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Charles E. Friend
University of Richmond

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ANIMAL CRUELTY LAWS: THE CASE FOR REFORM

*Charles E. Friend**

Laws, and the enforcement or observance of laws, for the protection of dumb brutes from cruelty, are, in my judgement, among the best evidences of the justice and benevolence of men.

—Arnold, J.¹

If, as Justice Arnold suggests in the foregoing quotation, our animal protection laws are indicative of the level to which “the justice and benevolence of men” has risen, then truly the human race is in sad shape. An examination of the history of the subject clearly reveals that man’s inhumanity to man is exceeded only by man’s inhumanity to animals. The popular image of animal existence fostered by innumerable Walt Disney movies and a plethora of children’s books is so far removed from reality that it borders on the fraudulent. The fact is that neglect, torture and destruction of helpless and usually inoffensive animals is so widespread and chronic in both history and contemporary society that one is tempted to conclude that cruelty to animals is a basic human instinct, only lightly obscured by a veneer of hypocritical platitudes and an occasional “Be Kind to Animals Week.”

Until the very recent past the law and the legal profession took little cognizance of the problem. What few laws existed prior to the mid-nineteenth century were primarily directed toward protecting the owners of animals, rather than the animals themselves, and anti-cruelty statutes per se were virtually unknown.

The primary reason for this legal vacuum was the common law view that all animals were property belonging absolutely to the human owner and therefore subject to his slightest whim. They could be exploited, used, abused, or dispatched at his pleasure. Cruelty to animals was simply not an offense. The owner of the property could torture, starve, or kill his “property” without accounting to anyone, and, of course, cruelty to ownerless animals

* Associate Professor of Law, University of Richmond. B.A. George Washington University 1957, J.D. William and Mary 1969.

1. *Stephens v. State*, 65 Miss. 329, 3 So. 458 (1888).

violated no law because no property rights were invaded.² Dogs were held in particularly low regard, in some cases being entitled to even less protection than other domestic animals.³ Thus, at common law, dogs were not the subject of larceny,⁴ and no indictment would lie for killing a dog.⁵ This concept of the animal as personal property, equivalent in status to a shovel, a chair, or a pair of shoes is still reflected in state statutes and case law.⁶

Superimposed on this historical concept of the animal as a chattel are several nonlegal factors which have contributed to and prolonged our national disinterest in animal welfare. We are all familiar, for example, with the callous lack of concern for other living creatures, animal or otherwise, which characterizes the majority of the human race, and with the deep public apathy which is encountered in dealing with most of the world's social ills. Added to this attitude are the very substantial economic factors which arise from the profitability of breeding, selling, trapping, slaughtering, keeping, shearing, plucking, skinning, hunting, harnessing, riding, and eating animals; the lack of adequate enforcement of what laws there are; and, perhaps most reprehensible, the reluctance of politicians to support any new law which might possibly offend any voting breeder, seller, trapper, slaughterer, keeper, shearer, plucker, skinner, hunter, harnesser, rider or eater of animals.

Despite the legislative inertia created by the sum total of these factors, some progress has been made. On all levels—federal, state, and local—laws have been passed which, in principle at least, purport to rectify some of the more flagrant abuses, and more than one courageous legislator has risked the ire of powerful lobbies to vote for protective legislation.

The purpose of this article is to survey the legislation and, to a certain extent, the case law, as it exists today in the United States,

2. Malicious mischief statutes were applicable, but these emphasized the injury to the "property" of the animal's owner. They were not concerned with the suffering of the animal, and a conviction could be obtained only upon a showing of malice toward the owner of animal. Obviously, such a statute could come into play only in the case of an injury to an owned animal by one other than the owner. Convictions were rare.

3. *Commonwealth v. Maclin*, 30 Va. (3 Leigh) 877 (1831).

4. *Blankenship v. Commonwealth*, 133 Va. 638, 112 S.E. 622 (1922).

5. *Davis v. Commonwealth* 58 Va. (17 Gratt.) 617 (1867). This has generally been altered by statutes. See, e.g., VA. CODE ANN. § 29-193 (Cum. Supp. 1973).

6. See, e.g., VA. CODE ANN. § 29-193 (Cum. Supp. 1973) (dogs as personal property).

to identify those areas where steps have been taken to illuminate some of the problems which remain, and to suggest possible methods of improvement. To this end, state law will be emphasized, with due acknowledgement of the growing federal concern with some of these areas, and with passing reference to municipal and county ordinances in the field.

I. STATE ANTI-CRUELTY LAWS

A dog owned by . . . a neighbor of the appellants, wandered and strayed over to a farm owned by the appellants' parents . . . [a]ppellants . . . decided that they would take the dog . . . to a crossroad . . . so that he would not return to the farm . . . [a]ppellants tied a tin can to his tail and filled the can with stones. . . . A rope was found in the rear of the automobile and the appellants tied the dog to the right side of the rear bumper. . . . Appellants testified that the maximum speed the car was driven was from 10 to 15 miles per hour. On three separate occasions [one of the appellants] looked out to see the dog, and the first and second time . . . the dog was getting along fine; but . . . the third time he looked at the dog, he was down and dragging. . . . The dog had been dragged for some distance—approximately over a fifteen acre tract of land. . . . [They] cut the rope and placed the dog in a ditch alongside the highway. There was ample evidence . . . that a trail of blood was traceable for six-tenths of a mile in the road to the place where the dog was ultimately found.

The offence was committed by appellants on a Thursday afternoon, and the dog was not found until the following Sunday afternoon. He was found [still alive] by a neighbor. . . . The neighbor who testified that he . . . took the dog to a veterinarian . . . who in testifying, described the dog's condition as follows:

“* **The front leg as I remember and the sternum . . . was completely denuded of muscle and the tendons were rotted. The back leg . . . was also completely denuded and the bones were exposed. It was quite offensive, and the flies had gotten in there . . . and it was full of maggots [t]he next morning the dog was dead.* **”

Behavior of the type described in the foregoing quotation would not even have been a punishable offense at common law, except to

7. *State v. Surma*, 263 Wis. 388, 389-91, 57 N.W.2d 370, 371-72 (1953).

the extent that some property interest was invaded. The suffering which this unfortunate animal felt would have been, in the eyes of the law, irrelevant.

However, the awakening of the modern social conscience which has so deeply affected other areas of the law has also manifested itself in an altered legal view of the nature and status of animals. Increasingly, there is recognition by legislatures and courts that "animals have rights which, like those of human beings, are to be protected."⁸

As a result of this belated pricking of conscience, the various states and localities have begun to enact statutes and ordinances which alter the common law pattern, at least to the extent of attempting to set some limits to the suffering which may be inflicted upon animals, regardless of ownership. All American state jurisdictions now have some form of anti-cruelty statute which purports to make abuse of animals (however defined) a criminal offense, and these statutes are generally construed to apply to one's own animals, as well as those of other owners, unknown owners, or no owners.⁹

A. *Animals Protected*

When contemplating a prosecution under modern anti-cruelty laws, it is first necessary to determine if the victim in the case is in fact covered by the laws. In most cases, the statute refers in terms to "any animal."¹⁰ Such statutes are generally construed or expressly stated to include any living creature other than man unless a contrary legislative intent is suggested.¹¹ Some statutes may, however, be limited by express language or court construction to certain classes of animals, e.g., domestic animals or "useful" animals,¹² thereby excluding large segments of the animal population from protection. This latter phenomenon is, of course, another remnant of the property concept, the reasoning apparently being that only a *valuable* animal is capable of screaming in agony.

8. *State v. Karstendiek*, 49 La. Ann. 1621, 1624, 22 So. 845, 847 (1897).

9. *See, e.g.*, *State v. Bruner*, 111 Ind. 98, 12 N.E. 103 (1887).

10. MD. ANN. CODE art. 27, § 59 (Cum. Supp. 1972); VA. CODE ANN. § 18.1-216 (Cum. Supp. 1973); RICHMOND, VA., CODE § 5-4 (1968).

11. *See, e.g.*, N.C. GEN. STAT. § 14-360 (Repl. Vol. 1969), which provides that "animal . . . shall be held to include every living creature. . . ."; and VA. CODE ANN. § 18.1-225 (Repl. Vol. 1960), which provides that "animal" shall include "birds and fowl."

12. W. VA. CODE ANN. § 61-8-19 (1966) (" . . . any horse or other domestic animal. . . .").

B. *General Anti-Cruelty Statutes*

It appears that every state has now passed some form of general anti-cruelty statute, prohibiting in broad terms "unnecessary" cruelty in any form to any animal or a specified class of animals, regardless of ownership. Over the years, as a result of court interpretations and a general urge toward uniformity, the statutes have taken on a remarkable similarity in language, at least among states in the same geographic region. The Virginia statute is typical:

Cruelty to animals a misdemeanor.—Any person who (1) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain . . . to, or cruelly or unnecessarily beats, maims mutilates, or kills any animal, whether belonging to himself or another, or deprives any animal of necessary sustenance food, or drink, or causes any of the above things, or being the owner of such animal permits such acts to be done by another, or (2) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal . . . so as to produce torture or unnecessary suffering, shall be guilty of a misdemeanor. . . .¹³

The broad language of these statutes has led to challenges on the ground that the statutes are unconstitutionally vague. These challenges have generally been rejected by the courts,¹⁴ but the broad language may present some problems for prosecutors in drawing up indictments, where more specific language than that provided in the statute may be required.¹⁵

In addition, the generality of the terms used may lead to vehement argument over what sort of conduct does, in fact, constitute "cruelty" or "torture." In the case quoted at the beginning of this section, the Wisconsin court upheld the conviction of the parties who dragged the unfortunate dog to death; similarly, courts have, under generally-worded statutes of the type under discussion, found

13. VA. CODE ANN. § 18.1-216 (Cum. Supp. 1973). See also N.C. GEN. STAT. § 14-360 (Repl. Vol. 1969) ("If any person shall willfully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance. . . ."); W. VA. CODE ANN. § 61-8-19 (1966) (" . . . beat, torture, torment, mutilate, kill, or overload, overdrive, or willfully deprive of necessary sustenance . . .").

14. See, e.g., *King v. Staie*, 75 Okla. Crim. 210, 130 P.2d 105 (1942). See also Annot., 144 A.L.R. 1037 (1943).

15. *State v. Gould*, 26 W. Va. 258 (1885).

that "cruelty" includes beating,¹⁶ burning,¹⁷ castrating,¹⁸ shooting,¹⁹ pouring acid on hooves,²⁰ overworking,²¹ and starving,²² although in some of the statutes one or more of these acts, e.g., starving, may be specifically prohibited without reliance on a general term such as "cruelty." Freeing a captive fox in the presence of a pack of hounds and allowing the hounds to tear the fox apart was held to be cruelty in a Massachusetts case,²³ and other "sporting" pastimes involving mutilation and death of animals have been condemned by the courts.²⁴

Unfortunately, the coverage of these general statutes has often been drastically narrowed by the creation of exceptions through the wording of the statute itself. Of particular interest to residents of the Commonwealth of Virginia is that portion of the Virginia anti-cruelty statute which specifically exempts the dehorning of cattle from coverage under the law.²⁵ In an 1892 case,²⁶ an Ohio court described this process in detail, relating how the heads of the cattle were gripped in a vise while men armed with meat saws and butcher knives spent eight to ten minutes cutting through the horns and paring away living flesh while the animal writhed and bellowed in torment. The Ohio court found the practice to be "cruelty." Apparently, the Virginia General Assembly regarded the practice as "cruel" also, for it took the trouble to specify that this activity would not be an offense.

It is likewise interesting to note that not only was the fighting of animals (e.g., cockfighting, bear-baiting) not a crime at common law, but, in addition, modern courts have sometimes refused to characterize fighting as "cruelty" or to find that it is prohibited by

16. *State v. Allison*, 90 N.C. 734 (1884) (defendant beat cow).

17. *State v. Bruner*, *supra* note 9 (defendants poured turpentine on a live goose and set it afire).

18. *State v. Hatton*, 240 Mo. App. 1244, 228 S.W.2d 10 (1950) (two dogs).

19. *Haines v. State*, 82 Ga. App. 129, 60 S.E.2d 504 (1950) (hog).

20. *Commonwealth v. Brown*, 66 Pa. Super. 519 (1917), *cited in* Annot., 82 A.L.R.2d 794 (1962) (horses).

21. *State v. Browning*, 70 S.C. 466, 50 S.E. 185 (1905) (hiring out unfit mules).

22. *State v. Douglas*, 78 R.I. 60, 78 A.2d 850 (1951).

23. *Commonwealth v. Turner*, 145 Mass. 296, 14 N.E. 130 (1887).

24. For an excellent discussion of this entire problem see Annot., 82 A.L.R.2d 794, 818 (1962).

25. VA. CODE ANN. § 18.1-216 (Cum. Supp. 1973).

26. *State v. Critchton*, 4 Ohio Dec. 481 (1892), *cited in* Annot., 82 A.L.R. 2d 794, 840 (1962).

general anti-cruelty laws. In a leading case, the New Mexico court in 1958 held that cockfighting was not within the state statute making it a crime to torture or torment an animal, saying:

Certainly from early times, cockfighting has been considered a lawful and honorable sport in New Mexico.²⁷

In affirming that this "honorable sport" was not a crime, the majority observed that "only one American decision has been found which has held that cockfighting was an unlawful activity, *absent a statute specifically prohibiting it.*" (Emphasis added).²⁸ The statement appears to be accurate even if the sentiment is not admirable. The deliberate goading of animals into bloody combat to the death for the amusement of humans has not, absent a specific statute, been generally considered to be "cruel." A recent Pennsylvania case²⁹ suggests that bullfighting would be considered "cruelty" even under a general statute, and one suspects that in those few jurisdictions which lack a specific fighting statute, or in instances which are not covered by the specific statute, the trend today may be against the reasoning of the New Mexico decision cited above.³⁰

It should also be noted that, both at common law and under most of the statutes, the mere killing of an animal, without more, is not "cruelty." Before the killing of an animal can support a conviction under a cruelty statute, it must be found that the killing was done in a cruel manner.³¹

27. *State v. Buford*, 65 N.M. 51, 57, 331 P.2d 1110, 1114 (1958). The statute involved was N.M.S.A. § 40-4-3 (1953), a law of the same general language as those cited in conjunction with note 13 *supra*.

28. *See* note 27 *supra*. The single exception referred to was *Commonwealth v. Tilton*, 49 Mass. (8 Met.) 232 (1844).

29. *Pennsylvania S.P.C.A. v. Bravo Enterprises, Inc.*, 428 Pa. 350, 237 A.2d 342 (1968). The case involved a statute which contained a specific provision against fighting. The dissenting opinion of Justice Musmanno is, as usual, well worth reading.

30. It is doubtful whether even the majority of the members of the New Mexico court in *State v. Buford* shared Justice McGhee's view of cockfighting as an "honorable sport." See the concurring opinion of Shillinglaw, J. which follows in its entirety:

The sole issue presented is whether or not cockfighting comes within the provisions of § 40-4-3 N.M.S.A. 1953. Whether cockfighting is to be considered an honorable sport is a question not necessary for us to decide. I concur in the result. 65 N.M. at 59, 331 P.2d at 1115.

31. *Horton v. State*, 124 Ala. 80, 27 So. 468 (1900). But a needless or unnecessary killing may be a crime, however humane. *State v. Neal*, 120 N.C. 613, 27 S.E. 81 (1897).

The concept of "necessity" is very important in the field of anti-cruelty laws. Under certain circumstances, cruelty, and even torture, are not "cruelty" in the legal sense because the activity is "necessary" or "useful." It is, for example, not a crime to boil a lobster alive because, regardless of the pain inflicted, it is generally conceded that the "only" way to cook a lobster properly is to boil it alive.³² Similarly, animal experimentation and, to some extent, slaughterhouse operations have, until very recently, commonly escaped from the operation of anti-cruelty statutes, on the grounds that these functions are "necessary" and their attendant cruelties therefore tolerable.³³

C. Statutes Covering Specific Acts of Cruelty

In view of the difficulties so frequently encountered in the interpretation of general anti-cruelty statutes, it is not surprising that most states have covered the more glaring loopholes with additional statutes which prohibit, expressly and specifically, certain types of cruel acts. The specific acts prohibited vary from state to state, but a sampling of jurisdictions in the Middle Atlantic region reveals a number of prohibitions common to most states. Virginia, for example, specifically prohibits fighting,³⁴ poisoning,³⁵ maiming³⁶ or "hard use"³⁷ of animals; soring of horses;³⁸ shooting of homing pigeons;⁴⁰ sexual abuse of animals;⁴¹ burning of stables or barns occupied by livestock;⁴² or the leaving of injured animals lying in roads.⁴³ Poison-

32. See *People ex rel. Freel v. Downs*, 26 N.Y. Crim 327, 333, 136 N.Y.S. 440, 445 (1911).

33. Animal experimentation, slaughterhouses, and other legal justifications for cruelty are discussed in detail *infra*.

34. VA. CODE ANN. § 18.1-242 (Repl. Vol. 1960).

35. VA. CODE ANN. § 18.1-159 (Cum. Supp. 1973).

36. *Id.*

37. VA. CODE ANN. § 18.1-161 (Repl. Vol. 1960).

38. VA. CODE ANN. § 18.1-216.1 (Cum. Supp. 1973). "Soring" is a process by which a horse is subjected to physical pain to induce the animal to assume a particular gait. The legs, ankles, or feet of the horse are blistered with chemicals, burned, cut, etc., to force the horse into an unnatural pattern of locomotion deemed fashionable by horse "lovers." Many a Tennessee Walking Horse has been trained by this method, and the practice, despite the statutes, is still widespread.

39. VA. CODE ANN. § 18.1-246 (Repl. Vol. 1960).

40. VA. CODE ANN. § 18.1-160 (Repl. Vol. 1960).

41. VA. CODE ANN. § 18.1-212 (Cum. Supp. 1973). It is at least arguable that statutes of this nature are primarily concerned with sexual mores and only incidentally with cruelty to animals. It is included here because of its possible usefulness as an anti-cruelty measure.

42. VA. CODE ANN. § 18.1-76 (Repl. Vol. 1960).

43. VA. CODE ANN. § 32-70.1 (Repl. Vol. 1973).

ing, maiming, arson of barn or stable, and sexual abuse or animals are felonies; the remainder are misdemeanors.

Maryland prohibits abandoning animals;⁴⁴ dyeing baby chicks, ducks, etc. for sale;⁴⁵ injuring race horses;⁴⁶ killing homing pigeons;⁴⁷ poisoning;⁴⁸ or sexual abuse of animals.⁴⁹ North Carolina prohibits, *inter alia*, shooting homing pigeons⁵⁰ and "bearbaiting, cockfighting and similar amusements."⁵¹ West Virginia supplements its general anti-cruelty statute by separately prohibiting, *inter alia*, keeping live birds to be shot for amusement.⁵² Prohibitions against abandoning, cockfighting, dogfighting, bearbaiting, etc., are expressly included in the general statute.⁵³

D. Regulation of Slaughterhouses

In addition to the specific and relatively narrow prohibitions discussed immediately above, there are several broader areas in which state statutes have become significant.

One of the most important of these is the problem of the treatment of animals in slaughterhouses and stockyards. The slaughtering of animals for meat has historically been ignored by anti-cruelty groups and anti-cruelty laws, probably because of the doctrine, hitherto mentioned in connection with lobsters, which excuses any amount of agony if the sufferer is good to eat. Through public ignorance or public unwillingness to interfere with the timely arrival of dinner, the animal which passes into the slaughterhouse has traditionally been lost to view, both literally and legally. That the activities of meat slaughterers need scrutiny is amply illustrated by an opinion in an old New York case,⁵⁴ which describes vividly the process by which hogs being prepared for slaughter were bound by iron

44. MD. ANN. CODE art 27, § 60 (Repl. Vol. 1971).

45. MD. ANN. CODE art. 27, § 60A (Repl. Vol. 1971).

46. MD. ANN. CODE art. 27, § 61 (Repl. Vol. 1971).

47. MD. ANN. CODE art. 27, § 64 (Repl. Vol. 1971).

48. MD. ANN. CODE art. 27, § 69 (Repl. Vol. 1971).

49. MD. ANN. CODE art. 27, § 554 (Repl. Vol. 1971).

50. N.C. GEN. STAT. § 14-369 (Repl. Vol. 1969).

51. N.C. GEN. STAT. § 14-362 (Repl. Vol. 1969).

52. W. VA. CODE ANN. § 61-8-20 (1966).

53. W. VA. CODE ANN. § 61-8-19 (1966).

54. *Davis v. S.P.C.A.*, 16 Abb. Pr. (n.s.) 73 (N.Y. 1874), cited in Annot., 82 A.L.R.2d 794 (1962), rejecting the "if it's edible, let it scream" argument as a justification for cruelty.

chains fastened to their ankles, hoisted as much as four floors by means of these chains, stabbed in the throat, and then plunged alive into boiling water. Practices of this type have led a number of states to pass statutes calling for humane methods of slaughtering livestock. Maryland law, for example, calls for the animal to be "rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, case [cast?] or cut. . . ." ⁵⁵

Regrettably, these slaughterhouse regulations tend to be restricted to commercial slaughterers. Persons slaughtering for home consumption are frequently excluded, although in predominantly rural states home slaughter may involve a significant number of animals each year. ⁵⁶

E. Regulation of Transportation of Animals

Another area in which state law is usually inadequate is the transportation of animals. Animals being transported in quantity to market are particularly subject to suffering imposed by crowded conditions, inadequate ventilation, lack of food and water, trampling, exposure to extremes of heat and cold, and miscellaneous other nightmares.

Few state legislatures have made any attempt to alleviate the conditions of transportation to market, probably again due to the economic importance of the activity and the fact that compulsory humanity in such matters would seriously reduce the profit margin. A few states have, however, attempted to attack the problem. North Carolina, for example, specifically prohibits conveyance of any animal in any vehicle in a cruel or inhumane manner. ⁵⁷

F. Regulation of Hunting and Trapping

In all states, the hunting of wild animals is closely regulated by

55. MD. ANN. CODE art. 27, § 333A(g)(1) (Repl. Vol. 1971), which, however, permits the slashing of the throats of the live, conscious animals "in accordance with ritual requirements of the Jewish faith. . . ." See also the discussion of Federal animal laws *infra*.

56. See, e.g., MD. ANN. CODE art. 27, §§ 333A and 333B (Repl. Vol. 1971). The author has a vivid recollection of a discussion with a farmer in which the farmer recounted the frantic struggling of hogs being immersed alive in boiling water, a method of home slaughter apparently still common among hog breeders in his state.

57. N.C. GEN. STAT. § 14-363 (Repl. Vol. 1969). The Federal involvement in this area is discussed elsewhere in this article.

state law and local ordinance. By and large, these laws are directed toward conservation of wildlife, and the suffering of the quarry is not a matter of concern.⁵⁸ This situation is not illogical, and it is not likely to change in the near future. Hunting is, by definition and nature, a cruel pastime. The concept of a humane hunting law is inherently self-contradictory, and it seems probable that only the eventual elimination of hunting itself will remedy the cruelties perpetrated in that particular manner.

Trapping is another area in which cruelty appears at first glance to be inevitable, and yet certain aspects of this particular activity make it more amenable to the application of anti-cruelty laws.

Unlike hunting, trapping is basically an economic activity rather than a sport. Within the state of Virginia, trapping is reported to represent a three to four million dollar per year industry.⁵⁹ The field is not limited to professionals; in the western part of the state, farmers and other rural landowners regularly engage in trapping as a means of supplementing income. Recently, animal protection societies have been trying to focus public attention on the cruelties inflicted upon fur-bearing animals by the common use of the clamp-type, serrated-jaw trap, and it takes little imagination to appreciate the horrors visited upon small animals caught by one leg, fighting to escape, dying over periods of a week or more of hunger and thirst, or, in some cases chewing off the trapped leg and crawling away to die elsewhere of infection or loss of blood.

Although trapping does, by nature, involve cruelty, suffering can be reduced to a minimum by regulation of the type of traps used and the methods of trapping. To date, at least, state legislatures have been slow in passing such regulatory legislation. In Virginia, the sole legislative acknowledgement of the problem appears to be § 29-143 of the Code of Virginia, which requires that trappers visit all traps at least once each day and remove all animals caught therein. This law, if observed, would at least reduce the total suffering time of the victims. However, the law is difficult or impossible to enforce and therefore inadequate in its present form.⁶⁰

58. See, e.g., Title 29 of the Virginia Code.

59. These figures, and much of the following information, were provided by officials of the S.P.C.A..

60. Information provided by sources within the state government.

Other jurisdictions have been similarly unconcerned with the humanitarian aspects of trapping laws. Like hunting laws, trapping laws are generally only concerned with conservation or, at best, protection of domestic animals which might otherwise accidentally be caught. Presumably there will be little progress in this area unless and until the public anger over the inhumane aspects of trapping exceeds the public interest in decorating itself with fur.

G. Animal Experimentation

Anyone who has toured a medical facility where animals are subject to experimentation is aware of the high price exacted of the victims. The suffering of the animals which are cut, burned, roasted, frozen, injected, starved, poisoned, and otherwise maimed and murdered in the name of "science," "research," "progress," "medicine," or, most ludicrous of all, "humanity," is, unfortunately, completely beyond the knowledge (or at least the comprehension) of the average citizen. Nevertheless experimentation upon animals, and the breeding, shipping and sale of these unlucky creatures is a widespread and extremely profitable enterprise.

Absent statute, experimentation with animals is, of course, not an offense under the common law view of animals as property. Even in the presence of a general anti-cruelty statute, animal experimentation has been generally ignored, or, if considered, excused on the grounds that it is "necessary" for the greater good of humanity.⁶¹ Although occasionally a statute is found which purports to regulate breeders of laboratory animals,⁶² state legislatures, prompted either by the "necessity" argument or the pressure applied by lobbyists acting on behalf of experimental animal breeders, have generally failed or declined to pass statutes specifically governing the treatment of laboratory animals. Some states have, in fact, gone a step in the other direction and have expressly exempted medical research animals from the operation of the state's general anti-cruelty laws. This express exemption is, of course, a legislative recognition of the fact that such experimentation is in fact cruel, and therefore, absent specific exemption, unlawful.⁶³

61. See, e.g., *New Jersey S.P.C.A. v. Board of Educ.*, 91 N.J. Super. 81, 219 A.2d 200 (1966) *aff'd*, 49 N.J. 15, 227 A.2d 506 (1967).

62. See, e.g., VA. CODE ANN. § 15.1-29.1 (Repl. Vol. 1973).

63. See, e.g., VA. CODE ANN. § 18.1-216 (Cum. Supp. 1972): "Any person who . . . inflicts

Since animal experimentation appears to be an essential feature of medical research, and therefore a necessary evil, it seems fitting that efforts be made to restrict the suffering involved to an irreducible minimum. To accomplish this, strong legislative control is needed. Unfortunately, this particular area is a virtual void as far as state laws are concerned, and the result has been an unhampered free-wheeling trade in animals destined for laboratory execution.⁶⁴ Federal enactments, alone, brighten this particular legislative wasteland.

II. FEDERAL LAWS

In view of the relative indifference of state lawmakers to the problems discussed above, it is not surprising to find the federal government filling a portion of the void. This Congressional interest, primarily manifested during the last few years, has produced several pieces of legislation which supplement or pre-empt the various muddled, weak, and fragmentary state laws.

Federal legislation has been particularly concerned with the transportation of animals. As early as 1906, Congress has passed an act designed to reduce the suffering of animals being transported in interstate commerce.⁶⁵ This act, now designated 45 U.S.C. § 71 *et seq.*, (1970), regulates railroads, express companies, car companies, common carriers, owners or masters of vessels, or receivers, trustees or lessees of any of the foregoing who transport "cattle, sheep, swine, or other animals." The act calls for limitations on the time periods that animals can be confined and requires periodic unloading for rest, water and feed. Civil and criminal penalties are provided.⁶⁶

The disgusting conditions existing in the nation's slaughterhouses became the subject of Congressional attention in 1960. The Federal

inhumane injury or pain *not connected with bona fide scientific or medical experimentation. . . .*" (Emphasis added). See also MD. ANN. CODE art. 27, § 67A (Repl. Vol. 1971). At least one court has ruled that impounded stray animals can be turned over to research facilities for use in medical experiments, on the grounds that the police power of the state includes "preventing waste of resources." Massachusetts S.P.C.A. v. Commissioner of Pub. Health, 339 Mass. 216, 158 N.E.2d 487 (1959).

64. This *carte blanche* has, among other things, led to a healthy traffic in stolen pets. Although larceny of an animal is, of course, now generally prohibited by statute, prosecutions of persons engaged in dog-napping for laboratories have been rare.

65. Act of June 29, 1906, ch. 3594, § 1 *et seq.*, 34 Stat. 607.

66. 45 U.S.C. §§ 73-74 (1970).

Humane Slaughter Law,⁶⁷ which called for rapid, effective dispatch of the animals prior to shackling, hoisting, etc., and the use of humane methods, has served as a model for similar laws in several states.⁶⁸

The Horse Protection Act of 1970,⁶⁹ prohibits the shipment in interstate commerce, for showing or exhibition, of a horse which has been sored.⁷⁰ The act likewise prohibits the showing or exhibition of a sored horse in any exhibition in which any horse has been moved in interstate commerce, and the holding of any exhibition in which a sored horse is exhibited if any horse in the show has been moved in interstate commerce.

A. *Federal Regulation of Animal Experimentation*

One area in which the Federal effort has been particularly noteworthy is the field of animal experimentation. In 1966 the Congress of the United States, acting to remedy the inadequacy of state laws in this area, passed the Federal Laboratory Animal Welfare Act.⁷¹ This Act, together with supplemental legislation enacted in 1970,⁷² is designed to:

[P]rotect the owners of animals, from the theft of their animals, to prevent the sale or use of animals which have been stolen, and to insure that certain animals intended for use in research facilities are provided humane care and treatment. . . .⁷³

To this laudable end, the act attempts to regulate:

[T]he transportation, purchase, sale, housing, care, handling, and treatment of such animals by persons or organizations engaged in using them for research or experimental purposes . . . or in transporting, buying, or selling them for any such purpose or use.⁷⁴

67. 7 U.S.C. § 1901 *et seq.* (1970).

68. *See, e.g.*, MD. ANN. CODE art. 27, § 333 (Repl. Vol. 1971).

69. 15 U.S.C. § 1821 *et seq.* (1970).

70. *See* note 38 *supra*.

71. 7 U.S.C. § 2131 *et seq.* (1970).

72. The Animal Welfare Act of 1970, Pub. L. No. 91-579, §§ 1-25, 34 Stat. 1560.

73. 7 U.S.C. § 2131 (1970). The 1970 amendment extended coverage of the act to include animals destined for exhibitions or use as pets.

74. *Id.*

The act calls for the registration of research facilities utilizing animals and for the licensing of dealers who supply the animals. It prohibits facilities from dealing with unlicensed dealers. Animals must be identified before being sold or transported, and humane treatment is required, under standards to be set up by the Department of Agriculture for housing, feeding, watering, sanitation, ventilation, shelter, and veterinary care.⁷⁵ Provision is made for inspection and investigation by the Department of Agriculture,⁷⁶ and penalties for violations are prescribed.

The 1966 act specifically exempted actual experimentation procedures from the coverage of the act.⁷⁷ The 1970 amendments, however, corrected this glaring omission at least in part by requiring that the Department of Agriculture standards shall include "the appropriate use of anesthetic, analgesic, or tranquilizing drugs, when such use would be proper" and providing that:

The Secretary shall require, at least annually, every research facility to show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during experimentation are being followed. . . .⁷⁸

These acts are clearly a step in the right direction, although the problem of enforcement is, as always, a major difficulty. It is regrettable that the various states have not seen fit to enact similar legislation.

III. ENFORCEMENT OF ANIMAL CRUELTY LAWS

As depressing as the legislative situation appears to be, the enforcement aspect of animal cruelty laws presents an even darker picture. The fact is that the few existing laws are generally very poorly enforced. This regrettable reality is the result of several factors; the fragmentary nature of the laws and the frequently vague language employed; the lack of funds and personnel for the agencies charged with enforcement; and the indifference toward animal cru-

75. See 9 C.F.R. § 1.1 (1971) *et seq.* for the standards set up by the Department of Agriculture under the mandate of Act of August 24, 1966, Pub. L. No. 91-579, §§ 1-24, 80 Stat. 350.

76. 7 U.S.C. § 2146 (1970).

77. 7 U.S.C. §§ 2143, 2148 (1970).

78. 7 U.S.C. § 2143, *as amended* in 1970. § 2148 was repealed in 1970.

elty shared by the public at large, law enforcement officials, and public prosecutors.

In Virginia, the official state agency which would probably be best qualified to administer animal cruelty laws has been virtually barred from the field by operation of statute. An examination of Virginia's code sections applicable to the control of animals reveals frequent reference to game wardens as the officials responsible for their enforcement.⁷⁹ Still another section of the Virginia code, however, provides that when the locality appoints a dog warden, the game warden shall have no further jurisdiction.⁸⁰ But all cities and counties of the state have now appointed dog wardens,⁸¹ and this circumstance, coupled with the previously-mentioned fact that the game laws themselves deal primarily with conservation and not cruelty, has in effect relieved the Commission of Game and Inland Fisheries and its personnel of any responsibility in the area of humane law enforcement, particularly where domestic animals are concerned.

The dog wardens appointed by the various localities are, by statute, concerned primarily with animal control and not animal protection. Consequently, they are seldom, if ever, involved in the prosecution of cruelty cases, and, in some instances, may themselves be forced by circumstance and the nature of their duties to inflict considerable suffering on the animals with which they deal.⁸²

Police and sheriffs' departments are, of course, primarily charged with the enforcement of the anti-cruelty statutes which are criminal laws. Unfortunately, the typical department is so overburdened with the escalating propensity of the American citizen to engage in

79. See, e.g., VA. CODE ANN. § 29-199 (Cum. Supp. 1973) (concerning the killing of unlicensed dogs).

80. VA. CODE ANN. § 29-184.2 (Cum. Supp. 1973).

81. There appears to be one technical exception to this. One western Virginia county has reportedly not "officially" appointed a dog warden but is nonetheless enforcing dog laws to the exclusion of the game wardens.

82. The responsibilities of local wardens, which are primarily the capture, imprisonment, and killing of dogs and other small animals, may be attended by a substantial amount of suffering on the part of the animals involved. Slow and inefficient methods of killing are a particular concern here, for local officers frequently lack the facilities and training necessary to the humane destruction of stray or unwanted animals. This deficiency is often a matter of great dissatisfaction to the wardens themselves, who would generally prefer to carry out their required tasks with a minimum of discomfort to the animals.

criminal activity, that animal mistreatment is of necessity given low priority. Police officers, therefore, seldom, if ever, initiate cruelty prosecutions, although they will act on warrants sworn out by others. In effect, then, there is very little official enforcement of the anti-cruelty laws. As a result, the burden of combating the human tendency to be sadistic toward lesser creatures falls primarily upon private citizens and the various private animal humane societies.

State codes frequently give the local S.P.C.A. and similar organizations quasi-official enforcement powers. In Virginia, for example, any officer or agent of "any society duly incorporated under the laws of this State for the prevention of cruelty to animals" is given the power "to arrest, without warrant, any person found violating in his presence any of the provisions of law concerning cruelty to animals. . . ." ⁸³ Such agencies regularly engage in the investigation of complaints concerning cruelty to animals, assist in the prosecution of such complaints where appropriate, provide shelters for stray and unwanted animals, attempt to find homes for such animals, and educate responsible state and local officials and the public at large in the proper treatment and disposition of animals. ⁸⁴

The primary obstacle encountered by such private agencies is a lack of money. Most agencies of this type are privately funded by contributions from the public and are manned at least in part by unpaid volunteers. A few states have been perceptive enough to provide for private humane societies to receive some public funds, usually from dog license fees or fines collected for animal law violations, ⁸⁵ but the majority of states give no public financial support to animal societies. ⁸⁶

In short, it may be fairly said that state governments have taken little interest in enforcing animal welfare laws. What enforcement there is has been left almost entirely in the hands of private agencies and individual citizens courageous enough to swear out a warrant. This official indifference has, in general, rendered the meagre pro-

83. VA. CODE ANN. § 18.1-217 (Repl. Vol. 1960).

84. Information provided by officials of the S.P.C.A. and the Virginia Federation of Humane Societies, Inc.. It should be noted that some local governments (for example, Richmond) also operate animals shelters where animals are held pending possible adoption.

85. For a brief judicial discussion of this practice see *Nicchia v. People*, 254 U.S. 228 (1920).

86. See, e.g., N.C. GEN. STAT. § 67-13 (Cum. Supp. 1971) (dog license taxes to go to school fund); VA. CODE ANN. § 29-184.6, -184.8 (Repl. Vol. 1973) (dog license taxes to be paid into county treasury).

tection provided by the few existing laws largely illusory, at least on the state level.⁸⁷

A. *Prosecution of Animal Cruelty Cases*

Even in those cases where an investigation is made and a warrant sworn out, the average state prosecutor's office is in a poor position to obtain a criminal conviction under anti-cruelty laws. The loose language and fragmentary coverage of the laws has already been discussed. In addition, the prosecutor who would prosecute a cruelty-to-animals case is faced with serious problems of proof, not the least of which is the typical reluctance of the average citizen to testify against a neighbor, regardless of how savagely said neighbor may have behaved toward some member of the animal kingdom. Unless a humane society official is the complaining witness, the prosecutor may simply be unable to establish the offense to the satisfaction of a court or jury.

On top of the foregoing difficulties, the prosecutor is faced with a myriad of legal defenses which can be raised by those charged with cruelty. Some of these have already been discussed, e.g., the theory that, under certain circumstances, necessity (for example, the need for food or medical research) justifies at least a certain amount of suffering which is therefore excused.

Negligent or accidental infliction of suffering is usually not actionable. Thus, injuring or killing a dog by negligently driving an automobile over it is not an offense within the anti-cruelty statute.⁸⁸

Even where the act or omission is voluntray and deliberate, it usually must be shown that the defendant was aware that the animal was suffering thereby. If the defendant was truly ignorant of the distress of the animal, there is no punishable act.⁸⁹

It is sometimes said that it is not necessary to prove intent to cause pain, and that it is sufficient if the prosecution shows that the

87. The Department of Agriculture, which has an established inspection division, is better able to cope with its obligations under the various Federal humane laws. However, the Department still faces the same problems of lack of adequate funds and personnel to police the regulations thoroughly.

88. *Territory v. Shindo*, 32 Hawaii 76 (1931); Annot., 82 A.L.R.2d 794 (1962).

89. *Re Stage Horse Cases*, 15 Abb. Pr. (n.s.) 51 (N.Y. 1873); Annot., 82 A.L.R.2d 794 (1962).

defendant voluntarily committed an act which must necessarily cause pain.⁹⁰ But in the case of maiming statutes, specific intent to maim is usually an element of the offense, and must therefore be proven.⁹¹

Even should intent be proven, the act may be excusable in the eyes of the law. It is generally recognized that, in addition to the need to obtain food or the need for medical experimentation, there are certain other situations in which the infliction of discomfort may, as a practical matter, be "necessary." Thus, for example, it may be "necessary" to inflict pain to discipline an animal, or even to train it.⁹² Discipline and training being proper and lawful ends, cruelty which can be categorized as either of these will usually be excused.⁹³

Although it more often arises in prosecutions for killing an animal than in cruelty cases, it does appear logical that defense against attack should be a legal justification for harsh action against animals in some instances. Thus, defense of one's self⁹⁴ or of other persons⁹⁵ would appear to excuse at least some degree of assault upon the offending animal, and there are a multitude of statutes and cases which justify shooting or killing animals, especially dogs, which are attacking the defendant's livestock.⁹⁶ These various defenses provide ample ammunition for the defendant, for they can be stretched to cover many sins, and a clever defense counsel will use them to the utmost.

Still another stumbling block in the prosecutor's path is the tendency of at least a certain percentage of the judiciary to regard anti-cruelty laws and prosecutions as nonsense. Particularly in rural areas, where hunting, trapping, and home slaughtering are so common as to be a way of life, there is frequently a lack of sympathy

90. *Commonwealth v. Lufkin*, 89 Mass. (7 Allen) 579 (1863).

91. *Winckler v. Commonwealth*, 155 Va. 1146, 156 S.E.364 (1931) (no presumption attack was with intent to maim or kill); *State v. Fletcher*, 106 W. Va. 601, 146 S.E. 628 (1929) (must prove "malice").

92. *But see* note 38 *supra*.

93. Where, however, the defense is necessity, the defendant must bear the burden of proving the necessity. *Breedlove v. Hardy*, 132 Va. 11, 110 S.E. 358 (1922).

94. For a good discussion of this entire subject and a comprehensive collection of cases see *Annot.*, 15 A.L.R.2d 578 (1951).

95. *See Annot.*, 74 A.L.R.2d 770 (1960).

96. *See, e.g.*, N.C. GEN. STAT. § 67-14 (Repl. Vol. 1965); VA. CODE ANN. § 29-197 (Cum. Supp. 1973); *Willeroy v. Commonwealth*, 181 Va. 799, 27 S.E.2d 211 (1943).

on the part of the man(or woman) on the bench. Thus, for example, the impatience with the whole matter which led one jurist to observe that:

Society could not long tolerate a system of laws which might drag to the criminal bar every lady who might impale a butterfly, or every man who might drown a litter of kittens.⁹⁷

With these and other obstacles thrown into the way of cruelty prosecutions, it is hardly surprising that prosecutors are generally lukewarm toward the prospect of trying a cruelty-to-animals case. There is a tendency either to avoid prosecution entirely, or, at best, to assign to the case the most junior assistant in the prosecutor's office. Needless to say, the conviction record in cruelty cases is therefore somewhat less than satisfactory.⁹⁸

IV. PLANS AND PROPOSALS

In view of the fact that man has been mistreating animals since the dawn of history, despite all religious, social, and legal pressure to prevent it, it hardly seems likely that many of us will live to see a new era in which man will be unfailingly benevolent to the "inferior" species. On the theory, however, that it is better to light one candle than to curse the darkness, some things can be done and are being done in an attempt to mitigate the situation.

A. *Improvement of Laws*

First, it is obvious that better laws are needed. Legislatures must somehow be persuaded to take cognizance of the abuses discussed above and to pass tighter, more comprehensive laws. Loopholes must be plugged. Special interest groups (e.g., furriers, meat packers, cattle breeders, and research animal dealers) must no longer be permitted to stifle remedial legislation. Courts must be presented with legislative mandates which permit no evasion by callous or disinterested judges of the "cockfighting is an honorable sport" variety.

This struggle for better legislation has long been waged by animal

97. *State v. Buford*, 65 N.M. 51, 59, 331 P.2d 1110, 1115 (1958), citing *Grise v. State*, 37 Ark. 456 (1881).

98. Civil actions for damages are, of course, possible. Unless the animal (a) belongs to someone and (b) is killed or crippled, such actions are rare.

welfare societies. For example, the Virginia Federation of Humane Societies, Inc., in conjunction with the United States Animal Health Association, has produced a proposed model act and is currently working for its passage in Virginia.⁹⁹ This model legislation, if passed, would fill several of the gaps which presently exist in the Virginia animal laws. Unfortunately, there is usually no established legislative committee or other formal liaison group through which humane societies can deal directly with state legislatures. Unless an individual legislator takes an interest in animal welfare, the animal welfare societies have no means of introducing animal welfare legislation. The only means of obtaining such legislation is pressure by informed and aroused constituents upon their individual representatives. Coordinated public campaigns to force legislative attention to this area are needed, but the cost is high and the level of public indifference is appalling.

B. Improvement of Law Enforcement

A second, and perhaps more fruitful, prospect is improvement of the enforcement of the laws which are already on the books. Animal wardens appointed by the various localities should be more numerous, better trained, and better paid.¹⁰⁰ Wardens, policemen, and sheriff's deputies, should be empowered by law and required by their superiors to investigate and prosecute animal cruelty cases. The public and the press should put increasing pressure on local administrators and prosecutors to force them to pay proper attention to the reporting, investigation, and prosecution of cruelty cases, regardless of political expediency. The laws we already have would be vastly more effective if they were enforced.

C. Improvement of Public Facilities

Public animal impoundment facilities are frequently a public disgrace. They are invariably too small, often poorly maintained, and usually miserably equipped. Dog wardens frequently are forced to

99. See appendix.

100. The animal wardens should be; more numerous, so that they will be able to handle an added burden of humane law enforcement, instead of being merely "dog-catchers;" better trained, because improper handling of animals, especially inept use of euthanasia devices, can cause immeasurable suffering; better paid to make certain that well-educated, highly-motivated personnel of a professional caliber are attracted to the job, and to insure that they stay in the job for reasonable periods of time.

dispose of animals by shooting or by carbon monoxide poisoning, due to the lack of modern euthanasia equipment.¹⁰¹ These conditions should be remedied by the construction of modern pounds of adequate dimensions. Humane animal disposal equipment should be required and proper maintenance of all facilities should be ensured by frequent state inspection.

D. Expansion of Private Humane Society Services

Until that presumably far-off day when state governments are prepared to begin fulfilling their obligations in the field of animal welfare, it will continue to be the private humane societies which carry the burden of protecting and caring for abused and unwanted animals. Although it is unfortunate that states are permitted to side-step their responsibilities in this area, it is undeniable that the private societies do an excellent job, particularly when one considers their limited resources. Continued popular support for their efforts is essential, for, at present, they are the only effective force in this entire field. Expansion of their facilities, increases in their personnel, and public recognition and support of their efforts will insure, on the whole, the best possible progress in the field of animal welfare for the foreseeable future. The key to this is, of course, an improved financial structure.

E. Financial Assistance for Animal Welfare Agencies

The majority of states collect vast sums of revenue from dog licenses and a reasonable amount of revenue from animal law fines each year. In most jurisdictions this money continues to be diverted to purposes completely unrelated to animal control, animal conservation, or animal welfare. At least some percentage of these funds should be channeled back into public agencies and facilities charged with responsibility for animal control and conservation. Since in most jurisdictions no public agency assumes any responsibility for the enforcement of humane laws and the care of unwanted animals, it seems only fitting that some portion of the funds be placed at the disposal of the S.P.C.A. or other private humane societies.

101. It has been reliably reported to the author that one of central Virginia's most populous and well-to-do counties did not, until very recently, have any sort of euthanasia equipment. The wardens were disposing of impounded animals by shutting them up in an old truck and asphyxiating the animals with the exhaust gases.

Some private agencies would no doubt regard this move with suspicion, fearing the bureaucratic interference which usually accompanies a grant of public money. Certainly, care should be taken that the funds are made available to the private agencies with a minimum of state intermeddling and red tape. If, however, this could be accomplished successfully, the benefits would be enormous and immediate. If direct grants are not feasible, then the state responsibilities in this area could and should be delegated to existing private societies on a formal contract basis, with the state paying all or at least a large part of the cost of expanded private services.¹⁰² Unless and until something of this nature is arranged, progress will continue to be slow and painful—especially to the animals.

V. CONCLUSION

If the reader has drawn from these pages the conclusion that the field of animal protection law is in a sorry state, the reader is precisely correct. In an age which prides itself on technology, enlightenment, education, good will, and justice, we still treat the majority of the earth's living creatures in a manner which is, in most respects, worthy of a medieval torturers' guild. That we continue to tolerate inhumanities of the type discussed in this article is an indictment of us all, and one which should weigh heavily on each and every human conscience.

To disregard the rights and feelings of equals, is unjust and ungenerous, but to willfully or wantonly injure or oppress the weak and helpless, is mean and cowardly. Human beings have at least some means of protecting themselves against the inhumanity of man . . . but dumb brutes have none. . . Animals whose lives are devoted to our use and pleasure, and which are capable perhaps, of feeling as great physical pain or pleasure [sic] as ourselves, deserve, for these considerations alone, kindly treatment. The dominion of man over them, if not a moral trust has a better significance than the development of malignant passions and cruel instincts. Often their beauty, gentleness, and fidelity suggest the reflection that it may have been one of

102. Proposals for public funding of animal protection efforts are often greeted with jeers from those who have no interest in animals. The usual comment is "why should my tax money go for that? Let the bow-wows (animal lovers) pay for it." It should be noted that (1) the proposal stated herein involves only funds from animal licenses and fines and (2) the "bow-wows" are already supporting the private agencies through contributions and adoption fees.

the purposes of their creation and subordination to enlarge the sympathies and expand the better feelings of our race. But, however this may be, human beings should be kind and just to dumb brutes; if for no other reason than to learn how to be kind and just to each other.¹⁰³

103. *Stephens v. State*, 65 Miss. 329, 331-32, 3 So. 458, 459 (1887).

APPENDIX*DRAFT OF A PROPOSED MODEL STATE LAW*

Title: A proposed Model Law designed to supplement the Federal Laboratory Animal Welfare Act (P.L. 89-544), as amended by the Animal Welfare Act of 1970, (P.L. 91-579), to provide standards for the care of animals in animal shelters, pounds, and pet shops, and to regulate dealers and dog wardens.

Section 1. Purpose: (1) To protect the owners of dogs and cats from the theft of such pets; (2) to prevent the sale or use of stolen pets; (3) to insure that all warm-blooded vertebrate animals, as items of commerce are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, buying or selling them for such use; (4) to insure that animals confined in pet shops, kennels, animal shelters, auction markets and pounds are provided humane care and treatment; (5) to release for sale, trade or adoption only those animals which appear to be free of infection, communicable disease, or abnormalities, unless veterinary care subsequent to release is assured.

Section 2. Definitions: as used in this article and the regulations promulgated thereunder, the following terms shall be construed, respectively, to mean:

(a) "Pound" or "dog pound" means a facility operated by a state, or any political subdivision thereof, for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs, cats, and other animals; or a facility operated for such purpose under a contract with any municipal corporation or incorporated society for the prevention of cruelty to animals.

(b) "Person" means any individual, partnership, firm, joint stock company, corporation association, trust, estate, or other legal entity.

(c) "Animal Shelter" means a facility which is used to house or contain animals and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other non-profit organization devoted to the welfare, protection and humane treatment of animals.

(d) "Pet Shop" means a business establishment where animals are bought, sold, exchanged, or offered for sale or exchange to the general public at retail or wholesale.

(e) "Kennel" means a place or establishment other than a pound or animal shelter where animals not owned by the proprietor are sheltered, fed and watered in return for a fee.

(f) "Animal" means any dog or cat, rabbit, rodent, nonhuman primate, bird or other warm-blooded vertebrate but shall not include horses, cattle, sheep, goats, swine and domestic fowl.

(g) "Public Auction" means any place or location where dogs or cats are sold at auction to the highest bidder regardless of whether such dogs or cats are offered as individuals, as a group, or by weight.

(h) "Commissioner" means the Commissioner of Agriculture of the State of _____.

(i) "Dealer" means any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility, for research or teaching purposes or for exhibition purposes or for use as pets, but such term excludes any retail pet shop which breeds or raises animals on its own premises, or any individual who breeds or raises animals on his own premises, unless such animals so bred and raised are sold specifically for research or teaching purposes, or to a dealer.

(j) "Research facility" means any place, laboratory or institution at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

(k) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment or hutch.

(l) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(m) "Sanitize" means to make physically clean and to remove and destroy to a practical minimum, agents injurious to health.

(n) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anes-

thetia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(o) "Ambient temperature" means the temperature surrounding the animal.

(p) "Adequate feed" means the provision at suitable intervals—not to exceed 12 hours—of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.

(q) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner.

(r) "Dog Warden" means any person employed, contracted or appointed by the state or any political subdivision thereof for the purpose of aiding in the enforcement of this law or any other law or ordinance relating to the licensing of dogs, control of dogs, or seizure and impoundment of dogs and includes any state or municipal peace officer, animal control officer, sheriff, constable or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any dog.

Section 3. No municipality shall operate a dog pound for more than six months subsequent to the effective date of this article unless a certificate of registration for such dog pound has been granted by the commissioner. Application for such certificate shall be made in the manner provided by the commissioner. No fee shall be required for such application or certificate. Certificates of Registration shall be valid for a period of _____ years or until revoked and may be renewed for like periods upon application in the manner provided.

Section 4. No person shall operate an animal shelter for more than six months subsequent to the effective date of this article unless a certificate of registration for such animal shelter has been granted by the commissioner. Application for such certificate shall be made in the manner provided by the commissioner. No fee shall be required for such application or certificate. Certificates of Registration shall be valid for a period of _____ years or until revoked and may be renewed for like periods upon application in the manner provided.

Section 5. No person shall operate a pet shop as defined in this article for more than six months subsequent to the effective date of this article unless a license to operate such establishment shall have been granted by the commissioner. Application for such license shall be made in the manner provided by the commissioner. The license period shall be the calendar (or fiscal) year and the license fee shall be \$25 (or \$50 or \$100) for each license period or part thereof beginning with the first day of the calendar (or fiscal) year.

Section 6. No person shall operate a public auction or a kennel as defined in this article for more than six months subsequent to the effective date of this article unless a license to operate such establishment shall have been granted by the commissioner. Application for such license shall be made in the manner provided by the commissioner. The license period shall be the calendar (or fiscal year) and the license fee shall be \$25 (or \$50 or \$100) for each license period or part thereof beginning with the first day of the calendar (or fiscal) year.

Section 7. No person shall be a dealer as defined in this article after the first day of the calendar (or fiscal) year unless a license to deal shall have been granted by the commissioner to such person. Application for such license shall be made in the manner provided by the commissioner. The license period shall be the calendar (or fiscal) year and the license fee shall be \$100 (or \$200 or \$500) for each license period or part thereof beginning with the first day of the calendar (or fiscal) year.

Section 8. A certificate of registration may be denied to any pound or animal shelter and a license may be denied to any public auction, kennel, pet shop or dealer, or, if granted, such certificate or license may be revoked by the commissioner if, after public hearing, it is determined that the housing facilities and/or primary enclosures are inadequate for the purposes of this article or if the feeding, watering, sanitizing, housing practices, and humane Euthanasia methods when required at the pound, animal shelter, public auction, pet shop or kennel, and if compliance with the rules and regulations which may be promulgated pursuant to the authority of this article, are not consistent with the intent of this article or with the intent of said rules and regulations.

Section 9. Operation of a pet shop, kennel or public auction without a currently valid license shall constitute a misdemeanor subject

to a penalty not less than \$_____ and not more than \$_____, and each day of such operation shall constitute a separate offense.

Section 10. Dealing in animals as defined in this article without a currently valid license shall constitute a felony subject to a penalty not less than \$_____ and not more than \$_____, or confinement for a period not to exceed ____ months or both. Continued illegal operation after conviction shall constitute a separate offense. Animals found in the possession or custody of an unlicensed dealer shall be subject to immediate seizure and impoundment, and, upon conviction of such dealer the court shall order that the animals be turned over to the nearest animal welfare organization or otherwise humanely disposed of as deemed proper by the court.

Section 11. Failure of any person licensed or registered to adequately house, feed and water animals in his possession or custody, or when required, to use humane methods of Euthanasia, shall constitute a misdemeanor and upon conviction shall be subject to a fine of not less than (\$2, or \$5, or \$10) per animal or more than a total of (\$1,000 or \$2,000). Such animals shall be subject to seizure and impoundment and upon conviction of such person the court shall order that the animals be turned over to the nearest animal welfare organization or otherwise humanely disposed of as deemed proper by the court, and such failure shall constitute grounds for revocation of license or registration after conviction.

Section 12. The governing body of the political subdivision regulating the operation of a pound shall determine that impounded animals are returned to owners, placed for adoption, or humanely destroyed. Any proceeds deriving from disposition of such animals shall be paid directly to the clerk or treasurer of the political subdivision and no part of such proceeds shall accrue to any individual. The board of directors of an incorporated humane society shall determine the method of disposition of animals released by its animal shelter. Any proceeds deriving from such disposition of animals shall be paid directly to the clerk or treasurer of the humane society and no part of such proceeds shall accrue to any individual.

No dog warden shall give or sell or negotiate for the gift or sale to a pet shop dealer, or research facility of any animal which may come into his custody in the course of carrying out his official assignments. No dog warden shall be granted a dealer's license and each application for such license shall include a statement made under

oath, that neither the applicant or any member or employee of the firm, partnership, or corporation making application is a dog warden within the meaning of the definition herein. A dog warden, upon taking custody of any animal in the course of his official duties, shall immediately make a record of the matter in the manner prescribed by the commissioner and the record shall include a description of the animal including color, breed, sex, approximate weight, reason for seizure, location of seizure, the owner's name and address if known and all license or other identification numbers if any. Complete information relating to the disposition of the dog shall be added in the manner provided by the commissioner immediately after disposition.

Section 13. Violation of any provision of this article which relates to the seizing, impoundment and custody of an animal by a dog warden shall constitute a misdemeanor subject to a fine not less than \$_____ and not more than \$_____, and each animal handled in violation shall constitute a separate offense.

Section 14. (a) The commissioner shall, promulgate rules and regulations consistent with the objectives and intent of this article for the purpose of carrying out such objectives and intent. Such rules and regulations may include, but are not limited to provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals handled, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care. He may at his discretion, after public hearing, adopt in whole or in part, those portions of the rules and regulations promulgated by the Secretary of the United States Department of Agriculture pursuant to the provisions of the United States Public Law 89-544, as amended by the Laboratory Animal Welfare Act of 1970, P.L. 91-579 which are consistent with the intent and purpose of this article. (b) Any rules and regulations promulgated by the Commissioner shall be submitted to interested groups for study and comment sixty days prior to the effective date. (c) Every rule or regulation of the Commissioner shall be posted for public inspection in the main office of the Commissioner and a certified copy filed in the Office of the Secretary of State. Copies of all rules and regulations of the Commissioner authenticated by the signature of said Commissioner shall for all purposes be deemed to be certified copies. A rule or regulation of the Commissioner, when duly posted and

filed as provided in this Section, shall have the force and effect of Law. The Commissioner and any officer or agent of any society duly incorporated under the laws of this State for the prevention of cruelty to animals shall enforce the rules and regulations promulgated by the Commissioner.

Section 15. This article shall not apply to a place or establishment which is operated under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, boarded and cared for incidental to the treatment, prevention, or alleviation of disease processes during the routine practice of the profession of veterinary medicine except that, if animals are accepted by such place, establishment or hospital for the primary purpose of boarding in return for a fee, the place, establishment or hospital shall be subject to the kennel license provisions of this article and the regulations relating thereto which may hereafter be promulgated by the commissioner. This article shall not apply to any dealer or research facility during the period such dealer or research facility is in the possession of a valid license or registration granted by the Secretary of Agriculture pursuant to the provisions of United States Public Law 89-544.

Section 16. For the purposes of administering and enforcing this article and rules and regulations that may hereafter be promulgated thereunder the sum of \$_____ is hereby appropriated.

Section 17. A violation of any provision of this chapter or of any rule or regulation of the Commissioner lawfully made, except as otherwise expressly provided by this chapter, shall be a misdemeanor punishable by a fine not exceeding \$500 or by imprisonment not exceeding one year, and each day during which such violation shall continue shall be deemed a separate violation.

Section 18. If any provision of this article or the application of any such provision to any person or circumstances shall be held invalid, the remainder of the article and the application of any such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

