

THE POLICY, LAW AND MORALITY OF MANDATORY SPAY/NEUTER

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Dedication

**To the unwanted companion
animals and the conscientious shelter
workers throughout the United States who,
each in their own way, pay the unacceptable price
for society's callous indifference to the overpopulation problem.**

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INTRODUCTION

Zeno of Elea (Italy), later of Greece, is famous for having constructed “paradoxes.” A paradox is “a statement, proposition, or situation that seems to be absurd or contradictory, but in fact is or may be true.”

His “Achilles and the Tortoise” paradox is explained this way in *Wikipedia*, an online encyclopedia:

In the paradox of Achilles and the Tortoise, Achilles is in a footrace with the tortoise. Achilles allows the tortoise a head start of 100 feet. If we suppose that *each racer starts running at some constant speed* (one very fast and one very slow), then after some finite time, Achilles will have run 100 feet, bringing him to the tortoise’s starting point. During this time, the tortoise has run a much shorter distance, for example 10 feet. It will then take Achilles some further period of time to run that distance, in which period the tortoise will advance farther; and then another period of time to reach this third point, while the tortoise moves ahead.

Thus, whenever Achilles reaches somewhere the tortoise has been, he still has farther to go. Therefore, because there are an infinite number of points [which] Achilles must reach where the tortoise has already been, he can never overtake the tortoise. (My emphasis.)

True enough, since the stipulated fact is that *each racer starts running at some constant speed*.

But that wouldn’t be much of a race. *In the real world*, Achilles (or anyone running competitively) would run as fast as he could—and the hare would beat the tortoise, if the rabbit wasn’t overconfident or distracted.

By now, the reader may be wondering what Zeno, Achilles, and the tortoise have to do with mandatory spay/neuter.

Plenty.

Let’s assume that mandatory spay/neuter laws are enacted by every state in the United States. In the real world, unlike in Zeno’s Achilles paradox, there will be statutory exceptions, some people will violate the law, underground breeding will proliferate, foreign sources of companion animals will attempt to fill the void.

In other words, while mandatory spay/neuter laws will surely reduce the population of unwanted companion animals in the United States (and possibly contribute to a widespread national No-Kill policy), in the harshness of the real world there will always be unwanted cats and dogs.

This sad fact must be taken into account when government, at any level, considers mandatory spay/neuter legislation. Those laws must be grounded not in hope, sentiment, or a benevolent opinion of mankind, but rather in the world as we find it—a real world where companion animals are too often thought of as virtually inanimate objects, mere property to be used and abused by humans.

A.
The Policy Component of the Companion Animal Overpopulation Problem

I.
The Nature and Scope of the Problem

The nature of the problem

In 2007 an important book was published with the intriguing title *Redemption: The Myth of Pet Overpopulation and the No Kill Revolution in America*. The author, Nathan J. Winograd, is by training a lawyer and by vocation the nation's leading advocate for a "No-Kill" solution to the companion animal (i.e., dog and cat) overpopulation problem.

The understandable reaction to *Redemption's* provocative title by many in the animal protection community has been that companion animal overpopulation is no "myth." Indeed, virtually everyone in the animal protection movement is painfully aware that millions of healthy dogs and cats are killed in shelters annually. Myth or no myth, Winograd himself puts the figure at about five million.

Thus, if millions of companion animals are euthanized every year, how can the overpopulation problem be a "myth"? It isn't, and despite Mr. Winograd's book's arresting title, Winograd readily acknowledges this awful fact:

In theory, we could be a No Kill nation *tomorrow*. Based on the number of existing households with pets who have a pet die or run away, more homes potentially become available each year for cats than the number of cats who enter shelters, while more than twice as many homes *potentially* become available each year for dogs than the number of dogs who enter shelters. Based on the existing lifespan of existing pet dogs and cats, every year more families are potentially looking to bring a new dog or cat into their home than currently enter shelters. According to one commentator, "since the inventory of pet-owning homes is growing, not just holding even, adoption could *in theory* replace all population control killing right now—if the animals and potential adopters were better introduced." In other words, if shelters did a better job at adoptions [and elsewhere in his book the author argues convincingly that too many do a rotten job], they could eliminate all population control killing today. This does not include the fact that the market of homes (the number of homes that do not currently have a dog or cat but will acquire one) is expanding rapidly. *If* shelters increased market share by just a few percentage points, we could be a No Kill nation right now. *But we are far from it.* (My emphasis.)

"Far from it," indeed.

If Winograd's analysis is correct, it means the vast majority of the five million cats and dogs killed each year (allowing for the sick, seriously injured, and otherwise

unadoptable) could find homes—and indeed “No-Kill” could be a reality.

But—as Winograd acknowledges with his qualifying “in theory” and “we are far from it”—in the meantime the shelter killing continues.

In the meantime, is there at least an interim approach to the problem?

There is, and to his credit, Winograd strongly endorses it: *spay/neuter*.¹

He writes, for example, that:

- “Sterilization of animals to curb their reproductive capacity thus leading to the birth of fewer dogs and cats and consequently fewer surrenders to shelters, is one of the keys to substantially reducing shelter killing.”
- “While laws were passed to force people to spay or neuter their pets, little was done about the high cost of sterilization that kept poor people from complying.”
- “Study after study had already confirmed that unaltered pets tend to belong to the people with the lowest incomes. If there was a solution in front of them, it was not hard to see: make spay/neuter affordable.”
- “At a time when every shelter in the country was telling people to spay and neuter their pets, many of these shelters were not altering the animals in their own care prior to adoption.”
- “Until its low-cost spay/neuter clinics were closed . . . the City of Los Angeles had begun the march toward No Kill with its municipally funded program that provided affordable access to spay/neuter services and incentives to increase the number of animals sterilized.”
- “Studies show the primary reasons people do not sterilize their pets are cost and lack of access to spay/neuter services.”

Who’s to blame?

According to Winograd: “The genesis of the failed model [solution] can be found at the 1974 meeting at which self-proclaimed animal welfare ‘leaders’ failed to demand the one

¹ While the term “spay” is customarily used in relation to female dogs and cats, and the term “neuter” for males, “neuter” is a generic term referring to the permanent sterilization of an animal. In females, the procedure is removal of the ovaries and uterus. In males, it is castration. Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108. This monograph uses “spay” in relation to females and “neuter” for males, unless it is clear from a particular context that “neuter” or “sterilize” is used for both.

thing that could have achieved results: low-cost and free spay/neuter, particularly for the pets of the poor.” He writes:

In 1974, the Humane Society of the United States, the American Humane Association, the ASPCA, and other animal welfare groups had an opportunity to take a decisive stand [for spay/neuter]. Had they endorsed and succeeded in promoting municipally funded low-cost spay/neuter nationwide, the lifesaving results could have been dramatic. Sadly, they failed to do so. * * * Despite two more years of indisputable proof that high volume spay/neuter clinics in Los Angeles were having a decisive impact on lowering shelter deaths . . . the [conference] participants again failed to support municipally funded low-cost spay/neuter programs *for fear of alienating veterinary business interests*. (My emphasis.)

Winograd notes that the American Veterinary Medical Association “opposed the endorsement of municipal- or SPCA-administered spay/neuter clinics that provided the poor an alternative to the prohibitively high prices charged by some private practice veterinarians.”

And so the cycle of birth-suffering-death goes on unabated: too many shelters do an incompetent job; spay/neuter programs, if they exist at all, fall far short; dogs and cats continue to breed (and be bred!)—and as they multiply endlessly, the dead bodies of their predecessors go up in smoke, literally.

The scope of the problem

It is estimated that approximately *seventy thousand* puppies and kitties are born in the United States *every day*.² Many are born into households whose members cannot provide for them, or mistakenly believe they can but later learn otherwise and relinquish the animals.

As Winograd makes abundantly clear, the usually crammed animal shelter system reflects this situation. Today, most shelters are regularly at capacity, and the influx of animals consistently outpaces the current demand for adoptable dogs and cats.

The Humane Society of the United States reports that between six and eight million dogs and cats enter shelters each year, and over half of them are euthanized.³ In reality, this

² Dee Harrell Mooring, *Facts About Spaying, Neutering*, OAKLAND TRIB. (Cal.), Feb. 6, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040206/ai_n14566753 (last modified Feb. 6, 2004); Robert Aaron, *U.S. Issue Highlights Pet Overpopulation*, TORONTO STAR, June 10, 2002, at E6.

³ Meghan Daum, *The Fix is In*, L.A. TIMES, Feb. 16, 2008, at 25; Bethania Palma, *Unwanted Cats Swamp Shelters*, PASADENA STAR-NEWS (Cal.), Feb. 18, 2008, available at http://www.pasadenastarnews.com/rds_search/ci_8309219?IADID= (last modified Feb. 18, 2008); Eve Hightower, *Animal Control Chief Pushes Mandatory Neutering of Pets: Goal: Reduce Euthanasia by 45 Percent in Five Years*, MODESTO BEE (Cal.), Dec. 6, 2006, at B1.

number may be even higher, because the accuracy of the statistical methods used to collect this data is often disputed.⁴ Shelters are not required by law to report intake, placement and euthanization rates, though some do voluntarily.⁵ Also, some commentators contend that older, sick, or otherwise unadoptable animals relinquished to shelters may be omitted from the reported statistics.⁶

For these and other reasons, estimates place the population of new shelter animals as high as ten million per year, and annual euthanizations up to five million.⁷ In fact, *the leading cause of death for dogs and cats in the U.S. is not illness or accidents, but euthanasia.*⁸

For example, in 2005 shelters throughout California received 840,000 dogs and cats, 450,000 of which were killed.⁹ In Stanislaus County, California, 18,281 companion animals were received by shelters, and 12,238 were killed—sixty-seven percent.¹⁰

Another example is Orleans Parish, Louisiana. Shelters there euthanized more than 21,000 animals during 2005 and 2006, seventy percent of their population.¹¹ Metro-Atlanta shelters alone killed 80,000 companion animals in 2005—*more euthanizations than in all of Great Britain.*¹²

Houston-area shelters killed *eighty* percent of the 66,000 animals brought to its shelters in 2004, and *eighty* percent of these animals were healthy.¹³

⁴ Lee Anne Fennell, *Beyond Overpopulation: A Comment on Zawistowski et al. and Salman et al.*, 2 J. OF APPLIED ANIMAL WELFARE SCI. 217, 218 (1999); John Wenstrup & Alexis Dowidchuk, *Pet Overpopulation: Data and Measurement Issues in Shelters*, 2 J. APPLIED ANIMAL WELFARE SCI. 303 (1999).

⁵ Jennifer Fiala, *Shelter Euthanasia Rates Drop to Historic Lows*, DVM: NEWSMAGAZINE OF VETERINARY MED., July 2003, at 26.

⁶ Philip H. Kass et al., *Understanding Animal Companion Surplus in the United States: Relinquishment of Nonadoptables to Animal Shelters for Euthanasia*, 4 J. APPLIED ANIMAL WELFARE SCI. 237 (2001).

⁷ Robert Aaron, *U.S. Issue Highlights Pet Overpopulation*, TORONTO STAR, June 10, 2002, at E6.

⁸ Sandra Eckstein, *Low-Cost Spay/Neuter is an Idea with Legs*, ATLANTA J. CONST. July 16, 2006, at 4.

⁹ Carla Hall, *Seeking a Kinder Fate for Abandoned Animals; Pet Rescuers and L.A. City Officials Discuss Ways Toward a “No-Kill” Policy. It Won’t Be Easy*, L.A. TIMES, July 1, 2007, at B5.

¹⁰ Tim Moran, *Success Breeds Limits for Stanislaus Pet Program: Too Many People Use Program to Spay and Neuter Pets Cheaply*, MODESTO BEE (Cal.), Sept. 19, 2007, available at <http://www.modbee.com/local/story/71539.html> (last modified Sept. 19, 2007).

¹¹ Editorial, *Guarding Fido*, TIMES-PICAYUNE (New Orleans, La.), May 2, 2007 at 6.

¹² D.L. Bennett, *State Breaks Own Law on Gassing Pets*, ATLANTA J. CONST., Oct. 11, 2007, at B1.

¹³ Bill Murphy, *Thousands of Strays are Euthanized in the Area, but Advocates Say There are Other Ways to Help Stem Pet Overpopulation; Against Lethal Odds*, HOUSTON CHRON. (Tex.), Nov. 14, 2004, at A1.

Looking beyond these raw, impersonal statistics, there are countless anecdotal stories illustrating some of the consequences of the companion animal overpopulation problem. In South Carolina, increased rates of feral cats, rabies, and other problems have been attributed to companion animal overpopulation, and have resulted in increased workloads for officials.¹⁴

Newspapers across the country continually print accounts of abandoned dogs and cats left in dumpsters, tied to shelter doorknobs, and dumped on rural roads, all victims of companion animal overpopulation.¹⁵

Companion animal overpopulation in Tacoma, Washington has led to an increase in dog fights and human-animal conflicts.¹⁶ The accidental poisoning of thirteen healthy dogs in a New Orleans shelter was linked to crowding and the limited resources of that facility.¹⁷

From an economic perspective, the financial costs of euthanasia are huge, by some estimates at least \$500 million per year.¹⁸ Some have estimated the cost between \$1 billion and \$2 billion annually to house, feed and kill unwanted companion animals.¹⁹ The average cost for a shelter to house just four kittens has recently been estimated at \$704.00.²⁰

¹⁴ Lynne P. Shackleford, *Council Studies Planned Pet Law*, HERALD-J. (Spartanburg, S.C.), Feb. 27, 2008, available at <http://www.goupstate.com/article/20080227/NEWS/802270334/1051/NEWS01> (last modified Feb. 27, 2008).

¹⁵ Peter Frost, *Easing Animal Overpopulation: New Spay, Neuter Clinic Plans to Reduce Number of Animals Killed*, ISLAND PACKET (Hilton Head Island, S.C.), Dec. 5, 2006, available at <http://dwb.islandpacket.com/news/local/story/6266280p-5468287c.html> (last modified Dec. 5, 2006).

¹⁶ Melissa Santos, *City Council to Take Up Pet Policy: A Compromise on Spay Rule*, NEWS TRIB. (Tacoma, Wash.), July 21, 2007, available at <http://www.thenewstribune.com/news/local/tacoma/story/115246.html> (last modified July 21, 2007).

¹⁷ Editorial, *Guarding Fido*, TIMES-PICAYUNE (New Orleans, La.), May 2, 2007 at 6.

¹⁸ Merry Lepper et al., *Prediction of Adoption Versus Euthanasia Among Dogs and Cats in a California Animal Shelter*, 5 J. APPLIED ANIMAL WELFARE SCI. 29, 30 (2002).

¹⁹ Cathy M. Rosenthal, *Advice: Spaying, Neutering Sure Beats Euthanasia*, SAN ANTONIO EXPRESS-NEWS (Tex.), Feb. 18, 2007, at 13J; Joan Lowell Smith, *Keeping Cat Population in Check*, STAR-LEDGER (Newark, N.J.), Feb. 4, 2007, at 2; Sarah Casey Newman, *Real Cost of Neutering Pets Comes from Failing to Do So*, ST. LOUIS POST-DISPATCH (Mo.), Feb. 20, 1999, at L4; John Wenstrup & Alexis Dowidchuk, *Pet Overpopulation: Data and Measurement Issues in Shelters*, 2 J. APPLIED ANIMAL WELFARE SCI. 303 (1999).

²⁰ Cathy M. Rosenthal, *Advice: Spaying, Neutering Sure Beats Euthanasia*, SAN ANTONIO EXPRESS-NEWS (Tex.), Feb. 18, 2007, at 13J.

Despite these indisputable facts, it appears that most companion animal custodians are unaware that overpopulation and the resultant killing exists on such an almost incomprehensible scale.²¹

The overpopulation killings are exacerbated, as Winograd has noted, by the public's reluctance, and often deliberate unwillingness, to adopt companion animals from shelters. One survey showed that only *fourteen* percent of owned dogs were acquired at animal shelters. The rest were from other sources, primarily "new production" sources such as pet stores and breeders.²² (Patronizing these sources not only keeps adoptable pets in shelters, at least until they're killed, but also encourages increased breeding of companion animals, which is why commercial breeding, especially, must be sharply curtailed. See Chapter V.)

An additional problem is the public's lack of awareness about companion animals' recurring capacity to reproduce. A cat can have as many as three litters of four to six kittens in a year, and each resulting kitten can do the same even when as young as five months.²³ As a result, one cat can potentially be the source of more than 400,000 cats in seven years.²⁴ Even if breeding occurs only once per year, two cats could have 175,000 descendents in seven years.²⁵ Though not as prolific as cats, one female dog and her unfixed offspring can produce 67,000 puppies in six years.²⁶ And on and on, relentlessly.

In an ideal world, this atrocity of endless reproduction and ceaseless death would not be happening. But it is, every day of every week of every month of every year. As these words are written, and as they will be read later, thousands of dogs and cats are being born while thousands of others are simultaneously being killed.

In an ideal world, Nathan J. Winograd's "No-Kill" solution would become a reality and there would be homes for all companion animals. But it isn't an ideal world, and there aren't enough homes—and, sadly, there won't be either for the foreseeable future.

²¹ Ed Boks, *The Dirty Little Secret In Your Community*, NEWSWEEK, June 27, 2005, at 15.

²² Lee Anne Fennell, *Beyond Overpopulation: A Comment on Zawistowski et al. and Salman et al.*, 2 J. OF APPLIED ANIMAL WELFARE SCI. 217, 220 (1999).

²³ Bethania Palma, *Unwanted Cats Swamp Shelters*, PASADENA STAR-NEWS (Cal.), Feb. 18, 2008, available at http://www.pasadenastarnews.com/rds_search/ci_8309219? IADID= (last modified Feb. 18, 2008).

²⁴ Elizabeth Attebery, *Too Many Cats and Not Enough Care*, N.Y. TIMES, June 7, 1998, at CN14; Cathy M. Rosenthal, *'Just One Litter' Adds to Euthanasia Crisis*, SAN ANTONIO EXPRESS-NEWS (Tex.), June 12, 2005, at 4K.

²⁵ Philip H. Hass, *Cat Overpopulation in the United States*, in THE WELFARE OF CATS 119, 124 (Irene Rochlitz ed., 2005).

²⁶ Cathy M. Rosenthal, *'Just One Litter' Adds to Euthanasia Crisis*, SAN ANTONIO EXPRESS-NEWS (Tex.), June 12, 2005, at 4K.

II. The Case For Spay/Neuter

In one respect, the case in favor of spay/neuter has already been made in Chapter I's discussion of the nature and scope of the companion animal overpopulation problem. That problem is real, very serious, has anti-social consequences, and is antithetical to humane morality.

It could not be clearer that because of the exponential growth of unneutered companion animals, spay/neuter is necessary if pet population is to be controlled.²⁷ As of today, the case made in Winograd's *Redemption* notwithstanding, spay/neuter has been shown to be the most effective, indeed only, method of addressing companion animal overpopulation on a nationwide basis.²⁸ (Interestingly, many spay/neuter clinics that were originally organized to deal with the *symptoms* of pet overpopulation have begun to redefine their mission to attack the *root* of the problem.)²⁹

Regrettably, the benefits of spay/neuter are not often enough explained.

Public education

Spay/neuter programs increase awareness of companion animal overpopulation, not only among dog and cat custodians, but also for those considering acquiring a companion animal.³⁰ In learning about the need for, and efficacy of, spay/neuter, the public necessarily becomes better informed about the breeding-killing problem.

There has been a documented "bandwagon effect" when discount spay/neuter programs change the public's attitude about the overpopulation problem and the methods to deal

²⁷ Angela K. Fournier & E. Scott Geller, *Behavior Analysis of Companion-Animal Overpopulation: A Conceptualization of the Problem and Suggestions for Intervention*, BEHAV. & SOC. ISSUES, Spring/Summer 2004, at 51.

²⁸ Joshua Frank, *An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Costs of Addressing the Problem*, 32 HUM. ECOLOGY 107, 125 (2004).

²⁹ Peter Frost, *Easing Animal Overpopulation: New Spay, Neuter Clinic Plans to Reduce Number of Animals Killed*, ISLAND PACKET (Hilton Head Island, S.C.), Dec. 5, 2006, available at <http://dwb.islandpacket.com/news/local/story/6266280p-5468287c.html> (last modified Dec. 5, 2006).

³⁰ Annie Burris, *H.B. Considers Cat Licensing with Proposed Pet-Fixing Law*, ORANGE COUNTY REG. (Cal.), Feb. 2, 2008, available at <http://www.ocregister.com/news/program-cat-city-1972598-cats-huntington> (last modified Feb. 2, 2008).

with it. Spay/neuter becomes more socially acceptable, leading to increased surgeries.³¹ The increased number is also due to attendant publicity.³²

Relinquishment to shelters

Spayed and neutered companion animals are relinquished to shelters at a rate of *one-half* to *one-third* of intact animals.³³

This means that countless companion animals will escape shelters and the fate awaiting them there if they are spayed/neutered.

Surviving the shelter

Just as a spayed or neutered companion animal has a better chance of avoiding a shelter, it has a better chance of leaving a shelter alive.

Studies have shown that adoption rates from shelters are higher for spayed/neutered dogs than unneutered ones because of increased appeal of the animals to potential adopters, and because while in the shelter they are healthier.³⁴

For example, the Humane Alliance in Asheville, North Carolina performs 22,000 sterilizations annually and is regarded as the gold standard for a low-cost, high-volume spay/neuter clinic. Since the Alliance was formed, the area's euthanasia rate has been reduced by *seventy-two* percent, and the area's shelters have saved thousands of dollars. The Humane Alliance is now attempting to establish similar groups in other states patterned on their model, and to do so has received grants from the ASPCA and PetSmart Charities.³⁵

Many other communities have had results similar to Asheville's after implementing different spay/neuter programs, of which there are many types with various levels of effectiveness.

³¹ Joshua M. Frank & Pamela L. Carlisle-Frank, *Analysis of Programs to Reduce Overpopulation of Companion Animals: Do Adoption and Low-Cost Spay/Neuter Programs Merely Cause Substitution of Sources?*, 62 ECOLOGICAL ECON. 740, 745 (2007).

³² Joshua M. Frank & Pamela L. Carlisle-Frank, *Analysis of Programs to Reduce Overpopulation of Companion Animals: Do Adoption and Low-Cost Spay/Neuter Programs Merely Cause Substitution of Sources?*, 62 ECOLOGICAL ECON. 740, 745 (2007).

³³ Janet M. Scarlett et al., *The Role of Veterinary Practitioners in Reducing Dog and Cat Relinquishments and Euthanasias*, 220 J. AM. VETERINARY MED. ASS'N 306, 309 (2002).

³⁴ 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. VETERINARY MED. EDUC. 372, 376 (2003).

³⁵ Sharon L. Peters, *The Fix is In for Pet Control*, USA TODAY, July 5, 2007, at D5.

For example, since instating a voucher-based spay/neuter program, the State of New Hampshire has seen a seventy-five percent decrease in impounds and euthanasia.³⁶

In Denver, shelter euthanasia rates have dropped *sixty* percent since spaying and neutering laws were approved there in 1995.³⁷

Spay/neuter programs need not be limited to dogs and cats that live with human custodians. A feral cat management program called Trap-Neuter-Return has had a dramatic nationwide impact.³⁸ All captured cats are spayed before being released. The result is fewer litters and reduced feral populations everywhere the programs have been instituted.

Medical concerns

Companion animal custodians often resent what they consider invasive, unnecessary, and even dangerous spay/neuter surgery for their dogs and cats. Although many of them worry that neutering is dangerous, particularly when the animal is younger than six months, numerous studies have shown otherwise.³⁹

The procedure is relatively quick, and new advances have reduced the recovery time.

In addition, there are new methods in development, using contraceptive vaccines and drugs which do not require surgery and are comparatively easy to administer.⁴⁰ Also promising is immunocontraception, the process of using the body's own immune system to block fertility, which has been successful in deer populations and is being investigated

³⁶ Edward Russo, *Eugene, County Track Unlicensed Dogs*, REGISTER GUARD (Eugene, Or.), March 22, 2006, available at <http://www.thefreelibrary.com/Eugene,+county+ track+unlicensed+dogs-a0130805360> (last modified Mar. 22, 2005).

³⁷ Jennifer Sorentrue & Hector Florin, *Spaying Rules Net Mixed Results*, PALM BEACH POST (Fla.), Dec. 26, 2007, at 1A. In Huntington Beach, California, an incentive-based spay-neuter plan that reduced pet licensing fees for participants was recently proposed. These types of incentive-based plans are designed to encourage people to spay or neuter their pets, while providing an additional monetary benefit.

³⁸ Ed Boks, *Saving Man's Best Friends*, USA TODAY, Nov. 1, 2005, at 32–33.

³⁹ Janet M. Scarlett et al., *The Role of Veterinary Practitioners in Reducing Dog and Cat Relinquishments and Euthanasias*, 220 J. AM. VETERINARY MED. ASS'N 306, 309 (2002).

⁴⁰ Johnny D. Hoskins, *New Strategies, Technologies are Helping in the Overpopulation War*, DVM: NEWSMAGAZINE OF VETERINARY MED., July 2005, at 12S.

as perhaps being applicable to companion animals.⁴¹ A simple vaccine, rather than surgery, may also be available in the near future.⁴²

Some companion animal custodians worry about their animals experiencing adverse “psychological” reactions after spay/neuter.⁴³ However, there is no empirical evidence of such reactions. If anything, there appear to be indications of an improved “psychological” state.

Animal health

There are many health benefits that flow from spaying and neutering companion animals. One is the vastly reduced risk of cancer and other diseases. Mammary, ovarian, uterine and testicular cancers are completely eliminated by spaying and neutering companion animals before sexual maturity.⁴⁴ Even if the animal is spayed or neutered later in life, the risk of these cancers and painful ailments such as prostate disease is still greatly reduced.⁴⁵ The cost of the operation, even in areas where vouchers or price discounts are unavailable, is still very small compared to the costs involved in treating those diseases—costs which include the suffering endured by the animals and their custodians alike.

Behavioral issues

Companion animals that are spayed or neutered do not engage in problem behavior as frequently as unaltered dogs and cats.⁴⁶ The former are more relaxed and affectionate because they are not biologically driven to mate or roam.⁴⁷ One benefit of reduced roaming is that companion animals are less likely to be lost or injured.⁴⁸

⁴¹ B.J. Purswell & Kara A. Kolster, *Immunocontraception in Companion Animals*, 66 THERIOGENOLOGY 510 (2006).

⁴² B.J. Purswell & Kara A. Kolster, *Immunocontraception in Companion Animals*, 66 THERIOGENOLOGY 510, 511-12 (2006).

⁴³ Meghan Daum, *The Fix is In*, L.A. TIMES, Feb. 16, 2008, at 25.

⁴⁴ Jeffrey Proulx, *Pet Overpopulation Can Be Stopped -- and You Can Help*, OAKLAND TRIB. (Cal.), Aug. 16, 2003, available at http://findarticles.com/p/articles/mi_qn4176/is_20030816/ai_n14558215 (last modified Aug. 16, 2003); David Samuels, *Attitudes Toward Neutering and Euthanasia*, in OVERPOPULATION OF CATS AND DOGS: CAUSES, EFFECTS, AND PREVENTION 189, 191-92 (Marjorie Anchel, ed., 1990); Janet M. Scarlett et al., *The Role of Veterinary Practitioners in Reducing Dog and Cat Relinquishments and Euthanasias*, 220 J. AM. VETERINARY MED. ASS'N 306, 309 (2002).

⁴⁵ Dee Harrell Mooring, *Facts About Spaying, Neutering*, OAKLAND TRIB. (Cal.), Feb. 6, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040206/ai_n14566753 (last modified Feb. 6, 2004); Jeffrey Proulx, *Pet Overpopulation Can Be Stopped -- and You Can Help*, OAKLAND TRIB. (Cal.), Aug. 16, 2003, available at http://findarticles.com/p/articles/mi_qn4176/is_20030816/ai_n14558215 (last modified Aug. 16, 2003).

⁴⁶ Dee Harrell Mooring, *Facts About Spaying, Neutering*, OAKLAND TRIB. (Cal.), Feb. 6, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040206/ai_n14566753 (last modified Feb. 6, 2004).

⁴⁷ Sandra Eckstein, *Low-Cost Spay/Neuter is an Idea with Legs*, ATLANTA J. CONST. July 16, 2006, at 4.

Spaying and neutering also reduces aggressive behavior toward other animals and makes dogs and cats less likely to attack humans.⁴⁹ Intact dogs are responsible for a much higher percentage of severe bites than those who have been neutered.⁵⁰ With neutering, most of the sex hormone testosterone, which is chiefly responsible for “male behavior” such as roaming, mounting, urine marking, and fighting, is eliminated.⁵¹ Neutered dogs are also less likely to be attacked, since they rarely instigate fights or rough behavior.⁵² In fact, cities such as San Francisco have identified reduced aggressiveness as a main benefit of their communities’ spay/neuter programs.⁵³

Spayed dogs and cats have fewer mood swings and display less of the aggression, over-protectiveness, and withdrawn behavior that generally accompanies estrus.⁵⁴

Spayed cats are less inclined to spray or mark their territory, and neutered dogs are less likely to urinate in the house.⁵⁵

Spaying also keeps female cats from attracting males.⁵⁶ Neutered dogs are less likely to dig up yards.⁵⁷

⁴⁸ Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108.

⁴⁹ Jeffrey Proulx, *Pet Overpopulation Can Be Stopped -- and You Can Help*, OAKLAND TRIB. (Cal.), Aug. 16, 2003, available at http://findarticles.com/p/articles/mi_qn4176/is_20030816/ai_n14558215 (last modified Aug. 16, 2003).

⁵⁰ 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. VETERINARY MED. EDUC. 372, 376 (2003).

⁵¹ Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108.

⁵² Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108.

⁵³ Wyatt Buchanan, San Francisco: Boy's Death Moves City Panel to Favor Required Neutering, SAN FRANCISCO CHRONICLE, June 10, 2005, at B4.

⁵⁴ Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108; Lisa Simmons, *Busting the Myths*, OAKLAND TRIB. (Cal.), July 8, 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060708/ai_n16529514 (last modified July 8, 2006); David Samuels, *Attitudes Toward Neutering and Euthanasia*, in OVERPOPULATION OF CATS AND DOGS: CAUSES, EFFECTS, AND PREVENTION 189, 190 (Marjorie Anchel, ed., 1990).

⁵⁵ Jeffrey Proulx, *Pet Overpopulation Can Be Stopped -- and You Can Help*, OAKLAND TRIB. (Cal.), Aug. 16, 2003, available at http://findarticles.com/p/articles/mi_qn4176/is_20030816/ai_n14558215 (last modified Aug. 16, 2003).

⁵⁶ Lisa Simmons, *Busting the Myths*, OAKLAND TRIB. (Cal.), July 8, 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060708/ai_n16529514 (last modified July 8, 2006).

⁵⁷ Dee Harrell Mooring, *Facts About Spaying, Neutering*, OAKLAND TRIB. (Cal.), Feb. 6, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040206/ai_n14566753 (last modified Feb. 6, 2004).

Though spaying and neutering is not guaranteed to eliminate all such behavior in every case, the demonstrated and potential behavioral benefits are well known to animal behaviorists and usually very dramatic.

Cost effectiveness

The cost of spay/neuter per companion animal can range from \$50.00 to \$400.00, though municipalities such as Los Angeles offer free or low-cost vouchers to those who qualify.⁵⁸ The city expects to distribute more than 30,000 vouchers over the next year to assist lower-income families.⁵⁹

Voucher programs, which are essential to any spay/neuter program, have been successful in assisting low-income households. *Oregon reports that the most indigent, economically stressed households are responsible for more than sixty percent of animal impounds and euthanasia*, a point that Winograd documents thoroughly. By assisting these households, significant gains can be made in the war against companion animal overpopulation.⁶⁰

For example, a New Hampshire spay/neuter program designed to assist its indigent citizens resulted in a *ninety* percent decrease in that state's euthanasia rate.⁶¹ The success of low- or no-cost spay/neuter programs in the United States has spread to other countries, including Australia and Canada.⁶²

Many shelters employ a sliding scale for spay/neuter procedures, based on the size of the animal and the adopter's financial need. One North Carolina clinic charges anywhere from as little as \$8.00 to as much as \$115.00 based on these and other factors.⁶³

In other words, *it is established fact that spay/neuter programs are cost effective*—especially when one considers the costs associated with companion animal overpopulation.

⁵⁸ Carla Hall, *L.A. Might Mandate Spaying*, L.A. TIMES, Feb. 1, 2008, available at <http://www.latimes.com/news/local/la-me-spay1feb01,1,4689758.story?ctrack=1&cset=true> (last modified Feb. 1, 2008).

⁵⁹ Meghan Daum, *The Fix is In*, L.A. TIMES, Feb. 16, 2008, at 25.

⁶⁰ Edward Russo, *Eugene, County Track Unlicensed Dogs*, REGISTER GUARD (Eugene, Or.), March 22, 2006, available at <http://www.thefreelibrary.com/Eugene,+county+ track+unlicensed+dogs-a0130805360> (last modified Mar. 22, 2005).

⁶¹ Ed Boks, *Saving Man's Best Friends*, USA TODAY, Nov. 1, 2005, at 32–33.

⁶² Sylvana Wenderhold, *National Desexing Network Launched*, ANIMALS TODAY, 2005, Issue 2, at 11 (2005).

⁶³ Sarah A. Reid, *Finding a Fix for Pet Overpopulation*, FAYETTEVILLE OBSERVER (N.C.), Mar. 8, 2008, available at <http://www.fayobserver.com/article?id=287928> (last modified Mar. 8, 2008).

Thus, we're faced with a situation where the problems caused by companion animal overpopulation are very serious, where the spay/neuter solution is available, where it is cost effective, but it is still not nearly as widespread as it can be.

What is to be done?

III.

Spay/Neuter Of Companion Animals Must Be Made Mandatory

Chapters I and II of this monograph establish beyond argument that the nature and scope of the companion animal overpopulation problem is of crisis proportions, that until the dream of universal No-Kill is achieved countless animals will be born and killed every year, and that while we await the advent of a humane nirvana spay/neuter can make at least a dent in the horrific euthanasia that suffuses our culture.

One would think that in an enlightened country like the United States custodians of companion animals would realize the problem and do something about it. While that does happen sometimes, it does not occur often enough nor in a large enough segment of our population.

There are three principal reasons why custodians of companion animals do not spay/neuter them: ignorance, indifference, and cost.

Because humane education in the United States has been woefully inadequate despite the efforts of some animal protection organizations, many people simply do not know the existential costs (and immorality) that surrounds the companion animal problem.

They know nothing about how much in public and private resources it costs for society to deal with the companion animal overpopulation problem, about the exponential reproduction of dogs and cats that are not spayed/neutered, about the animal and human suffering that goes on daily in shelters across the country, or about the fate of feral dogs and cats sentenced to abuse and starvation.

In short, most people know nothing about companion animals other than their own. They lack a broader perspective which, if they were aware of it, should appall them.

Then there are the indifferent, those who allow their companion animals to breed so that their children can "see the miracle of birth," those who "outgrow" their pets, those whose new relationship makes keeping their pet difficult, those who deal with a behavioral problem by dumping their animal, and even those men who believe neutering a male dog or cat somehow detracts from their own "manhood." These are the people who do make decisions about their animals, but are indifferent to the consequences of their wrong decisions.

Then there are those for whom spay/neuter costs are a problem—probably the group most responsible for today’s companion animal overpopulation.

*It has been reliably estimated that three percent of the population is responsible for eighty percent of the companion animal overpopulation in the United States today.*⁶⁴

Some believe that spay/neuter laws punish those who act responsibly in their care of companion animals because of the sins of those who do not.⁶⁵ However, as we have seen, it takes not too many unfixed animals left free to breed to create a population explosion.

Some leading veterinarians have argued that being a companion animal custodian should be a privilege and not an unalienable right, and that a major responsibility of enjoying that privilege is contributing to population control.⁶⁶

An additional complaint levied against spay/neuter initiatives, particularly mandatory spay/neuter programs, is that government is interfering with an aspect of individual personal choice. For example, the initial reaction to the proposed California “mandatory” spay/neuter bill (discussed in Chapter V) included several citizen requests to the Secretary of State seeking amendments to the California constitution prohibiting sterilization and microchipping of pets and limiting licensing fees.⁶⁷ While none of these measures had a reasonable chance to succeed, they illustrate the fears (and eventual clout) of certain companion animal custodians, and especially of breeders, who dislike government interference in what they view as a personal choice.

Similar concerns about government interference with pet ownership have been raised in areas such as Tacoma, Washington, in response to their mandatory spay/neuter program.⁶⁸

⁶⁴ Greg Bordonaro, *New Law Addresses Feral Cat Overpopulation*, HARTFORD COURANT (Conn.), June 23, 2007, at B4.

⁶⁵ Adam Lynn, *Fix Your Pet or Pay for a Permit?*, NEWS TRIB. (Tacoma, Wash.), Oct. 28, 2006, available at <http://dwb.thenewstribune.com/news/local/story/6196804p-5416123c.html> (last modified Oct. 28, 2006); Jennifer Fiala, *Spay or Pay*, DVM: NEWSMAGAZINE OF VETERINARY MED., Apr. 2007, at 71–72.

⁶⁶ Jennifer Fiala, *Spay or Pay*, DVM: NEWSMAGAZINE OF VETERINARY MED., Apr. 2007, at 71.

⁶⁷ Editorial, *Bad Laws, Bad! Now Sit, Stay*, APPEAL-DEMOCRAT (Marysville, Cal.), Nov. 20, 2007, available at http://www.appeal-democrat.com/articles/animal_56765___article.html/government_levine.html (last modified Nov. 19, 2007).

⁶⁸ Editorial, *Mandatory Spay-Neuter Law Deserves a Fair Hearing*, NEWS TRIB. (Tacoma, Wash.), Nov. 1, 2006, at B6; Kris Sherman, *Purr and Grrr over Tacoma Pet Laws*, NEWS TRIB. (Tacoma, Wash.), Dec. 13, 2006, available at <http://dwb.thenewstribune.com/news/local/story/6279816p-5478403c.html> (last modified Dec. 13, 2006).

There are also those who believe spay/neuter programs, even mandatory spay/neuter, will not suffice to stop irresponsible pet owners.⁶⁹ While three percent of the population is reputed to be responsible for eighty percent of pet overpopulation, the problem is community-wide and has ramifications for everyone.⁷⁰ Community leaders have acknowledged that the problem can often be simply too big to confront simply with leash laws and licensing enforcement.⁷¹

Opponents of mandatory spay/neuter complain about the alleged costs, but they fail to consider the current costs involved in dealing with companion animal overpopulation. While the cost of California's new statewide "mandatory" spay/neuter plan was estimated to be \$250 million annually,⁷² the cost to the state of just housing and euthanizing unwanted companion animals, without any of the many other associated costs, was already \$300 million annually.⁷³

As the plan's anticipated effects reduced the euthanasia numbers, had the program been implemented, it would have actually cost the state less overall. For the Los Angeles program, additional officers and staff were hired to enforce mandatory spay/neuter at the cost of \$400,000, but the shelter system had spent about \$2 million a year on euthanizations alone.⁷⁴ In fact, a study conducted by the Minnesota Legislature found that every \$1.00 invested in spay/neuter programs produced a long-term savings of \$19.00.⁷⁵

In order to be effective at reducing companion animal overpopulation, the vast majority of dogs and cats must be spayed and neutered. Veterinary experts calculate that in order

⁶⁹ Carla Hall, *L.A. is Set to Require Pet Sterilization*, L.A. TIMES, Feb. 2, 2008, available at <http://www.latimes.com/news/local/la-me-spay2feb02,1,5148512.story> (last modified Feb. 2, 2008).

⁷⁰ Greg Bordonaro, *New Law Addresses Feral Cat Overpopulation*, HARTFORD COURANT (Conn.), June 23, 2007, at B4.

⁷¹ Editorial, *Pets Will Keep Dying Until Animal Lovers Step Up*, NEWS TRIB. (Tacoma, Wash.), Dec. 12, 2006, at B6.

⁷² Steve Geissinger, *Mandatory Pet Spay, Neuter Bill Advances*, OAKLAND TRIB. (Cal.), Apr. 24, 2007, available at http://findarticles.com/p/articles/mi_qn4176/is_20070424/ai_n19031336 (last modified Apr. 24, 2007).

⁷³ Jim Sanders, *Spay-Neuter Bill in Big Trouble: A Senate Committee is Expected to Kill the Controversial Plan Today*, SACRAMENTO BEE (Cal.), July 11, 2007, at A3.

⁷⁴ Carla Hall, *L.A. Might Mandate Spaying*, L.A. TIMES, Feb. 1, 2008, available at <http://www.latimes.com/news/local/la-me-spay1feb01,1,4689758.story?ctrack=1&cset=true> (last modified Feb. 1, 2008). See also Associated Press, *Pet Sterilization Becomes Law in LA*, available at <http://ap.google.com/article/ALeqM5jgRWYTXz-GJFcPxxDs8ZMAUc613wD8V2BEM00> (last updated Feb. 26, 2008) (noting that it cost \$2 million to perform 15,000 euthanizations in 2007).

⁷⁵ Ed Boks, *Saving Man's Best Friends*, USA TODAY, Nov. 1, 2005, at 32–33.

to combat overpopulation, they must perform spay/neuter procedures in large numbers, rather than simply offering them as options.⁷⁶

To simply maintain zero growth in the companion animal population, it is estimated that seventy to eighty percent of the dogs and cats in any given geographical area must be spayed or neutered during every six-month period.⁷⁷

Unfortunately, it is estimated that at best only sixty percent of companion animal custodians have their animals spayed or neutered.⁷⁸

It is self-evident that a voluntary spay/neuter regimen is bound to be less successful than a mandatory system—and *it is mandatory spay/neuter that must become the norm throughout the United States, because that, and only that, will reduce the killing.*

For example, in 1995 Santa Cruz, California became one of the first communities in the nation to implement mandatory spay/neuter. Since then, shelters have gone from warehousing 14,000 animals a year to 5,500. Euthanasia rates for dogs dropped from thirty percent to seventeen percent, and euthanized cats fell from sixty to fifty percent.⁷⁹

In fact, intake numbers for Santa Cruz shelters began to drop almost immediately after the mandatory spay/neuter law was instituted, and have continued to drop ever since.⁸⁰ Today, officials report that the law has resulted in fewer unwanted litters and fewer roaming strays.

The Santa Cruz shelter system now has much more space for animals that enter the facilities, and more of those animals get adopted because they can remain in the shelter longer.⁸¹

Los Angeles' recent mandatory spay/neuter ordinance requires all companion animals at least four months of age to be spayed or neutered.⁸² The purpose of the ordinance is to

⁷⁶ Katie Burns, *Animal Shelters Home to a New Breed of Veterinary Medicine*, 229 J. AM. VETERINARY MED. ASS'N 1543, 1545 (2006).

⁷⁷ Anne Constable, *Animal Control: Pet Advocates Unite in Effort to Stamp Out Euthanasia*, SANTA FE NEW MEXICAN (N.M.), Apr. 23, 2006, at C1; Carla Hall, *Seeking a Kinder Fate for Abandoned Animals; Pet Rescuers and L.A. City Officials Discuss Ways Toward a "No-Kill" Policy. It Won't Be Easy*, L.A. TIMES, July 1, 2007, at B5.

⁷⁸ Johnny D. Hoskins, *New Strategies, Technologies are Helping in the Overpopulation War*, DVM: NEWSMAGAZINE OF VETERINARY MED., July 2005, at 12S.

⁷⁹ Meredith May, *Spay-Neuter Law Works in Santa Cruz*, SAN FRANCISCO CHRON., June 9, 2007, at A1.

⁸⁰ James Burger, *Enforcement, Financial Assistance Key to Successful Spay-Neuter Law*, BAKERSFIELD CALIFORNIAN (Cal.), Mar. 15, 2008, available at <http://www.bakersfield.com/102/story/389911.html> (last updated Mar. 14, 2008).

⁸¹ Meredith May, *Spay-Neuter Law Works in Santa Cruz*, SAN FRANCISCO CHRON., June 9, 2007, at A1.

reduce, and eventually eliminate, euthanizations.⁸³ While the ordinance is sweeping, still, it wrongly allows numerous exceptions.⁸⁴ (See Part B of this monograph.) The Department of Animals Services hopes the measure leads to Los Angeles becoming a “No-Kill” city by 2010.⁸⁵

A mandatory spay/neuter ordinance was passed in Buncombe County, North Carolina, in 2003. Since then, the number of animals taken in by shelters has decreased by *seventeen* percent, and euthanizations have been reduced by *twenty-seven* percent.⁸⁶

There are many ways to implement mandatory spay/neuter programs. One law, in Athens, Ohio requires pet stores and out-of-town breeders to prove that buyers later spayed/neutered the purchased pets.⁸⁷

The City Council of Lawton, Oklahoma, responding to the 7,500 companion animals euthanized by the town every year, imposed a \$500.00 penalty on pet store owners who sell animals that are not spayed or neutered.⁸⁸

Tacoma, Washington has imposed mandatory spay/neuter for any companion animal found running loose, even for a first offense.⁸⁹ Officials there argue that, in addition to the No-Kill goal of the city, mandatory spay/neuter is a benefit to taxpayers because the program will produce an overall reduction in animal-control costs.

⁸² Carla Hall, *L.A. is Set to Require Pet Sterilization*, L.A. TIMES, Feb. 2, 2008, available at <http://www.latimes.com/news/local/la-me-spay2feb02,1,5148512.story> (last modified Feb. 2, 2008).

⁸³ Associated Press, *Pet Sterilization Becomes Law in LA*, available at <http://ap.google.com/article/ALeqM5jgRWYTXz-GJFcPxxDs8ZMAUc613wD8V2BEM00> (last updated Feb. 26, 2008).

⁸⁴ Carla Hall, *L.A. Might Mandate Spaying*, L.A. TIMES, Feb. 1, 2008, available at <http://www.latimes.com/news/local/la-me-spay1feb01,1,4689758.story?ctrack=1&cset=true> (last modified Feb. 1, 2008).

⁸⁵ Meghan Daum, *The Fix is In*, L.A. TIMES, Feb. 16, 2008, at 25.

⁸⁶ Editorial, *Half-Way Measures Won't Help*, TIMES-NEWS (Henderson, N.C.), Feb. 17, 2008, available at http://www.blueridgenow.com/article/20080217/NEWS/802170354/1016/OPINION02/NEWS/Half_way_measures_won_t_help (last modified Feb. 17, 2008).

⁸⁷ Randy Ludlow, *Athens' Spay-Neuter Law Challenged*, COLUMBUS DISPATCH (Ohio), Mar. 30, 2005, at 1B.

⁸⁸ Editorial, *Lawton Cracks Down: The Price of Pet Overpopulation*, WORLD (Tulsa, Okla.), Aug. 18, 2007, available at http://www.tulsaworld.com/opinion/article.aspx?articleID=070818_7_A18_hThep50745 (last modified Aug. 18, 2007).

⁸⁹ Adam Lynn, *Fix Your Pet or Pay for a Permit?*, NEWS TRIB. (Tacoma, Wash.), Oct. 28, 2006, available at <http://dwb.thenewstribune.com/news/local/story/6196804p-5416123c.html> (last modified Oct. 28, 2006).

Where mandatory spay/neuter is imposed, even with all the unnecessary and dishonest loopholes inserted into the laws, the results speak for themselves. After implementing a mandatory spay/neuter ordinance, Buncombe County reported the number of animals coming through shelters decreased *twenty* percent, resulting in a large reduction in healthy animals being euthanized.⁹⁰

Indeed, mandatory spay/neuter programs have been so successful that some shelters have found space to take animals from more overpopulated regions. Northeast Animal Shelter, for example, takes in hundreds of dogs from out-of-state. Even in Puerto Rico, with its horrendous stray problem, some shelters can provide assistance to other facilities because of effective spay/neuter programs.⁹¹

Another not insubstantial benefit of mandatory spay/neuter is that it prevents government from singling out for special attention particular breeds, such as pit bulls, that may be viewed as particularly dangerous or prone to breeding.⁹² This stereotyping of certain breeds not only perpetuates unfair stigmas, but shifts the focus away from the larger problem of species-wide companion animal overpopulation.

For example, Los Angeles County's mandatory spay/neuter law, which began as applying only to pit bulls and rottweilers, quickly expanded to include all breeds.⁹³

Sadly, however, despite the nature and scope of the companion animal overpopulation problem and the ability of widespread spay/neuter to put a deep, cost-effective dent in it, thus solving many of the economic and moral problems born of it, every day we see empirically that the situation, at best, remains the same and may even be worsening.

Sadly, left to their own devices not enough custodians of companion animals will spay/neuter, leaving government, for all the reasons we have seen, no choice but to impose that responsibility on them.

This, then, leads us to a consideration of the legal aspects of mandatory spay/neuter.⁹⁴

⁹⁰ Editorial, *Pet Overpopulation is a Bigger Problem Than Any Shelter*, CITIZEN-TIMES (Asheville, N.C.), Dec. 12, 2007, at B6.

⁹¹ Alan Gomez, *Dog Imports Raise Fears of a Resurgence of Disease*, USA TODAY, Oct. 22, 2007, at 6A.

⁹² Russ Pulley, *Broader Controls on Dogs in Works*, KANSAS CITY STAR (Mo.), Oct. 15, 2006, at B1.

⁹³ Jennifer Fiala, *L.A. County Proposes Mandatory Sterilization*, DVM: NEWSMAGAZINE OF VETERINARY MED., May 2006, at 26.

⁹⁴ An extensive bibliography for Chapters I, II and III appears at Appendix 1.

B.
The Legal Component of the Companion Animal Overpopulation Problem

IV.
Analysis and Critique of Existing Mandatory Spay/Neuter Statutes

As this chapter will demonstrate, except for convenience it is imprecise to speak of “mandatory” spay/neuter statutes because in a perfect sense there is no such thing.

Appendix 2, “State and Municipal Spay/Neuter Statutes,” demonstrates that the term mandatory spay/neuter has been used loosely to describe not one but various approaches to the companion animal overpopulation problem, including neutering of dogs and cats by shelters before adoption, a promise by the adopter to neuter within a specified period of time, “vicious dog” and breed specific neutering, and trap-neuter-release programs.

Another aspect of the “mandatory” spay/neuter mischaracterization problem is that no actual or proposed statute is free of eviscerating exemptions.

Here, as I wrote in the Introduction, is the problem in a nutshell:

Let’s assume that mandatory spay/neuter laws are enacted by every state in the United States. In the real world, unlike in Zeno’s Achilles paradox, there will be statutory exceptions, some people will violate the law, underground breeding will proliferate, foreign sources of companion animals will attempt to fill the void.

In other words, while mandatory spay/neuter laws will surely reduce the population of unwanted companion animals in the United States (and possibly contribute to a widespread national No-Kill policy), in the harshness of the real world there will always be unwanted cats and dogs.

This sad fact must be taken into account when government, at any level, considers mandatory spay/neuter legislation. Those laws must be grounded not in hope, sentiment, or a benevolent opinion of mankind, but rather in the world as we find it—a real world where companion animals are too often thought of as virtually inanimate objects, mere property to be used and abused by humans.

In considering the shortcomings of current “mandatory” spay/neuter legislation, I use as an example the California statute which begins on the next page.⁹⁵ As noted in Chapter VIII, even this proposed statute went nowhere once the anti-spay/neuter forces mobilized.

⁹⁵ Words in brackets have been deleted from the bill as originally introduced. Italicized words have been added to the bill as originally introduced. Bold face numbers refer to my comments following the statute.

AMENDED IN SENATE JULY 3, 2007
AMENDED IN SENATE JUNE 27, 2007
AMENDED IN ASSEMBLY MAY 31, 2007
AMENDED IN ASSEMBLY MAY 9, 2007
AMENDED IN ASSEMBLY APRIL 30, 2007
AMENDED IN ASSEMBLY APRIL 17, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

California legislature—2007–08 regular session

ASSEMBLY BILL No. 1634

Introduced by Assembly Member Levine
(Principal coauthor: Senator Padilla)
(Coauthors: Assembly Members Nava and Solorio)

February 23, 2007

An act to add Chapter 9 (commencing with Section 122336) to Part 6 of Division 105 of, and to repeal Section 122336.21 the Health and Safety Code, relating to pets.

LEGISLATIVE COUNSEL DIGEST

AB 1634, as amended, Levine. California Healthy Pets Act.

Existing law sets forth provisions relating to veterinary public health and safety and provides for or regulates spay, neuter, and breeding programs for animals.

This bill would prohibit any person from owning or possessing any cat or dog over the age of 6 months that has not been spayed or neutered, unless that person possesses an intact permit, as defined.

The bill would establish an intact permit fee in an amount to be determined by a local jurisdiction, and would require the revenue from these fees to be used for the administration of the local jurisdiction's permit program.

The bill would make a violation of these provisions, as specified, punishable by a prescribed civil penalty. It would require all revenues derived from these civil penalties to be used for funding the outreach efforts in connection with, and the administration and enforcement of, these provisions, and, to the extent funding is available, free and low-cost spay and neuter programs, and outreach efforts for those programs, which would be required to be established by each local animal control agency.

By increasing the enforcement responsibility of local agencies, this bill would create a state-mandated local program.

This bill would, until January 1, 2012, authorize a local jurisdiction or its authorized local animal control agency to allow for issuance of an intact permit for one male and one female dog per household in order to allow the dogs to produce a single litter of offspring, subject to specified criteria. It would authorize the imposition of an intact permit fee for these purposes in an amount determined by the local jurisdiction, to be used for funding the administration of the local jurisdiction's permit program.

The bill would become operative on April 1, 2008.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Healthy Pets Act.

SECTION 2. Chapter 9 (commencing with Section 122336) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

Chapter 9. Spay and Neuter Program for Cats and Dogs

Article 1. Definitions

122336. For purposes of this chapter, the following definitions shall apply:

(a) "Intact permit" **(1)** means a document issued annually by a local **(2)** jurisdiction or its **(2)** local animal control agency if authorized to issue these permits, that authorizes a person to own or possess within that locality an unaltered cat or dog and meets the requirements of subdivision (a) of Section 122336.2 *or subdivision (a) of Section 122336.21*. A dog or cat license that meets the requirements of subdivision (a) of Section 122336.2 *or subdivision (a) of Section 122336.21* shall be considered a permit for purposes of this chapter.

(b) "Local animal control agency" means the municipal or county animal control agency or other entity responsible for enforcing animal-related laws.

(c) "Local jurisdiction" means any city, county, or city and county.

(d) “Recognized registry or association” means an animal registry or association that has been determined to be a bona fide registry or association by the local jurisdiction or its authorized local animal control agency. (3)

[d]

(e) “Spay or neuter” means any procedure, as performed by a duly licensed veterinarian, that permanently sterilizes an animal and makes it incapable of reproduction.

Article 2. General Provisions

122336.1.

(a) Subject to subdivision (c), a person shall not own or possess within the state any cat or dog over the age of six months that has not been spayed or neutered, unless that person possesses an intact permit, as defined in subdivision (a) of Section 122336. (4)

(b)

(1) Subject to subdivision (c), any person who violates subdivision (a) shall, for each animal for which a violation has occurred, be issued a citation subjecting the person to a civil penalty of five hundred dollars (\$500) if the person fails to provide proof that the person has met the requirements of subdivision (a) within 30 days of the date of the issuance of the citation. (5) This penalty shall be imposed in addition to any other civil or criminal penalties imposed by the local jurisdiction. (6)

(2) At the time a citation is issued, the citing authority shall provide the person being cited with information as to the availability of spaying and neutering services *for free or at reduced cost.* (7)

(c) If an owner of a cat or dog provides a letter from a California licensed veterinarian stating that it is the medical judgment of the veterinarian that the cat or dog should not be spayed or neutered prior to the age of nine months, the owner shall not be in violation of this chapter *during that period.* No earlier than 30 days [after] *before* the cat or dog has reached nine months of age, the veterinarian may provide a letter to the owner extending the date for spaying or neutering the cat or dog to 12 months of age. The letter from the veterinarian shall include the veterinarian’s license number, the name of the owner, and a description of the cat or dog in question. (8)

(d) Any civil penalty imposed under subdivision (b) shall be waived, in whole or in part, by the local jurisdiction if the person in violation provides verification that his or her cat or dog has been spayed or neutered. (9)

(e)

(1) Any person who is in possession of any document issued by the local jurisdiction or its authorized local animal control agency that permits the owner to

possess an unaltered cat or dog shall be deemed in compliance with this act until the document expires or January 1, 2009, whichever occurs first.

(2) Upon expiration of the permit, the owner of the intact cat or dog permit shall obtain a new permit pursuant to the applicable provision of Section 122336.2 in order to be in compliance with this section.

(f) Nothing in this chapter shall be construed to impose any obligation on a veterinarian to enforce the provisions of this chapter or to require the veterinarian to provide information to a local animal control agency as to the spay or neuter status of a cat or dog. **(10)**

Article 3. Permits

122336.2. **(11)**

(a) A local jurisdiction shall issue an intact permit, as defined in subdivision (a) of Section 122336, if the owner provides proof acceptable to the local jurisdiction, [as determined by the local jurisdiction] or its authorized local animal control agency, that any of the following conditions are met:

(1) The owner demonstrates, by providing a copy of his or her business license [and], federal [and state tax number] *tax identification number, California seller's permit, as required by Section 6066 of the Revenue and Taxation Code*, or by other proof, as required by the local jurisdiction or its authorized local animal control agency, that he or she is doing business and, *if licensing is required* is licensed as a breeder at a location for which the local jurisdiction or its authorized local animal control agency has issued a breeder license.

(2) The owner's cat or dog [is a valid breed that is recognized by an approved] *belongs to a recognized* registry or association, and complies with at least one of the following:

(A) [His or her] *The* cat or dog is used to show or compete and has competed in at least one legitimate show or sporting competition hosted by, or under the approval of, a recognized registry or association within the last two years, or by whatever proof is required by the local jurisdiction or its authorized local animal control agency *demonstrating* that the cat or dog is being trained to show or compete and is too young to have yet competed.

(B) The cat or dog has earned, or if under three years old, is in the process of earning, a conformation, obedience, agility, carting, herding, protection, rally, sporting, working, or other title from [an approved] *a recognized* registry or association.

(3) The owner is a [legitimate breeder] of mixed breed or purebred working dogs, or is supplying mixed breed or purebred dogs for training as working dogs to law enforcement, fire agencies, or legitimate professional or volunteer private sector working dog organizations.

(4) The dog is being actively used by law enforcement, fire agencies, or [legitimate] professional or volunteer private sector working dog organizations for law enforcement, fire service, search and rescue, or medical service activities, or is being raised, groomed, socialized, or otherwise prepared for duties for any of

these purposes.

(5) The owner of a cat or dog provides a letter to the local jurisdiction or its authorized local animal control agency from a California licensed veterinarian stating that due to age, poor health, or illness, it is unsafe to spay or neuter the cat or dog. The letter from the veterinarian shall include the veterinarian's license number, the name of the owner, a description of the cat or dog in question, and, if this information is available, the duration of the condition of the cat or dog, and the date by which the cat or dog may be safely spayed or neutered.

(6) *The dog is used for herding or guarding livestock, and the dog's owner resides on or is the owner of property designated for agricultural use. (12)*

(b) Any cat or dog owner who is not a resident of California shall be exempted from the permit requirements set forth in this chapter if the owner provides proof, as determined by the local jurisdiction or its authorized local animal control agency, that the cat or dog is temporarily in California for training, showing, or any other [legitimate] *lawful* reason. (13)

(c) (14)

(1) Any individual or organization breeding animals for services provided by guide dogs, signal dogs, or service dogs, as defined in subparagraph (C) of paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code, shall be presumptively entitled to an intact permit issued pursuant to this chapter.

(2) Any animal possessed by any individual with a disability protected by the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall be exempt from the provisions of this chapter if the animal is providing guide dog, service dog, or signal dog services, as defined in subparagraph (C) of paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code.

(3) Guide dog, signal dog, and service dog programs licensed by the State of California are exempt from all of the provisions of this chapter.

(4) A person in possession of a cat or dog to be used for any of the purposes [set forth in] *permitted by* the federal Animal Welfare Act (7 U.S.C. Sec. 2131 et seq.) shall be exempt from the provisions of [Section 122336.1] *this chapter*, provided the person is licensed by or registered with the United States Secretary of Agriculture pursuant to the provisions of the Animal Welfare Act.

(d) An unaltered cat or dog for which an intact permit was issued who ceases to meet the requirements of subdivision (a) is subject to the spay and neuter requirements set forth in Section 122336.1.

(e) **(15)**

(1) The amount of the fee for an intact permit shall be determined by the local jurisdiction, and shall be no more than what is reasonably necessary to fund the administration of that jurisdiction's intact permit program.

(2) A local jurisdiction shall waive the intact permit fee for an unaltered cat or dog that meets any of the requirements described in paragraphs (3) and (4) of subdivision (a), and the provisions of subdivision (c) and may waive all or part of the intact permit fee for an unaltered cat or dog meeting the requirements of paragraph (5) of subdivision (a).

(3) Any fee assessed by a local jurisdiction pursuant to this chapter shall not be duplicative of any other local fee in that jurisdiction.

[(f) Nothing in this section shall prohibit a local jurisdiction from adopting or enforcing a more restrictive spay or neuter program pursuant to Section 122331, provided that the program allows for a cat or dog to be temporarily or permanently exempted from a spay or neuter requirement for the reasons set forth in paragraphs (3) to (5), inclusive, of subdivision (a), or the provisions of subdivision (c).]

122336.21. **(16)**

(a) The local jurisdiction or its authorized local animal control agency may allow for issuance of an intact permit, and imposition of an intact permit fee, for one male and one female dog per household in order to allow the dogs to produce a single litter of offspring. In no event shall the intact permits issued for this purpose have a duration in excess of one year. In addition, the following conditions shall be met for purposes of obtaining and retaining the permit:

(1) The [animal] *dog* has been examined by a licensed veterinarian and is following the preventative health care program recommended by the veterinarian.

(2) The owner has not been convicted of one or more violations of the following offenses:

(A) Section 121705 of the Health and Safety Code.

(B) Section 286.5 of the Penal Code.

(C) Section 596 of the Penal Code.

(D) Section 597 of the Penal Code.

(E) Section 597.5 of the Penal Code.

(F) Section 599aa of the Penal Code.

(G) Section 487e of the Penal Code.

(H) Section 487f of the Penal Code.

(I) Section 487g of the Penal Code.

(3) The owner has not been convicted of two or more violations of any local ordinance involving the dog for whom the unaltered animal certification is sought.

(4) The owner has not received an order from the local jurisdiction or its authorized local animal control agency involving the dog for whom the unaltered animal certification is sought.

(5) The dog for whom the unaltered animal certification is sought has not been determined by local jurisdiction or its authorized local animal control agency to be a “vicious animal.”

(6) The [animal] *dog* is properly housed and cared for as follows:

(A) The [animal] *dog* is provided sufficient quantity of good and wholesome food and water.

(B) The [animal] *dog* is provided shelter that will allow the [animal] *dog* to stand up, turn around, and lie down without lying in its feces, and the area where the [animal] *dog* is kept is properly cleaned and disinfected.

(C) The [animal] *dog* is fully contained on the owner’s property and provided appropriate exercise.

(D) The [animal] *dog* owner otherwise complies with any applicable state law concerning the care and housing of animals.

(7) The owner furnishes the director of animal control services with a signed statement agreeing to the following conditions:

(A) Offspring of the unaltered [animal] *dog* may not be [sold and may be adopted without a fee only after] *adopted or sold before* they reach eight weeks of age.

[(B) Records will be kept documenting how many offspring were produced and who adopted them.]

(B) Prior to any adoption or sale, any offspring of the unaltered dog shall undergo a health examination by a California licensed veterinarian, and shall receive any preventative health care that is deemed necessary by the veterinarian.

(C) Any advertisement for the adoption or sale of the offspring of the unaltered dog shall prominently display the unaltered dog’s intact permit number.

(D) Any adoption or sale of the offspring of the unaltered dog shall comply with all of the requirements and duties of a breeder, as set forth in Article 1 (commencing with Section 122045) of Chapter 5.

(8) The dog for whom the unaltered animal certification is sought is currently licensed pursuant to local requirements.

(9) The owner has considered having the animal microchipped for purposes of identification.

(b) The owner shall maintain records documenting how many offspring were produced [or adopted, or both] *and by whom they were adopted or purchased, if applicable*, and shall provide proof that the dog has been spayed or neutered after *producing not more than a single litter*. This information shall be made available to [an] *the local jurisdiction or its authorized local* animal control agency upon request.

(c) The amount of the fee for an intact permit issued under this section shall be determined by the local jurisdiction and shall not exceed the cost of administering this section.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

Article 4. Funding (17)

122336.3.

(a)

(1) Any civil penalty collected pursuant to subdivision (b) of Section 122336.1 shall be used for funding the administration, outreach, and enforcement activities set forth in Article 5 (commencing with Section 122336.4).

(2) To the extent that funding is available pursuant to this chapter, a local animal control agency shall establish a free and low-cost spay and neuter program for low-income individuals. The agency shall undertake outreach efforts to inform qualified persons about these programs.

(b) All permit fees collected pursuant to subdivision [(c)] (e) of Section 122336.2, and subdivision (c) of Section 122336.21, shall be used for funding the administration of the permit program in the local jurisdiction in which the permits are issued.

Article 5. Enforcement (18)

122336.4. A local animal control agency shall be responsible for enforcing, conducting outreach efforts in connection with, and administering, this chapter.

Article 6. Exemptions (19)

122336.5.

(a) Nothing in this chapter shall be construed to prohibit a local jurisdiction from adopting or enforcing a more restrictive spay or neuter program than the program described in this chapter.

(b) Any local jurisdiction that, prior to January 1, 2007, has enacted an ordinance pursuant to Section 122331 shall be exempt from this chapter.

122336.5.

SECTION. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SECTION. 4. This act shall become operative on April 1, 2008.

Analysis and Critique of the California Statute

1. Here in the definitional section of the statute, the evisceration begins. There shall be “mandatory spay/neuter” in the State of California—except for those who obtain an “intact permit.” For their countless number of dogs and cats, there will be no spay/neuter.

2. The exemptions to the purported “mandatory” spay/neuter requirement will be made not throughout California, where the entire state companion animal overpopulation problem can be evaluated in its totality, but locally, where only a narrow picture is ever visible and incestuous relationships, political and other wise, are common.
3. The “Recognized registry or association” (e.g. cat fanciers), will be major beneficiaries of the mandatory-busting intact permits, will be legitimized when it is they who are a serious part of the problem.
4. The statute does not *mandate* that spay/neuter be performed at the earliest possible time. Between three months and six months, at least one litter can be produced. See chapter VII
5. Apart from the “intact permit” exemption, this provision is among the biggest loopholes in the California statute and in the “mandatory” spay/neuter laws of other jurisdictions which emulate it, rendering the law meaningless. For \$500.00 the custodian of a companion animal can buy his way out of the statute. Note that there is no additional penalty for a continuing violation. Nor is violation made a criminal offense.
6. Again, the statute provides a major role for localities to play in what should be a statewide system of mandatory spay/neuter.
7. If there are to be free or reduced-rate spay/neuter facilities, the statute is silent about who is to provide them.
8. Because the statute fails to provide any guidance to veterinarians, who are supposed to exercise their “medical judgment,” this provision creates another large loophole. At minimum, the provision grants a one-year reprieve to a dog or cat custodian, during which time several litters can be born, and then litters from litters, and so on down the line.
9. There are two major problems with this provision. First, again, the statute provides for localities to play a significant role in what should be a statewide system of mandatory spay/neuter. Second, non-complying companion animal custodians can take their chances. Even if they are hit with the \$500.00 statutory fine (a civil penalty), any other civil penalty can be waived—and given the wording of the two sections, the violator can argue that even the \$500.00 fine can be waived.
10. If we look closely, we’ll probably see the Veterinary Medical Association’s fingerprints all over this section. On its face, it absolves veterinarians from any responsibilities regarding dogs and cats that are supposed to be neutered, but are not—including, apparently, the veterinarian’s duty to respond to legal and other official inquiries by those charged with enforcement of the “mandatory” spay/neuter statute.

11. This “Permits” section is the largest loophole, and it guts the entire statute. On its face one can see the compromises that undercut the law’s claim to be a “mandatory” spay/neuter statute.

“Intact Permits” exempt “owners” from the purported “mandatory” spay/neuter statutory requirements, if *any* of the following apply:

(1) . . . if the owners are licensed “breeders,” a statutory term not defined in the statute and a status often obtainable with a minimum of qualifications. This exemption swallows the rule. Breeders, who are much to blame for the dog and cat overpopulation problem in the first place, are exempt from a statute which purports to deal with the very problem they helped cause. Breeders can continue to grind out dogs and cats, adding to their current overpopulation. And worse, because under the statute breeders are allowed to sell intact dogs and cats they are free of any responsibility for the post-breeding that occurs, the post- post-breeding, and on and on *ad finitum*, **or**

(2) . . . if the dog or cat is a purebred, and (i) either has been shown within the last two years (from when?) or is being trained to be shown but is too young to have competed, or (ii) if under three years of age, has earned a certification from a peer group that the dog or cat is somehow “useful.” This exemption from “mandatory” spay/neuter is for “hobby” breeders, who breed not for commercial purposes, but for fun. These people, too, are allowed to add to the current overpopulation and are equally relieved of what happens after the dogs and cats leave their backyards, **or**

(3) . . . if the owner is a breeder who supplies mixed breed or purebred “working” dogs to government or certain organizations. Put aside that this can be characterized as the “good dog” exemption, and that there is no rationale for the exemption simply because of what tasks the animal performs, this section appears to be redundant since the statute already exempts breeders of all kinds, **or**

(4) . . . if, no matter what its genesis, the dog is being used, or trained to be used, by government or volunteer working dog organizations. Just as with the commercial and hobby breeders, there is no rationale for this exemption based on the dog’s function and no concern for the consequences of allowing these dogs to breed, **or**

(5) . . . if a veterinarian certifies that spaying/neutering a particular dog or cat is medically unsafe. The idea is a good one, but the statute lacks safeguards for cheating, which can be minimized, if at all, only by imposing penalties on veterinarians who are proved to have acted improperly. Even with that minimization, however, the problem of non-neutering because of “age, poor health, or illness” is a real one. On the one hand, dogs and cats in that condition should not be bred. On the other, they can be, adding to the overpopulation problem. Yet the statute on its face makes no attempt to deal with the problem, thereby creating yet another huge loophole in a law that is supposed to impose “mandatory” spay/neuter. (See Chapter V.)

12. This is another “working dog” exemption. As in Comment 11 (4) above, there is no rationale for this exemption based on the dog’s function and no concern for the consequences of allowing these dogs to breed.

13. This exemption attempts to deal with the thorny problem of transient dogs and cats. It fails. As written, exempt from the “mandatory” spay/neuter statute are the dogs and cats of non-residents of California, who need not be physically present in the state, if their animals are “temporarily” there for any lawful reason, which means no reason at all. *This is another section that guts the statute because there is no limitation on the number of animals, no time limit on how long they may be present in the state, no concern with them breeding while here, no rationale for the exemption based solely on out-of-state status, and no concern for the consequences of them breeding while here.* This one section alone nullifies the entire statute.

14.

(1) Not only are breeders of working dogs exempt, but their being “presumptively entitled” to an intact permit means that the burden is on the issuing authority to prove that the former are not entitled to the permit.

(2) ADA dogs are exempt. As in Comments 11(4) and 12 above, there is no rationale for this exemption based on the dog’s function and no concern for the consequences of allowing these dogs to breed.

(3) Same point as in (2) above.

(4) Same point as in (2) above. And worse: “the purposes permitted by the Animal Welfare Act” is experimentation—which means experimenters in the State of California can breed as many dogs and cats as they choose, entirely free from the supposedly “mandatory” spay/neuter statute’s prohibitions.

15. See Comments 2, 6, and 9 above regarding the problem of local control.

16. This is the non-breeder, “civilian” exemption to the “mandatory” spay/neuter statute. The exemption attempts to deal with the thorny problem of private individuals’ dogs and cats. It fails. As to the power of localities, see Comments 11(4), 12, and 14(2) above.

(a) Incredibly, each undefined “household” is allowed one male and one female dog (not cat). For what purpose? *“To produce a single litter”!* This in a “mandatory” spay/neuter statute. What happens to the litter? It can be sold after eight weeks of age—but under an earlier section of the statute *the puppies do not have to be neutered for another sixteen weeks.*

17. All the provisions dealing with funding relate to, and suffer from, the problem of local rather than statewide administration of the statute.

18. Same point as in Comment 17 above.

19.

(a) Same point as in Comment 17 above.

(b) This subsection allows the continuation of pre-January 1, 2007 local “dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements.”

V.

Text and Annotation of ISAR’s Model Mandatory Spay/Neuter Statute

It’s easy to analyze and critique an existing mandatory spay/neuter statute, as I’ve done in Chapter IV, because usually the deficiencies are manifest and overwhelming, as with the California statute.

However, it’s considerably more difficult to write a statute in which those deficiencies are absent—a statute containing all the provisions necessary to implement a regime of true mandatory spay/neuter, but one which simultaneously squarely addresses the realities of the companion animal overpopulation problem.

If the previous four chapters of this monograph teach us anything, they speak loudly that there is an intractable companion animal overpopulation problem, that the only current way to alleviate it is by spay/neuter, that sterilization procedures must be made mandatory, and that legislation seeking to acknowledge and treat the overpopulation problem must be draconian, comprehensive, and free from compromises that gut the statutes.⁹⁶

In the end, dealing effectively with companion animal overpopulation problem is an either/or choice.

Either the dog and cat breeding valve is turned off almost completely until the companion animal overpopulation problem is virtually eradicated . . .

Or useless and counterproductive legislative efforts like California’s will perpetuate the charade that something constructive is being done while countless millions of hapless puppies and kittens and dogs and cats continue to be bred, born, traumatized, abused, killed, and incinerated—and while figuratively, if not literally, our land is suffused with their wind-borne ashes.

⁹⁶ See Chapter VIII, which reveals how the California statute (AB 1634) deconstructed in Chapter IV, as worthless and counterproductive as it was, eventually was scuttled.

In ISAR's proposed Model Mandatory Spay/Neuter Statute, we have made the "either" choice: *ISAR proposes to turn off almost completely the dog and cat breeding valve until the companion animal overpopulation problem is virtually eradicated.*

Before presenting the text and annotation of our proposal, several important antecedent points have to be made.

First, ISAR realizes that our proposed mandatory spay/neuter statute far exceeds the prohibitions on breeding that one sees in other such laws, actual and proposed. We have taken that position because we deeply believe that only draconian laws will get the job done, and if there are to be necessary compromises they must be as few, narrow, and defensible as possible.

Second, ISAR acknowledges that even if its proposed statute was adopted in every state in America, there would still be unwanted companion animals. We believe, however, that if the statute accomplishes its intended purpose there would be adoptive homes for those far fewer dogs and cats.

Third, ISAR believes that while Americans have the right to enjoy the companionship and services of companion animals of their choosing, while they do no one has the legal or moral right to be an accessory to the cruel fate that awaits the unwanted.

Fourth, as Chapter VI proves, there are neither constitutional nor legal impediments to even the most restrictive mandatory spay/neuter laws. Attacks on them in court will fail, if the statutes are drafted carefully.

Fifth, readers may be surprised at the comparative simplicity of ISAR's proposed mandatory spay/neuter statute. There are several reasons for its comparative brevity. Since the statute should be enacted on the state level and thus be uniformly applicable, no provisions for local participation are necessary. In addition, compromises which require elaborate explanations and justifications have been held to a bare minimum, unlike in the California statute which, until its demise at the hands of compromisers and lobbyists, accommodated various anti-mandatory spay/neuter constituencies and in doing so turned itself inside out.

Sixth, ISAR's proposed mandatory spay/neuter statute is not the last word on the subject, neither from our organization nor anyone else who can offer constructive suggestions—so long, however, as others recognize the underlying premise upon which our proposal is based: *turning off almost completely the dog and cat breeding valve until the companion animal overpopulation problem is virtually eradicated.* That is ISAR's goal, and that is what we have endeavored to codify in our proposed statute.

Finally, ISAR is well aware that our proposed mandatory spay/neuter statute will be unpopular not only with breeders, their cohort, and others, but also with other animal protection organizations. Of all them, we ask but one simple question: In light of the

acknowledged companion animal overpopulation problem how do they defend their opposition?

Please note that throughout this monograph 12-point Times New Roman has been used (except for the footnotes, which are in 10-point). The same specifications apply to the following text of ISAR's Model Mandatory Spay/Neuter Statute. *However, in order to facilitate my annotation of each section, my comments appear immediately after each section in 12-point Courier New font, which is what this sentence is written in.*

ISAR PROPOSED MODEL MANDATORY SPAY/NEUTER STATUTE⁹⁷

THE LEGISLATURE FINDS THAT,

Whereas, there have been and there are within this state countless unwanted dogs and cats lacking permanent homes; and

Whereas, although many of these animals are healthy, many others are not; and

Whereas, the latter through no fault of their own have an adverse impact on the public health, safety, welfare, and environment; and

Whereas, the impact of these animals includes, but is not limited to, the transmission of disease, the injury and sometimes death of humans and other animals, the creation of hazards to vehicular travel, and the drain on public finances; and

Whereas, many of these animals are euthanized by shelters, humane societies, and similar organizations; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is inhumane and abhorrent to the people of this state; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is not an effective, economical, humane, or ethical solution to the problem of dog and cat overpopulation; and

Whereas, one of the most effective, economical, humane, and ethical solutions to the problem of dog and cat overpopulation is to substantially reduce, if not entirely eliminate, their breeding; and

⁹⁷ A "clean" version of ISAR's proposed Model Mandatory Spay/Neuter statute, without the annotating courier-font comments, appears in Appendix 3.

Whereas, by such reduction or elimination the State seeks to promote the public health, safety, welfare, and environmental interests of its citizens;

Among the major faults of virtually all "mandatory" spay/neuter legislation is the failure to set forth explicitly the fundamental premises upon which the statutes are based. I have sought to remedy that omission by making it clear exactly what premises ISAR's statute rests on.

NOW, THEREFORE, BE IT ENACTED AS FOLLOWS:

Section 1. Coverage of statute

(a) All dogs and cats present in this state shall be in compliance with this statute, unless specifically exempted.

This subsection makes clear that the rule is in compliance with the statute, and that if there are to be exemptions they must be expressly stated.

(b) No exemption shall exist for dogs and cats present in this state which may fall under any federal statute or within the jurisdiction of the federal government or any agency thereof.

Since, as will be explained in Chapter VI, ISAR's proposed Model Mandatory Spay/Neuter Statute is designed to be enacted by states pursuant to the Tenth Amendment to the Constitution of the United States, the purpose of this subsection is an attempt to prevent animals under control of the federal government, but located within a state, to be bred. As such, a legitimate question arises about federal versus state power—but, still, this section is worth incorporating on the chance it would survive challenge.

Section 2. Requirement of spaying and neutering

(a) Subject to the provisions of this statute, every dog and cat harbored in this state shall be spayed or neutered.

This subsection is a corollary of Section 1(a), and reiterates that spay/neuter is the rule. Any deviation must be explicitly stated, and thus the burden of obtaining exemptions is on the one seeking them.

(b) For purposes of this statute, "harbor" is defined to include: legal ownership or providing regular care, shelter, protection, refuge, nourishment, or medical treatment other than as a licensed veterinarian; provided, however, that a person or entity does not "harbor" by providing nourishment to a stray or feral dog or cat, and; provided further, however, that caretakers of feral cat colonies shall use their best efforts to have those animals sterilized.

Many "mandatory" spay/neuter statutes labor with considerable difficulty to define exactly to whom the statutes applies. For example, "owners" may not be in possession or control of the animal, or one who is in control may not be the "owner." Thus, we have selected the word "harbor" and provided the definition appearing here. Excluded from "harboring" are those who feed feral dogs and cats, because in no sense can it be said that the caretakers own or have any control over those animals. However, recognizing that the most one can do with feral populations, especially cats, is feed-trap-neuter-release (other than trap and euthanize, a subject not within the scope of ISAR's proposed Model Mandatory Spay/Neuter Statute), it is appropriate that those who voluntarily assume the feeding obligation make their best efforts to have the animals sterilized.

Section 3. Breeding licensees; rules and regulations

Caveat: Readers of this section's title best not jump to conclusions. What follows is not the usual exception to "mandatory" spay/neuter statutes which effectively nullifies such laws by granting exemptions to breeders and those who "show" companion animals.

(a) Other than as expressly provided below, no dog or cat may be legally used for insemination or bred in this state except by an individual or entity holding a breeding license, which may be issued, in its absolute discretion, by the State Department of Animal Affairs or such other department as the governor shall designate.

This section begins with the absolute prohibition against breeding dogs and cats in this state, period. Express and limited exemptions are provided below.

Breeding licenses may, or may not, be issued by a government department. The exercise of "absolute" discretion, even if it results in the non-issuance of a breeding license, is very difficult to overturn in court.

(b) While a breeding license is valid, no subsequent breeding license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, or trustees, or to any entity controlled by the original licensee. Any license issued in violation of this subsection shall be void *ab initio*.

This section is aimed at preventing breeders from escaping the limitations contained in Section 4(i) below.

(c) The licensing authority shall promulgate such rules and regulations as may be necessary to implement its statutory duties, including but not limited to recordkeeping requirements.

Consistent with general principle of administrative law, the department charged with issuing breeder licenses has virtually unlimited discretion in establishing applicant qualifications and regulating the conduct of licensees.

(d) Such rules and regulations shall include, but need not be limited to, provisions assuring that the animals in the breeding licensee's care there are provided: sufficient quantity of good and wholesome food and water consistent with its breed, size, and age; shelter that will allow the animals to be protected from the elements with room to stand up, turn around, and lie down without lying in its or another animal's waste; confinement space that is clean and disinfected; an opportunity for adequate sunlight, fresh air, and exercise.

This subsection mandates minimum humane requirements that the license-issuing authority must impose on breeder licensees. It may, of course, impose additional and more stringent requirements.

(e) In addition, breeding licensees shall be required to comply with all other state statutes relating to the care and treatment of dogs and cats.

The purpose of this subsection is to make sure that breeding licensees do not argue that only the mandatory spay/neuter statute governs their conduct. Breeder licensees must comply with anti-cruelty and all other state laws regarding animals.

Section 4. Breeding limitations

(a) A breeding licensee may use a male dog or cat only twice to inseminate a female, which must occur within a twelve month period. No further insemination is allowed thereafter.

(b) A breeding licensee may breed a female cat only twice, which must occur within a twelve month period. No further breeding is allowed thereafter.

These two subsections are designed to end the abuse of animals used for breeding, who in most places today are treated no better than reproductive machines. Veterinarians believe that inseminating and giving birth twice in a twelve month period, with no further insemination or breeding thereafter, is not abusive to the animal.

The subsections, and others that appear below, deliberately and substantially reduce the size of breeder operations.

(c) The offspring of breeder licensee's dogs and cats may be retained by the breeding licensee, but they shall be subject to the same restrictions as their sires and dams, as shall be succeeding generations.

This subsection allows breeder licensees to retain offspring, but similarly limits their breeding.

(d) The dogs and cats covered by this section regarding insemination and breeding shall be at least four months old, the dogs no older than eighteen months, and the cats no older than twelve months.

This subsection creates a two-month window for insemination and breeding, between ages four and six months. Neither may occur before or after those ages.

(e) Once- or twice-bred female dogs and cats shall be sterilized promptly after delivery of the female animals' final litters.

(f) Male dogs and cats shall be sterilized promptly after they have twice inseminated females.

The purpose of subsections (e) and (f) is to turn off the reproductive valve, at least as to those dogs and cats, and to further limit the scope of breeder activities.

(g) Promptly after a male dog or cat has twice inseminated a female, and promptly after a female dog or cat has delivered her final litter, the breeder licensee shall either:

(i) Relinquish such animal to a shelter, humane society, rescue group, or similar organization for adoption only, or

(ii) Directly arrange for adoption, pursuant to the rules and regulations of the nearest shelter, humane society, rescue group, or similar organization; provided, however, that the breeder licensee shall under no circumstances transfer custody of a dog or cat to any individual or entity as to whom the breeder licensee knows, or should know, that the animal will be used for scientific experimental purposes.

In addition to the limitations provided above, these sections will oblige breeder licensees to indirectly or directly find homes for their "breeding stock." After they have been used this way, they deserve loving homes.

(h) No breeding licensee shall release from its custody any dog or cat that has not been sterilized, except to provide temporary veterinary care.

This section will prevent breeding stock from going elsewhere to be put through the same reproductive cycle.

(i) No breeding licensee shall possess in any calendar year more than ten unneutered male dogs, ten unneutered male cats, ten unspayed female dogs, and ten unspayed female cats, except for newborn litters which may be kept for no more than three months at which time the provisions of this statute will apply to them.

This section deliberately and substantially limits the scope of breeder operations.

Section 5. Other source dogs and cats

(a) Every individual and entity harboring an unsterilized dog or cat shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or appears to be, less than three months old.

This section is aimed at the person or entity who is not a breeder licensee. For example, an individual or family who rescues a dog or cat, or who is given one as a gift. The burden is on them to have spay/neuter performed. It is also aimed at whoever receives dogs or cats from out-of-state, whether an individual animal or more than one.

(b) This section does not apply to breeder licensees.

They are covered by sections above.

Section 6. Sellers of dogs and cats

(a) Upon coming into the possession of an unsterilized dog or cat, every individual and entity in the business of selling such animals, including but not limited to

pet stores, shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or appears to be, less than three months old.

This section applies to non-breeder licensee retail sellers of dog and cats. Whatever their source of these animals, as soon as a retail seller comes into possession of them there is a duty of immediate sterilization.

(b) This section shall not apply to breeder licensees.

They are covered by sections above.

Section 7. Medical exceptions to sterilization

(a) No dog or cat need be sterilized if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that an animal is medically unfit for the spay/neuter procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the animal's death.

(b) The dog or cat's age shall not *per se* constitute medical unfitness.

(c) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog or cat to promptly comply with all provisions of this statute.

(d) Possession of the certificate referred to in subsection (a) of this section shall constitute a defense to liability under the penalty provisions of this statute.

(e) If during the disqualification period the dog or cat breeds, the individual or entity in control of the animal shall be punished in accordance with Section 13 of this statute.

This section provides a safe harbor for those dogs and cats who have *bona fide* medical reasons not to be neutered. Obviously, this exemption, virtually the only one in ISAR's Model Mandatory Spay/Neuter Statute, is subject to abuse. We hope that veterinarians' respect for the law generally and what this statute is trying to accomplish in particular, and the requirement that their certification be under oath, will suffice to have medical exemptions granted only when legitimately deserved.

Section 8. Shelters and similar organizations

(a) Shelters, pounds, humane societies, and similar organizations, whether public or private, whose principal purpose is securing the adoption of dogs and cats, shall not be exempt from the provisions of this statute.

(b) No shelter, pound, humane society, or similar organization, whether public or private, whose principal purpose is securing the adoption of dogs and cats, shall release custody of any such animal to its owner or an adopter unless the dog or cat has first been sterilized.

Essentially, this section applies to all companion animal intake and adoption. All dogs and cats taken into these facilities must promptly be neutered. All dogs and cats leaving the shelter will have been neutered, regardless of whether they belong to an identified person or entity.

Section 9. Duties of veterinarians

(a) Any licensed veterinarian who shall become aware that a dog or cat who should be sterilized is in violation of this statute shall promptly inform the person or entity harboring such animal, and further state that the veterinarian has a duty to report that information pursuant to subsection (b) hereof.

This section imposes no more of a burden on veterinarians than those already imposed by law and professional ethics, as for example the duty of informing an animal's custodian of the risks of surgery or any course of treatment.

(b) If within five business days the person or entity harboring such animal has not shown to the veterinarian's satisfaction that it has been sterilized, the veterinarian shall report to the enforcing authority the name and contact information of the person harboring such animal and its unsterilized condition.

This section is equivalent in principle to state statutes which require veterinarians to notify public authorities regarding the rabies vaccination of dogs. Moreover, veterinarians already have reporting responsibilities to government agencies, not the least of which pertain to taxes and insurance.

Section 10. Microchipping

Promptly after beginning to harbor a dog or cat, the individual or entity shall have the animal microchipped in accordance with current technology.

The value of this section is self-evident. In addition to public authorities, shelters, and similar organizations being better able to identify lost dogs and cats, mandatory microchipping will facilitate enforcement of the entire mandatory spay/neuter statute.

Section 11. Low-cost spay/neuter

(a) The state shall itself or by contract provide facilities where its citizens can have dogs and cats humanely spayed and neutered by a licensed veterinarian for a fee established by regulation.

(b) The spay/neuter fee to be established by regulation shall be based on ability to pay, and such regulations shall provide for the fee to be waived entirely because of financial hardship.

Virtually every thoughtful person who has seriously addressed the problem of companion animal overpopulation, and organizations like ISAR that propose tough mandatory spay/neuter requirements, realize that success will depend in large part on the ability of low-income custodians of dogs and cats to have their animals neutered. By any calculation—economic, health, humane, moral—state provision of low-cost spay/neuter is eminently necessary and justifiable. (Especially when considered in relation to all the much less worthy projects states support.)

Section 12. Enforcement

Enforcement of this statute shall fall within the jurisdiction of the Attorney General, the Department of Animal Affairs, or such other department as the governor shall designate.

This section expresses a preference for licensing and enforcement to be vested in a department of state government with legal muscle, rather than burying mandatory spay/neuter in some backwater like the Department of Agriculture where it would likely be entrusted to bureaucrats with little or no interest in enforcement.

Section 13. Penalties

(a) The first violation of this statute shall constitute an offense, punishable by a civil fine of \$1,000.00.

(b) Each week during which the violation continues will constitute a separate offense for which an additional civil fine of \$1,000.00 shall be imposed.

(3) Immediately following the third offense, subsequent violations will be punishable as the lowest grade misdemeanor. The \$1,000.00 civil fine will also be imposed for each offense after the first.

Doubtless there will be complaints that this section's penalties are harsh. They are, and they are meant to be. Once and for all, legislatures, governors, and the regulation/enforcement community must take seriously the problem of companion animal overpopulation—and that seriousness will best be conveyed to the public at large by this section's harsh punishments for violation. More on this subject is discussed in Chapter X, "Morality and spay/neuter."

Section 14. Transition

Within sixty days from the effective date of this statute it shall be the responsibility of all those who harbor dogs and cats to be in compliance with this statute.

Some transition time has to be provided, and sixty days seems reasonable.

Section 15. Effective date

This statute will be effective when it is enacted by the legislature and approved by the governor in accordance with state law.

The statute's sponsors and advocates should resist attempts by its opponents to delay the effective date, during which time they might be able to mount an effective counterattack and perhaps repeal the law or at least gut it.

Section 16. Severability

If any provision of this statute shall be held unconstitutional, illegal, or unenforceable for any reason, the remaining provisions shall retain their full status as if the offending provision had not existed.

This section is important legally. If, for example, the veterinarian reporting requirement should be held by a court to be illegal, the balance of the statute would stand.

VI.

Constitutionality of Mandatory Spay/Neuter Statutes

Introduction

Categorically, mandatory spay/neuter laws, no matter how restrictive, will be upheld against constitutional challenges. Doubters should consider what has become of other constitutional challenges to various animal protection laws.

For example, various levels of government throughout the United States are increasingly enacting laws that severely restrict, or even prohibit, the breeding and owning of cats and dogs; some of these laws are breed-specific, some apply generally.

There is, of course, substantial opposition to these types of laws, especially from organizations such as the American Kennel Club, which have a huge financial stake in the breeding of cats and dogs. Among their many other arguments against anti-breeding laws, their opponents claim they are unconstitutional.

They are not.

Let's examine anti-breeding laws to illustrate why.

The core of a typical anti-breeding law is its "findings," which usually contain statements or ideas such as:

- The euthanasia of unwanted cats and dogs is rampant, with totals annually in the millions of animals;
- The destruction of these animals, though necessary, is immoral and not befitting a humane society;
- The practice is not cost effective;
- The root cause of this mass killing is the problem of overpopulation, which causes social and other problems beyond those created by mass euthanasia.

Based on findings like these, some laws provide for a moratorium on the breeding of cats and dogs. If the overpopulation problem in that jurisdiction isn't reduced, then a mandatory spaying and neutering program is often provided as Plan "B."

Important to the constitutional question is the "Declaration of Intent" found in typical anti-breeding laws. For example:

The Board of Supervisors of the Town of Wherever hereby finds and declares that it intends to provide for the public health safety, and welfare, through a moratorium on the breeding of cats and dogs owned, harbored, or kept in this municipality in order to bring the population of abandoned and stray animals to an acceptable level for protection of the public health, safety, and welfare.

To understand why anti-breeding laws like this one will be held constitutional if defended properly, as will mandatory spay/neuter laws, it is necessary first to understand something about the American system of government.

When the United States was founded, the Constitution created a new *federal* government possessing substantial power. Concern was expressed about whether any power was left to the states. To address that concern, the Tenth Amendment to the federal Constitution reserved to the states what is commonly referred to as the “police power”—not in the sense of law enforcement, but rather the power to legislate for the public’s health, safety, welfare and morals.

All state constitutions, in turn, delegate its police power from the state to various municipalities—e.g., cities, counties, towns, villages—which gives the latter power to pass laws related to the public health, safety, welfare and morals.

But those laws, like all legislative enactments made at every level of government—federal, state, municipal—must pass the test of constitutionality.

Laws affecting rights so fundamental that they are *expressly* protected by the federal and state constitutions – e.g., speech, press, religion—are tested by a very strict standard. In effect, laws affecting these kinds of fundamental rights (e.g., censoring media reporting, regulating church services) must advance an extremely important (i.e., “compelling”) governmental interest (e.g., not exposing the coming D-Day invasion), and be virtually the only way to accomplish that goal.

On the other hand, laws not affecting such fundamental rights are measured for constitutionality by a much less demanding test: Is there a problem properly within the government’s area of concern (e.g. teenage driving), and is the enacted law (e.g. requiring twenty-hours of classes and road testing) a rational way to deal with that problem? Put another way, it is a matter of legitimate “ends” and reasonable “means.”

Since anti-breeding—and mandatory spay/neuter laws—do not affect any fundamental rights, they are tested by this lesser standard.

Clearly, the number of unwanted cats and dogs causes significant social problems: senseless killing, health risks, wasted taxes, and more. Clearly, these problems raise important issues of public health, safety, welfare—and even morals. In other words, the “end” of mandatory spay/neuter and anti-breeding laws is entirely legitimate constitutionally.

Thus, the next (and last) question is one of “means”: Are anti-breeding and mandatory spay/neuter laws a reasonable way to deal with the problem? The “practical” answer is obvious: If there are too many unwanted cats and dogs, it’s certainly reasonable to prevent the breeding of any more in order to prevent the population from growing, allowing normal attrition to reduce the existing population.

The more basic answer is that the overpopulation problem is a moral outrage. Government has the constitutional *power* and the moral *duty* to solve it—to alleviate, if not eliminate, visiting the sins of irresponsible owners and breeders on innocent animals. When it comes to anti-breeding and mandatory spay/neuter laws, the end justifies the means—constitutionally and morally.

As the Supreme Judicial Court of Massachusetts opined in 1931, “[t]he natural, essential, and unalienable rights of men to acquire, possess and protect property are subject to reasonable regulation in the interest of public health, safety and morals.”

Indeed, a wide variety of statutes and ordinances affecting animals have been upheld against constitutional challenge. Some examples in the federal, state, and municipal courts appear below.

Federal cases

Airborne Hunting Act⁹⁸

In *U.S. v. Bair*, 488 F.Supp. 22, 9 Env’tl. L. Rep. 20, 324 (D.Neb. Feb 14, 1979), and *United States v. Helsey* 615 F.2d 784 (1979, CA9 Mont) the AHA was held constitutional as an appropriate exercise of Congress’s Interstate Commerce Power.

More recently, the Airborne Hunting Act (16 U.S.C. § 742j-1) was attacked in *U.S. v. Red Frame Parasail, Buckeye Model Eagle 503 (serial number 4159)*, 160 F.Supp.2d 1048, 179 A.L.R. Fed. 769 (D.Ariz. Jul 24, 2001). A big game guide flew at low altitudes, scouting trophy animals to be hunted. This conduct fell squarely within the plain meaning of “to harass” contained in implementing regulations of the Airborne Hunting Act (AHA), which prohibited use of aircraft “to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment” animals. Accordingly, “harass” as used in the AHA was not unconstitutionally vague under the Due Process Clause.

Animal Welfare Act⁹⁹

⁹⁸ Airborne Hunting Act, 16 U.S.C. § 742j-1.

⁹⁹ Animal Welfare Act of 1970, Sections 20(a), (c), 7 U.S.C. Sections 2149(a), (c).

In *Haviland v. Butz*, 177 U.S. App. D.C. 22, 543 F.2d 169 (1976), the plaintiff argued that the act, as intended and written, did not embrace animal performances, and that the Secretary of Agriculture could not expand its coverage. The court held that: (1) the statutory listing of covered enterprises was not exhaustive, and that the secretary was empowered to promulgate such rules, regulations, and orders as he deemed necessary in order to effectuate the purposes of the statutory scheme; (2) the animal act, traveling from state to state and using facilities of interstate communication, was subject to regulation by Congress in the exercise of its interstate commerce power; and (3) the classification effected by the act's definition of "exhibitor" was rationally related to a legitimate governmental interest.

Atlantic Coastal Fisheries Cooperative Management Act¹⁰⁰

In *Medeiros v. Atlantic States Marine Fisheries Com'n*, 327 F.Supp.2d 145, 2004 A.M.C. 2408, (D.R.I. May 24, 2004), a fisherman challenged a regulation limiting the number of lobsters he could land. He invoked the Fifth, Tenth, and Fourteen Amendments, arguing that the limit was without a rational basis and violated equal protection because it did not restrict the number of lobsters that could be caught by a different method, in traps.

The court ruled that because the regulation neither burdened a fundamental right (nor involved a "suspect" classification like race), it would be reviewed under a rational-basis standard. The conservation of coastal lobster fishery resources was deemed to be a legitimate governmental objective, and the regulation was a measure designed to reduce lobster mortality. The degree to which the rule accomplished its purpose was irrelevant to a rational-basis inquiry.¹⁰¹

Bald and Golden Eagle Protection Act¹⁰²

In *United States v. Kornwolf*, 276 F.3d 1014, 1015 (8th Cir. 2002), the court ruled that the Act and the Migratory Bird Treaty Act—prohibiting of the sale of lawfully acquired bird parts—did not constitute a taking in violation of Fifth Amendment property rights for which just compensation would have to be paid.

United States v. Top Sky, 547 F.2d 483 (9th Cir. 1976), held that the Fort Bridger Treaty of 1868 did not reserve to Indians the right to sell eagles or eagle feathers or parts, and *United States v. Top Sky*, 547 F.2d 486 (9th Cir. 1976), held that the Act was not unconstitutionally overbroad.

¹⁰⁰ 16 U.S.C. Sections 5101-5108.

¹⁰¹ Under the law applicable to the fisherman's claim—that the statute authorizing the rule encroached on state sovereignty—only the State of Rhode Island had standing to make that argument.

¹⁰² 16 U.S.C. Sections 668-668d

United States v. Bramble, 894 F.Supp. 1384, 1395 (D. Haw. 1995) held that the provisions of the Migratory Bird Treaty Act prohibiting taking, killing or possessing of migratory birds, or any part thereto, as well as the Bald and Golden Eagle Protection Act, making it illegal to take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import any bald eagle or golden eagle or any part thereof, are valid exercises of Congress's power under the Commerce Clause because the birds covered by the act travel interstate.

In *United States v. Lundquist*, 932 F.Supp. 1237 (D. Or. 1996), the defendant was charged with violations of the Bald and Golden Eagle Protection Act. The court ruled (1) that the Act's limitation on possession of eagle parts did not violate the defendant's right to free exercise of religion under the Religious Freedom Restoration Act; (2) that the defendant's privacy rights were not violated by the Act; and (3) that possession of eagle parts was within the authority of Congress to regulate pursuant to the Interstate Commerce Clause.

Endangered Species Act¹⁰³

Gibbs v. Babbitt, 214 F.3d 483, 485, (4th Cir. 2000), was an action challenging the validity of a regulation limiting the taking of red wolves on private land. The court held that the regulation was valid under the Interstate Commerce Clause because it regulated economic and commercial activity, and was an integral part of an overall federal scheme to protect, preserve, and rehabilitate endangered species.

Rancho Viejo, LLC v. Norton, 323 F.3d 1062, 1063 (D.C. Cir. 2003), involved a species of toad and a real estate development company whose proposed commercial housing project had a substantial relation to interstate commerce. Accordingly, the government's regulation of the housing project did not violate the Interstate Commerce Clause, even though toad did not travel outside of state and the proposed development was located wholly within the state.

United States v. Billie, 667 F.Supp. 1485, 1486 (D. Fla. 1987) was a prosecution of a Seminole Indian for violating the Endangered Species Act. The court ruled that the Act applied to noncommercial hunting of the Florida panther on the Seminole Indian reservation. Applicability of the Act on reservation hunting was not so vague as to prohibit prosecution of the Indian, and the Act's prohibition against taking of Florida panthers did not unconstitutionally infringe upon a Seminole Indian's right to free exercise of his religion, because use of panther parts was not indispensable to Seminole religious practice.

United States v. Hill, 896 F. Supp. 1057 (D. Colo. 1995) ruled that Congress did not violate the Constitution when it delegated to the Secretary of the Interior power to determine what was "an endangered or threatened species," rather than defining those terms in the Endangered Species Act.

¹⁰³ 16 U.S.C. Sections 1531-1544.

Humane Slaughter Act¹⁰⁴

Jones v. Butz, 374 F. Supp. 1284 (S.D.N.Y. 1974) was a First Amendment Free Exercise and Establishment Clause challenge to the Act's exemption from the humane slaughter requirement of livestock killed in accordance with Jewish ritual methods. The three-judge federal district court ruled that the exemption was constitutional, and the Supreme Court of the United States held that the case did not present a "substantial constitutional question."¹⁰⁵

Wild Free-Roaming Horses and Burros Act¹⁰⁶

Kleppe v. New Mexico, 426 U.S. 529 (1976), was an extremely important decision by the Supreme Court of the United States. The Act protected all unbranded and unclaimed horses and burros on federal land from capture, branding, harassment and death. The New Mexico Livestock Board argued that it, not the federal government, had the power to control those animals and that the statute was unconstitutional. The Supreme Court disagreed, upholding the Act as an appropriate exercise of Congressional power.

State

Many challenges to animal-related legislation have been brought on the constitutional *procedural* ground of what lawyers call "void for vagueness"—meaning that the law fails to convey to a person of ordinary intelligence exactly the conduct that is proscribed. Most of those challenges have failed [e.g., 2, 3, 5, 6, 10, 11, 30, 31, 32, 34, 38, 51, 56],¹⁰⁷ while only a few have succeeded [e.g., 4, 7]. The constitutional "vagueness" challenges that have succeeded usually benefit from the laws' poor draftsmanship and, occasionally, unsympathetic judges.

Substantively, virtually all constitutional challenges to animal-related legislation have failed on the ground that the laws have been well within the established state police power, no matter what constitutional provisions were alleged to have been violated.¹⁰⁸

¹⁰⁴ 7 U.S.C. Sections 1901-1906.

¹⁰⁵ Professor Henry Mark Holzer was counsel to the plaintiffs in this case.

¹⁰⁶ 16 U.S.C. Sections 1331-1340.

¹⁰⁷ The numbers in brackets in this paragraph and below are keyed to the Table of Cases appearing in Appendix 4.

¹⁰⁸ Exceptions are cases where, for example, seizure and destruction of fighting animals, or other interference with animal ownership, without notice or a hearing, violated due process of law [6, 26, 27, 33, 37, 49, 58] and cases invoking the Cruel and Unusual Punishments Clause of the Eighth Amendment [38, 51]. But see case 59 where the court ruled that no notice or opportunity to be heard was necessary when two policemen killed a cow they believed to be diseased. See also cases 16, 60, and 62. For a host of other state cases addressing, and overwhelmingly denying, constitutional challenges to animal-related legislation, see the unnumbered cases in Appendix 4.

One example is the Illinois Humane Care For Animals law—prohibiting a person from owning, breeding, trading, selling, shipping or receiving animals which one knows, or should know, are intended to be used for fighting purpose—which was held to be reasonably related to the proper governmental purpose of eliminating the evils associated with animal fighting, and thus did not exceed the state's police power. [1]¹⁰⁹

Another example is Oklahoma's prohibition of cockfighting, which did not constitute a "taking" of private property, a violation of an individual's right to contract, or impinge on his right to travel. [8] Nor did Washington State's similar anti-cockfighting statute violate the Constitution's Equal Protection Clause. [9]¹¹⁰

For other examples of how animal-related state laws survived constitutional challenges, see the following cases: 10 (presence at a cockfight), 17 (uncompensated slaughter of diseased cattle), 18 (criminalization of cockfighting), 22 (licensing), 24 (regulation of animal dealers), 25 (removal of dead animals), 28 (taxing dog owners), 29 (pound seizure), 30 (anti-cruelty law), 36 (destruction of diseased horses), 39 (licensing), 40 (licensing), 41 (licensing), 42 (regulation of dogs), 46 ("Pooper Scooper" law), 47 (destruction of dogs running at large), 50 (licensing), 52 (licensing), 53 (licensing), 54 (licensing), 57 (slaughter of diseased cattle).

Indeed, even a state law designating dogs as personal property under certain circumstances passed constitutional muster, no less in the Supreme Court of the United States as long ago as 1897: *Sentell v. New Orleans and Carrollton Railroad Company*, U.S. 698. The State of Louisiana had enacted a law providing that "dogs owned by citizens of this State are hereby declared to be personal property of such citizens, and shall be placed on the same guarantees of law as other personal property; provided, such dogs are given in by the owner thereof to the assessor." The law was attacked constitutionally as beyond the police power of the state to enact. The Supreme Court disagreed, and upheld the statute.

Just as federal and state animal-related statutes have survived constitutional challenges, so too have municipal laws.

Municipal

In *Zageris v. City of Whitehall*, 72 Ohio App. 3d 178; 594 N.E.2d 129 (1991), a city ordinance provided: "(a) No person shall keep or harbor more than three dogs, excluding puppies less than four months old, in any single family dwelling, or in any separate suite in a two-family dwelling or apartment dwelling, within this City. The terms 'dwelling' and 'suite', as used in this section, include the parcel of land upon which the building containing the dwelling or suite is located, and also all out-buildings located on that

¹⁰⁹ The unsuccessful constitutional challenge was brought by an association of game fowl breeders.

¹¹⁰ See case 12, where Florida's unfounded distinction between the legality of cockfighting on land and on steamboats was held to violate equal protection.

parcel of land. (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.”

The statute was upheld against constitutional challenge: “An enactment such as Section 505.13 falls within the police powers of a legislative body if it has a real and substantial relation to the public health, safety, morals or general welfare of the public and is neither unreasonable nor arbitrary. * * * As stated in [the] *Downing* [case], the regulation of dogs falls within the legitimate range of police power. The present ordinance represents a legislative determination that more than three grown dogs in any single-family dwelling unit or in any separate suite in a two-family or apartment dwelling is a detriment to the general welfare of the public.* * * The ordinance presently in dispute does bear a real and substantial relation to the general welfare of the community.” (See also *Village of Carpentersville v. Fiala*, 98 Ill. App.3d 1005 (1981), *Village of Jefferson v. Mirando*, 101 Ohio Misc.2d 1 (1999)).

Kovar v. City of Cleveland, 102 N.E.2d 472 (1951), involved the reprehensible practice of “pound seizure”—that is, turning over impounded animals for purposes of experimentation. A challenge was made to Section 2911-3 of the Municipal Code of the City of Cleveland, alleging that it did not empower the dog warden to deliver unredeemed impounded stray dogs to hospitals or laboratories for that purpose, and that any attempt to do so was without authority.

According to the court, “[t]his section of the General Code of Ohio is a part of Title 12 dealing with Municipal Corporations, and is found in Division II ‘General Powers, Chapter 1, Enumerated Powers.’ This section directly authorizes a municipal corporation [i.e., the City of Cleveland] to regulate and prohibit the running at large of dogs and provide against the injury and annoyance therefrom, and to authorize the disposition of them when running at large, contrary to the provision of any ordinance.” The court continued: “Both by its constitutional right of home rule and by the powers conferred upon municipal corporations by § 3633 GC, the City of Cleveland has the right, in the interest of the safety and health of its citizens, to provide that no dog should be permitted to run at large unless muzzled and to provide that any dog found at large unmuzzled should be impounded. The City has the right to impound unmuzzled dogs even though they may have been registered under the provisions of the General Code of Ohio dealing with that subject hereinabove referred to.” As to sale of impounded dogs to laboratories and hospitals, “If the City Council desires to define more specifically the means of disposing of dogs impounded it is their duty to do so. Such matter is for the consideration of the City Council and not the courts.”

Greater Chicago Combine and Center, Inc. v. City of Chicago, 2004 U.S. Dist. LEXIS 25706 (2004) involved a Chicago ordinance that made it unlawful to “import, sell, own, keep or otherwise possess any live pigeon” in any residential district within the City.

A homing pigeon organization challenged the ordinance on state and federal constitutional grounds: exceeding the City’s home rule and police power authority, equal protection, and due process. The City of Chicago argued that the ordinance was enacted

in order to address residential concerns about noise, smell, and droppings—in other words, concerns within the City’s police power to legislate on matters of the public health, safety and welfare. The ordinance was upheld.

Humane Society-Western Region v. Snohomish County, Slip Copy, 2007 WL 2404619 (2007) dealt with a County Code that established a durational requirement for how long shelters could retain animals, and imposed certain standards regarding repetitive dog barking. Essentially, the shelters raised a federal due process claim, which the court rejected because it found the County was acting constitutionally within its police powers in legislating for the public health, safety and welfare.

City of Akron ex rel. Christine Resch v. City of Akron, 159 Ohio App.3d 673 (2005) addressed a city ordinance that criminalized allowing cats to run at large and authorized animal control to impound them. The ordinance had been enacted because of cat-caused problems such as scratched automobiles, public defecation and urination (even using children’s sand boxes), and other property damage. Federal due process and equal protection challenges were rejected for the now-familiar reason that legislation of this sort is well within the municipality’s police powers.

Rhoades v. City of Battle Ground, 115 Wash. App. 752 (2002) presented the question of whether a prohibition of exotic animals within the city limits was constitutional. Predictable equal protection and due process challenges were made. Predictably, they and other arguments failed because the city had a right (indeed, a duty) to protect its citizens from the dangers posed by exotic animals.

Muehlieb v. City of Philadelphia, 574 A.2d 1208 (1990) is an important case for two reasons.

A provision of the State Department of Agriculture’s Dog Law limited to fifty the number of dogs that could be kept on any one property during a calendar year. The City of Philadelphia’s Animal Control Law limited the number of dogs at a residential dwelling to, and to abate nuisances.

Muehlieb had twenty dogs, which would have been legal under the state provision, but not the city’s ordinance. Thus the question was whether the state “fifty” dog statute “preempted” the city ordinance.

The court’s answer was that it did not. No intention was found in the state legislation to prevent cities from dealing with its own dog problems, especially since the state law had been enacted to protect dogs but the city ordinance was aimed at protecting humans from dog-created nuisances.

Thus, not only are dog limitations constitutional, but dog-related legislation is allowed to coexist at different levels of government so long as the “higher” level does not manifest a clear intent to “preempt” the “lower” levels from occupying the same area of law.

Hannan v. City of Minneapolis, 623 N.W.2d 281 (2001), is another case that presented a preemption issue. The City Code of Ordinances contained “dangerous” and “potentially dangerous” animal provisions. A notice of destruction was issued for plaintiff’s dog because of its behavior. In addition to making constitutional arguments which were rejected, plaintiff claimed that the Minneapolis Code provision was preempted by a state statute. The court disagreed, and precisely stated the core principle of preemption: “*Local regulations will be preempted when the legislature has fully and completely covered the subject matter, clearly indicated that the subject matter is solely of state concern or the subject matter is of such a nature that local regulation would have unreasonably adverse effects on the general populace.*” (My emphasis.)

Summary

Congress has prohibited hunting animals from the air, regulated animal performances, limited the number of lobsters that can be taken, protected eagles, shielded endangered and threatened species, enforced humane slaughter methods, exerted control over wild horses and burros—and all constitutional challenges against this legislation has failed.

States have legislated concerning animals on a variety of topics: fighting, licensing, taxation, regulation of dealers, public sanitation, running at large, number and breed restrictions—and in case after case the statutes have been upheld against substantive constitutional challenges.

Municipalities have enacted ordinances dealing with the number of animals that can be owned, the areas they can be kept, the species and breeds they can be; the impounding of animals and how they are to be disposed of; the possession of dangerous and exotic animals; the rules by which shelters must operate—and, just as with state statutes, these and similar municipal ordinances have been consistently upheld against substantive constitutional challenges.

Moreover, not only have states and municipalities each enacted animal protection legislation, but under the preemption doctrine in virtually all cases the courts have allowed the statutes and ordinances to coexist—thus providing two layers of laws benefiting animals.

The significance of the federal, state and municipal laws just surveyed for mandatory spay/neuter laws that might be faced with constitutional challenges is unmistakable: if mandatory spay/neuter laws serve the public health, safety, welfare or morals, they will survive constitutional scrutiny.

VII.

Corollaries to Mandatory Spay/Neuter Laws

Chapter I, II and III of this monograph have established that from a policy perspective there exists in this country a serious problem of companion animal overpopulation, that to ameliorate it spay/neuter is currently the principal tool, and that spaying/neutering must be made mandatory.

Chapter IV has analyzed and critiqued existing spay/neuter statutes, Chapter V has presented the text and analysis of ISAR's proposed model statute, and Chapter VI has convincingly demonstrated that spay/neuter laws will be upheld against constitutional challenge.

Once mandatory spay/neuter legislation is in place, its effectiveness will depend not only on vigorous constitutional/legal defense and aggressive enforcement, but on at least four other considerations: (1) companion animal identification, (2) low- or no-cost spay/neuter, (3) early-age spay/neuter, and (4) Departments of Animal Affairs.

Companion animal identification

ISAR's Model Mandatory Spay/Neuter Statute depends heavily on aggressive enforcement, which in turn relies at least in part on animal control authorities and others being able to identify companion animals.

Experience shows that earlier attempts to identify dogs and cats permanently have failed, and that collars (which come off) and tattoos (which fade) are useless. But now, modern technology has provided the microchip.

A microchip is a tiny transponder that can be safely implanted into animals to provide permanent and unmistakable identification. The chip is encased in a tiny glass tube which is formulated to be compatible with living tissue, and is no larger than a grain of rice. Microchips have a useful average life of approximately twenty-five years.

Each chip is assigned a unique identification number that can be read by special scanners using low-frequency radio waves. This number corresponds to a database record in a national registry which provides the information necessary to contact the animal's caretaker. The record can also include alternate contact persons; a medical history of the pet, including whether it's spayed or neutered; health conditions; necessary medications; and even favorite foods. A toll-free number is provided to retrieve the information and phone lines are staffed 24 hours a day, 365 days a year.

The microchip's database can be updated when the animal's custodian moves, when for any other reason the animal changes homes, when medical information has to be changed, etc. With the proper scanning equipment, which virtually all shelters and veterinarians have today, microchips can be read instantly and are correctly deciphered approximately 99% of the time.

Microchipping companion animals is not some idea from Star Wars. The process has existed for at least a decade, and has already been made mandatory in some jurisdictions under certain circumstances.

For example, *Colorado Revised Statute Section 18-9-204.5 (e.5) (2006)* provides that “[t]he court shall order any owner of a dangerous dog who has been convicted of a violation of this section to: at the owner's expense, permanently identify the dangerous dog through the implantation of a microchip by a licensed veterinarian or a licensed shelter.”

Miami-Dade [Florida] County Ordinance No. 05-53, enacted March 15, 2005, provides that “All dogs and cats sold in the County must have a microchip implanted prior to sale.”

Revised Ordinances of *Honolulu County*, Ch. 7, Art. 7, § 7-7.2, reads as follows: “Regulation of Dangerous Dogs, Prohibited acts—Conditions on owner—Penalties. (d)(5). Unless already identified by microchip, the dog shall be permanently identified, at the owner’s expense, by injecting into the dog an identification microchip using standard veterinary procedures and practices. The microchip identification number of the dog shall be provided to the city animal control service.”

Indianapolis and Terre Haute [Indiana] animal control ordinances are more extensive: “Sec. 531-725. Return of impounded animal to its owner. (c) Prior to the return to its owner of an impounded dog or cat which at the time of impoundment did not bear a permanent means of identification as required by section 531-202 of this Code, the enforcement authority shall cause a microchip with a registered identification number to be implanted in the animal. The fee for such service shall be ten dollars (\$10.00). Sec. 531-731. Disposition of owner-surrendered animals and impounded animals not claimed by owner; adoption. (c) Following the four-day impoundment period, a person other than the animal's owner or a member of the owner's family who wishes to adopt an impounded animal which has not been claimed, and which is otherwise available for adoption, may adopt the animal. * * * [H]owever, with respect to a dog or cat which does not bear an identification microchip, the enforcement authority shall cause a microchip with a registered identification number to be implanted in the dog or cat prior to the animal's adoption, and the adoption fee for such a dog or cat shall be sixty dollars (\$60.00).”

Concordia and Manhattan [Kansas] animal control ordinances: “Code 1971, Sections 5-29, 5-47 - Ord. No. 2004-2880, Section 1, 12-15-2004: Sec. 4-187. Standards and requirements. (8) All owners, keepers, harborers or possessors of dogs defined as dangerous in accordance with section 4-185 must within 20 days of the effective date of this section provide proof to the city clerk that an identification microchip has been implanted in the dog.”

Michigan Comp. Laws Section 287.1005 (2004): “Identification number placed in wolf-dog; subcutaneous microchip. Sec. 5. The owner of a wolf-dog cross shall have an

identification number placed in the wolf-dog cross via subcutaneous microchip, at the expense of the owner, by or under the supervision of a veterinarian.”

Detroit and East Lansing [Michigan] animal control ordinances: “Sec. 6-2-5. License tags; license and tags not transferable. Use of microchips; transfer of microchip registration. (f) The Animal Control Division is authorized to implant and utilize microchips to identify licensed dogs and to collect a fee for such services.”

Minnesota Statutes 347.515 (2007): “Microchip identification. The owner of a dangerous or potentially dangerous dog must have a microchip implanted in the dog for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the animal control authority. If the microchip is not implanted by the owner, it may be implanted by the animal control authority. In either case, all costs related to purchase and implantation of the microchip must be borne by the dog's owner.”

Minneapolis [Minnesota]: “Title 4 Animals and Fowl, Section 64.110. Dangerous animals. (g) Any dog declared dangerous under this ordinance must have a microchip implanted for identification within fifteen (15) days of the date the dog is declared dangerous or the date of a decision in a hearing held pursuant to this chapter, whichever is later. The name of the microchip manufacturer and identification number of the microchip must be provided to animal control. If the microchip is not implanted by the owner, animal control may have a microchip implanted at the owner's expense. All costs related to purchase and implantation of the microchip must be borne by the owner of the dog. Upon request, the owner or custodian of a dangerous dog must make the animal available to animal control for an inspection to determine that a microchip has been implanted.”

North Platte and Omaha [Nebraska] animal control ordinances: “Sec. 6-153. Same-- Microchip identification required. Any animal judicially determined to be dangerous shall be implanted with microchip identification by a licensed veterinarian at the owner's expense no less than 30 days after such determination is entered by the court with the chip identification number provided to the authority within 72 hours of procedure being completed. (Ord. No. 36463, Section 2, 12-16-03).”

Las Vegas [Nevada]: “Ord. 3618, Section 4, 1991, Ord. 5111 Section 3, 1998”; *Reno [Nevada]*: “Ord. No. 5464, Section 1, 6-25-03 - Ord. No. 5036, § 1, 9-14-99. 7.16.030 Vicious animals--Ownership permitted when. Any animal which is declared to be dangerous by the Animal Regulation Officer may be kept within the City, provided that: (F) The animal shall be implanted with an electronic microchip from a manufacturer approved by the Animal Regulation Officer. The implantation must be performed by a licensed veterinarian and must conform to procedures recommended by the manufacturer. The owner or keeper shall register the microchip number in a national database in accordance with instructions from the manufacturer, and shall provide the number to the Animal Control Officer.”

New Mexico: “N.M. Stat. § 77-1A-5. Registration and handling requirements for dangerous and potentially dangerous dogs. A. An animal control authority shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes that: (7) the dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority”

New York: “Agriculture & Markets Law, Art. 7, Section 121. The [state] shall have the burden at such hearing to prove the dog is a ‘dangerous dog’ by clear and convincing evidence. If satisfied that the dog is a dangerous dog, the judge or justice shall then order neutering or spaying of the dog, [and] microchipping of the dog”

Oregon: “Or. Rev. Stat. § 609.168 (2007). Microchip identification. (1) A county shall implant an identifying microchip into a dog described in ORS 609.162 [one that chases livestock] that is not put to death. Implantation shall be made prior to any adoption or relocation of the dog. The State Department of Agriculture, by rule, shall prescribe standards for microchip implantation. The county making an implantation shall forward the microchip information and the record of the dog to the department. (2) The department shall maintain the record for a dog implanted with a microchip under this section for a reasonable period and shall make the record available to any county upon request. (3) The county and the department may charge reasonable fees to the dog owner to cover the cost of conducting and administering the microchip implantation program.”

City of Sioux Falls [South Dakota]: “Ch. 7, Art. 1, Section 7.3. (c) The owner of an animal that has been declared vicious shall make application to the animal control office to register such vicious animal and shall comply with the following: (5) The animal shall be permanently identified by injecting an identification microchip into the animal using standard veterinarian procedures and practices. The number and the veterinarian who injected the microchip to be reported to animal control.”

Moab and Salt Lake City [Utah] animal control ordinances: “8.06.040 Dangerous or vicious animals. It is a violation of this title for an owner or handler of a dangerous or vicious animal to allow or permit such animal to go or be off his/her premises unless such animal is under secure restraint and muzzled and/or confined so as to prevent it from injuring any person, property or other animal. The owner of any dangerous or vicious animal shall microchip the animal and register the microchip number with the division. (Ord. 1461 § 2 (part), 2000).”¹¹¹

¹¹¹ Sources for this section on identification of companion animals include:

American Veterinary Medical Association, *Microchipping of Animals*, Dec. 3, 2007.

Provides a basic overview of the technology, benefits of microchipping, medical reactions, and use in different countries.

AVMA, *The Objectives and Key Elements Needed for Effective Electronic Identification of Companion Animals, Birds, and Equids*, Apr. 2006.

These state statutes and municipal ordinances demonstrate that diverse jurisdictions have concluded that mandatory identification, through microchipping, of dogs and cats serves a useful public purpose. Actually and potentially dangerous animals are identified, impounded animals adopted and returned to their custodians are identified, hybrid dogs are identified, dogs worrying livestock are identified, licensed dogs are identified.

Just as all of this identification is done in accordance with state and municipal police power to promote public health, safety, welfare and moral goals, it follows that mandatory identification of companion animal is similarly a necessary adjunct to mandatory spay/neuter legislation.

Low-cost spay/neuter

In *Redemption*, Nathan J. Winograd makes the valid point that much of the companion animal overpopulation problem is caused by low income animal custodians not spaying/neutering their pets.

Although reasonable people can disagree about such persons' hierarchy of values—many have adequate resources that they simply choose to spend on other things, such as cars, TV sets, lottery tickets, etc.—in light of various studies there can't be any disagreement that much of the stray and overpopulation problem originates at the low end of the economic totem pole. Indeed, Winograd cites such studies, and demonstrates anecdotally that when no- or low-cost spay/neuter facilities exist, overpopulation goes down, and when they do not, overpopulation goes up.

The literature contains considerable information about low-cost spay/neuter, which is readily available from various Internet search engines.

As an illustration, the following is a report of an interview ISAR conducted several years ago with W. Marvin Mackie, DVM, a consultant specializing in high-volume spay/neuter clinics. It is entitled "High-volume, low-cost spay/neuter clinics."

Sets out the elements the AVMA believes are necessary to a successful electronic identification system, including the need for standardization of chip frequency and scanners.

Emilie Clermont, 10 *Animal L.* 363, 2003 *Legislative Review*

Review of an Illinois microchipping bill that met widespread resistance and was scuttled.

Illinois Public Act 93- 0548, An Act in Relation to Animals.

Text of HB0184.

Journal for the AVMA, *USDA: No authority to regulate pet microchips*, Oct. 15, 2007.

Overview of the USDA's finding that the federal Animal Welfare Acts does not provide any authority to standardize microchips and scanners in the US.

Dr. Mackie opened his first spay/neuter clinic in 1976 and at the time of our interview headed four high-volume, low-cost spay/neuter clinics in Southern California. Dr. Mackie's very successful clinics altered a combined total of 25, 315 cats and dogs in 1998 alone, a decade before the advanced technology and techniques available today.

The successful high-volume spay/neuter clinic. Dr. Mackie's clinics average 40 surgeries each operating day. He attributes the high number of spay/neuter surgeries his clinics are able to perform to the fact that the clinics are considered "well animal clinics," offering essentially only one service: sterilization (although they also provide vaccinations, deworming, and ear mite treatments). Whereas a traditional veterinary hospital must be prepared to provide a wide variety of services each day, a specialized spay/neuter clinic can focus its efforts entirely on perfecting and streamlining only one task. Dr. Mackie emphasizes the need for extraordinary efficiency in every aspect of a successful high-volume clinic. Noting that the proficiency of the clinic is predicated on the slowest link in the chain, he stresses the necessity of a motivated staff that's willing to work as a team, communicates very well, and has a dedication to the purpose of the clinic. He encourages his staff to work daily with the passion of preparing for a hurricane." Despite his emphasis on speed, Dr. Mackie stresses that it's imperative for the veterinarians to do a good job and that the clinics earn a good reputation. He expects excellence and strives for perfection with each surgery performed in his clinics. Dr. Mackie's clinics clearly fulfill his Mission Statement, which reads, "Our Mission . . . To develop and promote a reproducible, financially and medically sound, consistently excellent surgical system to effectively respond to the pet overpopulation problem through surgical sterilization by private sector veterinarians. " Having developed a protocol for a successful clinic, Dr. Mackie is eager to assist others in establishing similar programs.

Clinic operations. To remain economically viable, the clinic must maintain operations in accordance with the volume of spay/neuter surgeries supported by the community in which it operates. Therefore, the personnel and facility requirements, as well as the hours and days the clinic is open, will depend largely on community size. Dr. Mackie's clinics in the major metropolitan areas are open 11 days in 2 weeks, including every other Saturday. His clinics in the outlying areas that serve the smaller communities can't support the same kind of volume, so they're open only one or two days a week. In 1998, Dr. Mackie's four clinics were open a combined total of 641 surgery days. Due to the expense of advertising, Dr. Mackie's clinics rely primarily on word of mouth to gain clients. Also, various organizations such as animal shelters and rescue leagues utilize his clinics' services and constitute a notable portion of their business.

Determining Fees for Spay/Neuter Surgeries. Dr. Mackie recommends that clinics base the spay/neuter surgery fee on the breakeven point of unsubsidized operations. The price per surgery is determined by totaling the fair market value of everything necessary to provide the service and then dividing by the estimated

number of surgeries the clinic will perform. Dr. Mackie notes that to achieve a realistic portrayal of the value of services, all subsidization (e.g., financial, in kind, volunteer) should be considered at its fair market value when determining fees. Dr. Mackie suggests that clinics strive for a fee that will move people to action; he recommends a target fee of approximately 60% below the average local cost. His clinics charge \$35.00 for a cat spay, a substantial reduction from the \$100.00 local average charged by private veterinarians for the same service [a decade ago]. It is significant to note that Dr. Mackie's clinics are self-sustaining; they receive no subsidization aside from the fees paid by those who use the services. While this proves the economic viability of high-volume, low-cost clinics, Dr. Mackie cautions that for a clinic to be self-sustaining, it must meet a relatively high volume of surgeries on an ongoing basis. He estimates the need for 25-30 surgeries per shift to cover all overhead costs. Dr. Mackie also recommends that nonprofit clinics, which inherently wish to help the less fortunate, establish a fund to provide financial assistance for those who cannot afford the regular fees.

Veterinary Opposition. Although Dr. Mackie was fortunate not to experience opposition from the veterinary community when opening his clinics, he acknowledges that this is a problem which others are likely to encounter. Veterinarians, who often ignore the issue until it becomes a NIMBY syndrome (“not in my backyard”), frequently resist low-cost spay/neuter clinics based on the belief that they will be detrimental to their own businesses. When faced with veterinary opposition, Dr. Mackie advises clinics to continue with their plans, as he feels that at this point in time, the veterinary community knows that they’re not going to win the battle against these clinics.

High-Volume Spay/Neuter Clinics Impact Pet Overpopulation. High-volume spay/neuter clinics play an important role in reducing pet overpopulation in the communities they serve. Although it's difficult to quantify the exact impact Dr. Mackie's clinics have made on dog and cat overpopulation, the sheer volume of animals these clinics have prevented from reproducing has undoubtedly had a tremendous effect on the pet overpopulation crisis. After 23 years of service, Dr. Mackie estimates his clinics have altered approximately 300,000 animals, thereby preventing countless puppies and kittens from contributing to pet overpopulation. Dr. Mackie also cites anecdotal indications of the effectiveness of the programs, such as a heightened awareness of pet overpopulation, evidenced by increased community response to this tragic problem. In the region Dr. Mackie serves, this has been particularly evident in the field of early age spay/neuter, a practice which he has performed for the last 11 years and which he strongly advocates. Dr. Mackie works with the veterinarians who serve the city of Los Angeles' six shelters, where early age spay/neuter is essential to their NBA (Neuter Before Adoption) policy. These shelters adopt out more than 20,000 animals a year, with each of the animals being spayed or neutered prior to placement.

Special Veterinary Training. Faced with an initial groundswell of activity upon first opening, high-volume spay/neuter clinic veterinarians often have difficulty

meeting the demand and can soon find themselves overwhelmed by the monumental task they've undertaken. In efforts to facilitate the success of high-volume spay/neuter clinics, Dr. Mackie offers special training which he feels may be helpful for veterinarians practicing in a high-volume setting. Dr. Mackie's special training for veterinarians teaches a spay/neuter procedure he devised which eliminates and refines many of the steps traditionally taught in veterinary school—steps which he considers to be totally superfluous, adding nothing to the surgery except time. The special training sessions typically last two or three days and may be tailored to meet the needs of the attendee. Referring to his training session, Dr. Mackie states, “I know that this is what I need to do in my waning years of productive practice—to leverage what I know and pass it on to others. That's the greatest gift I can give, really.”

Whether mandatory spay/neuter legislation is accompanied by provisions for low-cost spay/neuter based on Dr. Mackie's model or another of the many that now exist, virtually everyone knowledgeable about the companion animal overpopulation problem recognizes that there must be some mechanism for surgical intervention.

Just as mandatory spay/neuter legislation must be accompanied by mandatory identification laws, so too must the former provide a cost-effective way that those forced to comply are able to do so.

Early-age spay/neuter

Just as there is controversy in the veterinary community about the role of low-cost spay/neuter clinics in today's companion animal world, a related dispute exists over when dogs and cats may be neutered.

For a very long time, if one asked a veterinarian whether she spays or neuters dogs or cats under four or five months of age the answer would almost always have been “no.” Yet, there appear to be no good reasons not to spay/neuter early—and there seem to be very good reasons to do so. The latter have been clearly presented in an *ISAR Report* written by Clayton MacKay, DVM, Ontario Veterinary College. It is entitled “Early Age Spay/Neuter – A Tool Against Unnecessary Euthanasia.”

What exactly is Spay and Neuter Surgery?

Surgical sterilization is usually the most complex procedure to happen during the life of most dogs and cats. Because spay and neuter are done so routinely, many equate this with simplicity.

As animal advocates, we must always consider our patients' comfort and safety when considering a drastic measure, like surgery, in the solution of a problem. Therefore let us look at exactly what these procedures are and why they are carried out before discussing the controversy of timing.

Female Spay or Neuter

These terms are used interchangeably for surgical sterilization of the female. Because it involves removing the entire uterus and both ovaries, the surgery is commonly performed via an incision on the belly of the patient. This invasion of the abdomen requires attention to sterile technique to prevent life-threatening infection, post-operatively. Historically this procedure has been performed to solve the following problems; stop the animal from heat (reproductive cycling) 3-4 times per year; prevent unwanted pregnancies initially, and in the last 20 years an attempt to solve the unwanted dog and cat overpopulation; provide preventive health care by decreased incidence of breast cancer (when spayed prior to heat cycles) and less reproductive tract disorder in the aged pet; decrease problems in behavior during heat cycles (running away, sex-related fighting, trauma, etc.).

Male Castration or Neuter

These terms are used as synonyms, generally meaning the removal surgically of both testicles. The surgery is less dangerous because the organs in question are found in the scrotum, in most cases. Because of that fact the procedure is faster and less risky. Larger dogs require more overall care and technique. Males undergo this procedure because the owner is usually trying to take advantage of the following: attempt to control inter-male aggression; curtail the animal from roaming particularly when there are females in heat within the immediate area; prevent testicular and prostatic disease later in life; control population by decreasing random breeding; decrease discharges from penile sheath in some cases.

The majority of the veterinary profession recommends these procedures around six months of age. Generally the importance of spaying the female prior to heat is stressed.

What is Early-Age Spay/Neuter?

This term indicates the above procedures that would take place between eight and 16 weeks of age. Controversy over the age at which surgery can be done is usually centered on the following areas:

- What are the long-term effects on patients' overall development, growth and health when sterilizing so young?
- Because this is an elective procedure, are there animal welfare issues over anesthetizing a patient at this age?
- Are there behavioral problems created by this early surgery and the hormonal balances that are affected?

Some Questions Now Answered

Anecdotal information is available on many early spay/neuter programs throughout North America that have been carried out over the last 50 years. The City of Chicago Animal Care and Control has sterilized all animals leaving their care since 1989.

Individuals associated with these programs report little or no evidence of problems. The most recent scientific study was done by Dr. Bloomberg et al. at the University of Florida at Gainesville. This study of cats divided up the patients in those neutered and spayed at seven weeks, those neutered and spayed at seven months, and the remainder sterilized at one year. This project began in 1991 and the animals which were adopted out are still being followed. To this point there appears to be no significant concerns of health or behavioral abnormalities.

Many veterinarians were very concerned about the increased risk of anesthesia for an elective procedure. Very young animals offer quite different challenges to the veterinary anesthetist. These include slower metabolism and excretion of sedatives, tranquilizers and anesthetics. Because of less body fat and undeveloped heat regulatory mechanisms, these patients were at risk for hypothermia (dangerously low body temperature). While many veterinarians would carry out anesthetics on such patients during emergencies, they were unwilling to consider doing so for a procedure that could take place later at what they considered a safer age. The primary problems have now been addressed and protocols for anesthesia and surgery have been published in professional journals from work performed at Angell Memorial in Boston operated under the auspices of the Massachusetts SPCA.

Animal behaviorists generally agree that neutering prior to sexual maturity results in more acceptable pets. Their only real concerns in performing the surgery at eight to 16 weeks center around the problem that this is during the “fear” period of development. Behaviorists suggest we need to monitor these early sterilized animals for fear-related problems and any signs that these patients would retain juvenile characteristics. While many pet owners would prefer their animals to retain puppy and kitten characteristics, they would be unhappy if they could never effectively train them.

Understandably there has been reluctance among practicing veterinarians to accept such a major change in philosophy with no body of data to suggest this is safe for the patient. However, there is really no body of data supporting spay/neuter at the traditional time of six months. This age was likely chosen to try and be sure the patients had fully developed immune systems. The early days of organized small animal veterinary medicine prior to the world of modern vaccines had large numbers of dogs and cats dying from canine and feline distemper. Once vaccines came along, these patients were actively protected from the major contagious diseases and this timing fit just prior to possible heat starting. Older anesthetics were also less reliable for tiny patients so it was naturally believed better to wait until the procedures could be carried out at the safest time possible for the patient.

Why Do We Care About This Controversy?

It is accepted generally that over 4% of the total population of dogs and cats are euthanized annually because there are simply not enough homes. Over the last 20 - 30 years many different programs have been attempted to solve this problem. Surgical sterilization has often been touted as the answer. Certainly if spay/neuter procedures were carried out prior to new owners ever acquiring pets, it would sharply decrease the number of unwanted litters.

Veterinarians are in touch with people daily who want to rush their pets in quickly because they are ready to have a second litter before they have found homes for the first. Despite the good intentions of many owners to have their animals sterilized, they often will have one or two litters before they “get around to it.” Many spay/neuter programs fail throughout North America because the owners do not return to have the surgery they promised to have done. It is simply too taxing in resources and manpower for most shelters and pounds to track these owners down and insist on mandatory spay/neuter. It would seem quite obvious that by sterilizing these animals prior to adoption or sale we would markedly reduce the population of available animals.

What Effect Will It Have on Unwanted Dogs and Cats in Canada?

We must be realistic in what we expect from one program in a complex problem. Obviously it will have some impact by preventing the litters born to animals that the owner meant to have sterilized. It will affect, however only those animals coming through a program with such restrictions in place to adopt only sterilized animals. At present we have no clear data on where owners acquire a majority of their pets. It is felt the most common source is from friends and acquaintances and therefore those are not likely to be sterilized prior to acquisition.

The other factor is that the animals being euthanized are young adults, particularly cats, not puppies and kittens. Indeed many of these animals are spayed and neutered. For some reason the human animal bond has not been strong enough for the owner to seek out and claim stray pets. Many more are simply given up because the owner won't continue to keep them for a myriad of reasons. Work is currently taking place to evaluate this and determine how to combat the disposable animal problem.

What Should I Do About It?

If you feel that early spay/neuter programs could be advantageous to your animal control or shelter situations take the following steps:

- Bring this article to the attention of your local animal control or humane shelter.
- Discuss the pros and cons of this procedure with your own veterinarians or local veterinary association. They should be willing to discuss with you

their personal viewpoint as well as identify information from national or international veterinary associations.

- If veterinarians you speak to do not use this technique now, ask whether they would investigate in hopes they would consider adding this service to their list of client offerings. Remind them of their last call from the owner wanting a quick spay because their female has "gotten out" again.
- Try and get some consensus on the type of project you wish to begin. Cooperation of all the major players (animal control, humane shelters, veterinarians, pet stores and breeders) will have a much greater impact if there is a common front. There has been some interest from commercial pet breeders and professional dog breeders to consider sterilization prior to sale. This would stop the careless or unscrupulous owner from breeding animals sold as pet stock because they are not the best representatives of their breed.
- Report your program to national and local humane organizations and try to quantify results by statistically following what happens to euthanasia rates in your particular area. Always document any other factors that would affect these numbers to be sure there is a cause and effect relationship (e.g. if the population is growing and euthanasia rate stays level that should indicate success because you would expect increased euthanasia with more pet owners).
- Finally, be cautious not to oversell the perceived benefits of this technique until there are more confirmed data to show if it will be beneficial long-term to both the individual animal and society. Because this is still a surgical approach, there is little if any cost saving in simply doing the surgery at an earlier age.

Another concern will be the reluctance of many hospital personnel to accept the idea of surgery on such tiny beings when they are first approached. Once the procedure can be shown to be done safely and effectively and the possible benefits (e.g. less euthanasia, fewer tax dollars expended on the overpopulation problem) are explained these people usually become advocates for these techniques.¹¹²

¹¹² Articles Cited:

1. *Developmental and Behavioral Effects of Prepubertal Gonadectomy*. Mark Bloomberg, DVM, MS; W.P. Stubbs, DVM; D.E Senior, BVSc; Thomas J. Lane, BS, DVM; University of Florida at Gainesville. Funded by the Robert H. Winn Foundation, February 1991.
2. Faggella AM, Aronsohn MG. *Anesthetic techniques for neutering 6-14 week old kittens*. J AM Vet Med Assoc. 1993; 202: 56-62.
3. Aronsohn MG, Faggella AM. *Surgical techniques for neutering 6-14 week old kittens*. J AM Vet Med Assoc. 1993; 202: 53-55.

Other References That Would Be Useful:

Lieberman, L.L. *A case for neutering pups and kittens at two months of age*. J AM Vet Assoc. 1987.

If a regime of mandatory spay/neuter is to be imposed by law at the state level of government—implemented by mandatory identification and especially by facilities for low-cost spay/neuter—part of that strategy to reduce the companion animal population must include early-age neuter of dogs and cats. If spay/neuter is performed before a new custodian ever acquired a dog or cat, the number of litters would be drastically reduced. If the custodian wanted to breed, if the companion animal roamed freely or got loose, or anything else occurred that were the animal intact it could breed, having been neutered it could not.

So, consistent with good veterinary practice, the earlier the better.

Departments of Animal Affairs

The proposals in this monograph—mandatory spay/neuter, microchip identification, low-cost facilities, early-age surgeries—and the enforcement mechanisms necessary to successfully implement them, raise several important questions. One of them is how are these programs to be most efficiently managed by government.

Regrettably, the current implementation of animal protection legislation throughout the United States is woefully inadequate with regard to companion animals, and enforcement is not much better.

Puppy mills and back-yard breeders grind out dogs. American cities are rife with pet shops, selling dogs and cats. Strays, dogs and cats alike, breed indiscriminately. And countless surplus animals, unwanted for any reason, or no reason at all, end up dead in the streets or countryside, or "euthanized" at shelters and humane societies. Estimates vary as to how many unwanted dogs and cats are killed annually at shelters and humane societies, but millions is certainly not an exaggeration.

In part, the problem derives from a governmental structure which, at best, has minor animal protection services spread throughout various agencies, or which, at worst, has no such services at all. And even in those jurisdictions where private shelters or humane societies do exist, they cannot, they do not, adequately cope with the profound animal protection problems which exist today.

Lieberman, L.L. *The optimum time for neutering surgery of the dogs and cats (letter)*. Vet Rec 1988; 122:369. Chalifoux A., Fanjoy P., Niemi G., et al. *Early spay/neutering of dogs and cats (letter)*. Can Vet J 1981; 22:381.

This article [was] dedicated [by the author] to Dr. Leo Lieberman of Florida. His countless hours of researching, traveling, networking and preaching this philosophy have brought us to where we are today. This fact sheet is published by the Canadian Federation of Humane Societies and is reprinted, with permission, by International Society for Animal Rights. © 1995 Canadian Federation of Humane Societies.

Those problems do not include merely the countless strays who roam our streets and countryside, the fecal matter which pollutes our environment, the destruction of millions of unwanted cats and dogs, the cruelty, the neglect. No, those problems also embrace every other aspect of the relationship between humans and animals, and the responsibility of the former to the latter. And because, taken as a whole, there are so many problems born of this interaction, what is needed on the state level is a single public entity with know-how, power, and resources, a single public entity concerned with and devoted to animal problems, a single public entity which is empowered to take a coordinated across-the-board approach to those problems in the public interest and in the interest of animals.

*What is needed in every state is a Department of Animal Affairs in which all regulation of animals in that jurisdiction will be centralized.*¹¹³

ISAR proposes that enabling legislation could look like this:

Finding. The Legislature finds that the public health, safety, welfare and morals is served by the humane treatment of animals generally and by promoting the wellbeing of companion animals in particular.

Department; commissioner. There is hereby created a Department of Animal Affairs, the director of which shall be the Commissioner of Animal Affairs who shall be appointed by the Governor with the advice and consent of the Senate.

Jurisdiction. The Commissioner shall have jurisdiction to regulate all matters affecting animals and to enforce all provisions of law applicable to the treatment and control of animals, in order to ensure their protection from cruelty, exploitation, and all forms of suffering; provided, however, that such jurisdiction shall not extend to any pest extermination program now or hereafter in effect under the jurisdiction of any other public agency, and provided further that the methods of such extermination program shall be first approved by the Department of Animal Affairs.

Powers. In furtherance, but not in limitation, of such jurisdiction, the Commissioner shall possess and exercise the power to:

- Regulate all matters affecting animals, enforce all provisions of law applicable to animals, and protect them from cruelty and all forms of suffering;

¹¹³ There is an argument to be made that achieving the consolidation of all animal affairs at the state level would be extremely difficult to accomplish, given the inherent compromising nature of the political process and the powerful lobbying interests that would inevitably marshaled in opposition. (See Chapter VIII.) A corollary of that argument is that achieving most of the goals of consolidation can more easily be done on a municipal—i.e., county, city, town, village—level, where politicians are closer to the electorate and thus more susceptible to notions of the public good. On the other hand, there are simply too many municipalities, which would require substantial political and economic resources—all of which would be brought under the state-level Department of Animal Affairs.

- Promulgate, amend, suspend, and abolish rules and regulations to exercise the powers and duties of the Department;
- Exercise all functions in connection with the department's jurisdiction, powers and duties which are now or may hereafter be allowable under the law of this jurisdiction;
- Hold public and private hearings, administer oaths, take testimony, issue and serve subpoenas, receive evidence, make findings, promulgate and enforce orders, and generally utilize the administrative fact finding and adjudicative process in furtherance of the department's function;
- Conduct studies pertaining to the welfare of animals in this jurisdiction;
- Plan and develop programs, and make recommendations to the executive and legislative branches, concerning the humane treatment and control of animals to ensure their protection from cruelty and all forms of suffering;
- Establish and humanely operate, at no direct cost to the public for services rendered, public shelters and pounds for the care, redemption, adoption, and humane euthanization of unowned or unwanted animals or those incurably suffering from injury, disease, or other infirmity;
- Establish and humanely operate low-cost spay neuter clinics;
- Consult with and assist all educational institutions in this jurisdiction, to and including college level, in connection with the preparation and implementation of educational programs concerning the humane treatment and control of animals to ensure their protection from cruelty and all forms of suffering;
- Register or license, or both, all owned or possessed animals or the owners or possessors thereof, or both, including those who have only temporary possession of animals, subject to such regulations as the department may promulgate.

Additional powers. In furtherance, but not in limitation, of such powers, the Commissioner shall have and exercise such additional powers and duties as shall be necessary and proper to implement the foregoing powers.

Other laws. In furtherance, but not in limitation, of such powers, the Commissioner shall exclusively possess and exercise such powers and duties regarding animals in this jurisdiction which, as of the effective date of this statute, are possessed by any other agency of this state.

Definition. As used in this statute, “animal” shall be defined as birds, amphibians, fish, reptiles, crustaceans and every mammal except mankind.

Severability. If any provision of this statute shall be held invalid or ineffective in whole or in part, or inapplicable to any given situation, it is the intent and purpose of this legislation that all remaining provisions shall nevertheless be separately and fully valid, effective, and applicable.

Effective date. This statute shall take effect immediately upon being duly approved.

This proposal for a state-level Department of Animals Affairs is hardly novel, in principle. That’s because various states have already centralized some—though not as many as ISAR proposes here—of their animal-related regulatory activities in a state-level department.¹¹⁴

For example, within the State of New Jersey Department of Health and Senior Services there is an “Office of Animal Welfare.” Though not going as far as ISAR’s proposed Department of Animal Affairs would, New Jersey’s Office of Animal Welfare is a very impressive example of what state government can do if it wishes to get serious about the protection and management of companion animals residing in its jurisdiction.

OWA’s website,¹¹⁵ under the title of “Vision,” describes the Office’s mission as being “dedicated to promoting and protecting the health, safety and welfare of companion animals in the state of New Jersey. The Office of Animal Welfare works to promote responsible pet care and to ensure that pets do not suffer due to abuse, neglect or lack of proper care.” This is indeed a broad mandate, which is explained further in its statement of “Mission”:

To ensure sanitary and humane conditions at pet shops, kennels, shelters and pounds through enforcement of New Jersey’s animal health and welfare rules and regulations; To educate animal health and welfare professionals, pet owners, members of the animal trade profession, and the public regarding these rules and regulations; To work in partnership with various government agencies and animal welfare organizations to promote animal health and welfare issues; and To improve the lives of homeless animals in the state of New Jersey.

¹¹⁴ Recently, Pennsylvania created in its Department of Agriculture the Bureau of Dog Law Enforcement. Its powers include: Enforcing licensing and control of dogs and kennel licensing and inspections; investigating dog bites; seizing and detaining any dog seen running at large; reimbursing individuals for dog-caused damage to livestock, poultry and domestic game birds; establishing and enforcing the quarantine of dogs in certain areas when required; funding counties and humane organizations to establish dog control facilities; providing educational services concerning dog ownership in Pennsylvania; and enforcing the Pennsylvania Rabies Law.

¹¹⁵ <http://www.state.nj.us/health/animalwelfare/index.shtml>.

Differentiating between its Vision/Mission and the Office's "Objectives," the latter is stated as follows:

Enhance the Department of Health and Senior Services' provision of animal welfare services. Enhance and develop, as appropriate, regulations, education and training, standard operating procedures, programs and "Best Practices" that promote animal welfare throughout the State of New Jersey.

One of New Jersey's Office of Animal Welfare's "primary responsibilities is conducting regular inspections of pet shops, kennels, pounds and shelters in collaboration with local health agencies. The Office also educates the public about animal health, safety and welfare issues, and plays an active role in collaborative efforts to protect companion animals."

As formidable as the Office of Animal Welfare's portfolio is, it does not centralize all New Jersey animal-related activities at the state level. For example, while under state law the Office inspects pet shops, kennels, shelters and pounds, licensing these facilities is left to the municipalities in which they are located—thereby splitting responsibility and removing the sword of non-licensure or license revocation from the State's hands and leaving it to be wielded, if at all, at the local level where politics, venality, and personal connections can more easily come into play.

Another example relates to feral cat colonies and "trap, neuter, release" programs, which, in principle, New Jersey supports. However, according to the Office's website,

The New Jersey Department of Health and Senior Services (NJDHSS) defers to local officials to determine the appropriateness of allowing a managed cat colony at a site within a municipality. Municipalities considering managed cat colonies are encouraged to develop standards through ordinance or their regulatory authority to insure these recommendations are developed in a manner that provides an organized community program with proper oversight and accountability.

While it is understandable that local knowledge and concerns about TNR programs are important, state-level deference can result in non-uniform policies and procedures.

The State of New Jersey obviously understands the principles guiding a state's responsibility to companion animals and their custodians, and even though some regulatory power has been left to municipal control the Office of Animal Welfare is nonetheless a fine example of what a state-level Department of Animal Affairs can and should be.¹¹⁶

¹¹⁶ See also Maine Revised Statutes Annotated, Title 7, Section 3901 et seq., the State's Animal Welfare Act. Some municipalities have aggregated animal protection ordinances, but since they are a subordinate level of government they do not, indeed can not, combine all aspects of animal control and protection. See,

C.
**The Legislative Component of the
Companion Animal Overpopulation Problem**

VIII.
California's Worse Than Useless "Mandatory" Spay/Neuter Statute

There are many animal protection activists who believe the best way to help companion animals is through the legislative process, rather than in the courts.¹¹⁷

Consistent with that view, on February 23, 2007 California Assembly Member Lloyd Levine introduced the "Healthy Pets Act" (HPA), which has been analyzed and critiqued in Chapter IV.

Whether or not it's true that California typically leads the nation in innovative legislation, the fact is that the HPA is a quintessential example of how the legislative process degrades on "hot button" issues. In examining the fate of Mr. Levine's bill we can see the dynamic that will be at work when mandatory spay/neuter legislation is introduced in other states. Indeed, we can see how eventually Levine was coopted and his bill killed.

Assemblyman Levine's bill received considerable media coverage throughout California and elsewhere in the United States.

For example, on February 24, 2007 the *Madera Tribune* reported that 841,000 dogs and cats entered California shelters in 2005, of which 430,240 were euthanized (about 51%). According to the article, the total cost to the state to destroy those animals was \$132,513,899.00. As to Madera County itself, the 2005 euthanasia rate was about 70%. (See Appendix 4, "Fiscal Impact of Cat and Dog Intake & Euthanasia in California Shelters".)

Public and professional support for the bill (despite its many flaws) was overwhelming. By July 5, 2007, less than six months after the bill's introduction, supporting letters and petition signatures numbered approximately ten thousand. The bill was favored by public officials, city councils, police departments, animal services, hundreds of local organizations from "A Leg Up Rescue of Sonoma City" to "Zipmark Working Retrievers," and several national groups. Predictably, opposition came from thousands of individuals, a few public agencies, and various dog and cat "fancier" organizations such as the American Kennel Club.

The report of the California Senate Government Committee explains the Levine bill.

for example, www.laanimalservices.com, www.miamidade.gov/animals/about_us.asp, www.rcdas.org/about.htm, www.sanantonio.gov/animalcare/PDF/Volunteer%20Handbook.doc.

¹¹⁷ It should be noted, however, that eventually most legislation, especially laws addressing volatile subjects, ends up in courts where the interpretive process can sometimes produce results at odds with the legislation's intent and language.

<p style="text-align: center;">SENATE LOCAL GOVERNMENT COMMITTEE Senator Gloria Negrete McLeod, Chair</p>

BILL NO: AB 1634

AUTHOR: Levine

VERSION: 7/3/07

HEARING: 7/11/07

FISCAL: Yes

CONSULTANT: Detwiler

CALIFORNIA HEALTHY PETS ACT

Background and Existing Law

The Legislature has declared that the overpopulation of cats and dogs is “a problem of great public concern,” noting that overpopulation causes public health problems, affects local animal control departments, and results in euthanizing too many cats and dogs (AB 1856, Vincent, 1998).

State law requires animal control agencies and shelters to spay or neuter the cats and dogs that they sell or give away. For cats and dogs that are injured or too sick to be spayed or neutered, state law requires the adopter to agree to have the animal sterilized at a later date and pay a sterilization deposit. State law requires fines for the owners of nonspayed or unneutered cats and dogs that are impounded (SB 1301, Vincent, 2004).

Public officials regulate cats and dogs under a mix of state laws and local ordinances. Some cities and counties have ordinances that require owners to spay or neuter their cats and dogs. State law allows cities and counties to adopt programs to control dangerous dogs that are more restrictive than state law, but these local ordinances can’t be breed-specific (SB 428, Torres, 1989). However, local officials can adopt breed-specific ordinances for their mandatory spay or neuter programs and breeding requirements (SB 861, Speier, 2005). The City and County of San Francisco used the 2005 Speier bill to adopt breed-specific restrictions.

Despite these regulations and despite the availability of low-cost spay and neuter services, some groups believe that the Legislature should take stronger action to reduce the overpopulation of cats and dogs.

Proposed Law

Assembly Bill 1634 enacts the California Healthy Pets Act, which becomes operative on April 1, 2008.

AB 1634 prohibits a person from owning a cat or dog that is over six months old unless the animal has been spayed or neutered, or unless the person has an “intact permit.”

A person who has been cited for violating this prohibition has 30 days to provide proof that the person has met the requirement to spay or neuter the animal. Failure to provide proof within 30 days of the citation results in a civil penalty of \$500 per animal, in addition to any other local civil or criminal penalties. The bill requires waiving the civil penalty if the person provides verification that the cat or dog has been spayed or neutered.

AB 1634 declares that it does not obligate veterinarians to enforce its provisions or provide information to local officials about a cat or dog's spay or neuter status. The bill also declares that its provisions don't prohibit local officials from adopting or enforcing more restrictive spay or neuter programs. A city, county, or city and county that adopted a dog breed-specific ordinance pertaining to mandatory spay or neuter programs and breeding requirements is exempt from the Act.

Extensions. AB 1634 allows the owner of a cat or dog to postpone complying with the spay or neuter requirement until the animal is nine months or a year old by obtaining a letter from a California licensed veterinarian stating that the animal should not be spayed or neutered.

The bill declares that a person who holds a local document permitting the possession of an unaltered cat or dog is deemed to be in compliance with its requirements until the document expires or January 1, 2009, whichever comes first. When the permit expires, the person must obtain a new intact permit.

Intact permits. AB 1634 requires local officials to issue an intact permit under specified conditions. A dog or cat license that meets those conditions is considered an intact permit. An "intact permit" is a locally issued annual document that allows a person to own an unaltered cat or dog.

To get an intact permit, the owner must provide proof to local officials that any of the following six conditions exists:

- The owner is a licensed breeder.
- The owner's cat or dog belongs to a recognized registry or association, and either is a show animal or being trained as a show animal, or has earned or is earning a title from a recognized registry or association.
- The owner is a breeder of working dogs or supplies working dogs to law enforcement, fire agencies, or working dog organizations.
- The dog is actively being used or is being raised to be used by law enforcement, fire agencies, or working dog organizations.
- The owner provides a veterinarian's letter stating that it is unsafe to spay or neuter the cat or dog because of the animal's age, poor health, or illness.
- The dog is used for herding or guarding livestock and the dog's owner lives on or owns the agricultural property.

The bill also declares that a person or organization that breeds guide dogs, signal dogs, and service dogs is presumptively entitled to an intact permit.

The spay and neuter requirements apply when an animal with an intact permit ceases to meet these conditions.

Intact permit fees. The fees that local officials charge for local intact permits cannot be more than the amount reasonably necessary to fund the administration of the intact permit program. These fees cannot duplicate other local fees.

Local officials must waive the intact permit fee:

- When the owner is a breeder of working dogs or supplies working dogs to law enforcement, fire agencies, or working dog organizations.
- When the dog is actively being used or is being raised to be used by law enforcement, fire agencies, or working dog organizations.
- For persons or organizations that breed guide dogs, signal dogs, and service dogs.

Local officials may waive the intact permit fee when the owner provides a veterinarian's letter stating that it is unsafe to spay or neuter the cat or dog because of the animal's age, poor health, or illness.

Single-litter intact permits. Until January 1, 2012, AB 1634 allows local officials to issue an intact permit for up to a year and impose an intact permit fee for one male and one female dog per household so that the dogs can produce a single litter of offspring.

The bill requires nine conditions for a single-litter intact permit:

- A licensed veterinarian has examined the dog and the dog is following the veterinarian's recommended preventive health care program.
- The owner has not been convicted of one or more of nine specified crimes.
- The owner has not been convicted of two or more violations of local ordinances involving the dog.
- The owner has not received an order from local officials involving the dog.
- Local officials have not determined that the dog is a "vicious animal."
- The dog is properly housed and cared for, citing four conditions.
- The owner provides local officials with a signed statement agreeing to four conditions regarding the adoption or sale of the offspring dogs.
- The dog has a current local license.
- The owner has considered an identification microchip for the animal.

AB 1634 requires the owner to keep records about the offspring dogs. The owner must prove that the dog has been spayed or neutered after producing the single litter. The bill allows local officials to impose an intact permit fee that does not exceed administrative costs.

The bill's authority to issue single-litter intact permits automatically terminates

on January 1, 2012.

Exemptions. AB 1634 provides four exemptions from its requirements:

- A cat or dog owner who is not a California resident if the owner proves that the cat or dog is temporarily in California for training, showing, or another lawful purpose.
- An animal possessed by an individual with a disability protected by the federal Americans with Disabilities Act if the animal is a guide dog, service dog, or signal dog.
- Licensed guide dog, signal dog, and service dog programs.
- A person with a federal license under the Animal Welfare Act.

Enforcement and funding. AB 1634 requires local animal control agencies to enforce, conduct outreach efforts, and administer its provisions. A “local animal control agency” is a city or county animal control agency or another entity that enforces animal-related laws.

The bill requires that the civil penalties must be used to fund the administration, outreach, and enforcement activities. To the extent that funding is available, the bill requires local officials to “establish a free and low-cost spay and neuter program for low-income individuals.” They must undertake outreach efforts to inform people about these programs. When local officials cite someone for violating the Act, they must provide information about these free or reduced cost spay and neuter programs.

The bill requires local officials to use their permit fees for funding the administration of their permit program.

Comments

1. Strategic action. Tackling the problems caused by cat and dog overpopulation requires the combined efforts of animal owners and breeders, veterinarians, private organizations, local officials, and state leaders. Many owners and breeders already take personal responsibility for controlling the number and sizes of their animals’ litters. Many veterinarians contribute their services to free and low-cost spay and neuter programs. Private organizations actively educate the public about overpopulation programs and existing solutions. Local officials have adopted local ordinances to curb dog and cat overpopulation. Yet despite these efforts and some successes, California still endures the problems caused by overpopulation. AB 1634 confronts the problem of dog and cat overpopulation by setting up a system of prohibitions, penalties, and permits. With specific AB 1634 extensions and exemptions, including provisions for single litters, the bill requires spaying or neutering most cats and dogs. As the bill’s requirements take hold, the number of unwanted cats and dogs will go down.

2. Personal responsibility, public regulation. Owning and caring for cats and

dogs is deeply emotional for many people. Some pet owners resent even the existing state and local government limits on how they treat their animals, believing that these decisions are best left to the owners themselves. Responsible pet owners and breeders want what's best for their cats and dogs. Although many cat and dog owners acknowledge the public health and public finance problems caused by unregulated pet overpopulation, they oppose a statewide requirement for spaying or neutering animals. But not all animal owners are responsible. Uncontrolled litters result in inappropriate cross-breeding, feral cats, and unwanted dogs. Those who fail to take personal responsibility for their animals create expensive problems for all taxpayers. AB 1634 forces legislators to think about how they balance private decisions with public regulation.

3. State control or local regulation? Legislators continually struggle with how to balance state and local control. State laws that preempt local control promote uniformity. Local controls allow local officials to adapt controls to fit their communities' circumstances. Statewide statutes are important when individuals' rights are at stake --- voter qualifications, equal justice, fair access to public accommodations, uniform tax rules. Local controls are important when individual rights aren't at risk and when there is general agreement that local elected officials should respect community differences. Some industries and interest groups favor statewide laws because they don't have to deal with 58 counties and 478 cities. Other groups prefer local regulations because they can advance their policies and economic goals one community at a time. AB 1634 forces legislators to think about how they balance state control and local regulation for cats and dogs.

4. Big problems, local responses. The 1989 Vincent bill identified three public policy problems that result from uncontrolled cat and dog overpopulation: public health, public costs, and unnecessary euthanization. The Legislature declared that the most effective solution is spaying and neutering. Some cities and counties already have spay and neuter ordinances, at least one ordinance is breed specific. AB 1634 creates a statewide program that applies to nearly all counties and cities. The Committee may wish to consider whether this kind of statewide uniformity is critical to curbing dog and cat overpopulation. Should legislators enact a statewide standard statute and then allow counties and cities to opt-out if they think that local conditions justify different solutions?

5. Finding the fit. Two of the more contentious provisions in AB 1634 have been the animal's age and the amount of the civil penalty. The bill requires spaying or neutering cats and dogs by the age of six months, but allows for two three-month extensions based on a veterinarian's medical judgment. Although the bill is now more flexible than its earlier versions, some critics say that the characteristics of certain dog breeds justify longer delays. For civil penalties to influence behavior, supporters say that they must be sufficiently costly. The \$500 civil penalty set by AB 1634 is more expensive than spaying or neutering an animal. By keeping this penalty high, the bill promotes a rational response --- it's just cheaper to follow the law than to flaunt it.

6. Drafting improvements. When legislators amend complex bills, drafting inconsistencies occur. As AB 1634 nears the end of the legislative process, the Committee may wish to consider these clarifying amendments:

Entitlements and exemptions. The presumptive entitlement for intact permits for guide dogs, signal dogs, and service dogs belongs with the other conditions, not with the list of exemptions (page 6, lines 21-25).

Consistent terms. The bill's references to "unaltered animal certification" should use the term, "intact permit" (page 8, lines 8, 11, & 12; page 9, line 5).

Free and low-cost programs. The bill requires local officials to spend the civil penalties on "spay and neuter programs for low-income individuals." The author probably means spay and neuter programs for the cats and dogs that are owned by low-income individuals (page 9, lines 29 to 33).

Numbering. To avoid confusion, clarifying amendments should renumber the section regarding intact permits (page 7, line 24) and strike out the stray reference to a code section that doesn't exist (page 10, line 16).

Assembly Actions

Assembly Business & Professions Committee: 7-3

Assembly Appropriations Committee: 10-0

Assembly Floor: 41-38

Despite the Report's recognition that there have been some successes in controlling dog and cat overpopulation in California, it noted that the State "still endures the problems caused by overpopulation"—chief among them being the ceaseless cycle of birth and destruction, with its corollary of huge financial costs and social ills.

Yet the opposition to the Levine bill was fierce.

Hypocrites such as "The Cat Fanciers' Association, Inc. ("World's Largest Registry of Pedigreed Cats") pleaded ignorance: "The greatest number of animals in our shelters and the highest percentage of shelter animals euthanized are cats. *Solving the real problems of why these cats are in shelters requires a more innovative approach—not the 'quick fix' media-hyped [Levine bill] that applies a one-size-fits-all law to be forced on all 536 [California municipal] jurisdictions whether they want this or not.*" (My emphasis.)

There is no mystery about "why these cats [and dogs] are in shelters." They're in shelters because there are too many of them, and because if breeders didn't pump them out of their breeding factories there would be more homes available.

In support of its opposition to the Levine bill, CFA offered six arguments:

- "Most cats do not have owners to comply with [the Levine bill]."
- "No law that targets owners of cats will make any difference in shelter intakes of cats."

- “[The Levine bill] will be costly for jurisdictions.”
- “[The Levine bill] will be costly for animal control and shelters.”
- “Breeders of pedigreed cats cannot meet conditions for exemption to be able to obtain an ‘intact’ permit.”

This monograph is not the appropriate place to rebut in detail each of CFA’s point, so suffice to say that:

- Those cats that *do* have owners would have to comply. Those without owners will be dealt with differently. Some mandatory spay/neuter is better than none.
- The number of “shelter intakes” is *irrelevant* to owners’ duty to spay/neuter.
- Everything worthwhile costs money, and mandatory spay/neuter will *save* money.
- If true, and there is some doubt about whether it is (see Chapter IV), that’s the breeders’ problem. Given the State’s police powers, there is no *constitutional* right to breed cats.

Unfortunately, however, CFA and other opponents of the Levine bill were very effective.

Some breeders threatened to go “underground,” where even existing legal oversight would be avoided. Others flew the banner of “property rights.”

In an effort to block the bill, proposals were made to make it so rigid that some supporters would jump ship. Some legislators ridiculed the bill; “We need to stop pulling bills out of the crazy factory,” said Republican Assemblyman George Plescia. The American Kennel Club established a hotline where opponents could call and voice their opinions.

(When recently the Dallas, Texas City Council considered mandatory spay/neuter, breeder permits, and limits on the number of pets that can be owned, not surprisingly the American Kennel Club strongly opposed the proposed ordinance with the same “talking points” it always advances, claiming to support “reasonable and enforceable laws that protect the health and welfare of purebred dogs and do not restrict the rights of breeders and owners who take their responsibilities seriously.”)

In June 2008 Assemblyman Levine’s office reported that his bill is stuck in committee,¹¹⁸ is listed as a non-urgent issue, and is being indefinitely tabled—a testament, among other things, to the temerity of legislators and the power of lobbyists.¹¹⁹

But the anti-mandatory spay/neuter forces were not content to let the Levine bill languish in the Senate Local Government Committee, where phoenix-like it might someday rise from the ashes in which the lobbyists and their legislative henchmen buried it.

¹¹⁸ The bill is in the State Senate Local Government Committee.

¹¹⁹ On June 10, 2007, the bill passed the Assembly by a 41-vote majority (out of 80), largely on a party-line vote.

Many people who had fought tooth and claw for enactment of the Levine bill, despite its major flaws, suspected that sooner or later something definitive would happen to the proposed legislation.

Then, on June 18, 2008, a bombshell fell.

Beginning below is a letter from Judie Mancuso, who led the state-wide fight for legislative adoption of the Levine bill.

Note the players: Assemblyman Levine and Senator Gloria Negrete McLeod, Chairman of the Senate Local Government Committee where the bill has lay moribund for about a year.

Note the roll played by the senior of the two, Senator Negrete McLeod.

Note that there were no amendments, but rather an entire rewrite of Levine's bill.

Note where the new language originated.

Note whose bill it is now.

CALIFORNIA TAXPAYERS FOR SAFE AND HEALTHY PETS

**An alliance of groups working together to ensure
a better future for California's taxpayers and pets.**

June 18, 2008

Dear Friends,

Earlier this week Assembly Member Lloyd Levine met with Senator Gloria Negrete McLeod to discuss AB 1634. Senator Negrete McLeod chairs the Senate Local Government Committee where AB 1634 has been held since mid-2007. The Senator presented amendments that remove all the current language of the bill and replace it with new language her office developed. The new bill targets only dogs and cats who are the subject of repeated complaints to animal control or repeated shelter impoundments. Assemblyman Levine agreed to adopt these amendments, which also adds Senator Negrete McLeod as a principal co-author.

The Senate Local Government Committee will hear and vote on the bill next Wednesday, June 25th, in Room 112 of the State Capitol. The hearing will start at 9:30 AM. The language should be in print tomorrow morning and available online at www.leginfo.ca.gov, and we will post it as soon as it is available. The committee's new analysis should be available online by Friday morning, also at www.leginfo.ca.gov and also to be posted here as soon as available.

The coalition we have built in support of the California Healthy Pets Act is the largest many people in California politics have ever seen. I know many of you will not be happy with this proposal, and I am personally deeply disappointed that AB 1634 has been rewritten by Senator Negrete McLeod. But, please take a careful look at the new bill and the committee's analysis, and come to your own conclusion about whether it might help decrease California's pet overpopulation.

If you have comments or suggestions on the new bill, please do not send them to me; instead, please contact Assembly Member Levine's office, preferably by email at AB1634staff@gmail.com. Your email may not get a personal response, but Assembly Member Levine's office has promised that every email will be read.

Although the new language does not reflect the intent of the original bill, the fact that Senator Negrete McLeod is now willing to support any bill having to do with spay and neuter is in itself a victory. With this new language, AB 1634 will no longer be known as the California Healthy Pets Act. Our coalition will continue to work on spay and neuter legislation in the months and years to come, and I will continue to keep you informed about our ongoing efforts to combat pet overpopulation through spay and neuter. The original California Healthy Pets Act will still be available on our web site for states, counties and cities across the US to reference as they craft local ordinances and state laws.

I urge you to share this information with other pet lovers immediately, to ensure that the widest array of comments is heard before the hearing on Wednesday.

Thank you for your unwavering commitment to California's dogs and cats. Together, we will bring an end to their needless suffering and death in our state's shelters.

Judie Mancuso
President, Social Compassion in Legislation

Mancuso's letter speaks for itself, both in what it says explicitly, and in what it implies.

What does the new bill provide? The Legislative Counsel's Digest explains:¹²⁰

BILL NUMBER: AB 1634 AMENDED BILL TEXT

AMENDED IN SENATE JUNE 18, 2008
AMENDED IN ASSEMBLY MAY 31, 2007
AMENDED IN ASSEMBLY MAY 9, 2007
AMENDED IN ASSEMBLY APRIL 30, 2007
AMENDED IN SENATE JULY 3, 2007
AMENDED IN SENATE JUNE 27, 2007

¹²⁰ For ease of reading, I have omitted the former language, now struck. The surviving language from the former (Levine) bill is in 12 point Times New Roman. The new language is in italics.

AMENDED IN ASSEMBLY APRIL 17, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

INTRODUCED BY Assembly Member Levine

(Principal *coauthors: Senators Negrete McLeod and Padilla*) (Coauthors:
Assembly Members Nava and Solorio)

FEBRUARY 23, 2007

An act to amend Sections 30804.7 and 31751.7 of, and to add Sections 30804.8 and 31751.8 to, the Food and Agricultural Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, as amended, Levine.

Dogs and cats: nonspayed or unneutered: civil penalties.

Existing law regulates-spay, neuter, and breeding programs for animals. *Existing law-requires the owner of a nonspayed or unneutered dog or cat that is impounded by a city or county animal control agency or shelter, society for the prevention of cruelty to animals, or humane society-to be fined \$35 on the first occurrence, \$50 on the 2nd occurrence,-and \$100 for the 3rd or subsequent occurrence. This bill would increase the above fines for a nonspayed or unneutered dog to \$50 for the first occurrence, \$100 for the 2nd occurrence, and would require spaying or neutering of the dog at the owner's expense on the 3rd occurrence. The bill would increase the above fines for a nonspayed or unneutered cat to \$50 on the first occurrence and would require spaying or neutering of the cat at the owner's expense on the 2nd occurrence.*

This bill also requires the owner of a nonspayed or unneutered-dog or cat that is the subject of a complaint to a local animal-control agency, as specified, to be cited and pay a civil-penalty to the local animal control agency within 30 days. It would require a local animal control agency to waive the civil penalty if, within 14 business days of the citation, the pet's owner presents written proof from a licensed veterinarian that the dog or cat was spayed or neutered.

By increasing the enforcement responsibility of local agencies, this bill would create a state-mandated local program.

Existing law, enacted in 1998, relating to animal control, imposed certain state mandated local programs. This bill would prohibit the Controller from releasing a payment to a local agency for costs arising under that 1998 law until the local agency has complied with certain rabies control reporting requirements.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions

establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

It would be a waste of time to look at the actual language of the statute, because *nothing in it even remotely resembles the Levine bill. Nothing.*

Thanks to the ministrations of the lobbyists, Senator Negrete McLeod, complicit legislators—and sellout Assemblyman Levine—even the “worse than useless” supposedly “mandatory” spay/neuter statute has been morphed into a law that does nothing but raise some civil fines by paltry amounts for those “owners” who do not sterilize their companion animals.

One lesson to be learned from the affair of the Levine bill, as discussed in Chapter IV, is that flawed legislation presents too many targets for its opponents to shoot at.

Another is that the power of anti-animal activists and lobbyists is not to be underestimated.

A third is that those who wish to fight legislative battles on behalf of animals must learn how to beat the opposition at their own game, as the following chapter instructs.

IX.

Successfully Promoting Animal Protection Legislation

As we have seen, the *policy* aspects of mandatory spay/neuter necessarily lead to consideration of the *legal* aspects. The legal aspects necessarily lead to the *legislative*—because if the policy is sound and the law appropriate, both must become embodied in legislation.

In other words, once one is convinced by the policy arguments that pending the existence of a truly nationwide “No-Kill” environment it is necessary to impose mandatory spay/neuter, and once one understands that implementation depends on the enactment of state statutes, the final task is the always difficult problem of how to get those laws enacted. Because without them, all else is merely a wasteful exercise.

To begin with, it has to be emphasized that federally tax-exempt 501(c)(3) organizations, including International Society for Animal Rights, can do very little lobbying. Indeed, in an excess of caution, ISAR does none at all.

For those individuals and organizations who choose to lobby, however, a detailed blueprint has just been provided them thanks to the prodigious efforts of Julie E. Lewin and her National Institute for Animal Advocacy (www.nifaa.org), a project of the Connecticut Council for Humane Education, a 501(c)(3) charitable organization based in Guilford, Connecticut (contributions to which are tax deductible, as allowed by law).

That blueprint is Lewin's recently published book, *Get Political for Animals and Win the Laws They Need*, about which I said this in my Blog-review of April 3, 2008 (www.isaronline.blogspot.com):

In a forthcoming law review article entitled "The Birth of Animal Rights Law: The Role of Lawyers in the Animal Rights/Protection Movement from 1972-1987" Joyce Tischler, Esq., founder and president of Animal Legal Defense Fund, sets out to "explore the roots of a large scale, organized movement, which started in the early 1970s in the United States, spearheaded by attorneys and law students with the express purpose of filing lawsuits to protect animals and establish the concept of their legal rights, regardless of the species of the animals or the ownership interest of humans."

In that article, Ms. Tischler graciously names as "the first animal rights lawyer" ISAR's chairman and general counsel, Henry Mark Holzer, professor emeritus at Brooklyn Law School.

She credits Professor Holzer, then a practicing attorney professionally associated with ISAR, with three accomplishments crucial to establishing the field of what today is known as "animal rights law": with ISAR, having brought the first federal and first state lawsuit to invoke the moral concept of "animal rights"; with ISAR, having founded the Animal Rights Law Reporter, which became "the legal clearinghouse for animal rights law information"; and, again with ISAR, having organized the "First National Conference on Animal Rights Law"—an undertaking, in Ms. Tischler's words, "[t]he significance of which cannot be overstated."

One of the topics addressed at that conference was how activists can foster the enactment of statutes and ordinances protective of animals. We included that topic because while on the legal side of the ledger it was not difficult for capable lawyers to write the appropriate laws, on the legislative side of the ledger getting them enacted and signed was an entirely different, and extremely difficult, matter.

Over the years animal protective legislation has of course been enacted, but the problem has been that except for the very few national humane organizations with deep pockets and strong legislative connections everyone else has lacked the requisite information and skills to lobby successfully.

No more!

Julie E. Lewin of the National Institute for Animal Advocacy (Guilford, CT) has written a book that can alter the landscape of animal legislation in the United States. Its complete title and subtitles are: "Get Political for Animals [GPFA] and

Win the Laws they Need; Why and how to launch a voting bloc for animals in your town, city, county or state; A step-by-step manual for animal rights and rescue advocates and organizations."

This description promises a lot, and it delivers!

GPFA has been rightly endorsed by the Humane Society of the United States, In Defense of Animals, ASPCA, Animal Legal Defense Fund, legislators, and others.

Lewin's book has rightly been called "important," "groundbreaking," "superb," "wonderful," "a masterpiece" and "a great resource."

It is all of those things, and more.

Indeed, the Table of Contents alone consists of eleven letter-size pages, providing an overview of the 276 page book.

The scope of what is covered in GPFA is so comprehensive that attempting to relate it here would be a disservice to the research, writing, and experience that the author brought to this invaluable project.

To illustrate this point, here are the chapter titles, without the abundance of material that each one contains.

1. "We can be power players who win strong laws for animals."
2. "The dynamics of social change: from charity to political organization."
3. "The structure of government--and why activists need to know it."
4. "The structure of politics, the culture of politics, and the political mind."
5. "The dynamics and mechanics of political campaigns and voting blocs' role."
6. "How the lawmaking process *really works*--and the role of the voting bloc system."
7. "Playing to win: the pro-active lobbyist for a political organization is a power player."
8. "The legal side: how individuals, informal animal rights and rescue groups, and charities can launch political organizations for animals."
9. "How to use media to help win laws for animals--and when to avoid it."
10. "Make it happen: how to launch your voting bloc for animals."
11. "Political quiz: read between the lines."

In the history of social-cultural-political movements there have been defining moments--a speech ["Tear Down That Wall"], a book [*Uncle Tom's Cabin*], a judicial decision [*Brown v. Board of Education*]-that sent our nation down a new road.

That is what Lewin's book does for the protection of animals through the legislative processes of the United States of America.

More animal protective laws will be introduced--and thanks to Julie E. Lewin and the National Institute for Animal Advocacy, many of them will be enacted.

The animals should be, as we are, extremely grateful.

To purchase a copy of Ms. Lewin's book, please visit www.nifaa.org.

Ms. Lewin and NIFAA have graciously allowed ISAR to reprint in Appendix 6 the entire Table of Contents of *Get Political for Animals and Win the Laws They Need*. We are pleased to do so in the hope that widespread dissemination of her book will result in not only the *introduction* of more animal protective legislation, but in its *enactment*.

D.

The Moral Component of the Companion Animal Overpopulation Problem

X.

Morality and spay/neuter

Surely no one can dispute that government has a moral and political obligation to protect *children* from harm. At common law, before the enactment of modern statutes, it was the consistent policy of government to look after the interests of children (although the form and extent of that protection often left much to be desired). Laws protected children from their own folly and improvidence, and from abuse by adults. Indeed, as regards their protection, from the time of their birth children have been considered wards of the state. These common law principles have been enacted into statutes in every state in America. Child-protection laws reflect governmental concerns with physical and mental cruelty, neglect, food, clothing, shelter, education, vagrancy, capacity to contract, lack of capacity to consent to sexual acts, and much more.

The principle which underlies all modern child protection legislation unites the cause of children's rights with the parallel cause of animal rights. Government intervenes to prevent or remedy a child's fear, hunger, pain, suffering, abuse and even death, because children are incapable, mentally and physically, of protecting themselves from these conditions. So, too, are companion animals. Like children, they are alive but defenseless. Like children, they can experience fear, hunger, pain, suffering, abuse and death. Like children, government has a duty to protect them, though the line-drawing about which animals should be protected in what manner continues to bedevil everyone from moral philosophers to shelter workers.

This proposition—that government has an obligation to protect animals, at least some and at least to some extent—is not novel. The fact is that we see in existing animal protection legislation government's recognition of its responsibility.

The genesis of that legislation is not widely known.

The Englishman Lewis Gompertz (1779-1865) was a founding member of the British Society for the Prevention of Cruelty to Animals (later the Royal Society for the

Prevention of Cruelty to Animals), and probably the first public person in modern times to opine in the English language on the rights of animals.

In his *Moral Inquiries into the Situation of Man and of Brutes* Gompertz wrote that:

The dreadful situation of the brute creation, particularly of those which have been domesticated, claims our strictest attention. Who can dispute the inhumanity of the sport of hunting—of pursuing a poor defenseless creature for mere amusement, till it becomes exhausted by terror and fatigue, and of then causing it to be torn to pieces by a pack of dogs? From what kind of instruction can men, and even women, imbibe such principles as these? How is it possible they can justify it? And what can their pleasure in it consist of? Is it not solely in the agony they produce to the animal? They will pretend that it is not, and try to make us believe so too—that it is merely in the pursuit. But what is the object of their pursuit? Is there any other than to torment and destroy?

It seems that the crime of cruelty proceeds greatly from improper education. Subjects of moral inquiry are too often chased from the attention of youth, from a false idea that they are mere chimeras too difficult to enter into, that they only serve to confound us and to lead us into disputes, which never come to a conclusion; that they cause us to fall into eccentricities, and unfit us for all the offices of life, and at last drive us into downright madness.

Forbid it that we should give assent to such tenets as these! That we should suffer for one moment our reason to be veiled by such delusions! But on the contrary let us hold fast every idea, and cherish every glimmering of such kind of knowledge, as that which shall enable us to distinguish between *right* and *wrong*, what is due to one individual—what to another.

Some two hundred years later, Gompertz's words remind us that cruelty to animals continues to demand a *moral inquiry*, including asking and answering questions about the consequences of companion animal overpopulation.

Anyone who looks closely at how animals are treated in America today cannot help being confused. Hunters cherish their hunting dogs, but kill and trap wildlife without conscience or regret. Stylish women coddle furry house pets, but think nothing of wearing the skins of animals. At animal farms and petting zoos, parents introduce their children to a world of innocence and beauty, but see no harm in exposing them to circus acts which degrade animals, and rodeos, which brutalize them.

The law, too is contradictory. It is legal to butcher livestock for food, but not to cause them to suffer during slaughter (although federal law contains an exception: "ritually" slaughtered cattle are allowed to suffer). It is legal to kill chickens for the pot, but not to allow fighting cocks to kill each other. Animals can be used for painful laboratory experiments, but they must be exercised and their cages must be kept clean. Kittens can be drowned, but not abandoned. Certain types of birds are protected, but others are annihilated. With a permit, one can own a falcon, and with a falcon, one can hunt

rabbits; but rabbits cannot be dyed rainbow colors and sold at Easter Time. Breeders can pump out countless puppies and kittens, yet none need be sterilized.

It is not surprising that countless contradictions exist today in man's relationship to animals, because never has there been a consistent humane principle to guide him in dealing with those dependent creatures who share his planet. What is surprising is that animals have been accorded any decent treatment at all, considering the overwhelmingly dominant attitude, from the earliest of times, that animals could be used, abused, and even tormented, at the utterly capricious will of man. Absent from the history of ideas has been even a semi-plausible notion to the contrary, let alone a defensible, fully integrated theory of animal rights.

The problem of animal rights antedated Lewis Gompertz by thousands of years, and begins with the Book of Genesis¹²¹: “And God said: Let us make our image, after our likeness; and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.” Later, after the flood, “. . . Noah builded an altar unto the Lord; and took of every clean beast, and of every clean fowl, and offered burnt offerings on the altar, and the Lord smelled the sweet savour . . .”¹²² To express his gratitude, “God . . . blessed Noah and his sons and said unto them: Be fruitful, and multiply, and replenish the earth. And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon the fishes of the sea; into your hand are they delivered. Every moving thing that liveth shall be for food for you; as the green herb have I given you all.”¹²³

In short, the view expressed in the scriptures was that animals were put on earth by God to be used by man.

The predominant Greek attitude, as expressed by its most influential philosopher, was no better: “. . . we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all, at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete . . . and nothing in vain, the inference must be that she has made all animals for the sake of man.”¹²⁴

As to the attitude of the Romans, one need only recall history's bloody forerunner to today's bullfights and rodeos—the Coliseum—where no distinction was made between animal and human victims.

¹²¹ Genesis 1:24-28.

¹²² Genesis 8:20-21.

¹²³ Genesis 9:1-3.

¹²⁴ Aristotle, *Politics*, Bk I, Ch. 8, Random House, 1941, 1137.

When pagan Rome gave way to Christianity, men may have fared better, but Christian charity was not extended to animals. Indeed, early Christian thought seems obediently to echo the Genesis thesis: animals exist merely to serve man's needs.

Hundreds of years passed, with no discernible change in ideas. With the coming of St. Thomas Aquinas in the 1200s, the concept of animal servitude was reinforced. Aquinas, drawing on the Old Testament and on Aristotle, not surprisingly concluded that since all things are given by God to the power of man, the former's dominion over animals is complete.

Aquinas' theory of dominion says nothing, one way or the other, about the metaphysical nature of the animals being dominated, but renowned Christian philosopher-mathematician Rene Descartes had a great deal to say on that subject. He held that animals were automatons—literally. He asserted that lacking a Christian “soul,” they possessed no consciousness. Lacking a consciousness, he concluded, they experienced neither pleasure nor pain. His conclusion was a convenient one; it allowed him to rationalize this dissection of unanesthetized living creatures.

Although Descartes's hideous experiments purportedly were done to advance the knowledge of anatomy, they properly earn him a place in history as the Seventeenth Century soul mate of Mengele, the Nazi concentration camp doctor who experimented on human beings.

Although the existence of the dominant Genesis-Aristotle-Descartes view of animals, and the resultant lack of an appropriate theory of animal rights, is reason enough to explain fifteen hundred years of man's maltreatment of animals, there is a related explanation: during this same period there was no appropriate theory of the rights of man.

From the days of the Pharaohs to the threshold of modern philosophy in the 1600s, man's status fell into one of two categories: oppressor or oppressed. The tyrants of Egypt had much in common with the despots of feudal Europe; the Hebrew slaves who built the pyramids, with the serfs who tilled their lords' estates. It is not surprising that cultures which regarded some men as other men's chattels would treat animals, at best, as plants, and, at worst, as inanimate objects. Accordingly, when man's lot improved, the lot of animals also improved, albeit slightly.

The historical turning-point for the Rights of Man came with the 18th Century's Age of Enlightenment. It was a time of Adam Smith and laissez-faire capitalism, of John Locke, of Thomas Jefferson's Declaration of Independence. Man was recognized, at least by some, to possess inalienable rights, among them the right to life, liberty and the pursuit of happiness. By no means had the world's ideas about liberty changed, but a fresh wind was blowing for man, one which would soon lead to the creation of a new Nation—one, as Lincoln would say nearly a century later, “conceived in liberty and dedicated to the proposition that all men are created equal.” Surely, it is more than coincidence that at about the same time, thinkers like Voltaire, Rousseau, Pope, and Bentham were questioning man's maltreatment of animals.

Yet, despite these questions, for another two centuries the lot of animals did not improve noticeably even in the civilized world, because the attitudes of most people remained rooted in the ideas of Genesis, Aristotle, and Descartes.

Before change could come, these ideas had to be discarded. Although it was a long gestation, finally, in the last twenty years a handful of philosophers, scientists, theologians, and lawyers—among them Brigid Brophy, Andrew Linzey, Richard Ryder, Peter Singer, Gary Francione, and Steven M. Wise—have launched broadside attacks on the basic ideas which for so long have served to rationalize man's brutalization of the only other living species with whom he shares this planet.

But merely exposing fallacies and immoralities, as important as that is, does not itself constitute propounding anything affirmative. Recognizing this, today's animal rights activists have begun to build that affirmative, defensible theory of animal rights.

Although the modern animal rights movement is no more than about twenty years old, the efforts of its leaders have already produced important gains: philosophical symposia on animal rights are being held around the world; courses on animal rights are being offered in colleges and law schools; more and more books and articles on animal rights are being published every month; advocates of animal rights are in great demand as lecturers; the rights of animals are increasingly being asserted in legislatures and courts.

An inevitable result of this growing inquiry into the rights of animals has been scrutiny of the companion animal overpopulation problem—a blight as much implicating animal rights as does experimentation, factory farming, hunting and fishing, animals used in “sport,” and the many other modern examples of abuse and exploitation of sentient creatures.

In good conscience, this country can no longer countenance the abhorrent cyclical spectacle of endless companion animal birth and death, turning blind eyes and deaf ears to the silent cries of those who did not ask to be born, let alone ask to die.

Mandatory spay/neuter may not be the only solution, but it is *one* solution—and it must be given a chance. *And now!*

As ISAR's national billboards beseech the public: “*Spay/Neuter: It Reduces the Killing.*”

APPENDICES

1. Chapters I, II and III bibliography
2. State and municipal spay/neuter statutes
3. ISAR proposed Model Mandatory Spay/Neuter Statute
4. State cases raising constitutional questions regarding animal-related statutes
5. Fiscal Impact of Cat and Dog Intake & Euthanasia in California Shelters
6. Table of Contents: *Get Political for Animals and Win the Laws They Need*

1. Chapters I, II and III Bibliography

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Editorial stating preference for personal choice instead of government intervention concerning mandatory spay/neuter laws.

Editorial, *Guarding Fido*, TIMES-PICAYUNE (New Orleans, La.), May 2, 2007 at 6.

Blames accidental poisoning of 13 healthy dogs in a county shelter on both inadequate facilities and local pet overpopulation.

Editorial, *Half-Way Measures Won't Help*, TIMES-NEWS (Henderson, N.C.), Feb. 17, 2008, available at http://www.blueridgenow.com/article/20080217/NEWS/802170354/1016/OPINION02/NEWS/Half_way_measures_won_t_help (last modified Feb. 17, 2008).

Editorial, *Lawton Cracks Down: The Price of Pet Overpopulation*, WORLD (Tulsa, Okla.), Aug. 18, 2007, available at http://www.tulsaworld.com/opinion/article.aspx?articleID=070818_7_A18_hThep50745 (last modified Aug. 18, 2007).

Editorial endorsing Lawton city counsel's proposed penalty against pet shops selling animals that are not spayed or neutered. Also suggests the law expand to include private sellers.

Editorial, *Mandatory Spay-Neuter Law Deserves a Fair Hearing*, NEWS TRIB. (Tacoma, Wash.), Nov. 1, 2006, at B6.

Editorial endorsing Tacoma city council proposal for mandatory spay-neuter in order to control pet population while assisting no-kill shelters. Emphasizes that low- or no-cost spay-neuter options are being explored.

Editorial, *Pet Overpopulation is a Bigger Problem Than Any Shelter*, CITIZEN-TIMES (Asheville, N.C.), Dec. 12, 2007, at B6.

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Editorial, *Pets Will Keep Dying Until Animal Lovers Step Up*, NEWS TRIB. (Tacoma, Wash.), Dec. 12, 2006, at B6.

Editorial critical of protestors to a mandatory spay/neuter law proposed by city council.

Robert Aaron, *U.S. Issue Highlights Pet Overpopulation*, TORONTO STAR, June 10, 2002, at E6.

Canadian look at new United States postage stamps highlighting pet overpopulation, as well as summary of U.S. pet overpopulation statistics.

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Author's account of participating in unnecessary euthenizations, the problems of pet overpopulation, and the general public's unawareness of these problems.

Ed Boks, *Saving Man's Best Friends*, USA TODAY, Nov. 1, 2005, at 32–33.

Account of pet overpopulation as it developed over the past century, as well as possible approaches to the problem.

Greg Bordonaro, *New Law Addresses Feral Cat Overpopulation*, HARTFORD COURANT (Conn.), June 23, 2007, at B4.

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Wyatt Buchanan, *San Francisco: Boy's Death Moves City Panel to Favor Required Neutering*, SAN FRANCISCO CHRONICLE, June 10, 2005, at B4.

Account of city panel's proposal of mandatory spay/neutering following a pit bull attack on a boy.

James Burger, *Enforcement, Financial Assistance Key to Successful Spay-Neuter Law*, BAKERSFIELD CALIFORNIAN (Cal.), Mar. 15, 2008, available at <http://www.bakersfield.com/102/story/389911.html> (last updated Mar. 14, 2008).

Katie Burns, *Animal Shelters Home to a New Breed of Veterinary Medicine*, 229 J. AM. VETERINARY MED. ASS'N 1543 (2006).

Examines new methods of veterinary medicine, including emphasis on “herd health.”

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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. VETERINARY MED. EDUC. 372 (2003).

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Anne Constable, *Animal Control: Pet Advocates Unite in Effort to Stamp Out Euthanasia*, SANTA FE NEW MEXICAN (N.M.), Apr. 23, 2006, at C1.

Describes animal shelter groups’ goal of zero pet population growth in New Mexico, through use of low-cost, high volume spay/neuter programs and traveling spay/neuter vans.

Meghan Daum, *The Fix is In*, L.A. TIMES, Feb. 16, 2008, at 25.

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Sandra Eckstein, *Low-Cost Spay/Neuter is an Idea with Legs*, ATLANTA J. CONST. July 16, 2006, at 4.

Discusses the problems inherent with pet overpopulation, as well as the benefits of low-cost spay/neuter programs.

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

Questions the statistical model used in Zawistowski’s study, including its limited accuracy. Analyzes the pet overpopulation problem in market analysis terms – somewhat difficult to understand in parts.

Jennifer Fiala, *L.A. County Proposes Mandatory Sterilization*, DVM: NEWSMAGAZINE OF VETERINARY MED., May 2006, at 26.

Short account of Los Angeles proposal of MSN program expanding from pit bulls and rottweilers to all breeds. Notes that the California Veterinary Medical Association had declined to take a position on the proposal.

Jennifer Fiala, *Shelter Euthanasia Rates Drop to Historic Lows*, DVM: NEWSMAGAZINE OF VETERINARY MED., July 2003, at 26.

Links reduced euthanasia rates to increased public acceptance of spay/neuter programs, especially in the last ten years.

Jennifer Fiala, *Spay or Pay*, DVM: NEWSMAGAZINE OF VETERINARY MED., Apr. 2007, at 1.

Reports on controversy surrounding the California Healthy Pets Act, which mandates MSN for California. The main controversy regards the high penalty for violations (up to \$500), though veterinarians will be exempted.

Angela K. Fournier & E. Scott Geller, *Behavior Analysis of Companion-Animal Overpopulation: A Conceptualization of the Problem and Suggestions for Intervention*, BEHAV. & SOC. ISSUES, Spring/Summer 2004, at 51.

Proposes a behavior-based conceptualization of companion-animal Overpopulation, and a framework to guide intervention efforts in reducing this societal problem. It concludes that the chief problem is that environmental contingencies currently in place support behavior deficits and may impede behavior change, and that the next logical step is to “use behavior analysis to manipulate environmental contingencies resulting in the desired behaviors.”

Joshua M. Frank & Pamela L. Carlisle-Frank, *Analysis of Programs to Reduce Overpopulation of Companion Animals: Do Adoption and Low-Cost Spay/Neuter Programs Merely Cause Substitution of Sources?*, 62 ECOLOGICAL ECON. 740 (2007).

Analysis of aggressive spay/neuter and adoption programs and the extent they lead to “substitution of sources” rather than increasing total community adoption and spay/neuter levels. Also examines how effective the programs are at reducing population sizes and shelter intake. Concludes that low-cost spay/neuter programs are effective in that they don’t merely cause substitution in source of spay/neuter procedures. However, there were no clear results concerning the impact of total spay/neuter procedures on shelter intake.

Joshua Frank, *An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Costs of Addressing the Problem*, 32 HUM. ECOLOGY 107 (2004).

A model was constructed to understand the dynamics of canine overpopulation and the effectiveness of various policy options for reducing euthanasia, including economic and ecological factors in human and dog populations. Concluded that a “no-kill” society is an achievable goal with spay/neuter programs the most effective option, and increasing adoptions also an effective option. However, found that the full impact may not be achieved for at least thirty years or more.

Peter Frost, *Easing Animal Overpopulation: New Spay, Neuter Clinic Plans to Reduce Number of Animals Killed*, ISLAND PACKET (Hilton Head Island, S.C.), Dec. 5, 2006, available at <http://dwb.islandpacket.com/news/local/story/6266280p-5468287c.html> (last modified Dec. 5, 2006).

Describes local spay/neuter clinic, interviews staff about their mission, and gives accounts of stray animals.

Steve Geissinger, *Mandatory Pet Spay, Neuter Bill Advances*, OAKLAND TRIB. (Cal.), Apr. 24, 2007, available at http://findarticles.com/p/articles/mi_qn4176/is_20070424/ai_n19031336 (last modified Apr. 24, 2007).

Describes the advancement of a statewide spay/neuter bill through committee, and details its contents.

Alan Gomez, *Dog Imports Raise Fears of a Resurgence of Disease*, USA TODAY, Oct. 22, 2007, at 6A.

Mainly focuses on consequences of disease due to imported dogs, but also mentions its contribution to overpopulation.

Robert Haddocks, *Shelters Cheer Animal Tag; License Plate Funds Welcome, But Pet Population a Major Concern*, ATLANTA J.-CONST. (Ga.), Dec. 30, 2002, at XJ1.

Concerns new Georgia license tag, costing an additional \$25 per vehicle, with the proceeds going to spay/neuter programs. Gives brief statistics about spay/neuter programs contribution in reducing pet overpopulation.

Carla Hall, *L.A. is Set to Require Pet Sterilization*, L.A. TIMES, Feb. 2, 2008, available at <http://www.latimes.com/news/local/la-me-spay2feb02,1,5148512.story> (last modified Feb. 2, 2008).

Carla Hall, *L.A. Might Mandate Spaying*, L.A. TIMES, Feb. 1, 2008, available at <http://www.latimes.com/news/local/la-me-spay1feb01,1,4689758.story?ctrack=1&cset=true> (last modified Feb. 1, 2008).

Carla Hall, *Seeking a Kinder Fate for Abandoned Animals; Pet Rescuers and L.A. City Officials Discuss Ways Toward a “No-Kill” Policy. It Won’t Be Easy*, L.A. TIMES, July 1, 2007, at B5.

Account of reasons why owners give animals to shelters rather than keep them (top answer: too old or sick), and the benefits of “no-kill” shelters. Also includes public accusations that statistics about overpopulation are untrue, as well as responses.

Philip H. Hass, *Cat Overpopulation in the United States*, in THE WELFARE OF CATS 119 (Irene Rochlitz ed., 2005).

Eve Hightower, *Animal Control Chief Pushes Mandatory Neutering of Pets: Goal: Reduce Euthanasia by 45 Percent in Five years*, MODESTO BEE (Cal.), Dec. 6, 2006, at B1.

Johnny D. Hoskins, *New Strategies, Technologies are Helping in the Overpopulation War*, DVM: NEWSMAGAZINE OF VETERINARY MED., July 2005, at 12S.

Summarizes various new methods of S/N for pets, including medicinal and surgical procedures. Also highlights compliance problems of both the public and some shelters in properly observing S/N regulations.

Philip H. Kass et al., *Understanding Animal Companion Surplus in the United States: Relinquishment of Nonadoptables to Animal Shelters for Euthanasia*, 4 J. APPLIED ANIMAL WELFARE SCI. 237 (2001).

Compares characteristics of pets donated to shelters for readoption as opposed to euthanasia, with the goal of understanding how people view the role of animal shelters as well as pet overpopulation. Concludes that many donors view shelters as an alternative to pet hospitals, and perhaps such donated diseased or old companion animals should not be used in shelter or euthanasia statistics.

Merry Lepper et al., *Prediction of Adoption Versus Euthanasia Among Dogs and Cats in a California Animal Shelter*, 5 J. APPLIED ANIMAL WELFARE SCI. 29 (2002).

Study of what traits in shelter cats and dogs lead to higher adoption rates, including sex, age, coat color, breed, etc. The purpose of the study is to assist shelters in increasing the adoptions of animals with less-favorable traits, or, alternatively, focusing resources on those that have the best chance of adoption.

Randy Ludlow, *Athens' Spay-Neuter Law Challenged*, COLUMBUS DISPATCH (Ohio), Mar. 30, 2005, at 1B.

Describes pet store's legal challenge of law requiring stores to prove that sold pets were later sterilized. No mention is made of the outcome.

Adam Lynn, *Fix Your Pet or Pay for a Permit?*, NEWS TRIB. (Tacoma, Wash.), Oct. 28, 2006, available at <http://dwb.thenewstribune.com/news/local/story/6196804p-5416123c.html> (last modified Oct. 28, 2006).

Details proposal to require all "unaltered" pet owners in Tacoma to buy annual breeders permits. Includes responses from animal-rights groups as well as the public.

Amy Marder, *10 Reasons to Get Your Pet Fixed*, PREVENTION, Feb. 1991, at 108.

List of reasons to S/N companion animals. Most are common arguments, such as reduction of pet overpopulation and reduced risk of some types of cancer.

Meredith May, *Spay-Neuter Law Works in Santa Cruz*, SAN FRANCISCO CHRON., June 9, 2007, at A1.

Account of reduction of shelter population in Santa Cruz, twelve years after MSN law was put into effect. Includes favorable response from public, as well as comparison to California Healthy Pets Act.

Jean McNeil & Elisabeth Constandy, *Addressing the Problem of Pet Overpopulation: The Experience of New Hanover County Animal Control Services*, 12 J. OF PUB. HEALTH MGMT. & PRAC. 452 (2006).

Examination of the creation of a North Carolina Animal Shelter, from early planning through the first year of opening. Mainly concerns creation of effective business plan and securing support.

Dee Harrell Mooring, *Facts About Spaying, Neutering*, OAKLAND TRIB. (Cal.), Feb. 6, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040206/ai_n14566753 (last modified Feb. 6, 2004).

An argument for owners to spay/neuter their companion animals, including pet overpopulation statistics.

Tim Moran, *Success Breeds Limits for Stanislaus Pet Program: Too Many People Use Program to Spay and Neuter Pets Cheaply*, MODESTO BEE (Cal.), Sept. 19, 2007, available at <http://www.modbee.com/local/story/71539.html> (last modified Sept. 19, 2007).

Describes voucher program that became a “victim of its own success,” so popular that more money went out than was budgeted, leading to a shortfall.

Bill Murphy, *Thousands of Strays are Euthanized in the Area, but Advocates Say There are Other Ways to Help Stem Pet Overpopulation; Against Lethal Odds*, HOUSTON CHRON. (Tex.), Nov. 14, 2004, at A1.

Examines pet overpopulation problem, both generally and locally, and finding that Houston has one of the nation’s highest euthanization rates. Also suggests solutions, such as better education before families buy/adopt pets, expanding shelters, and promotion of S/N.

Sarah Casey Newman, *Real Cost of Neutering Pets Comes from Failing to Do So*, ST. LOUIS POST-DISPATCH (Mo.), Feb. 20, 1999, at L4.

Basic informational article about MSN for shelters in Midwest area, as well as information on local shelters. Endorses MSN as best way to control pet population.

Bethania Palma, *Unwanted Cats Swamp Shelters*, PASADENA STAR-NEWS (Cal.), Feb. 18, 2008, available at http://www.pasadenastarnews.com/rds_search/ci_8309219?IADID= (last modified Feb. 18, 2008).

Account of pet overpopulation problem and overcrowded shelters.

Sharon L. Peters, *The Fix is In for Pet Control*, USA TODAY, July 5, 2007, at D5.

Focuses on promotion of S/N in areas besides those (like CA) promoting MSN.

Jeffrey Proulx, *Pet Overpopulation Can Be Stopped -- and You Can Help*, OAKLAND TRIB. (Cal.), Aug. 16, 2003, available at http://findarticles.com/p/articles/mi_qn4176/is_20030816/ai_n14558215 (last modified Aug. 16, 2003).

Details benefits of spay/neutering, both for general pet population and individual pets.

Russ Pulley, *Broader Controls on Dogs in Works*, KANSAS CITY STAR (Mo.), Oct. 15, 2006, at B1.

B.J. Purswell & Kara A. Kolster, *Immunocontraception in Companion Animals*, 66 THERIOGENOLOGY 510 (2006).

Examines immunocontraception as a method of controlling pet overpopulation. The method has been used in deer populations at various sites, and is being researched and developed for use on companion animals. The process involves using the body's immune response to prevent pregnancy.

Sarah A. Reid, *Finding a Fix for Pet Overpopulation*, FAYETTEVILLE OBSERVER (N.C.), Mar. 8, 2008, available at <http://www.fayobserver.com/article?id=287928> (last modified Mar. 8, 2008).

Story of one shelter's pet surplus, and the difficulty of euthanizing animals. Also details shelter's low-cost spay-neuter program, and the community's positive response.

Cathy M. Rosenthal, *Advice: Spaying, Neutering Sure Beats Euthanasia*, SAN ANTONIO EXPRESS-NEWS (Tex.), Feb. 18, 2007, at 13J.

An editorial making an economic argument for spay/neuter, claiming the cost of pet overpopulation is \$1 billion per year. Also promoting Spay Day events in the area.

Cathy M. Rosenthal, *'Just One Litter' Adds to Euthanasia Crisis*, SAN ANTONIO EXPRESS-NEWS (Tex.), June 12, 2005, at 4K.

An editorial suggesting that pet owners who believe it best for pets to have at least one litter are contributing to pet overpopulation. Suggests that all owners spay/neuter their pets.

Edward Russo, *Eugene, County Track Unlicensed Dogs*, REGISTER GUARD (Eugene, Or.), March 22, 2006, available at <http://www.thefreelibrary.com/Eugene,+county+track+unlicensed+dogs-a0130805360> (last modified Mar. 22, 2005).

Though article mostly is concerned with mandatory dog licensing, it also examines Eugene-area pet overpopulation and requests for mandatory spay/neutering.

David Samuels, *Attitudes Toward Neutering and Euthanasia*, in OVERPOPULATION OF CATS AND DOGS: CAUSES, EFFECTS, AND PREVENTION 189 (Marjorie Anchel, ed., 1990).

Jim Sanders, *Spay-Neuter Bill in Big Trouble: A Senate Committee is Expected to Kill the Controversial Plan Today*, SACRAMENTO BEE (Cal.), July 11, 2007, at A3.

Concerns California Assembly Bill 1634, requiring mandatory sterilization of kittens and puppies, and the possible death of the measure, along with the public's and lawmakers' response on both sides of the issue.

Melissa Santos, *City Council to Take Up Pet Policy: A Compromise on Spay Rule*, NEWS TRIB. (Tacoma, Wash.), July 21, 2007, available at <http://www.thenewstribune.com/news/local/tacoma/story/115246.html> (last modified July 21, 2007).

Details a proposed compromise on Washington mandatory spay/neuter proposal, only requiring the measure for animals that aren't licensed as unaltered animals.

Janet M. Scarlett et al., *The Role of Veterinary Practitioners in Reducing Dog and Cat Relinquishments and Euthanasias*, 220 J. AM. VETERINARY MED. ASS'N 306 (2002).

Lynne P. Shackleford, *Council Studies Planned Pet Law*, HERALD-J. (Spartanburg, S.C.), Feb. 27, 2008, *available at* <http://www.goupstate.com/article/20080227/NEWS/802270334/1051/NEWS01> (last modified Feb. 27, 2008).

Kris Sherman, *Purr and Grrr over Tacoma Pet Laws*, NEWS TRIB. (Tacoma, Wash.), Dec. 13, 2006, *available at* <http://dwb.thenewstribune.com/news/local/story/6279816p-5478403c.html> (last modified Dec. 13, 2006).

Account of forum concerning Tacoma's spay/neuter law, including several quotes from attendees.

Lisa Simmons, *Busting the Myths*, OAKLAND TRIB. (Cal.), July 8, 2006, *available at* http://findarticles.com/p/articles/mi_qn4176/is_20060708/ai_n16529514 (last modified July 8, 2006).

An editorial arguing against the myth that neutering/spaying dogs and cats makes their lives less happy than those that are fixed.

Joan Lowell Smith, *Keeping Cat Population in Check*, STAR-LEDGER (Newark, N.J.), Feb. 4, 2007, at 2.

Credits spaying/neutering and trap, neuter, release programs with the decline in shelter and feral cat populations in the Newark area. Also presents detractors' opinions.

Jennifer Sorentrue & Hector Florin, *Spaying Rules Net Mixed Results*, PALM BEACH POST (Fla.), Dec. 26, 2007, at 1A.

Examines the effectiveness of mandatory spay/neuter rules in other jurisdictions, in considering whether Pal Beach should adopt the measure. Concludes that similar measures have had "mixed results," due to the reduction in licenses and other hardships on professional breeders.

Sylvana Wenderhold, *National Desexing Network Launched*, ANIMALS TODAY, 2005, Issue 2, at 11 (2005).

John Wenstrup & Alexis Dowidchuk, *Pet Overpopulation: Data and Measurement Issues in Shelters*, 2 J. APPLIED ANIMAL WELFARE SCI. 303 (1999).

Study examining shelters' different approaches to pet overpopulation. Findings showed many different issues that shelters face, with sterilization the most commonly cited solution.

NATHAN J. WINOGRAD, *REDEMPTION: THE MYTH OF PET OVERPOPULATION AND THE NO KILL REVOLUTION IN AMERICA* (2007).

2. State and Municipal Spay/Neuter Statutes

	States	1 Require Sterilization or A Promise to Sterilize in Order to Adopt	2 Mandatory Spay/Neuter of All Animals Adopted from Animal Shelters	3 "Breed specific" Spay/Neuter or Vicious Dog Mandatory Spay/Neuter	4 Specialty License Plates to Fund Low-cost Spay/Neuter Programs	5 Income Tax Check-offs to Create Over- population Funds	Applicable Statutory Citations
1	Alabama	i					§ 3-9-2 ⁱⁱ
2	Alaska						-
3	Arizona	iii	iv		v		A.R.S. § 11-1022 (2006) ^{vi}
4	Arkansas	vii	viii				Ark. Code Ann. § 20- 19-103 ^{ix}
5	California	x	xi	xii			Cal. Food & Agric. Code § 30503 ^{xiii}
6	Colorado					xiv	35-80-116.5 ^{xv}
7	Connecticut	xvi	xvii		xviii		Conn. Gen. Stat. § 22- 380f (2005) ^{xix}
8	Delaware						-
9	District of Columbia		xx				D.C. Code § 8-8107 (2006) ^{xxi}
10	Florida	xxii	xxiii		xxiv		Fla. Stat. § 823.15 (2005) ^{xxv}
11	Georgia	xxvi	xxvii	xxviii			O.C.G.A. §§ 4-14-3, 4-14-4 (2005) ^{xxix}
12	Hawaii						-
13	Idaho						-
14	Illinois	xxx	xxxi	xxxii			Ill. Comp. Stat. Ann. 5/11, 8 Ill. Adm. Code 25.140 ^{xxxiii}
15	Indiana						-
16	Iowa	xxxiv	xxxv				Iowa Code § 162.20 (2004) ^{xxxvi}
17	Kansas	xxxvii	xxxviii				K.S.A. § 47- 1731(2005) ^{xxxix}
18	Kentucky				xl		§ 186.162 ^{xli}
19	Louisiana	xlii	xliii				La. Rev. Stat. Ann. §§ 3:2472, 3:2475 (2005) ^{xliv}
20	Maine	xlv				xlvi	§ 3939 (2007)
21	Maryland						-
22	Massachusetts	xlvii	xlviii				ALM GL ch. 140 ^{xlix}
23	Michigan	l	li				MCL § 287.338a (2005) ^{lii}
24	Minnesota						-
25	Mississippi						-
26	Missouri	liii	liv	lv			Mo. Ann. Stat. § 273.403-5 (2006) ^{lvi}
27	Montana	lvii	lviii				Mont. Code § 7-23- 4202 (2005) ^{lix}
28	Nebraska	lx					Neb. Rev. Stat. § 54- 638 (2005) ^{lxi}
29	Nevada		lxi				§574.600 et seq. ^{lxiii}
30	New Hampshire		lxiv				§ 437-A ^{lxv}
31	New Jersey						-

32	New Mexico	lxvi	lxvii		lxviii		N.M. Stat. Ann. § 77-1-20 (2005) ^{lxix}
33	New York	lxx	lxxi				Agric. & Mkts. Law § 377-A (2005) ^{lxxii}
34	North Carolina						-
35	North Dakota	lxxiii	lxxiv				N.D. Cent. Code, § 40-05-19 (2005) ^{lxxv}
36	Ohio				lxxvi		§ 955.201 ^{lxxvii}
37	Oklahoma	lxxviii	lxxix			lxxx	4 Okl. St. §§ 499.2, 499.3 (2005) ^{lxxxi}
38	Pennsylvania	lxxxii					3 Pa. Cons. Stat. §§ 459-901-A, 459-908-A (2005) ^{lxxxiii}
39	Rhode Island		lxxxiv	lxxxv			R.I. Gen. Laws § 4-19-16 ^{lxxxvi}
40	South Carolina	lxxxvii		lxxxviii			S.C. Code Ann. § 47-3-480 (2005) ^{lxxxix}
41	South Dakota						-
42	Tennessee	xc		xcii			Tenn. Code § 44-17-502 (2005) ^{xcii}
43	Texas	xciii	xciv				Tex. Health & Safety Code Ann. § 828.001 ^{xcv}
44	Utah	xcvi					Utah Code §§ 10-17-102, 103 (2005) ^{xcvii}
45	Vermont						-
46	Virginia		xcviii				Va. Code Ann. § 3.1-796.126:1 (2005) ^{xcix}
47	Washington						-
48	West Virginia	c	ci				§ 19-20B-1 ^{cii}
49	Wisconsin						-
50	Wyoming						-

ⁱ American Veterinarian Medical Association, http://www.avma.org/advocacy/state/issues/sr_spay_neuter_laws.asp (last visited Jun. 29, 2008) [hereinafter *AMA*]; The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/Legislation/2006EnactedandVetoedLeg.pdf> (last visited Jun. 29, 2008).

ⁱⁱ The Code of Alabama, <http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm> (last visited Jun. 30, 2008).

ⁱⁱⁱ *AMA*, *supra* note i.

^{iv} People for the Ethical Treatment of Animals, http://www.helpinganimals.com/res_lawspayord.asp (last visited Jun. 29, 2008) [hereinafter *PETA*].

^v Joshua D Hodes, *Legislative Review: 2004 Legislative Review*, 11 *ANIMAL L.* 325, 362-3 (2005); The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/2004EnactedVetoedLeg.pdf> (last visited Jun. 29, 2008).

^{vi} Rebecca Huss, *Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations*, 39 *CONN. L. REV.* 2059, 2057, 2106 (2007); Opposition to the CA Healthy Pets Act, AB 1634, http://www.ab1634.com/Files/ARE_MSN.pdf [hereinafter *AB 1634*].

^{vii} Huss, *supra* note i, at 2057, 2106; *AMA*, *supra* note i.

^{viii} *PETA*, *supra* note iv.

^{ix} Huss, *supra* note vi, at 2098, 2106; *AB 1634*, *supra* note vi.

^x Huss, *supra* note vi, at 2098, 2106; Jamey Medlin, *Comment: Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 *DEPAUL L. REV.* 1285, 1290-2, 1308-9 (2007); *AMA*, *supra* note i.

^{xi} *PETA*, *supra* note iv.

^{xii} Katina, Antoniadis, *Breed-Specific Laws in California* (May-Jun. 2006), http://www.animalsheltering.org/resource_library/magazine_articles/may_jun_2006/breed_specific_laws_in_ca.html.

^{xiii} Huss, *supra* note vi, at 2106; *AB 1634*, *supra* note vi.

^{xiv} Hodes, *supra*, note v, at 363-5; The Animal Legal & Historical Center, http://www.animallaw.info/statutes/stuscost35_80_101_117.htm.

^{xv} The Animal Legal & Historical Center, *supra* note xiv.

^{xvi} Joseph R. Holstead, *Animal Cruelty* (Mar. 6, 2007), available at <http://www.cga.ct.gov/2007/rpt/2007-R-0228.htm>; *AMA*, *supra* note i.

^{xvii} *PETA*, *supra* note iv.

- xviii The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/2003EnactedandVetoedLeg.pdf> (last visited Jun. 29, 2008).
- xix Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xx *PETA*, *supra* note iv.
- xxi Huss, *supra* note i, at 2098, 2106.
- xxii *AMA*, *supra* note i.
- xxiii *PETA*, *supra* note iv.
- xxiv Hodes, *supra*, note v, at 362-3; The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/2004EnactedVetoedLeg.pdf> (last visited Jun. 29, 2008).
- xxv Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xxvi *AMA*, *supra* note i.
- xxvii *PETA*, *supra* note iv.
- xxviii The Humane Society of the United States, http://files.hsus.org/web-files/PDF/2002_st_law_chart.pdf (last visited Jun. 29, 2008).
- xxix Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xxx Huss, *supra* note i, at 2098, 2106.
- xxxi *PETA*, *supra* note iv; *AB 1634*, *supra* note vi.
- xxxii The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/2003EnactedandVetoedLeg.pdf> (last visited Jun. 29, 2008).
- xxxiii Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xxxiv *AMA*, *supra* note i.
- xxxv *PETA*, *supra* note iv.
- xxxvi Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xxxvii *AMA*, *supra* note i.
- xxxviii *PETA*, *supra* note iv.
- xxxix Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xl Kentucky Legislature, <http://www.lrc.state.ky.us/Statrev/ACTS2002/0056.pdf> (last visited Jun. 29, 2008).
- xli Kentucky Legislature, <http://www.lrc.state.ky.us/Statrev/ACTS2002/0056.pdf> (last visited Jun. 29, 2008).
- xlii Huss, *supra* note i, at 2098, 2106; *AMA*, *supra* note i.
- xliii *PETA*, *supra* note iv.
- xliv Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- xlv *AMA*, *supra* note i; The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/legislation/2007-enacted-and-vetoed.pdf> (last visited Jun. 29, 2008); Maine.gov, <http://janus.state.me.us/legis/statutes/7/title7sec3939-A.html> (last visited Jun. 29, 2008).
- xlvi Hodes, *supra*, note v, at 363-5.
- xlvii *AMA*, *supra* note i.
- xlviii *PETA*, *supra* note iv.
- lix *AB 1634*, *supra* note vi.
- i *AMA*, *supra* note i.
- ii *PETA*, *supra* note iv.
- iii Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- iiii Huss, *supra* note i, at 2098, 2106; *AMA*, *supra* note i.
- lv *PETA*, *supra* note iv.
- lv The Humane Society of the United States, http://files.hsus.org/web-files/PDF/2002_st_law_chart.pdf (last visited Jun. 29, 2008).
- lvi Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- lvii Huss, *supra* note i, at 2100, 2106; *AMA*, *supra* note i.
- lviii *PETA*, *supra* note iv.
- lix Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- lx Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- lxi Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- lxii *PETA*, *supra* note iv.
- lxiii *AB 1634*, *supra* note vi.
- lxiv *PETA*, *supra* note iv; State of New Hampshire Revised Statutes Online, <http://www.gencourt.state.nh.us/rsa/html/xl/437-a/437-a-mrg.htm> (last visited Jun. 29, 2008).
- lxv New Hampshire Revised Statutes Online, <http://www.gencourt.state.nh.us/rsa/html/xl/437-a/437-a-mrg.htm> (last visited Jun. 29, 2008).
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- lxviii The Humane Society of the United States, <http://www.hsus.org/web-files/PDF/2003EnactedandVetoedLeg.pdf> (last visited Jun. 29, 2008).
- lxix Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.
- lxx *AMA*, *supra* note i.
- lxxi *PETA*, *supra* note iv.
- lxxii Huss, *supra* note i, at 2098, 2106; *AB 1634*, *supra* note vi.

Cities	Ordinance #	Description
CALIFORNIA		
Los Angeles, CA	53.15.2, 10.20.355, 31751.3, 31751.5 - .7	Pet Overpopulation ordinances ⁱ , Pet sterilization ⁱⁱ , MSN ⁱⁱⁱ
Belmont, CA	Article 1A, §§ 5-27.5, 5-27.9	Differential licensing ^{iv}
City of Clearlake, CA	7-10.1, 7-10.3	MSN ^v
Hesperia, CA	6.08.020E	MSN for impounded animals and dogs running at large, running loose, or unrestrained off the owners property ^{vi}
Pacific Grove, CA	Ord. 10.04.100, 10.18.010, 10.16.040	MSN (exceptions: unaltered permits and breeder permits) ^{vii}
Sacramento Co., CA	8.24.030 b	MSN (some exceptions) ^{viii}
San Mateo, CA	Chap. 8.02.090, § 3332.4, Chap. 8.02, § 3330.8	MSN (exceptions: unaltered license or breeder's permit) ^{ix}
Santa Cruz Co., CA	6.10.030	MSN (exceptions: written permission by director of animal control and breeders) ^x
COLORADO		
Aurora, CO	§ 14-42	MSN (some exceptions) ^{xi}
Denver, CO	Ord. No. 999-95, § 8-70-3	MSN (breeding is illegal; some MSN exceptions) ^{xii}
Lake Co., CO		MSN ^{xiii}
FLORIDA		
Palm Beach Co., FL	Part 6. Chapter 4, § 28.	Licensing ^{xiv} , MSN ^{xv}
Volusia Co., FL	14-40, 14-43	Licensing, Dangerous Dogs ^{xvi} , MSN ^{xvii}
ILLINOIS		
Rock Island, IL	Div. 2, § 7-146, Div. 3, § 7-156	MSN (some exceptions) ^{xviii}
INDIANA		
Bloomington, IN	7.22.010, 7.22.020, 7.22.050, 7.22.060	MSN (some exceptions) ^{xix}
Fort Wayne, IN	Ord. 91.055-56	MSN (some exceptions) ^{xx}
Hamilton Co., IN	§ 15-2.1-1-23	MSN ^{xxi}

Cities	Ordinance #	Description
MARYLAND		
Baltimore, MD	§ 12-4-103	MSN ^{xxii}
Montgomery Co., MD	§§5-303, 5-403	MSN ^{xxiii}
MISSOURI		
St. Louis	§10.04.150 to 10.04.160, §10.04.065	MSN ^{xxiv}
NEW JERSEY		
Camden, NJ	§§ 210-39, 210-40	MSN (some exceptions) ^{xxv}
NEW MEXICO		
Albuquerque, NM	27-1994 § 9-2-2-3	MSN ^{xxvi}
McKinley Co., NM	6-2-15	MSN ^{xxvii}
NEW YORK		
NYC, NY	Chap. 8, §17-804	MSN ^{xxviii}
NORTH CAROLINA		
Asheville, NC	§3-5	MSN ^{xxix}
Buncombe Co., NC	03-12-16	MSN ^{xxx}
OHIO		
Athens, OH	§ 9.01.09	MSN ^{xxxi}
Richmond, OH	§ 4-77	MSN (exception: breeder's permit) ^{xxxii}
TEXAS		
Houston, TX	§ 6-111-19	MSN (exception: breeder's permit) ^{xxxiii}
WASHINGTON		
King Co., WA	Chap IV, §§ 11.04.400, 11.04.510	MSN (exception: unaltered license) ^{xxxiv}
Tacoma, WA	§§§ 17.010.110, 17.010.120, 17.05.040	MSN ^{xxxv}

ⁱ Kim Nguyen, *Council Adopts Fee, Fine Increase for Unaltered Pets*, METROPOLITAN NEWS ENTERPRISE, Mar. 30, 2000 at 8.

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- ⁱⁱ *Los Angeles Council Moves to Require Pet Sterilization*, ORLANDO SENTINEL, Feb. 13, 2008 at A16.
- ⁱⁱⁱ Rick Orlov, *L.A. City Council Touts Spay, Neuter Law*, DAILY NEWS, Feb. 12, 2008 at A3; People for the Ethical Treatment of Animals, http://www.helpinganimals.com/res_lawspayord.asp (last visited Jun. 29, 2008) [hereinafter *PETA*].
- ^{iv} *PETA*, *supra* note iii.
- ^v *Id.*
- ^{vi} *Id.*
- ^{vii} *Id.*
- ^{viii} *Id.*
- ^{ix} *Id.*
- ^x *Id.*
- ^{xi} *Id.*
- ^{xii} *Id.*
- ^{xiii} *Id.*
- ^{xiv} Rachael Jackson, *Volusia County Might Make Dog, Cat Sterilization the Law*, ORLANDO SENTINEL, Feb. 7, 2008.
- ^{xv} *PETA*, *supra* note iii.
- ^{xvi} Municode, <http://www.municode.com/Resources/gateway.asp?pid=11665&sid=9> (last visited Jun. 30, 2008).
- ^{xvii} John Woestendiek, *Should spaying, neutering be mandatory?*, BALTIMORE SUN.COM, Jun. 7, 2008, http://weblogs.baltimoresun.com/features/mutts/blog/2008/06/should_spaying_neutering_be_ma.html.
- ^{xviii} *PETA*, *supra* note iii.
- ^{xix} *Id.*
- ^{xx} *Id.*
- ^{xxi} Municode.com, <http://www.municode.com/resources/gateway.asp?pid=13492&sid=14> (last visited Jun. 30, 2008); *PETA*, *supra* note iii.
- ^{xxii} *PETA*, *supra* note iii; American Legal, [http://www.amlegal.com/nxt/gateway.dll/Maryland/baltimore_co/baltimorecountycode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:baltimoreco_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/baltimore_co/baltimorecountycode?f=templates$fn=default.htm$3.0$vid=amlegal:baltimoreco_md) ((last visited Jun. 30, 2008).
- ^{xxiii} *Id.*
- ^{xxiv} *Id.*
- ^{xxv} *Id.*
- ^{xxvi} American Legal, [http://www.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqwin/cityofalbuquerque/newmexicocodeofordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:albuquerque_nm_mc](http://www.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqwin/cityofalbuquerque/newmexicocodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:albuquerque_nm_mc) (last visited Jun. 30, 2008).
- ^{xxvii} *PETA*, *supra* note iii.
- ^{xxviii} *Id.*
- ^{xxix} *Id.*
- ^{xxx} *PETA*, *supra* note iii; *Half-way Measures Won't Help*, BLUERIDGENOW.COM, Feb. 17, 2008, http://www.blueridgenow.com/article/20080217/NEWS/802170354/1016/OPINION02/NEWS/Half_way_measures_won_t_help (last visited May 18, 2008).
- ^{xxxi} *PETA*, *supra* note iii.
- ^{xxxii} *Id.*
- ^{xxxiii} *Id.*
- ^{xxxiv} *Id.*
- ^{xxxv} Opposition to the CA Healthy Pets Act, AB 1634, http://www.ab1634.com/Files/ARE_MSN.pdf (last visited Jun. 29, 2008); *PETA*, *supra* note iii.

3. ISAR Proposed Model Mandatory Spay/Neuter Statute

Whereas, there have been and there are within this state countless unwanted dogs and cats lacking permanent homes; and

Whereas, although many of these animals are healthy, many others are not; and

Whereas, the latter through no fault of their own have an adverse impact on the public health, safety, welfare, and environment; and

Whereas, the impact of these animals includes, but is not limited to, the transmission of disease, the injury and sometimes death of humans and other animals, the creation of hazards to vehicular travel, and the drain on public finances; and

Whereas, many of these animals are euthanized by shelters, humane societies, and similar organizations; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is inhumane and abhorrent to the people of this state; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is not an effective, economical, humane, or ethical solution to the problem of dog and cat overpopulation; and

Whereas, one of the most effective, economical, humane, and ethical solutions to the problem of dog and cat overpopulation is to substantially reduce, if not entirely eliminate, their breeding; and

Whereas, by such reduction or elimination the State seeks to promote the public health, safety, welfare, and environmental interests of its citizens;

NOW, THEREFORE, BE IT ENACTED AS FOLLOWS:

Section 1. Coverage of statute

(a) All dogs and cats present in this state shall be in compliance with this statute, unless specifically exempted.

(b) No exemption shall exist for dogs and cats which may fall under any federal statute or within the jurisdiction of the federal government or any agency thereof.

Section 2. Requirement of spaying and neutering

(a) Subject to the provisions of this statute, every dog and cat harbored in this state shall be spayed or neutered.

(b) For purposes of this statute, “harbor” is defined to include: legal ownership, providing regular care, shelter, protection, refuge, nourishment, or medical treatment; provided; however, that a person or entity does not “harbor” by providing nourishment to a stray or feral dog or cat, and; provided further, however, that caretakers of feral cat colonies shall use their best efforts to have those animals sterilized.

Section 3. Breeding licensees; rules and regulations

(a) Other than as provided below, no dog or cat may be legally used for insemination or bred in this state except by an individual or entity holding a breeding license, which may be issued in its absolute discretion by the Department of Animal Affairs or such other department as the governor shall designate.

(b) While a breeding license is valid, no subsequent breeding license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the first licensee by common officers, directors, stockholders, or trustees, or to any entity controlled by the first licensee.

(c) The licensing authority shall promulgate such rules and regulations as may be necessary to implement its statutory duties, including but not limited to recordkeeping requirements.

(d) Such rules and regulations shall include, but not be limited to, provisions assuring that the animals in the breeding licensee’s care there are provided: sufficient quantity of good and wholesome food and water consistent with its breed, size, and age; shelter that will allow the animals to be protected from the elements with room to stand up, turn around, and lie down without lying in its or another animal’s waste; confinement space that is clean and disinfected; an opportunity for adequate sunlight, fresh air, and exercise.

(e) In addition, breeding licensees shall be required to comply with all other state statutes relating to the care and treatment of dogs and cats.

Section 4. Breeding limitations

(a) A breeding licensee may use a male dog or cat only twice to inseminate a female, which must occur within a twelve month period. No further insemination is allowed thereafter.

(b) A breeding licensee may breed a female cat only twice, which must occur within a twelve month period. No further breeding is allowed thereafter.

(c) The offspring of breeder licensee’s dogs and cats may be retained by the breeding licensee, but they shall be subject to the same restrictions as their sires and dams, as shall be succeeding generations.

(d) The dogs and cats covered by this section regarding insemination and breeding shall be at least four months old, the dogs no older than eighteen months, and the cats no older than twelve months.

(e) Once- or twice-bred female dogs and cats shall be sterilized promptly after delivery of the female animals' final litters.

(f) Male dogs and cats shall be sterilized promptly after they have twice inseminated females.

(g) Promptly after a male dog or cat has twice inseminated a female, and promptly after a female dog or cat has delivered her final litter, the breeder licensee shall either:

(i) Relinquish such animal to a shelter, humane society, rescue group, or similar organization for adoption only, or

(ii) Directly arrange for adoption, pursuant to the rules and regulations of the nearest shelter, humane society, rescue group, or similar organization; provided, however, that the breeder licensee shall under no circumstances transfer custody of a dog or cat to any individual or entity as to whom the breeder licensee knows, or should know, that the animal will be used for scientific experimental purposes.

(h) No breeding licensee shall release from its custody any dog or cat that has not been sterilized, except to provide temporary veterinary care.

(i) No breeding licensee shall possess in any calendar year more than ten unneutered male dogs, ten unneutered male cats, ten unspayed female dogs, and ten unspayed female cats, except for newborn litters which may be kept for no more than three months at which time the provisions of this statute will apply to them.

Section 5. Other source dogs and cats

(a) Every individual and entity harboring an unsterilized dog or cat shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or appears to be, less than three months old.

(b) This section does not apply to breeder licensees.

Section 6. Sellers of dogs and cats

(a) Upon coming into the possession of an unsterilized dog or cat, every individual and entity in the business of selling such animals, including but not limited to pet stores, shall immediately present the animal to a licensed veterinarian who shall

sterilize it; provided, however, that the animal need not be sterilized if it is, or appears to be, less than three months old.

(b) This section shall not apply to breeder licensees.

Section 7. Medical exceptions to sterilization

(a) No dog or cat need be sterilized if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that an animal is medically unfit for the spay/neuter procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the animal's death.

(b) The dog or cat's age shall not *per se* constitute medical unfitness.

(c) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having control of the dog or cat to immediately comply with all provisions of this statute.

(d) Possession of the certificate referred to in subsection (a) of this section shall constitute a defense to liability under the penalty provisions of this statute.

(e) If during the disqualification period the dog or cat breeds, the individual or entity in control of the animal shall be punished in accordance with Section 13 of this statute.

Section 8. Shelters and similar organizations

(a) Shelters, pounds, humane societies, and similar organizations, whether public or private, whose principal purpose is securing the adoption of dogs and cats, shall not be exempt from the provisions of this statute.

(b) No shelter, pound, humane society, or similar organization, whether public or private, whose principal purpose is securing the adoption of dogs and cats, shall release custody of any such animal to its owner or an adopter unless the dog or cat has first been sterilized.

Section 9. Duties of veterinarians

(a) Any licensed veterinarian who shall become aware that a dog or cat who should be sterilized is in violation of this statute shall promptly inform the person or entity harboring such animal, and further state that the veterinarian has a duty to report that information pursuant to subsection (b) hereof.

(b) If within five business days the person or entity harboring such animal has not shown to the veterinarian's satisfaction that it has been sterilized, the veterinarian shall

report to the enforcing authority the name and contact information of the person harboring such animal and its unsterilized condition.

Section 10. Microchipping

Promptly after beginning to harbor a dog or cat, the individual or entity shall have the animal microchipped in accordance with current technology.

Section 11. Low-cost spay/neuter

(a) The state shall itself or by contract provide facilities where its citizens can have dogs and cats humanely spayed and neutered by a licensed veterinarian for a fee established by regulation.

(b) The spay/neuter fee to be established by regulation shall be based on ability to pay, which regulations shall provide for the fee to be waived entirely because of financial hardship.

Section 12. Enforcement

Enforcement of this statute shall fall within the jurisdiction of the Attorney General, the Department of Animal Affairs, or such other department as the governor shall designate.

Section 13. Penalties

(a) The first violation of this statute shall constitute an offense, punishable by a civil fine of \$1,000.00.

(b) Each week during which the violation continues will constitute a separate offense for which an additional civil fine of \$1,000.00 shall be imposed.

(3) Immediately following the third offense, subsequent violations will be punishable as the lowest grade misdemeanor. The \$1,000.00 civil fine will also be imposed for each offense after the first.

Section 14. Transition

Within sixty days from the effective date of this statute it shall be the responsibility of all those who harbor dogs and cats to be in compliance with this statute.

Section 15. Effective date

This statute will be effective when it is enacted by the legislature and approved by the governor in accordance with state law.

Section 16. Severability

If any provision of this statute shall be held unconstitutional, illegal, or unenforceable for any reason, the remaining provisions shall retain their full status as if the offending provision had not existed.

4. State cases raising constitutional questions regarding animal-related legislation.

Affonso Bros. v. Brock, 84 P.2d 515 (Cal. Ct. App. 1938). **57**
Albright v. Bd. of Comm'rs of Douglas County, 194 P. 913 (Kan. 1921).
Anderson v. George, 233 S.E.2d 407 (W. Va. 1977). **33**
Bazard v. La. State Livestock Sanitary Bd, 135 So.2d 652 (La. Ct. App. 1962).
Blair v. Du Mond, 117 N.Y.S.2d 23 (N.Y. App. Div. 1952). **47**
Bowden v. Davis, 289 P.2d 1100 (Or. 1955).
Brown v. Muhlenbert Township, 269 F.3d 205 (3d Cir. 2001).
Bugai v. Rickert, 242 N.W. 774 (Mich. 1932).
Burt v. Arkansas Livestock and Poultry Comm'n., 644 S.W.2d 587 (Ark. 1983).
Campoamor v. State Live Stock Sanitary Bd., 182 So. 277 (Fla. 1938).
Carmack v. Missouri Dept. of Agric., 31 S.W.3d 40 (Mo. Ct. App. 2000).
Carter v. Colby, 51 A. 904 (N.H. 1902).
Chambers v. Gilbert, 42 S.W. 630 (Tex. Ct. App. 1897). **36**
Clason v. State, 17 N.E.2d 92 (Ind. 1938).
Coelho v. Truckell, 48 P.2d 697 (Cal. Ct. App. 1935).
Commonwealth v. Flynn, 188 N.E. 627 (Mass. 1934). **42**
Commonwealth v. Gonzales, 588 A.2d 528 (Pa. 1991). **6**
Commonwealth v. Haldeman, 135 A. 651 (Pa. 1927). **52**
Commonwealth v. Higgins, 178 N.E. 536 (Mass. 1931).
County of Pasco v. Riehl, 635 So.2d 17 (Fla. 1994). **37**
Davis v. State, 806 So.2d 1098 (Miss. 2001). **4**
Dederick v. Smith, 184 A. 595 (N.H. 1936).
Dog Owners Ass'n of N.Y. State v. Hilleboe, 206 Misc. 119 (N.Y. Sup. Ct. 1953). **29**
Durand v. Dyson, 111 N.E. 143 (Ill. 1917). **17**
Edmondson v. Pearce, 91 P.2d 605 (Okla. 2004). **8**
Fevold v. Bd. of Superiors of Webster County, 210 N.W. 139 (Iowa 1926).
Finley v. Barker, 189 N.W. 197 (Mich. 1922). **60**
Glisson v. Hancock, 181 So. 379 (Fla. 1938). **62**
Goeller Iron Works v. Carey, 77 A. 527 (N.J. 1910). **27**
Graham v. Kingwell, 24 P.2d 488 (Ca. 1933).
Hargrove v. State, 321 S.E.2d 104 (Ga. 1984). **38**
Hofer v. Carson, 203 P. 323 (Or. 1922).
Holmes v. Murray, 105 S.W. 1085 (Mo. 1907).
Howell v. Daughet, 230 S.W. 559 (Ark. 1921).
Humane Soc'y of Marshall County v. Adams, 439 So.2d 150 (Ala. 1983).

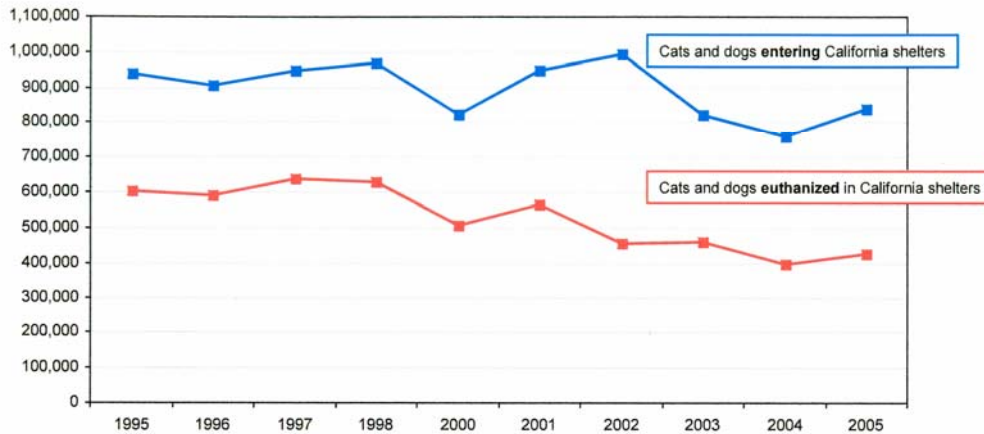
Illinois Gamefowl Breeders Ass'n v. Block, 389 N.W.2d 529 (Ill. 1979). **1**
Jones v. State ex rel. Ind. Livestock Sanitary Bd., 163 N.E.2d 605 (Ind. 1960).
Jordan v. Gaines, 8 A.2d 585 (Me. 1939).
Kasch v. Anders, 149 N.E. 275 (Ill. 1925).
Kerr v. Kimmell, 740 F. Supp. 1525 (D.C. Kan. 1990). **24**
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Loesch v. Koehler, 41 N.E. 326 (Ind. 1895).
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Meeks, Boren & Miller Co. v. Cleveland Humane Soc'y, 22 Ohio Dec. 517 (Ct. Com. Pl. Ohio 1912).
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Mirick v. Gims, 86 N.E. 880 (Ohio 1908).
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Pearson v. Zehr, 29 N.E. 854 (Ill. 1891).
People v. Anderson, 189 N.E. 338 (Ill. 1934).
People v. Baniqued, 101 Cal. Rptr. 2d 835 (Cal. Ct. App. 2000). **18**
People v. Bunt, 462 N.Y.S.2d (N.Y. 1983). **30**
People v. Knowles, 709 N.Y.S.2d 151 (Rensselaer County Ct. 2000). **2**
People v. Raleigh, 49 A.D.2d 306 (N.Y. App. Div. 1975). **28**
People v. Superior Court, 201 Cal. App. 3d 1061 (Cal. Ct. App. 1988). **11**
People v. Van Horn, 9 N.W. 246 (Mich. 1881).
Ponder v. State, 212 S.W. 417 (Tenn. 1919).
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Ryder v. Pyrke, 224 N.Y.S. 289 (N.Y. Sup. Ct. 1927).
Schnapp v. Lefkowitz, 422 N.Y.S.2d 798 (N.Y. Sup. Ct. 1979). **46**
Schwarz Bros. Co. v. Bd. of Health, 87 A. 463 (N.J. 1913). **25**
Shadoan v. Barnett, 289 S.W. 204 (Ky. Ct. App. 1926).
Smith v. Costello, 290 P.2d 742 (Idaho 1955). **16**
Spillman v. Beauchamp, 362 S.W.2d 33 (Ky. 1962). **59**
State ex. rel. Zobel v. Burrell, 167 S.W.3d 688 (Mo. 2005). **32**
State Live Stock Sanitary Bd. v. Sheets, 178 So. 901 (Fla. 1938).
State v. Anderson, 234 S.W. 768 (Tenn. 1920). **54**
State v. City of Topeka, 12 P. 310 (Kan. 1886).
State v. Clarke, 396 A.2d 228 (Me. 1979). **41**
State v. Cowan, 814 N.E.2d 846 (Ohio 2004).
State v. DePascale, 463 N.E.2d 1284 (Ohio Ct. App. 1983). **50**
State v. Elliott, Unpublished, 2002 WL 31820245 (Del. Super. 2002). **3**
State v. Erwin, 200 S.W. 973 (Tenn. 1918).

State v. Gaines, 580 N.E.2d 1158 (Ohio Ct. App. 1990). **51**
State v. Ham, 691 P.2d 239 (Wash. Ct. App. 1984). **9**
State v. Hartley, 790 S.W.2d 276 (Tenn. 1990).
State v. Heldt, 213 N.W. 578 (Neb. 1927).
State v. Robinson, 541 N.E.2d 1092 (Ohio Ct. App. 1989). **56**
State v. Schriber, 205 P.2d 149 (Or. 1949).
State v. Sharp, 81 N.E. 1150 (Ind. 1907). **39**
State v. Tabor, 678 S.W.2d 45 (Tenn. 1984). **10**
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Waud v. Crawford, 141 N.W. 1041 (Iowa 1913). **58**
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Yoder v. Givens, 18 S.E.2d 380 (Va. 1942).

5. Fiscal Impact of Cat and Dog Intake & Euthanasia in California Shelters

Fiscal Impact of Cat and Dog Intake & Euthanasia in California Shelters

December 16, 2006 Source: California Department of Health Services, Veterinary Public Health Section



	1995	1996	1997	1998	2000	2001	2002	2003	2004	2005
Cats and dogs entering California shelters	941,207	905,059	948,755	969,400	822,176	947,433	993,068	824,164	758,792	841,750
Total cost for all cats and dogs entering shelters	\$ 289,891,756	\$ 278,758,172	\$ 292,216,540	\$ 298,575,200	\$ 253,230,208	\$ 291,809,364	\$ 305,864,944	\$ 253,842,512	\$ 233,707,936	\$ 259,259,000
Cats and dogs euthanized in California shelters	603,806	591,604	638,944	629,114	509,767	568,637	457,417	460,066	400,643	430,240
Percent of cats and dogs entering shelter euthanized	64.15%	65.37%	67.35%	64.90%	62.00%	60.02%	46.06%	55.82%	52.80%	51.11%
Cost for euthanized cats and dogs entering shelters	\$ 185,972,370	\$ 182,214,122	\$ 196,794,735	\$ 193,767,236	\$ 157,008,126	\$ 175,140,262	\$ 140,884,581	\$ 141,700,223	\$ 123,398,018	\$ 132,513,899

*Note: Accurate numbers for year 1999 are unavailable.

Basis for Calculations:

- Numbers are extrapolated to 61 local health jurisdictions from reports varying from between 51 to 58 jurisdictions (83% to 95%) each year.
- Estimated total operational cost per animal is \$308.00, based on 2005 costs incurred by Los Angeles City Shelters and includes Shelter Costs, Medical Costs, Field Costs, Administrative Costs, Burden and Labor Rates, but excludes Capital Costs. Submitted by the General Manager, City of Los Angeles Department of Animal Services

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6. Table of Contents: Get Political for Animals and Win the Laws They Need

Get Political for Animals and Win the Laws They Need:

***Why and How to Launch a Voting Bloc for Animals in Your Town, City,
County or State***

A manual for rights and rescue advocates and organizations

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