

***Rescue Me: Legislating Cooperation Between
Animal Control Authorities and Rescue
Organizations***

Rebecca J. Huss*

Notwithstanding the overwhelming evidence that shows how important pets are to many people in the United States, the leading cause of death for dogs and cats in this country is euthanasia because of the lack of homes. Although progress has been made, conservative estimates are that between three and four million dogs and cats are euthanized each year. A successful program for implementing non-lethal strategies to control the pet population incorporates three prongs: (a) increasing adoptions, (d) increasing the number of animals sterilized and (c) increasing the number of animals retained in homes. This Article focuses on the legislative actions that should be taken immediately to implement these non-lethal strategies so that this needless euthanization can end.

INTRODUCTION	2
I. BACKGROUND AND DEFINITIONS.....	11
A. HISTORICAL BACKGROUND	11
B. INNOVATIONS IN ANIMAL SHELTERING	15
C. DEFINITIONS	20
II. NON-LEGISLATIVE SOLUTIONS – WHY CAN’T WE ALL GET ALONG?.....	21
A. ASILOMAR ACCORDS	21
B. OTHER NON-LEGISLATIVE AVENUES	23
III. LEGISLATIVE SOLUTIONS	26
A. THE POTENTIAL PROBLEMS WITH RESCUE ORGANIZATIONS – KEEPING THE ANIMAL AND THE PUBLIC SAFE	26

* Professor of Law, Valparaiso University School of Law; LL.M. University of Iowa, 1995; J.D. University of Richmond, 1992. The author wishes to thank her administrative assistant Melissa Mundt for her invaluable assistance and Professor Taimie Bryant for sharing her ideas and knowledge about this area of the law. This Article is dedicated to all the people who work every day in their communities to save the animals.

(NAME OF JOURNAL)

1.	INADEQUATE RESCUE ORGANIZATIONS/HIDDEN HOARDER PROBLEM.....	27
2.	RESCUE ORGANIZATIONS MAKE UNREASONABLE DEMANDS AND MAKE UNJUSTIFIED AND IRRATIONAL COMPLAINTS AGAINST SHELTERS	32
3.	RESCUE ORGANIZATIONS WILL TAKE ANIMALS AND RESELL THEM FOR PROFIT	37
4.	RESCUE ORGANIZATIONS WILL TAKE ANY ANIMAL REGARDLESS OF PUBLIC SAFETY CONCERNS	39
B.	EXISTING LEGISLATION	42
1.	CALIFORNIA	42
2.	ILLINOIS.....	43
C.	PROPOSED LEGISLATION.....	46
IV.	SPAY OR NEUTER YOUR PET!	51
	CONCLUSION.....	67

INTRODUCTION

The relationship that people in the United States have with companion animals is complicated. In many cases the relationship has changed from one of utility to one of affection and companionship.¹ In some households, these animals are viewed in ways similar to that of human children.² Many people consider

¹ For a discussion on the domestication of animals and the changing role of animals in the United States, see GAIL F. MELSON, WHY THE WILD THINGS ARE: ANIMALS IN THE LIVES OF CHILDREN 19 (2001) (discussing the use of animals in therapy with children); Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. COLO. L. REV. 181, 188-95 (2003) [hereinafter Huss, *Issues Relating to Companion Animals*]. There are many factors that contributed to the development of this new paradigm in the relationship between people and companion animals. Melson cites the effects of urbanization, industrialization, and isolation of modern society as reasons for the new relationship. MELSON, *supra*, at 25-31; see also Leslie Mann, *Pet's Domain Includes the Hearth as Well as the Heart*, CHI. TRIB., Apr. 2, 2000, at 3 (reporting on the changing perspective of dogs as utility animals to dogs as members of families).

² ALAN M. BECK & AARON HONORI KATCHER, BETWEEN PETS AND PEOPLE: THE IMPORTANCE OF ANIMAL COMPANIONSHIP 41 (1996) (citing the analogous treatment of children and companion animals). Although sometimes companion animals are viewed as child substitutes, pets are actually included in the majority of households with children. MELSON, *supra* note 1, at 17 (stating that pets live

LEGISLATING COOPERATION

these animal companions as part of the family.³ The role of these animals as family members has become progressively more important over time.⁴

A significant amount of money is spent on companion animals in the United States. There are estimates that approximately thirty-five billion dollars is spent each year on the care of these animals.⁵

in “at least 75% of all American households with children”); *see also* Sandra Block, *Pet Insurance Can Save Owners From Wrenching Decisions*, USA TODAY, Feb. 19, 2002, at 3B (citing to survey that found that seventy-eight percent of people “think of their pets as their children”).

³ AM. PET PRODS. MFRS. ASS’N, 2002-2003 APPMA NAT’L PET OWNERS SURVEY xxxiv (2003) [hereinafter APPMA] (reporting that in a recent poll seventy percent of people with dogs and sixty-two percent of people with cats agreed with the statement that the companion animals in their households were like children or family members); *see also* Aaron H. Katcher, *How Companion Animals Make Us Feel*, in PERCEPTIONS OF ANIMALS IN AMERICAN CULTURE 121, 123 (R. J. Hoage ed., 1989) (discussing studies that find that pets are viewed as “members of the family”).

⁴ Katcher, *supra* note 3, at 123 (citing to the studies that show that fewer people are having children and that there are fewer children in families); APPMA, *supra* note 3, at xxiv (finding that for ninety-six percent of dog owners and eighty-eight percent of cat owners the benefits of ownership include companionship, love, company and affection); Shepherd Pittman, *America’s Furry Families; Owners Spending More Time; Money on Pets*, WASH. TIMES, Oct. 11, 2005, at A2 (analyzing increase in pet ownership in the United States and the relationship that people have with their animals); Karen Dawn, *Best Friends Need Shelter, Too*, WASH. POST, Sept. 10, 2005, at A23 (discussing the issue of people refusing to evacuate because “people ‘won’t leave their pets’”).

⁵ AM. PET PRODS. MFRS. ASS’N, 2005-2006 APPMA NAT’L PET OWNERS SURVEY Industry Statistics and Trends, http://www.appma.org/press_industrytrends.asp (last visited Feb. 1, 2006); *see also* Maureen Jenkins, *A Dog’s Life; Pets Considered Part of the Family*, CHI. SUN-TIMES, Sept. 2, 2005, at 68 (discussing day care and play groups for dogs and other activities that Chicago areas dog owners engage in with their dogs); Gregory Karp, *Pet Project: Cut Spending Where Possible*, CHI. TRIB., Apr. 10, 2005, at C8 (discussing luxury spending on pets and cost cutting tips); Coco Masters, *Let’s Pawty!; Petlane Combines Pet Products with Direct Sales to Educate Pet Owners and Entertain America’s “New Kids”*, TIME MAG., Apr. 11, 2005, at A20 (discussing direct marketing company that sells pet accessories, toys and treats); Deborah Wood, *Pet Talk – Our Lives are Going to the Dogs and We Love It*, OREGONIAN, Nov. 6, 2005, at 012 (discussing the changing relationship from “‘just a dog’ to a ‘fur kid’” and the activities and money that Americans are spending with and on their animals).

(NAME OF JOURNAL)

The amount of money that people are willing to spend on medical care for their animals varies widely; however, the total amount of money spent by pet owners in the United States on veterinary care is estimated at nineteen billion dollars per year.⁶ One survey

⁶ AM. VETERINARY MED. ASS'N, U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK 99 (2002) (reporting that the total veterinary expenditures for 2001 was \$18.94 billion); Margaret Graham Tebo, *Pet Project: New ABA Committee on Animal Law Focuses on Post-Katrina Rescue Efforts*, 91 A.B.A. J. 72, 72 (quoting Barbara Gislason, the chair of the Animal Law Committee of the Tort, Trial and Insurance Law Section of the American Bar Association); see also Jerry Gleeson, *Dog-gone Expensive*, J. NEWS (Westchester Co., N.Y.), Dec. 26, 2001, at 1D (reporting on a survey by the American Animal Hospital Association that found that more than one third of the respondents said they “would spend any amount of money to save the lives of their pets. Eighteen percent . . . said they had spent more than \$1,000 on veterinary care for their pets in the previous 12 months.”). The amount of money spent on veterinary care has increased significantly in the last decade. *Veterinary Care Without the Bite*, CONSUMER REP., July 2003, at 12 (stating that “[s]pending on veterinary services jumped to \$18.2 billion in 2001, nearly triple the 1991 level”). The “demand for veterinary services has grown significantly faster than growth in the overall economy” for the period from 1980 through 1997, and growth through the year 2015 is expected to be considerably higher than the anticipated growth in total consumer expenditures. John P. Brown & Jon D. Silverman, *The Current and Future Market for Veterinarians and Veterinary Medical Services in the United States: Executive Summary*, May 1999, 215 J. AM. VETERINARY MED. ASS'N 161, 164 (1999). The Executive Summary is derived from a comprehensive study of the veterinary profession that was commissioned by the American Veterinary Medical Association, American Animal Hospital Association, and Association of American Veterinary Medical Colleges. *Id.* at 161. Veterinarians specialize in areas of medicine such as dermatology, cardiology, dentistry, neurology, oncology, and ophthalmology. American Veterinary Medical Association, Market Statistics, Veterinary Specialties, <http://www.avma.org/membshp/marketstats/vetspec.asp> (last visited Feb. 1, 2006). Holistic treatments are available as an alternative to traditional veterinary medicine. Bill Shein, *It's a Dog's Life—and a Good One*, BERKSHIRE EAGLE (Pittsfield, MA), Jan. 18, 2006 (discussing alternative therapies for animals). See generally, Alt Vet Med, Complementary and Alternative Veterinary Medicine, <http://www.altvetmed.org> (last visited Feb. 1, 2006) (providing articles and links to complementary and alternative veterinary medical information).

LEGISLATING COOPERATION

indicated that 94% of pet owners take their dogs or cats to a veterinarian regularly.⁷

A recent example of the resources devoted to certain companion animals in this country is the effort to rescue the pets of people displaced by Hurricane Katrina. Pets were reportedly the number one reason that residents refused to leave their flooded homes⁸ and researchers have estimated that twenty percent of people ordered to evacuate would not do so if it meant leaving pets behind.⁹ The Humane Society of the United States estimated that

⁷ American Animal Hospital Association, Pet Owner Survey News Release, *It's Official, Pets Rule the Roost*, http://www.aahanet.org/About_aaha/About_PressKit_POSrelease.html (last visited Feb. 1, 2006). One reason for the regular visits to veterinarians is the requirement that dogs (and sometimes cats) be vaccinated against rabies pursuant to state law. See JAMES F. WILSON, LAW AND ETHICS OF THE VETERINARY PROFESSION 79-80 (1988). Unlike childhood vaccinations that are concentrated within the first few years of life, depending on the jurisdiction, rabies boosters are required every two or three years. *Id.* Individual jurisdictions set the frequency that rabies vaccinations must be administered. *Id.* Lawsuits alleging that particular statutes relating to the control of animals are beyond the police power of the jurisdiction have generally been unsuccessful. ORLAND A. SOAVE, ANIMALS, THE LAW AND VETERINARY MEDICINE, A GUIDE TO VETERINARY LAW 164 (4th ed. 2000). Note that what an owner means by visiting the veterinarian regularly may vary widely. One poll found that the average number of visits to a veterinarian per year for dogs was 2.7 and cats 2.3. APPMA, *supra* note 3, at xxiv. However, about “one-out-of-ten dogs were not taken to the veterinarian during the past 12 months.” *Id.* at 9. The percentage of cats that are not taken to the veterinarian during the past twelve months is much higher at twenty-seven percent. *Id.* at 69.

⁸ Sandy Davis, *Hard to Go, Rescuers Say Efforts Disorganized, Many Pet Owners Cling to Homes*, ADVOCATE (Baton Rouge, LA), Sept. 7, 2005, at A1 (stating that “[p]ets appeared to be the No. 1 reason that many of the estimated 10,000 residents still holed up in their flooded homes are refusing to leave”).

⁹ Robin Brown, *Together They Stand; Pet-Lovers' Loyalty Becomes Even More Clear After Hurricane's Devastating Blows*, NEWS J. (Wilmington, DE), Dec. 9, 2005, at A22 (citing to researchers at the University of Colorado); see also Leslie Irvine, *Providing for Pets During Disasters: An Exploratory Study*, <http://www.colorado.edu/hazards/qr/qr171/qr171.pdf> (last visited Jan. 30, 2006) (providing twenty percent statistic and other information regarding research on disaster planning for pets). Another expert has stated that thirty percent of pet owners will not leave their homes without their pets. Sharon Kiley Mack, *Animal Rescue Team Plans State Crisis Response*, BANGOR DAILY NEWS

(NAME OF JOURNAL)

50,000 pets were left behind in New Orleans.¹⁰ The estimates of the numbers of companion animals rescued varied between 8,500¹¹ and 20,000¹² animals. One estimate was that the rescue effort

(Bangor, ME), Oct. 19, 2005, at B1 (quoting Bill Gentry the head of North Carolina's State Animal Response Team).

¹⁰ Tom Spaulding, *Hoosiers Open Homes to Storm Pets; Officials Praise Adoptions, but Lament the Fate of Local Animals*, INDIANAPOLIS STAR, Sept. 26, 2005, at 1B (quoting Rachel Querry, spokeswoman for the Humane Society of the United States); see also Bill Hogan, *Orphans of the Storm, You Can Call Them Louis, Iowa, Louis, Curly, Carl, Eddie, Arlo. Or Just Lucky*, CHI. TRIB., Dec. 7, 2005, at C1 (citing to estimates by the Humane Society of the United States). Note that estimates of the numbers of animals impacted by the storm varied widely and reports were not always clear about what types of animals were affected and the location of the animals. For example the statement was made that "more than 600,000 [pets] were left on their own in Hurricane Katrina's wake." *In New Orleans, A Pet Project: Saving Those Left Behind*, WASH. POST, Sept. 18, 2005, at A19 (stating estimates by the U.S. Humane Society and discussing the fact that other animals were lost in Mississippi). One estimate is that 200,000 animals died in the aftermath of Katrina. Tricia Jones, *Rescue Mission; Clark College Professor Spends Break Aiding Hurricane's Animal Victims*, COLUMBIAN (Vancouver, WA), Jan. 15, 2006, at D1 (quoting Jane Garrison, founder of Animal Rescue New Orleans); Brenda Rindge, *Jane Garrison; Animal Activist Still Rescuing Katrina's Other Victims*, POST AND COURIER (Charleston, SC), Jan. 28, 2006, at F1 (quoting Jane Garrison). Another estimate is that well over 100,000 pets perished in the aftermath of Katrina. Joyce Maynard, *The Dogs of New Orleans; After all the Human Tragedy, Pets Left Behind Were an Afterthought—Except to a Pack of Determined Rescuers*, SAN FRANCISCO CHRON., Nov. 29, 2005, at E1 (discussing rescue efforts in New Orleans eleven weeks after Hurricane Katrina).

¹¹ Pam Firmin, *It's Puppy Season: Katrina Sets Pets Free, and Shelters are Filling Up*, SUN HERALD (Biloxi, MS), Jan. 22, 2006, at B1 (stating that Petfinder.com statistics show that "the number of animals rescued in the Gulf states after hurricanes Katrina and Rita topped 8,500"); Paul Purpura, *Donation Comes to the Aid of Animal Rescue Group; N.O. SPCA Can Now Rebuild its Facility*, TIMES-PICAYUNE (New Orleans), Jan. 31, 2006, at 1 (quoting Laura Maloney, the executive director of the Louisiana SPCA that "more than 8,500 animals were rescued with the help of outside agencies").

¹² Katie Schmidt, *Hurricane-Displaced Animals Find Homes with U. Iowa-Area Residents*, U. WIRE, Jan. 25, 2006 (quoting Christine Petersen, assistant professor of veterinary pathology and hurricane volunteer, that 20,000 animals were rescued); see also Sara Ivry, *An Outpouring for Other Victims, The Four-Legged Kind*, N.Y. TIMES, Nov. 14, 2005, at F24 (quoting Jo Sullivan, the American Society for the Prevention for Cruelty to Animals Senior Vice

LEGISLATING COOPERATION

would cost more than fifteen million dollars.¹³ Even given the considerable efforts of the volunteers, the estimated percentage of animals that have been reunited with their owners (while also varying widely) is limited to between ten¹⁴ to twenty-five percent.¹⁵

In contrast to these animals where significant attention and resources have been allocated, millions of dogs and cats are euthanized each year because they lack a home.¹⁶ In fact “[e]uthanasia of healthy, homeless cats and dogs remains the leading cause of death of these species.”¹⁷ Although the number of

President for Development and Communication, that estimated that 13,000 to 15,000 animals were cared for by welfare and rescue groups).

¹³ Laura Parker & Anita Manning, *Trapped New Orleans Pets Still Being Rescued*, USA TODAY, Oct. 6, 2005, at 1A (discussing the largest pet rescue operation in U.S. history and the costs, which includes the reconstruction costs of animal shelters in Louisiana and Mississippi). A great deal of money was raised to assist in the rescue effort. Ivry, *supra* note 12, at F24 (stating that among other groups, the Humane Society of the United States received donations after Hurricane Katrina totaling \$20 million, the American Society for Prevention for Cruelty to Animals received \$13 million, and the American Humane Association received \$1.6 million). The Humane Society of the United States reports on its website that it has spent or has committed to spending over twenty million dollars on disaster relief efforts. Humane Society of the United States, 2005 Disaster Relief, An Unprecedented Show of Kindness Toward Animals, An Unprecedented HSUS Disaster Response, http://www.hsus.org/hsus_field/hsus_disaster_center/recent_activities_and_information/2005_disaster_response/hurricane_katrina/unprecedented_show_of_kindness.html (last visited Mar. 1, 2006).

¹⁴ Jones, *supra* note 10, at D1 (quoting ten percent figure of Jane Garrison, founder of Animal Rescue New Orleans); Martin Savidge, *Pet Reunions Rare After the Storms: Despite Heavy Publicity, Owners Aren't Finding Their Abandoned Pets*, (Dec. 2, 2005) <http://msnbc.com/id/103003291> (citing to reunion rates of less than fifteen percent).

¹⁵ Schmidt, *supra* note 12 (quoting Christine Petersen, assistant professor of veterinary pathology and hurricane volunteer that “nearly 20,000 animals were rescued after the hurricane, but only 5,000 to 6,000 were reunited with their original owners”).

¹⁶ Spaulding, *supra* note 10, at 1B (discussing adoption of animals evacuated from Gulf Coast but highlighting continuing local overpopulation problem)

¹⁷ Auburn University, College of Veterinary Medicine, Maddie’s Shelter Medicine Program, Information and Protocols No More Homeless Pets, http://www.vetmed.auburn.edu/index.pl/no_more_homeless_pets2 (last visited

dogs and cat that are euthanized each year has decreased substantially in the last two decades,¹⁸ there are estimates that between three and four million dogs and cats are euthanized each year.¹⁹ Using the midpoint of that number as a guide that equals about 9600 animals euthanized each day.²⁰ Another way to think about it is 400 animals each hour or seven animals each minute are euthanized.

There are many ramifications from the euthanization of these animals. Of course to each animal, it is a death sentence. There are economic costs associated with using euthanization as a form of animal control.²¹ There is also a significant psychological

Jan. 24, 2006). "In fact, euthanasia kills more pets than any known 'disease.'" *Id.*

¹⁸ Jennifer Fiala, *Shelter Euthanasia Rates Drop to Historical Lows*, DVM NEWSMAGAZINE, July 2003, at 26. The American Humane Association reported 17.8 million shelter deaths in 1985. *Id.* Note from Author to Editors: I have deliberately used the more palatable but less precise term of "euthanasia" throughout this Article but have no objection to changing the language to the more accurate "kill."

¹⁹ Pet Overpopulation and Ownership Statistics, http://www.hsus.org/pets/issues_affecting_our_pets/pet_overpopulation_and_ownership_statistics/ (last visited Feb. 6, 2006). It is difficult to measure the true rate of euthanasia because organizations are often not required to maintain records of the status of the animals entering and leaving a shelter. Fiala, *supra* note 18, at 26; see also John Wenstrup & Alexis Dowidchuk, *Pet Overpopulation: Data and Measurement Issues in Shelters*, 2 (4) J. APPLIED ANIMAL WELFARE SCI. 303, 304 (2000) (discussing issues relating to current data collection process). In contrast to the difficulty in obtaining national statistics, Michigan state law requires all Michigan licensed animal shelters to collect admission and discharge data. MICH. COMP. LAWS § 287.339a (2005) (stating that animal shelters shall maintain records on the number of dogs, cats, and ferrets received; returned to owners; adopted; and euthanized and provide a report annually). A recent study analyzing that data found that smaller shelters and privately owned shelters had lower euthanization rates than larger shelters. Paul C. Barlett et al., *Rates of Euthanasia and Adoption for Dogs and Cats in Michigan Animal Shelters*, 8 J. OF APPLIED ANIMAL WELFARE SCI. 97, 100 (2005).

²⁰ The specific number is 9589 animals.

²¹ Although statistics are dated, one estimate was that \$500 million dollars per year was spent on this form of animal control. Merry Lepper, et al., *Prediction of Adoption Versus Euthanasia Among Dogs and Cats in a California Animal*

LEGISLATING COOPERATION

impact on the shelter employees that are part of the euthanization process.²²

There are media and anecdotal reports that suggest that shelter workers performing animal euthanasia are under a high level of stress.²³ There has been recent quantitative research finding that there is strain associated with euthanasia work.²⁴ More specifically, conducting animal euthanasia was found to be a “unique source of work stress” that has a negative impact on the employees well being.²⁵

There must be improvements in the system. A successful program for implementing non-lethal strategies in pet population control includes three prongs. These three prongs are to (a) increase adoptions, (b) increase sterilizations, and (c) increase the retention of companion animals in homes.²⁶ This Article focuses

Shelter, 5 J. OF APPLIED ANIMAL WELFARE SCI. 29, 30 (2002) (citing to a 1984 study when euthanasia rates were higher); see also Joshua Frank, *An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Cost of Addressing the Problem*, <http://www.firepaw.org/wpmodel.html> (last visited Feb. 14, 2006) (discussing costs of dog overpopulation to human society and citing to one 1992 study that found that shelters spend one billion dollars a year dealing with unwanted companion animals and another 1992 study that found estimated that cities and counties spent \$500 million on animal control each year).

²² In the adoption of the provisions requiring sterilization of animals adopted from shelters in Arkansas, the legislative record notes that the legislature took note that “[s]helter personnel suffer enormous psychological strain caused by the hidden costs to society of irresponsible pet owners.” (Publishers Notes Acts 1999, No. 488) to ARK. CODE ANN. § 20-19-103 (2006).

²³ Charlie L. Reeve et al., *The Caring-Killing Paradox: Euthanasia-Related Strain Among Animal-Shelter Workers*, 35 J. OF APPLIED SOC. PSYCHOL. 119, 120 (2005); see also Charlie L. Reeve et al., *Employee Reactions and Adjustment to Euthanasia-Related Work: Identifying Turning-Point Events Through Retrospective Narratives*, 7 J. OF APPLIED ANIMAL WELFARE SCI. 1, 21 (2004) (discussing various events discussed in interviews with shelter workers involved with euthanasia work).

²⁴ Reeve et al., *supra* note 23, at 136.

²⁵ *Id.*

²⁶ These three prongs are commonly known in the welfare community. See, e.g., Auburn University College of Veterinary Medicine, Maddie’s Shelter Medicine Program, Non-Lethal Strategies for Pet Population Control,

on the legislative actions that need to be taken to implement these strategies. Of these three prongs, the first two are suitable for immediate legislative attention and are the focus of this Article.²⁷ The first section will set forth the necessary background and definitions for the problem. To increase adoptions, legislation is needed to require animal control organizations to work with rescue organizations. The second section discusses some of the non-legislative efforts that have encouraged organizations to work together. The third section analyzes the limited legislative measures that have been taken in this area, scrutinizes the concerns that have been raised about such legislation and sets forth guidelines for new legislation. In the area of sterilization, legislation has been implemented in some states, but such legislation is flawed and should be revised. The fourth section evaluates the current state of sterilization legislation and provides recommendations for changes. A conclusion considers the future of non-lethal strategies in pet population control.²⁸

http://www.vetmed.auburn.edu/index.pl/non-lethal_strategies_for_pet_population_control (last visited on Jan. 24, 2006). Note that the issue of retention of animals in homes will be discussed briefly in the conclusion but involves issues that are beyond the scope of this Article.

²⁷ By freeing up resources, more attention can be devoted to education, leading to higher retention rates. *See infra* notes 281-88 and accompanying text (discussing retention of companion animals in homes).

²⁸ There are serious issues that are outside the scope of this Article. One of these issues is the ongoing debate over the control of the feral cat population. Shawn Gorman & Julie Levy, *A Public Policy Toward the Management of Feral Cats*, 2 *Pierce L. Rev.* 157 (2004). There are estimates that the number of feral cats is equal to the number of cats that are kept as pets in the United States. *Compare* No Kill Solutions, Resource Material, *Do Feral Cats Have a Right to Live? A National No Kill Standard for Feral Cats*, at 4, <http://www.nokillsolutions.com/pdf/Feral%20Cats.pdf> (last visited Feb. 6, 2006) (estimating that there are 100 million feral cats in the United States) *with* AM. PET PRODS. MFRS. ASS'N, *supra* note 5 (estimating that there are 90.5 million domesticated cats in the United States). A variety of methods have been utilized to deal with free roaming cats. An example of one local ordinance that received significant publicity was in Akron, Ohio. To date, opponents of the Akron ordinance have been unsuccessful in having the ordinance overturned. Lisa A. Abraham, *Foes of Cat Law Still Not Licked Activists Ask Appeals Court for Trail to Challenge 2002 Akron Ordinance*, *Akron Bus. J.*, Jan. 14, 2005, at B1. The

LEGISLATING COOPERATION

I. BACKGROUND AND DEFINITIONS

A. Historical Background

It is necessarily to briefly describe the historical background of the structure of the animal welfare movement in order to understand the relationship between the entities today. Anticruelty statutes began to be passed in greater numbers in the 1860s.²⁹ In 1866 the New York legislature granted the charter for the American Society for the Prevention for Cruelty to Animals (“ASPCA”).³⁰ The ASPCA and other humane organizations (collectively “humane societies”) took on many activities in the

Akron ordinance provided for trapping and euthanasia of cats that were “running at large.” AKRON, OHIO, CODE § 92.01 (2005). Cats that are not identified as being owned are evaluated to determine whether they should be euthanized due to health reasons or are feral or are transferred to the county facility for adoption. AKRON, OHIO, CODE § 92.15 (2005); *see also* City of Akron, Akron’s Animal Control Ordinance, http://www.ci.akron.oh.us?temporary_Pages/cats.htm; (last visited Feb. 27, 2006) (describing Akron’s ordinance). The Akron ordinance received widespread publicity in part because there were reports that rather than being transferred for potential adoption, domesticated cats were immediately being euthanized. Michael Sangiacomo, *Akron Law to Trip, Kill Cats, is OK, Judge Rules*, PLAIN DEALER, May 6, 2004, at B3; Michael Sangiacomo, *Cat Lovers Pounce on Akron Plan to Kill Strays*, PLAIN DEALER, Apr. 12, 2002, at B6. In contrast, there are several well known programs where feral cat colonies are maintained through what are referred to as trap, neuter and release (or return) programs. *See, e.g.*, Alley Cat Allies, <http://www.alleycat.org> (last visited Feb. 27, 2006) (discussing feral cats and programs). In these programs, feral cats are trapped by volunteers, sterilized, and vaccinated and then returned to the same geographic area where they were found. The theory is that these sterilized animals keep the population at a stable number. There are obvious philosophical differences supporting the policies dealing with feral cats that deal with environmental and social policy issues that are ancillary to the primary focus of this Article.

²⁹ David Favre & Vivian Tsang, *The Development of Anti-Cruelty Laws During the 1800s*, 1993 DET. C. L. REV. 1, 5 (1993); *see also* GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 42 (1995) (noting that a few states had anticruelty statutes prior to this time including New York State and the Massachusetts Bay Colony).

³⁰ Favre & Tsang, *supra* note 29, at 13.

area of animal welfare including education and veterinary care.³¹ One of the activities that many humane societies took on early in their history was contracting with municipalities for the enforcement of anticruelty laws and other public duties.³² The purpose was to have some enforcement of these laws – that would not otherwise be enforced.³³ Another duty taken over by these humane societies was the euthanasia of diseased or homeless animals.³⁴ For example, the ASPCA took over the management of New York City’s animal shelters in 1894 and performed the animal control function until 1994.³⁵ By taking on the role themselves these organizations believed the euthanization could be done in a more humane manner.³⁶ Humane societies would receive a fee or tax exemption for their role – so there was an economic benefit as well.³⁷ It is important to note that the emphasis for many early humane societies was on protecting horses rather than cats and dogs.³⁸ The economic value of horses was established and the role of dogs and cats in society was substantially different than it is today.³⁹ Over time, the emphasis began to turn to companion animals.⁴⁰

This public-private partnership has survived to the present time, although not always without controversy. A recent New Jersey case that illustrates one of these tensions is *Gerofsky v.*

³¹ WILLIAM J. SHULTZ, *THE HUMANE MOVEMENT IN THE UNITED STATES, 1910-1922*, 29-40 (1924) (discussing activities of representative societies).

³² FRANK BACKUS WILLIAMS, *THE ADMINISTRATION OF THE LAW FOR THE PREVENTION OF CRUELTY TO ANIMALS IN LEGISLATION FOR THE PROTECTION OF ANIMALS AND CHILDREN* 8 (Samuel McCune Lindsay ed., 1914).

³³ *Id.* at 8.

³⁴ SCHULZ, *supra* note 31, at 40.

³⁵ Stephen Zawistowski et al., *Population Dynamics, Overpopulations and the Welfare of Companion Animals: New Insights on Old and New Data*, 1 J. OF APPLIED ANIMAL WELFARE SCI. 193, 194, 201 (1998).

³⁶ *Id.* at 194.

³⁷ WILLIAMS, *supra* note 32, at 8.

³⁸ Zawistowski, *supra* note 35, at 193.

³⁹ *Id.* at 193-94; *see also* Huss, *Issues Relating to Companion Animals*, *supra* note 1, at 192-94 (discussing the changing role of companion animals in United States society).

⁴⁰ Zawistowski, *supra* note 34, at 194.

LEGISLATING COOPERATION

Passaic County Society for the Prevention of Cruelty to Animals.⁴¹ The Gerofsky case is useful because it discusses the role of SPCAs in law enforcement and specifically references a process that New Jersey had been going through to consider the role of private groups in the public arena.⁴²

There was a complicated procedural history, involving the relationship between the state and county SPCAs, but the core issue in Gerofsky was whether the county prosecutors had the authority to supervise a county SPCA's law enforcement activities.⁴³ Through a directive, a county prosecutor had suspended the members of the county SPCA's law enforcement functions.⁴⁴ After negotiations, the county prosecutor set up requirements for the county SPCA members to carry out animal cruelty investigations under the prosecutor's supervision.⁴⁵ The state SPCA applied to the court for an order to revoke the certificate of authority of the county SPCA.⁴⁶ The Gerofsky case concluded that the county prosecutors had the constitutional and statutory authority to supervise all law enforcement in the county including SPCA members that exercise law enforcement powers.⁴⁷

Another example of the difficulties inherent in the public-private partnership occurs because the history of animal control as one researcher describes is as an ad hoc response with "limited attention paid to the development of systematic programs of efforts

⁴¹ 870 A.2d. 704 (N.J. Super. Ct. App. Div. 2005).

⁴² *Id.* at 706-07. In New Jersey a State Commission of Investigation and a Task Force appointed by the Governor issued reports that were critical of the current operations of the SPCAs' and recommended "either repeal or substantial modification of the statutes that confer law enforcement authority upon these private groups." *Id.* at 706.

⁴³ *Id.* at 707-08.

⁴⁴ *Id.* at 708. One of the stated concerns was that the members were in violation of gun laws. *Id.*

⁴⁵ *Id.* at 708. The new memorandum of understanding required the members to complete courses in firearms, animal control investigations, and a background check. *Id.*

⁴⁶ *Id.* at 709. The basis of the state SPCA application is the directive suspending the law enforcement functions of the county SPCA. *Id.* at 708-09.

⁴⁷ *Id.* at 711.

(NAME OF JOURNAL)

during those years.”⁴⁸ The result is the lack of long term statistics to measure any progress in this area.⁴⁹

There are many different ways jurisdictions structure the relationship between the government and the private party.⁵⁰ In some jurisdictions, the county or city provides the building and the nongovernmental organization runs the operation.⁵¹ In other jurisdictions, the nongovernmental organization may contract with municipalities for housing animals.⁵²

⁴⁸ Zawistowski, *supra* note 35, at 195 (discussing history of animal control).

⁴⁹ *Id.*

⁵⁰ *See, e.g.*, The Bowling Green Warren County, Kentucky Humane Society describes itself and its funding as follows:

The Humane Society is an independent, non-profit agency contracted by Warren County to operate the animal shelter, which we moved into in 1983. The Humane Society is not a department of city or county government. The city and county own the shelter building. The Humane Society receives funds from city and county governments to operate the shelter. This funding is used to pay for management/employee salaries, utility bills, cleaning supplies/chemicals, euthanasia solution, cat litter, fuel for rescue vehicles and building repairs/maintenance. Humane Society DONATIONS are used to pay for medical care of sick and injured animals, animal cages, incidental supplies such as food/water bowls, dog/cat treats, canned cat/dog food, dog/cat toys, supplies for fund raisers and education/outreach programs. Hill's Pet Products donates dog, cat, kitten and puppy food.

The Humane Society's mission is to provide a clean comfortable shelter for homeless, abused, lost and impounded animals of our community; to place as many of these animals as possible in loving and responsible homes and humanely euthanize those not adopted; to investigate complaints of animal abuse/neglect; and to educate the public about responsible care of companion animals, **ESPECIALLY SPAY/NEUTER!**

Bowling Green Warren County Humane Society, <http://www.petfinder.com/shelters/KY18.html> (last visited Feb. 27, 2006).

⁵¹ *Id.*

⁵² *See, e.g.*, Blue Mountain Humane Society of Walla Walla, <http://www.bluemountainhumane.org> (last visited Dec. 13, 2005) (describing funding sources for Walla Walla, Washington, Humane Society, including some small municipal contracts for housing animals); Dubuque Humane Society,

LEGISLATING COOPERATION

B. Innovations in Animal Sheltering

There have been several innovations in the animal sheltering system. In 1923 the American Veterinary Medical Association (AVMA) approved standards for sterilization surgeries for dogs and cats providing the first step in combating pet overpopulation.⁵³ In the 1970s the level of sterilization of pets was still quite low, with only 10% of pet dogs and 1% of pet cats sterilized.⁵⁴ In contrast, currently more than 70% of pets today are sterilized.⁵⁵ Although the sterilization rate is improving, given the birth rate of dogs and cats, even a relatively small number of intact animals can have a large impact on a community's pet population rate.⁵⁶

Another major change is in how shelters view themselves. The emphasis on "numbers euthanized" has not always been an issue even for humane societies.⁵⁷ There is a psychological deterrent in

<https://www.dbqhumane.org/onlinedonations.cfm> (last visited Feb. 14, 2006) (describing funding for the Dubuque, Iowa Humane Society which has contracts to house animals from two counties and the city of Dubuque); Larimer Humane Society, <http://www.larimerhumane.org/about/index.cfm> (last visited Dec. 13, 2005) (describing funding sources for the Larimer, Colorado, Humane Society, but stating that the funding from the Animal Protection and Control contracts does not help with rehabilitation or adoption expenses).

⁵³ Merritt Clifton, *Who Invented No-Kill*, ANIMAL PEOPLE, Sept. 9, 2005, available at

<http://www.animalpeoplenews.org/05/9/whoinventedNoKill9.0t.htm>.

[hereinafter Clifton, *Who Invented No-Kill*] It was not until 1957 when the Friends of Animals opened a low cost clinic that sterilization for pets became affordable for people in the United States. *Id.*

⁵⁴ *Id.*

⁵⁵ Merritt Clifton, *What Has No-Kill Accomplished*, ANIMAL PEOPLE, Sept. 5, 2005, available at

<http://www.animalpeoplenews.org/05/9/whoinventedNoKill9.05.htm>.

[hereinafter Clifton, *What Has No-Kill Accomplished*] See *infra* notes 72-83 and accompanying text (discussing role of no kill movement).

⁵⁶ See *infra* notes 215-23 and accompanying text (discussing sterilization issues and the birth rate for dogs and cats).

⁵⁷ Zawistowski, *supra* note 35, at 194 (discussing the ASPCA's annual report in 1895 which "felt itself successful in its management of New York City's animal shelters because the ASPCA euthanized more animals than had previous authorities). The reasoning behind the ASPCA's belief was that it eliminated the previous bounty system and thus the animals that were euthanized were true

adopting animals from a facility where euthanasia occurs.⁵⁸ Governmental organizations whose historical focus has been on animal control have recently reinvented themselves as animal *care* and control.⁵⁹ Dingy unattractive shelters discourage people from coming to adopt animals.⁶⁰ Providing a more welcoming atmosphere for adoptions is an important part of this message. Renovating or building new facilities so that potential adopters will feel comfortable is part of this changing atmosphere.⁶¹ In addition, having trained personnel that match adopters with the right animal to ensure long-term success is important in the adoption process.⁶²

The North Shore Animal League illustrated the idea of “high volume” adoption early in its history and it now promotes itself as

strays and were euthanized in a more humane manner than under the previous system. *Id.*

⁵⁸ Lee Anne Fennell, *Beyond Overpopulation: A Comment on Zawistowski et al. and Salman et al.*, 2 J. OF APPLIED ANIMAL WELFARE SCI. 217, 224 (1999).

⁵⁹ Julie Richard, *Gimme Shelter, Responding to Public Pressure, It's Now Animal Care & Control*, BEST FRIENDS MAG., May/June 2005, at 14, 15 (discussing changes made at the San Antonio Animal Control Shelter and other city and country shelters in response to the growing no-kill movement).

⁶⁰ Fennell, *supra* note 50, at 217, 222-24 (discussing the physical characteristics of shelters that discourage adoptions).

⁶¹ Elizabeth Weinstein, *Animal Shelters Upgrade Creature Comforts*, WALL ST. J., Apr. 19, 2005, at B1 (discussing changing aesthetics and architecture in San Francisco, California, and San Antonio, Texas, shelters). Locating shelters to geographic areas closer to retail stores also has been part of the plan of some planners. *Id.*; see also Lucina Schlaffer, AIA & Paul Bonacci, AIA, *Design for Shelter Animals in a No-Kill World*, Maddies Fund, For Animal Organizations, Shelter Health.Behavior, http://www.maddies.org/organizations/shelter_nokill_designs.html (last visited Feb. 20, 2006) (discussing the importance of a comfortable waiting area for people who are in the shelter to adopt animals).

⁶² Erica Solvig, *Shelter's Goal: Get Pets Homes*, DESERT SUN (Palm Springs, CA), Jan. 15, 2006, at A1 (discussing opening of new county animal shelter and the hiring of adoption coordinators to help make matches). Claims of animal cruelty in 2004 prompted an audit of this shelter and an animal control officer of this county was fired after he was videotaped dragging a dog rescued from Hurricane Katrina across the pavement at Palm Springs International Airport. *Id.*

LEGISLATING COOPERATION

the “largest pet adoption agency in the world.”⁶³ The pet supply store Petco Animal Supplies, Inc.’s (Petco) decision to display animals from local shelters rather than sell animals from breeders was another major innovation in the adoption process.⁶⁴ The Petco adoption process assists in the adoption of pets by a variety of organizations each month.⁶⁵

PetSmart, Inc. another pet supply company encourages local rescue organizations to work together as a network. PetSmart actively promotes its adoption activities and announced in 2004 that since the inception in 1994 two million pets had been adopted through its program.⁶⁶

Perhaps the most significant innovation is the development of the Internet and the ability of people to search for animals online. Petfinder.com is the largest site in the U.S.⁶⁷ In 2003, the

⁶³ North Shore Animal League, *The Beginnings*, http://www.nsalamerica.org/about/the_beginnings.html (last visited Feb. 6, 2006); Clifton, *Who Invented No Kill*, *supra* note 53 (citing to statistics from the 1940s and 1950s).

⁶⁴ There are now over 750 Petco locations nationwide. Petco Storefinder, <http://www.petco.com/Content/Content.aspx?PC=ourstorehome&Nav=4> (last visited Dec. 20, 2005).

⁶⁵ Petco Pet Adoptions, <http://www.petco.com/Content/StoreAdoptions.aspx?PC=storeadoptions&Nav=114&=> (last visited Dec. 20, 2005) (discussing the partnership that Petco stores have with local organizations).

⁶⁶ PetSmart Adoptions, <http://www.petsmart.com/adoptions/index.shtml> (last visited Feb. 14, 2006) (citing to over 2,400,000 pets adopted as of February 2006 partnering with over 3,400 humane organizations).

⁶⁷ *PETCO Announces Industry Leading “Think Adoption First” Initiative Kick-Off of New Effort Will Include National Pet Adoption Weekend*, August 28-29, (Aug. 20, 2004), <http://www.petco.com/Content/PressRelease.aspx?PC=pr082004&Nav=146&=> (last visited Dec. 20, 2005) [hereinafter *Petco, Think Adoption First*] (discussing the Think Adoption First initiative but also discussing Petfinder.com generally). Petfinder.com “went national” in 1998. Petfinder.com, *Petfinder.com Gives Shelter Pets New Byte*, <http://www.petfinder.com/press.html> (last visited Dec. 20, 2005) [hereinafter *Petfinder.com Gives Shelter Pets New Byte*]; see also Alex L. Goldfayn, *PetFinder Provides a Simpler Selection*, CHI. TRIB., Nov. 19, 2005, at C4 (discussing use of Petfinder.com to adopt animals and the average of 200,000 animal listings per day on the site).

“adoption partners” on Petfinder.com “found homes for more than 1.5 million animals.”⁶⁸ There are over 8000 animal placement organizations that utilize Petfinder.com.⁶⁹

The use of sites such as Petfinder.com for adoptions enables organizations that do not have traditional shelters to place animals. Recently, a sociologist found that these so called “independent animal rescue organizations” using foster homes are successful in finding homes using the Internet. Dr. Angela Garcia is quoted as stating that “[w]hile the SPCAs and traditional shelters still process the majority of stray and surrendered dogs, the impact of virtual shelters is increasing and may at some point overtake the traditional shelters.”⁷⁰ Another commentator believes it is possible that shelterless organizations may place more animals in homes than conventional shelters, although the shelterless organizations may often be working in partnership with shelters.⁷¹ Obviously, if more animals are being placed through these “independent” or shelterless organizations, it makes sense to facilitate their appropriate use.

Finally, it is important to recognize the importance of the no-kill movement in these issues. The term may be used loosely by organizations that are sensitive to the fact that the public does not like the idea of animals being euthanized⁷² but for those organizations that are serious about changing the way that shelters operate, there is a Declaration of the No-Kill Movement in the United States that sets forth a Statement of Rights and Guiding

⁶⁸ *Petco Think Adoption First*, *supra* note 67.

⁶⁹ *Petfinder.com Gives Shelter Pets New Byte*, *supra* note 67.

⁷⁰ M.M., *Internet Adoption Programs Work*, DOG FANCY, Jan. 2006, at 8. Dr. Garcia is a professor at the University of Cincinnati. *Id.*

⁷¹ Clifton, *Who Invented No-Kill*, *supra* note 53 (discussing invention of no-kill).

⁷² Response by Nathan Winograd, Semantics aside, what IS no Kill? Posted on NMHP Forum nmhpforum@bestfriends.org, Jan. 16, 2006, 17:20 EST (on file with author) (stating that to “get community support, to get community funding, to stave off community resentment, a lot of agencies have adopted the language of No Kill, but not the programs and services that save lives”). Mr. Winograd is the Founder and Director of No Kill Solutions. *Id.*

LEGISLATING COOPERATION

Principles.⁷³ The first issue in the Statement of Rights is that “Sheltered animals have a right to live.”⁷⁴ The fourth issue in the Statement of Rights is that “Animal protection groups, rescue groups, and No Kill shelters have a right to take into their custody animals who would otherwise be killed by animal shelters.”⁷⁵ The mandate for the transfer of animals is also emphasized in the Guiding Principles⁷⁶ and No Kill Standards.⁷⁷

There are controversies over the use of no kill terminology. Shelters that are required to accept all animals may use the term “open admission” to describe themselves in contrast to organizations that may be more selective in their admissions and are no kill.⁷⁸ This of course presumes that a no kill organization must be more selective in its admission process, which is not the view of proponents of the no kill movement.⁷⁹ While there have always been some no kill shelters,⁸⁰ the numbers have grown substantially in recent years with one estimate that there were approximately fifty no kill shelters in the 1980s and over 250 by 2004.⁸¹ This is, of course, still just a small percentage of the 5000

⁷³ Declaration of the No Kill Movement of the United States, September 2005, <http://www.nokilldeclaration.org/pages/1/index.htm> (last visited Feb. 6, 2006).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* (stating “[p]ublic shelters work with humane animal adoption organizations to the fullest extent to promote the adoption of animals and to reduce the rate of killing”).

⁷⁷ *Id.* (stating “[r]escue groups access to shelter animals”).

⁷⁸ Francis Battista, *Curtain Call! How Act Three of the No More Homeless Pets Drama is Set to Play Out*, BEST FRIENDS MAG., Mar./Apr. 2005, at 46 (discussing no kill movement). Those organizations may then use the term “limited admission” to refer to no kill shelters. *Id.*

⁷⁹ Examples include San Francisco, California, and Tompkins County, New York. Liz Szabo, *Kinder, Gentler Animal Shelters*, USA TODAY, July 26, 2004, at 1D (discussing successes in no kill movement). For information on the transformation of the Tompkins County SPCA from a traditional shelter environment to a no kill facility, see No Kill Solutions, Resources Library, Building a No-Kill Community, <http://www.nokillsolutions.com/pdf/BNKC.pdf> (last visited Feb. 7, 2006).

⁸⁰ Battista, *supra* note 78, at 46.

⁸¹ Szabo, *supra* note 79, at D1.

shelters and other organizations that are involved in the placement of animals today.⁸²

The issue of euthanization numbers and the issue of status of an organization as a no-kill facility should not be understated. One of the significant barriers to cooperation (and apparently communication) between animal welfare organizations is the division in philosophies on the use of euthanization.⁸³

Even with the recent innovations in sheltering and adoption, the percentage of animals that are acquired through adoption from shelters and humane societies still remains quite low. The percentage of dogs adopted through these types of organizations is only eighteen percent compared with forty-six percent of dogs being acquired through a private party or breeder.⁸⁴ The percentage of cats obtained through shelters and humane societies is similar at sixteen percent but a significant percentage of cats were acquired by adopting a stray.⁸⁵ The goal is to increase the number of animals acquired through Shelters and Rescue Organizations and of course, to make certain that these animals are sterilized so as to not contribute to the overpopulation problem in the future.

C. Definitions

For purposes of this Article, the definitions of the participants in the process will be as follows: Animal Control will refer to any governmental entity housing animals, Humane Society will refer to any nongovernmental entity that has entered into any agreement with a jurisdiction to take on the obligations of Animal Control, including the care, housing and euthanization of animals. Together, Animal Control and Humane Society entities will be

⁸² *Id.*

⁸³ Clifton, *What Has No-Kill Accomplished*, *supra* note 55.

⁸⁴ APPMA, *supra* note 3, at 5.

⁸⁵ APPMA, *supra* note 3, at 66 (stating that thirty percent of cats were acquired as a stray). The percentage of cats acquired from breeders and private parties only totaled thirteen percent. *Id.*

LEGISLATING COOPERATION

referred to as Shelters. Rescue Organization refers to any other nongovernmental entity whether it is foster home based or has a facility.

II. NON-LEGISLATIVE SOLUTIONS – WHY CAN’T WE ALL GET ALONG?

In an ideal world it would not be necessary to have legislation to mandate the transfer of animals from Shelters to Rescue Organizations. Unfortunately, in the area of animal welfare, there are times when there are serious conflicts within the community that can work to the detriment of the animals.⁸⁶

There are many examples of organizations not being able to work together. This is illustrated not just between Shelters and Rescue Organizations but also between different types of entities. In one very well publicized case, a young cat was involved in a custody battle that involved Hampton Virginia’s Animal Control, the People for the Ethical Treatment of Animals (“PETA”) and a private no-kill shelter named The Cat Corner.⁸⁷ Although the facts are in dispute, what is clear is that a cat was stuck in a tree and that the city’s animal control department had not yet responded.⁸⁸ With the two private organizations on the scene there was a dispute over who would retain custody over the rescued feline.⁸⁹

A. *Asilomar Accords*

Perhaps the best known nationwide effort to meet on common ground became known as the “Asilomar Accords” (hereinafter the “Accords”)⁹⁰ In August 2004 a group of local and national groups

⁸⁶ Elizabeth Hess, *Gimme Shelter*, BARK, Spring 2002, at 72 (discussing disputes between rescue organizations and New Year’s Center for Animal Care and Control). *But see* Szabo, *supra* note 79, at D1 (discussing recent changes in New York City including the Mayor’s Alliance of NYC’s Animals, “a coalition that intends to make New York a ‘no kill city’ within five years”).

⁸⁷ Beverly N. Williams, *Custody Catfight Brews Between PETA, Hampton City Officials*, DAILY PRESS (Va.), Feb. 18, 2005, at A1.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Asilomar Accords, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

with varying philosophies met to discuss and draft accords with the goal of “significantly reducing the euthanasia of healthy and treatable companion animals in the United States.”⁹¹ The Accords first Guiding Principle states that the mission of the organizations involved in creating the Accords is “to work together to save the lives of all healthy and treatable companion animals.”⁹²

The Accords do not support legislation mandating the transfer of animals to organizations but encourages the creation of “community coalitions” and states that they are committed to the belief that “the only true solution is to work together.”⁹³ In addition, the Accords set forth a uniform method for collecting and reporting shelter data.⁹⁴ The intent of the Accords appears to be to try to achieve harmony in an area where there has been conflict in the past. In fact, one of the Guiding Principles asks community coalitions to “discuss language and terminology which has been historically viewed as hurtful or divisive by some animal welfare stakeholders (whether intentional or inadvertent), identify “problem” language, and reach a consensus to modify or phase out language and terminology accordingly.”⁹⁵

Not all animal welfare organizations supported the Accords. An example of an organization that has been highly critical of the Accords is No Kill Solutions. No Kill Solutions is an organization that describes itself as having one goal “to help individuals, shelters, rescue groups, animal control agencies and municipalities

⁹¹ Asilomar Accords, Preface, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

⁹² Asilomar Accords, Guiding Principles 1, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

⁹³ Asilomar Accords, Guiding Principles 6, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

⁹⁴ Asilomar Accords, Guiding Principles 10, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

⁹⁵ Asilomar Accords, Guiding Principles 8, <http://www.asilomaraccords.org> (last visited Feb. 7, 2006).

LEGISLATING COOPERATION

create No Kill communities.”⁹⁶ The No Kill Solutions perspective is set out in a position paper that is titled “*Does the Road to No Kill Lead Through Asilomar?*”⁹⁷ The answer to that question is found on the first page of that paper where it bluntly states “[i]t does not.”⁹⁸ No Kill Solutions disparaged the Accords process for a lack of representation of No Kill groups at the meeting.⁹⁹

No Kill Solutions is especially critical of the reporting model used in the Accords.¹⁰⁰ According to No Kill Solutions, the model used allows for inaccurate and misleading reporting – and the categories allow shelters to “spin” the numbers to make it appear a shelter is doing a better job than it is actually is.”¹⁰¹ For the purposes of this Article, the most important criticism of the Accords is that there was no right specifically provided in the Accords to allow rescue groups to take into their own custody animals facing euthanasia in animal control facilities.¹⁰²

It is never a bad idea to try to build coalitions. The intent of the participants drafting the Accords was a good one. Given the history of conflict between the participants in the animal welfare community it may be difficult for the current generation to develop national accords that bring every organization into the fold.

B. Other Non-Legislative Avenues

Some rescue organizations have not waited for national coalition building and have organized on their own. For example, in Wisconsin, one coalition of animal shelters, humane societies

⁹⁶ E-mail from Nathan J. Winograd, Founder and Director of No Kill Solutions, to Rebecca J. Huss, Professor of Law, Valparaiso University School of Law (Sept. 23, 2005, 1:41 PM CST) (on file with author).

⁹⁷ No Kill Solutions, *No Kill Solutions Position Paper* (April 2005), <http://www.nokillsolutions.com/pdf/Asilomar%20position%20paper.pdf> (last visited Feb. 6, 2006).

⁹⁸ *Id.* at 1.

⁹⁹ *Id.* at 5. According to the No Kill Solutions categorization, only twenty-two percent of the participants would be considered No Kill groups. *Id.*

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.*

¹⁰² *Id.* at 8.

and rescue organizations has formed to share information and strengthen the bond among these groups in that state.¹⁰³ The breed rescue groups also provide contact information in a book format to each of the general humane societies and animal shelters across the state to facilitate the transfer of animals to the rescue organizations.¹⁰⁴

Another well-known non-legislative avenue of coalition building is called “No More Homeless Pets.” No More Homeless Pets in Utah is a program of Best Friends Animal Society.¹⁰⁵ Best Friends Animal Society is well known for its large companion animal sanctuary in Angel Canyon, Utah and its recent activities rescuing animals affected by Hurricane Katrina.¹⁰⁶ No More Homeless Pets in Utah is a “coalition of rescue groups, shelters and veterinarians working together to end the euthanasia of homeless dogs and cats statewide, and to promote humane alternatives for feral cats.”¹⁰⁷ This program includes a mobile spay/neuter clinic, spay/neuter vouchers, a pet adoption center and super adoption events.¹⁰⁸ Funding for the initiation of this project was made possible by a grant from Maddie’s Fund.¹⁰⁹

¹⁰³ Wisconsin Dog Rescue, Mission & Ethics, <http://www.widogrescue.com/missionethics.html> (last visited (Feb. 6, 2006) (stating that the “mission is to better serve homeless, stray, and unwanted pets by creating and strengthen the bond between reputable rescues and quality shelters in WI”); Telephone Interview with Michele Ambrose, President of MidWest Dachshund Rescue, Inc., in Madison, Wis. (Oct. 1, 2005) [hereinafter Ambrose].

¹⁰⁴ Ambrose, *supra* note 103.

¹⁰⁵ Best Friends Animal Society, <http://www.bestfriends.org> (last visited Feb. 20, 2006).

¹⁰⁶ *Id.*

¹⁰⁷ No More Homeless Pets in Utah, Who We Are, <http://www.utahpets.org/nmhpbasicinfo.html> (last visited Feb. 20, 2006). The description continues that the “program places a strong emphasis on increasing the numbers of both adoptions and spay/neuter surgeries throughout the state.” *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ No More Homeless Pets in Utah, Maddie’s Fund, <http://www.utahpets.org/mf.html> (last visited Feb. 20, 2006).

LEGISLATING COOPERATION

Maddie's Fund is a foundation that provides grants to communities and veterinary schools to first "create programs that guarantee loving homes for all healthy shelter dogs and cats throughout the country" and then to "save the sick and injured pets in animal shelters nationwide."¹¹⁰ Currently, Maddie's Fund is active in Alachua County, Florida, Baldwin County, Alabama, Maricopa County, Arizona and Mobile, Alabama.¹¹¹ In order to receive funding, Maddie's Fund grant guidelines look to projects that are "for comprehensive, community-wide projects that will guarantee a home for every healthy shelter dog and cat in the target community within five years and for every treatable shelter dog and cat within ten years."¹¹² Maddie's Fund specifically wants to "support collaborations of rescue organizations working together with animal control shelters, traditional shelters, and private veterinarians."¹¹³ Maddie's Fund has made a significant impact on the animal welfare movement. With the significant resources of Maddie's Fund as incentive a coalition may be easier to form and maintain. The reality is that even Maddie's Fund is limited in its resources and cannot accomplish everything without legislative support.

Smaller geographic areas have formed coalitions that have focused on the reduction of euthanasia of animals without outside support. One example is the Metroplex Animal Coalition ("MAC") in Texas.¹¹⁴ MAC defines itself as "an alliance of 501(c)3 animal welfare organizations in Collin, Dallas, Denton, and Tarrant counties whose members have joined together in order to reduce the killing of dogs and cats in municipal animal shelters

¹¹⁰ Maddie's Fund, About Us, Corporate Background, <http://www.maddies.org/aboutus/background.html> (last visited Feb. 20, 2006); Maddie's Fund, Funded Projects, <http://www.maddies.org/projects/index.html> (last visited Feb. 20, 2006).

¹¹¹ Maddie's Fund, Funded Projects, Community Projects, http://www.maddies.org/projects/comm_proj.html (last visited Feb. 20, 2006).

¹¹² Maddie's Fund, Grant Guidelines, Community Grants, http://www.maddies.org/grant/comm_grants.html (last visited Feb. 20, 2006).

¹¹³ *Id.*

¹¹⁴ Metroplex Animal Coalition, About Us, <http://www.metroplexanimalcoalition.com/AboutUs/AboutMAC.html> (last visited Feb. 20, 2006).

and humane societies.”¹¹⁵ There are over thirty members of MAC including canine breed rescue organizations, feral cat groups and humane societies.¹¹⁶

With these types of initiatives as examples, why is it necessary to have legislation mandating the transfer of animals to Rescue Organizations? Quite simply, not every Shelter is willing to work with the community as the organizations described herein. There is evidence that in some cases, Rescue Organizations are made subject to additional requirements before animals are released to them that make it difficult if not impossible for them to take animals that are then euthanized.¹¹⁷ As discussed below, without a legal mandate that the Shelter must transfer animals, volunteers from Rescue Organizations, may be hesitant to report abuses at a Shelter in the fear that the Shelter will stop working with their organization. Finally, when a clear and unambiguous statutory provision is in place, it pushes Shelters to work with the community because the legislature has articulated that it is the standard that it has set for them to meet.

III. LEGISLATIVE SOLUTIONS

A. The Potential Problems with Rescue Organizations – Keeping the Animals and the Public Safe

There have only been a few states that have adopted language that have mandated the transfer of animals to Rescue Organizations. In California, the opponents of the legislation raised several potential problems with Rescue Organizations and this type of legislation. This section will focus on those issues and other issues that may be raised in the future. The first is the issue

¹¹⁵ *Id.*

¹¹⁶ Metroplex Animal Coalition, Members and Sponsors, <http://www.metroplexanimalcoalition.com/MembersNSponsors/MACFriends.html> (last visited Feb. 20, 2006).

¹¹⁷ Bryant, *The Uncertain Present and Future of the Hayden Shelter Reform Legislation of 1998*, at 9 (discussing additional requirements including a rule that essentially would require rescue group “have volunteers on site all the time”).

LEGISLATING COOPERATION

of “over facilitation” or a Shelter’s funneling of animals to inadequate Rescue Organizations. This also is raised as an issue of a hidden hoarder problem. The second issue is the general issue of the relationship between Animal Control or Humane Societies and the Rescue Organizations – specifically that Rescue Organizations make unreasonable demands on the organizations or make irrational complaints against Shelters. The third issue is the perception that some Rescue Organizations simply take animals from Shelters and resell them for profit. The fourth and final issue is that Rescue Organizations will take any animal regardless of the public safety risk posed by the animal. The discussion of these issues will also illustrate the need for legislation in this area.

1. Inadequate Rescue Organizations/Hidden Hoarder Problem

During the debate on the California legislation, concerns were raised about the lack of provisions in that bill insuring that rescue organizations had “facilities and staffing to care for the animals going to them.”¹¹⁸ Another concern that was raised is that “collectors” will take animals from shelters.¹¹⁹ These issues are distinct. In the first situation, a Rescue Organization can simply fail to meet minimal standards of care. Just as with any other individual who houses or cares for companion animals, a Rescue Organization must meet state standards for animal welfare and anti-cruelty.

The much more complicated issue is that of an animal hoarder.¹²⁰ There has been increased attention paid to these cases

¹¹⁸ Sarah A. Balcom, *Legislating a Solution to Animal Shelter Euthanasia: A Case Study of California’s Controversial SB 1785*, 8(2) SOC’Y & ANIMALS 1, 10 (2000). Additional concerns were that Rescue Organizations that did not meet standards would not be identified or reported and that Rescue Organizations would not have the same screening procedures for their adopters. *Id.*

¹¹⁹ Maddies.org, No Kill Movement, No Kill Legislation, Taimie Bryant, *No-Kill Legislation: Hayden Law: An Analysis*, http://192.220.120.141/nokill/nokill_legis_hayden.html (last visited Feb. 6, 2006) [hereinafter Bryant, *Hayden Law*].

¹²⁰ The preferred term to describe the behavior is now “hoarding” rather than collecting. As described by the Hoarding of Animals Research Consortium website “[c]ollecting describes a benign hobby, not a pathological situation. The

in recent years.¹²¹ Hoarding appears to have a psychological basis.¹²² Although there is no systematic reporting of cases the following criteria can be used to determine whether there is a problem with animal hoarding. First, there is generally more than the typical number of companion animals in the household.¹²³ The second factor is the inability to provide minimal standards of care, with the impact of this resulting in illness or death to the animals.¹²⁴ The final criteria is that the person denies that he or she is not able to provide minimal care and that there is a negative impact on the animals, household or other human members of the household.¹²⁵

characteristics of "animal hoarding" are much more consistent with what is described in the medical and psychiatric literature about other forms of hoarding than collecting." Tufts Cummings Veterinary School Center for Animals & Public Policy, The Hoarding of Animals Research Consortium, http://www.tufts.edu/vet/cfa/hoarding/hoardqa_dt.htm. (last visited Mar. 1, 2006).

¹²¹ Carrie Allan, *Opening the Closed Door, Strategies for Coping with Animal Hoarders*, ANIMAL SHELTERING, July-Aug. 2004, at 15, available at http://www.animalsheltering.org/publications/magazine/back_issues/asm_jul_aug_2004.pdf (discussing problems of animal hoarding and strategies used by Animal Control and Humane Societies to combat the problem); Arnold Arluk et al., *Press Reports of Animal Hoarding*, 10(2) SOC'Y & ANIMALS 113 (2002) (exploring the emotional themes used by the press to describe animal hoarding and finding that they present an inconsistent view of the problem); Jessica Tremayne, *Can You Identify Animal Hoarders? New Legislative Push Binds Practitioners to Report Cases*, DVM NEWSMAGAZINE, Feb. 2005, at 12 (discussing hoarders' self identification and new legislation in California requiring veterinarians to report suspected animal abuse or cruelty to the appropriate law enforcement agency, CAL. BUS. & PROF. CODE § 4830.7 (West 2005)).

¹²² Lisa Avery, *From Helping to Hurting: When the Acts of "Good Samaritans" Become Felony Animal Cruelty*, 39 VAL. U. L. REV. 815, 835-38 (2005) (discussing theories for animal hoarding's psychological roots).

¹²³ Gary J. Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult to Study Population*, 114 PUB. HEALTH REPORTS 81, 84 (Jan.-Feb. 1999). Note that the number of animals does not define a hoarder; it is the inability to provide acceptable care that is key. *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

LEGISLATING COOPERATION

There have been a few recent studies examining animal hoarding.¹²⁶ One study found that a majority of hoarders were female and about half of the hoarders lived in single person households.¹²⁷ There are anecdotal reports that indicate that employed animal hoarders are able to live a double life until their homes are investigated.¹²⁸ Cats and dogs are the animals that are most frequently involved in hoarding cases.¹²⁹

If an animal is kept by a hoarder, the animal is very likely to be receiving substandard care. One study found that in 80% of hoarder cases animals were found dead or in poor condition.¹³⁰ From a public policy perspective there are other issues relating to hoarders. Hoarding has obvious health and safety implications for the individual and community.¹³¹ In addition, hoarders frequently acquire additional animals through breeding, adding to the companion animal overpopulation problem.¹³²

It has been reported that there is a “growing trend of hoarders identifying themselves as directors of sanctuaries and rescue groups.”¹³³ There have been several hoarding cases associated

¹²⁶ Hoarding of Animals Research Consortium, *Health Implications of Animal Hoarding*, 27 HEALTH & SOCIAL WORK 125, 125 (2002) [hereinafter *Health Implications*] (discussing studies on animal hoarding).

¹²⁷ Patronek, *supra* note 123, at 84.

¹²⁸ *Health Implications*, *supra* note 126, at 125.

¹²⁹ Patronek, *supra* note 123, at 84.

¹³⁰ *Id.* Poor condition is described as very malnourished, poor haircoat or with obvious disease or injury. *Id.*

¹³¹ Randy O. Frost et al., *Hoarding: A Community Health Problem*, 8(4) HEALTH & SOC. CARE IN THE COMMUNITY 229 (2000) (discussing health concerns of hoarding and distinguishing between animal hoarding and other types of hoarding).

¹³² Patronek, *supra* note 123 at 84 (finding that unplanned breeding accounted for approximately thirty-nine percent of the acquisition of animals and planned breeding accounted for thirteen percent of the accumulation of animals).

¹³³ Colin Berry et al., *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167, 181 (2005) (stating that “the lines between hoarders who identify themselves as a rescue organization and those who do not may not be so clearly defined”). The following are just a few examples of cases where persons charged with animal cruelty appear to self-identify as a rescuer or Rescue Organization. *Bogart v. Chapell*, 396 F.3d 548 (4 th Cir. 2005) (describing apparent hoarder case with 200 dogs and cats, person involved participated in

(NAME OF JOURNAL)

with well-known Rescue Organizations.¹³⁴ Even in the aftermath of Hurricane Katrina there were highly publicized problems with one facility where some of the rescued dogs were sent.¹³⁵ Some

animal rescue activities through several organizations, almost all the animals were euthanized, due process claim dismissal affirmed); *City of Parma v. Takacs*, 2005 WL 678533 (Ohio Ct. App. 8 Dist. 2005); *Utah v. McDonald*, 2005 WL 433526 (Utah Ct. App. 2005) (setting forth multiple counts of animal cruelty against a woman who had fifty-eight cats for “apparent purposes of creating a ‘sanctuary’ for stray cats that she trapped in and around Salt Lake City”); William C. Bayne, *Judge Orders Bond in Dog Case*, THE COMM. APPEAL (Memphis, Tenn.), Feb. 10, 2005, at DS1 available at 2005 WLNR 1953074 (describing woman charged with animal cruelty relating to thirty-one dogs keeping twenty-six as part of her Mid-South Shepherd Rescue effort); Sara Lee Fernandez, *Woman’s 34 Dogs Turned Over to City Flour Bluff Resident Has Lost Custody of Animals Twice Now*, CORPUS CHRISTI CALLER-TIMES, Jan. 19, 2006, at B1 (discussing hearing where animal cruelty inspector testified that the animals in Sisson’s care were cruelly confined in unsanitary and unsafe conditions); Sara Lee Fernandez, *City Takes Control of Seized Animals: Judge Orders Dogs, Birds Out of Sisson’s Care*, CORPUS CHRISTI CALLER-TIMES, Oct. 21, 2005, at B4 (discussing decision by judge to award custody of seventy dogs and two birds seized from Coastal Bend Small Breed Rescue to Animal Care Services, and the ordering of a fine against Sisson, the woman in charge of the organization); Justin George & Amy Wimmer Schwarb, *140-plus Dogs, Cats Taken from Filthy Home*, ST. PETERSBURG TIMES, Feb. 5, 2005, at 3B (discussing woman who described herself as someone who worked or volunteered in animal rescue).

¹³⁴ Clifton, *What Has No-Kill Accomplished*, *supra* note 55 (discussing several well known hoarding cases and recent cases in the no-kill sheltering community).

¹³⁵ Chandra Huston, *Animal Sanctuary? Gruesome Scene Inside What is Supposed to be a Sanctuary for Animals: Authorities Discover 400-500 Dogs Living in Cramped, Filthy Conditions*, THE BAXTER BULL. (Mountain Home, Ark.), Oct. 24, 2005, at 1A (discussing scene the Baxter County Sheriff’s Office discovered while serving a search warrant at the Every Dog Needs a Home (“EDNAH”) Animal Rescue and Sanctuary); Chandra Huston, *EDNAH Owners: ‘We Know Every Name of Every Dog’ Owners of Animal Rescue Sanctuary That Was Raided By Police Friday Admit They were Overwhelmed, but Argue They’ve Done Nothing Wrong*, THE BAXTER BULL. (Mountain Home, Ark.), Oct. 25, 2005, at 1A (responding to charges of animal cruelty, the owners of EDNAH said that hundreds of animal rescue organizations begged her to take in more dogs that were going to be destroyed after Hurricane Katrina). After the charges were filed, animal rescue organizations set up emergency shelters for the animals on the property to take care of the animals until a judge ruled that the dogs could be placed in approved facilities. Armando Rios, *Judge to Let*

LEGISLATING COOPERATION

critics of the no-kill movement hypothesize that that movement (and thus increase in Rescue Organizations that are no-kill) have increased the incidence of hoarding.¹³⁶ The study that discussed this hypothesis did not find that the no-kill movement could be held responsible for the increase in hoarding cases.¹³⁷ There was an increase in cases attributed to rescuers but the researcher attributed that to the fact that many former breeders switched to breed rescue (changing categorization) and awareness of the problem is bringing about increased prosecution.¹³⁸ The problem, of course, is that the hoarder self identifies as a rescuer.

Since the hoarder self identifies as a rescuer (when they clearly are not), the easiest solution is to make certain that there are laws combating the problem of hoarding. Illinois was the first state to have a specific statute dealing with animal hoarding.¹³⁹ The Illinois statute utilizes the criteria discussed above to determine if a person is a hoarder.¹⁴⁰ If a person fits the hoarding criteria and

Dogs Out of EDNAH, THE BAXTER BULL. (Mountain Home, Ark.), Nov. 22, 2005, at 1A (discussing the judicial orders allowing the dogs to be placed at outside facilities). The couple running the organization was found guilty of twenty counts of cruelty to animals and was ordered by the judge not to own any pets. Armando Rios, *Couple Found Guilty of Animal Cruelty*, THE BAXTER BULL. (Mountain Home, Ark.), Jan.17, 2006, at 1A (discussing the misdemeanor convictions and the response of the spectators in the courtroom to the ruling of the judge).

¹³⁶ Clifton, *What Has No-Kill Accomplished?* *supra* note 55 (comparing 688 cases occurring before September 1998 with the 217 cases occurring in the first half of 2005).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ 510 ILL. COMP. STAT. 70/2.10 (2005); Kate Thayer, *Law May Cost Animals' Lives Some Say*, ST. LOUIS POST DISPATCH, Jan. 20, 2005, at D03 (discussing the changes to Illinois law that some critics say "unintentionally blocked the flow of adoptive animals from Illinois to Missouri by bogging down the process with red tape").

¹⁴⁰ 510 ILL. COMP. STAT. 70/2.10:

Companion animal hoarder" means a person who (i) possesses a large number of companion animals; (ii) fails to or is unable to provide what he or she is required to provide under Section 3 of this Act [510 ILCS 70/3]; (iii) keeps the companion animals in a severely overcrowded environment; and (iv) displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the companion animals

fails to provide minimal care¹⁴¹ to each of the animals under his or her care, the Illinois statute allows the court to order a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense.¹⁴²

2. Rescue Organizations Make Unreasonable Demands and Make Unjustified and Irrational Complaints Against Shelters

Another problem identified during the process of adopting the Hayden Bill (the California legislation) was that some Shelters felt that some Rescue Organizations made unreasonable demands on them in connection with the transfer of animals. One issue that was identified in the legislative record is the idea that allowing Rescue Organizations to take animals would "create a 'cherry picking problem' whereby rescue societies and adoption organizations could frequently remove all easily adoptable animals from the shelters, leaving only unadoptable animals in the shelters."¹⁴³ The argument continues that shelters "need to be able to retain some of the easily adoptable animals so that they can entice the public to visit shelters. Higher numbers of visitors results in more frequent adoptions of less easily adoptable animals."¹⁴⁴ If legislation only requires Shelters to release animals

are living and the deleterious impact they have on the companion animals' and owner's health and well-being.

Id.

¹⁴¹ The care is defined in § 510 ILL COMP. STAT. 70/3 as "(a) sufficient quantity of good quality, wholesome food and water; (b) adequate shelter and protection from the weather; (c) veterinary care when needed to prevent suffering; and (d) humane care and treatment."

¹⁴² 510 ILL. COMP. STAT. 70/3 (2005). The first conviction under this section results in a Class B misdemeanor. *Id.* A subsequent violation is a Class 4 felony. *Id.*

¹⁴³ Senate Bill 1785 Bill Analysis (Cal.), *Unfinished Business, Arguments in Opposition*, available at <http://www.Leginfo.ca.gov/cgi-bin/postquery> (Aug. 24, 1998).

¹⁴⁴ *Id.* The opponents of the Hayden Bill were also concerned that if Shelters were required to release animals to Rescue Organizations without charge, revenues would decrease. *Id.* This of course is not logical if the animal is scheduled to be euthanized as there is an economic cost to euthanization and disposal of the animal.

LEGISLATING COOPERATION

that are scheduled to be euthanized, the “cherry picking” of adoptable animals is no longer an issue. In practice, Rescue Organizations are most often given access to animals that the Shelter does not have the resources to care for, do not do well in a shelter environment or are not likely to be able to place easily.¹⁴⁵

Another issue that may be raised is that Rescue Organizations make unreasonable demands on Shelters such as the Shelter giving the Rescue Organization additional time to get to the Shelter or to allow the adoption process near closing time. It would make sense that there would be tensions between organizations, relating to access to animals. In a situation where a Shelter is willing to voluntarily transfer an animal to a Rescue Organization it needs a prompt reply as to the interest of the Rescue Organization in order to determine whether another arrangements should be made.¹⁴⁶ On the other side, a Rescue Organization, often times made up solely of volunteers with full time jobs may find it difficult to send a representative to the Shelter within the time available.¹⁴⁷ The

¹⁴⁵ For example, The Anti-Cruelty Society in Chicago transfers certain breeds directly to rescue, including Pit Bulls and Italian Greyhounds. Interview with David Dinger, Vice-President of Operations, The Anti-Cruelty Society, in Chicago, Il. (Mar. 17, 2005) [hereinafter Dinger]; Response by Tara Derby-Perrin, How do you counter nay-sayers? Posted on NMHP Forum nmhpforum@bestfriends.org, Mar. 1, 2006 5:31 PM (on file with author) (stating in connection with the transfer program at the Philadelphia Animal Care and Control Association where Ms. Derby-Perrin is the chief executive officer that “we are able to ask them to go the extra mile and help us with the more difficult-to-place animals, animals that are treatable that we are unable to treat, and animals that we simply have trouble moving-animals that will show better in a different environment or be more readily placed in a different community”).

¹⁴⁶ Dinger, *supra* note 145 (discussing why a response is needed when a rescue organization is contacted about an animal).

¹⁴⁷ Telephone Interview with Thomas M. Flynn, Board Member of Dachshund Rescue of North America, Inc., in Mableton, Ga. (Oct. 4, 2005) (discussing generally the challenge in reaching all the possible dachshunds that may be in shelters and the difficult decisions that the rescue organization has to make to determine which animals to take into its organization).

better the relationship between the Rescue Organization and the Shelter, the less likely this will be a problem.¹⁴⁸

One of the reasons that it is necessary to require the transfer of animals to Rescue Organizations (rather than merely promoting the transfer) is that without a legal mandate, Rescue Organizations may be coerced into keeping silent about problems that they see in a Shelter in order to continue to receive animals from a Shelter.¹⁴⁹ As discussed above, one of the hallmarks of animal control is that it has been done on an ad hoc basis with minimal resources.¹⁵⁰ As more people from the community become involved and interested in animal welfare issues, it is not surprising that they raise issues about what they see in their local shelters.¹⁵¹ As pressure from the community grows, the state responds, as illustrated by reports in New Jersey.¹⁵² That said, there has been a perception that Rescue Organizations make unjustified and irrational complaints against Shelters.

Even former supporters or partners with an organization can become critics.¹⁵³ An example is the Michigan case of *Phillips v.*

¹⁴⁸ Ambrose, *supra* note 103 (discussing the development of relationships with shelters and the need to be responsive).

¹⁴⁹ Bryant, *Hayden Law, supra* note 119 (stating “[a]s frequent visitors to the shelters, rescuers saw systemic problems and inhumane treatment of animals, but their access to animals was conditioned on keeping their mouths shut”).

¹⁵⁰ See *supra* notes 29-52 and accompanying text (discussing history of sheltering).

¹⁵¹ See *supra* notes 72-83 and accompanying text (discussing development of No-Kill movement).

¹⁵² STATE OF NEW JERSEY COMMISSION OF INVESTIGATION, SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS (DECEMBER 2000), *available at* <http://www.state.nj.us/sci/pdf/spca.pdf#search='new%20jersey%20animal%20control%20criticism'> (criticizing the SPCA system in New Jersey and making recommendations on changes).

¹⁵³ Marni Pyke, *Bureau Criticized for Its Animal Care*, CHI. DAILY HERALD, Sept. 21, 2004, at 6 (discussing complaints by the People and Animal in Community Together Humane Society who works with the county to help adopt animals that that DuPage County, Illinois, animal control department failed to treat an animal for a painful ear condition, is run inefficiently and was too quick to euthanize animals). See also *City of Houston v. Levingston*, No. 01-03-

LEGISLATING COOPERATION

Ingham County.¹⁵⁴ Phillips was an Assistant Prosecutor for Ingham County who helped establish and became President of Friends of the Ingham County Animal Shelter.¹⁵⁵ Phillips became concerned that sales of animals to Class B dealers were being done incorrectly.¹⁵⁶ Given the controversy regarding the sales to Class B Dealers, the county had a policy allowing an owner to redeem animals “marked” to be sold to the dealers if a claim by the owner was made and if certain costs were paid.¹⁵⁷ Phillips came to believe that this county policy allowing redemption of animals was not being followed and she independently set up a sting (not in any official capacity) whereby another woman misrepresented that she owned a cat transferred to a Class B Dealer.¹⁵⁸ The woman acting as the purported owner was able to redeem the cat, but the director of the county shelter was suspicious and investigated further leading back to the set up with Phillips.¹⁵⁹

The case at issue dealt with the aftermath of the sting when Phillips brought an action against the county and county officials asserting a First Amendment retaliation claim and a host of state law claims.¹⁶⁰ All of Phillips claims were ultimately dismissed on

00678-CV 2006 TEX. APP. Lexis 859 (Tex. App. Feb. 2, 2006) (discussing whistleblower case of Levingston who served as senior veterinarian of the Bureau of Animal Regulation and Care of Houston, Texas, and who alleged multiple actions that rose to the level of animal abuse).

¹⁵⁴ 371 F. Supp. 2d. 918 (W.D. Mich. 2005).

¹⁵⁵ *Id.* at 922.

¹⁵⁶ *Id.* at 922-23. The director of the Ingham County Animal Shelter had interpreted Michigan law to allow him to sell animals to Class B Dealers rather than pursuant to the specific language in the statute, directly for research. *Id.* After the events of this case described in this suit became public, the Lansing Board of Commissioners forbade future sales to Class B Dealers but not direct sales to research institutions. *Id.* at 923 n.2; *see also infra* note 194 and accompanying text (discussing issue of sales of animals to research institutions.)

¹⁵⁷ *Phillips*, 371 F. Supp. 2d at 923.

¹⁵⁸ *Id.* at 923-25.

¹⁵⁹ *Id.* at 925.

¹⁶⁰ *Id.* at 928-29. Phillips state law claims including defamation, interference with business expectancies, malicious prosecution and abuse of process and intentional infliction of emotional distress were also all dismissed at the summary judgment level. *Id.* at 929-32.

motions for summary judgment,¹⁶¹ however, this case is illustrative of the conflict that can occur when there are allegations that policies are not being followed. As the court in this case stated: “The moral rectitude of what was done and why are matters which can and should continue to fill debates among activists, ethicists, theologians, and philosophers. Given the determination shown of the parties of this suit, it is clear that these kinds of debates are by no means over.”¹⁶²

Regardless of the difficulties that individuals have working together, the unfortunate reality is that there are serious problems in some Shelters across the country. Just a few recent examples include the following. A report commissioned by Miami-County, Florida found that the county shelter in Medley was in deplorable condition and its handling of animals was “appalling.”¹⁶³ An another example is in California where a civil grand jury found that that a county animal control department had euthanized healthy animals before they had been held the required number of days specified by California state law, inadequate care of animals, and inappropriate use of funds.¹⁶⁴ The Humane Society of

¹⁶¹ *Id.* at 933.

¹⁶² *Id.*

¹⁶³ Francisco Alvarado, *Death by the Pound; Hidden From the Public and Cloaked in Euphemism, Regulated Execution of Dogs and Cats is a Routine Horror. Can a New Animal Services Director Make a Difference?*, MIAMI NEW TIMES, Jan. 26, 2006 (discussing report issued in 2004). This article also discusses conflicts between Rescue Organizations and the Miami-Dade County Animal Services shelter. *Id.*

¹⁶⁴ Joel Hood, *Report Rip Shelter, Da Financial, Ethical and Legal Woes, Panel Says*, MODESTO BEE, (Modesto, Cal.) July 2, 2005, at A1 (discussing assessment of civil grand jury of county animal control department). The civil grand jury also called for the resignation of top officials of that department. *Id.* The euthanization of cats prior to the expiration of North Carolina’s seventy-two hour impoundment period was the subject of litigation in 2005. *Justice for Animals, Inc. v. Lenoir County SPCA, Inc.*, 607 S.E.2d 317 (N.C. Ct. App. 2005) In this case, Justice for Animals alleged that the Lenoir County SPCA practice of euthanizing stray and feral cats without holding them for seventy-two hours caused “unjustifiable physical pain, suffering, and death.” *Id.* at 319. There was also testimony in this case by a former employee of the defendant that the defendant’s process to determine a cat’s status as tame or feral was a

LEGISLATING COOPERATION

Louisiana found that cats in the Assumption Parish Animal Shelter were treated with “extreme neglect” including the fact that they were kept in humane traps for up to fifteen days and had no access to a litter box.¹⁶⁵

Representatives from Rescue Organizations are in Shelters on a daily basis thus it would make sense that if there is a problem people from these organizations would make more complaints than the general public – when in fact, they are just the ones that are there to report the situation first.

3. Rescue Organizations Will Take Animals and Resell Them for Profit

A third concern that has been raised is that Rescue Organizations could take animals from Animal Control entities and Humane Societies and resell them for profit.¹⁶⁶ In theory profit could be made from the sale of the animals for research or through adoption fees obtained from individuals. This potential problem appears to be minimal and fairly easy to resolve through the legislation requiring the Rescue Organization to have either 501(c)3 status or be licensed by the state department of agriculture. If a Rescue Organization is a 501(c)3 entity it could be subject to legal sanctions based on fraudulent misrepresentation if it sells animals for research purposes.¹⁶⁷ Given the expenses that are incurred by legitimate organizations prior to adoption, including

“poke” test – someone would poke the cat with pen or pencil and if the animal responded aggressively it would be deemed to be wild and could be euthanized immediately. *Id.* at 318-19. This case was vacated in part (in connection with determining the application of the impoundment rule to feral cats), reversed in part, and remanded on issues of subject matter jurisdiction. *Id.* at 323.

¹⁶⁵ John McMillan, *Sheriff Disputes Complaints on Parish Animal Shelter*, *ADVOCATE* (Baton Rouge, La) June 3, 2005, at B2, B5 (stating in a report by the Humane Society of Louisiana the treatment of cats and also finding that dogs in the Assumption Parish Animal Shelter were subject to “overcrowded conditions”).

¹⁶⁶ The specific concern that was raised during the negotiations over the Hayden Bill was that Rescue Organizations would divert animals into research. Bryant, *Hayden Law*, *supra*, note 119.

¹⁶⁷ Bryant, *Hayden Law*, *supra* note 119. *See also infra* note 194 (discussing the issue of animals obtained from animal control facilities for research purposes).

(NAME OF JOURNAL)

housing and veterinary expenses, most animal welfare organizations are unlikely to be making profits, but again, the record keeping requirements of a 501(c)3 entity would be sufficient to monitor any potential problems.¹⁶⁸

If a Rescue Organization chooses to be licensed by a state department of agriculture (rather than 501(c)3 status), the same record keeping requirements would of course not apply. There are, however, certain record keeping requirements that a state department of agriculture may mandate including maintaining a record of the “sales” of all the animals over the past twelve months.¹⁶⁹ It is difficult to conceive of a situation where a Rescue Organization that is taking animals that are otherwise to be euthanized and adopting them out will be able to make profit. If that was the case, it would seem that no animals would be euthanized – Animal Control and Humane Societies would all be profit making organizations – and of course – no animal would need to be transferred to a Rescue Organization at all. Especially in the event that a Rescue Organization is required to pay the Animal Control or Humane Society all (or even part) of the adoption fee it seems unrealistic that this will be a problem.¹⁷⁰ Finally, it is important to note, that one of the reasons that Animal Control and Humane Societies work with Rescue Organizations, especially breed specific Rescue Organizations, is that it saves the

¹⁶⁸ Organizations that are formed under § 501(c)3 of the Internal Revenue Code are required to file Form 990 on a yearly basis. Internal Revenue Service, Instructions for Form 990 and 990-EZ (2005), *available at* <http://www.irs.gov/instructions/i990-ez/index.html>.

Those forms are also available over the Internet on a variety of paid websites. *See, e.g.*, Guidestar.org, <http://www.guidestar.org/> (last visited Feb. 27, 2006) (providing services to donors, nonprofits, and others).

¹⁶⁹ ILL. DEP'T OF AGRIC., BUREAU OF ANIMAL WELFARE, FORM AW-1, *available at* <http://www.agr.state.il.us/Forms/AnimalHW/AW-1.pdf>.

¹⁷⁰ This is not to say that there might not be issues with some fraudulent or problematic Rescue Organizations, but more likely than not in order to be able to make a profit, such a Rescue Organization would likely need to lower the standard of care in a way that it would violate another law.

LEGISLATING COOPERATION

Shelters money.¹⁷¹ Thus it seems an odd problem if other organizations able make a profit from the adoption of these presumably difficult to adopt animals. If a Shelter is able to place an animal, they will do so without working with a Rescue Organization.¹⁷²

4. Rescue Organizations will Take Any Animal Regardless of Public Safety Concerns

The fourth issue that has been raised is that Rescue Organizations will take any animal regardless of the public safety risk posed by the animal.¹⁷³ The public safety risk can be due to disease but is most often thought of in the case of dangerous dogs. Due to the threat to the public from dog bites, beginning in the late 1970s a number of jurisdictions adopted statutes covering dangerous dogs.¹⁷⁴ Courts have consistently upheld the language of

¹⁷¹ “We can save them money, save them space, reduce their holding cost and certainly save the life of many Golden Retrievers, and provide vet care that the shelters can rarely consider.” E-Mail from Jonathan Gibson, President of the Board of Directors of Golden Bond Bolden Retriever Rescue, to Rebecca J. Huss, Professor of Law, Valparaiso University School of Law (Nov. 15, 2005, 11:54 AM CST) (on file with author) [hereinafter Gibson].

¹⁷² *Id.* (“Some shelters are able to place in adoption most of the Golden Retrievers that they process, but usually without fostering. This allows the shelters to collect a fee that is usually several hundred dollars, not unlike our application and adoption fees.”)

¹⁷³ Alvarado, *supra* note 163 (quoting Sara Pizano, director of animal services for Miami-Dade County that “some of the rescue groups were used to getting their way and would take animals that were really sick out into the general population”).

¹⁷⁴ DAVID FAVRE & PETER L. BORCHELT, *ANIMAL LAW & DOG BEHAVIOR* 202-06, 208-210 (1999) (discussing statutory provisions covering dogs and other animals worrying or harassing livestock); Mary Stanfield Bubbett, Comment, *In the Doghouse or in the Jailhouse?: The Possibility of Criminal Prosecution of the Owners of Vicious Dogs in Louisiana*, 49 *LOY. L. REV.* 953 (2003) (discussing dog owner liability in Louisiana and proposing increased liability); Christopher C. Eck & Robert E. Bovett, *Oregon Dog Control Laws and Due Process: A Case Study*, 4 *ANIMAL L.* 95 (1998) (discussing Oregon dog control laws that require the impounding and euthanasia of any dog found to be chasing, injuring or killing livestock); Anna Sibylle Ehresmann, Note, *Torts: Smith v. Ruidoso: Tightening the Leash on New Mexico’s Dogs*, 32 *N.M. L. REV.* 335

well-written dog statutes as a legitimate exercise of jurisdictions' police powers.¹⁷⁵ A discussion of liability for damages caused by animals is beyond the scope of this Article, however, there is nothing in the proposed legislation that would negate any of the laws or ordinances dealing with this liability. Using these existing laws two things would happen. The first occurs if an animal (usually a dog) is deemed to be dangerous under a local ordinance. In that case it would, pursuant to the standards set forth in that ordinance be euthanized. If an animal is truly dangerous – in other words, has committed one or more acts that under the provisions of the ordinance would bring the dog under the definition of being dangerous it would not be able to be released to a Rescue Organization.

The second circumstance occurs if an animal is in a Shelter and is scheduled for euthanasia, and does not appear to be temperamentally suited for adoption pursuant to the Shelter's standards. As the Rescue Organization or individual keeping the animal would be legally liable for any damage caused by an animal, it would appear to be unlikely for Rescue Organizations to take on animals that they believe have true temperament problems.¹⁷⁶ The difficulty lies in the fact that an individual

(2002) (analyzing New Mexican dog bite case and relevant statutory provisions).

¹⁷⁵FAVRE & BORCHELT, *supra* note 174, at 202-06. Generally, the application of a dangerous dog statute requires that a dog first be identified as being a danger to the public – due to the dog biting or attacking a person or other animal. *Id.* at 203. Normally the action taken by the dog must be unprovoked. *Id.* The identification of the dog as dangerous causes the possession by the owner to become conditional – sometimes subject to keeping the dog confined or on leash at all times as well as providing proof of minimum insurance coverage if the dog causes injuries. *Id.*; SOAVE, *supra* note 7, at 176. If the owner does not follow the strict provisions of the law or the dog causes injury there can be criminal sanctions against the owner as well as seizure of the animal. FAVRE & BORCHELT *supra* note 174, at 202-06. Some statutes make it extremely difficult to regain custody of an animal once it has been confiscated. *Id.* The ultimate penalty for the dog that has caused harm is the euthanasia of the dog. *Id.* at 203. The state has clear authority to kill a dangerous dog. *Id.*

¹⁷⁶ It is important to note that temperament testing is controversial and it is difficult to determine whether an animal in a stressed shelter environment is

LEGISLATING COOPERATION

ultimately must determine whether the animal is “adoptable.” There is no universal agreement on the definition of adoptability among all Shelters and Rescue Organizations. Much depends on the resources of the organization and the needs of the animal. It is possible that the animal may require a special placement, such as a household with no other animals or children, or special training.¹⁷⁷ Rescue Organizations with sufficient time, experience and resources can take animals that may fail standard temperament testing in a Shelter environment and place them into an appropriate home after a period of fostering.¹⁷⁸ The liability structure currently in place would appear to negate the potential likelihood of this problem becoming a significant issue.¹⁷⁹

reacting in a true manner. *See also* Dinger, *supra* note 145, (stating that The Anti-Cruelty Society does its own temperament testing and that a significant majority of the rescue groups that it works with will not take an animal that will not pass a temperament evaluation); No Kill Solutions, Resource Library, Temperament Testing in the Age of No Kill, <http://www.nokillsolutions.com/pdf/Temperament%20Testing.pdf> (last visited Feb. 20, 2006) (discussing temperament testing in a shelter environment).

¹⁷⁷ Gibson, *supra* note 171 (discussing the role of the foster family and stating that “[o]ur foster families figure out whether a Golden has the ability to live safely with young children and we don’t put a Golden, such as a stray for which we have no history, in a family with infants or other children less than about six”).

¹⁷⁸ *Id.* (“We are beginning to understand that one real issue is what to do with dogs with aggression tendencies, from mild to severe. Most aggressive dogs are automatically put down, which has been the conventional way of operating for a long time. But for Golden Retrievers, at least, the aggression is often fear based and can be cured, but it requires a lot of time, sometimes a year.”). Mr. Gibson’s e-mail continued by discussing the need for training for people who purchase or adopt dogs. *Id.*

¹⁷⁹ Another issue that is beyond the scope of this Article is the current debate regarding discrimination among different types of breeds of animals, most often seen in the area of canines. Unless a local ordinance specifically governs a specific breed, there does not appear to be any justification for treating a Rescue Organization dealing with that breed differently than others. *See generally* Devin Burstein, Comment, *Breed Specific Legislation: Unfair Prejudice & Ineffective Policy*, 10 ANIMAL L. 313 (2004) (arguing that breed specific legislation is based on flawed policy grounds); Larry Cunningham, *The Case Against Dog Breed Discrimination by Homeowners’ Insurance Companies*, 11 CONN. INS. L.J. 1 (2004) (analyzing the actuarial data available on dog bites and insurance coverage among other issues); Karyn Grey, *Breed-Specific Legislation*

B. *The Existing Legislation*

This section will discuss the legislation itself, first analyzing the language in the statutes of California and Illinois and then discussing the language in other state statutes that relate to interactions with Rescue Organizations. It is noteworthy that California statutory law states that it is the “policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home...[and it is the] policy of the state that no treatable animal should be euthanized.”¹⁸⁰

1. California

California Food and Agricultural Code Section 31108 mandates the release of dogs (with a parallel provision for cats found at Section 31752 and other animals at Section 31753) prior to euthanasia to animal rescue or adoption organizations.¹⁸¹ The animal rescue or adoption organization must be a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code.¹⁸² The provision allows for shelters to enter into cooperative agreements with animal rescue or adoption organizations.¹⁸³ In addition to any required spay or neuter deposit the shelter may in its discretion assess a fee not exceeding its standard adoption fee

Revisited: Canine Racism or the Answer to Florida’s Dog Control Problems?, 27 NOVA L. REV. 415 (2003) (discussing issues in Florida and concluding that breed specific legislation is not an effective method for Florida’s dog control problems); Lynn Marmer, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067 (1984) (discussing the enactment and constitutionality of pit bull regulations); Heather K. Pratt, *Does Breed-Specific Legislation Take a Bite Out of Canine Crime?* 108 PENN. ST. L. REV. 855 (2004) (focusing on the responsibilities of owners of dangerous dogs but acknowledging that more breed specific legislation will likely be passed).

¹⁸⁰ CAL. CIV. CODE § 1834.4 (West 2005).

¹⁸¹ CAL. FOOD & AGRIC. CODE §§ 31108, 31752, 31753 (West 2005).

¹⁸² *Id.* This provision could be criticized as being difficult for smaller rescue organizations to meet.

¹⁸³ CAL. FOOD & AGRIC. CODE §§ 31108(b), 31752(b), 31753(b) (West 2005).

LEGISLATING COOPERATION

for animals released to an animal rescue or adoption organizations.¹⁸⁴

2. Illinois

Illinois amended its statute in 2005 to require animals to be transferred to other organizations. The statutory section now provides that a dog or cat must first be scanned for a microchip and if a microchip is present the registered owner be notified.¹⁸⁵ Once contact has been made or attempted, the provision states “dogs or cats deemed adoptable by the animal control facility¹⁸⁶ shall be offered for adoption, or made available to a licensed humane society or rescue group. If no placement is available, it shall be humanely dispatched ...”¹⁸⁷ The facilities may only release dogs or cats to individuals representing rescue groups with licenses or foster care permits issued by the Illinois Department of Agriculture or if he or she is a representative of a not-for-profit out of state organization.¹⁸⁸ The licensing process by the Illinois Department of Agriculture is set forth in the state’s Animal Welfare Act.¹⁸⁹

As highlighted in the discussion of the perception of the problems of that these types of provisions could cause, there was substantial resistance to the adoption of the California provision.¹⁹⁰ In contrast, there appeared to be very little

¹⁸⁴ *Id.*

¹⁸⁵ 510 ILL. COMP. STAT. 5/11 (2005). This requirement makes sense given that the provision later requires the microchipping of animals. *Id.*

¹⁸⁶ “Pound” or “animal control facility” are used interchangeably in the statute and “mean any facility approved by the Administrator for the purpose of enforcing this Act and used as a shelter for seized, stray, homeless, abandoned, or unwanted dogs or other animals.” 510 ILL. COMP. STAT 5/2.18 (2005).

¹⁸⁷ 510 ILL. COMP. STAT. 5/11 (2005). The “dispatch” must be pursuant to the Humane Euthanasia in Animal Shelters Act. 510 ILL. COMP. STAT. 72/1-180 (2005).

¹⁸⁸ 510 ILL. COMP. STAT. 5/11 (2005).

¹⁸⁹ 225 ILL. COMP. STAT. 605/2-22 (2005).

¹⁹⁰ *See supra* notes 118-179 and accompanying text (discussing potential problems with Rescue Organizations).

(NAME OF JOURNAL)

resistance to the amendments to the section of the Illinois statute that essentially accomplished the same goal.¹⁹¹

The language of the Illinois act originated with the ASPCA and the Humane Society of Central Illinois who consulted with other interest groups.¹⁹² The language providing for the transfer of animals to humane societies and rescue organizations was part of a much larger bill and other provisions became the focus of concern of the legislature.¹⁹³

There are a few other states that specifically allow, but do not mandate the transfer of animals to humane societies or rescue organizations.¹⁹⁴ Examples include a Texas code

¹⁹¹ The author ran a “News” search in the Nexis Database on Feb. 6, 2006 on the title of the act using the popular name as well as the official name and only one of the eight newspaper articles that came up in the search even mentioned the change that would mandate the transfer to rescue organizations. See Sarah Casey Newman, *Forum will Focus on Holistic Pet Health*, ST. LOUIS POST-DISPATCH, May 28, 2005, at 37 (listing in the Legislative Update section of the story that the Illinois Senate had passed the Public Health & Safety Animal Population Control Act and that the act would require “shelters to offer animals they deem adoptable for placement prior to euthanasia”).

¹⁹² E-Mail from Ledy VanKavage, Sr. Director of Legal Training & Legislation, National Outreach, ASPCA, to Rebecca J. Huss, Professor of Law, Valparaiso University School of Law (Feb. 27, 2006, 12:16 PM CST) (on file with author).

¹⁹³ STATE OF ILL., 94TH GENERAL ASSEM., H.R., TRANSCRIPTION DEB., 32ND Leg. Day, 3/17/2005, available at <http://www.ilga.gov/house/transcripts/htrans94/09400032.pdf> (discussing House Bill 315, which became the Illinois Public Health and Safety Animal Population Control Act). In the debate, there was no mention of the provision requiring the transfer of animals to humane societies or rescue organizations. *Id.* The focus of the debate was on the financing of the provision through a proposed increase in the cost of the rabies vaccination. *Id.* This is illustrated by the later debate that occurred after the bill was amended taking out the provision requiring the increase in the cost of the rabies vaccination. STATE OF ILL., 94TH GENERAL ASSEM., H.R., TRANSCRIPTION DEB., 41ST Leg. Day, 4/15/2005, available at <http://www.ilga.gov/house/transcripts/htrans94/09400041.pdf> (stating that the bill was now being supported by the Illinois Veterinarians Association).

¹⁹⁴ An issue that must be left for a future article is the use of domesticated animals that have been obtained from animal control facilities for research. There are a few states that either allow for or mandate the use of these

LEGISLATING COOPERATION

provision which states that cruelly treated animals must be sold at auction but if they are unable to be sold they may be humanely destroyed or given to a nonprofit shelter.¹⁹⁵ It is more common to find language such as the South Carolina code provision that allows for the animal to be disposed of by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals.¹⁹⁶ In addition, many states recognize non-profit animal protection groups but do not encourage or require Shelters to work with Rescue Organizations as an alternative to euthanizing animals.¹⁹⁷

The issue is not that Shelter personnel have bad motives or want to euthanize animals, but past history has shown that in some cases in some areas, Shelters have not worked with Rescue Organizations. Since it is a death sentence for the animals if personnel of a Shelter do not wish to work with Rescue Organizations to transfer animals, legislation is needed to mandate cooperation in this area. This legislation works to

domesticated animals for research. *See, e.g.*, COLO. REV. STAT. § 35-42.5-101 (2005) (setting forth the standards for pounds and shelters that provide animals for experimentation, including prohibiting the practice known as “red tagging,” which is the practice of isolating relinquished animals without allowing them the opportunity for adoption). The Colorado statute also mandates that an owner who is relinquishing his or her animal must be told that the pound or shelter provides dogs or cats to facilities for experimentation. *Id.*; *see also* OHIO REV. CODE ANN. § 955.16 (West 2005) (providing that any dog not redeemed and is not required to be donated to a nonprofit special agency for service dogs, may be sold to a nonprofit Ohio institution engaged in teaching or research for diseases of humans or animals).

¹⁹⁵ TEX. HEALTH & SAFETY CODE ANN. § 821.024 (Vernon 2005).

¹⁹⁶ S.C. CODE ANN. § 47-3-60 (Law Co-op. 2005); *see also* 3 PA. STAT. ANN. § 459-302 (West 2005) (providing that after forty-eight hours an unlicensed dog may be humanely killed or given to a humane society or association for the prevention of cruelty to animals); UTAH CODE ANN. § 77-24-1.5 (2005) (providing that the final disposition of animals may be placement in adoptive home or transfer or euthanasia).

¹⁹⁷ *See, e.g.*, MICH. COMP. LAWS § 287. 336 (2005) (requiring shelters or societies to be registered with the department of agriculture); MO. REV. STAT. § 273.327 (2005) (requiring pounds and shelters to be licensed but providing that they are exempt from fees); N.J. REV. STAT. § 4:19-15.8 (2005) (providing for licensing of organizations).

the benefit of all the parties involved. The animals transferred to Rescue Organizations have an opportunity to be adopted and Shelters can focus their energies and resources on their other obligations.

C. Proposed Legislation

With California and Illinois leading the way, the path should be easier for states adopting language mandating the transfer of animals from Shelters to Rescue Organizations. States should keep the following issues in mind when they are drafting their provisions.

First, as seen in the existing language, it seems clear that some Shelters believe they have an interest in keeping the most “adoptable” animals on hand to encourage adoptions from their own facilities. Although an argument may be made that certain Rescue Organizations may be better able to place certain breeds because of the knowledge of the particular needs of those animals, it does not seem realistic that legislation will be passed that would mandate the transfer of animals that otherwise would not be put up for adoption. Certainly, language clarifying that every available animal must be up for adoption or transferred should be part of any such statute.

Including imprecise language such as “deemed adoptable” in a provision is problematic. Given that a strength of Rescue Organizations is the ability to take the time and resources to rehabilitate an animal, such language may lead to many animals that Rescue Organizations could place being euthanized. Existing law should control the impulse of any Rescue Organization to take any animal that might be dangerous to the community and truly vicious animals would not be eligible for adoption under local dangerous dog ordinances.¹⁹⁸ The terminology used in California

¹⁹⁸ The No-Kill movement recognizes that some animals should not be released to the public. These include animals for “whom euthanasia is the most humane alternative” and vicious animals. Maddie’s Fund, Defining No-Kill, What is No-Kill, http://www.maddies.org/nokill/nokill_define_what.html (last visited

LEGISLATING COOPERATION

law defining “treatable” is useful in this discussion.¹⁹⁹ Treatable animals are “any animal that is not adoptable but that could become adoptable with reasonable efforts.”²⁰⁰ It is precisely the efforts of the Rescue Organizations that are at issue. The issue of what is a “reasonable effort” should be left up to the Rescue Organization. If a Rescue Organization has the resources to treat an animal, the organization should be allowed to do so. The best option is to not have limiting language in the provision, allowing the Rescue Organizations to determine whether they wish to expend the resources to rehabilitate an animal.

It is important to make certain that all Shelters that take in animals be included in the provision to transfer animals. In other words, regardless of the status of a Shelter as a public or private entity, if a Shelter has a contract to provide animal control services to a jurisdiction, it should be subject to the terms of the provision. A step further would be to require any Shelter that is euthanizing healthy animals,²⁰¹ regardless of their status as an animal control

Feb. 20, 2006) (discussing definition of No-Kill). The ability to take a poorly socialized animal and through behavior modification enable the animal to be adopted into the community is one thing that Rescue Organizations can devote time and resources if Shelters cannot take on this task themselves.

¹⁹⁹ CAL. FOOD & AGRIC. CODE § 17005 (West 2005). Healthy (adoptable) animals are defined as:

[T]hose animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animals health in the future.

Id.; see also Maddie’s Fund, Defining No-Kill, What is No-Kill, http://www.maddies.org/nokill/nokill_define_what.html (last visited Feb. 20, 2006) (discussing definition of No-Kill).

²⁰⁰ CAL. FOOD & AGRIC. CODE § 17005 (West 2005).

²⁰¹ For example, because of a lack of space.

(NAME OF JOURNAL)

service provider, to make such animals available to Rescue Organizations.²⁰²

As discussed above, opponents of the California provision had concerns as to the suitability of some Rescue Organizations. To ensure that Rescue Organizations had some stability and were a true organization, California utilized Section 501(c)3 status as a proxy.²⁰³ In contrast, Illinois uses the licensing authority of its Department of Agriculture. As seen in the recent amendments to the Illinois statute²⁰⁴ there are valid reasons for both provisions to be included as alternatives for a Rescue Organization.

A source of potential conflict between Shelters and Rescue Organizations is the possibility of Shelters using their statutory enforcement powers to inspect facilities in a way that is burdensome on Rescue Organizations.²⁰⁵ By providing for the

²⁰² In this case, the point is that no healthy or treatable animal should be euthanized if there is an organization that is willing and able to take such an animal, regardless of where the animal was originally located.

²⁰³ See *supra* note 182 and accompanying text (discussing California statute).

²⁰⁴ The Illinois statute now allows representatives of out-of-state organizations that are organized as non-profit organizations to take animals. 510 ILL. COMP. STAT. 5/11 (2005); see Thayer *supra* note 139 at D03 (discussing changes to the Illinois Animal Control Act in 2003 that required organizations that obtain animals from shelters be licensed by the Illinois Department of Agriculture and the perception that out of state rescue organizations were illegible for such licenses).

²⁰⁵ There have been recent cases where animal caretakers appear to be the target of Shelters. In *Ritzel v. Penn. Society for the Prevention of Cruelty to Animals*, the plaintiff "cared for a variety of animals, many of which had been abandoned by others." No. 04-2757, 2005 U.S. Dist. LEXIS 1904, at *1 (E.D. Pa., Feb. 9, 2005). The plaintiff called the SPCA because sheep had been shot by paintballs and during the visit the officer recommended the plaintiff use a particular farrier. *Id.* at *2-3. The plaintiff alleges that the officer, who had previously lauded plaintiff's efforts to care for his animals, became accusatory because he declined to use the services of the recommended farrier, with whom plaintiff suggests the officer was engaged in a "personal relationship." *Id.* The plaintiff was charged but found not guilty of several animal cruelty charges, and sued for variety of claims. In this case, summary judgment on several of these claims including the punitive damages claim, were denied. *Id.* at *18. In another case, a self proclaimed "advocat[e] of alternative dog rescue organizations" who was

LEGISLATING COOPERATION

licensing to be done by the state department of agriculture, and having any inspections be done by state, rather than local officials, the possibility of a Shelter with police power putting pressure on a Rescue Organization to keep quiet about poor conditions at the Shelter may be minimized.

Since the purpose of this provision is to increase adoptions, Rescue Organizations who now have additional licensing requirements, should receive something in return. The additional rights or benefits that should be provided to the Rescue Organizations will differ depending on the circumstances of each state.

One aspect of sheltering that has increased is the use of foster homes. For many Rescue Organizations, without a physical facility, their ability to care and place animals is limited to the number of foster homes in their organization. A challenge for many people involved in rescue work is the limit that many jurisdictions place on the number of companion animals that can be kept on each residential property. As with other statutes relating to the regulation of companion animals, these statutes have been contested frequently but such lawsuits have generally been unsuccessful.²⁰⁶ Allowing for a waiver of the application of such limitations for foster homes²⁰⁷ would support the ability of Rescue Organizations to provide temporary shelter to these animals.²⁰⁸ Local nuisance laws are still available if a jurisdiction finds that a

charged but found not guilty of animal cruelty charges, sued an animal protection organization in Ulster County over seizure of the animals. *Fabrikant v. French*, 328 F. Supp. 303, 306-07 (N.D. N.Y. 2004). The court found the actors were not acting under color of law, as the requisite elements of a § 1983 claim were not met. *Id.* at 312.

²⁰⁶ Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69, 109, 111-15 (2005) (discussing the validity of municipal ordinances and restrictive covenants).

²⁰⁷ See, e.g., ILL. DEP'T OF AGRIC., BUREAU OF ANIMAL WELFARE, FORM AW-1 available at <http://www.agr.state.il.us/Forms/AnimalHW/AW-1.pdf> (providing for the licensing of Foster Homes in the State of Illinois).

²⁰⁸ Allowing for an increased number of animals in licensed foster homes is another option, although would be more difficult to implement on a case by case basis.

foster home is caring for the animals in a way that negatively impacts the rest of the community.²⁰⁹

The interaction between state and local governments differ by jurisdiction but generally, state legislatures have delegated the power to regulate in this area to local governments.²¹⁰ Since the establishment of these pet limit laws, along with other zoning regulations has been delegated to the local governments, in most cases requiring local governments to provide for an exemption to the pet limit laws based on a property owner's status as a foster care provider would necessitate serious changes to the structure of a state's laws.²¹¹ Local jurisdictions are free to adopt on their own provisions that would grant this right and given the benefits of foster care to the sheltering community,²¹² local jurisdictions should be encouraged to take such action.

Another benefit that might be provided is reduced or eliminated adoption fees for Rescue Organizations that take animals. Some Shelters will waive or reduce their fees while others will not when they are releasing animals to Rescue Organizations.²¹³

²⁰⁹ Huss, *supra* note 206, at 115-19 (discussing application of nuisance law in companion animal cases); *see also* San Francisco SPCA, Animal Rights and Protection, Pet Limit Laws Unnecessary, Pet Limit Laws: Closing the Door to Loving Homes, http://www.sfspca.org/advocacy/pdf/pdf_catrights/pet_limits.pdf (last visited Feb. 20, 2006) (discussing the San Francisco SPCA's opposition to pet limit laws as unnecessary, arbitrary and obtrusive).

²¹⁰ JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW 47 (2003) (discussing the states delegation of power to regulate land use to local governments).

²¹¹ This issue is quite complex and is heavily dependent on the status of the state laws including the type of enabling act adopted by the state and whether local governments in that state have independence by virtue of home rule powers conferred by a state constitution or a state statute. *Id.* at 47-51.

²¹² For example, foster care saves a local jurisdiction the costs of the care of an animal in a municipal Shelter.

²¹³ Telephone Interview with Michele Ambrose, President of MidWest Dachshund Rescue, Inc., in Madison, Wisconsin (Oct. 1, 2005).

LEGISLATING COOPERATION

The key to the adoption of any statute is to keep it simple. The point is not to imply at all Shelters refuse to work with all Rescue Organizations, but to make certain in those cases where there has been a lack of cooperation in the past, there is a legal mandate to require Shelters to release animals to Rescue Organizations in the future.

IV. SPAY OR NEUTER YOUR PET!

Any plan that aims to reduce the level of euthanization of animals must reduce the number of animals coming into the system. This is why it is necessary to mandate sterilization of animals coming into the community out of Shelters and Rescue Organizations. There are widely varying estimates on the percentage of animals that are spayed and neutered nationwide. Research in 1999 using a cross sectional study of cats and dogs in the State of Texas found only approximately 30% of animals were sterilized.²¹⁴ Owned animals are obviously more likely to be sterilized, and estimates are much higher with 72% of owned dogs and 84% of owned cats spayed or neutered.²¹⁵ In some cities more than 90% of pet dogs and cats are sterilized.²¹⁶ Even the American Kennel Club (“AKC”), which opposes the concept of breeding permits, breeding bans or mandatory spay/neuter of purebred dogs²¹⁷ encourages the spaying and neutering of any dogs placed by purebred dog rescue groups prior to placing them with a new owner²¹⁸ and “encourages pet owners to spay or neuter their dogs

²¹⁴ Jane C. Mahlow, *Estimation of the Proportions of Dogs and Cats that are Surgically Sterilized*, 215 J. AM. VETERINARIAN MED. ASSOC. 640, 640 (1999).

²¹⁵ APPMA, *supra* note 3 at 9, 69 (citing to spay/neuter statistics).

²¹⁶ Clifton, *What Has No-Kill Accomplished*, *supra* note 55.

²¹⁷ American Kennel Club, *Canine Legislation Position Statements as of April 2005, Breeding Restrictions*, available at http://www.akc.org/canine_legislation/position_statements.cfm (last visited Feb. 6, 2006).

²¹⁸ American Kennel Club, *Canine Legislation Position Statements as of April 2005, Purebred Dog Rescue*, available at http://www.akc.org/canine_legislation/position_statements.cfm (last visited Feb. 6, 2006).

as a responsible means to prevent accidental breedings resulting in unwanted puppies.”²¹⁹

A recent study, though limited in scope, found that females and more highly educated people were more likely to spay or neuter their animals.²²⁰ There is clearly much broader cultural acceptance for sterilizing animals than in the past as illustrated by the statement of one expert that “[f]or the majority of pet owners, it’s just what you do...”²²¹ Unfortunately even a small percentage of intact animals can make a significant difference in the overpopulation problem. In six years, one female dog and her offspring can give birth to up to 67,000 puppies and in only seven years one cat and her offspring can produce up to 420,000 kittens.²²²

Obviously, encouraging the sterilization of animals out in the community is a significant target for education and resources. The type of program varies by the community.²²³ For example, one

²¹⁹ American Kennel Club, *Canine Legislation Position Statements as of April 2005, Spaying and Neutering*, available at http://www.akc.org/canine_legislation/position_statements.cfm (last visited Feb. 6, 2006). Note that according to the AKC “[s]payed or neutered dogs are not eligible to compete in conformation classes at a dog show, because the purpose of a dog show is to evaluate breeding stock.” *American Kennel Club, Confirmation, A Beginners Guide*, available at <http://www.akc.org/events/conformation/beginners.cfm> (last visited Jan. 17, 2006).

²²⁰ Joshua M. Frank & Pamela Carlisle-Frank, *Sterilization and Contextual Factors of Abandonment: A Study of Pet Overpopulation*, available at <http://www.firepaw.org/research.html#papers>. This study surveyed households in upstate New York. The top reason listed at 33.3% for not spaying or neutering the animal was that the person may use the dog for breeding. *Id.*

²²¹ Jennifer Fiala, *Shelter Euthanasia Rates Drop to Historic Lows*, DVM NEWSMAGAZINE, July 2003, at 26.

²²² Humane Society of the United States, *Solving the Pet Overpopulation Problem*, http://www.hsus.org/pets/issues_affecting_our_pets/pet_overpopulation_and_ownership_statistics/solving_the_pet_overpopulation_problem.html (last visited Jan. 16, 2006).

²²³ See, e.g., Best Friends Animal Society, *No More Homeless Pets, Spay/Neuter Resources*,

LEGISLATING COOPERATION

model that has been successful uses a mobile veterinary clinic to provide services to low-income residents.²²⁴ Several states have also recognized the importance of this issue and have established programs not only to educate but also to fund low cost sterilization services. Examples include a new program in Illinois which is limited to owners of animals that are either eligible for the Food Stamps Program, the Social Security Disability Program or are managing a feral cat colony recognized by his or her municipality or county.²²⁵ Eligibility can also be based on whether the animal was acquired through a shelter.²²⁶ Many of these programs, including the program in Illinois, are funded, in part by the sale of pet friendly license plates.²²⁷ There are other proposals to promote the sterilization of animals including a proposed bill in the state of Hawaii that would provide for a tax deduction for an individual taxpayer for expenditures related to sterilization of the taxpayer's dog or cat.²²⁸

<http://www.bestfriends.org/nomorehomelesspets/resourcelibrary/snindex.cfm> (last visited Jan. 16, 2006); Regan Loyola Connolly, *Group Inspired to Explore Mobile Spay-Neuter Clinic*, LEAF-CHRON. (Clarksville, TN), Aug. 25, 2004 (discussing new mission of Clarkville Humane Society of focusing on sterilization to reduce pet overpopulation and reduce the euthanization rate).

²²⁴ Claudia Kawczynka, *Taking it to the Streets*, BARK, Fall 2001, at 30 (discussing mobile spay/neuter program in Los Angeles).

²²⁵ 510 ILL. COMP. STAT. 92/25 (2005) (discussing eligibility to participate in the Pet Population Control Fund; see also *infra* note 28 (discussing feral cats)).

²²⁶ N.H. REV. STAT. ANN. § 437-A:3 (2005) (providing New Hampshire residents may participate in the program if they adopt an eligible dog or cat from a shelter and pay a fee of \$40).

²²⁷ 510 ILL. COMP. STAT. 92/45 (2005) (setting forth provisions of Pet Population Control Fund); GA. CODE ANN. § 4-15-1, 40-20-49.3 (2005) (establishing dog and cat reproductive sterilization support program and issuing license plates promoting program); OHIO REV. CODE ANN. § 955.201 *et. seq.* (West 2006) (setting forth provisions of the "Ohio pet fund" including establishing eligibility criteria for organizations and individuals and allowing the issuance of license plates to raise funds); TENN. CODE ANN. § 55-4-290 (2005) (providing for the issuance of animal friendly license plates with the proceeds to be placed in a special fund to provide low cost spay and neutering services); VA. CODE ANN. § 46.2-749.2:7 (2005) (providing for special license plates to support sterilization program for dogs and cats).

²²⁸ H.R. 2631, 2006 Leg., 23d Sess. (Haw. 2006) (amending Chapter 235 to allow for a deduction from gross income during the taxable year).

Another alternative is to revise existing laws to provide incentives to owners to sterilize their animals. For example, municipalities could amend existing ordinances regulating companion animals. Dog registration programs are very common.²²⁹ Providing for differential licensing – requiring a substantially higher fee for intact animals over sterilized animals provides an incentive for owners to spay or neuter their pets.

One study found that pre adoption neutering increased the likelihood that dogs would be adopted from a shelter.²³⁰ In this program, the School of Veterinary Medicine at the University of California, Davis sterilizes shelter dogs through a student surgery program and then the dogs are offered for adoption at the shelter.²³¹ Ultimately, intact male dogs were least likely to be adopted, followed by intact females dogs.²³² Not surprising, euthanization rates for the intact adults were higher than that of the juveniles (with an estimated age of less than one year).²³³

Thorough legislation, most states have recognized the reality of the need to control pet overpopulation through the mandating of sterilization, at least in the case of animals that are acquired through adoption from Animal Control or a Shelter. The language from the Arkansas, California, Illinois and Texas statutes will be

²²⁹ HUMANE SOC'Y. OF THE U.S., GUIDE TO CAT LAW: A GUIDE FOR LEGISLATORS AND HUMANE ADVOCATES, 3 (2002) (stating that an estimated ninety percent of cities and counties have had a dog registration program).

²³⁰ Jaime Clevenger & Philip H. Kass, *Determinants of Adoption and Euthanasia of Shelter Dogs Spayed or Neutered in the University of California Veterinary Student Surgery Program Compared to Other Shelter Dogs*, 30 J. OF VETERINARY MED. EDU. 372, 378 (2003) (comparing adoption or euthanization of dogs neutered at University of California to a comparison group from the general shelter population).

²³¹ *Id.* at 372. In contrast, dogs in the general shelter population are neutered only after being selected for adoption at a local veterinary hospital. *Id.* at 372-73.

²³² *Id.* at 374.

²³³ *Id.* at 374, 377.

LEGISLATING COOPERATION

used for comparison purposes. There are several other states with similar language.²³⁴

²³⁴ ARIZ. REV. STAT. ANN. § 11-1022 (2006) (providing that dogs and cat shall not be released without sterilization unless there is no veterinary facility within a twenty mile radius of the shelter or there is a medical contraindication); CONN. GEN. STAT. § 22-380(f) (2005) (providing no pound “shall sell or give away any unsprayed or unneutered dog or cat . . . unless such pound receives forty-five dollars from the person buying or adopting such dog or cat” and additionally providing vouchers to the person acquiring such animal for sterilization purposes); D.C. CODE § 8-1807 (2006) (setting forth restrictions on releasing unsterilized animals); FLA. STAT. § 823.15 (2005) (providing very generally for the sterilization of dogs and cats released from any public or private animal shelter or allowing a written agreement with the adopter guaranteeing sterilization with penalties); GA. CODE ANN. § 4-14-3, 4-14-4 (2005) (providing for sterilization prior to release or written agreement for sterilization within thirty days with the penalty for noncompliance to be a misdemeanor with a fine not to exceed \$200.00); IOWA CODE § 162.20 (2004) (providing generally for sterilization prior to release on a written agreement that the new custodian shall have the dog or cat sterilized); KAN. STAT. ANN. § 47-1731 (2005) (providing for sterilization or written agreement and the deposit will be lost if not reclaimed upon proof of sterilization within six months); LA. REV. STAT. § 3:2472 (2005) (providing for sterilization or written agreement to sterilize within thirty days); MICH. COMP. LAWS § 287.338a (2005) (providing that no shelter shall allow an adoption of a dog, cat, or ferret without an alteration or contract to alter within four weeks); MO. REV. STAT § 273.403 (2006) (providing for sterilization by veterinarian or agreement to sterilize within thirty days); MONT. CODE ANN. § 7-23-4202 (2005) (providing that an animal must be spayed or neutered or agreement and deposit to be forfeited within thirty days); NEB. REV. STAT. § 54-638 (2005) (providing for spaying or neutering or written agreement to do so within thirty days); N.M. STAT. ANN. § 77-1-20 (West 2005) (providing for sterilization prior to release or agreement to sterilize within thirty days); N.Y. AGRIC. & MKTS. LAW § 377-a (McKinney 2005) (requiring dogs or cats be spayed or neutered prior to being released or within thirty days); N.D. CENT. CODE § 40-05-19 (2005) (providing for sterilization or written agreement and deposit); OKLA. STAT. tit. 4, §§ 499.2, 499.3 (2005) (providing that no dog or cat shall be released for adoption unless is it sterilized or there is an agreement to sterilize within sixty days of adoption with a minimum deposit of \$10.00); 3 PA. CONS. STAT. §§459-901-A, 459-908-A (2005) (providing for sterilization or agreement to sterilize and allowing the adopting agency to reclaim the animal if violation of the provision); S.C. CODE ANN. § 47-3-480 (Law. Co-op. 2005) (providing for sterilization prior to release or written agreement for sterilization within thirty days, remedies may include forfeiture of the animal and \$200.00 in liquidated damages); TENN. CODE ANN. § 44-17-502 (2005) (providing that dogs and cats must be spayed or neutered or a written agreement to do so within

(NAME OF JOURNAL)

In Arkansas, organizations that are supported in whole or in part by public funds cannot release any dog or cat over two months old that has not been sterilized “unless...a promise to spay or neuter the animal has been signed by the person acquiring the animal.”²³⁵ For counties with a population over 300,000, unless the animal is medically compromised, animals must be sterilized prior to leaving the facility.²³⁶ The failure of the new owner to comply with the signed agreement is deemed to be a violation of the statute and upon demand of the facility, the animal must be returned to the organization.²³⁷ Violations of the section are misdemeanors punishable by a fine of not less than one hundred nor more than five hundred dollars.²³⁸

In California, effective on January 1, 2005 “no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any dog [or cat] that has not been spayed or neutered.”²³⁹ There are limitations on this provision, allowing for a deposit to be used if a veterinarian certifies that it

thirty days); UTAH CODE ANN. §§ 10-17-102, 10-42-102 (2005) (providing that an animal shelter may not transfer an animal that has not be sterilized unless a written agreement has been executed agreeing to sterilize within thirty days); VA. CODE ANN. § 3.1-796.126:1 (West 2005) (providing for sterilization or a writing agreement to do so within thirty days with violators subject to civil penalties). There is recent similar legislative activity in other states as well. *See, e.g.*, H.R. 252, S. 291, 2006 Leg. (Ala. 2006) (providing that animal shelters and humane societies must sterilize dogs or cats prior to sale or placement); N.J. Assembly Bill 1827 (2006) (requiring all cats and dogs released from shelters be sterilized).

²³⁵ ARK. CODE ANN. § 20-19-103(a) (Michie 2006). There are exceptions to this rule if the animal is medically compromised and a veterinarian certifies to that fact. *Id.* § 20-19-103(c)(2).

²³⁶ *Id.* § 20-19-103(c)(1).

²³⁷ *Id.* § 20-19-103(b)(2). “In such case, the animal described therein shall be returned to the releasing agency upon demand. Ownership of the animal reverts to the releasing agency in such instance. No claim may be made by the owner to recover expenses incurred for maintenance of the animal, including the initial procurement cost.” *Id.*

²³⁸ *Id.* § 20-19-103(d).

²³⁹ CAL FOOD & AGRIC. CODE §§ 30503(a), 31751.3(a) (West 2005).

LEGISLATING COOPERATION

would be detrimental to the health of the animal to be sterilized at the time²⁴⁰ and the provisions do not apply to counties with populations under 100,000 persons.²⁴¹

The Illinois provision is similar but allows for a written contract with the person wishing to adopt agreeing have the service performed within thirty days.²⁴² In addition, the Illinois statute requires that the animal be microchipped.²⁴³ The breach of Illinois statute may result in seizure and impoundment of the animal.²⁴⁴

In Texas, the provisions apply to public or private animal pounds, shelters or humane organizations, collectively referred to as “releasing agencies.”²⁴⁵ The releasing agency must sterilize the animal or the new owner must sign an agreement to have the animal sterilized.²⁴⁶ The new owner is required to send the releasing agency a letter to confirm sterilization of the animal²⁴⁷ or to notify the releasing agency if the animal dies²⁴⁸ is lost or stolen.²⁴⁹ It is the responsibility of the releasing agency to file a complaint against the new owner if the required letter is not received by the time set forth in the statute.²⁵⁰ The releasing

²⁴⁰ *Id.* §§ 30503(b), 31751.3(b).

²⁴¹ *Id.* §§ 30503(e), 31751.3(e). Note that there is an entirely different set of provisions that apply to counties in California with populations under 100,000 persons). *Id.* §§ 30521, 30522, 30561, 30562 (providing for a spaying or neutering deposit for dogs and cats and providing that failure to comply for the sterilization agreement will cause the owner to forfeit the deposit and incur a fine).

²⁴² 510 ILL. COMP. STAT. 5/11 (2005).

²⁴³ *Id.* The agreement to render the animal incapable for reproduction also includes having the animal microchipped. *Id.*

²⁴⁴ *Id.*

²⁴⁵ TEX. HEALTH & SAFETY CODE § 828.001(2) (Vernon 2005).

²⁴⁶ *Id.* § 828.002.

²⁴⁷ *Id.* § 828.003.

²⁴⁸ *Id.* § 828.006.

²⁴⁹ TEX. HEALTH & SAFETY CODE § 828.007 (Vernon 2005).

²⁵⁰ *Id.* § 828.008. The releasing agency must receive the letter before the expiration of the seventh day after the sterilization completion date agreed to under the agreement signed by the new owner. *Id.* This provision continues :

It is the presumption under this law that the failure of the new owner to deliver to the releasing agency a signed letter as required under Section 828.005, 828.006, or 828.007 is the result of the new owner’s refusal to

(NAME OF JOURNAL)

agency can then reclaim the animal from the new owner.²⁵¹ Violation of the chapter by the new owner is also criminal offense punishable as a Class C misdemeanor.²⁵² The chapter does not apply to counties with populations of 20,000 or less or municipalities with populations of 10,000 or less.²⁵³

There are a few issues with the language with the statutes. The first is the scope of the language. Of course in most cases, the provisions only apply to animals that are being adopted, not to animals that are being released back to their owners.²⁵⁴ From a public policy perspective, an argument can be made that it is precisely the animals that are running at large that need to be sterilized. In fact, proposed legislation in New Jersey mandates the sterilization of animals prior to the release back to their owners (subject to certain exemptions),²⁵⁵ and recent amendments to the Illinois Code provide that a dog found running at large a second or subsequent time must be sterilized within 30 days after being reclaimed.²⁵⁶

have the adopted animal sterilized. The new owner may rebut this presumption at the time of the hearing with proof required under the above mentioned sections.

Id.

²⁵¹ *Id.* § 828.009.

²⁵² *Id.* § 828.003 & 828.010. Requiring a statement to this effect on the sterilization agreement used by the releasing agency. *Id.*

²⁵³ *Id.* § 828.013. The chapter also does not apply to dogs or cats that are claimed by persons who already own the animal, animals that are procured by institutions of higher learning for biomedical research, testing or teaching, or if the jurisdiction has an ordinance with standards that exceed those of this chapter. *Id.*

²⁵⁴ *See, e.g.,* MO. REV. STAT. §273.405 (providing that sterilization requirement does not apply to dog or cat claimed by owner).

²⁵⁵ 2006 N.J. Assem. Bill 1827 (providing an exemption from sterilization if an owner of an animal can provide documentation that the animal is a show animal, the owner is a professional licensed breeder, or that sterilization would be detrimental to the health of the animal).

²⁵⁶ 510 ILL. COMP. STAT. 5/9 (2005). The provision continues by stating “failure to comply shall result in impoundment.” *Id.*

LEGISLATING COOPERATION

As seen by the language discussed above, it is also common to exempt counties with small populations from the provisions of the act. Of course there are resource issues for every jurisdiction. With the increasing use of state pet overpopulation fund programs²⁵⁷ the pressure to excuse these counties from the application of these should be lessened. Further creativity in funding for sterilization should also be considered to eliminate this as an issue such as tax credits for veterinarians that provide services to shelters.²⁵⁸

Perhaps a more obvious issue is that there are still several statutes that have exceptions to the sterilization provision that appear to allow for a potential adopter to essentially choose to “opt out” of the act. Examples include Louisiana which states that the “sterilization requirements ...do not apply to a dog or cat that is claimed by an adopter who executes a written agreement obligating the adopter to care for the adopted dog or cat and all of its offspring and pays the fee set by the releasing agency, which fee shall be in addition to the set adoption fee.”²⁵⁹ This appears to allow the releasing agency to essentially sell the right to breed the animal.

In Montana, the language is even more straightforward with the provisions of the sterilization section not applying when the shelter “at its discretion, chooses to accept an adoption fee of not less than \$ 50 from a person who wishes to adopt an animal for breeding purposes.”²⁶⁰ Thus in Montana there is not even any written agreement obligating the adopter to care for the offspring of the animal.

²⁵⁷ See *infra* notes 223-227 and accompanying text (discussing various programs).

²⁵⁸ See, e.g., H.B. 1367, 2006 Sess. (Va. 2006) (allowing for a nonrefundable credit to veterinarians performing sterilization procedures at no cost on animals from public pounds and shelters).

²⁵⁹ LA. REV. STAT. § 3:2475 (2005) (setting exceptions to sterilization requirements and stating that failure to comply “may give rise to a cause of action in a court of competent jurisdiction”).

²⁶⁰ MONT. CODE ANN. § 7-23-4202 (2005) (providing for exceptions from sterilization provision).

(NAME OF JOURNAL)

In Missouri, the exemption is based on the type of dog and what the dog is going to be used for specifically that the dog is “of a breed regularly used for lawful hunting or livestock production or management, as specified by rules of the department, to be used in the practice of livestock production or management or the practice of lawful hunting.”²⁶¹

Many of the current state sterilization provisions include language that provide for timing for the sterilization procedure or deposit forfeiture to be delayed if the animal is considered immature. Maturity is generally deemed to be considered six months of age.²⁶² It is only after this point in time that the clock would start to run (the thirty day or even longer period) on the contract to sterilize. Although the idea behind this may seem

²⁶¹ MO. REV. STAT. § 273.405 (2006) (allowing for the adopter to sign a statement that he or she will use the dog for that purposes instead of a sterilization agreement).

²⁶² CONN. GEN. STAT. § 22-380e-380f (2005) (providing in the definition of “Medically unfit” that a dog or cat may be deemed unsuitable for sterilization due to insufficiency in age if the animal is under six months); D.C. CODE § 8-1807 (2006) (providing for female animals to be spayed by six months and male animals to be neutered by ten months); FLA. STAT. § 823.15 (2005) (providing for sterilization prior to sexual maturity); GA. CODE ANN. § 4-14-2 (2005) (defining a sexually mature animal as a dog or cat that has reached the age of 180 days or six months and requiring sterilization within thirty days of sexual maturity); LA. REV. STAT. §§ 3:2471, 3-2472 (2005) (providing that an adult animal is a dog or cat that has reached the age of six months and allowing for the sterilization date to be the thirtieth day after the date estimated to be the date the animal becomes six months of age, but allowing for earlier sterilization if the releasing agency has a written policy recommending sterilization of certain infant animals); MICH. COMP. LAWS § 287.338(a) (2005) (providing for six months before four week window for sterilization begins); MO. REV. STAT. § 273.403 (2005) (providing for sterilization within 30 days after a kitten or puppy become six months of age); MONT. CODE § 7-23-4202 (2005) (allowing for the deposit to be forfeited within thirty days if an animal is more than six months old at the time of adoption, but by the time the animal is six months old, or within thirty days of adoption whichever is longer if the animal is less than six months old); NEB. REV. STAT. § 54-638 (2005) (providing for thirty days after a put or kitten is estimated to be six months of age or if the releasing entity has a written policy recommending earlier sterilization, the thirtieth day after such date) N. M. STAT. § 77-1-20 (2005) (using six months as its guide).

 LEGISLATING COOPERATION

sound, it is not in line with current veterinary theory. Of course, a sterilization procedure should not be done on any animal that is medically compromised and many of the statutory provisions have this as a separate exception to the time periods provided. It is true that early age sterilization of dogs and cats has been controversial in the past. However, the benefits of early age neutering continue to be found in scientific studies.²⁶³ The American Veterinary Medical Association has a position statement that supports the concept of “early (prepubertal, 8 to 16 weeks of age) spay/neuter in dogs and cats in an effort to reduce the number of unwanted animals of these species.”²⁶⁴ Although there are concerns with pediatric sterilization, including, the risk of disease transmission at the veterinary clinic, such a risk of course is not applicable if an animal is already in a Shelter environment (which is already a high risk environment for disease transmission).²⁶⁵ Several studies have

²⁶³ John C. Wright & Richard T. Amoss, *Prevalence of House Soiling and Aggression in Kittens During the First Year After Adoption From a Humane Society*, 224 J. AM. VETERINARY MED. ASSOC. 1790, 1795 (2004) (stating “in light of the present results and the benefits of early-age gonadectomy cited elsewhere, . . . [finding] little evidence to recommend against shelters and practicing veterinarians continuing to neuter 6- to 13-week old kittens prior to adoption”).

²⁶⁴ American Veterinary Medical Association, Early-Age (Prepubertal) Spay/Neuter of Dogs and Cats, http://www.avma.org/issues/policy/animal_welfare/spay_neuter.asp (last visited Feb. 20, 2006). The statement continues “[j]ust as for other veterinary procedures, veterinarians should use their best medical judgment in deciding at what age spay/neuter should be performed on individual animals.” *Id.* The American Animal Hospital Association’s position statement is similar, stating “[t]o reduce the overpopulation problem in companion animals, the American Animal Hospital Association supports neutering of cats and dogs as early as eight to 16 weeks of age in animal care and control facilities.” American Animal Hospital Association, Early Neutering of Companion Animals Position Statement, http://www.aahanet.org/About_aaha/About_Position.html#neutering (last visited Feb. 20, 2006). Note that the American Animal Hospital Association Position Statement was adopted in 1994. American Animal Hospital Association, Position Statements/White Papers, http://www.aahanet.org/About_aaha/About_Position.html (last visited Feb. 20, 2006).

²⁶⁵ Best Friends Animal Society, No More Homeless Pets Forum, Feb. 29, 2003, Pediatric Spay/Neuter, <http://www.bestfriends.com/archives/forums/pediatric.html> (last visited Feb. 20,

(NAME OF JOURNAL)

shown that animals that are sterilized very young have “lives that are as long and healthy as any other.”²⁶⁶ It is not uncommon for an organization to have a firm policy that no animal will be released for adoption prior to sterilization.²⁶⁷

2006) (citing to Dr. Dave Sweeny, a veterinarian and chief of staff at No More Homeless Pets Utah’s Big Fix mobile van). Other issues such as risks of anesthesia can be dealt with proper information and training. *Id.* Dr. Sweeny recommends all dogs and cats been sterilized by twenty weeks. *Id.*

²⁶⁶ Richard Allen, DVM, *The Truth About Juvenile Spay/Neuter: When is the Right Time to Spay or Netuer Puppies and Kittens?*, BEST FRIENDS MAG., Sept./Oct. 1999, at 42.

²⁶⁷ *Id.* (stating that “every organization or person that places animals in new homes *must* have them spayed or neutered before adoption. It is a policy that we never waiver from here at Best Friends,” referring to Best Friends Animal Society, an animal sanctuary in Utah that has approximately 1,500 animals at any time); The Anti-Cruelty Society, Adoptions, <http://www.anticruelty.org/adoptions.html> (last visited, Feb. 20, 2006) (stating that spaying and neutering is included in each adoption in information about adoption from this Chicago, Illinois private not-for-profit humane society); Dachshund Rescue of North America, Inc., Adoption Process, Standard Vet Care, <http://www.drna.org/vetcare.asp> (last visited Feb. 27, 2006) (stating that all DNRA dogs will have been spayed or neutered); Midwest Dachshund Rescue, Adoption Process, <http://www.mwdr.org/adopt.asp> (last visited Feb. 20, 2006) (stating that prior to adoption each dachshund who needs it receives a spay or neuter procedure); Philadelphia Animal Care and Control Association, Adoptions, <http://www.pacca.us/adoptions.cfm> (last visited Feb. 20, 2006) (stating that all dogs, puppies, cats, and kittens are spayed and neutered prior to prior to going home from Philadelphia Animal Care and Control Association, the City of Philadelphia’s contracted animal control shelter which takes in almost 30,000 animals each year);

San Francisco SPCA, Adoption, Adoption Program, http://www.sfspca.org/adoption/adoption_program.shtml (last visited Feb. 20, 2006) (stating that every animal is provided with free spay/neuter surgery prior to placement); Tompkins County, SPCA, Adoption, Why Adopt From Tompkins County, SPCA http://www.spcasonline.com/sp_adopt2.htm (stating that “[a]ll dogs and cats, including puppies and kittens already spayed/neutered”); Wayside Waifs, Adoption, Adoption Process <http://www.waysidewaifs.org/adoptionprocess.asp> (last visited Feb. 20, 2006) (stating that all animals are spayed or neutered before leaving this independent not-for profit shelter that takes in strays, owner surrendered and transfers from animal control facilities in the Kansas City, Missouri, area).

LEGISLATING COOPERATION

As with the issue of sterilization contracts for older animals, the issue with allowing a younger animal to be adopted without prior sterilization, the issue is noncompliance. As one expert states “[e]ven in programs where adopters pay for the spay/neuter AHEAD of time, 20% of pets who are adopted intact are not fixed by the time they’re old enough to reproduce, which can happen as young as 4 months of age for some female cats.”²⁶⁸

The need for mandatory sterilization prior to release from an organization rather than a contract is illustrated by the lack of compliance with the provisions. The Arkansas statute now requires shelters (although only in certain counties) to sterilize rather allowing for a written contract because “experience has shown that less than fifty percent (50%) of persons who receive animals from shelters subject to an agreement to subsequently sterilize those animals, comply with their agreement. Attempts to enforce those agreements place an intolerable burden upon the enforcement effort.”²⁶⁹

Based on this information, the ideal practice is for every animal to be sterilized prior to leaving any Shelter or Rescue

²⁶⁸ Response by Ledy VanKavage, Esq. Too young to Fix=Too young for adoption posted on NMHP Forum nmhpforum@bestfriends.org, Dec. 21, 2005, at 8:13 PM (on file with author). Ms. VanKavage is the Senior Director of Legal Training & Legislation, National Outreach for the ASPCA. *See also* American Humane Association, Animal Welfare Policy Statements, Prepubescent Neutering of Sheltered Kittens and Puppies, http://www.americanhumane.org/site/PageServer?pagename=wh_where_stand_apsp_prepubescent_neuter (last viewed Feb. 20, 2006) (setting forth the American Humane Societies support of prepubescent sterilization of kittens and puppies in shelters and stating that in its experience “even with spay/neuter contracts and follow-up reminders by shelters, as much as 10% to 20% of adopted animals remain unneutered”).

²⁶⁹ ARK. CODE. ANN. § 20-19-103 note (2006) (discussing Acts 1999, No. 488). Note that even when vouchers are provided to a person to pay for the sterilization of an animal, compliance rates can be quite low. “Some estimates are as low as only 40% success rate for people using vouchers nationwide.” Best Friends Animal Society, No More Homeless Pets Forum, Feb. 16, 2004, *Getting Vets Involved, How to get Vets Accepting of A Voucher Program*, <http://www.bestfriends.com/archives/forums/021604vets.html> (citing to response by Dr. Leslie Appel of Shelter Outreach Services).

Organization.²⁷⁰ If this is not feasible, the animal could be picked up directly from the veterinary clinic doing the sterilization procedure.²⁷¹ Given the fact that sterilization procedures can be done as early as eight weeks of age, the issue may be if the animal is too young for sterilization perhaps it is too young to be adopted.²⁷²

Perhaps the next generation of these statutes is seen in the proposed legislation in Virginia. The Virginia proposal not only includes microchipping (which is an positive step) it also requires that all releasing agencies including dealers and pet stores must sterilize before the animal is released to a new owner.²⁷³ There is an exemption to the sterilization requirement for sales to someone who intends to breed only once and not for profit.²⁷⁴ The reaction of the AKC has been swift and it has publicly opposed the bill.²⁷⁵ It is difficult to see how this bill as initially proposed can be successful with the AKC's opposition in place. The Virginia statute still includes the same issue of allowing for an agreement and deposit to sterilize rather than requiring sterilization itself –

²⁷⁰ Petfinder.com, Benchmarks of a Good Shelter, <http://www.petfinder.org/journalindex.cgi?path=/public/shelteroperations/yourlocalshelter/1.45.2.txt> (last visited Feb. 20, 2006) (setting forth benchmarks from the ASPCA to evaluate a shelter). The ASPCA benchmarks state “[t]he first indication of a good animal shelter is mandatory sterilization of all animals... No responsible shelter will adopt animals without making provisions for their sterilization. Ideally, all animals leaving a shelter should be sterilized prior to being sent into their new homes.” See also WI Dog Rescue, Mission & Ethics, <http://www.widogrescue.com/missionethics.html> (last visited Feb. 20, 2006) (stating that a quality rescue and a quality shelter spay and neuter all animals prior to placement).

²⁷¹ VanKavage, *supra* note 268 (suggesting alternatives to allowing an intact animal into the community).

²⁷² *Id.* (discussing pediatric spay/neuter and the fact that in her area of the country (Southwestern Illinois) veterinarians have been performing spaying and neutering on animals that are eight weeks of age or weigh two pounds for the last decade).

²⁷³ S. 55, 2006 Sess. (Va. 2006).

²⁷⁴ *Id.* This is defined in the provision as a Hobby breeder. *Id.*

²⁷⁵ American Kennel Club, *Virginia Considers Mandatory Spay/Neuter Bill!*, http://www.akc.org/news/index.cfm?article_id=2765 (last visited Feb. 6, 2006).

LEGISLATING COOPERATION

which will likely result in a substantial percentage of noncompliance with the provisions.

It is certainly a positive step that many states have recognized the importance of sterilization to control the pet population. While recognizing that political realities differ in each state, based on the information available to date, the following changes are recommended. First, if a state does not currently have a provision mandating sterilization of animals adopted from all Shelters and Rescue Organizations, such a provision should be adopted. Regardless of the public policy implications, it may be unlikely for broader sterilization measures to be adopted in the near future on a wide basis.²⁷⁶ Notwithstanding that, such a measure should provide that owned animals that have been found at large be sterilized as well as those to be adopted to the public.²⁷⁷

Second, as discussed above, the best practice would be for all animals to be sterilized prior to being adopted²⁷⁸ given that there is compelling evidence that contracts and voucher programs are not fully effective.²⁷⁹ The problem is that there is a risk that by

²⁷⁶ That said, a law that allows jurisdictions to mandate the universal sterilization of a certain breeds of dogs has already been adopted in California. CAL. HEALTH & SAFETY CODE § 122331 (2006). *Compare* San Francisco Animal Care and Control, Pit Bull Ordinance, http://www.sfgov.org/site/acc_index.asp (discussing recent adoption of California law and ordinance in San Francisco that makes it illegal to own an intact pit bull or pit bull mix in San Francisco), with Kory, A. Nelson, *Denver's Pit Bull Ordinance: A Review of its History and Judicial Rulings*, available at http://www.denvergov.org/City_Attorney/template319853.asp (last visited Feb. 20, 2006) (discussing the constitutionality of DENVER REV. MUNICIPAL CODE § 8-55 banning pit bulls in the City of Denver, Colorado).

²⁷⁷ *See supra* notes 254-56 (discussing rationale for sterilization of at-large animals). In order for such a measure to be passed, it may need to provide for an exemption for animals that are registered as American Kennel Club or Cat Fanciers Association show animals as provided for in the proposed New Jersey provision. N.J. Assmb. Bill 1827 212 Legis (2006).

²⁷⁸ The responsibility for sterilization is passed to a Rescue Organization if an animal is transferred to it by a Shelter.

²⁷⁹ As discussed above, even just one intact dog or cat can have a significant impact on the pet population, *see supra* note 222 and accompanying text (discussing estimated progeny from single breeding dog or cat).

requiring sterilization prior to release, in some jurisdictions without a history of support for sterilization, it may actually lead to pressure to euthanize more animals. As an interim measure, these contracts or voucher programs may stay in place but should be strengthened in the following manner. Given the evidence regarding the safety of pediatric sterilization, the usual period of time for the sterilization clock to begin to run for young animals should be dropped from six months to four months.²⁸⁰ In addition, the penalties for the violation of the sterilization agreement should be strengthened in many states. If not already included one penalty for violation should be to allow the releasing entity to seize the animal, and any offspring. As important as it is to encourage compliance with sterilization contracts, the penalties for noncompliance should be in line with other state law. It is a difficult balancing act – to emphasize the importance of the contract without discouraging a potential adopter from adopting an animal from a Shelter or Rescue Organization – and instead purchasing one.

The final issue is that the significant loopholes must be closed in the provisions. First, the jurisdictions with smaller populations that are exempt from or have lesser standards should be brought in line with the state mandate. Second, the specific loopholes allowing an adopter to “opt out” of sterilization should be eliminated.

Sterilization efforts cannot happen without financial support. The funding programs discussed above are imperative if Shelters are going to be able to implement state laws that will require spaying and neutering of animals. In order for the pet population

²⁸⁰ Best Friends Animal Society, *No More Homeless Pets Forum Pediatric Spay/Neuter*, <http://www.bestfriends.com/archives/forums/pediatric.html> (last visited Feb. 20, 2006) (citing to Dr. Dave Sweeny, a veterinarian and chief of staff at No More Homeless Pets Utah’s Big Fix mobile van). Other issues such as risks of anesthesia can be dealt with proper information and training. *Id.* Dr. Sweeny recommends all dogs and cats been sterilized by twenty weeks. *Id.* Note that if it is medically inadvisable to sterilize a particular animal, most states already include language allowing for an delay to be made in such a case.

LEGISLATING COOPERATION

problem to be brought under control, it is necessary for sterilization programs to be brought out into the community. Only when the human population is educated about the need for sterilization and fulfills its obligations can the pet population problem be brought under control.

CONCLUSION

The final prong of the non lethal methods of pet population control relies on the on the retention of animals in homes. By freeing up resources, one thing that Shelters can focus on is reuniting lost animals with their owners.²⁸¹ Microchipping promotes the reuniting of animals with their legal owners, in a lost and found situation. Microchipping, as part of a mandatory sterilization program is one way to promote the use of this system.

Another use of resources is to provide for additional training and education to the public. Studies have shown that up to one-third of the dogs and cats that enter Shelters are relinquished by their owners.²⁸² A leading cause of relinquishment is behavior problems.²⁸³ By providing for behavioralists and lower cost training opportunities, fewer animals will need to enter into the Shelter system. Research shows that animals are subject to a variety of psychological stressors during their time in shelters.²⁸⁴ There is evidence that shows that dogs find shelters stressful.²⁸⁵

²⁸¹ Ninety percent of lost pets are never identified and recovered. Auburn University College of Veterinary Medicine, *Maddie's Shelter Medicine Information and Protocols Microchip Information*, http://www.vetmed.auburn.edu/index.pl/microchip_information (last visited Jan. 24, 2006).

²⁸² Auburn University College of Veterinary Medicine, *Maddie's Shelter Medicine Information and Protocols Strengthen the Bond*, http://www.vetmed.auburn.edu/index.pl/strengthen_the_bond" (last visited Jan. 24, 2006).

²⁸³ *Id.*; David S. Tuber et al., *Dogs in Animal Shelters: Problems, Suggestions, and Needed Expertise*, 10 PSYCHOL. SCI. 379, 381 (1999) (finding that behavior problems in dogs are one of the most common reasons that dogs are relinquished to shelters).

²⁸⁴ Tuber, *supra* note 283, at 379.

²⁸⁵ *Id.* at 380 (finding that the plasma levels of the stress related adrenal hormone cortisol were elevated in dogs in modern public shelters).

Another study concluded that at least one “serious behavioral problem can be expected during the first month of adoption for 50% of kittens from a humane society into a home.”²⁸⁶ “Dogs obtained from shelters and then relinquished make up about 20% of the population of the dogs of shelters.”²⁸⁷

Certainly, better shelter design is an interim measure that can help minimize the impact on the animals in the system.²⁸⁸ It is unrealistic in many communities to take on renovation or building of new facilities. The facilitation of animals to foster programs in order to get them out of the shelter environment as quickly as possible is good for the animals and beneficial to the Shelters’ bottom lines.

In the area of increasing adoptions, this Article has focused on mandating the transfer of animals to Rescue Organizations. Other creative ways to encourage the adoption of animals include, providing a tax deduction to those who adopt an animal from a Shelter or Rescue Organization and providing for an additional tax on the sale of animals from pet stores or breeders increasing the price of such animals with such a fee being allocated to the state pet overpopulation fund.²⁸⁹

As this Article has shown, in order to implement non-lethal strategies to combat pet overpopulation legislation is needed to

²⁸⁶ John C. Wright & Richard T. Amoss, *Prevalence of House Soiling and Aggression in Kittens During the First Year After Adoption From a Humane Society*, 224 J. AM. VETERINARY MED ASS’N 1790, 1795 (2004). The Wright and Amoss study did not compare kittens acquired by other means with kittens acquired through humane societies. The authors of the study encourage education to adopters to reduce aggression to prevent abandonment of young kittens. *Id.*

²⁸⁷ Tuber, *supra* note 283, at 379.

²⁸⁸ Schlaffer & Bonacci, *supra* note 61 (discussing designs for shelters that minimize stress on animals).

²⁸⁹ See, e.g., 7 MAINE REV. STAT. § 3931-A (2005) (providing that a “person maintaining a breeding kennel shall collect a surcharge of \$25 on each cat or dog sold that has not been neutered and forward the entire surcharge to the department for deposit in the Companion Animal Sterilization Fund”).

LEGISLATING COOPERATION

encourage Shelters to work with Rescue Organizations and to make certain that an increased percentage of animals are sterilized.

There will always be limited resources available. What has become clear in the last decade is that it is possible for significant changes to be made in the animal population problem in the United States. Through education, collaboration and with legislative standards in place the euthanization levels in the United States can continue to decline which is better for the animals and better for the communities where we live. It is possible to become a no kill nation – we just need to take the necessary steps to make it happen.