelty to feral animals because feral animals were not explicitly protected by the state's animal cruelty statute. *Id.* at 973–74, 966.

A. Abandonment and Neglect

The problem noted in the *Baylor Law Review* article, however, is that this broadened definition of "animal" may expose a caretaker of a feral cat to criminal liability for neglect and abandonment if, at some point, she ceases to care for the animal. The possibility of criminal penalties could serve as a significant deterrent to potential feral cat caretakers, thereby undercutting the statute's purpose of promoting the welfare of feral animals. *See id.* at 983–84, 988–90.

B. State Registration and Spay/Neuter Requirements

Similarly, some states classify feral cat caretakers as "owners" and further require owners to spay and neuter their pets or immunize them against rabies. Thus, feral cat caretakers could be subjected to the same fines and citations as other animal owners if they fail to comply with these laws. Virginia's comprehensive animal statute is a clear illustration of how a caretaker might be exposed to criminal liability for failure to comply with registration and spay/neuter requirements. The statute explicitly includes feral cats in its definition of "companion animal." Va. Code Ann. § 3.2-6500 . The statute further defines an animal's owner as anyone who "(i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal." *Id.* Given the status of feral cats as "companion animals," anyone who provides food, water, or shelter to a feral cat would almost certainly fall under Virginia's definition of an "owner."

Under Virginia law, local governments may " prohibit any person other than a releasing agency that has registered as such annually with local animal control from owning a cat four months old or older within such locality unless such cat is licensed as provided by this article." Va. Code Ann. § 3.2-6524(B) . Further, it is a misdemeanor for a "cat owner to fail to pay any license tax required by this chapter before February 1 for the year in which it is due." Va. Code Ann. § 3.2-6587(A)(2). It is certainly plausible, then, that a feral cat caretaker in Virginia could be required to comply with the same requirements imposed on owners of domestic cats.

Similarly, Kentucky has enacted a statute that states, "[a]ny person with feral cats on his premises shall make a reasonable effort to capture or vaccinate the cats." KY ST § 258.015 . Likewise, an Ohio appellate court has upheld a local ordinance that made it a criminal offense for, among other things, an "owner, keeper or harborer of" a cat to allow the cat to run at large. *Christman-Resch v. City of Akron , 825 N.E.2d 189, 676 n.1, 686 (Ohio Ct. App. 2005)* . The court did not, however, address the question of whether a feral cat caretaker could be held criminally liable under the ordinance—a distinct possibility, given the ordinance's broad definition of ownership. Although, as in Virginia, there is no indication that ownership requirements are actively being imposed on feral cat caretakers, the possibility that this might occur under the current law further highlights the importance of cautiously drafting feral cat legislation. Thus, it is vital that the drafters of feral cat legislation consider the effect that such legislation might have as a disincentive to individuals who may otherwise be inclined to care for the very animals that feral cat laws are intended to protect.

Top of page

V. Conclusion

Only thirteen states and the District of Columbia have enacted statutes that mention feral cats, and none of those statutes directly address liability. Local laws, on the other hand, vary significantly from town to town, and some of

those laws may even go so far as to expose unwitting caretakers to civil or criminal liability. The majority of cases that have addressed liability for feral cat owners are unpublished decisions involving local ordinances, highlighting the impossibility of discerning a single set of guidelines for dealing with feral cats. Thus, when a statute or local ordinance explicitly defines the role and responsibility of a feral cat keeper or caretaker, it is important to look closely at the statute, ordinance, and any relevant case law to fully understand the risks, rights, and responsibilities associated with caring for feral cats.

In the vast majority of jurisdictions, however, courts will have no guidance other than common law. As discussed above, feral cats do not fit neatly within the common law of animal ownership. In light of the policy implications associated with defining feral cats as wild animals and thereby subjecting keepers and caretakers to a strict liability regime, a court would be more likely to find that feral cat keepers and caretakers are analogous to owners or keepers of domestic animals. This would expose keepers and caretakers to liability for the actions of feral cats, but it is plausible that a court would limit the liability of those keepers and caretakers to reflect the more limited degree of control that they exercise over the cats. Under this system, a person who feeds feral cats outside of her office building every morning might not be subjected to liability at all, whereas a person who provides shelter, food, water, and veterinary services for a group of feral cats would be more likely to be liable for the actions of those animals.

What, then, is the answer to the question of whether feral cat keepers and caretakers are the animals' owners? May keepers and caretakers be held civilly liable for the actions of feral cats in their care? Could they be exposed to criminal liability for abandonment, neglect, or failure to comply with registration or spay/neuter requirements? Unfortunately, the answers to these questions are unclear and depend heavily on the local law. Even in common law jurisdictions, the scarcity of published judicial opinions makes it difficult to determine what a judge will decide in a particular case. Ideally, more state and local legislatures should begin to address this complex and convoluted area of law. Until then, however, only the courts can provide clearer guidance for keepers and caretakers in common law jurisdictions. When they do attempt to resolve these issues, judges and legislatures must take care to ensure that the legal regime they impose on feral cat keepers and caretakers is not overly burdensome. Keepers and caretakers provide a valuable service, and the law should not discourage these individuals from caring for animals in need.