

April 2011

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### Recommended Citation

Stephen Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. 748 (2011)

Available at: <http://digitalcommons.pace.edu/plr/vol31/iss2/7>

# Felony Animal Cruelty Laws in New York

Stephen Iannacone\*

## I. Introduction

In 1997, Chester Williamson committed an act of murder.<sup>1</sup> He approached Buster, soaked him in kerosene, lit a match, then proceeded to burn Buster alive. Chester's punishment for these heinous acts was not jail, but he was sentenced to three years of probation.<sup>2</sup> Chester was prosecuted in the New York Court system and found guilty of a mere misdemeanor. Why was Chester's punishment so minor? Because Buster was a cat.

In 2008, the Animal Legal Defense Fund (ALDF) categorized all fifty states into three tiers which ranked each state's animal cruelty laws from best to worst—the top tier being the most protective of animals and the bottom tier being the least protective.<sup>3</sup> New York fell into the middle tier.<sup>4</sup> Currently, all fifty states have some type of animal cruelty laws.<sup>5</sup> Moreover, forty-six of fifty states, as well as Washington D.C., make certain types of animal cruelty a felony.<sup>6</sup> Most

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\* J.D., Pace University School of Law, 2011. I would like to thank my family for their steadfast support in all my endeavors, especially throughout law school.

1. Dana Campbell, *The Unique Legal Challenges Involved in Bringing Juvenile Animal Abusers to Justice*, N.Y. ST. B. ASS'N 5 (Sept. 15, 2008), <http://www.nysba.org/Content/ContentFolders45/SpecialCommitteeonAnimalandtheLaw/TeenAnimalCruelty/3.Dana.Campbell.Animal.Cruelty.Materials.pdf>.

2. *See id.*

3. ANIMAL LEGAL DEF. FUND, 2008 STATE ANIMAL PROTECTION LAWS RANKINGS: COMPARING OVERALL STRENGTH & COMPREHENSIVENESS 2 (2008), <http://www.aldf.org/downloads/ALDF2008StateRankingsReport.pdf>.

4. *Id.* at 3.

5. THE HUMANE SOC'Y OF THE UNITED STATES, STATE ANIMAL CRUELTY CHART (2010), [http://www.humanesociety.org/assets/pdfs/abuse/state\\_animal\\_cruelty\\_laws\\_080109.pdf](http://www.humanesociety.org/assets/pdfs/abuse/state_animal_cruelty_laws_080109.pdf).

6. STEPHAN K. OTTO, ANIMAL LEGAL DEF. FUND, JURISDICTIONS WITH FELONY ANIMAL ABUSE PROVISIONS (2009), <http://www.aldf.org/downloads/Felo>

states only apply felony animal cruelty laws to specific types of crimes against certain species of animals.<sup>7</sup> New York makes aggravated cruelty to animals a felony under Article 26 of its Agriculture and Markets Laws.<sup>8</sup> While there are several reasons why ALDF ranked New York in the middle tier of its report, there are also several actions that New York can take to move into the top tier. This Comment will examine the purpose behind New York's felony animal cruelty law and how local courts interpret the complex wording in the statute. This Comment will also determine whether the law is serving its purpose and what the state of New York can do to better implement its law. Sections II and III will explain the history of animal cruelty laws in general and the specific purposes that the State of New York is attempting to accomplish with its felony animal cruelty law. Section IV will explain the difficulties that New York prosecutors face when trying to interpret New York's statute and prosecute animal cruelty cases. Finally, in Section V, I will suggest several ways that could help New York properly implement its felony animal cruelty law.

## II. History of New York's Animal Cruelty Laws

Cruelty to animals was never an offense at common law, but developed from a long history of philosophical debates and state statutory regimes.<sup>9</sup> In 1641, the Massachusetts Bay

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ny\_Status\_List2-09.pdf. The only states without statutes making animal cruelty a felony are Idaho, Mississippi, North Dakota, and South Dakota. *Id.*

7. See ALA. CODE § 13A-11-241 (2010) (applying only to cruelty, skinning, overloading, and overdriving offenses against dogs and cats); ARK. CODE ANN. § 5-62-102 (2009) (applying to all vertebrates except fish); DEL. CODE ANN. tit. 11, § 1325 (2002) (excluding fish, crustacean, and molluska from the definition of "animal"); TEX. PENAL CODE ANN. § 42.092 (2009) (applying to any domesticated animal such as a stray or feral cat and wild animals in captivity).

8. See N.Y. AGRIC. & MKTS. LAW § 353-a (Consol. 1999). A person convicted of felony animal cruelty is guilty of a class E felony and can be incarcerated for a period of no more than two years. N.Y. PENAL LAW § 55.10(1)(b) (McKinney 1978).

9. Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 RUTGERS L. REV. 721, 750 (1994).

Colony adopted the first notion of animal cruelty in a set of laws called the “Body of Liberties.”<sup>10</sup> This law prohibited “any Tirrany or Crueltie towards any Bruite creature which are usuallie kept for man’s use.”<sup>11</sup> Massachusetts Bay Colony also adopted a statute similar to modern day statutes against overdriving: “If any man shall have occasion to leade or drive Cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them for a competent time . . . .”<sup>12</sup>

Modern notions of animal cruelty laws continued to develop through the late 1700s as Jeremy Bentham spoke of animals in the legal system. In his writings, Bentham argued that there was no reason not to afford animals protection under the law, stating that “their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of *things*.”<sup>13</sup> Bentham goes on to say that animals may one day acquire the necessary rights that they lack and that “the question is not, Can they *reason?* nor, Can they *talk?* but, *Can they suffer?*”<sup>14</sup> This question sparked hundreds of years of legislation that created proper animal cruelty laws. Indeed, many people, in arguing that these laws still need strengthening, ask this question today.

The first animal cruelty laws in England were introduced by Richard Martin and passed in 1822.<sup>15</sup> In 1824, Martin and William Wilberforce founded the Royal Society for the Prevention of Cruelty to Animals in order to assist in enforcing England’s animal cruelty laws.<sup>16</sup> The first animal cruelty law in the United States appeared in 1821 in Maine and prohibited “cruelly beating any horse or cattle . . . .”<sup>17</sup> In 1829, New York

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10. Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 81, 81 (1999).

11. *Id.* (internal quotations omitted).

12. AM. PROSECUTORS RESEARCH INST., ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE 5 (2006), [http://www.ndaa.org/pdf/animal\\_cruelty\\_06.pdf](http://www.ndaa.org/pdf/animal_cruelty_06.pdf).

13. JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 310 (Oxford, Clarendon Press 1823) (1780).

14. *Id.* at 310-11 n.1.

15. AM. PROSECUTORS RESEARCH INST., *supra* note 12, at 5.

16. *Id.*

17. *Id.* at 6.

passed one of the most influential animal cruelty statutes in the United States: “Every person who shall maliciously kill, maim or wound any horse, ox or other cattle, or any sheep, belonging to another, or shall maliciously and cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.”<sup>18</sup> The first portion of the statute dealt specifically with animals as the private property of another, and the second part dealt with an animal’s rights regardless of ownership by another. New York’s statute became one of the first models for animal cruelty laws and served as the starting point for many states.<sup>19</sup>

The next crucial turning point for animal cruelty laws took place in 1866, again in New York, when Henry Bergh prompted several changes in the original New York animal cruelty provisions.<sup>20</sup> Not only did Bergh help draft animal cruelty legislation during the 1860s, but he also helped to create the American Society for the Prevention of Cruelty to Animals (ASPCA)<sup>21</sup> and was unanimously voted its first president, a position that he held until he died in 1888.<sup>22</sup> His first change to New York’s statutory scheme was in the language of the 1829 statute. He altered it to apply to “[e]very person who shall, by his act or neglect” harm an “animal belonging to himself or another.”<sup>23</sup> Bergh’s second change expanded the animal cruelty laws by adding an overdriving and overloading section to the 1829 statute. He applied the law to “[e]very owner, driver or

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18. *Id.* (citing N.Y. REV. STAT. part IV, ch. 1, tit. 6, § 26 (1829)).

19. Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 3 (2000).

20. David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800’s*, 1 DET. C. L. REV. 1, 13 (1993).

21. The ASPCA was the first humane society to be established in North America and is now one of the largest in the world. *See About the ASPCA*, ASPCA, <http://www.aspca.org/about-us/about-the-aspca.aspx> (last visited Apr. 16, 2011). It was the first “humane organization to be granted legal authority to investigate and make arrests for crimes against animals.” *Id.* It attempts to provide necessary assistance in areas such as “caring for pet parents and pets, providing positive outcomes for at-risk animals, and serving victims of animal cruelty.” *Id.*

22. *Id.* at 14.

23. N.Y. REV. STAT. ch. 682.26 (1866).

possessor of an old, maimed or diseased horse or mule, turned loose or left disabled in any street, lane or place of any city in this state . . . for more than three hours . . . .”<sup>24</sup> These alterations to the law added an element of negligence and thus expanded the statute beyond intentional actions aimed at animals. The alterations further recognized the fact that people could be cruel to their own animals rather than just another person’s animal. These amendments were also the first time that an animal cruelty law in the United States dealt with a person abandoning an animal.<sup>25</sup> As a result, New York once again served as the catalyst for many other states to expand their animal cruelty laws.<sup>26</sup>

New York now has a plethora of laws dealing with cruelty to animals,<sup>27</sup> abandonment of animals,<sup>28</sup> and even for lack of reporting animals left injured after they are struck by a car.<sup>29</sup> New York’s Agriculture and Markets Law also attempts to define certain terms necessary for the prosecution of animal cruelty cases, such as “companion animal” and “cruelty.”<sup>30</sup> The law recognizes animal cruelty as both a misdemeanor<sup>31</sup> and a felony.<sup>32</sup> This Comment deals with the latter.

### III. Purpose of New York’s Felony Animal Cruelty Laws

#### A. *Animal Cruelty as an Indicator of Human Violence*

It is well established that there is a distinct connection between animal violence and violence towards humans. Studies in this area date back as far as the 1970s, when the Federal Bureau of Investigation performed a retrospective study on various serial killers and mass murderers, finding that many of

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24. N.Y. REV. STAT. ch. 682.2 (1867).

25. Favre & Tsang, *supra* note 20, at 15.

26. *See id.* at 21 (discussing similar statutes developed in Massachusetts, Pennsylvania, Illinois, New Hampshire, and New Jersey).

27. *See* N.Y. AGRIC. & MKTS. LAW §§ 350-379 (Consol. 2009).

28. *See id.* §§ 331-332.

29. *See* N.Y. VEH. & TRAF. LAW § 601 (Consol. 2009).

30. *See* N.Y. AGRIC. & MKTS. LAW § 350.

31. *See id.* § 353.

32. *See id.* § 353-a.

the most notable offenders started out as animal abusers.<sup>33</sup> Examples of this include David Berkowitz (Son of Sam), who was described as “having hated dogs and having killed a number of neighborhood animals,” and Albert DeSalvo (The Boston Strangler), who trapped dogs and cats in crates as a child and shot arrows through the boxes in order to kill the animals.<sup>34</sup> Further studies illustrate that animal abusers are five times more likely to commit violent crimes<sup>35</sup> and “as many as 75 percent of violent offenders in prison have earlier records of animal cruelty.”<sup>36</sup>

This type of animal cruelty is recognized as a social issue that may inherently result from our relationships with other humans and may actually “distort or inhibit empathy, making it even easier to disregard the feelings . . . [of humans and animals].”<sup>37</sup> Since animal cruelty is a clear warning sign of potential violence against humans, it is no surprise that the purpose of many animal cruelty statutes is to prevent this outcome. In fact, the New York Legislature recognized this issue when discussing the purpose of New York’s proposed aggravated animal cruelty law, stating that “[t]he connection between animal abusers and violence towards humans shows that virtually every serial killer had a history of abusing animals before turning their attention to people.”<sup>38</sup> Under these circumstances, it seems that part of the purpose for creating

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33. Lockwood, *supra* note 10, at 82-83.

34. A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, 30 PROSECUTOR 31, 32 (1996); *see also* Lockwood, *supra* note 10, at 83.

35. Sauder, *supra* note 19, at 13-14.

36. Bonnie Erbe, *Protecting Animal Rights: A Quiet Revolution*, POL. DAILY (Nov. 10, 2009), <http://www.politicsdaily.com/2009/11/10/protecting-animal-rights-a-quiet-revolution/>.

37. Clifton P. Flynn, *Acknowledging the “Zoological Connection”: A Sociological Analysis of Animal Cruelty*, 9 SOC’Y & ANIMALS 71, 74 (2001) (citations omitted).

38. *People v. Garcia*, 777 N.Y.S.2d 846, 849 (Sup. Ct. 2004) (quoting N.Y. Assemb. Memo in Support of L. 1999, ch. 118, 1999 N.Y. Sess. 1584-85 [hereinafter N.Y. Support Memo]) (internal quotation marks omitted) (recognizing that Agriculture and Markets Law § 353-a(1), “Aggravated cruelty to animals,” represents the Legislature’s recognition that man’s inhumanity to man often begins with inhumanity to those creatures that have formed particularly close relationships with mankind).

New York's felony animal cruelty laws was to prevent what is known as "broken window" crimes.<sup>39</sup> The "broken windows" theory aims at regulating relatively low level crimes that often go overlooked.<sup>40</sup> Overlooking these types of crimes may send the wrong message that society cares very little about them.<sup>41</sup> This may then develop into greater disorder and crime. Therefore, in order to maintain safety in the community, states such as New York develop felony animal cruelty laws.

### B. *Protection of Animals*

"Our culture defines our laws, but our laws define what we stand for as a culture and as a society."<sup>42</sup> This statement is true not only for the American legal system in general, but also for each state's individual laws. Therefore, each state's animal cruelty laws reflect its general belief about the inhumane treatment of animals. That is why some states do not have any felony animal cruelty laws and why other states reserve its laws for specific animals, such as companion animals.<sup>43</sup> Regardless of societal differences in every state, most of the animal cruelty laws generally serve two main purposes: to protect animals and to conserve public morals.<sup>44</sup> New York's felony animal cruelty law is no different in this respect.

The New York Legislature enacted Agriculture and Markets Law section 353-a, known as "Buster's Law," in

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39. See generally George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29, available at <http://www.theatlantic.com/doc/198203/broken-windows> (introducing the broken windows theory).

40. *Id.*

41. *Id.* at 29.

42. Lockwood, *supra* note 10, at 81.

43. KY. REV. STAT. ANN. § 525.125 (West 1992) (making cruelty to animals a Class D felony); KY. REV. STAT. ANN. § 525.135 (West 2008) (making torture to a cat or dog a Class A misdemeanor for the first offense and Class D felony for subsequent offenses); OHIO REV. CODE ANN. § 959.131 (West 2002) (applying cruelty to animals statutes to companion animals which means "any animal that is kept inside a residential dwelling and any dog or cat").

44. Francione, *supra* note 9, at 753.



1999.<sup>45</sup> The statute was enacted after a teenage boy, Chester Williamson, covered a cat named Buster in kerosene and burned him to death.<sup>46</sup> The courts found Chester “guilty of a misdemeanor” and “sentenced him to three years of probation and psychiatric assistance.”<sup>47</sup> After these atrocious acts resulted in a mere misdemeanor conviction, the legislature introduced a bill that makes aggravated animal cruelty a felony.<sup>48</sup> The legislature gave several reasons for passing this bill:

To increase the penalty for intentionally and without just cause seriously injuring or killing an animal.

...

The most egregious animal abuse cases, where a person deliberately tortures an animal, should result in the perpetrator being subject to stricter penalties than in existing statute.

Innocent animals have been subject to horrendous actions including hanging, being set on fire and being used as target practice for knife throwing.

...

Given the growing public recognition of the rights of animals to be treated in a humane fashion, this bill seeks to ensure that these cases are not handled as petty matters by increasing the most flagrant acts to a felony.<sup>49</sup>

When George Pataki, then-Governor of New York, signed the bill, he recognized that these types of animal cruelty were not isolated incidents and stated that the law “not only adequately punishes those who prey on defenseless animals, but also sends a clear message that such cowardly and

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45. *People v. Garcia*, 777 N.Y.S.2d 846, 848 (Sup. Ct. 2004).

46. *Campbell*, *supra* note 1.

47. *Id.*

48. *Id.*

49. N.Y. Support Memo, *supra* note 38.

despicable acts of violence will not be tolerated.”<sup>50</sup> It appears that the legislature created this law in order to serve the two goals of protecting animals and conserving public morals.

#### IV. Difficulties of Proving Animal Cruelty as a Felony

Every state defines the terms in its statutes differently. However, in New York, the use of ambiguous terms in its felony animal cruelty law challenges the courts, resulting in inconsistent and unpredictable enforcement. This confronts prosecutors with the near impossible task of trying to define ambiguous terms such as “aggravated cruelty” and “companion animal” on top of trying to prove the requisite intent for punishment under New York’s Agriculture and Markets Law section 353-a. To charge a person with a felony, the prosecutor must prove that the person “intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty.”<sup>51</sup> This type of language often results in a prosecutor undercharging an offender because she may not feel the crime meets the ambiguous statutory definition of a specific term.<sup>52</sup>

##### A. *Proving Intent*

A person is guilty of aggravated cruelty when “he or she intentionally kills or intentionally causes serious physical injury” to an animal.<sup>53</sup> There are several underlying problems with proving intent under this statute. Foremost, while risk of harm to an animal may be foreseeable, the primary motivation for human conduct is often not to harm the particular animal; thus, there is no intent.<sup>54</sup> What makes intent even harder to prove under section 353-a is the fact that, under section 353, which qualifies animal cruelty as only a misdemeanor, a

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50. N.Y. Exec. Memo., 1999 Ch. 118, 1999 N.Y. Sess. 1468-69.

51. N.Y. AGRIC. & MKTS. LAW § 353-a(1) (Consol. 1999).

52. AM. PROSECUTORS RESEARCH INST., *supra* note 12, at 31.

53. N.Y. AGRIC. & MKTS. LAW § 353-a(1).

54. Favre & Tsang, *supra* note 20, at 28-29.

prosecutor must still prove some sort of mental culpability.<sup>55</sup> The line that differentiates the culpability under section 353 and section 353-a is quite thin and if the prosecutor cannot prove intent under section 353-a for a felony, it seems just as difficult to prove the mental culpability required under section 353 as a misdemeanor.

While there are some situations that will show clear intent by an individual to harm an animal, not all are easily defined. In *People v. Degiorgio*,<sup>56</sup> the defendant picked up a twelve-year-old dog by the neck, shook him and slammed his head against a door.<sup>57</sup> He then threw the dog down the basement stairs onto a cement floor and continuously kicked it.<sup>58</sup> The New York Supreme Court, Appellate Division, found that, based on the cumulative misconduct of the defendant, his actions satisfied the requisite intent required for section 353-a.<sup>59</sup> This type of case is a clear example of an intent to commit animal cruelty, but most cases do not involve such an obvious disregard for an animal's life. When courts rely on the cumulative misconduct of a defendant and an action that is "especially depraved or sadistic" in nature to show intent, it places a high burden on the prosecutor.<sup>60</sup> This is part of the reason that the defendant may be undercharged.<sup>61</sup> The only way to solve this problem is to clearly define the level of intent that the prosecutor must show in those situations that do not present such a high level of abuse.

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55. See *People v. O'Rourke*, 369 N.Y.S.2d 335 (Crim. Ct. 1975) (finding that although section 353 does not explicitly require a mental culpability, the prosecution must prove that the defendant had a culpable state of mind in order to punish him or her).

56. 827 N.Y.S.2d 342 (App. Div. 2007).

57. *Id.* at 344.

58. *Id.*

59. *Id.*

60. See *People v. Knowles*, 709 N.Y.S.2d 916, 918 (County Ct. 2000) (deciding that a defendant who kicked an eight-month-old dog down a walkway and then threw it against a wall was sufficiently on notice that his acts were the type of acts the statute intended to prevent).

61. See generally *Garcia v. Rivera*, 07 Civ. 2535 (PAC)(AJP), 2007 U.S. Dist. LEXIS 59722 (S.D.N.Y. Aug. 16, 2007).

### B. Defining “Cruelty to Animals”

Aggravated cruelty is defined as conduct which “(i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.”<sup>62</sup> In order for the act to be considered aggravated animal cruelty, the statute must “give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.”<sup>63</sup> Acts that the court considers aggravated cruelty include “throwing animals from windows, using them for target practice, hanging them and starving them.”<sup>64</sup> However, the problem that arises with this definition is that not all intentional acts that cause extreme pain are apparent. One major example of this is a situation in which a person does not provide an animal with proper medical treatment when it is clear that the animal requires it. Under section 353-a, neglect is not usually a factor to consider when deciding aggravated cruelty because it does not usually involve violence. Furthermore, courts do not consider the perpetrator as having an “increased risk of becoming [a] violent offender[ ].”<sup>65</sup> However, such intentional neglect still causes great suffering to an animal and should go beyond a misdemeanor covered by section 353 as long as the prosecutor can prove the requisite intent.

While cruelty to animals can include every unjustifiable act, omission, or neglect that causes pain, suffering, or death, it is not clear if this translates to withdrawal from providing proper medical attention to an animal.<sup>66</sup> Case law in this area seems to be split on the issue. In *People v. O'Rourke*, a carriage driver pulled his carriage with a horse, Mabel, which appeared to be limping.<sup>67</sup> The driver continued to pull his carriage with

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62. N.Y. AGRIC. & MKTS. LAW § 353-a(1)(i)-(ii).

63. *Knowles*, 709 N.Y.S.2d at 918 (internal quotation marks omitted).

64. *People v. Degiorgio*, 827 N.Y.S.2d 342, 344 (App. Div. 2007) (citation omitted).

65. *Lockwood*, *supra* note 10, at 85.

66. *See People v. O'Rourke*, 369 N.Y.S.2d 335 (Crim. Ct. 1975) (finding that permitting a horse that is limping to continue to work without supplying necessary medical attention constitutes neglect under section 353).

67. *Id.* at 338.

Mabel even after an ASPCA Inspector warned the driver to stop using the horse.<sup>68</sup> A New York criminal court decided that, while an animal such as a horse cannot verbalize her suffering, the fact that Mabel was limping was a clear indication that she was in pain.<sup>69</sup> Furthermore, because the defendant knew that Mabel was in pain when the driver attempted to make her pull the carriage, the court presumed that he caused further suffering and should have called a veterinarian to provide the horse with proper medical attention.<sup>70</sup> While this case came before the New York Legislature recognized animal cruelty as a felony, it serves as a useful illustration of how intent can be shown to prove aggravated cruelty.

Recent case law seems to suggest that this view of such animal neglect as felony animal cruelty no longer exists. In *People v. Arroyo*,<sup>71</sup> the defendant's dog had a painful stomach tumor the size of a grapefruit. The defendant stated that he had limited finances and could not afford the necessary operation for his dog; he believed that a natural death would be more comfortable than invasive surgery.<sup>72</sup> This case turned on two principle issues: the constitutionality of the statute and whether the defendant is obligated to provide veterinary care. The court decided that the term "unjustifiable pain," as used to describe the term "cruelty" under New York's animal cruelty laws, was unconstitutionally vague as applied to a defendant who has not provided medical treatment to an animal.<sup>73</sup> The court also stated that the moral standards of the community would not allow the expansion of the terms in these laws.<sup>74</sup> Finally, the court ruled that, in order to punish a person for deciding not to provide medical care, the prosecutor must prove a pattern of neglect by the defendant.<sup>75</sup> Once again, this places a heavy burden on prosecutors and results in defendants receiving much lighter convictions than they may deserve.

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68. *Id.*

69. *Id.*

70. *Id.* at 341.

71. 777 N.Y.S.2d 836 (Crim. Ct. 2004).

72. *Id.* at 838.

73. *Id.* at 846.

74. *Id.* at 844.

75. *Id.* at 845.

One way to solve this apparent flaw in New York's law is to explicitly include failure to provide medical care as neglect in the statute. There are several states that specifically mention a defendant's failure to provide veterinary care as the type of neglect that the courts can punish<sup>76</sup> or that have read this type of action into their statutes.<sup>77</sup> There are even statutes that impose punishments for other types of neglect and abandonment of an animal.<sup>78</sup> New York must adopt these statutory designs and add neglect as a criminal action.

### C. Defining "Companion Animal"

New York limits its felony animal cruelty law to a person that "intentionally kills or intentionally causes serious physical injury to a *companion animal* with aggravated cruelty."<sup>79</sup> A companion animal under the statute is "any dog or cat," as well as "any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal," but does not include certain farm animals.<sup>80</sup> New York is not unique in its approach to limiting the type of animals the felony statute covers. There are several states that exclude animals such as livestock, insects, fowl, and fish.<sup>81</sup> Some states apply felony animal cruelty statutes to pets

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76. MD. CODE ANN., CRIM. LAW § 10-604(a)(5) (West 2006); 18 PA. CONS. STAT. ANN. § 5511(c)(1) (West 2009).

77. See generally *People v. Sanchez*, 114 Cal. Rptr. 2d 437 (Ct. App. 2001) (defendant found guilty for denying medical care to his severely injured puppy); *Biggerstaff v. State*, 435 N.E.2d 621 (Ind. Ct. App. 1982) (defendant found guilty for failing to provide medical care to five diseased and malnourished puppies); *People v. Olary*, 170 N.W.2d 842 (Mich. 1969) (defendant found guilty for failing to provide medical treatment to his injured and emaciated cow).

78. See, e.g., 510 ILL. COMP. STAT. ANN. 70/3.03 (West 2002) (Illinois makes torture to all animals a felony and aggravated cruelty to companion animals a felony).

79. N.Y. AGRIC. & MKTS. LAW § 353-a(1) (Consol. 1999) (emphasis added).

80. *Id.* § 350.

81. ARK. CODE ANN. § 5-62-102 (2009) (excludes fish); GA. CODE ANN. § 16-12-4 (West 2000) (excludes fish and "pests"); MONT. CODE ANN. § 45-8-211(4)(b) (2003) (excludes "the use of commonly accepted agricultural and livestock practices on livestock").

(usually limiting “pets” to include only dogs and cats).<sup>82</sup> There are also those states that exclude a definition of “animal” and leave it up to the courts to decide.<sup>83</sup> The burden lies, once again, on the prosecutor to define this vague term and to ultimately decide if a case involves harm to a companion animal.

New York appears to be fairly broad when construing its definition of companion animal. New York courts have even expanded the definition to include fish and reptiles, animals that many other state statutes exclude. In *People v. Garcia*, the defendant shattered a ten-gallon fish tank against a wall in his girlfriend’s house and purposely crushed three goldfish under the heel of his shoe in front of a nine-year-old boy.<sup>84</sup> The defendant argued that a companion animal must be a mammal that breathes air, can be trained, provides company to an owner, and with which an owner can interact.<sup>85</sup> Because the defendant believed a fish did not have any of these characteristics, the question the court grappled with was how far to extend the definition of companion animal. In this case, the court went beyond the definition provided in New York’s statutes and looked at several other factors to decide if a fish was a companion animal. The court ruled that a fish is indeed a household pet by looking at the surrounding circumstances to assess how the owners treated the fish.<sup>86</sup> In this case, among many other things, the fish had names, the fish tank was regularly cleaned, and the girlfriend reacted to rush and get the fish a new bowl of water.<sup>87</sup> The question now becomes, how much further will the courts extend the companion animal definition? If a fish can constitute a companion animal, then cattle, sheep, and other farm animals should as well. Farm

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82. ALA. CODE § 13A-11-241 (2010) (applies only to cruelty, skinning, overdriving, overloading, depriving of necessities, and injuring offenses against dogs and cats); HAW. REV. STAT. § 711-1108.5 (2008) (limits felony animal cruelty charges to pet animals and horses).

83. ALA. CODE § 13A11-14 (2010); FLA. STAT. ANN. § 828.12 (West 2002); MONT. CODE ANN. § 45-8-211 (2003).

84. 777 N.Y.S.2d 846 (Sup. Ct. 2004).

85. *Id.* at 849.

86. *Id.* at 851.

87. *Id.*

animals can be tended to, given a name, and cared for, but these types of animals are not currently included in the statute. At one point, New York considered the word “animal” to include every other living creature besides a human being.<sup>88</sup> While New York has moved away from this notion, it appears that its legislature may be returning to it, particularly since the legislature recognized the fact that innocent animals are subjected to cruel treatment all the time.<sup>89</sup> New York’s laws, however, are still far from ameliorating all cruelty, especially taking into consideration the many exemptions to the felony animal cruelty statute.

#### D. *Exemptions to New York’s Felony Statute*

Most states create exceptions to their animal cruelty laws. The most common exceptions include use of animals for research, veterinary practices, husbandry practices, and hunting. As discussed previously, New York’s felony animal cruelty laws do not apply to farm animals, including poultry, sheep, cattle, swine, horses, and others.<sup>90</sup> Furthermore, the provisions of New York’s felony animal cruelty laws do not apply to “anyone lawfully engaged in hunting, trapping, or fishing, . . . the dispatch of rabid or diseased animals . . . properly conducted scientific tests, experiments, or investigations involving the use of living animals.”<sup>91</sup> The statute only applies to people who commit aggravated cruelty against animals “with no justifiable purpose.”<sup>92</sup> The problem is that these types of exceptions to felony animal cruelty laws usually only protect the abuser and not the abused. It is extremely difficult to satisfy the purpose of New York’s statute when there are so many exceptions that leave perpetrators with plenty of avenues for escape. It seems contradictory to

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88. *People ex rel. Freel v. Downs*, 136 N.Y.S. 440 (Magis. Ct. 1911) (finding that a turtle was included in the statutory definition of “animal”).

89. N.Y. Support Memo, *supra* 38.

90. See N.Y. AGRIC. & MKTS. LAW § 353-a(1) (Consol. 1999); see also § 350(4)-(5).

91. § 353-a(2).

92. § 353-a(1).



allow the intentional killing of fish for the use of food on a regular basis, but when a man crushes the goldfish of a young boy, he is considered a felon.<sup>93</sup> In both situations, the end result is the same, yet they are treated differently under New York law. Of course, this is an extreme example because a state will never ban fishing and a person who crushes a goldfish clearly has malicious intent. However, this does illustrate the problems that arise because of these exceptions.

The major difficulty with these exceptions is interpreting what can constitute a “justifiable purpose.”<sup>94</sup> New York courts state that an act is justifiable “where its purpose or object is reasonable and adequate, and the pain and suffering caused is not disproportionate to the end sought to be attained.”<sup>95</sup> Defining what falls under this standard is a difficult task. When is killing an animal for food “justifiable” as a necessity? Killing a human for food is never justifiable as a necessity<sup>96</sup> and killing an animal for food usually does not have to be a necessity. Consequently, the true question is: “Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured?”<sup>97</sup> With ambiguous terms like “justifiable purpose,” a prosecutor will continue to struggle indicting an individual. Therefore, the statute should clear up such terms and go beyond listing the exclusions in the statute by explaining what actually qualifies as a “justifiable purpose.”

#### *E. Seizure of Abused Animals*

Several issues may arise because felony animal cruelty crimes deal with live animals. One issue is that this type of cruelty may be hard to prove because of insufficient investigation by police officers. If officers are not allowed to properly investigate the crime and seize the abused animal,

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93. *See* *People v. Garcia*, 777 N.Y.S.2d 846 (Sup. Ct. 2004).

94. § 353-a(1).

95. *People v. Arroyo*, 777 N.Y.S.2d 836, 843 (Crim. Ct. 2004) (internal quotation marks omitted).

96. *R v. Dudley*, [1884] 14 Q.B.D. 273 (Eng.).

97. *Id.* at 287.

they may lack the necessary proof to show cruelty by the defendant. This is especially true because trials take a significant amount of time to come to fruition. Many states deal with this by allowing groups, such as the ASPCA, to intervene in such situations. The ASPCA was originally given extensive power to arrest violators of prior animal cruelty laws.<sup>98</sup> The ASPCA currently has this authority in New York,<sup>99</sup> but as in any state, there is a lack of funding and manpower for these groups.<sup>100</sup> There is a large burden placed upon these types of groups to house abused animals for long periods of time while the perpetrator navigates the prolonged adversarial system.<sup>101</sup>

Furthermore, in some situations, there are states that require consent and willingness of the perpetrator to surrender the animal or to allow the animal to receive medical treatment after he or she is accused of cruelty.<sup>102</sup> New York does not have a section in its statutory scheme that allows immediate seizure of an animal when authorities suspect aggravated animal abuse. New York's statute only deals with the issue of seizing animals when the animal is improperly confined, "lost, strayed, homeless or abandoned."<sup>103</sup> New York should take the approach several other states have taken and allow for pre-conviction forfeiture of animals.<sup>104</sup> This would allow for optimum care for an abused animal and will ensure that the authorities provide the animal with proper veterinary treatment.

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98. Favre & Tsang, *supra* note 20, at 17.

99. See N.Y. AGRIC. & MKTS. LAW § 371 (Consol. 1978) (vesting authority in "any agent or officer of any duly incorporated society for the prevention of cruelty to animals" to ticket, summon or arrest violators of the animal cruelty laws).

100. See Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 16 (1998).

101. AM. PROSECUTORS RESEARCH INST., *supra* note 12, at 26.

102. Sherry Schlueter, *Law Enforcement Perspective and Obligations Related to Animal Abuse*, in THE INTERNATIONAL HANDBOOK OF ANIMAL ABUSE AND CRUELTY: THEORY, RESEARCH, AND APPLICATION 375, 378 (Frank R. Ascione ed., 2008). See also AM. PROSECUTORS RESEARCH INST., *supra* note 12, at 27.

103. See N.Y. AGRIC. & MKTS. LAW § 373 (Consol. 2011).

104. CAL. PENAL CODE § 597 (West 1998); OHIO REV. CODE ANN. § 959.99 (West 2003); OR. REV. STAT. ANN. § 167.350 (West 2010).

## V. Properly Implementing New York's Felony Animal Cruelty Statute

It is obvious that many of the terms in New York's animal cruelty statutes are far too vague to allow consistent implementation. While the law provides a definition section and attempts to define terms in other sections such as "aggravated cruelty,"<sup>105</sup> these definitions still leave courts confused and prosecutors without the proper tools to punish an individual.<sup>106</sup> Therefore, one simple action that the legislature can take is to make an effort to clearly define some of the terms. There are also many other ways that would allow New York to properly implement this statute.

### A. Increase Police Training

There are many police officers who either do not know the ramifications of these types of animal cruelty laws or who do not take them seriously enough to implement them. If New York provided additional education to these officers in the area of animal cruelty, they would be able to more readily recognize crimes of this nature and would then perform the proper investigations that could lead to a faster, more efficient prosecution of someone engaging in animal cruelty.

Furthermore, intentional animal cruelty crimes are usually only pursued by a prosecutor when the cruelty is associated with other serious crimes relating to drugs, weapons, and other severe criminal charges.<sup>107</sup> This is because these other criminal charges are often easier to prove than animal cruelty.<sup>108</sup> If police officers were properly trained in the intricacies of animal cruelty laws, the police would not have to rely on other crimes to gain entrance to an abuser's property and prosecutors have to rely on other charges to punish someone guilty of animal cruelty. However, since animal cruelty laws in New York are still fairly ambiguous, aggravated

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105. See N.Y. AGRIC. & MKTS. LAW § 353.

106. See *infra* Part IV.A-C.

107. AM. PROSECUTORS RESEARCH INST., *supra* note 12, at 20.

108. *Id.*

cruelty is often harder to prove. Thus, an officer must use another crime to investigate a potential abuser's premises and also look into possible animal cruelty.

### B. *Intervention at an Early Age*

Often, animal abuse by children will go unnoticed or unpunished by parents because it is common for children to go through this type of developmental phase early in their lives.<sup>109</sup> This phase usually occurs when children begin to explore the world around them and their own interactions with that world.<sup>110</sup> Moreover, since this is a normal phase that children experience, many parents do not punish their children.<sup>111</sup> This lack of punishment may condone such behavior, which then begins a cycle of violence.<sup>112</sup> The cycle continues and may develop into greater incidents of violence towards animals and eventually other humans. Consequently, many prosecutors argue that a parent can no longer dismiss these childhood acts by stating "it's just a phase" or "boys will be boys."<sup>113</sup>

To prevent this type of behavior, children need to learn about humane treatment of animals from their parents and schools. Children must learn about the consequences of the actions of cruelty that they exhibit in this phase of their lives in order to develop empathy towards other animals and other humans. New York, at the very least, requires some type of instruction to students on the humane treatment of animals.<sup>114</sup> Some states go beyond classroom lessons and actually bring students to animal shelters in an effort to properly educate

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109. Flynn, *supra* note 37, at 76.

110. Lacroix, *supra* note 100, at 9.

111. Flynn, *supra* note 37, at 76-77.

112. See Sauder, *supra* note 19, at 10-11.

113. Ritter, *supra* note 34, at 32.

114. N.Y. EDUC. LAW § 809 (McKinney 1994). The Westchester area participates in the Humane Education Program in which lawyers and law students go to inner-city schools to teach students how to humanely treat animals and the laws relating to animal cruelty. See *Humane Education*, SPCA OF WESTCHESTER, [http://www.sPCA914.org/humane\\_edu.htm](http://www.sPCA914.org/humane_edu.htm) (last visited Feb. 8, 2011).

them.<sup>115</sup> More cities in New York, and every state for that matter, should adopt these types of programs in order to eliminate this behavior where it begins.

*C. Eliminate the “Animals as Property” Mentality*

Humans have always considered animals as property. In the Bible, humans were given “dominion over the fishes of the sea, and the fowls of the air, and the beasts, and the whole earth, and every creeping creature that moveth upon the earth.”<sup>116</sup> In 1809 a British lawyer, Lord Erskine, addressed Parliament and spoke in favor of one of the first statutes protecting animals stating that animals “are created, indeed, for our use, but not for our abuse.”<sup>117</sup> The first American laws in the “Body of Liberties” only applied to animals that were “usuallie kept for man’s use.”<sup>118</sup> By labeling animals as property, they become easy targets of abuse. Animal cruelty laws do not do much to mitigate this fact because humans create animal cruelty laws and as a result the “abusers hold positions of superior power.”<sup>119</sup>

While the animal cruelty statutes, like the Agriculture and Market Laws in New York, do a sufficient job at preventing at least some inhumane treatment towards animals, they do not confer any true rights to animals.<sup>120</sup> The purpose of creating New York’s felony animal cruelty law was to help prevent gross inhumane treatment towards animals and future acts against other humans.<sup>121</sup> However, there are so many exclusions to this rule that it is clear humans still benefit from animals in activities such as farming, hunting, fishing, medical research,

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115. See Sharon L. Peters, *Fight on Animal Cruelty Unleashed on All Fronts; ‘Humane Education’ Goes After Abusers and Kids with Lessons on How to Treat Pets*, USA TODAY, July 30, 2008, at 7D, available at [http://www.usatoday.com/life/lifestyle/2008-07-29-humane-education\\_N.htm](http://www.usatoday.com/life/lifestyle/2008-07-29-humane-education_N.htm).

116. *Genesis* 1:26 (Douay-Rheims).

117. Favre & Tsang, *supra* note 20, at 3-4 (internal quotation marks omitted).

118. Lockwood, *supra* note 10, at 81 (internal quotation marks omitted).

119. Flynn, *supra* note 37, at 79.

120. See, e.g., N.Y. AGRIC. & MKTS. LAW § 353-a (Consol. 1999).

121. See, e.g., N.Y. Support Memo, *supra* note 38.

and any other “justifiable purpose.” So the question now becomes whether the purpose of these statutes is merely to make us feel better as moral beings. These laws foster better treatment of animals, but some would argue that these types of statutes actually justify the poor treatment of animals because they also define the proper way to humanely harm an animal through allowable exceptions and consequently, continue to further animal exploitation.<sup>122</sup> There is no practical way to allow animals to gain full rights under the law unless we eliminate the concept of them as property. That being said, it does not seem plausible at this time, and under these types of animal cruelty laws, that animals will ever be anything other than property.

#### D. *Punishing these Crimes*

New York law provides that a person convicted of felony animal cruelty is guilty of a class E felony and can be incarcerated for a period “which may not exceed two years.”<sup>123</sup> This minimal time of incarceration may not suffice to prevent future violations. This is especially true because prisons are already overcrowded and many parole boards consider animal cruelty as a minor violent crime as compared to other violent offenses so they grant animal cruelty offenders early release.<sup>124</sup> In some situations, after release, the authorities even return animals to the owners that abused them.<sup>125</sup> To mitigate these effects, New York should implement punishments in addition to jail time. Several states require psychological treatment or anger management for those found guilty of animal cruelty.<sup>126</sup> Many states also allow for seizure of the abused animal upon conviction and limits on future ownership.<sup>127</sup> Further, New

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122. Francione, *supra* note 7, at 739.

123. *See* § 353-a(3); *see also* N.Y. PENAL LAW § 55.10(1)(b) (McKinney 1978).

124. *See* Lockwood, *supra* note 10, at 86.

125. *See, e.g.*, N.Y. AGRIC. & MKTS. LAW § 353-b (Consol. 2003).

126. 510 ILL. COMP. STAT. ANN. 70/3.02 (West 2009); ME. REV. STAT. ANN. tit. 7, § 4016 (2007); MICH. COMP. LAWS ANN. § 712A.18 (West 2005); OR. REV. STAT. ANN. § 167.350 (West 2010).

127. *See* CAL. PENAL CODE § 597(f)(1) (West 1998) (allows for seizure of

York should adopt harsher sentences for repeat offenders similar to various other states.<sup>128</sup>

The federal government can also assist New York and all states in implementing these types of statutes and the overall protection of animals by allowing federal tracking of animal cruelty crimes.<sup>129</sup> A Senate Bill introduced in 2007 would allow for this exact type of tracking for certain animal cruelty crimes.<sup>130</sup> If enacted into law, this bill would allow “enforcement officials [to] gather information on animal cruelty as a separate category, [ ] track criminal activity, monitor trends, allocate resources more efficiently, and ultimately stop these criminals before they commit even more heinous crimes.”<sup>131</sup> Tracking these types of crimes would certainly help to prevent future acts of similar conduct by putting the community on notice of these criminals. This would do more than an abbreviated jail sentence that can last for no more than two years.

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the animal upon conviction). California also allows courts the discretion to limit the defendant’s future ownership of seized animals. *Id.*

128. See 510 ILL. COMP. STAT. ANN. 70/3.02 (making aggravated animal cruelty a Class 4 felony and a Class 3 felony under certain circumstances which can result in a \$25,000 fine or 1 to 5 years in prison); 730 ILL. COMP. STAT. ANN. 5/5-4.5-40 to -50 (West 2009); MICH. COMP. LAWS ANN. § 750.50b (making intentional cruelty to an animal punishable by up to 4 years in prison, fines up to \$20,000, and community service).

129. In fact, one county in New York has adopted the United States’ first registry for animal abusers. See Jennifer Gustavson, *Suffolk Approves Animal Abuse Registry Bill*, N. SHORE SUN (Oct. 12, 2010), <http://northshoresun.timesreview.com/2010/10/2997/suffolk-approves-animal-abuse-registry-bill/>. The public registry assembles a database containing an offender’s name, alias, address, and photograph. *Id.* Suffolk County is also in the process of creating a second animal cruelty bill related to this registry, which would require employees at pet stores and animal shelters to visit the online registry before permitting an individual to purchase or adopt an animal. *Id.* The author of the animal registry law reacted to its creation by stating that he is “extremely proud that Suffolk County has established the nation’s first animal abuser registry . . . .” *Historic Vote in Suffolk County, New York Creates Nation’s First Registry for Animal Abusers*, ANIMAL LEGAL DEF. FUND (Oct. 12, 2010), <http://www.exposeanimalabusers.org/article.php?id=1492>.

130. See S. 2439, 110th Cong. § 1 (2007).

131. 153 CONG. REC. S15,064 (daily ed. Dec. 10, 2007) (statement of Sen. Robert Menendez).

## VI. Conclusion

Historically, New York has taken huge steps in developing its animal cruelty laws and has greatly impacted how the rest of the country creates animal cruelty laws. It is apparent, however, that New York's felony animal cruelty statutes require some revisions. While New York has the foundation for a sufficient felony animal cruelty statute, some of the terms are too ambiguous, which places a heavy burden on prosecuting these types of crimes. Nevertheless, the New York legislature can take various actions to achieve the original goals envisioned for this statute.