

# STATE ANIMAL PROTECTION LAWS—THE NEXT GENERATION

By  
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*A vast increase in animal protection laws during the past decade has changed the legal landscape of animal law. The current generation of such laws includes more inventive and effective provisions, but more could be done. This article reviews the current laws of states across the country and proposes a number of specific provisions that would improve the force and effect of animal protection legislation. The Author's goal is to identify pragmatic ways in which to make animals the most statutorily protected type of property in our country.*

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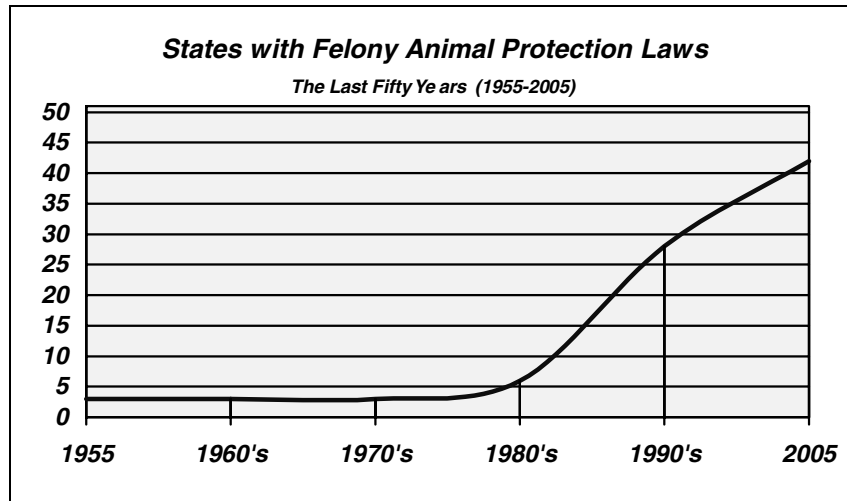
## I. INTRODUCTION

Over the past decade, there has been a tremendous surge in the number of animal protection laws enacted in states all across the country. Nowhere is this more noticeable than in the increase of felony-level laws. In 1993, only seven states<sup>1</sup> had felony animal abuse<sup>2</sup> laws. As of the writing of this article, forty-one states and the District of Columbia have now enacted at least some form of a felony-level animal protection law—an almost seventy percent increase since 1993.<sup>3</sup>

<sup>1</sup> California, Florida, Massachusetts, Montana, Oklahoma, Rhode Island, and Wisconsin had all enacted felony animal abuse provisions by 1993. Cal. Penal Code Ann. § 597(b) (West 1999) (felony provision enacted 1988); Fla. Stat. § 828.12(2) (2000 & Supp. 2005) (felony provision enacted 1989); Mass. Gen. Laws ch. 266, § 112 (2000) (felony provision enacted 1804); Mont. Code Ann. § 45-8-211 (2003) (felony provision enacted 1993); Okla. Stat. Ann. tit. 21, § 1685 (West Supp. 2005) (this statute was a felony-only provision before the amendment in 1999); R.I. Gen. Laws § 4-1-5 (1998) (felony provision in effect in 1956 enactment); Wis. Stat. §§ 951.02, 951.18(1) (1996) (felony provision enacted 1986).

<sup>2</sup> As used in this article, the term “abuse” is inclusive of all forms of animal cruelty and neglect.

<sup>3</sup> List of currently enacted, general animal protection statutes containing felony provisions: Ala. Code § 13A-11-241(a) (Supp. 2004); Ariz. Rev. Stat. §§ 13-2910(A), (G) (Supp. 2004); Cal. Penal Code Ann. § 597(b) (West 1999); Colo. Rev. Stat. §§ 18-9-202(1)(a), (1.5)(b), (2)(b)(I), (2)(c) (2004); Conn. Gen. Stat. § 53-247(b) (2001); Del. Code Ann. tit. 11, § 1325(b) (2001); D.C. Code Ann. § 22-1001(d) (LEXIS 2001); Fla. Stat. § 828.12(2) (2000 & Supp. 2005); Ga. Code Ann. § 16-12-4(c) (2003); 510 Ill. Comp. Stat. 70/3–70/3.03, 70/6 (2004); Ind. Code § 35-46-3-12(a) (2004); Iowa Code § 717B.3A (2003); Ky. Rev. Stat. Ann. § 525.135 (LEXIS Supp. 2004); La. Rev. Stat. Ann. § 14:102.1(B) (West 2004); 17 Me. Rev. Stat. Ann. § 1031(1) (Supp. 2004); Md. Crim. L. Code Ann. § 10-606 (2002); Mass. Gen. Laws ch. 266, § 112, ch. 272, § 77 (2000 & Supp. 2005) (ch. 272, section 77 upgraded to a felony in 2004); Mich. Comp. Laws §§ 750.50(2), (4), 750.50b(2) (2003); Minn. Stat. §§ 343.21(1), (7), (9)(c), (9)(d), (9)(f), (9)(h) (2004); Mo. Rev. Stat. § 578.012 (2003); Mont. Code Ann. §§ 45-8-211, 217 (2003); Neb. Rev. Stat. §§ 28-1008(3), 1009(2) (2003); Nev. Rev. Stat. § 574.100 (2003); N.H. Rev. Stat. Ann. §§ 644:8 (III), (III-a) (1996 & Supp. 2004); N.J. Stat. Ann. § 4:22-17(b) (Supp. 2004); N.M. Stat. Ann. § 30-18-1 (Supp. 2003); N.Y. Agric. & Mkts. Law § 353-a (McKinney 2004); N.C. Gen. Stat. § 14-360(b) (2001); Ohio Rev. Code Ann. §§ 959.131(B), 959.99(E)(1) (West Supp. 2004); Okla. Stat. Ann. tit. 21, § 1685 (West Supp. 2005); Or. Rev. Stat. Ann. §§ 167.320(4), 167.322 (2003 & Supp. 2004); 18 Pa. Consol. Stat. Ann. § 5511(a)(2.1) (West 2000 & Supp. 2004); R.I. Gen. Laws §§ 4-1-5, 4-1-26 (1998); S.C.



Beyond felony provisions, states have been busy passing other animal protection laws, including provisions for costs-of-care bonds,<sup>4</sup> liens,<sup>5</sup> forfeiture,<sup>6</sup> stronger law enforcement policies,<sup>7</sup> reporting,<sup>8</sup> and psychological evaluation requirements,<sup>9</sup> to note just a few examples.

This article will first review the current generation of animal protection laws, principally through the prism of felony provisions. It will then discuss and explore the possibilities and challenges that exist for the next generation of animal protection laws.<sup>10</sup>

Today, our legal system still classifies animals as property—a fact unlikely to change in the near future. However, this article will not be discussing the important ongoing debate over this issue. Rather, the goal and focus of this article is to identify pragmatic ways to make animals the most statutorily protected type of property in our country.

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Code Ann. § 47-1-40(B) (Supp. 2004); Tenn. Code Ann. §§ 39-14-202, 39-14-212 (2003); Tex. Penal Code Ann. § 42.09 (2004); Vt. Stat. Ann. tit. 13, §§ 352a, 353a(2) (1998 & Supp. 2004); Va. Code Ann. §§ 3.1-796.122(A), (B), (H) (Supp. 2004); Wash. Rev. Code § 16.52.205 (2004); W. Va. Code § 61-8-19(b) (Supp. 2004); Wis. Stat. §§ 951.02, 951.18(1) (1996); Wyo. Stat. Ann. § 6-3-203(n) (2003). Some jurisdictions have enacted more specific felony provisions in addition to those included in this list.

<sup>4</sup> *E.g.* La. Rev. Stat. Ann. § 14:102.2(C) (requiring bond to cover costs for thirty days).

<sup>5</sup> *E.g.* Ga. Code Ann. § 4-11-9.3(b) (Supp. 2004) (allowing liens for a variety of circumstances in which an animal has been impounded).

<sup>6</sup> *E.g.* Cal. Penal Code § 597(F)(1) (requiring forfeiture upon conviction).

<sup>7</sup> *E.g.* 17 Me. Rev. Stat. Ann. § 1034 (allowing humane agents to be issued search warrants).

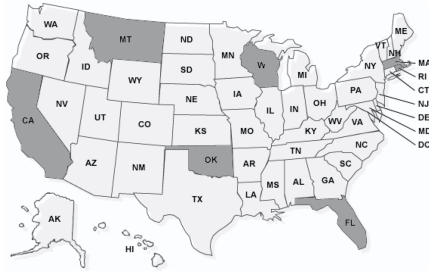
<sup>8</sup> *E.g.* 7 Me. Rev. Stat. Ann. § 4018 (2001) (granting veterinarians immunity for reporting or testifying regarding suspected animal cruelty).

<sup>9</sup> *E.g.* 510 Ill. Comp. Stat. 70/3.03-1(c) (allowing the court to order an evaluation of a person convicted of depiction of animal cruelty).

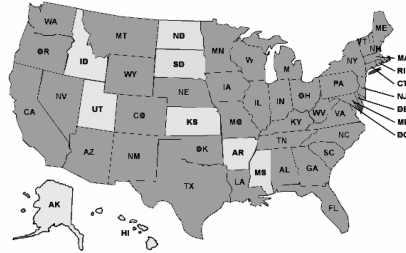
<sup>10</sup> For a comprehensive review of each state's animal protection laws, see *Animal Protection Laws of the United States of America* (Stephan K. Otto ed., 2005). This compendium tracks sixteen provision categories, is fully searchable, and is presented in both a tabular reference and complete statutory versions.

Moreover, even if their status as property were to evolve or dramatically change into something else, adequate statutory protections would still be necessary, just as they are for humans.

## II. THE CURRENT GENERATION



*States with Felony Provisions*<sup>11</sup> (1993)



*States with Felony Provisions*<sup>12</sup> (2005)

### A. Felony Animal Abuse Laws

Since 1990, thirty-five states and the District of Columbia have enacted, for the first time, felony-level laws for certain types of animal abuse.<sup>13</sup> To illustrate both the differences and similarities between these laws, an overview of the last ten states to enact these provisions follows. The laws in these ten states are generally reflective of the structure and scope of the felony animal abuse laws in the other states.

#### 1. The Ten Most Recent Felony Provisions<sup>14</sup>

##### a. Colorado

##### i. General - Colo. Rev. Stat. § 18-9-202(1)(a) (2004)

- Felony on second and subsequent offenses
- Culpable mental states: *knowingly, recklessly, or with criminal negligence*
- “[O]verdrives, overloads, overworks, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, allows to be housed in a manner that results in chronic or repeated serious physical harm, carries or confines in or upon any vehicles in a cruel or reckless manner, or otherwise mistreats or neglects any animal, or causes or procures it to be done, or, having the

<sup>11</sup> See *supra* n. 3 (listing state felony statutes).

<sup>12</sup> Alaska, Arkansas, Hawaii, Idaho, Kansas, Mississippi, North Dakota, South Dakota, and Utah are the nine remaining states without any felony animal abuse provisions.

<sup>13</sup> Those states include: Alabama, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wyoming. See *supra* n. 3 for relevant statutory sections.

<sup>14</sup> These provisions have been edited for the sake of brevity and relevance; non-felony provisions within the cited statutes are not included.

charge or custody of any animal, fails to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved, or abandons an animal.”

- ii. Aggravated – Colo. Rev. Stat. § 18-9-202 (1.5) (2004)
  - Felony on first offense; more serious felony on subsequent offenses
  - Culpable mental state: *knowingly*
  - “[T]ortures, needlessly mutilates, or needlessly kills an animal.”
- iii. Relevant definitions – Colo. Rev. Stat. § 18-9-201, 202(1.6)(a) (2004)
  - “Abandon” means the leaving of an animal without adequate provisions for the animal’s proper care by its owner, the person responsible for the animal’s care or custody, or any other person having possession of such animal.
  - “Mistreatment” means every act or omission that causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.
  - “Neglect” means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal’s health and well-being consistent with the species, breed, and type of animal.
  - “Serious physical harm” means any of the following:
    - (I) Any physical harm that carries a substantial risk of death;
    - (II) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming; or
    - (III) Any physical harm that causes acute pain of a duration that results in substantial suffering.

b. Kentucky

- i. Torture of dog or cat – Ky. Rev. Stat. Ann. § 525.135 (LEXIS Supp. 2004)
  - Felony on second and subsequent offenses
  - Culpable mental state: *intentionally*
  - “[W]ithout legal justification intentionally tortures a domestic dog or cat.”
    - “[T]orture” means the intentional infliction of or subjection to extreme physical pain or injury, motivated by an intent to increase or prolong the pain of the animal.

c. Maryland

- i. Aggravated – Md. Crim. L. Code Ann. § 10-606 (2002)
  - Felony on first offense
  - Culpable mental state: *intentionally*
  - “[M]utilate, torture, cruelly beat, or cruelly kill an animal” or “cause, procure, or authorize [such] an act.”

d. Minnesota

- i. General – Minn. Stat. § 343.21 (2004)

- Felony only in instances when there is an intentional violation resulting in death or great bodily harm (or substantial bodily harm when the act is done to threaten, intimidate, or terrorize another person) to a “pet or companion animal.”
      - Culpable mental state for felony: *intentionally*
      - “[O]verdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or to another person.”
      - “[D]eprive any animal over which the person has charge or control of necessary food, water, or shelter.”
      - “[A]bandon any animal.”
      - “[A]llow any maimed, sick, infirm, or disabled animal to lie in any street, road, or other public place for more than three hours after receiving notice of the animal’s condition.”
      - “[W]illfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.”
- e. Nebraska
- i. General – Neb. Rev. Stat. § 28-1009(2)(a) (2003)
    - Felony on second and subsequent offenses
    - Culpable mental state: *knowingly and intentionally*
    - “[K]ill, maim, disfigure . . . beat, mutilate, burn, scald, or otherwise inflict harm upon any animal.”
  - ii. Aggravated – Neb. Rev. Stat. § 28-1009(2)(b) (2003)
    - Felony on first offense
    - Culpable mental state: *knowingly and intentionally*
    - “[T]orture, repeated beating, or mutilation of the animal.”
- f. New Jersey
- i. Aggravated – N.J. Stat. Ann. § 4:22-17(b) (Supp. 2004)
    - Felony on first offense if animal is cruelly killed or dies as a result of the violation; felony on all subsequent offenses.
    - Culpable mental states: *purposely, knowingly, or recklessly*
    - “Torment, torture, maim, hang, poison, unnecessarily or cruelly beat, or needlessly mutilate a living animal or creature; or cause or procure any such acts to be done.”
- g. Ohio
- i. Abuse of companion animal – Ohio Rev. Code Ann. § 959.131(B) (West Supp. 2004)
    - Felony on second and subsequent offenses
    - Culpable mental state: *knowingly*
    - “[T]orture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal.”
  - ii. Relevant definitions – Ohio Rev. Code Ann. § 959.131(A)(2) (West Supp. 2004)
    - “Cruelty,” “torment,” and “torture” include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffer-

ing is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief.

h. Tennessee

- i. General – Tenn. Code Ann. § 39-14-202 (2003)
  - Felony on second and subsequent offenses
  - Culpable mental states: *intentionally or knowingly*
  - “Tortures, maims or grossly overworks an animal; fails unreasonably to provide necessary food, water, care or shelter for an animal in the person’s custody; abandons unreasonably an animal in the person’s custody; transports or confines an animal in a cruel manner . . . .”
- ii. Aggravated (companion animals) – Tenn. Code Ann. § 39-14-212 (2003)
  - Felony on first offense
  - Culpable mental state: *intentionally*
  - “[W]ith aggravated cruelty and with no justifiable purpose, [a] person intentionally kills or intentionally causes serious physical injury to a companion animal.”
    - “Aggravated cruelty” means conduct which is done or carried out in a depraved and sadistic manner and which tortures or maims an animal including the failure to provide food and water to a companion animal resulting in a substantial risk of death or death.

i. West Virginia

- i. Aggravated – W. Va. Code § 61-8-19(b) (Supp. 2004)
  - Felony on first offense
  - Culpable mental state: *intentionally*
  - “[T]ortures or maliciously kills an animal, or causes, procures or authorizes any other person to torture or maliciously kill an animal.”
    - “Torture” means an action taken for the primary purpose of inflicting pain.

j. Wyoming

- i. Aggravated – Wyo. Stat. Ann. § 6-3-203(n) (2003)
  - Felony on first offense
  - Culpable mental state: *knowingly and with intent to cause death, injury, or undue suffering*
  - “[C]ruelly beats, tortures, torments, injures or mutilates an animal resulting in the death or required euthanasia of the animal.”

The content of these felony laws are illustrative on a number of points. First, with few exceptions, states are currently reserving felony status for the most egregious, affirmative acts of abuse, and are requiring a high degree of criminal culpability. Many states are also restricting felony status to only subsequent offenses. Others are further restricting felonies to include only those crimes committed against certain species of animals, typically those either defined as, or generally considered to be, companion animals.

With the content of the new felony laws having been reviewed, a question arises: What is the relative strength of these laws? At least part of the answer to this question can be found through an analysis of state sentencing guideline systems.

## 2. *Sentencing Guidelines*

Sentencing guidelines have been incorporated at the state-level over the past twenty-five years.<sup>15</sup> As their name suggests, they have been developed as a way to guide courts in the sentencing of criminals and, ostensibly, reduce sentencing disparities. As of 2000, eighteen states had implemented some form of sentencing guidelines.<sup>16</sup> In the majority of states that have adopted them, the guidelines are presumptive, and the courts in these states are required to consider them.<sup>17</sup> The remaining states have voluntary guidelines, which are solely advisory.<sup>18</sup> Sentencing guidelines typically place crimes into a ranking system and compare an offender's risk (their prior criminal history, aggravating circumstances, etc.) to the crime ranking to develop a sentencing range for each conviction.<sup>19</sup> Some states utilize frequently complex sentencing matrices (representing the guidelines) to assist courts during the sentencing process.<sup>20</sup>

While most of the felony animal abuse statutes delineate a specific severity category for the felony assigned to them within the felony law itself, this statutory classification on its face can be misleading when sentencing guidelines are involved. Reviewing these guidelines is useful because they help to ascertain the relative severity that jurisdictions have given to animal abuse felonies and how this compares to other crimes.

The following chart includes information from both presumptive and voluntary guidelines states.<sup>21</sup>

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<sup>15</sup> Part of the sentencing guidelines system is currently in flux due to a recent Supreme Court decision, *Blakely v. Washington*, which found that the Sixth Amendment forbids a judge from increasing a sentence based on facts not found by a jury to exist beyond a reasonable doubt. 124 S. Ct. 2531, 2538 (2004). While interesting to note, this decision does not affect the analysis in this article because the focus is on the relative severity given to animal abuse felonies in the guidelines themselves, and not on the ability or inability of courts to increase sentences based on non-jury-found facts.

<sup>16</sup> Robin L. Lubitz & Thomas W. Ross, *Sentencing Guidelines: Reflections on the Future*, 10 *Sentencing & Corrections: Issues for the 21st Century* (newsletter of the Natl. Inst. of Justice & Corrections Program Off.) 2 (June 2001) (available at <http://www.ncjrs.org/pdffiles1/nij/186480.pdf>).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> In addition to the states listed in the table, Delaware, Michigan, and Virginia each have felony abuse laws and some form of sentencing guidelines. Del. Code Ann. tit. 11, § 1325(b); Mich. Comp. Laws §§ 750.50(2), (4), 750.50(b)(2); Va. Code Ann. § 3.1-796.122(A), (B), (H).



SENTENCING GUIDELINES FOR STATES  
WITH FELONY ANIMAL ABUSE LAWS<sup>22</sup>

STATES WITH PRESUMPTIVE GUIDELINES			
STATE	Maximum Incarceration by Statute	Maximum Incarceration by Guidelines	Examples of Other Crimes with Higher Guideline Maximums
	A. <i>First-time offender, mitigating circumstances, no prior criminal history</i> B. <i>Multiple repeat offender, aggravating circumstances, additional lengthy criminal history</i>	A. <i>First-time offender, mitigating circumstances, no prior criminal history</i> B. <i>Multiple repeat offender, aggravating circumstances, additional lengthy criminal history</i>	<i>With maximum incarceration allowable for a multiple repeat offender, with aggravating circumstances, and additional lengthy criminal history</i>
MN	A/B: 24 months	Excluded from guidelines "because prosecutions are rarely . . . initiated . . . or because the conduct included covers a wide range of severity . . . Courts should use their own discretion in sentencing by assigning a level they believe appropriate."	Sports bookmaking 30 months
NC	A: 4 months B: 12 months	A: 4 months B: 12 months	Illegal purchase or sale of food stamps 25 months  Larceny of ginseng 25 months
OH	A: 6 months B: 12 months	A: 6 months B: 12 months	Conducting an illegal bingo game 18 months  False voter registration statements for presidential elections 18 months  Tampering with evidence 5 years
OR	A/B: 5 years	A: 90 days B: 10 months	Unauthorized use or possession of vehicle valued at more than \$10k 23 months  Unlawfully recording a live performance* 23 months  *When value of recording is \$5-10k

<sup>22</sup> The Author thanks Damon Daniels for his timely research contributions to this section.

<b>PA</b>	A/B: 7 years	A: 9 months B: 39 months	Trademark counterfeiting* 51 months  Altering a firearm's ID mark 51 months  *In cases with a high quantity of products, and an offender with a prior record
<b>TN</b>	A: 2 years B: 6 years	A: 2 years B: 6 years	Money laundering 30 years
<b>WA</b>	A/B: 5 years	An "unranked crime" without an established seriousness level. Courts may sentence up to a maximum of one year. Orders of assignment more than one year constitute exceptional sentences, which must be justified in writing. <sup>23</sup>	Taking a motor vehicle without permission 7 years  Unlawful use of food stamps 29 months  Cheating 7 years
<b>STATES WITH VOLUNTARY GUIDELINES</b>			
<b>MA</b>	A/B: 5 years	A: 6 months B: 12 months	Embezzlement 90 months  Leaving the scene of an accident involving property damage 24 months
<b>MD</b>	A/B: 3 years	A/B: 3 years	Willful failure to file an income tax return 5 years  Voting by person convicted of a felony 5 years
<b>MO<sup>24</sup></b>	A/B: 4 years	A: Probation B: 4 years	Stealing a motor vehicle 6 years  Passing bad checks 5 years

<sup>23</sup> Wash. St. Senten. Guidelines Commn., *Adult Sentencing Guidelines Manual I-20* (St. of Wash. 2003) (available at [http://www.sgc.wa.gov/PUBS/Past\\_Manuals/Manual2003/adult\\_sentencing\\_manual\\_2003.htm](http://www.sgc.wa.gov/PUBS/Past_Manuals/Manual2003/adult_sentencing_manual_2003.htm); *select* Section 1 – Sentencing Guidelines Overview). *See also supra* n. 15 (regarding the Supreme Court's decision in *Blakely*).

<sup>24</sup> In a recent report, the Missouri Sentencing Advisory Commission included statistics on criminal sentences throughout the state. According to the report, over the past five years there were twenty-seven felony convictions for animal abuse. Of these, only four received a prison sentence. Mo. Senten. Advisory Commn., *Report on Recommended Sentencing* 32 (June 2004) (available at <http://www.doc.missouri.gov/pdf/Missouri%20Sentencing%20Advisory%20Commission.pdf>).

### B. Summary

Through this review of the actual language of the laws and of the sentencing guidelines, it is apparent that the current generation of felony animal abuse laws has weaknesses. As a group, they are limited in scope and typically have more lenient penalties in comparison to several other crimes, including many that are nonviolent, and even, counter-intuitively, to certain misdemeanor animal abuse provisions. For example, an Oregon court may actually sentence an offender to more time under a misdemeanor animal abuse conviction than a felony.<sup>25</sup>

Nonetheless, the current slate of felony abuse laws and other animal protection laws represent a significant first step that reflects society's growing uneasiness with the maltreatment of animals. It is not unexpected that the first generation of such laws would be less strong and comprehensive than might be desired. However, these laws do serve significant purposes. They provide some statutory protections, raise awareness of animal abuse issues, and provide a foundation on which the next generation of laws may be developed.

There are other reasons why felony animal abuse laws are important. One reason is the stigma the public attaches to felonies. Another reason is that limited resources may cause prosecutors to focus on felony-level crimes before misdemeanors.<sup>26</sup> Felony convictions also have consequences well beyond the actual sentence imposed. For example, in many states, a felon loses the right to vote, to hold public office, to serve on a jury, to possess firearms, and he or she may lose or be barred from certain professional licenses.<sup>27</sup> A felon may also be precluded from certain jobs and can even face eviction if the type of felony is "detrimental to the health, safety, and welfare of other residents."<sup>28</sup> Whether animal residents would be included in this group is unknown.

This limited review of the current generation of animal protection laws brings attention to the myriad of ways that these laws could be

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<sup>25</sup> Or. Rev. Stat. Ann. § 161.615 (2003) (providing that the maximum sentence of incarceration for a Class A misdemeanor is one year in jail); Or. Admin. R. 213-004-0001 to 213-004-0013, 213-017-0009 (2005) (stating that sentencing guidelines limit incarceration for a felony abuse conviction to no more than ten months for an offender with a significant criminal history, and where the court successfully departs from the presumptive sentence of four months).

<sup>26</sup> See John B. Mitchell, *Redefining the Sixth Amendment*, 67 S. Cal. L. Rev. 1215, 1224-25 (1994) (reflecting on the role of public defenders and lower courts in the criminal justice system). The article notes: "Most prosecutors are eager to dispose of misdemeanors with plea bargains in order to concentrate on felonies such as homicides, assaults and armed robberies. 'We just don't have the resources to bring these misdemeanor cases to trial,' a New York prosecutor says." *Id.* at 1301 n. 245.

<sup>27</sup> See e.g. Christopher Reinhart, *Consequences of a Felony Conviction*, <http://www.cga.ct.gov/2003/olrdata/jud/rpt/2003-R-0333.htm> (Mar. 28, 2003) (a Connecticut General Assembly Office of Legislative Research Report describing these consequences for felony conviction in that state).

<sup>28</sup> *Id.*

improved. The next section of this article will propose specific means that states should consider to help strengthen and expand these laws.

### III. THE NEXT GENERATION

#### A. Introduction

It is somewhat incorrect to look at the next generation of laws as potential goals to be met at some future point in time. Already, many states have revisited their animal protection laws and some have made important improvements to them. Nonetheless, there remain many opportunities for growth in every state.

For the sake of organization, many of the issues and proposals in this section are addressed separately. However, in reality there is often blurring between many of them. Additionally, some of the proposals are incremental, others more profound. There is no one exact approach that will fit every situation, as each jurisdiction has a different culture and different priorities.

#### B. Better Standards and Definitions

One of the more common complaints the Animal Legal Defense Fund's (ALDF) Anti-Cruelty Division receives regarding state animal protection laws is that the relevant terminology used is often devoid of useful definitions, rendering them vague and extremely subjective.<sup>29</sup> This causes many problems. One purpose of these laws is arguably educational. The hope is that through proper education, criminal conduct may be avoided, especially in animal neglect cases. Not having adequate definitions of the standards of care, for example, seriously limits the ability of such laws to educate.

Another problem occurs when a case is investigated and prosecuted. Without sufficient standards and definitions in place, prosecutors commonly need experts to discern the intent and meaning of the law. This not only makes cases harder to prosecute, but also can dissuade their prosecutions altogether. It can also lead to judicial interpretations of the law, which may or may not be beneficial to the interests of animals.

#### 1. Legislative and Judicial Solutions

A recent example showing how subjective definitions made a prosecution more difficult is the case of Rose-Tu, an elephant in Portland, Oregon, whom a zookeeper abused in 2000.<sup>30</sup> Rose-Tu was inflicted with 176 puncture wounds from a sharpened ankus. The abuse left

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<sup>29</sup> Animal Leg. Def. Fund, *National Animal Cruelty Database* (2005) (on file with the Animal Legal Defense Fund, Portland, Oregon).

<sup>30</sup> R. Gregory Nokes, *Animal Abuse Bill Would Aid Prosecution; The Legislation, Inspired by the Mistreatment of Rose-Tu at the Oregon Zoo, Would Take into Account a Creature's Reaction*, *Oregonian* D01 (Jan. 25, 2001) (available at LEXIS, NEWS library, OREGNN file).

gashes all over her body. Her rectum was also sodomized with the ankus.<sup>31</sup> Oregon's animal abuse laws required a minimum showing of "physical injury."<sup>32</sup> The specific definition was one initially created for crimes against humans. It defined "physical injury" as "impairment of physical condition or substantial pain."<sup>33</sup> Because the injuries were confined primarily to surface wounds, the issue of whether Rose-Tu's physical condition was impaired came into question.<sup>34</sup> In addition, experts were required to testify as to whether Rose-Tu suffered pain and whether the pain was substantial. In the end, the keeper was convicted.<sup>35</sup> However, the case served to highlight the problems in the definition and to galvanize support for Oregon Senate Bill 230 (2001)—a bill that made numerous changes to Oregon's animal protection laws.<sup>36</sup> Included in the changes was a new definition of physical injury that obviated the need to present evidence of pain in an abuse case. The new standard simply required evidence of "physical trauma" which is defined as "fractures, cuts, punctures, bruises, burns or other wounds."<sup>37</sup>

Another recent case involving definitions occurred in Washington—a state without a statutory definition for "pain." In *State v. Zawistowski*,<sup>38</sup> the courts were called on to determine how much pain is required for an animal abuse conviction. The Washington Court of Appeals ruled that proving "mild discomfort" is sufficient for conviction.<sup>39</sup> While this is a very pro-animal result, a less risky and more predictable approach is to follow the legislative route.

Included below are model definitions for some of the common terms found in animal protection laws.<sup>40</sup> "Minimum care" is one such definition that describes the basic requirements of care that must be afforded animals. Animal neglect laws are addressed in the *General Provisions* section of this article, to follow. Care standards are particularly critical in combating animal neglect.

#### ANIMAL

"Animal" means any nonhuman living creature.

<sup>31</sup> Animal Protection Inst., *Elephant Abuse Case at Oregon Zoo Needs Your Help*, <http://api4animals.org/880.htm> (last updated Apr. 27, 2001).

<sup>32</sup> Or. Rev. Stat. § 167.310(5) (1999) (current version at Or. Rev. Stat. § 167.310(7) (Supp. 2004)).

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

<sup>34</sup> Animal Protection Inst., *supra* n. 31.

<sup>35</sup> Peter Farrell, *Elephant Keeper Pleads No Contest*, Oregonian B1 (Mar. 6, 2001).

<sup>36</sup> Oregon enacted its first felony animal abuse provision in 1995. Or. Rev. Stat. Ann. § 167.322 (1995).

<sup>37</sup> Or. Rev. Stat. Ann. § 167.310(8) (Supp. 2004).

<sup>38</sup> 82 P.3d 698 (Wash. App. Div. 2 2004), *rev. denied*, 99 P.3d 896 (Wash. 2004).

<sup>39</sup> *Id.* at 700.

<sup>40</sup> Examples of model language in this article are from the Animal Legal Defense Fund's *Model State Animal Protection Laws*, of which this Author is also the editor. For a complete current copy of these model laws, visit <http://www.aldf.org/content.asp?sect=action&sectionid=3> (accessed Mar. 3, 2005).

**GUARDIAN**

“Guardian” means a person who has control, custody, possession, title, or other legal interest in an animal.

**MINIMUM CARE**

Minimum care means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, includes, but is not limited to, the following requirements:

1. Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.
2. Open or adequate access to potable water of a drinkable temperature in sufficient quantity to satisfy the animal’s needs.
3. Access to a barn, house or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun, and which has adequate bedding to protect against cold and dampness.
4. Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, or disease.
5. Continuous access to an area:
  - a. With adequate space for exercise necessary for the health of the animal. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.
  - b. With air temperature suitable for the health of the animal.
  - c. With adequate ventilation.
  - d. With regular diurnal lighting cycles of either natural or artificial light.
  - e. Kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health.

**PERSON**

“Person” means an individual, corporation, trust, partnership, association, or any other legal entity.

**PHYSICAL INJURY**

“Physical injury” means physical trauma, impairment of condition, or pain inconsistent with reasonable handling or training techniques.

**PHYSICAL TRAUMA**

“Physical trauma” means fractures, cuts, burns, punctures, bruises, or other wounds or illnesses produced by violence or by a thermal or chemical agent.

**POSSESSION**

“Possession” means to have physical custody or to exercise dominion or control over an animal.

**SERIOUS PHYSICAL INJURY**

“Serious physical injury” means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb or bodily organ.

**TORTURE**

“Torture” means an action taken for the primary purpose of inflicting or prolonging pain.

## 2. Exemptions

Exemptions are found in most animal protection statutes throughout the country. Some of the more typical exemptions are those for veterinary practices, agriculture, hunting, and research.<sup>41</sup>

One simple, yet useful proposal for improving such exemptions is to change “customary and accepted practices” (a commonly used phrase) to “customary and reasonable practices.” Such a change would enable the trier of fact in animal abuse cases to determine whether a certain practice was reasonable, regardless of whether it may be customary. This change could result in full prosecution of more abuse cases involving livestock animals.

A better approach, however, would be to eliminate the need for exemptions altogether by adopting a phrase like “unless otherwise authorized by law.” Unfortunately, for primarily political reasons, exemptions are likely to remain a feature of animal protection statutes for some time to come.

### C. Statutory Enhancements and Additional Charges

When available, prosecutors will often incorporate statutory enhancements to increase the potential severity of a criminal offense. For instance, if a deadly weapon is used in the commission of a crime, it may often warrant a higher penalty. In ALDF’s national database of animal abuse cases, there are examples of cases where such enhancements have been successfully utilized.<sup>42</sup> There are also examples of additional charges being brought when, for example, a person has set an animal on fire. Not only was the defendant charged with animal abuse, but also with arson.<sup>43</sup> Other examples of additional charges in animal abuse cases include “destruction of property”<sup>44</sup> and “child endangerment”<sup>45</sup> (when a child was a witness to the abuse).

In 2001, Oregon was the first state to include statutory enhancements within its animal abuse laws.<sup>46</sup> Oregon law now includes a first-

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<sup>41</sup> See e.g. Or. Rev. Stat. Ann. § 167.335 (including an exemption for each of these activities); Ga. Code Ann. § 16-12-4(e) (2003) (including an exemption for each of these activities); Mo. Rev. Stat. § 578.007 (2003) (including an exemption for each of these activities).

<sup>42</sup> Animal Leg. Def. Fund, *supra* n. 29.

<sup>43</sup> *Id.*; see also Associated Press, *Pa. Man Gets Prison Time for Killing Cat*, Metro West Daily News (Aug. 27, 2004) (available at <http://www.metrowestdailynews.com/national/view.bg?articleid=41659>).

<sup>44</sup> Associated Press, *Teen Who Shot Chimp Gets Creative Sentence*, Columbia Daily Tribune (Mar. 5, 2002) (available at <http://www.showmenews.com/2002/Mar/20020305News013.asp>).

<sup>45</sup> Erik Holm, *Man Gets Thirty Days in Attack on PitBull That Bit His Son*, Newsday A22 (Oct. 16, 2000).

<sup>46</sup> Or. Rev. Stat. Ann. § 167.320 (2003 & Supp. 2004). Rhode Island introduced legislation with similar provisions in 2003 and 2004. R.I. H. 7789, Gen. Assembly, 2004 Sess. at 4-1-46(d) (Feb. 11, 2004); R.I. H. 5817, Gen. Assembly, 2003 Sess. at 4-23-23(d) (Feb. 11, 2003).

in-the-nation provision that statutorily recognizes the connection between those who are violent toward animals and those who are violent toward humans. It does so by increasing the penalties for animal abusers with prior domestic violence or animal abuse convictions, and for those who abuse animals in the presence of children.<sup>47</sup> The following model language is based on this law:

ANIMAL ABUSE IN THE FIRST DEGREE<sup>48</sup>

1. A person commits the crime of ANIMAL ABUSE IN THE FIRST DEGREE if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly, or with criminal negligence:
  - a. Causes serious physical injury to an animal; or
  - b. Causes the death of an animal.
2. Animal abuse in the first degree is a [*Class \_\_ misdemeanor*].
3. Each act in violation of subsection (1) shall constitute a separate offense.
4. Notwithstanding subsection (2) of this section, animal abuse in the first degree is a [*Class \_\_ felony*] if:
  - a. The person committing the animal abuse has previously been convicted of one or more of the following offenses:
    - i. Any [*animal protection statute*] offense of this state or the equivalent laws of another jurisdiction; or
    - ii. Any [*domestic violence – spouse, child, elder*] offense of this state or the equivalent laws of another jurisdiction; or
  - b. The person knowingly commits the animal abuse in the immediate presence of a minor child. For purposes of this paragraph, a minor child is in the immediate presence of the animal abuse if the abuse is seen or directly perceived in any other manner by the minor child.

Enhancements within animal neglect laws specifically targeted at collector/hoarder<sup>49</sup> cases could also be extremely useful.<sup>50</sup> This type of proposal is further described in the next section.

#### D. General Provisions

One of the criticisms raised about felony abuse laws enacted around the country is that they generally only apply to narrowly defined, intentional acts of cruelty and therefore do not cover the vast majority of cases involving animal neglect—cases in which the victims generally suffer longer and where, when hoarders are involved, more animals are victimized. As mentioned previously, the current felony laws are narrow in scope and generally target only the most egregious

<sup>47</sup> Or. Rev. Stat. Ann. § 167.320.

<sup>48</sup> To review the other suggested severity levels for animal abuse, i.e., “Animal Abuse in the Second Degree” and “Aggravated Animal Abuse,” see ALDF’s *Model State Animal Protection Laws*, *supra* n. 40.

<sup>49</sup> In this article, the terms “collector” and “hoarder” are used interchangeably and refer to the defendant in cases in which multiple animals have been concurrently neglected.

<sup>50</sup> The Author of this article has drafted such a proposal for possible introduction in Wyoming in 2005.



affirmative acts of cruelty. It is understandable, however, that these first-generation felonies would be structured in this manner. An apt analogy is the difference between criminally negligent homicide and aggravated murder. Both are criminal acts that cause the death of a human, but they have significantly different *mens rea* requirements, and this difference is reflected in their respective penalties.<sup>51</sup>

This is not to suggest that animal neglect cases are undeserving of felony penalties. To the contrary, certain cases of animal neglect do seem warranting of felony sanctions, and, as with cases involving affirmative acts of abuse, using a multi-tiered structure for cases involving failures to act may be the most effective approach.<sup>52</sup> Such an approach would first entail the adoption of specific standards of care.<sup>53</sup> Simple failure to provide “minimum care” would be the lowest-level offense and would be treated almost akin to strict liability. That is, where the least culpable criminal mental state—criminal negligence—would be all the *mens rea* required. Additionally, at this level the physical condition of the animal would not be an element of the crime. Rather, the only question would be whether minimum care had been provided. The next two tiers would be increasingly more serious. Finally, for enhancement in hoarding cases, the penalty would be increased if a violation were to occur on premises containing more than a specific number of animals.<sup>54</sup>

#### ANIMAL NEGLECT IN THE SECOND DEGREE

1. A person commits the crime of ANIMAL NEGLECT IN THE SECOND DEGREE if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in the person’s possession.
2. ANIMAL NEGLECT IN THE SECOND DEGREE is a [Class \_\_ misdemeanor].
3. Notwithstanding subsection (2), ANIMAL NEGLECT IN THE SECOND DEGREE is a [more serious misdemeanor] if the offense occurred on premises where there were eight or more animals, including the victim.

<sup>51</sup> For example, until 2003 in Oregon, “Criminally Negligent Homicide” was a Class C felony, which is the same felony level as “Aggravated Animal Abuse” and “Animal Abuse in the First Degree” with enhancements. Or. Rev. Stat. Ann. § 163.145 (2003) (regarding “Criminally Negligent Homicide”); Or. Rev. Stat. Ann. § 167.320 (regarding “Animal Abuse in the First Degree”); Or. Rev. Stat. Ann. § 167.322 (regarding “Aggravated Animal Abuse in the First Degree”). By contrast, the crime of “Aggravated Murder” is the highest-level felony, punishable by death or life imprisonment. Or. Rev. Stat. Ann. § 163.105 (2003).

<sup>52</sup> One of the most haunting cases this Author can recall was a horrific neglect case from North Carolina. For an edited account by one of the witnesses to the abuse, see Appendix A.

<sup>53</sup> See *supra* pt. III(B)(1) (for proposed model language regarding “minimum care”).

<sup>54</sup> Alternative language: “Notwithstanding subsection ( \_\_ ), ANIMAL NEGLECT IN THE \_\_ DEGREE is a [more serious penalty] if the offense was part of a single criminal episode involving eight or more animals, where each animal was subjected to one or more violations of the [animal neglect laws].”

## ANIMAL NEGLECT IN THE FIRST DEGREE

1. A person commits the crime of ANIMAL NEGLECT IN THE FIRST DEGREE if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:
  - a. Fails to provide minimum care for an animal in the person's possession; and
  - b. The failure to provide care results in serious physical injury to the animal.
2. ANIMAL NEGLECT IN THE FIRST DEGREE is a [*Class \_\_ misdemeanor*].
3. Notwithstanding subsection (2), ANIMAL NEGLECT IN THE FIRST DEGREE is a [*felony*] if the offense occurred on premises where there were eight or more animals, including the victim.

## AGGRAVATED ANIMAL NEGLECT

1. A person commits the crime of AGGRAVATED ANIMAL NEGLECT if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:
  - a. Fails to provide minimum care for an animal in the person's possession; and
  - b. The failure to provide care results in the death of the animal.
2. AGGRAVATED ANIMAL NEGLECT is a [*Class \_\_ felony*].
3. Notwithstanding subsection (2), AGGRAVATED ANIMAL NEGLECT is a [*more serious felony*] if the offense occurred on premises where there were eight or more animals, including the victim.

*E. Specific Provisions**1. Sexual Assault of an Animal*

Thirty states have made the sexual assault of an animal a specific prohibited act.<sup>55</sup> Six of these states have made it a felony.<sup>56</sup> Such distinct provisions are important in that the physical injury requirements of most general animal cruelty laws can sometimes be difficult to prove in sexual assault cases due to both the nature of the criminal conduct itself and the often lengthy lapses between the assault and the actual investigation and examination of the animal.

<sup>55</sup> Ark. Code Ann. § 5-14-122 (1997); Cal. Penal Code Ann. § 286.5 (West Supp. 2005); Del. Code Ann. tit. 11, § 777 (2001); Ga. Code Ann. § 16-6-6 (2003); Idaho Code § 18-6605 (2004); 720 Ill. Comp. Stat. 5/12-35 (2002); Ind. Code § 35-42-4-2 (2004); Iowa Code Ann. § 717C.1 (West 2003); Kan. Stat. Ann. § 21-3505 (1995); La. Rev. Stat. Ann. § 14:89 (West 2004); 17 Me. Rev. Stat. Ann. § 1031(1)(I) (Supp. 2004); Md. Crim. Law Code Ann. § 3-322 (2002); Mass. Gen. Laws ch. 272, § 34 (2000); Mich. Comp. Laws § 750.158 (2003); Minn. Stat. § 609.294 (2003); Miss. Code Ann. § 97-29-59 (1999); Mo. Rev. Stat. § 566.111 (Supp. 2005); Mont. Code Ann. § 45-5-505 (2004); Neb. Rev. Stat. § 28-1010 (1995); N.Y. Penal Law § 130.20 (McKinney 2004); N.C. Gen. Stat. § 14-177 (2002); N.D. Cent. Code § 12.1-20-12 (1997); Okla. Stat. tit. 21, § 886 (2002); Or. Rev. Stat. Ann. § 167.333 (Supp. 2004); 18 Pa. Consol. Stat. Ann. § 3129 (2000); R.I. Gen. Laws § 11-10-1 (2002); S.C. Code Ann. § 16-15-120 (2003); S.D. Codified Laws § 22-22-42 (2004); Utah Code Ann. § 76-9-301.8 (1999); Va. Code Ann. § 18.2-361 (2004); Wis. Stat. § 944.17 (2004).

<sup>56</sup> Del. Code Ann. tit. 11, § 777; Ind. Code § 35-42-4-2; Mich. Comp. Laws § 750.158; N.C. Gen. Stat. § 14-177; S.D. Codified Laws § 22-22-42; Va. Code Ann. § 18.2-361.

Most states previously criminalized these types of acts under general “crimes against nature” statutes.<sup>57</sup> Beginning a half-century ago, these catchall laws fell out of favor when courts throughout the country began invalidating them for being unconstitutionally vague.<sup>58</sup> Until recent years, many states had neglected to criminalize, once again, the sexual assault of an animal through the enactment of separate laws.

While not nearly studied to the same extent as the link between animal cruelty and violence toward humans, the research so far does suggest similar correlations. A study by the Federal Bureau of Investigation of serial sexual homicide perpetrators found high rates of sexual assault of animals.<sup>59</sup> Another study found that up to thirty-seven percent of sexually violent juvenile offenders had a history of animal sexual assault.<sup>60</sup>

The following is proposed language to criminalize this type of assault:

SEXUAL ASSAULT OF AN ANIMAL

1. A person commits the crime of SEXUAL ASSAULT OF AN ANIMAL if the person:
  - a. Touches or contacts, or causes an object or another person to touch or contact, the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person; or
  - b. Causes an animal to touch or contact, the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.
2. Sexual assault of an animal is a [Class \_\_ felony].
3. Sexual assault of an animal is a sex crime.<sup>61</sup>

## 2. Law Enforcement Policies: Humane Agents

The following proposal establishes that all peace officers in a jurisdiction have both the duty and responsibility to enforce the governing animal protection laws. It also includes provisions that authorize the appointment of special humane agents with specific statewide jurisdic-

<sup>57</sup> See e.g. Okla. Stat. tit. 21, § 886; see Larry Cata Backer, *Raping Sodomy and Sodomizing Rape: A Morality Tale about the Transformation of Modern Sodomy Jurisprudence*, 21 Am. J. Crim. L. 37 (Fall 1993) (discussing sodomy-related jurisprudence).

<sup>58</sup> See e.g. *Franklin v. State*, 257 So. 2d 21, 22, 24 (Fla. 1971) (holding void on its face a Florida statute that prohibited “abominable and detestable [crimes] against nature, either with mankind or with beast . . .”).

<sup>59</sup> Robert K. Ressler et al., *Sexual Homicide: Patterns and Motives* 38 (Lexington Books 1988).

<sup>60</sup> Monique R. Frazier, *Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables* 99 (unpublished dissertation, Utah St. U. 1998) (on file with Utah St. U.).

<sup>61</sup> Designating “Sexual Assault of an Animal” as a sex crime would bring offenders under the sex offender registration laws in their respective states. See Ark. Code Ann. § 12-12-903(12) (2003) (sentencing court given authority to require registration for sex offenses, examples of which are enumerated in the statute); see also S.D. Codified Laws § 22-22-30(14) (designating “bestiality” as a “sex crime”).

tion to enforce the animal protection laws. Having dedicated humane agents of this type can be a very helpful tool in combating animal abuse.

#### LAW ENFORCEMENT POLICIES

1. All peace officers shall have the duty and responsibility to enforce the [*animal protection statutes*] of this state.
2. Municipal and county animal control and care agencies and any societies incorporated in this state for the purpose of preventing the criminal mistreatment of animals, may appoint special humane agents to enforce the [*animal protection statutes*] of this state. Any such appointee must be approved by a court in the jurisdiction in which the agency or society is located. The court shall approve the appointment of a special humane agent if the appointee has demonstrated a satisfactory level of knowledge and training in the animal protection laws and the constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers.
  - a. Special humane agents shall have the same duty, responsibility, power and authority to enforce the [*animal protection statutes*] of this state as any peace officer. This includes the power and authority:
    - i. To arrest and take into custody any person the special humane agent has probable cause to believe has committed or is committing a violation of the [*animal protection statutes*];
    - ii. To carry firearms;
    - iii. To prepare and execute search and arrest warrants.
  - b. The power and authority of special humane agents in the discharge of their duties shall extend throughout the entire state.
  - c. Any person who shall interfere with or obstruct any special humane agent in the discharge of their duties shall be guilty of obstructing a peace officer in violation of the [*applicable obstruction statute*].

### 3. *Reporting and Immunity*

Most current animal abuse reporting statutes are limited to veterinarians and their assistants.<sup>62</sup> The following proposal significantly expands the required reporters of suspected animal abuse to include those professions that are most likely to discover cases of animal abuse. It also provides immunity from all civil or criminal liability for those who make such reports in good faith.

#### REPORTING AND IMMUNITY

1. The following designees, having probable cause to believe that any animal with whom the designee comes in contact has suffered a violation of the [*animal protection statutes*] or that any person with whom the designee comes in contact has committed a violation of the [*animal protection statutes*] shall immediately report or cause a report to be made to the nearest law enforcement agency:

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<sup>62</sup> *E.g.* Mich. Comp. Laws § 333.18827 (2001); Or. Rev. Stat. Ann. § 686.445 (Supp. 2004).

- a. Peace officer;
  - b. Veterinarian, including any intern or resident;
  - c. Veterinary or animal care technician;
  - d. Employee of a humane society, animal shelter or other animal control agency;
  - e. Employee of a business engaged in the sale of animals, animal-related merchandise, or in the providing of services, transportation or housing for animals;
  - f. Employee of the State Department of Fish & Wildlife, State Department of Agriculture, State Department of Social Services, State Commission on Children and Families, Child Care Division of the Employment Department, State Youth Authority, any county health department, community mental health and developmental disabilities program, county juvenile department, licensed child-caring agency or an alcohol and drug treatment program;
  - g. Zoo or circus employee;
  - h. Physician, including any intern or resident;
  - i. Licensed practical nurse, registered nurse, physician's assistant, or nurse practitioner;
  - j. Employee of any public or private school;
  - k. Psychologist;
  - l. Member of the clergy;
  - m. Licensed clinical social worker;
  - n. Certified provider of foster care, including any employee;
  - o. Attorney;
  - p. Licensed professional counselor or marriage and family therapist;
  - q. Firefighter or emergency medical technician;
  - r. Public utility employee;
  - s. Photographer or photographic finisher;
  - t. News media employee;
  - u. A registered or certified childcare provider.
2. Any psychiatrist, psychologist, member of the clergy or attorney shall not be required to report such information communicated by a person if the communication is privileged under state law.
  3. Any designee making a report under this section is immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.
  4. A violation of this act is a [Class \_\_ misdemeanor].

#### 4. *Impoundment/Seizure*

It is important to have specific provisions delineating the process for impounding animals. The following proposal provides options for impoundment with and without warrants, gives limited immunity to the impounders, includes other adequate notice of impoundment requirements, and reiterates that impounded animals must receive "minimum care."<sup>63</sup>

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<sup>63</sup> See *supra* pt. III(B)(1) (for proposed model language regarding "minimum care").

## IMPOUNDMENT

## 1. IMPOUNDMENT WITH A WARRANT:

If there is probable cause to believe that an animal is being subjected to treatment in violation of the [*animal protection statutes*], a special humane agent or other peace officer, after obtaining a search warrant, shall enter the premises where the animal is located and impound the animal.

## 2. IMPOUNDMENT WITHOUT A WARRANT:

If a special humane agent or other peace officer witnesses a situation, in which the special humane agent or peace officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health of safety, the special humane agent or peace officer may impound the animal without a warrant. The special humane agent or peace officer shall immediately take an animal impounded under this section to a licensed veterinarian for medical attention to stabilize the animal's condition and to assess the health of the animal.

## 3. Any person or facility receiving an animal impounded pursuant to this section shall provide the animal with minimum care.

## 4. A special humane agent or other peace officer is not liable for any damages for an entry under this section.

## 5. Any guardian of an animal that is impounded pursuant to this section shall, within seventy-two (72) hours following the impoundment, be given written notice of the impoundment and legal remedies available to the guardian. The notice shall be given by posting at the place of impoundment, by delivery to a person residing at the place of impoundment, or by registered mail if the guardian is unknown.

5. *Mandatory Restraining Order*

This proposal would establish a mandatory restraining order against anyone who is charged with an animal abuse violation. Such a restraining order would protect the animal victim(s), any guardian or owner (besides the defendant), and any witness to the abuse. No jurisdictions have yet enacted this type of provision, although one was introduced in the Colorado General Assembly in 2002.<sup>64</sup>

## MANDATORY RESTRAINING ORDER

## 1. A mandatory restraining order is created against any person charged with a violation of this section.

## 2. The order shall remain in effect from the time that the defendant is advised of his or her rights at arraignment or the defendant's first appearance before the court and informed of such order, until final disposition of the action.

## 3. The order shall restrain the defendant from harassing, molesting, intimidating, retaliating against, or tampering with:

a. Any animal(s) victimized by the acts charged.

b. Any guardian or owner, other than the defendant, of such animal(s).

c. Any witness to the acts charged.

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<sup>64</sup> Colo. Sen. 02-048, 63d Gen. Assembly, 2d Reg. Sess. (Jan. 9, 2002).

4. The restraining order issued pursuant to this section shall be on a standardized form prescribed by the judicial department.
5. A copy of the restraining order shall be provided to the protected parties.

6. *Bonds, Liens, Reimbursement of Costs, and Restitution*

Caring for mistreated animals can be prohibitively expensive. Cases often involve dozens or even hundreds of animals and can last for months or years. Cost-of-care bonds, liens, reimbursement of costs, and restitution provisions help to ameliorate the expenses that shelters and humane societies typically are forced to bear, while providing appropriate safeguards and due process protections for defendants.

Cost-of-care bonds are particularly helpful because they provide the agency caring for the mistreated animals with court-approved funds (paid by the defendant or other guardian/owner) necessary to provide the animals with the reasonable costs of their care during the pendency of the criminal case, e.g., food, shelter, veterinary care. In effect, these provisions shift the costs from the shelter back to the defendant, who continues to have the responsibility for minimum care, regardless of where the animal temporarily lives. In addition, should the defendant choose not to post the bond, then the animal(s) are deemed abandoned and can be adopted into new homes. The following proposal would accomplish these goals:

COSTS-OF-CARE BONDS

1. The guardian of an animal that has been impounded pending outcome of a criminal action charging a violation of the [*animal protection statutes*] may prevent disposition of the animal by an animal shelter, humane society or other animal care agency that has temporary custody of the animal, by posting a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty days, including the day on which the animal was taken into custody. Such bond shall be filed with the court within ten days after the animal is impounded. If a bond is not so posted, the custodial animal care agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. At the end of the time for which expenses are covered by the bond, if the guardian desires to prevent disposition of the animal by the custodial animal care agency, the guardian shall post a new bond with the court within ten days following the prior bond's expiration. If a new bond is not so posted, the custodial animal care agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. However, nothing in this subsection shall prohibit the immediate disposition of the animal by euthanasia if, in the opinion of a licensed veterinarian, the animal is experiencing untreatable extreme pain or suffering. The guardian shall be liable for all costs of providing minimum care, or disposal of the animal.
2. If a bond has been posted in accordance with subsection (1) of this section, the custodial animal care agency may draw from the bond the ac-

tual reasonable costs incurred by the agency in providing minimum care to the impounded animal from the date of initial impoundment to the date of final disposition of the animal in the criminal action.

#### LIENS

Any expense incurred in providing minimum care to an impounded animal shall become a lien on the animal and must be discharged before the animal is released to the guardian following the acquittal of the guardian or withdrawal of the criminal complaint. If the lien is not satisfied within seven days following the resolution of the criminal case, the guardian's legal interest in the impounded animal shall immediately transfer to the custodial agency or person for further disposition in accordance with reasonable practices for the humane treatment of animals. Any additional expense above the value of the transferred interest in the animal may be recovered by the custodial agency or person in a civil action.

#### REIMBURSEMENT OF COSTS

In addition to any other sentence it may impose, a court shall require a defendant convicted under [*any animal protection statute*] to repay all reasonable costs incurred by any person or organization prior to judgment in impounding and providing minimum care for each animal subjected to mistreatment in violation of the [*animal protection statute*], and for all costs of prosecution.

#### RESTITUTION

In addition to any other sentence it may impose, a court shall order that restitution be made by the defendant to the guardian of any animal subjected to mistreatment by the defendant in violation of [*any animal protection statute*]. The measure for restitution shall be the actual pecuniary value of such loss, including but not limited to, the actual veterinary expenses, special supplies, and other costs incurred by the animal's guardian in treating the animal and in attempting to restore the animal to good health or to otherwise ameliorate the effects of the violation.

### 7. *Termination of Unfit Guardian's Interest in an Animal*<sup>65</sup>

The following proposal mirrors in part similar statutes aimed at the protection of children. It allows the court broad review in determining whether a guardian is fit to possess an animal and, if not, the means to terminate the guardian's interest. The court review includes considering conduct that may not rise to the criminal level, but nonetheless may be detrimental to the animal. The proposal also establishes that the court must consider the best interest of the animal in making its decisions.

#### TERMINATION OF UNFIT GUARDIAN'S INTEREST IN AN ANIMAL

1. If an animal is in the custody of an animal care agency as a result of alleged conduct in violation of the [*animal protection statutes*], exigent circumstances, or for any other reason authorized by law, the custodial

<sup>65</sup> Under the leadership of Rep. Peter Lewiss, Rhode Island was the first state to introduce legislation containing this type of provision. R.I. H. 7789, Gen. Assembly, 2004 Sess. at 4-1-45; R.I. H. 5817, Gen. Assembly, 2003 Sess. at 4-23-22.



agency may file a petition for termination of the guardian's legal interest in the animal.

2. The petitioner shall serve a true copy of the petition upon the guardian of the animal, and to the prosecuting attorney if a prosecution pursuant to the [*animal protection statutes*] arising out of the same facts is currently pending.
3. Upon receipt of the petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen (14) days of the filing of the petition. The animal is not subject to any other civil action pending the final judgment of the court under this section.
4. The guardian's interest in the animal shall be terminated if the court finds the petitioner has established, by a preponderance of the evidence, that the guardian is unfit to possess the animal by reason of a single or recurrent incident of conduct or condition detrimental to the animal. In making such determination, the court shall consider, but is not limited to, the following:
  - a. Emotional illness, mental illness or mental deficiency of the guardian of such nature and duration as to render the guardian incapable of providing minimum care to the animal for extended periods of time.
  - b. Conduct toward any animal of an abusive, neglectful, or sexual nature.
  - c. Addictive or habitual use of intoxicating or controlled substances to the extent that the guardian's ability to provide minimum care has been impaired.
  - d. Failure of the guardian to provide minimum care to the animal.
  - e. Criminal conduct that impairs the guardian's ability to provide minimum care to the animal.
  - f. Abuse, neglect, abandonment or the sexual assault of the animal by the guardian.
  - g. Conduct by the guardian to aid or abet another person in the abuse, neglect, abandonment or sexual assault of the animal.
  - h. A conviction under the [*animal protection statutes*] resulting from the treatment of the animal is prima facie evidence that the guardian is unfit to possess the animal.
5. Upon a finding by the court that the petitioner has established by a preponderance of the evidence that the guardian of the animal is unfit to possess the animal, the court, in consideration of the best interest of the animal:
  - a. Shall immediately terminate the guardian's legal interest in the animal and transfer such interest to the petitioner for further disposition in accordance with reasonable practices for humane treatment of animals. A transfer of legal interest under this subsection constitutes a transfer of ownership.
  - b. Shall enjoin the guardian's possession of any animal for a period of not less than three years from the date the petition was granted.
  - c. Shall order the guardian to repay the reasonable costs incurred by any person or agency in providing minimum care to the animal.
  - d. May order that other animals that are in the possession of the guardian and that were not taken into actual or constructive custody by the petitioner be transferred to the permanent custody of

the petitioner or an appropriate person or animal care agency for further disposition in accordance with reasonable practices for the humane treatment of animals.

6. In placing an animal with a new guardian, the petitioner shall give placement preference to any person who had prior contact with the animal, including but not limited to family members and friends of the former guardian whom the petitioner determines are capable of providing necessary, adequate, and appropriate levels of care to the animal.

### 8. *Mental Health Evaluations and Treatment*

To assist the court in determining an appropriate sentence, this proposal requires that a defendant undergo an evaluation and directs the court to order appropriate care or treatment if it is warranted.

#### EVALUATION AND TREATMENT

1. In addition and prior to, any other sentence it may impose, a court shall order the defendant to undergo a psychiatric, psychological, or mental health evaluation, and if warranted by the condition of the defendant, shall order the defendant to undergo appropriate care or treatment.
2. All costs of the evaluation, care, and treatment shall be borne by the defendant.

### 9. *Forfeiture and Bans on the Possession of Animals*

Should a defendant opt to post costs-of-care bonds<sup>66</sup> and also survive a hearing on his fitness to possess an animal,<sup>67</sup> the following forfeiture proposal will ensure that all of his interest in the abused animal is permanently severed upon his conviction.

The provision banning possession of animals establishes that in addition to any other sentence, someone convicted under the animal protection statutes is statutorily barred from possessing or residing with any animal for a set period of time. To date, only a handful of states have enacted this type of statutory ban.<sup>68</sup> It is a very important provision, however, and can be another vital tool in combating repeat hoarders. All too often, there are examples of convicted hoarders who immediately start re-collecting animals after completing their initial

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<sup>66</sup> *Supra* pt. III(E)(6) (discussing and proposing model language for cost-of-care bonds).

<sup>67</sup> *Supra* pt. III(E)(7) (discussing and proposing model language regarding unfit guardians).

<sup>68</sup> *See e.g.* Del. Code Ann. tit. 11, § 1325(c), (d) (Supp. 2004) (providing for a five-year ban on owning or possessing any animal (other than those involved in some commercial operations) following a misdemeanor animal abuse conviction, and for a fifteen-year ban following a felony conviction); Or. Rev. Stat. § 167.332 (2003) (providing for a five-year ban on the possession of a domestic animal following a misdemeanor animal abuse conviction, and for a fifteen-year ban following a felony conviction); W. Va. Code § 7-10-4(I) (2004) (providing for five-year ban on possessing, owning, or residing with any animal following a misdemeanor animal abuse conviction, and for a fifteen-year ban following a felony conviction).

sentences.<sup>69</sup> While a possession ban will not necessarily keep these offenders from animals, law enforcement can more easily prosecute them and permanently remove the animals from these situations.

Possession bans are also important because they separate convicted offenders from possible new victims. Furthermore, such bans serve to highlight the principle that those convicted have clearly demonstrated their irresponsibility with animals and should not be permitted to possess or reside with them.

#### FORFEITURE

In addition to any other sentence it may impose, a court shall require a defendant convicted under [*any animal protection statute*] to forfeit all legal interest of the defendant in the animal subjected to the violation. The court shall award all such interest to the animal to a humane society, animal shelter or other organization that has as its principle purpose the humane treatment of animals.

#### POSSESSION OF ANIMALS

1. In addition to any other penalty imposed by law, a person convicted of any misdemeanor violation of the [*animal protection statutes*], shall not possess or reside with any animal for a period of five years following entry of the conviction. An offense under this subsection is a [*Class \_\_ misdemeanor*] punishable by a fine not exceeding one thousand dollars (\$1,000) and forfeiture of the animal as provided in [STATUTE xxx.xxx].
2. In addition to any other penalty imposed by law, a person convicted of any felony violation of the [*animal protection statutes*], shall not possess or reside with any animal for a period of fifteen (15) years following entry of the conviction. An offense under this subsection is a [*Class \_\_ misdemeanor*] punishable by a fine not exceeding five thousand dollars (\$5,000) and forfeiture of the animal as provided under [STATUTE xxx.xxx].
3. For purposes of this section, “possess” means to have physical custody or to exercise dominion or control over an animal.

### 10. *Offender Registration and Community Notification*<sup>70</sup>

Numerous studies have established a strong correlation between those who abuse animals and those who commit violence toward humans.<sup>71</sup> If a convicted animal torturer were to move in next door to

<sup>69</sup> Chris Colin, *Loving Animals to Death*, Salon, People Feature (Mar. 8, 2002) (available at <http://archive.salon.com/people/feature/2002/03/08/hoarders>). See also Karen Samples, *Animal Hoarders Offend, Perplex: Filth and Deterioration Often Follow*, Cincinnati Enquirer 1A (Jan. 7, 2001) (available at [http://www.enquirer.com/editions/2001/01/07/loc\\_animal\\_hoarders.html](http://www.enquirer.com/editions/2001/01/07/loc_animal_hoarders.html)).

<sup>70</sup> Under the leadership of Rep. Peter Lewiss, Rhode Island was the first state to introduce legislation containing an “Offender Registration and Community Notification” provision. R.I. H. 7789, Gen. Assembly, 2004 Sess. at 4-1-46(d); R.I. H. 5817, Gen. Assembly, 2003 Sess. at 4-23-23(d).

<sup>71</sup> *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998) (providing a compilation of studies showing the correlation between animal abuse and interpersonal violence); see also Ressler et al., *supra* n. 59 (regarding sexual violence).

you, should you have the right to know this fact? Further, should your local law enforcement agency notify you of this information so that you have the opportunity to take any reasonable precautions you feel necessary with the animals and other family members that live with you? These are the questions at the heart of another novel proposal, Offender Registration and Community Notification. This proposal is based on the statutory equivalents dubbed “Megan’s Laws,” after Megan Kanka, a seven-year-old girl killed in 1994 by a convicted child molester who, unknown to the girl’s parents, had moved to their New Jersey neighborhood.<sup>72</sup> Megan’s Laws require convicted sex offenders to register their home addresses and other personal information with local authorities.<sup>73</sup> The information must be made available to the public at large.

This proposal requires those convicted of animal abuse to similarly register and would require the state to maintain a public registry and to notify residents who live near the animal abuser.

#### OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION

1. For purposes of this section, an “animal abuser” means a person over eighteen (18) years of age who has been convicted of a felony violation of [*any animal protection statute*] of this state or of the comparable statutes of another state.
2. Any animal abuser physically within the boundaries of this state for more than ten (10) consecutive days shall register with the county sheriff for the county in which the animal abuser is located before the end of the eleventh (11th) day in the state.
3. Any previously registered animal abuser shall re-register with the county sheriff for the county in which the animal abuser is located no later than ten (10) days after moving to a new location within the state.
4. When an animal abuser registers with the county sheriff, the animal abuser shall provide the following registration information:
  - a. The legal name and any other names or aliases that the animal abuser is using or has used;
  - b. The date of birth of the animal abuser;
  - c. The social security number of the animal abuser;
  - d. The current address or location of the animal abuser;
  - e. The place of employment of the animal abuser;
  - f. The animal protection offense for which the animal abuser was convicted; and
  - g. The date and place of the animal protection offense conviction of the animal abuser.
5. When an animal abuser registers with a county sheriff, the sheriff shall obtain:
  - a. A photograph of the animal abuser and a complete set of the animal abuser’s fingerprints; and

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<sup>72</sup> Richard Willing, *Megan’s Laws Gain New Attention*, USA Today 3A (Aug. 9, 2004).

<sup>73</sup> *Id.*

- b. A description of any tattoos, scars or other distinguishing features on the animal abuser's body that would assist in identifying the animal abuser.
- 6. Following an animal abuser's initial registration pursuant to the provisions of this section, an animal abuser shall annually renew the animal abuser's registration with the county sheriff prior to December 31 of each subsequent calendar year for a period of fifteen (15) years.
- 7. An animal abuser who intentionally or knowingly fails to comply with the registration requirements or provides false information when complying with the registration requirements set forth in this section is guilty of a [Class \_\_\_ felony].
- 8. Each county sheriff shall maintain a local registry of animal abusers in the sheriff's jurisdiction required to register pursuant to this section.
  - a. The county sheriff shall forward all registration information obtained from animal abusers to the [State Department of Justice].
  - b. Within ten (10) days of receiving initial registration information from an animal abuser, the county sheriff shall contact every residence, school, humane society, animal shelter, and any other business within a half-mile radius of the animal abuser's residence or location and provide them with the animal abuser's registration information, with the exception of the animal abuser's social security number.
- 9. The [State Department of Justice] shall maintain a central registry of animal abusers required to register pursuant to the provisions of this section. The central registry of animal abusers shall be made available to the public through internet access, telephone access, written access and in-person access. All of the information contained in an animal abuser's registration, with the exception of the animal abuser's social security number, shall be made available. Records of each animal abuser's registration shall be maintained for the duration of the fifteen-year period in which the animal abuser is required to be registered.

### 11. *Civil Rights of Action*

The first of two proposals establishes a civil right of action for the recovery of damages based on an animal abuse conviction.<sup>74</sup> It authorizes any guardian of an abused animal to bring an action against the abuser to recover all damages (both pecuniary and noneconomic) sustained by both the abused animal and the animal's guardian. It also authorizes punitive damages.

#### CIVIL RIGHT OF ACTION FOR RECOVERY OF DAMAGES

- 1. Any guardian of an animal subjected to a violation of the [animal protection statutes], may bring a civil action to recover the damages sustained by the animal and guardian. Damages may include, but are not limited to, the pecuniary value of the animal, veterinary expenses incurred on behalf of the animal, any other expenses incurred by the guardian in attempting to mollify the effects of the violation, pain and suffering of the animal, emotional distress and any loss of companionship suffered by the guardian. In addition to such actual damages as

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<sup>74</sup> This proposal is based in part on 510 Ill. Comp. Stat. 70/16.3.

may be proven, the guardian shall also be awarded for punitive damages a sum of not less than one thousand dollars (\$1,000) for each violation to which the animal was subjected. In addition, the court shall award reasonable attorney's fees and costs incurred by the guardian in the prosecution of the action. The remedies provided in this section are in addition to, and do not replace or supplant, any other remedies allowed by law. The court may enter injunctive orders as are reasonably necessary to abate further violations of the [*animal protection statutes*] by the defendant.

2. Commencement of a cause of action under this section shall occur within three (3) years from the date on which injuries were first identified by the guardian.

The second proposal authorizes injunctive relief to compel the humane treatment of an animal who is being, or has been, subjected to a violation of the animal protection statutes.<sup>75</sup> It permits the court to give the complainant (who can be any person, irrespective of whether that person has any legal interest or possessory rights in the animal) the right to provide minimum care to the animal and, under certain circumstances, the right to take possession of the animal during the pendency of the action. Should the court allow the complainant to take temporary possession of the animal, costs-of-care bonds are also authorized. Failure of the defendant to post such bonds would result in the forfeiture of the mistreated animal.

Following a trial on the complaint, the court has the authority to issue a permanent injunction to compel humane treatment or, upon certain findings, permanently transfer all interest and possessory rights in the animal to the complainant or appropriate successor guardian.

#### CIVIL RIGHT OF ACTION TO COMPEL HUMANE TREATMENT

##### 1. Purpose

It is the purpose of this Act to provide a civil action for the protection and humane treatment of animals, in addition to any criminal remedies that are available. It shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall include any person<sup>76</sup> even if the person does not have any legal interest or possessory rights in an animal. A real party in interest as defendant shall include any guardian<sup>77</sup> who has allegedly engaged in, or is engaging in, a violation of the [*animal protection statutes*].

##### 2. Preliminary injunction; Bond

- a. Upon the filing of a verified complaint in the [*designated court*] in the county in which a violation of the [*animal protection statutes*] has allegedly occurred, a preliminary injunction may be granted.

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<sup>75</sup> This proposal is based in part on N.C. Gen. Stat. §§ 19A-2 to 19A-4 (2004).

<sup>76</sup> See *supra* pt. III(B)(1) (for proposed model language definitions).

<sup>77</sup> *Id.*

1. Every such preliminary injunction, if the complainant so requests, may give the complainant, and any agents of the complainant, the right to provide minimum care<sup>78</sup> to the animal.
  2. Any such order shall also permit the complainant's veterinarian to remove the animal if the veterinary care necessary cannot be reasonably completed on the premises where the animal is located.
  3. If it appears on the face of the complaint that the condition giving rise to the violation of the [*animal protection statutes*] requires the animal to be removed from the defendant, then it shall be proper for the court in the preliminary injunction to allow the complainant to take possession of the animal.
- b. If the court allows the complainant to take possession of the animal, the defendant shall post a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty (30) days, including the day on which the complainant took possession of the animal. Such bond shall be filed with the court within ten (10) days after the complainant takes possession of the animal. If a bond is not so posted, the court shall terminate all of the defendant's interest and possessory rights in the animal and transfer all interest and possessory rights to the complainant or other appropriate successor guardian. At the end of the time for which expenses are covered by the bond, if the defendant desires to preserve the defendant's interest and possessory rights in the animal, the defendant shall post a new bond with the court within ten (10) days following the prior bond's expiration. If a new bond is not so posted, the court shall terminate all of the defendant's interest and possessory rights in the animal and transfer all interest and possessory rights to the complainant or other appropriate successor guardian.
  - c. Nothing in subsection (b) shall prohibit the immediate euthanasia of the animal if, in the opinion of a licensed veterinarian, the animal is experiencing untreatable extreme pain or suffering.
  - d. The defendant shall be liable for all costs of providing minimum care, euthanasia and disposal of the animal.
  - e. If a bond has been posted in accordance with subsection (b) of this section, the complainant may draw from the bond, and any additional bonds so posted, the actual reasonable costs incurred by the complainant in providing minimum care to the impounded animal from the date of initial possession to the date of final disposition of the animal in the civil action.
3. Permanent injunction  
A [*designated court*] in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further violations of the [*animal protection statutes*] if returned to the possession of the de-

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<sup>78</sup> *Id.*

fendant, the court may terminate the defendant's interest and possessory rights in the animal and transfer all interest and possessory rights to the complainant or other appropriate successor guardian.

## 12. *Crime Tracking*

Gaining accurate statistics on animal abuse crimes has been exceedingly difficult. Local, regional, and state agencies often do not adequately track or maintain reliable data on animal abuse crimes. While ALDF maintains a database of animal abuse crimes committed across the country, this collection is incomplete and often anecdotal in nature.<sup>79</sup>

The Federal Bureau of Investigation (FBI) tracks crime statistics through its crime reporting data collection system. This system establishes categories used by local and state law enforcement agencies to report crime data.<sup>80</sup> Categories include everything from violent crimes to vandalism and writing bad checks. Noticeably absent from these categories, however, is a classification for animal abuse crimes. Without having its own category in this system, important information on animal abuse crimes is not collected. In early 2004, Rep. Chris Van Hollen (D-Md.) initiated a dialogue with the FBI on this issue, and was later successful in having language included in an appropriations bill that directed the FBI to prepare a report on the advantages and disadvantages of adding animal cruelty as a crime category.<sup>81</sup>

## 13. *Alternative Enforcement and Prosecution*

Alternative legal enforcement and prosecution provisions refer to non-traditional statutes or common law tools that have the potential to move the investigation and prosecution of animal abuse cases forward, with or without the support of law enforcement officials. For example, some states permit direct access to grand juries by a private citizen, thereby providing an avenue by which to avoid a recalcitrant prosecutor. West Virginia has actually recognized a private citizen's direct access to a grand jury as a state constitutional right.<sup>82</sup> Tennessee codified the process,<sup>83</sup> and a majority of courts hold that citizen access to the grand jury is a common law right that can only be taken away by statute.<sup>84</sup>

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<sup>79</sup> Animal Leg. Def. Fund, *supra* n. 29.

<sup>80</sup> Fed. Bureau of Investigation, *Crime in the United States*, <http://www.fbi.gov/ucr/ucr.htm#cius> (accessed Feb. 5, 2005) (providing links to the FBI's annual publication, *Crime in the United States* (CIUS) dating back to 1995).

<sup>81</sup> H.R. Rpt. 108-576 at 25 (July 1, 2004).

<sup>82</sup> *State ex rel. Miller v. Smith*, 285 S.E.2d 500 (W. Va. 1981).

<sup>83</sup> Tenn. Code Ann. § 40-12-104 (2003).

<sup>84</sup> Douglas E. Beloof, *Victims in Criminal Procedure* 316 (Carolina Academic Press 1999).



In Kansas, a judge in “extreme cases” may actually order a county attorney to instigate criminal proceedings.<sup>85</sup> In Oregon, justice courts still exist in many counties. This court system, dating back to the 1800s, allows private citizens to commence criminal actions against a person and authorizes the justice courts to request that local district attorneys prosecute the case.<sup>86</sup> Oregon law specifically provides these courts with concurrent jurisdiction for animal abuse offenses.<sup>87</sup>

These are just a few examples of alternative legal enforcement and prosecution provisions. Other laws provide for citizens to make arrests themselves and grant officials the authority to appoint special deputies and prosecutors to certain cases. These types of provisions have traditionally been underutilized but may make a significant positive impact to the enforcement and the prosecution of animal protection laws.

#### 14. *Court-Appointed Special Advocates (CASA) for Animal Victims*

“Concerned over making decisions about abused and neglected children’s lives without sufficient information, a Seattle judge conceived the idea of using trained community volunteers to speak for the best interests of these children in court. So successful was the Seattle program that soon judges across the country began utilizing citizen advocates . . . . Today more than 900 CASA programs are in operation, with 70,000 women and men serving as CASA volunteers.”<sup>88</sup>

“When a CASA volunteer is court-appointed to a case, he or she is responsible for gathering information, and coordinating as many elements as possible, in order to secure for each child a safe, permanent home as quickly as possible. CASAs visit children regularly, review records, interview parents and relatives, consult with teachers, neighbors and foster care providers, and work closely with community support and services. They appear in court to advocate on behalf of the child’s needs and best interests.”<sup>89</sup>

Should a CASA for animal victims program be established? There are numerous similarities between the plight of abused and neglected children and those of abused and neglected animals. Like children, animals could significantly benefit from having an authorized representative working to ensure that their best interests are not just being considered, but actually championed throughout the legal system.

## IV. CONCLUSION

Ensuring that the next generation of animal protection laws will be successful requires adherence to at least two principle themes.

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<sup>85</sup> Kan. Stat. Ann. § 22-2301(2) (1995).

<sup>86</sup> Or. Rev. Stat. Ann. §§ 156.020, 156.520 (2003).

<sup>87</sup> Or. Rev. Stat. Ann. § 156.705.

<sup>88</sup> Natl. CASA Assn., *History of CASA*, <http://www.nationalcasa.org/htm/about.htm> (accessed Feb. 10, 2005).

<sup>89</sup> CASA for Children, *About Casa*, <http://www.casahelpskids.org/main.asp?id=17> (accessed Mar. 28, 2005).

First, there is a need for improved statutory standards. Second, there is a need for stronger and more comprehensive provisions.

There is much work to be done. However, a good start in this direction is now occurring. With continued support and dedication, advocates across the country can build upon the notable successes of the first generation of animal protection laws. Through their efforts, they can ensure that the next generation of laws will afford all animals the full protection of our laws and legal system—protections animals both need and rightly deserve.

## V. APPENDIX: THE STORY OF DUCHESS

The following is an edited account by one of the witnesses to the abuse:

—WARNING: CONTAINS GRAPHIC DETAILS—

The Story of Duchess<sup>90</sup>

This is the story of Duchess, a 2 ½ year old Dalmatian. She may be young in years, but she is old in terms of the wisdom and fear learned of a life neglect and abuse. For years she has lived behind the home of one of our neighbors here in Harnett County [North Carolina]. Left to roam and forage for her own food and water, or tied to a tree without shelter, food and water for days upon days at a time, her spirit had been broken. At her young age, she has been mother to 4 litters of puppies. And it is here that the true horror of her story begins.

After her first litter of puppies was born, the owners . . . locked Duchess's pups underneath their doublewide modular home. There they stayed for several days, until they finally died a torturous death of dehydration and starvation. The majority of her second litter was born dead. Of those that did survive, the owners dewormed and gave . . . shots . . . to only those puppies that resembled Dalmatians - which they would later claim to be full-blooded Dalmatians in order to profit. The other pups, riddled with worms, were left to die. Their dead bodies lay in [the owners'] back yard for days, until a neighbor finally buried them. [Of her third litter, only] two puppies survived the birth. One later died in their front yard, where it lay for three days as the mother and surviving pup fed off it, as it was a source of nutrition so often denied to them. [So] begins the final chapter of this story.

[Day 1:] Duchess began birthing a fourth litter of puppies. Three were born live . . . After their births, a dead pup became wedged in Duchess. Despite her efforts she could not push the remainder of the puppy out. A neighbor noted her plight and went to [the owners, informing them of Duchess' situation.]

[Day 2:] [T]he neighbor noticed one of the live pups lying across the yard near the adult male dog. She picked up the pup to bring it to its mother. When she approached [Duchess], she found that the dead puppy was still hanging halfway out of [her] birth canal. . . . The neighbor also noted that Duchess's left rear leg was brown and had a foul odor about it. It was obvious that her leg was infected. Again, she [informed the owners]. At 10 pm that night, checking on the dog once more, the neighbor believed Duchess had finally died and went to inform her neighbors. The male owner came out and removed the puppy, stating Duchess was still alive, but barely.

[Day 3:] [T]he owners finally became concerned - because of the "nosy neighbors" - and sent their pre-teen daughter out to give Duchess a bath. By now her rear end, vulva, vagina and uterus were infected due to 5 dead pups being stuck inside of her for days. The young girl scrubbed down the dog, placed a bandage on the leg, and Duchess was left to survive her trauma - once again alone. The neighbor took the time to tell the [owners]

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<sup>90</sup> Dawn Henderson, *The Story of Duchess*, <http://www.i-dog.com/board/messages/165/4603.html> (Sept. 9, 2000).

of a [nearby vet] that would treat Duchess for [free]. The only condition was that when she was fully recovered that she be spayed. [The owners never took advantage of this offer.] On this same day, [Duchess] realized she could not care for her three living pups. She carried them off to the woods, where she left them to die. A friend of the neighbor retrieved the puppies, and began devoting her life to saving them.

[Day 4:] Duchess was barely moving. [The neighbor called the local law enforcement, and arranged for a private veterinarian to care for Duchess. The responding animal control officer however did not impound Duchess.]

[Day 5:] [T]wo of the three puppies began to decline. Their cries stopped coming; their energy disappeared; their bodies began to swell and at the same time became limp; they stopped ferociously attacking their bottle; their gums, tongue and pads turned white; and they began running fevers. And at last they died.

[Day 6:] [T]he neighbor returned from a trip to the grocery store. Duchess hobbled over to her. The neighbor was horrified and heartbroken. Duchess's left leg had literally fallen off her body. The neighbor went into her house to get her husband and his sister. By the time she had convinced them to come outside, Duchess had wandered across the street onto another. She was found in a ditch walking off, they believed, to die. The sister-in-law began crying when she saw Duchess - this dog who had been neglected so long. A decision was made. The dog was placed in car and taken to a private vet. The vet's letter to the sheriff's department in regards to this maltreated dog states the following:

1. "The [dog's left] rear foot had fallen off leaving only metatarsal bones [1 - 1½"] exposed with no tissue on them.
2. The dog had recently had puppies & had pus coming from the vulva-uterus infection.
3. The skin over the rear end & tail was severely irritated, full of maggots (fly larvae).
4. The [right] rear foot - fifth toe - was infected.

The left rear leg was amputated. The skin over the rear was clipped and cleaned. The dog was spayed. The right rear foot (toe) was lanced and flushed. Antibiotics were given. A blood transfusion was also given due to low hematocrit and the amputation."

There are further notes from this [vet], who had been practicing [in the area] for over 20 years. Another reads: "The foot appears to have been damaged & sloughing for 2 to 6 weeks. The tissue was not bleeding and trying to heal around the exposed bone (was not possible though)." Still another: "Her white blood cell count was elevated due to infection."

Also on [the same day], Duchess's final pup died. . . .

Epilogue: Unfortunately, Duchess succumbed two months later.<sup>91</sup> The owners were later convicted of misdemeanor animal cruelty.<sup>92</sup>

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<sup>91</sup> Robert McNeill, *Larceny Charges Dropped Against Duchess' Rescuer*, Daily Record (Dunn, N.C.) (Oct. 13, 2000) (available at <http://www.dunndailyrecord.com/main.asp?Search=1&ArticleID=13671&SectionID=1&SubSectionID=1&S=1>).

<sup>92</sup> John F. Youmans, *Abused Dalmatian Case Ends*, Daily Record (N.C.) (Dec. 14 2000) (available at <http://www.dunndailyrecord.com/main.asp?Search=1&ArticleID=15942&SectionID=1&SubSectionID=1&S=1>).