

2010

Protecting Cats and Dogs in Order to Protect Humans: Making the Case for a Felony Companion Animal Statute in Mississippi

Deborah J. Challener

Follow this and additional works at: <https://dc.law.mc.edu/lawreview>



Part of the [Law Commons](#)

Custom Citation

29 Miss. C. L. Rev. 499 (2010)

This Article is brought to you for free and open access by MC Law Digital Commons. It has been accepted for inclusion in Mississippi College Law Review by an authorized editor of MC Law Digital Commons. For more information, please contact walter@mc.edu.

PROTECTING CATS AND DOGS IN ORDER TO PROTECT HUMANS: MAKING THE CASE FOR A FELONY COMPANION ANIMAL STATUTE IN MISSISSIPPI

Deborah J. Challener*

I. INTRODUCTION

Although forty-six states make it a felony to cruelly harm a dog or cat,¹ under Mississippi's current "companion animal" statute, it is merely a misdemeanor to "maliciously . . . kill, maim . . . wound, or injure any dog or cat."² Thus, when twenty-year-old Travis Bradford, a certified home health nursing assistant, pleaded guilty to dousing his dog in lighter fluid and setting her on fire,³ he faced a maximum sentence of six months in jail or a \$1000 fine.⁴ Judge Charlie Vess sentenced Bradford to the maximum available penalty, but stated that Bradford's crime was "one of the most horrific things [he had] ever had to deal with" in his twenty years as a judge and should be a felony.⁵

Nevertheless, Bradford was free to return to society within a very short period of time. Although many studies show that animal abusers also commit crimes against humans,⁶ under Mississippi's animal cruelty laws, the sentencing judge could not order Bradford to have a psychological evaluation or seek counseling. Moreover, despite committing a violent crime, Bradford's criminal record reflects only that he pleaded guilty to a misdemeanor charge of animal cruelty. While a felony plea would have been prohibited Bradford from, among other things, owning a firearm or working in a school,⁷ a misdemeanor plea does not have the same consequences. Furthermore, while Bradford's case was actually prosecuted, perhaps because his crime was so horrific, prosecutors typically devote their limited time and resources to felony cases, not misdemeanors.⁸ Accordingly, most misdemeanor animal cruelty cases are never pursued, and it is not until an animal abuser commits a crime against a human being that the criminal justice system intervenes.

* Professor, Mississippi College School of Law. Many thanks to Sarah Beth Wilson for her invaluable research assistance and Mississippi College School of Law for financial support.

1. See The Humane Society of the United States, *State Animal Cruelty Chart* (June 2010), available at http://www.humanesociety.org/assets/pdfs/abuse/state_animal_cruelty_laws_080109.pdf.

2. MISS. CODE ANN. § 97-41-16(1).

3. Adam Koob, *Dog Tied to Tree, Burned; Man Arrested*, THE NATCHEZ DEMOCRAT (Mar. 20, 2009), available at <http://www.natchezdemocrat.com/news/2009/mar/20/dog-tied-tree-burned-man-arrested/>; *A Case for a First Offense Felony*, MS-FACT NEWSL. (Miss. Fighting Animal Cruelty Together (MS-FACT)), Jan./Feb. 2010, at 3.

4. MISS. CODE ANN. § 97-41-16(1).

5. MS-FACT, *supra* note 3.

6. See *infra* notes 35–38 and accompanying text.

7. See *infra* notes 187–89 and accompanying text.

8. See *infra* notes 185–86 and accompanying text.

During the 2010 session of the Mississippi legislature, Senator Billy Hewes (R-Gulfport) introduced Senate Bill No. 2623 which, *inter alia*, made it a felony to “with malice torture, mutilate, maim, burn, starve, disfigure or kill any domesticated dog or cat.”⁹ The penalty for a conviction under the proposed companion animal statute was one to five years in prison and a fine of \$1500 to \$10,000.¹⁰ Senate Bill No. 2623 passed the Senate but failed in the House, largely because the Mississippi Farm Bureau Federation argued that it would be harmful to Mississippi’s farming industry.¹¹ This objection, along with the others that doomed Senate Bill No. 2623, reflects a fundamental misunderstanding of the purposes of animal cruelty laws and, in particular, the crucial role that a felony penalty for malicious cruelty to cats and dogs could play in protecting all Mississippians. Thus, the goal of this Article is to demonstrate that the objections to Senate Bill No. 2623 were meritless and explain why Mississippi should enact a felony companion animal statute as well as other key provisions of Senate Bill No. 2623.

This Article proceeds in several parts. Part II discusses the reasons behind the enactment of both early and modern animal cruelty statutes, and part III identifies the common features of modern animal cruelty laws. Part IV details Mississippi’s animal cruelty statutes and compares them to typical modern cruelty laws. Part V describes the provisions of Senate Bill No. 2623 in detail and explains why the Mississippi Farm Bureau Federation and others opposed Senate Bill No. 2623. Part VI argues that the objections to Senate Bill No. 2623 were frivolous and makes the case for a felony companion animal statute in Mississippi. Finally, part VII contends that a bill modeled on Senate Bill No. 2623 should be introduced during the 2011 legislative session and passed by the Mississippi legislature.

II. THE PURPOSES BEHIND EARLY AND MODERN ANIMAL CRUELTY STATUTES

A. *Early Animal Cruelty Statutes*

In order to ascertain the appropriate scope of animal cruelty statutes, it is first necessary to understand why society has chosen to criminalize animal cruelty.¹² The common law did not treat animal cruelty as a criminal offense,¹³ and it was not until the first half of the nineteenth century

9. S.B. 2623, 125th Leg., Reg. Sess. § 2 (Miss. 2010).

10. *Id.*

11. See *infra* notes 160–65 and accompanying text.

12. See Luis E. Chiesa, *Why Is It a Crime to Stomp on a Goldfish?—Harm, Victimhood and the Structure of Anti-Cruelty Offenses*, 78 Miss. L.J. 1, 5 (2008) (“[I]t is difficult, if not impossible, to determine the proper scope of anti-cruelty statutes without first considering the question of why it is that such conduct is a crime in the first place.”).

13. Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1, 22 (2001).

that states began to enact animal cruelty laws.¹⁴ Although these laws afforded some protection to certain kinds of animals, their primary focus was not animal welfare.¹⁵ Instead, animal cruelty was criminalized in order to (1) protect the property rights of those who owned commercially valuable animals, such as cows, horses and oxen; and (2) prevent harm to human beings.

For example, an 1846 Vermont statute made it a felony to "willfully and maliciously kill, wound, maim or disfigure any horse, or horses, or horse kind, cattle, sheep, or swine, of another person."¹⁶ This law punished only those who harmed commercially valuable animals owned by someone else¹⁷ thereby "adversely affecting important economic interests."¹⁸ It did not apply to pets or wild animals,¹⁹ and one could do as one pleased with one's own animals. Thus, "[t]he purpose of this law was to protect commercially valuable property from the interference of others, not to protect animals from pain and suffering."²⁰

Other states enacted laws that prohibited cruelty to commercially valuable animals "regardless of whether the perpetrator's actions affected someone else's property interests."²¹ Under these laws, one could be punished for beating one's own horse, as well as the horse of another. An 1821 Maine statute, for example, made it a crime to "cruelly beat *any* horse or cattle."²² By the end of the nineteenth century, many states had adopted

14. The earliest known American animal cruelty law was adopted by the Massachusetts Bay Colony in 1641. Livingston, *supra* note 13, at 23. It "evidenced some impulse toward protection of animals" by prohibiting "'any Tyranny or Cruelty towards any Bruit Creatures, which are usually kept for the use of Man.'" Livingston, *supra* note 13, at 23 (quoting 2 THE LAWS AND LIBERTIES OF MASSACHUSETTS, 1641-1691, at 265 (John D. Cushing ed., Scholarly Res. 1976) (1672)). It has been suggested, however, that the purpose of the law was to "enforce [a] well-recognized moral obligation[] to treat humanely animals that "wast[ed] their lives in man's service." Grise v. State, 37 Ark. 456, 1881 WL 1522, at *1 (1881). For a more thorough discussion of the history of animal cruelty laws, see generally David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DET. C. L. REV. 1, available at <http://www.animallaw.info/articles/arusfavrehistcruelty1993.htm>; see also Livingston, *supra* note 13, at 21-29.

15. See Livingston, *supra* note 13, at 24.

16. 1846 Vt. Acts & Resolves 34, § 2, quoted in Favre & Tsang, *supra* note 14, at 7; Favre & Tsang, *supra* note 14, at 8 ("[S]ince the penalty was for up to five years of jail time, a violation of this law was a felony.").

17. Livingston, *supra* note 13, at 23.

18. Chiesa, *supra* note 12, at 5.

19. Favre & Tsang, *supra* note 14, at 8.

20. Favre & Tsang, *supra* note 14, at 7.

21. Livingston, *supra* note 13, at 24 (discussing statutes from Maine, New York, Michigan, Connecticut, Minnesota, Pennsylvania, and Vermont).

22. 1821 Me. Laws ch. IV, § 7 (1821), quoted in Favre & Tsang, *supra* note 14, at 8 (emphasis added). Similarly, an 1829 New York law made it a crime to "maliciously kill, maim or wound any horse, ox or other cattle, or any sheep, belonging to another, or . . . maliciously and cruelly beat or torture any such animals, *whether belonging to himself or another*." N.Y. REV. STAT. tit. 6, § 26 (1829) (quoted in Favre & Tsang, *supra* note 14, at 9) (emphasis added).

animal cruelty laws that extended protection to all animals, not just commercially valuable ones, regardless of ownership.²³ By “making the ownership question irrelevant”²⁴ and including all animals within their purview, these statutes appeared to be concerned primarily with preventing cruelty to animals.

Nevertheless, these statutes were intended to protect society, not animals. Specifically, these laws were enacted primarily to deter immoral conduct. As one scholar has noted, many early philosophical and religious writers contended that animals “should not be treated cruelly because such treatment has an impact on human morals and behavior. In this way, human beings degrade themselves by perpetrating needless violence on helpless animals.”²⁵ It was believed that an individual who acted cruelly toward animals would engage in other immoral conduct as well.²⁶ These views “arguably led to the enactment of early anticruelty laws, which were often categorized with other laws relating to morality, such as prohibitions on gambling and prostitution.”²⁷ Furthermore, many nineteenth-century courts found that the purpose of these statutes was to protect humans “from barbarous and uncivilized behavior. Pointless torture of dumb creatures was an offense against public morals and could not be tolerated.”²⁸

23. New York adopted the first such law in 1867. See Favre & Tsang, *supra* note 14, at 14–16. Many states followed. Favre & Tsang, *supra* note 14, at 21 & nn. 96–100 (citing statutes from Massachusetts, Pennsylvania, Illinois, New Hampshire, and New Jersey). The New York statute provided, in pertinent part: “If any person shall over-drive, over-load, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be overdriven, over-loaded, tortured, tormented or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated, or killed as aforesaid, *any living creature*, every such offender shall, for every such offence, be guilty of a misdemeanor.” N.Y. REV. STAT. § 375.1 (1867) (quoted in Livingston, *supra* note 13, at 25 n.139).

Like the New York statute, one of Mississippi’s early animal cruelty laws provided in pertinent part that it was a misdemeanor to “override, overdrive, overload, torture, torment, deprive of necessary sustenance, or cruelly beat or needlessly mutilate, or cause or procure to be overridden, overdriven, overloaded, tortured, tormented, or deprived of necessary sustenance, or to be cruelly beaten, or needlessly mutilated, or killed . . . any living creature.” MISS. CODE ch. 21, § 804 (Rev. 1880) (quoted in Davis v. State, 806 So. 2d 1098, 1100–01 (Miss. 2001)).

24. Chiesa, *supra* note 12, at 9.

25. Livingston, *supra* note 13, at 20–21; see also Livingston, *supra* note 13, at 13–16 (discussing the views of early philosophical and religious writers).

26. See Livingston, *supra* note 13, at 28.

27. Livingston, *supra* note 13, at 21; see also Favre & Tsang, *supra* note 14, at 11 (stating that the “concern” behind early animal cruelty laws “was for the moral state of the human actor, rather than the suffering of the nonhuman animal” and that “[t]his focus of concern was reflected in the early state laws by [their] location . . . in chapters of the criminal code entitled, ‘Of Offenses Against Chastity, Decency, and Morality’”); Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 13 (“[T]he driving force for the enactment of [animal cruelty] laws has historically been the preservation of a moral society as opposed to a genuine interest in the protection of animals . . .”).

28. Livingston, *supra* note 13, at 27–28 & nn. 162–163 (citing and discussing various cases). Despite the broader animal cruelty statutes enacted in the 1800s, some nineteenth-century courts continued to view animals as property and were unwilling to enforce the laws as written. Livingston, *supra* note 13, at 26–27 & nn. 155–61 (citing and discussing various cases).

B. Modern Animal Cruelty Statutes

Modern animal cruelty laws, like their predecessors, exist in order to promote moral behavior and thereby “improve human character”²⁹ rather than to protect animals.³⁰ These statutes also exist, however, in order to prevent those who harm animals from engaging in other antisocial conduct that is harmful to humans.³¹ The belief that juveniles who act cruelly towards animals will also act cruelly toward humans has existed for several centuries.³² Today, many modern philosophers and theologians “aver that deliberate animal cruelty injures not only the animals but also the human perpetrators because it degrades the human spirit and hardens individuals to the suffering of their fellow humans.”³³ Anecdotal evidence shows that many serial killers and mass murderers, as well as the juveniles involved in various school shootings, abused animals as children.³⁴ More importantly, many studies show that (1) juveniles and adults who abuse animals are more likely to commit violent and nonviolent crimes against humans,³⁵ and

29. Gary L. Francione, *Animals, Property and Legal Welfarism: “Unnecessary” Suffering and the “Humane” Treatment of Animals*, 46 RUTGERS L. REV. 721, 754 (1994); see also Francione, *supra*, at 753–54 (noting that the drafters of the Model Penal Code concluded that the purpose of animal cruelty laws is to deter immoral conduct); Chiesa, *supra* note 12, at 35; Lacroix, *supra* note 27, at 4 (“The protection of animals furthers several human interests including the preservation and promotion of societal morals and the protection of the general welfare of society.”).

30. Francione, *supra* note 29, at 750.

31. Chiesa, *supra* note 12, at 31 (“Perhaps the mainstream belief with regard to animal cruelty statutes is that they are enacted as way of indentifying and neutralizing presumptively dangerous individuals before they engage in acts that are harmful to human beings.”); Francione, *supra* note 29, at 753 (“[M]ost courts agree [that] these statutes are intended to prevent humans from acting in cruel ways toward each other and regard cruel treatment toward animals as leading to cruel treatment toward humans.”); Lacroix, *supra* note 27, at 4 (stating that animal cruelty laws “have been enacted to prevent humans from acting cruelly toward other humans”).

32. Livingston, *supra* note 13, at 45–46 (discussing philosopher John Locke in the seventeenth century; Phillip Pinel, the founder of modern psychiatry, in the early nineteenth century; Sigmund Freud in the early 1900s; and anthropologist Margaret Mead in the 1960s).

33. See Livingston, *supra* note 13, at 6, 13–16.

34. Livingston, *supra* note 13, at 43–44.

35. Livingston, *supra* note 13, at 46–58 (discussing various studies); Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 10–14 (reviewing various studies and noting that “animal abusers are five times more likely to commit violent crimes, such as assault, robbery, or rape; four times more likely to commit property crimes; and three times more likely to be arrested for drug related offenses”); see also Lacroix, *supra* note 27, at 8–9 (reviewing various studies that demonstrate a link between animal cruelty and violence toward humans); Will Coxwell, *The Case for Strengthening Alabama’s Animal Cruelty Laws*, 29 LAW & PSYCHOL. REV. 187, 187–91 (2005) (same); Kristin E. Brimer, *Comment, Justice for Dusty: Implementing Mandatory Minimum Sentences for Animal Abusers*, 113 PENN. ST. L. REV. 649, 652–54 (2008) (same).

Both the U.S. Congress and the Federal Bureau of Investigation (FBI) have acknowledged the correlation between animal cruelty and violence against humans. Joint Congressional Resolution, H. Cong. Res. 286 (105th Cong., 2d Session, 1998), available at <http://bulk.resource.org/gpo.gov/bills/105/hc286ih.txt.pdf> (encouraging law enforcement authorities to be diligent in the enforcement of animal cruelty laws due to this correlation); Coxwell, *supra*, at 189 (stating that the FBI instructs members of its Behavioral Science Unit that the enforcement of animal cruelty laws can assist in the identification of those who commit or may commit violent crimes against humans).

Additionally, as early as 1987, the American Psychiatric Association (APA) identified “physical cruelty to animals” as one of the symptoms that can be used to diagnose conduct disorder in children. See Coxwell, *supra*, at 189 (citing American Psychiatric Ass’n, *Childhood Disorders*, <http://psych.org/>

(2) animal abuse can be an indication of domestic violence and/or child abuse within a family.³⁶ This research suggests that by “identifying and treating” juvenile animal abusers, “society arguably diminishes the likelihood that such abusers will progress to violent acts against humans.”³⁷ It further suggests that imprisoning adults who intentionally abuse animals will prevent those adults from committing crimes against humans.³⁸ Thus, by targeting animal abuse, today’s animal cruelty laws have the potential to protect humans by reducing the overall level of violence and antisocial behavior in society.

public_info/child.cfm); Brimer, *supra*, at 651–52. Conduct disorder “is a psychiatric syndrome occurring in children and adolescents. It is often characterized by prolonged period (at least six months) of aggression, theft, vandalism, violations of rules[,] and/or lying.” Brimer, *supra* at 652 n.18 (citing American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 78-85 (4th ed. 1994)).

In a fairly recent article, Professor Margit Livingston thoroughly examines several studies that have tested the hypothesis that juveniles who abuse animals go on to commit violent crimes against humans as adults. Livingston, *supra* note 13, at 46–55. This hypothesis contends that “children who hurt animals are likely to graduate to more violent acts towards humans as they mature” and is known as the “violence graduation hypothesis.” Livingston, *supra* note 13, at 55. Professor Livingston concludes that “the bulk of social science data suggests a link between childhood animal abuse and adult violence,” but “there are . . . a number of well-conducted studies that could not establish an association between childhood animal abuse and the impulse towards violence.” Livingston, *supra* note 13, at 50, 53.

Professor Livingston then examines a 1999 study by Professor Arnold Arluke. Livingston, *supra* note 13, at 55–58 (discussing Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963 (1999)). According to Professor Livingston, the Arluke study found that the violence graduation hypothesis “could not be supported.” Livingston, *supra* note 13, at 55. The study did conclude, however, “that there was a positive correlation between antisocial behavior (whether violent or nonviolent) and animal cruelty. In other words, criminals were more likely than those in the general population to commit aggressive acts towards animals.” Livingston, *supra* note 13, at 46, 55–57. More specifically, the research showed that animals abusers “were much more likely” to have committed violent and “nonviolent offenses as well, such as property crimes, drug-related offenses, and disorderly conduct.” Livingston, *supra* note 13, at 57. The study did not support the violence graduation theory “because the animal abuse was as likely to occur after the criminal offense as before it.” Livingston, *supra* note 13, at 55. The data, however, did support the theory that animal abusers “often had antisocial behavioral traits that caused them to be involved in all types of criminal activity without any necessary escalation from violent to nonviolent.” Livingston, *supra* note 13, at 57.

Although Professor Livingston acknowledges that the Arluke study, like other studies, has “limitations,” she concludes that the study “reinforces the connection between animal cruelty and antisocial behavior” and therefore supports the view that animal cruelty can be “a useful tool in predicting criminal behavior.” Livingston, *supra* note 13, at 57. Thus, Professor Livingston argues that “[a]t whatever point in the cycle of criminal behavior . . . cruelty to animals is discovered, such cruelty should be taken seriously and suitably punished and treated.” Livingston, *supra* note 13, at 58.

36. Sauder, *supra* note 35, at 10–13 (2000) (discussing several studies which show that animal abusers are more likely to abuse their children and spouses); Coxwell, *supra* note 35, at 187 (“Animal abuse among children is often an indicator of potentially severe psychoses or the result of domestic violence and abuse within the child’s household.”); Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 100–03 (2001) (reviewing several studies that demonstrate the link between family violence and animal abuse); Lacroix, *supra* note 27, at 10–12 (same).

37. Livingston, *supra* note 13, at 42.

38. Livingston, *supra* note 13, at 42.

III. COMMON FEATURES OF MODERN ANIMAL CRUELTY STATUTES

Although animal cruelty laws vary greatly from state to state,³⁹ the typical statute includes (1) “the animals that are covered,”⁴⁰ (2) the mens rea or “perpetrator’s required state of mind,”⁴¹ (3) “the specific acts that are prohibited,”⁴² (4) exemptions,⁴³ and (5) penalties.⁴⁴

A. Animals Covered

Today, most animal cruelty statutes that identify the animals to which they apply provide that the term “animal” means “nonhuman vertebrates or . . . nonhuman vertebrates with the exception of fish.”⁴⁵ These laws cover nonhuman vertebrates because they, unlike invertebrates—insects and “lower” life forms—have nervous systems and therefore can suffer pain.⁴⁶

B. Required State of Mind

The majority of modern animal cruelty laws require the perpetrator to act “intentionally or knowingly” before he can be convicted of animal cruelty.⁴⁷ Some statutes require that the defendant act willfully or with malice for certain crimes, “but most courts interpret these terms in the criminal context to be equivalent to intent.”⁴⁸ Under animal cruelty laws in some states, a defendant can be convicted of acting recklessly or negligently and thereby causing harm to an animal.⁴⁹

C. Specific Acts Prohibited

As one scholar has explained, where the use of an animal “generates economic and social benefit,” then that use is not prohibited under animal cruelty laws.⁵⁰ Where the use of an animal provides no societal benefit and merely satisfies “sadistic impulses,” however, the conduct is forbidden.⁵¹

39. Livingston, *supra* note 13, at 30; Pamela D. Frasch et al., *Essay, State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 70 (1999).

40. See Livingston, *supra* note 13, at 30.

41. See Livingston, *supra* note 13, at 30.

42. See Livingston, *supra* note 13, at 30.

43. Frasch et al. *supra* note 39, at 70.

44. See Livingston, *supra* note 13, at 30.

45. Livingston, *supra* note 13, at 30.

46. See Beth Ann Madeline, *Cruelty to Animals: Recognizing Violence Against Nonhuman Victims*, 23 U. HAW. L. REV. 307, 323–25 (2000) (noting that “science tends to confirm that vertebrate animals do suffer from pain,” but “there is no generally accepted consensus that insects and other ‘lower’ animal life forms suffer”).

47. Livingston, *supra* note 13, at 31.

48. Livingston, *supra* note 13, at 31.

49. Livingston, *supra* note 13, at 31–32. Sometimes, animal cruelty laws “seem to set a standard of strict liability. For example, laws banning dog fighting, cockfighting, and the like are often phrased as absolute prohibitions without regard to the actor’s state of mind.” Livingston, *supra* note 13, at 31–32.

50. Francione, *supra* note 29, at 768.

51. Francione, *supra* note 29, at 768.

Thus, modern animal cruelty statutes typically prohibit “acts that inflict unnecessary pain and suffering on animals,” including cruel mistreatment, torture, mutilation, [and] maiming.”⁵² Additionally, most animal cruelty laws criminalize “significant acts” of animal neglect⁵³ and the “unjustified killing” of animals.⁵⁴

D. Exemptions

Today, the typical animal cruelty statute exempts one or more activities,⁵⁵ including (1) “commonly accepted animal husbandry practices, . . . such as dehorning, castrating, and branding”; (2) the slaughtering of animals for food; (3) “traditional veterinary practices”; (3) animal research; (4) “hunting, fishing and trapping”; (5) the “killing of pests, including insects, vermin, rodents, and sometimes birds”; and (6) the use of animals for entertainment in rodeos, zoos, and circuses.⁵⁶ Although exempted activities fit with the definition of “cruelty” under most statutes, they do not violate the law “because they are deemed by society to be necessary or justifiable practices that outweigh the interests of the animals and serve to promote the general public welfare.”⁵⁷ Thus, by including exemptions in animal cruelty laws, legislatures have recognized the societal decision to permit the exempted activities as long as they are beneficial to humans.⁵⁸

E. Penalties

The penalties for animal cruelty, like animal cruelty statutes in general, vary greatly from state to state.⁵⁹ Although only seven states made animal cruelty a felony in the early 1990s,⁶⁰ legislatures across the country have amended their animal cruelty laws to include felony penalties based on the empirical evidence which demonstrates that animal abusers tend to

52. Livingston, *supra* note 13, at 33. Additionally, animal cruelty laws “often forbid certain specific behavior that may cause unnecessary pain and suffering to animals,” such as “animal fighting and transportation of an animal in an inhumane way.” Livingston, *supra* note 13, at 33.

53. Livingston, *supra* note 13, at 33, 34. Essentially, neglect laws “impose a legal duty on the custodian of animals to provide them with the necessities of life.” Livingston, *supra* note 13, at 34. Furthermore, many states “forbid the abandonment of any animal without arranging for someone to take care of it.” Livingston, *supra* note 13, at 35.

54. Livingston, *supra* note 13, at 35.

55. Frasch et al., *supra* note 39, at 75.

56. Frasch et al., *supra* note 39, at 76; see also Lacroix, *supra* note 27, at 14–15; Darian M. Ibrahim, *The Anticruelty Statute: A Study in Animal Welfare*, 1 J. ANIMAL L. & ETHICS 175, 180 (2006).

57. Lacroix, *supra* note 27, at 14.

58. Ibrahim, *supra* note 56, at 182. Thus, for example, “when legislatures include exemptions for food production, they are not acting in a counter-majoritarian fashion. Rather, they are implementing widely held societal beliefs that meat-eating is acceptable, and that meat, like any commodity, should be affordable as possible.” Ibrahim, *supra* note 56, at 185. For a discussion of other reasons why exemptions are included in animal cruelty statutes, see Ibrahim, *supra* note 56, at 184–88.

59. Livingston, *supra* note 13, at 36.

60. Stephan K. Otto, *State Animal Protection Laws—The Next Generation*, 11 ANIMAL L. 131, 132 (2005).

engage in criminal conduct that harms humans.⁶¹ Today most states, the District of Columbia, Puerto Rico, and the Virgin Islands make certain types of animal cruelty felony offenses.⁶² Animal cruelty is not usually treated as a felony, however, unless it is egregious and the perpetrator acts intentionally or maliciously.⁶³ Additionally, some states treat only subsequent offenses as felonies, while others provide that only the abuse of “companion animals”—typically cats and dogs—warrants felony status.⁶⁴

Regardless of whether animal abuse is treated as a misdemeanor or a felony, however, the maximum prison term available is often one year, especially for a first offense, and may be as light as thirty days or six months. For first offenses with a low degree of criminal culpability, the maximum allowable fines “range from \$100 to \$500.” In some states, the “maximum prison terms and fines reach[] as high as ten years and \$150,000 respectively” for “subsequent or aggravated offenses.”⁶⁵ In addition, several states statutes either permit or require a court to order additional remedies in animal cruelty cases, such as (1) seizure and forfeiture of the animal, (2) payment by the defendant of the costs of caring for the seized animal and/or restitution to the owner of an abused animal, (3) counseling for the defendant, (4) “restrictions on future pet ownership,” and (5) community service.⁶⁶

IV. PERTINENT MISSISSIPPI ANIMAL CRUELTY LAWS⁶⁷ AND THEIR COMPARISON TO MODERN ANIMAL CRUELTY STATUTES

A. Misdemeanor Statutes

Mississippi has several pertinent misdemeanor animal cruelty statutes. The general prohibition on animal cruelty is found in Mississippi Code Annotated section 97-41-1. This statute provides that it is a misdemeanor to do the following to “any living creature”: (1) “override, overdrive, [or] overload”; (2) “torture, torment, [or] unjustifiably injure”; (3) “deprive of necessary sustenance, food or drink”; or (4) “cruelly beat or needlessly mutilate.”⁶⁸ Under the statute, it is also a misdemeanor to “cause or procure” any of the above conduct, as well as to “cause or procure” the needless

61. See Frasch et al., *supra* note 39, at 70; Richard L. Cupp, Jr., *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animals' Property Status*, 60 SMU L. Rev. 3, 39-40 (2007) (stating that legislatures “concern for human welfare has . . . served as a primary motivator for the enhancement of animal cruelty laws to felony status in many states since the 1990s”).

62. See The Humane Society of the United States, *supra* note 1.

63. See Otto, *supra* note 60, at 137.

64. Otto, *supra* note 60, at 137; see also Chiesa, *supra* note 12, at 10 (“Another salient feature of modern anti-cruelty statutes is the tendency to afford heightened legal protection to dogs and cats.”).

65. Livingston, *supra* note 13, at 37-38.

66. Livingston, *supra* note 13, at 38; see also Frasch et al., *supra* note 39, at 70-74.

67. Mississippi has several animal cruelty statutes that will not be addressed in this Article. For example, at least three Mississippi statutes prohibit various animal fighting activities. MISS. CODE ANN. §§ 97-41-11, 97-41-18, 97-41-19. Mississippi also prohibits the poisoning of certain animals, including dogs, MISS. CODE ANN. § 97-41-17, and the harassment of guide dogs, MISS. CODE ANN. § 97-41-21.

68. MISS. CODE ANN. § 97-41-1.

killing of any animal.⁶⁹ The maximum penalty for a defendant convicted under section 97-41-1 is six months in county jail and/or a \$1000 fine.⁷⁰

Mississippi also has separate statutory provisions that make it a misdemeanor to (1) carry an animal in a cruel or inhumane manner,⁷¹ (2) confine an animal without sufficient food and water,⁷² or (3) "unjustifiably neglect or refuse to furnish [an animal] necessary sustenance, food, or drink."⁷³ A defendant who is convicted of one of these offenses can be fined anywhere from \$10 to \$100, imprisoned from ten to 100 days, or both.⁷⁴

Finally, under Mississippi Code Annotated section 97-41-16, it is a misdemeanor in Mississippi to "maliciously, either out of a spirit of revenge or wanton cruelty" or "mischievously kill, maim or wound, or injure any dog or cat, or cause any person to do the same."⁷⁵ The maximum penalty under this "companion animal" statute is a \$1000 fine or a six-month prison sentence, but not both.⁷⁶ In addition, the defendant must pay restitution to the animal's owner.⁷⁷

B. Felony Statutes

Although it is a misdemeanor in Mississippi to maliciously or mischievously kill, maim, wound, or injure a dog or cat, it is a felony to commit the same crime against livestock.⁷⁸ Specifically, the "livestock statute" provides that it is a felony to "maliciously, either out of a spirit of revenge or

69. *Id.*

70. Section 97-41-1 does not define the penalty for conviction under the statute. However, section 99-19-31 provides that where a statute creates an offense but does not prescribe the penalty, the offense "shall be punished by fine of not more than one thousand dollars (\$1,000.00) and imprisonment in the county jail not more than six (6) months, or either." MISS. CODE ANN. § 99-19-31.

71. MISS. CODE ANN. § 97-41-5 ("If any person shall carry, or cause to be carried by hand or in or upon any vehicle or other conveyance, any creature in a cruel or inhuman manner, he shall be guilty of a misdemeanor.").

72. MISS. CODE ANN. § 97-41-7 ("If any person shall confine, or cause to be confined, in any stable, lot, or other place, any living creature, without supplying the same during such confinement with a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor.").

73. MISS. CODE ANN. § 97-41-9 ("If any person be the owner or have the custody of any living creature and unjustifiably neglect or refuse to furnish it necessary sustenance, food, or drink, he shall be guilty of a misdemeanor.").

74. Section 97-41-13 provides that any person who is convicted under sections 97-27-7, 97-41-3, 97-41-5, 97-41-7, 97-41-9, or 97-41-11 "shall . . . be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned in the county jail not less than ten days nor more than one hundred days or both." MISS. CODE ANN. § 97-41-13.

75. MISS. CODE ANN. § 97-41-16(1).

76. *Id.*

77. *Id.* at § 97-41-16(2). "Restitution" is defined as "the current replacement value" of the dog or cat and "the actual veterinarian fees, special supplies, loss of income and other costs incurred" due to the statutory violation." *Id.*

78. MISS. CODE ANN. § 97-41-15(1). It is also a felony in Mississippi to "without just cause, purposely kill[] or injure[] any public service animal." MISS. CODE ANN. § 97-41-23(2). A "public service" animal is defined as "any animal trained and used to assist a law enforcement agency, public safety entity or search and rescue agency." *Id.* at § 97-41-23(3). A defendant convicted under this statute is subject to a maximum fine of \$5,000, a prison term of five years, or both. *Id.* at § 97-41-23(2).

wanton cruelty” or “mischievously kill, maim or wound, or injure any livestock, or cause any person to do the same.”⁷⁹ The term “livestock” is defined to mean “horses, cattle, swine, sheep[,] and other domestic animals produced for profit.”⁸⁰

The language in section 97-41-15(1) is identical to the language in section 97-41-16(1) except that section 97-41-15(1) pertains to livestock and contains a felony penalty, while section 97-41-16(1) pertains to dogs and cats and contains only a misdemeanor penalty. A defendant convicted of maliciously harming a farmed animal under the livestock statute faces twelve months to five years in prison *and* a fine of \$1500 to \$10,000.⁸¹ In contrast, a defendant convicted of committing the same exact same crime against a dog or cat faces at most a \$1000 fine *or* a prison sentence of six months.⁸²

C. Civil Remedies

Section 97-41-2 of the Mississippi Code permits any court in Mississippi to order an animal seized “upon a finding of probable cause to believe said animal is being cruelly treated, neglected[,] or abandoned.”⁸³ This statute is applicable to cats and dogs as well as “any . . . exotic animal, . . . horse, mule, jack[,] or jennet,”⁸⁴ and it does not require an individual to be convicted of animal cruelty before an animal can be seized. Under section 97-41-2(2), the owner of a seized animal has five days from the date of the seizure to request a hearing “to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal.”⁸⁵ Within three days of requesting a hearing, the owner must post a bond or security that is “sufficient to repay all reasonable costs . . . to provide for the animal’s care.”⁸⁶ If the owner does not post the bond or security, he forfeits the animal.⁸⁷ Furthermore, if the court finds that the animal’s owner “is unable or unfit to adequately provide for the animal,” the court can order permanent forfeiture of the animal.⁸⁸ Finally, “the court may order that other animals in the custody of the owner that were

79. *Id.* § 97-41-15(1).

80. *Id.* § 97-41-15(3).

81. *Id.* § 97-41-15(1). In addition, the defendant must make restitution to the animal’s owner. *Id.* § 97-41-15(2). The definition of “restitution” is “the current replacement value of such loss and/or the actual veterinarian fees, special supplies, loss of income and other costs incurred” due to the statutory violation. *Id.* It is unclear why section 97-41-16(2) (dogs and cats) defines restitution to mean “the current replacement value” of the lost animal *and* “actual veterinarian fees, special supplies, loss of income[,] and other costs incurred” due to the statutory violation, but section 97-41-15(2) (livestock) defines restitution to mean “the current replacement value” of the lost animal *and/or* “actual veterinarian fees, special supplies, loss of income[,] and other costs incurred” due to the statutory violation.

82. *See* § 97-41-16(1).

83. § 97-41-2(1).

84. *Id.* at § 97-41-2(9).

85. *Id.* at § 97-41-2(2).

86. *Id.*

87. *Id.*

88. *Id.* at § 97-41-2(5).

not seized be surrendered” and restrict the individual’s future ownership of animals.⁸⁹

*D. Comparison of Mississippi’s Animal Cruelty Laws
with Modern Animal Cruelty Statutes*

1. Animals Covered

Most modern animal cruelty statutes apply only to nonhuman vertebrates or nonhuman vertebrates with the exception of fish,⁹⁰ but Mississippi’s general animal cruelty statute more broadly covers “any living creature.”⁹¹ Laws that contain such a broad definition of the animals covered are problematic because they include “invertebrates and other lower animals,” as well as vertebrates, within their scope.⁹² By doing so, they “tend to trivialize the crime of animal cruelty by equating the swatting of a housefly with the burning of a cat” and “may end up criminalizing actions that are viewed as socially acceptable, such as the extermination of insect pests, the use of worms as bait, and the capture of butterflies for a collection.”⁹³

2. Required State of Mind

The majority of modern animal cruelty laws require the defendant to act with a high degree of criminal culpability before he can be convicted of animal cruelty.⁹⁴ Mississippi’s general animal cruelty statute, however, lacks a mens rea requirement altogether.⁹⁵ Accordingly, in 2001 a plurality of the Mississippi Supreme Court concluded in *Davis v. State*⁹⁶ that section 97-41-1 is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because it fails to define the appropriate state of mind that the prosecution must prove to secure a conviction under the statute.⁹⁷ The *Davis* court thus reversed the defendant’s conviction under section 97-41-1 because he did not have fair notice

89. *Id.* at § 97-41-2(6).

90. See *supra* text accompanying note 45.

91. See Miss. CODE ANN. § 97-41-1.

92. Livingston, *supra* note 13, at 31.

93. Livingston, *supra* note 13, at 31.

94. See *supra* text accompanying note 47.

95. See § 97-41-1.

96. 806 So. 2d 1098 (Miss. 2001).

97. *Id.* at 1102, 1004. In *Davis*, the defendant owned a horse that fell and broke its leg. *Id.* at 1099. According to the defendant, a veterinarian recommended that he either take the horse to a veterinary school for treatment or keep the weight off of the horse’s foot and let the break heal on its own. *Id.* at 1100. Although the defendant was aware that the horse would be left with a permanent limp if it was not treated by a veterinarian, he chose to let the break heal on its own. *Id.*

Several months later, the defendant was reported to the Pearl River County Society for the Prevention of Cruelty to Animals and ultimately was convicted of animal cruelty under section 97-41-1. *Id.* at 1099, 1100. On appeal, a plurality of the Mississippi Supreme Court concluded that section 97-41-1 is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because it fails to “define the appropriate *mens rea* of the accused.” *Id.* at 1102, 1104. Thus, the defendant did not have fair notice from the statute that his decision not to take his horse to a veterinarian violated the statute. *Id.* at 1102, 1103.

that his treatment of his animal violated the statute.⁹⁸ This statute remains problematic today because it has not been amended to include a mens rea since the *Davis* case was decided.⁹⁹

In contrast to the general animal cruelty statute, Mississippi's companion animal and livestock statutes are similar to other states' animal cruelty laws in terms of the perpetrator's required state of mind. Both statutes contain a mens rea requirement and both require a high degree of criminal culpability: The defendant must act "maliciously, either out of a spirit of revenge or wanton cruelty," or "mischievously."¹⁰⁰ Furthermore, the Mississippi Supreme Court has held that the companion animal statute, unlike the general animal cruelty statute, is not unconstitutionally vague because it fails to define "spirit of revenge" and "wanton cruelty."¹⁰¹

3. Specific Acts Prohibited

Like most states, Mississippi prohibits acts that inflict unnecessary pain and suffering on animals, as well as significant acts of neglect and unjustified killing.¹⁰² Mississippi's animal cruelty laws, however, also unnecessarily prohibit nineteenth century uses of animals and contain overlapping prohibitions. For example, the general animal cruelty statute defines

98. *Id.* at 1104. Justice McRae concurred in the result and thereby created a majority for reversing the defendant's conviction. *See id.* at 1099, 1104. Because Justice McRae did not write an opinion, however, it is unclear whether he agreed with the plurality that the statute is unconstitutional but did not agree with the plurality's reasoning as to why the statute is unconstitutional or if he believed that the defendant's conviction should be reversed for some other reason entirely.

99. Because the opinion in *Davis* is a plurality opinion, the current status of section 97-41-1 is somewhat unclear. The *Davis* plurality indicated that a defendant cannot be convicted under the statute unless he acts with malice. *See id.* at 1103. Thus, the plurality said that if the trial court had instructed the jury to convict only if it found that the defendant acted with malice, then the defendant's "reasons for trying to mend the horse's leg himself would have been properly considered by the jury. If the jury had found that [the defendant] acted without malice, then the jury would have been obligated to acquit [the defendant]." *Id.* This language suggests that the *Davis* plurality read a mens rea requirement of malice into the statute, and therefore prosecution under the statute may still be possible as long as the jury is properly instructed as to the mens rea requirement.

100. Miss. CODE ANN. §§ 97-41-16(1), 97-41-15(1). The Mississippi Supreme Court has indicated that "malice" is the highest degree of criminal culpability available under the law. *Davis v. State*, 806 So.2d 1098, 1102 (2001) (citing Sonja A. Soehnel, Annotation, *What Constitutes Offense of Cruelty to Animals—Modern Cases*, 6 A.L.R. 5th 753, 755 (1992)).

101. *Hill v. State*, 853 So. 2d 100 (Miss. 2003). In *Hill*, the defendant argued that the companion animal statute, section 97-41-16(1), is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because "it, *inter alia*, does not define 'spirit of revenge,' does not indicate whether the spirit of revenge must be directed toward the dog or its owner, and fails to define what constitutes wanton cruelty in killing a dog." *Id.* at 102–03. The defendant in *Hill* "readily admitted that he shot [a dog] twice in the head with a 16-gauge shotgun and that [the dog] was posing no threat whatsoever at the time. In addition, [the defendant] dragged [the dog's] corpse down a paved road before disposing of it." *Id.* at 104.

The Mississippi Supreme Court found that the defendant shot the dog "without provocation and not in the exercise of self defense" and concluded that "an ordinary person giving a fair reading of [section] 97-41-6" would be aware that this conduct violated the statute. *See id.* According to the court, because the defendant was not provoked and did not act in self defense, his conduct "clearly [fell] within the ambit of 'maliciously,' 'mischievously,' and 'wanton cruelty'" under section 97-41-6. *Id.* The court thus held that the statute is "not unconstitutionally vague" and affirmed the defendant's "conviction and sentence for animal cruelty." *Id.*

102. *See, e.g.,* Miss. CODE ANN. §§ 97-41-1, 97-41-5, 97-41-7, 97-41-9, 97-41-15, 97-41-16.

animal cruelty to include the “overriding, overdriving[,] or overloading” of any living creature.¹⁰³ This nineteenth-century language “reflects historical concern for those animals most closely associated with humans (beasts of burden) during a period when motorized transportation was unavailable.”¹⁰⁴ Today, however, such definitions of animal cruelty “inadequately represent current uses of animals and contemporary society’s attitude towards their welfare.”¹⁰⁵ Moreover, the inclusion of such outdated terms in animal cruelty statutes makes it difficult for those charged with enforcing the laws to know precisely what conduct falls within their ambit.¹⁰⁶

Additionally, Mississippi’s animal cruelty laws contain redundant provisions. Specifically, Mississippi’s general animal cruelty statute prohibits depriving an animal of “necessary sustenance, food or drink.”¹⁰⁷ Mississippi also has separate statutory provisions that prohibit confining an animal without sufficient food and water¹⁰⁸ and “unjustifiably neglect[ing] or refus[ing] to furnish [an animal] “necessary sustenance, food or drink.”¹⁰⁹ Like the use of outdated language, overlapping provisions make it difficult to know exactly what conduct is proscribed by the statutes.

4. Exemptions

Mississippi’s animal cruelty laws do not contain the typical exemptions, such as for animal husbandry, found in many modern animal cruelty laws.¹¹⁰ This does not mean that Mississippi does not exempt any animal practices from its animal cruelty laws, however. Even when a statute does not contain specific exemptions, individuals who engage in socially acceptable animal practices will not be prosecuted for or convicted of animal cruelty because either a court will read an exemption into the statute¹¹¹ or it will be impossible for a prosecutor to establish the required mens rea.¹¹²

103. See MISS. CODE ANN. § 97-41-1; see also Livingston, *supra* note 13, at 33.

104. Amie J. Dryden, *Overcoming the Inadequacies of Animal Cruelty Statutes and the Property-Based View of Animals*, 38 IDAHO L. REV. 177, 181-82 (2001) (quoting DAVID S. FAVRE & MURRAY LORING, *ANIMAL L.* 124 (1983)).

105. Lacroix, *supra* note 27, at 17.

106. Lacroix, *supra* note 27, at 17.

107. MISS. CODE ANN. § 97-41-1.

108. § 97-41-7.

109. § 97-41-9.

110. See *supra* text accompanying notes 55–56. Some of Mississippi’s animal fighting statutes do contain specific exemptions, however. For example, section 97-41-18 prohibits various hog and canine fighting activities. This statute exempts “any competitive event in which canines trained for hunting or herding activities are released in an open or enclosed area to locate and corner hogs, commonly referred to as a ‘bay event,’ and in which competitive points are deducted if a hog is caught and held.” § 97-41-18(4). This statute also contains an exemption for “the lawful hunting of hogs with canines or the use of canines for management, farming or herding of which are livestock or the private training of canines for the purposes enumerated in this subsection provided that such training is conducted for the field using accepted dog handling and training practices and is not in violation of the provisions of subsection (1) of this section.” *Id.* Similarly, section 97-41-19 prohibits various dogfighting activities. This statute exempts the use of dogs “in the management of livestock” and “lawful hunting,” § 97-41-19(4)(a), (b), as well as the “training of dogs for any purpose not prohibited by law,” *id.* § 97-41-19(4)(c).

111. See Ibrahim, *supra* note 56, at 191–92.

112. Gary L. Francione, *Introduction: Animals As Property*, 2 ANIMAL LAW 1, 3 (1996)

5. Penalties

The most interesting (and troubling) aspect of the penalty structure under Mississippi's animal cruelty laws is that it is a misdemeanor to maliciously or mischievously harm a dog or a cat,¹¹³ but it is a felony to commit the same crime against livestock and "other domestic animals produced for profit."¹¹⁴ Accordingly, the maximum penalty under the companion animal statute is much less severe than it is under the livestock statute.

Given the language of the statutes, the likely reason for the disparity between them is that the animals covered by the livestock statute have economic value, while most dogs and cats are not produced for profit. The view that only commercially valuable animals warrant heightened legal protection can be traced back to the early nineteenth century and is outdated.¹¹⁵ Today, forty-six states have recognized that animal cruelty laws serve important purposes beyond the protection of property and therefore have made intentional acts of cruelty committed against cats and dogs a felony offense.¹¹⁶ Thus, Mississippi is one of only four states that continues to classify the intentional abuse of cats and dogs as merely a misdemeanor.¹¹⁷

Although Mississippi law permits the imposition of only minimal prison terms and fines for intentional cruelty to most animals, it does provide some additional remedies. For example, the companion animal and livestock statutes require the defendant to pay restitution to the owner of the harmed animal.¹¹⁸ Moreover, Mississippi law does contain a civil forfeiture statute, section 97-41-2, that affords some protection to abused animals. Most forfeiture provisions apply only if the owner of an abused animal is convicted of animal cruelty,¹¹⁹ but section 97-41-2 does not require a conviction. Under this statute, a law enforcement official can remove an abused animal from its environment without being concerned about "the possibility that the owner may end up with a criminal record as a result of their actions."¹²⁰ Regardless of whether the animal's owner is ever charged with or convicted of animal cruelty, a court can order the permanent forfeiture of the abused animal, require the animal's owner to

113. MISS. CODE ANN. § 97-41-16(1).

114. See MISS. CODE ANN. § 97-41-16(1), (3).

115. See *supra* text accompanying notes 13–22.

116. See The Humane Society of the United States, *supra* note 1. The District of Columbia, Puerto Rico, and the Virgin Islands also treat intentional animal abuse as a felony. See *id.*

117. See The Humane Society of the United States, *supra* note 1. The other three states are Idaho, North Dakota, and South Dakota. *Id.* Guam also treats intentional animal cruelty as a misdemeanor. *Id.*

118. MISS. CODE ANN. §§ 97-41-16(2), 97-41-15(2).

119. Dryden, *supra* note 104, at 209 (stating that most "forfeiture provisions . . . are generally conditioned upon the conviction of the owner," but "[a] few states have implemented alternatives in the form of civil forfeiture proceedings and civil hearings to determine who shall have possession of a cruelly treated animal"); cf. Frasch et al., *supra* note 39, at 74 (stating that "[m]any states" have forfeiture provisions in their civil codes).

120. See Dryden, *supra* note 104, at 209.

forfeit other animals in his care, and restrict the owner's future ownership of animals.¹²¹

V. SENATE BILL NO. 2623

A. *The Structure of Senate Bill No. 2623*

In an effort to modernize Mississippi's animal cruelty laws, Senator Billy Hewes (R-Gulfport) introduced Senate Bill No. 2623 during the 2010 legislative session.¹²² Senate Bill No. 2623 attempted to accomplish several goals. First, it repealed Mississippi's general animal cruelty statute, section 97-41-1, and the separate statutes pertaining to the failure to provide animals with food and water, sections 97-41-5 and 97-41-7.¹²³ It replaced these statutes with a new general animal cruelty statute, which made it a misdemeanor to "knowingly or with criminal negligence torment, unjustifiably injure, deprive of necessary sustenance, food or drink; or cruelly beat or mutilate . . . any living vertebrate creature, except human beings and fish."¹²⁴ The maximum sentence under this provision was one year in prison, a fine of up to \$1000, or both.¹²⁵

Second, Senate Bill No. 2623 repealed Mississippi's current companion animal statute, section 97-41-16, which makes it a misdemeanor to maliciously or mischievously kill or harm a dog or cat.¹²⁶ Using the current livestock statute as a model, the bill created a new companion animal statute under which it was a felony to "with malice torture, mutilate, maim, burn, starve, disfigure or kill any domesticated dog or cat."¹²⁷ The penalty for a conviction under this statute was one to five years in prison and a fine of \$1500 to \$10,000.¹²⁸ The bill required the court to order restitution to the owner of the dog or cat, as does the current statute,¹²⁹ and added a new provision that required the court to "order that restitution be made to all law enforcement agencies, animal control, or humane societies for . . . costs directly related to the case."¹³⁰ Additionally, in contrast to the current companion animal statute, the proposed law gave the court discretion to require that the defendant, upon conviction, (1) undergo "[p]sychiatric or psychological evaluation, . . . counseling or treatment; (2) forfeit "any future right to own or care for any animal; and (3) be subject to "[p]eriodic

121. See MISS. CODE ANN. § 97-41-2(5), (6).

122. S. 2623, Reg. Sess. (Miss. 2010).

123. *Id.* § 5.

124. *Id.* § 1. This section also made it a misdemeanor to "cause or procure to be tortured, unjustifiably injured, tormented, or deprived of necessary sustenance, food or drink; or to be cruelly beaten or mutilated or killed, any living vertebrate creature, except human beings and fish." *Id.*

125. *Id.*

126. *Id.* § 5.

127. See *id.* § 2(1); see also MISS. CODE ANN. § 97-41-15(1).

128. S. 2623, Reg. Sess. § 2(1) (Miss. 2010).

129. *Id.* § 2(3)(a). The definition of "restitution" in S.B. No. 2623 was identical to the definition of the term in the current companion animal statute: "The measure for such restitution in money shall be the current replacement value of such loss and the actual veterinarian fees, special supplies, loss of income and other costs incurred." § 97-41-16(2).

130. S. 2623, Reg. Sess. § 2(3)(b) (Miss. 2010).

unannounced visits . . . by a humane officer to inspect the care and condition of any animal permitted by the court to remain” with the defendant.¹³¹

Third, Senate Bill No. 2623 created a new statute that specifically exempted many activities from falling within the purview of Mississippi’s animal cruelty laws.¹³² Specifically, this section exempted all of the activities that modern animal cruelty statutes typically exempt: commonly accepted animal husbandry practices; slaughtering animals for food; traditional veterinary practices; animal research; hunting, fishing, and trapping; pest control; and the use of animals for entertainment in rodeos, zoos, and circuses.¹³³ The proposed statute also made it clear that an individual cannot be prosecuted under Mississippi’s animal cruelty laws for engaging in certain other activities, including (1) “[d]efending himself or herself or another person from physical or economic injury being threatened or caused by an animal”; (2) [i]njuring or killing . . . an unconfined animal of the person’s property if the unconfined animal is reasonably believed to constitute a threat of physical injury or damage to any animal under the care of control of the person”; or (3) “any conduct which is otherwise permitted under the laws of this state or of the United States.”¹³⁴ Finally, Senate Bill No. 2623 created a set of definitions for the terms “maim,” “mutilate,” “torment,” and “torture.”¹³⁵

Senate Bill No. 2623 modernized and improved Mississippi’s animal cruelty laws in several ways. First, the bill appropriately narrowed and clarified the range of animals covered by the general animal cruelty statute by changing the phrase “any living creature” to “any living vertebrate creature, except human beings and fish.” Second, it added a mens rea requirement to the proposed general animal cruelty statute by requiring a prosecutor to prove that a defendant acted “knowingly or with criminal negligence” in order to obtain a conviction for animal cruelty. Thus, the proposed new general animal cruelty statute does not suffer from the flaw that led a plurality of the Mississippi Supreme Court to conclude that the current general animal cruelty statute is unconstitutionally vague.¹³⁶ The bill also simplified and clarified the required mens rea under the companion animal statute by providing that the defendant must act with “malice”

131. *Id.* § 2(3)(c)(i)-(iii).

132. *Id.* § 3.

133. *Id.*

134. *Id.* § 3(1)(a),(b),(n).

135. *Id.* § 4. “Maim” was defined as “to injure so severely as to cause lasting damage.” *Id.* § 4(a). “Mutilate” was defined as “to seriously wound, injure, maim or disfigure an animal by irreparably damaging the body parts of the animal or to render useless any part of the body of the animal.” *Id.* § 4(b). “Torment” was defined as “the infliction of extreme pain or agony.” *Id.* § 4(c). “Torture” was defined as “the infliction of inhumane treatment or gross physical abuse to a dog or cat meant to cause the dog or cat intense or prolonged pain or serious physical injury, or thereby causing death to the dog or cat, with the intent of increasing or prolonging the pain of the dog or cat.” *Id.* § 4(d). The proposed statute stated that these definitions were applicable to all of the statutes in chapter 97, not just the proposed companion animal statute, “unless the context clearly requires otherwise.” *Id.* § 4.

136. See *supra* notes 95–99 and accompanying text.

instead of acting “maliciously, out of a spirit of revenge or wanton cruelty,” or “mischievously.”¹³⁷

Third, with regard to the conduct covered, the proposed statute deleted the outdated terms “override, overdrive, overload” from the definition of animal cruelty and repealed the redundant statutes pertaining to the provision of adequate food and water.¹³⁸ Fourth, the proposed bill added a list of exemptions similar to those found in many other states’ animal cruelty laws.¹³⁹ If the bill had passed, those who use animals in various socially acceptable activities would no longer have had to rely on the courts to read exemptions into the laws or depend on the prosecutor’s inability to prove the required mens rea in order to avoid conviction.¹⁴⁰

Finally, the proposed general animal cruelty statute increased the maximum penalty for a conviction of animal cruelty from six months in county jail, a \$1000 fine, or both to one year in jail, a \$1000 fine, or both.¹⁴¹ Most importantly, the bill modernized the companion animal statute by making malicious cruelty to cats and dogs a first-offense felony, increasing the maximum penalty from six months in jail or a \$1000 fine to five years in jail and a \$10,000 fine.¹⁴² As other states have done, the proposed law required the defendant to make restitution and gave the court discretion to impose several additional remedies upon conviction of the defendant.¹⁴³

B. Senate Success and House Failure

Mississippi Fighting Animal Cruelty Together (MS-FACT), a “grass-roots, nonpartisan organization” and one of the principal proponents of Senate Bill No. 2623,¹⁴⁴ gathered the signatures of 25,000 Mississippians who supported the enactment of a first-offense felony for malicious cruelty to cats and dogs.¹⁴⁵ The bill was supported by the Mississippi Law Enforcement Officers’ Association, the Mississippi Association of Chiefs of Police, and the Mississippi Psychiatric Association.¹⁴⁶ Michael Guest, the district

137. S.B. 2623, § 2.

138. *Id.* at § 5.

139. *Id.* at § 3; *see also* Frasch, *supra* note 39, at 75–79.

140. *See supra* text accompanying notes 111–12.

141. S.B. 2623, § 1.

142. *Id.* at § 2.

143. *Id.*

144. MS-FACT NEWSL. (Miss. Fighting Animal Cruelty Together (MS-FACT)), Jan./Feb. 2010; Opinion, *Animal Cruelty Bill Dies in Committee*, HATTIESBURG AM., Mar. 14, 2010, available at 2010 WLNR 5415090. American Humane also supported Senate Bill No. 2623. Tracy Coppola, *Mississippi Fails to Become Forty-seventh State with a Felony Animal Cruelty Law*, DC INSIDER – AN UP-CLOSE LOOK AT AMERICAN HUMANE’S PUBLIC POLICY WORK, at 15–17, available at <http://www.ms-fact.org/linked/dcincider27%2011.pdf>.

145. *See* Gary Pettus, *Severe-cruelty Laws Sought*, THE CLARION-LEDGER, Jan. 22, 2010, available at 2010 WLNR 1402380.

146. MS-FACT NEWSL. (Miss. Fighting Animal Cruelty Together (MS-FACT)), Mar./Apr. 2010. Individual law enforcement officers also publicly voiced their support for tougher animal cruelty laws. For example, Lee County Sheriff Jim Johnson stated, “We deal with animal cruelty a lot more than you’d think about, but we’re not able to penalize it much. [Senate Bill No. 2623] will put a little more bite in it. This law will make you think twice before you do something.” Emily Le Coz & Danza Johnson, *Animal Cruelty Bill Gets Mixed Feeling*, N.E. MISS. DAILY J., Feb. 12, 2010, available at 2010

attorney for Madison and Rankin Counties, also publicly supported the bill, stating, "Right now, the punishment doesn't fit the crime."¹⁴⁷ Senate Bill No. 2623 had multiple sponsors¹⁴⁸ and overwhelmingly passed the Senate on February 4, 2010, by a vote of 47-1.¹⁴⁹

After the bill reached the House on February 8, 2010, Speaker William J. ("Billy") McCoy (D-Rienzi) "double-referred" it to both the Judiciary B and Agriculture Committees.¹⁵⁰ As a result, the bill's passage was immediately in jeopardy because a double-referred bill must pass two committees instead of one and therefore is less likely to make it to the floor for a vote.¹⁵¹ Ultimately, Senate Bill No. 2623 died in the House Agriculture Committee when Chairman Greg Ward (D-Ripley) failed to bring it up for action.¹⁵² Ward suggested that he opposed the bill at least in part because it would permit the prosecution of an individual who harmed or killed a

WL 3066719. Similarly, Lamar County Sheriff Danny Rigel stated, "If the law had a little more teeth and would deter someone from doing it in the future, I wouldn't have a problem with that." *Proposed Bills Could Lead to Felony Animal Cruelty Charge*, HATTIESBURG AM., Jan. 21, 2010.

147. *Severe Cruelty Laws Sought*, THE CLARION-LEDGER, Jan. 22, 2010, available at 2010 WLNR 1402380. Furthermore, Lee County Justice Court Judge Rickey Thompson, who often deals with animal cruelty in his court, indicated that Senate Bill No. 2623 would "make people realize if they knowingly and maliciously harm an animal they will be severely punished and not just slapped on the wrist." See N.E. MISS. DAILY J., *supra* note 146.

148. Senate Bill No. 2623 was authored by Senator Hewes (R) and co-authored by Senators Baria (D), Burton (R), Butler (D), Chassanoil (R), Dawkins (D), Dearing (D), Frazier (D), Jackson (11th) (D), Jackson (32nd) (D), Jones (D), Jordan (D), King (R), McDaniel (R), Tollison (D), Walls (D), Ward (R), and Yancey (R). S. 2623 (as passed the Senate).

149. The 47 Yeas for the Bill were as follows: Albritton (R), Baria (D), Blount (D), Brown (R), Bryan (D), Burton (R), Butler (D), Carmichael (R), Chassaniol (R), Clarke (R), Davis (R), Dawkins (D), Dearing (D), Dickerson (D), Fillingane (R), Flowers (R), Frazier (D), Gollott (R), Gordon (D), Harden (D), Hewes (R), Hopson (R), Horhn (D), Hudson (R), Hyde-Smith (D), Jackson G. (15th) (R), Jackson R. (11th) (D), Jackson S. (32nd) (D), Jones (D), Jordan (D), King (R), Kirby (R), Lee P. (35th) (R), McDaniel (R), Mettetal (R), Michel (R), Montgomery (D), Nunnelee (R), Powell (D), Simmons (D), Stone (D), Tollison (D), Turner (D), Walls (D), Ward (R), Watson (R), and Yancey (R). Mississippi State Senate, *Yeas and Nays on S.B. No. 2623* (2010 Regular Session), available at <http://billstatus.ls.state.ms.us/2010/pdf/votes/senate/0310006.pdf>.

The sole Nay was cast by Senator J.P. Wilemon, Jr. (D). *Id.*

150. S.B. 2623 – History of Actions / Background, Mississippi Legislature, available at <http://billstatus.ls.ms.us/2010/pdf/history/SB/SB2623.xml>. Speaker McCoy is a farmer who is publicly affiliated with the Mississippi Farm Bureau Federation. Profile of William J. McCoy, Official Website of Mississippi State Legislature, House of Representatives, Representatives, <http://billstatus.ls.state.ms.us/members/house/McCoy.xml>.

151. See Debbie Gamblin, *A Political Issue of Animal Abuse Fell to Political Agendas*, ClarionLedger.com, Mar. 13, 2010; see also MISS. CONST., art. 4, § 74 ("No bill shall become a law until it shall have been referred to a committee of each house and returned therefrom with a recommendation in writing.").

152. Because the House Agriculture Committee did not meet before the deadline for House and Senate committees to act on bills that had passed the opposite chamber, the bill died. Associated Press, *Animal Cruelty Bill Set to Die in Mississippi House*, ClarionLedger.com, Mar. 1, 2010.

In addition to Senate Bill No. 2623, three other animal cruelty bills were introduced in the Senate during the 2010 legislative session: Senate Bills Nos. 2074, 2971, and 3085. Four animal cruelty bills were introduced in the House: House Bills Nos. 33, 799, 1431, and 1492. Senate Bills Nos. 2074 and 2971 both died in committee in the Senate, and all of the House bills died in committee in the House.

Senate Bill No. 3085, which made a second offense of malicious cruelty to a cat or dog a felony, passed the Senate but, like Senate Bill No. 2623, died in the House. Senate Bill No. 2623 is the focus of this Article because it made a first offense of malicious cruelty to a cat or dog a felony and received the most media attention. The issues related to making malicious animal cruelty a second-offense felony instead of first-offense felony are discussed in part VII.

“nuisance animal.”¹⁵³ One commentator has suggested that Ward actually killed the bill in order to prevent Hewes, the bill’s Senate sponsor and a potential Republican candidate for Lieutenant Governor, from getting credit for it.¹⁵⁴ Ward himself has stated that he hopes to rewrite the bill and introduce it in the 2011 session.¹⁵⁵

Other legislators also objected to Senate Bill No. 2623. For example, Representative David Gibbs suggested that he could not support the bill because it would allow the prosecution of an individual who hit a stray dog or cat with his car instead of avoiding the animal.¹⁵⁶ Gibbs stated: “When I go to town, on my way back dogs and cats are runnin’ across the road. . . . I don’t plan to kill myself dodging dogs and cats.”¹⁵⁷ Representative Gary Chism argued that cats and dogs do not merit the protection that a felony animal cruelty law would provide. He stated that “setting a dog on fire” is “horrible, but . . . it doesn’t need to be a felony. . . . It’s not even a felony to kill a baby and we’re talkin’ about making it a felony to kill a dog?!”¹⁵⁸ Chism further stated that he believes a six-month prison sentence for animal cruelty “is plenty.”¹⁵⁹

Additionally, the Mississippi Farm Bureau Federation (MFBF) was adamantly opposed to passage of the bill on the ground that it would have a detrimental impact on Mississippi farmers and the production in Mississippi of affordable agricultural products. MFBF is the self-proclaimed “Voice of Mississippi Agriculture” and has over 200,000 member families.¹⁶⁰ Many animal advocacy groups and the majority of Mississippi’s media outlets have pointed to the President of MFBF, David Waide, as the driving force behind the death of Senate Bill No. 2623 in the House.¹⁶¹

In an interview in January of 2010, Waide stated that the MFBF could “certainly . . . support [a bill] for dogs and cats.”¹⁶² Then, after Senate Bill No. 2623 had passed the Senate and was pending in the House, Waide said that although the MFBF is “very sympathetic to abuse,” he had “yet to see a state pass one bill for dogs and cats [that] didn’t impact meat producers. It has tremendous impact on things you don’t think about, like soybeans and corn.”¹⁶³ Shortly thereafter, Waide sent a *Letter to the Editor* to the

153. Gamblin, *supra* note 151. Ward also expressed concern about the bill’s definition of animal cruelty, suggesting that it was flawed because it did not address “puppy mills or vicious dogs.” Emily Lee Coz, *Animal Cruelty Bill Dead, But the Issue Is Still Alive*, N.E. MISS. DAILY J., Mar. 4, 2010, available at 2010 WLNR 4650181.

154. Gamblin, *supra* note 151.

155. *Animal Cruelty Bill Dies in Committee*, *supra* note 144.

156. *Animal Cruelty Bill Dies in Committee*, *supra* note 144.

157. *Animal Cruelty Bill Dies in Committee*, *supra* note 144.

158. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, THE COLUMBUS PACKET, Feb. 18, 2010, at 6.

159. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

160. Pettus, *supra* note 145.

161. See, e.g., MS-FACT NEWSL. (Miss. Fighting Animal Cruelty Together (MS-FACT)), Mar./Apr. 2010, available at <http://www.ms-fact.org/linked/marapr2010.pdf>.

162. WLBT.com, *Why Did Animal Cruelty Bill Die In the Legislature?*, Mar. 5, 2010, <http://www.wlox.com/Global/story.asp?S=12093530>.

163. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

majority of newspapers in Mississippi.¹⁶⁴ In the letter, Waide stated that MFBF's concern with legislation like Senate Bill No. 2623 is that it "will be used as a vehicle to open avenues for [animal] activists to extend their reach and push other, more extreme agendas."¹⁶⁵ He continued:

The risk of [animal activists] causing the discontinuation of practices that have proven to be humane and efficient methods for raising livestock on our farms is quite real. It has happened in at least four states across the country where this type legislation has already been enacted. In those states, livestock farmers are being driven out of business because of misconceptions by the public due to allegations levied by animal activist groups.

It is critical to our membership that our nation's consumers continue to have an affordable, abundant supply of safe, domestically-produced food. Not all of us are agricultural producers, but everyone consumes agricultural products.¹⁶⁶

In addition to opposing that Senate Bill No. 2623 on the ground that it would negatively impact Mississippi farmers, Waide argued that it is simply too expensive to make malicious cruelty to cats and dogs a felony.¹⁶⁷ He reasoned that a felony penalty would cause law enforcement officials and prosecutors to take animal cruelty more seriously.¹⁶⁸ Police would investigate more thoroughly, prosecutors would prosecute more often, and state-financed attorneys would be appointed for indigent defendants.¹⁶⁹ In the end, more individuals would be incarcerated for animal cruelty.¹⁷⁰ All of this, according to Waide, would increase taxpayers' costs and would not be worth the expense.¹⁷¹ Waide stated that he did not "mind paying the price for a violent criminal, but there are better solutions for animal abuse."¹⁷² Waide suggested that instead of making malicious cruelty to cats and dogs a felony, Mississippi should increase the fine for a misdemeanor and require convicted offenders to undergo psychological evaluation.¹⁷³

164. See, e.g., ClarionLedger.com, *Cruelty Issue Still Needs Work*, Mar. 9, 2010; Letter to the Editor, *Animal Cruelty Issue Still Needs Work*, GREENWOOD COMMONWEALTH, Mar. 6, 2010; Opinion, *Farm Bureau Addresses Abuse*, MADISON COUNTY HERALD, Mar. 11, 2010, at 4A; HattiesburgAmerican.com, *Cruelty Bill Needs Revisions To Work*, Mar. 13, 2010.

165. ClarionLedger.com, *supra* note 164; *Farm Bureau Addresses Abuse*, *supra* note 164. Waide also urged in his letters that MFBF was "working diligently toward a solution" to the problem of animal cruelty, and pointed to "a compromise bill" proposed by MFBF, Senate Bill No. 2971. That bill, however, would have *decreased* the punishment for misdemeanor first-offense animal cruelty to cats and dogs and would have provided felony status for a *third* offense of animal cruelty to cats and dogs. S. 2971, Reg. Sess. (Miss. 2010).

166. *Farm Bureau Addresses Abuse*, *supra* note 164.

167. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

168. See *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

169. See *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

170. See *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

171. See *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

172. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

173. *Animal Cruelty Bill Dominates Farm Bureau Legislative Breakfast*, *supra* note 158.

VI. THE CASE FOR A FELONY COMPANION ANIMAL STATUTE
IN MISSISSIPPI

David Waide, as President of MFBF, and Mississippi legislators offered several objections to Senate Bill No. 2623 and, in particular, the bill's felony provision for cruelty to cats and dogs. None of these objections, however, can withstand close scrutiny. Moreover, these objections obscure the important reasons why a felony companion animal statute would potentially benefit all Mississippians by reducing the overall level of violence and crime in the state.

A. *Effect of S.B. 2623 on Mississippi's Farming Industry*

David Waide argued that if Senate Bill No. 2623 became law, it would negatively impact Mississippi farmers. Waide's underlying concern apparently was that Senate Bill No. 2623 would somehow lead to the prosecution of farmers whose work involves animals. The threat of prosecution would force farmers to alter their current agricultural and animal husbandry practices and thereby increase production costs. Increased costs, in turn, would lead to an increase in food prices because Mississippi farmers would be forced to sell their products at higher prices. The livelihoods of Mississippi farmers would then be threatened as consumers sought lower-priced goods from other producers. Waide also argued that even if Senate Bill No. 2623 did not itself harm Mississippi farmers, it would lead to detrimental legislation in the future.

Simply put, these arguments are illogical. First, under Mississippi's livestock statute, it is already a felony to maliciously or mischievously harm a "domestic animal[] produced for profit."¹⁷⁴ If any animal cruelty law were to negatively affect Mississippi's farming industry, one would expect that this statute would have done so. It is directly applicable to farmed animals and specifically prohibits the malicious or mischievous killing, maiming, wounding, or injuring of any livestock.¹⁷⁵ There is no evidence that this law has had any impact on Mississippi farmers, however, and Waide offered none.

Indeed, it seems obvious that the livestock statute was enacted to protect farmed animals because of their economic value. Similarly, the purpose of the proposed companion animal statute was to protect cats and dogs because doing so is beneficial to society, not to affect Mississippi farmers in any way. If the livestock statute has not affected the farming industry in Mississippi, there is no basis for the argument that the proposed companion animal statute would be harmful to Mississippi's farming industry. Furthermore, given MFBF's great success in killing legislation directed at cats and dogs, it surely would have no difficulty derailing legislation that was actually aimed at Mississippi farming practices.

174. See MISS. CODE ANN. § 97-41-15(1), (3).

175. *Id.*

Second, Senate Bill No. 2623 contained several exemptions intended to address the concern that either a revised general animal cruelty statute or a felony companion animal statute would somehow lead to the prosecution of Mississippi farmers for animal cruelty. For example, Senate Bill No. 2623 specifically stated that nothing in chapter 97, including the proposed general animal cruelty and companion animal statutes, would “be construed as prohibiting a person from (1) “[p]erforming accepted agricultural and animal husbandry practices on livestock or poultry, including but not limited to, slaughter, butchering, food processing and marketing practices”; or (2) “[e]ngaging in normal or accepted practices of animal identification, including but not limited to, use of microchips, tat[t]oos, eartags, branding, ear notching, or any similar practice to identify ownership of an animal.”¹⁷⁶ In addition, Senate Bill No. 2623 contained a more general provision which provided that nothing in chapter 97 would be construed as prohibiting “[a]ny conduct which is otherwise permitted under the laws of this state or of the United States.”¹⁷⁷

Exemptions for “accepted agricultural and animal husbandry practices” are common in animal cruelty statutes. Under these exemptions, as long as farmers obey the laws of their state and are engaged in practices that society deems acceptable, they have no reason to fear prosecution under animal cruelty statutes.¹⁷⁸ Furthermore, both the proposed general animal cruelty statute and the proposed companion animal statute had mens rea requirements. The general animal cruelty statute required the prosecutor to prove that the defendant acted “knowingly or with criminal negligence,” and the companion animal statute required the prosecutor to prove that the defendant acted “with malice.” As one scholar has explained, a defendant who engages in “‘accepted’ or ‘customary’ behavior will not have a culpable mental state under the statute”¹⁷⁹ and therefore is not susceptible to prosecution. Thus, even if the bill somehow did not explicitly exempt a particular agricultural or animal husbandry practice, it would be impossible for a prosecutor to establish the required mens rea as long as the defendant was engaged in a commonly accepted animal practice.¹⁸⁰ Thus, the MFBF’s apparent concern that passage of Senate Bill No. 2623 would lead to prosecution of Mississippi farmers for animal cruelty was meritless.

176. S. 2623, Reg. Sess. § 3(1)(g), (j) (Miss. 2010).

177. *Id.* § 3(1)(n).

178. Frasch et al., *supra* note 39, at 76.

179. Francione, *supra* note 29, at 768 (citing *State v. Fowler*, 205 S.E.2d 749, 751 (N.C. Ct. App. 1974)).

180. Francione, *supra* note 112, at 3.

B. The Prosecution of Those Who Harm Cats and Dogs While Protecting Themselves, Others, or Property

Legislators who opposed Senate Bill No. 2623 contended that it would lead to the prosecution of individuals who were forced to deal with “nuisance” animals or someone who, for example, killed a dog who ran in front of his car. For many of the same reasons that the MFBF’s objections were meritless, these objections are also without merit. First, Senate Bill No. 2623 contained specific exemptions that made the proposed companion animal statute inapplicable in these types of situations.¹⁸¹ The bill explicitly provided that nothing in chapter 97 prohibited a person from (1) “[d]efending himself or herself or another person from physical or economic injury being threatened or caused by an animal,” or (2) “[i]njuring or killing . . . an unconfined animal on the person’s property if the unconfined animal is reasonably believed to constitute a threat of physical injury or damage to any animal under the care of control of the person.”¹⁸²

If a dog ran in front of a car and an individual hit the animal instead of swerving to miss it, the individual presumably would be “defending himself . . . from physical . . . injury being threatened . . . by an animal.” Similarly, if a dog wandered onto an individual’s property and threatened injury to the owner or the owner’s animals, the above exemptions would preclude prosecution. Even if the exemptions were inapplicable, however, a prosecutor would be unable to prove that a defendant in these examples acted with the malice, the required mens rea under the proposed companion animal statute. In these situations, the defendant obviously would not be acting with malice towards the animal. Instead, the defendant would be acting in order to protect himself, other human beings, and/or his property.

C. The Importance and Expense of a Felony Companion Animal Law

Representative Chism suggested that cats and dogs are simply not important enough to warrant the protection of a felony penalty and stated that a six-month jail term for animal cruelty (the maximum sentence available under the current companion animal statute) is sufficient for the crime of animal cruelty. Similarly, David Waide objected to a felony companion animal statute on the ground that the costs of enforcing it would be better spent on incarcerating violent offenders. Waide thus suggested that the investigation, prosecution, and imprisonment of animal abusers would not provide enough societal benefit to warrant an increased expenditure of taxpayer dollars. Both Chism’s and Waide’s objections, however, are meritless. The question of whether cats and dogs are “important enough” to warrant heightened legal protection is irrelevant to whether Mississippi

181. *What If?*, MS-FACT NEWSL. (Miss. Fighting Animal Cruelty Together (MS-FACT)), Mar./Apr. 2010, at 5 (stating that situations such as these were all covered by the exemptions in S.B. 2623).

182. S. 2623, Reg. Sess. § 3(1)(a), (b) (Miss. 2010).

should enact a felony companion animal statute. Moreover, increased penalties for animal cruelty crimes and the higher costs associated with enforcing a felony companion animal statute ultimately may *decrease* the societal and financial costs associated with violent crime.

As discussed in part II, modern animal cruelty laws do not exist in order to protect animals. Because many studies have shown that animal abusers are more likely to engage in criminal behavior, one of the primary purposes of modern animal cruelty laws is to deter both violent and nonviolent criminal behavior and thereby protect humans.¹⁸³ In order to accomplish this important goal, society must treat animal cruelty as a serious offense. Laws that provide only misdemeanor penalties for intentional animal cruelty, however, “create the social message that injuring animals through . . . deliberate cruelty is marginally acceptable or a minor criminal infraction.”¹⁸⁴ Furthermore, prosecutors often do not pursue misdemeanor animal cruelty cases because they devote their limited time and resources to felonies¹⁸⁵ and because misdemeanors “have little plea bargain value.”¹⁸⁶ A misdemeanor conviction also does not have the same stigma or negative long-term consequences of a felony conviction.¹⁸⁷ In Mississippi, an individual who pleads guilty to a felony or has a felony conviction is prohibited from possessing a firearm¹⁸⁸ and can, *inter alia*, be denied a license to teach in Mississippi’s public schools.¹⁸⁹ Because those who abuse animals are more likely to harm humans, it is imperative that these individuals are prevented from owning weapons and working in jobs that give them easy access to vulnerable populations.¹⁹⁰ Thus, due to their light penalties and lack of enforcement, misdemeanor laws like Mississippi’s current

183. See *supra* notes 35–38 and accompanying text.

184. See Livingston, *supra* note 13, at 60.

185. Lacroix, *supra* note 27, at 16. There is no national database that can be used to determine “how many animal cruelty cases are criminally charged and prosecuted each year,” but “[t]here is anecdotal evidence . . . to indicate that some prosecutors are less likely to charge or prosecute animal cruelty compared to other violent crimes, except in extreme cases.” Frasch et al., *supra* note 39, at 69–70.

186. Lacroix, *supra* note 27, at 16. The threat of a felony animal cruelty charge can be a “powerful bargaining tool in plea negotiations,” which a prosecutor can employ “to mandate counseling, treatment[,] and fines. This in turn will help prevent violent behavior by the defendant.” Sauder, *supra* note 35, at 17.

187. Otto, *supra* note 60, at 141. “[I]n many states, a felon loses the right to vote, to hold public office, to serve on a jury, to possess firearms, and he or she may lose or be barred from certain professional licenses. A felon may also be precluded from certain jobs. . . .” *Id.*

188. MISS. CODE ANN. § 97-37-5(1).

189. MISS. CODE ANN. § 37-3-2(11)(g). An individual who has a teaching license and is convicted of a felony can also lose his teaching license. See *id.* § 37-3-2(12)(d). Individuals can also be prevented from working in hospitals and nursing homes if they are convicted of or plead guilty to a variety of felonies. See MISS. CODE ANN. § 43-11-13(5)(b). If malicious cruelty to cats and dogs becomes a felony, then it could be added to the list of crimes in section 43-11-13(5)(b). A felony plea to or conviction of malicious animal cruelty would then prevent animal abusers from working with the sick and elderly.

190. As one advocacy organization has stated, “Having a felony conviction . . . isn’t just about putting someone in jail for a longer period of time. It is about ensuring that these people have a felony record so that they cannot get a job working in a school, nursing home, hospital, or anywhere else that would include contact with children or vulnerable adults. It is about making sure that violent offender’s [sic] do not possess guns. . . . It is, quite simply, about ensuring community safety.” *What If?*, *supra* note 181, at 6.

companion animal statute do not deter intentional animal cruelty and therefore do not deter other criminal behavior or protect society. As a result, many commentators have argued that states should enact felony penalties for certain types of animal cruelty,¹⁹¹ and many states have done so.

In addition to the invaluable deterrent effect of felony animal cruelty laws, there are other compelling reasons for the Mississippi legislature to enact a felony companion animal statute. First, surveys have shown that Americans support stronger animal cruelty laws and those legislators who vote for them.¹⁹² The overwhelming support Senate Bill No. 2623 received demonstrates that Mississippians are in favor of a felony companion animal statute. Second, while the Federal Bureau of Investigation tracks felony convictions, it no longer tracks misdemeanors.¹⁹³ If an animal abuser with a misdemeanor conviction in one state moves to another state and is prosecuted for animal cruelty in that state, the prosecutor in the second state will have no way to determine if the defendant has a history of animal abuse.¹⁹⁴ The prosecutor therefore will be unable to recommend an appropriate sentence.¹⁹⁵ Finally, there is a great deal of evidence that society places a high value on companion animals.¹⁹⁶ One way the law can recognize this valuation is to classify malicious cruelty to cats and dogs as a felony.

VII. SUGGESTIONS FOR THE FUTURE

For all of the reasons discussed in part VI, the Mississippi legislature should not hesitate to enact a felony companion animal statute during the

191. See Sauder, *supra* note 35, at 15; Coxwell, *supra* note 35, at 187; Lacroix, *supra* note 27, at 12–13, 18; Livingston, *supra* note 13, at 5, 60–61; Dryden, *supra* note 104, at 200.

192. In one poll done in December of 1996 for the Humane Society of the United States, seventy-one percent of the approximately one thousand adults surveyed “agreed that some forms of animal abuse should be a felony.” Randall Lockwood, Essay, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 1, 84–85 (1999) (citing PENN. & SCHOEN ASSOCS., PUBLIC OPINION ISSUES ON ANIMAL ABUSE: A REPORT TO THE HUMANE SOCIETY OF THE UNITED STATES 8 (Feb. 6, 1997)). Furthermore, according to one scholar, “surveys show that seventy-five percent of Americans support re-electing legislators who are tough on animal cruelty.” Sauder, *supra* note 35, at 16.

193. Sauder, *supra* note 35, at 16.

194. Sauder, *supra* note 35, at 16.

195. Sauder, *supra* note 35, at 16.

196. One author has noted that humans “spend large amounts of money on their veterinary care, give pets birthday presents, get them pet sitters or leave them in ‘doggy day care,’ take pets on vacations with us, and make serious efforts to provide for their care after our death.” Susan J. Hankin, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 RUTGERS J. L. & PUB. POL’Y 314, 377 (2007).

In addition, “[a]n even more vivid reminder of just how highly people value their animals was demonstrated by all of those who refused to evacuate Hurricane Katrina-damaged New Orleans without their animals.” Hankin, *supra*, at 377–78. Individuals were not permitted to board evacuation buses with their pets and therefore had to choose between evacuating without their animals and risking their personal safety to stay behind with their animals. Casey Chapman, Comment, *Not Your Coffee Table: An Evaluation of Companion Animals as Personal Property*, 38 CAP. U. L. REV. 187, 206 (2009). This problem attracted so much attention that Congress passed the PETS Act in 2006. Chapman, *supra*, at 205–06 (citing Pets Evacuation and Transportation Standards Act of 2006, 42 U.S.C.A. §§ 5196(b), 5170(a)(3) (West 2008)). The Act “ensures that state and local emergency plans address the needs of individuals with household pets following a major disaster or emergency.” Chapman, *supra*, at 206.

2011 legislative session. Mississippi has everything to gain by doing so, and despite the objections to Senate Bill No. 2623, nothing to lose. If the felony statute proposed in Senate Bill No. 2623 had passed, it would have contributed greatly to the modernization of Mississippi's animal cruelty laws, and it should serve as a model for any legislation that is introduced in the 2011 legislative session. Like the companion animal statutes in many other states, the proposed statute applied only to cats and dogs, required a high degree of criminal culpability, and prohibited only egregious acts of cruelty.¹⁹⁷ Additionally, just as many states exempt commonly accepted uses of animals from the scope of their animal cruelty laws, Senate Bill No. 2623 created a thorough list of activities that would have been exempted from prosecution under the proposed companion animal statute, as well as Mississippi's other animal cruelty laws.

Most importantly, if the proposed companion animal statute had passed, the penalties for cruelty to cats and dogs in Mississippi would have been greatly strengthened. Mississippi would have become the forty-seventh state to make malicious cruelty to cats and dogs a felony. While some states classify only second or subsequent intentional animal cruelty offenses as felonies,¹⁹⁸ Senate Bill No. 2623 made a first offense of malicious animal cruelty a felony.¹⁹⁹ Those who oppose the enactment of a felony animal cruelty law in Mississippi may suggest in 2011, as they did during the 2010 legislative session,²⁰⁰ that the legislature should compromise and enact such a statute only if it classifies a first offense of malicious animal cruelty as a misdemeanor and makes second and subsequent offenses felonies. Given the rarity with which misdemeanor animal cruelty cases are pursued, however, such a compromise would greatly reduce the deterrent value of a felony law. It would remain unlikely that those who engage in malicious animal cruelty would be identified and punished, rendering a second-offense felony statute virtually meaningless. Furthermore, as noted

197. The proposed companion animal statute prohibited the torture, mutilation, maiming, burning, starving, disfiguring, or killing of any domesticated dog or cat. S.B. 2623, § 2(I). Senate Bill No. 2623 also created a separate statutory section that contained definitions of the terms "maim," "mutilate," "torment," and "torture." *Id.* at § 4. The proposed law stated that these definitions were applicable to all of the statutes in chapter 97, the code chapter comprised of Mississippi's animal cruelty laws, "unless the context clearly requires otherwise." *Id.*

While S.B. 2623 defined "maim," "mutilate," and "torment" generally, *see id.* at § 4(a)–(c), it defined "torture" to be applicable only to cats and dogs, *see id.* § 4(d). Specifically, Senate Bill No. 2623 provided that "torture" is the infliction of inhumane treatment or gross physical abuse to a *dog or cat* meant to cause the dog or cat intense or prolonged pain or serious physical injury, or thereby causing death to the dog or cat, with the intent of increasing or prolonging the pain of the dog or cat. *Id.* at § 4(d) (emphasis added). Because the definition of "torture" applies only to cats and dogs, but the word "torture" was used in the proposed new general animal cruelty statute, *id.* § 1, and is also used in the current livestock statute, Miss. CODE ANN. § 97-41-15(1), this definition should be revised. The context may indicate that the definition of "torture" was intended to be applicable only to the companion animal statute, but it does not make sense to define "torture" differently under the general animal cruelty statute or the livestock statute.

198. *See supra* text accompanying note 64.

199. Compare S. 2623, Reg. Sess. § 2(1) (Miss. 2010) with S. 3085, Reg. Sess. § 2(1) (Miss. 2010).

200. *See, e.g.,* S. 3085, Reg. Sess. § 2(1) (Miss. 2010).

above, a misdemeanor conviction does not carry with it the collateral consequences of a felony conviction, such as employment restrictions and the prohibition on owning a firearm. Thus, any companion animal statute proposed in 2011 should make malicious cruelty to a cat or dog a first-offense felony.

The proposed law also would have required the defendant to pay restitution upon conviction to the owner of the abused animal and any relevant agency for costs related to the case. Furthermore, the sentencing judge would have had the discretion to order the defendant into counseling, restrict the defendant's future ownership of animals, and order unannounced visits by a humane officer to ascertain the status of any animals left in the defendant's care. Any companion animal statute that is proposed in 2011 should include similar remedies.

Restitution provisions, of course, decrease the costs associated with enforcing animal cruelty laws. Moreover, many states have recognized that if animal cruelty laws are to fulfill their deterrent potential, it is crucial that the sentencing judge have the authority to order the defendant into counseling. While a lengthy prison term will neutralize an offender and prevent him from engaging in animal abuse or other criminal behavior while he is incarcerated, counseling may prevent an individual from engaging in criminal behavior once he is released from prison. Counseling may be a particularly important component in treating juvenile animal abusers and preventing them from harming humans when they become adults.²⁰¹ Like counseling provisions, forfeiture provisions and those that restrict the defendant's future ownership of animals are common in modern cruelty laws.²⁰² They not only appropriately punish defendants who have inflicted deliberate cruelty on animals,²⁰³ but also afford protection to animals.²⁰⁴

201. Livingston, *supra* note 13, at 61–68. Simply incarcerating juvenile animal abusers “may cut them off from needed treatment, unduly stigmatize them in their community, and expose them to other, more hardened criminal elements at an earlier age.” Livingston, *supra* note 13, at 61. Moreover, because juveniles engage in animal cruelty for a variety of reasons, courts must “attempt to identify the cause of the animal abuse” and sentence the defendant accordingly. Livingston, *supra* note 13, at 61. If a juvenile harms an animal because of ignorance or peer pressure, then “education and . . . therapy” may be the appropriate remedies. Livingston, *supra* note 13, at 61. On the other hand, “a juvenile who abuses animals because of violent and cruel personality traits . . . needs intensive and perhaps long-term therapy.” Livingston, *supra* note 13, at 61–62. A juvenile offender who “shows evidence of having a conduct disorder” may require “therapy beyond individual counseling or an anger management program may be advisable.” Livingston, *supra* note 13, at 68. According to Professor Livingston, both multisystemic therapy, “which attempts to treat aggressive children in the context of their school and family environment,” and pet therapy have shown “some promise for assisting juvenile defendants in overcoming their antisocial behavior and becoming better adjusted adults capable of making a positive contribution to society.” Livingston, *supra* note 13, at 68.

202. Livingston, *supra* note 13, at 69–70; Dryden, *supra* note 104, at 206–07.

203. Livingston, *supra* note 13, at 70 (“[F]orfeiture is an appropriate punishment of those defendants who have so utterly abandoned their moral and legal responsibilities to their animals.”); Livingston, *supra* note 13, at 70–71 (“Restrictions on animal ownership are appropriate in cases where the perpetrator has deliberately tortured an animal . . .”).

204. Livingston, *supra* note 13, at 69 (“Forfeiture of abused . . . animals assures that the animal will not again be subject to the inhumane treatment that resulted in conviction of the animal’s owner.”); see Dryden, *supra* note 104, at 206 (“If animals are to find protection from cruelty under state statutes, such protection must be given separately from the punishment aspect of these statutes.”).

In addition to creating a modern first-offense felony companion animal statute, if Senate Bill No. 2623 had become law, it would have updated and clarified Mississippi's current general animal cruelty statute by narrowing the range of animals covered, adding a mens rea requirement, omitting nineteenth-century language, and increasing the maximum prison term for misdemeanor animal cruelty from six months to one year. Since a plurality of the Mississippi Supreme Court found in 2001 that the current general animal cruelty statute is unconstitutionally vague because it does not define the perpetrator's required state of mind,²⁰⁵ it is particularly important in 2011 that the Mississippi legislature either amend the current general animal cruelty statute to include a mens rea or, as Senate Bill No. 2623 proposed, enact a new general animal cruelty statute altogether.

Although the general animal cruelty statute proposed in Senate Bill No. 2623 contained many important changes and can serve as a model for any legislation that is introduced during the 2011 legislative session, the language of the proposed law can and should be improved upon. The first phrase of the proposed statute provided that it was a misdemeanor to "knowingly or with criminal negligence torment, unjustifiably injure, . . . or cruelly beat or mutilate" a vertebrate animal other than humans and fish.²⁰⁶ The second phrase provided that it was a misdemeanor to knowingly or with criminal negligence "cause or procure to be *tortured*, unjustifiably injured, tormented, . . . or to be cruelly beaten or mutilated or *killed*" a vertebrate animal other than humans or fish.²⁰⁷ It is unclear why the terms "tortured" and "killed" are included in the second phrase, but the words "torture" and "kill" are omitted from the first phrase. The current

There are additional ways in which Mississippi could amend its animal cruelty laws to make them more effective at preventing animal abusers from committing crimes against humans. For example, in order to improve the chances that animal abuse will be discovered, scholars have suggested that animal cruelty laws should "(1) require[] veterinarians to report suspected instances of animal cruelty and (2) require[] child welfare agencies to note the condition of animals within the abusive family and alert prosecuting authorities if they observe suspected animal abuse." Livingston, *supra* note 13, at 62; see also Sauder, *supra* note 35, at 20–21 ("Since animal abusers often abuse humans, a law requiring veterinarians to report animal abuse would prevent violence against people."). Scholars have also recommended that animal cruelty statutes "insulate veterinarians from liability to pet owners for reporting such abuse." Livingston, *supra* note 13, at 63. Mississippi law does currently include such a provision, MISS. CODE ANN. § 73-39-87, but it does not require veterinarians to report suspected abuse.

Additionally, domestic violence could be decreased and abused animals could be better protected if (1) state laws provided that companion animals could be named in protective orders, Gentry, *supra* note 36, at 108; (2) shelters existed where battered women could bring their pets, Livingston, *supra* note 13, at 71; and (3) at least a portion of the fines imposed on convicted animal abusers were remitted to animal welfare organizations, see Sauder, *supra* note 35, at 18; see also Livingston, *supra* note 13, at 71. Domestic violence victims often refuse to leave a violent family situation because they cannot take their pets with them and fear for their animals' safety if the animals are left behind. Livingston, *supra* note 13, at 71; Sauder, *supra* note 35, at 17 ("Studies show that at least thirty percent of abused women would leave their abusive spouse or partner sooner if they could find homes for their pets. . . ."). If pets were included in protective orders, at least some domestic violence shelters accepted pets, and animal shelters reserved space for the pets of domestic violence victims, violence against women, children, and animals might be prevented.

205. See *supra* notes 95–99 and accompanying text.

206. S. 2623, Reg. Sess. § 1 (Miss. 2010).

207. *Id.*

language suggests that while an individual cannot “cause or procure” someone else to torture or kill certain animals, the individual can torture or kill certain animals himself.²⁰⁸ It may well be that the drafters of the proposed bill intended the language to be exactly as it is written. Because the differences in the phrases are potentially confusing and could derail any proposed legislation, however, the language should be critically examined before a new bill is submitted to the legislature.

Lastly, when the Mississippi legislature does enact a felony companion animal statute like the one proposed in Senate Bill No. 2623, it will be incumbent upon all Mississippi residents, law enforcement agencies, and prosecutors to treat animal cruelty seriously. Individuals who witness animal abuse must report it, police must investigate it, and district attorneys must prosecute those who are charged with malicious animal cruelty.²⁰⁹ A felony law that is never enforced will not, by itself, deter animal abusers from harming other animals or committing crimes against humans. In addition, police officers who investigate animal cruelty should be aware that animal abusers often abuse women and children in their families and “look beyond” the animal victim during their investigations.²¹⁰ Prosecutors also must take advantage of the increased penalties and additional remedies afforded by a felony law and recommend appropriate sentences for animal abusers.²¹¹ Judges, too, must be willing to impose stiff sentences for malicious animal cruelty and appropriately use their discretion to order convicted defendants to seek treatment and forfeit their abused animals as well as the right to own animals in the future.

VIII. CONCLUSION

In 1888, Justice Arnold of the Mississippi Supreme Court wrote, “Cruelty to [animals] manifests a vicious and degraded nature, and it tends inevitably to cruelty to men. Animals whose lives are devoted to our use and pleasure, and which are capable, perhaps, of feeling as great physical pain or pleasure as ourselves, deserve, for these considerations alone, kindly treatment.”²¹² Today, many studies have established what Justice Arnold believed: Those who harm animals are likely to harm human beings. Forty-six states already treat intentional cruelty to cats and dogs as a felony. Thus, it is past time for the Mississippi legislature to recognize that it should enact a felony companion animal statute in order to protect all Mississippians. Perhaps in 2011 it will do so.

208. It is also unclear why the term “torment” is placed *before* “unjustifiably injure” in the first phrase, but the term “tormented” is located after the words “unjustifiably injured” in the second phrase.

209. Sauder, *supra* note 35, at 18–19.

210. Sauder, *supra* note 35, at 18–19.

211. Sauder, *supra* note 35, at 19 (stating that “prosecutors must realize that by appropriately prosecuting the abuser, they are in a position to help protect many future animal and human victims”).

212. *Stephens v. State*, 3 So. 458 (Miss. 1888).