

**GOING TO THE DOGS: THE SUCCESSES,
FAILURES, AND HOPES FOR THE FUTURE OF
TEXAS ANIMAL LAW**

Comment

*Jessica Rugeley**

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* B.A., English, Texas Tech University, 2011; J.D., Texas Tech University School of Law, 2014.

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I. INTRODUCTION

Mahatma Gandhi notably stated: “The greatness of a nation can be judged by the way its animals are treated.”¹

In July 2009, the Montague County Sheriff’s Department executed a search warrant on the Maggie Pets/Heddins Kennel, a dog-breeding facility north of Bowie, Texas.² The police officers found what is potentially the largest puppy mill in Texas history.³ In one morning, 497 dogs were discovered on the twenty-five acre property.⁴ Many of the dogs were emaciated, overbred, and some had missing limbs.⁵ “One pasture was filled with beagles,” and throughout the property, officers found four dead dogs amongst many scattered bones.⁶ Dogs were “kept in wire crates stacked two-high,” and many had open wounds.⁷ The kennel was known for breeding expensive “designer dogs” to sell; the sheriff described the operation as “using and abusing these animals for profit.”⁸ Though the animals were removed and many re-homed, charges were never filed against the kennel owners.⁹ In fact, several “family dogs” were reportedly returned to the owners.¹⁰ The outcome might be different today because the Texas Legislature has finally passed a

1. QUOTATIONS BOOK, www.quotationsbook.com/quote/8614 (last visited Sept. 28, 2013).

2. Ryan Evans, *Puppy Mill Raided Near Bowie*, TIMES REC. NEWS (July 8, 2009, 6:17 AM), <http://www.timesrecordnews.com/news/2009/jul/08/puppy-mill-raided-near-bowie>.

3. *See id.*

4. *See id.*

5. *See id.*

6. *See id.*

7. Rebecca Poling, *Humane Society of North Texas Saves 500 Dogs from Bowie, Texas Puppy Mill*, EXAMINER.COM (July 7, 2009), <http://www.examiner.com/article/humane-society-of-northtexas-saves-500-dogs-from-bowie-texas-puppy-mill>.

8. *See Evans, supra* note 2; Rebecca Poling, *Saved: The Dogs Who Were Part of the Largest Puppy Mill Bust in North Texas*, EXAMINER.COM (Aug. 8, 2009), <http://www.examiner.com/article/saved-the-dogs-who-were-part-of-the-largest-puppy-mill-bust-north-texas>.

9. *Demand Charges Against Texas Puppy Mill Operators*, CHANGE.ORG, <http://www.change.org/petitions/demand-charges-against-puppy-mill-operators> (last visited Sept. 28, 2013).

10. Rebecca Poling, *Judge Orders Nearly 500 Puppy Mill Dogs Turned Over to HSNT*, EXAMINER.COM (July 17, 2009), <http://www.examiner.com/article/judge-orders-nearly-500-puppy-mill-dogs-turned-over-to-hsnt>.

puppy mill law, and district attorneys are working tirelessly to increase prosecution for animal cruelty.¹¹

The field of animal law has undergone a recent explosion in both development and overall awareness.¹² Law schools increasingly offer courses in animal law, attorneys identify themselves as “animal law practitioners,” and even traditionally conservative states have instituted progressive, protectionist laws.¹³ Much of this change is due to public mindfulness of phenomena such as puppy mills and dogfighting.¹⁴ The State of Texas has also taken notice.¹⁵

Texas was recently on the Animal Legal Defense Fund’s list of one of the best places in which to abuse an animal, but it has redeemed itself during the past few years by increasing prosecution and by passing protectionist laws to combat animal cruelty.¹⁶ Now more than ever, animals in the State of Texas are protected from threats ranging from natural disasters to domestic violence.¹⁷ One Texas court has recognized the personal value of animals by permitting individuals to recover sentimental damages for the loss of a pet.¹⁸ Even so, the road to excellence is far from complete, and Texas can and should step up to meet the challenges of creating a more ideal home for its animal inhabitants. This Comment discusses the modern field of animal law with specific emphasis on how the State of Texas is addressing increasing demand for protectionist action and legislation. Part II outlines the general history of the development of animal law in the United States.¹⁹ Part III examines recent additions to Texas’s criminal anti-cruelty statutes, specifically focusing on increased punishment.²⁰ Part IV considers definite and pending changes to civil statutes and common law, such as the newly passed Puppy Mill Law and the debate over the types of damages available for the loss of a pet.²¹ Finally, Part V proposes improvements to current laws and suggests changes that Texas should

11. See discussion *infra* Parts IV.A, V.A.3.

12. See Joyce Tischler, *A Brief History of Animal Law, Part II (1985–2011)*, 5 STANFORD J. ANIMAL L. & POL’Y 27, 75–76 (2012) (noting that “[a]nimal law is still a fledgling movement” but has become “an American phenomenon”).

13. See Susan Hightower, *The Recent Evolution of Texas Animal Law*, 74 TEX. B.J. 906, 906 (2011) (examining the rise in protective animal legislation in Texas); Fran Ortiz, *Animal Law in the Classroom*, 74 TEX. B.J. 902, 902 (2011) (detailing the increasing number of law schools offering animal law); Bruce A. Wagman, *Growing Up With Animal Law: From Courtrooms to Casebooks*, 60 J. LEGAL EDUC. 193, 204, 208 (2010) (discussing U.C. Hastings animal law professor Bruce Wagman’s journey to create a majority animal law practice).

14. See *Pit Bull Cruelty*, ASPCA, <http://www.aspc.org/fight-cruelty/dog-fighting/pit-bull-cruelty> (last visited Sept. 28, 2013); *Puppy Mills Require Ongoing Legislative Attention*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/advocating-for-animals/puppy-mills-require-ongoing-legislative-attention/> (last visited Sept. 28, 2013).

15. See discussion *infra* Parts III–IV.

16. See Hightower, *supra* note 13, at 907.

17. See *id.*

18. See discussion *infra* Part IV.D.

19. See discussion *infra* Part II.

20. See discussion *infra* Part III.

21. See discussion *infra* Part IV.

implement to more effectively reduce, and hopefully prevent, the mistreatment of animals.²²

II. BRIEF OVERVIEW OF THE HISTORY OF ANIMAL LAW IN THE UNITED STATES

A. *The ASPCA Leads the Charge*

Protective animal law saw its first major boom during the nineteenth century when Henry Bergh, a New York resident, approached the New York Legislature seeking a statewide charter for the American Society for the Prevention of Cruelty to Animals (ASPCA).²³ The legislature granted Bergh's request on April 10, 1866, and Bergh became, by unanimous election, the ASPCA's first president.²⁴ The ASPCA's purpose was to "provide effective means for the prevention of cruelty to animals throughout the United States, to enforce all laws which are now or may hereafter be enacted for the protection of animals and to secure, by lawful means, the arrest and conviction of all persons violating such laws."²⁵ Bergh made great strides to put this purpose into effect by the first anniversary of the ASPCA's founding.²⁶ The ASPCA drafted, and the New York Legislature passed, a vastly expanded animal cruelty statute.²⁷ This new act provided protection to "any living creature," thus protecting animals that had no commercial value, a major change from the previous anti-cruelty statute.²⁸ The New York law also made animal fighting of any kind illegal for the first time.²⁹ Under this law, owners had a duty to provide sufficient and wholesome food and water to their animals.³⁰ Also an unprecedented change, the New York law allowed anyone, even the ASPCA, to enter private premises to care for an animal's needs.³¹ These are just a few

22. See discussion *infra* Part V.

23. See DAVID FAVRE, ANIMAL LAW: WELFARE, INTERESTS, AND RIGHTS 188, 191–92 (Vicki Been et al. eds., 2d ed. 2011).

24. See *id.* at 192; *History of the ASPCA*, ASPCA, www.aspc.org/about-us/about-the-aspc/history-aspc (last visited Sept. 28, 2013) (relaying a quote by Bergh: "Day after day I am in slaughterhouses, or lying in wait at midnight with a squad of police near some dog pit. Lifting a fallen horse to his feet, penetrating buildings where I inspect collars and saddles for raw flesh, then lecturing in public schools to children, and again to adult societies. Thus my whole life is spent.").

25. See FAVRE, *supra* note 23, at 191–92 (internal citation omitted); *About Us*, ASPCA, www.aspc.org/About-Us (last visited July 27, 2013) (stating that the ASPCA's current mission is "to provide effective means for the prevention of cruelty to animals throughout the United States").

26. See FAVRE, *supra* note 23, at 191–92.

27. See *id.*

28. See *id.* (discussing how the addition of the phrase "any living creature" meant that all animals were protected, "regardless of the issue of ownership of the animal").

29. See *id.*

30. See *id.*

31. See *id.* at 193; Elizabeth R. Rumley & Rusty W. Rumley, *Enforcing Animal Welfare Statutes: In Many States, It's Still the Wild West*, 21 SAN JOAQUIN AGRIC. L. REV. 21, 25 (2011–2012) (stating that the New York law also gave the ASPCA "the power to . . . arrest violators of the anti-cruelty statute").

examples of animal-rights measures implemented by this law, which was the first attempt at transforming the ethical concern for animals into comprehensive legislation.³²

B. First Federal Protective Animal Law

The United States Legislature took notice of the plight of animals and attempted to provide a remedy in a law that eventually became known as the Twenty-Eight Hour Law, a bill passed by Congress on March 3, 1873 (1873 Act).³³ Congress passed the 1873 Act in response to scathing criticism published in Chicago newspapers of methods of livestock transportation.³⁴ The *Chicago Live Stock Reporter* described the squalid conditions of animal transportation as “great cruelty.”³⁵ Cattle, sheep, and pigs were transported across the country by train, often packed tightly into cars with no food, water, or rest for days.³⁶ In one reported instance, forty of the 150 cattle shipped died on the short, four-day journey.³⁷ In response to public outcry, Congress passed a law requiring transportation companies to provide facilities that allow the cattle to rest, eat, and drink.³⁸ Many transportation companies, however, resented having to frequently unload the animals, and many were convicted for not complying with the law.³⁹ Then, on June 29, 1906, Congress repealed the initial 1873 Act and enacted the present Twenty-Eight Hour Law.⁴⁰ The Twenty-Eight Hour Law included stronger regulations and stricter enforcement by limiting the number of hours that livestock could be kept in cars without unloading for food, water, and rest.⁴¹ To enforce these regulations, the United States Department of Agriculture inspected train cars and rest stops for proper

32. See FAVRE, *supra* note 23, at 192–93; Rumley & Rumley, *supra* note 31, at 25 (explaining that many other states followed suit and “passed similar legislation to that in New York and chartered local ASPCA chapters to help with enforcement”).

33. See EMILY STEWART LEAVITT ET AL., *ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAWS FROM 1641 TO 1990*, at 49 (4th ed. 1990).

34. See *id.* at 48–49.

35. See *id.* at 48.

36. See *id.*; see also Nicole Fox, Note & Comment, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145, 159–60 (1995) (“A second concern which led to the enactment of this law was the potential economic harm suffered by the animal’s owner when animals were transported in this manner. Confinement over a period of hours caused the animal’s ‘flesh and weight’ to deteriorate.”).

37. See LEAVITT ET AL., *supra* note 33, at 48.

38. See *id.* at 49; Fox, *supra* note 36, at 160 (stating that the initial Act was unsuccessful because the pens provided by the transportation companies did not provide adequate room or conditions for proper rest for the animals).

39. See LEAVITT ET AL., *supra* note 33, at 49.

40. See *id.*

41. See *id.* at 49–50; Amy Mosel, *What About Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production*, 27 U. DAYTON L. REV. 133, 140 (2001) (“The 28-Hour Law does not set requirements for the daily living conditions of animals that are not being transported.”).

facilities and equipment, and fined offending companies.⁴² Today, the Twenty-Eight Hour Law is still in effect, though most livestock are now transported by trucks as opposed to rail.⁴³

The movement for the humane treatment of animals, beginning with the Twenty-Eight Hour Law, has had lasting effects.⁴⁴ On May 29, 1884, not long after the creation of the 1873 Act, Congress created a subset of the United States Department of Agriculture called the Bureau of Animal Industry (BAI).⁴⁵ The BAI was created to prevent the transportation of diseased livestock and to suppress contagious diseases among domestic animals.⁴⁶ In addition, the BAI was tasked with enforcing the Twenty-Eight Hour Law.⁴⁷ Since its establishment, the BAI and its succeeding agencies have eliminated twelve exotic or domesticated diseases from the United States.⁴⁸ Today, the BAI is known as the Veterinary Services of the Animal and Plant Health Inspection Service, and its duties include enforcing the Animal Welfare Act.⁴⁹

C. Federal Law and Animal Testing: The Animal Welfare Act

During the early 1960s, the media and the public became very concerned with the treatment of animals in research facilities after a news story uncovered instances of household dogs and cats being stolen and sold to research laboratories.⁵⁰ Simultaneously, Congress began discussing the use of animals in scientific research and testing.⁵¹ As a result of national attention on animal testing, Congress passed the Animal Welfare Act (AWA) in 1966.⁵² The original version of the AWA established a licensing system for animal dealers and research laboratories that use “dogs, cats, hamsters, guinea pigs, rabbits, or nonhuman primates.”⁵³ Today, the AWA covers many different types of mammals and oversees and enforces an extensive range of issues including the

42. See LEAVITT ET AL., *supra* note 33, at 49–50.

43. See *id.* at 50; Erin Sheley, “Live Animals”: Towards Protection for Pets and Livestock in Contracts for Carriage, 3 J. ANIMAL L. 59, 66 (2007) (“[T]he 28-Hour Law has been rendered virtually nugatory by the failure of the USDA to apply it to trucks, in addition to trains.”).

44. See LEAVITT ET AL., *supra* note 33, at 48–50.

45. See Matthew E. Rohrbaugh, Note, *It’s Eleven O’Clock, Do You Know Where Your Chicken Is? The Controversy Surrounding the National Animal Identification System and its Application to Small and Organic Farmers*, 32 VT. L. REV. 407, 409 (2007).

46. See *id.* (explaining that the BAI was not created to supersede state regulation, but to create a “parallel state and federal structure for animal-disease regulation”).

47. See LEAVITT ET AL., *supra* note 33, at 50.

48. See *id.*

49. See *id.*

50. See FAVRE, *supra* note 23, at 350.

51. See *id.*; Henry Cohen, *The Animal Welfare Act*, 2 J. ANIMAL L. 13, 15 (2006) (explaining that the Animal Welfare Act prohibits “dealers from selling or buying dogs or cats to or from unlicensed dealers”).

52. See FAVRE, *supra* note 23, at 350.

53. See *id.*; Robyn Fae Katz, Comment, *The Importance of Enacting a Texas Commercial Breeder Law to Regulate Loopholes That the Federal Law Creates*, 11 TEX. TECH ADMIN. L.J. 185, 188 (2009) (“Currently, any commercial breeder who sells dogs directly to the public avoids the regulation of the AWA . . .”).

theft of pet dogs and cats sold to research laboratories; the placement of mammals in zoos and exhibitions; the fighting of animals; the breeding and wholesale distribution of some mammals; the auctioning of animals; the monitoring of animals in research facilities; and the transportation of animals by other common carriers.⁵⁴ Furthermore, the current AWA regulates activities concerning animals that travel through interstate or foreign commerce.⁵⁵ Notwithstanding its varied range of regulation, the AWA is not a powerful law designed to protect all animals.⁵⁶ The AWA is specifically meant to regulate certain types of animals, such as those involved in scientific experimentation and those transported through foreign commerce.⁵⁷ Despite this limited federal application, animal law and the protectionist movement have continued to grow on a state and national level.⁵⁸

D. Animal Law as a Class and Career

From its humble beginnings, the field of animal law has experienced major growth in recent years, to the point that an animal law class is offered as part of the curriculum in many law schools.⁵⁹ An adjunct professor at Seton Hall University School of Law developed the first animal law course in 1977 at the request of a student.⁶⁰ It only lasted one semester.⁶¹ Various law schools attempted similar courses in the 1980s without success until the animal law practice area gained traction and legitimacy.⁶² The first animal law casebook, published in 1999, created course consistency between the schools and made animal law easier to teach.⁶³ The Animal Legal Defense Fund (ALDF) also had a major impact on increasing the availability of animal law courses.⁶⁴ The ALDF decided to devote significant time and energy to establishing student ALDF chapters in law schools that could generate interest in the field and

54. See FAVRE, *supra* note 23, at 351.

55. See Carole Lynn Nowicki, Note, *The Animal Welfare Act: All Bark and No Bite*, 23 SETON HALL LEGIS. J. 443, 458 (1999).

56. See FAVRE, *supra* note 23, at 350 (“[The AWA] is a federal law of limited purpose and scope. It is not a broad anti-cruelty law.”); Craig A. Wenner, Note, *Judicial Review and the Humane Treatment of Animals*, 86 N.Y.U. L. REV. 1630, 1638 (2011) (stating that the word “humane” is not defined within the Act).

57. See FAVRE, *supra* note 23, at 350; Cohen, *supra* note 51, at 13 (“[T]he AWA covers only about five or ten percent of laboratory animals.”).

58. See discussion *infra* Parts III–IV.

59. See Ortiz, *supra* note 13, at 902.

60. See *id.*; Joyce Tischler, *The History of Animal Law, Part I (1972-1987)*, 1 STAN. J. ANIMAL L. & POL’Y 1, 10 n.57 (2008) (stating that the second animal law course began “at the Dickinson School of Law at Penn State University” in 1983).

61. See Ortiz, *supra* note 13, at 902.

62. See *id.*

63. See *id.*

64. See *generally About Us*, ANIMAL LEGAL DEF. FUND, <http://www.aldf.org/about-us/> (last visited Sept. 28, 2013) (describing the history of the ALDF—an organization founded by attorneys in 1979 to protect animals by filing lawsuits to stop animal abuse, to provide free legal assistance, and to strengthen state anti-cruelty statutes).

promote the inclusion of animal law classes.⁶⁵ The ALDF was very successful in this venture, as the number of courses and student ALDF groups grew from fifteen in 1999 to more than 130 today.⁶⁶ Many schools now offer a basic animal law course.⁶⁷ Lewis & Clark Law School, in Portland, Oregon, even offers a specialization in animal law through its Center for Animal Law Studies.⁶⁸ Not only can students learn about animal law in the classroom, but many law schools have also created animal law journals.⁶⁹ Two law schools, Lewis & Clark Law School and Duke University School of Law, offer animal law clinics to upper level students.⁷⁰ In Texas, several law schools offer courses in animal law and have active student ALDF chapters.⁷¹

Perhaps even more groundbreaking, students with an interest in animal law can now go on to practice in the field.⁷² Opportunities exist in a wide variety of practice areas such as animal cruelty, contract disputes, constitutional law, and intellectual property law.⁷³ The emergence of the animal law profession has also been recognized in professional organizations.⁷⁴ The Tort Trial and Insurance Practice section of the American Bar Association (ABA) has added an Animal Law Committee.⁷⁵ On a local level, the Houston Bar Association added an Animal Law Section in 2007 after local attorneys petitioned the association based on a need for greater understanding of animal law among lawyers.⁷⁶ The January 2008 issue of the ABA *Law Practice Management Magazine* identified “animal law as a ‘hot’ niche area of practice.”⁷⁷

Those interested in working in private practice can find success by going solo or working within the structure of a firm.⁷⁸ Others have ventured into the

65. See Ortiz, *supra* note 13, at 903.

66. See Lisa Franzetta, *Animal Legal Defense Fund*, 26 GPSOLO, no. 5, 2009, at 12, 12 (2009) (stating that the ALDF has a student chapter at every top-ten school in America); Ortiz, *supra* note 13, at 903.

67. See Ortiz, *supra* note 13, at 902.

68. See *id.*; Melody Finnemore, *The Evolution of Animal Law*, 68 OR. ST. B. BULL., Feb.–Mar. 2008, at 28, 29 (“Lewis & Clark, a national model of animal law curriculum, was the first college in the country to publish an animal law review and give rise to a student-organized chapter of the Animal Legal Defense Fund.”).

69. See Ortiz, *supra* note 13, at 902.

70. See *id.* at 903.

71. See *id.* Texas law students are also invited to animal law CLE events and can participate in animal law internships, such as the Animal Cruelty Section of the Harris County District Attorney’s Office. *Id.*

72. See YOLANDA EISENSTEIN, CAREERS IN ANIMAL LAW: WELFARE, PROTECTION, AND ADVOCACY 9 (2011).

73. See *id.* at 9–10; Yolanda Eisenstein, *Animals, Lawyers, and the Law*, 74 TEX. B.J. 898, 898 (2011) (“‘What is animal law?’ My answer is simply that it’s the law related to animals . . .”).

74. See EISENSTEIN, CAREERS IN ANIMAL LAW: WELFARE, PROTECTION, AND ADVOCACY, *supra* note 72, at 8–9.

75. See *id.*

76. Fran Ortiz, *Animal Law: A New Breed of Practice*, 45 HOUS. LAW., May–June 2008, at 30, 33.

77. See EISENSTEIN, CAREERS IN ANIMAL LAW: WELFARE, PROTECTION, AND ADVOCACY, *supra* note 72, at 9.

78. See *id.* at 44. Adam Karp, a solo practitioner in Washington, found success by establishing himself as an expert in animal law to become the media’s “go-to” guy for animal news stories, in addition to representing his own clients. *Id.* at 41.

practice of animal law through nonprofit organizations and government entities.⁷⁹ The Humane Society employs twenty-five staff attorneys and six to eight law clerks to handle as many as fifty cases at a time.⁸⁰ The Humane Society heavily relies on volunteer attorneys to provide pro bono assistance.⁸¹

Though animal law as a career is gaining traction, perhaps the most popular and viable way for interested persons to get involved in the animal advocacy movement is through volunteer agencies.

E. Animal Protection Organizations and Agencies

Animal advocacy has experienced significant growth in America through the formation of animal welfare groups.⁸² By 1991, there were an estimated nine hundred animal protection groups in America.⁸³ In addition to these animal welfare groups, America hosts approximately 3,500 private humane societies, which offer shelter to animals, and provide spaying and neutering services.⁸⁴ These animal welfare organizations work to combat animal cruelty in numerous ways.⁸⁵ Today, the Humane Society is likely the largest American animal welfare organization, with a reported membership of 9,980,589.⁸⁶ The Humane Society encompasses a variety of projects and goals, ranging from companion animal care to wildlife conservation.⁸⁷ The ALDF also works to protect animals of all kinds, primarily by promoting stronger enforcement of anti-cruelty laws and advocating for more humane treatment of animals.⁸⁸ The ALDF has over 100,000 members, attorneys and non-attorneys alike.⁸⁹

On the opposite end of the spectrum are small organizations like the Greyhound Protection League, which is dedicated to informing Americans about the dark side of greyhound racing.⁹⁰ Founded in 1991, the Greyhound Protection League is an all-volunteer organization that focuses on protecting

79. *See id.* at 60. Jonathan Lovvorn found an animal law career in the non-profit sector as the Vice President and Chief Counsel of the Humane Society of the United States. *Id.* at 55. Mr. Lovvorn also aids in the progressive animal law movement by taking on teaching responsibilities, in addition to assisting in the Humane Society's litigation. *Id.* at 57. Lovvorn is a professor in the animal law program at the Georgetown University Law Center. *Id.*

80. *See id.* at 56–57.

81. *See id.* at 57.

82. *See* HELENA SILVERSTEIN, UNLEASHING RIGHTS: LAW, MEANING, AND THE ANIMAL RIGHTS MOVEMENT 34 (Martha Minow et al. eds., 1996).

83. *See id.*

84. *See id.*

85. *See id.* at 34–35. For example, through the efforts of animal welfare groups, the fur industry has seen serious decline, and cosmetic companies have gradually moved away from animal testing. *Id.* at 35.

86. *See* FAVRE, *supra* note 23, at 440.

87. *See About Us*, HUMANE SOCIETY OF THE U.S., <http://www.humanesociety.org/about/> (last visited Sept. 28, 2013).

88. *See* FAVRE, *supra* note 23, at 442.

89. *See id.*

90. *See id.* at 441; *Who We Are*, GREYHOUND PROTECTION LEAGUE, <http://www.greyhounds.org/gpl/contents/entry.html> (last visited Sept. 28, 2013).

greyhounds from “exploitation, mistreatment and abuse.”⁹¹ Specialized animal welfare organizations also exist at the local level, such as the North Texas Rabbit Sanctuary.⁹² This all-volunteer nonprofit organization rescues, cares for, and finds homes for rabbits in the Dallas-Fort Worth area.⁹³

Community efforts by these organizations have played a major part in protecting animals by organizing volunteers and creating specialized services for the various animal species.⁹⁴ Even so, for animal advocacy efforts to have a real and meaningful impact, these efforts must be supported by the law.

III. THE RECENT BOOM IN TEXAS ANTI-CRUELTY STATUTES

A. Felony Animal Cruelty

1. Queso’s Law: Protecting Stray Animals

During the last three legislative sessions, Texas representatives have passed bills that give Texas anti-cruelty laws a more serious bite.⁹⁵ Though some forms of cruelty have already been considered felonies in Texas, the legislature widened the scope of felony anti-cruelty laws to encompass stray dogs and feral cats.⁹⁶ Effective as of September 1, 2007, the Cruelty to Nonlivestock Animals statute makes intentionally, knowingly, or recklessly torturing, killing or causing serious bodily injury to any nonlivestock animal, including stray dogs and feral cats, a state felony offense.⁹⁷ This revision, known as Queso’s Law, was created after a jury acquitted two Baylor University baseball players who mutilated and killed a feral cat.⁹⁸ Prior to this revision, a person could only be convicted of a felony for harming domesticated animals, such as a Tarrant County man who shot two domesticated dogs that wandered onto his property.⁹⁹

In *Tilbury v. State*, the defendant shot an Alaskan Malamute and a Labrador Retriever mix who walked onto the land around his trailer home.¹⁰⁰ Tilbury told the sheriff that he did not feel threatened by the dogs, which were

91. See FAVRE, *supra* note 23, at 441.

92. See N. TEX. RABBIT SANCTUARY, www.ntrs.org (last visited Sept. 28, 2013).

93. See *id.*

94. See Farzana Scofield, *Volunteering: Why It Matters to Animal Welfare Organizations*, PETSMAST CHARITIES BLOG (Feb. 7, 2011), <http://www.pschar.org/blog/2011/02/07/volunteering-why-it-matters/> (“Many animal welfare organizations rely on volunteers to help create a positive impact in their efforts to save the lives of homeless pets.”).

95. See Hightower, *supra* note 13, at 906.

96. See TEX. PENAL CODE ANN. § 42.092 (West 2011 & Supp. 2012).

97. See *id.* § 42.092(b).

98. Jeremy Masten, Comment, *Don’t Feed the Animals: Queso’s Law and How the Texas Legislature Abandoned Stray Animals, A Comment on H.B. 2328 and the New Tex. Penal Code § 42.092*, 60 BAYLOR L. REV. 964, 965 n.2 (2008).

99. See *Tilbury v. State*, 890 S.W.2d 219, 220 (Tex. App.—Fort Worth 1994, no writ).

100. See *id.* at 221.

twenty-five feet away from him.¹⁰¹ Tilbury shot the Labrador seven times as it walked away from him.¹⁰² Both dogs eventually died of gunshot wounds.¹⁰³ Tilbury was prosecuted after the police found the dogs' owners and proved that the animals were domesticated.¹⁰⁴ He could not have been convicted under the old law if the dogs had not belonged to anyone.¹⁰⁵

While the legislature has enhanced punishments regarding the torture of animals, those regarding the neglect of animals have remained stagnant.¹⁰⁶

2. *Starvation Is Not Torture?: Animal Neglect*

Texas recognizes torture as “any act that causes unjustifiable pain or suffering” and classifies the torture of an animal as a felony offense.¹⁰⁷ In contrast, Texas inexplicably does not recognize causing starvation, dehydration, frostbite, heatstroke, parasitic infection, or any form of neglect to be “unjustifiable pain or suffering.”¹⁰⁸ These offenses are not considered felonies because, according to the statute, they do not fall under unjustifiable pain and suffering.¹⁰⁹ For example, in *State v. Kingsbury*, the defendant purchased several dogs to breed and sell.¹¹⁰ Based on an anonymous tip, Cameron County Animal Control investigated the defendant's property and discovered seventy-six dogs, all of which were emaciated and dehydrated.¹¹¹ The officers also found the decomposing remains of at least four dogs that had died from extreme neglect.¹¹² The defendant was charged with intentionally or knowingly torturing the dogs by “leaving them without food and water to such an extent as to cause the death of said dogs.”¹¹³ The defendant argued that he could not be charged with felony animal torture for neglect.¹¹⁴ The court of appeals found that the plain meaning of the animal cruelty statute does not include “failing to provide necessary food, care, or shelter” under the umbrella of torture, thus it is only a misdemeanor offense.¹¹⁵ Despite the fact that Kingsbury had abused seventy-six animals to the point of emaciation and even death, he cannot be charged with a felony until his third conviction for neglect.¹¹⁶ According to the

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.* at 222.

105. *See id.* at 220.

106. *See infra* discussion Part III.A.2.

107. TEX. PENAL CODE ANN. § 42.092(a)(8)(c) (West 2011 & Supp. 2012).

108. *See id.* § 42.092(a)(8).

109. *See id.* § 42.092(c).

110. *State v. Kingsbury*, 129 S.W.3d 202, 204 (Tex. App.—Corpus Christi 2004, no pet.).

111. *Id.*

112. *Id.*

113. *Id.* (internal quotation marks omitted).

114. *Id.*

115. *Id.* at 206.

116. *See* TEX. PENAL CODE ANN. § 42.092(c) (West 2011 & Supp. 2012) (stating that neglect “is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two

current anti-cruelty statute, the pain and suffering of Kingsbury's dogs is not considered "unjustifiable" torture.¹¹⁷ Prosecutors currently do not, but should, have the discretion to seek felony convictions for especially egregious first-offense cases of neglect.¹¹⁸

Though the Texas Legislature has not extended felony punishment regarding first-offense cases of neglect, it has made significant changes in another notable area—animal fighting.¹¹⁹

B. Animal Fighting

With the recent media and public attention focused on dogfighting, such as the highly publicized Michael Vick trial, the Texas Legislature strengthened penalties for dogfighting with amendments to the criminal statute in both 2007 and 2009.¹²⁰ Dogfighting is defined as "any situation in which one dog attacks or fights with another dog."¹²¹ A person commits the felony offense of dogfighting if he or she "intentionally or knowingly . . . causes a dog to fight with another dog."¹²² The legislature increased the penalty for dogfighting from a Class A Misdemeanor to a state jail felony.¹²³ The legislature also increased the penalty "for attending a dog fighting exhibition from a Class C misdemeanor to a Class A Misdemeanor."¹²⁴ By treating dogfighting as a felony offense, Texas has recognized how detrimental the crime is to both animals and society.¹²⁵

Texas has had some form of a ban on cockfighting since 1925, and provisions similar to those found in the dogfighting statutes have been added to the Texas Penal Code concerning cockfighting.¹²⁶ As of 2011, a person who

times under this section"); *see also* Qaddura v. State, No. 02-05-00361-CR, 2007 WL 614087, at *1–2 (Tex. App.—Fort Worth Mar. 1, 2007, pet. ref'd) (mem. op., not designated for publication) (affirming the misdemeanor conviction of a man who neglected over fifty goats and sheep to the point of starvation and left them in various stages of decomposition on his property, while many of those living were disease-ridden and could not get up or walk).

117. *See* PENAL § 42.092(a)(8).

118. *Contra id.* § 42.092(c).

119. *See* discussion *infra* Part III.B.

120. *See* PENAL § 42.10(e) (West 2011); Hightower, *supra* note 13, at 907.

121. PENAL § 42.10(b)(1).

122. *Id.* § 42.10(a)(1).

123. *See id.*; Mitchell v. State, No. 11-09-00097-CR, 2010 WL 3447546, at *1 (Tex. App.—Eastland Sept. 2, 2010, no pet.) (mem. op., not designated for publication) (finding defendant guilty of a second-degree felony when convicted of the state jail felony offense of dog fighting when defendant had two prior, sequential felony convictions).

124. *See* PENAL § 42.10(e); Hightower, *supra* note 13, at 907.

125. *See generally* Animal Fighting Facts, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/laws-cases/animal-fighting-facts/> (last visited Sept. 28, 2013) (stating that illegal gambling, weapons violations, and violent crimes are all associated with dogfighting).

126. *See* PENAL § 42.105 (West 2011 & Supp. 2012); Gonzalez v. State, No. 12-11-00128-CR, 2012 WL 1142479, at *3 (Tex. App.—Tyler Mar. 30, 2012, pet. ref'd) (mem. op., not designated for publication) (explaining the history of cockfighting statutes in Texas).

causes or participates in a cockfight is guilty of a state jail felony.¹²⁷ A person who provides the premises for a cockfight or owns a fighting cock is guilty of a Class A Misdemeanor.¹²⁸ Additionally, attending a cockfighting exhibition is a Class C Misdemeanor.¹²⁹

The increase in penalties for animal abuse crimes is significant and encouraging. It seems that Texas is recognizing the mistreatment of animals for what it is—intolerable. A similar pattern of improvement is also becoming evident on the side of civil law.¹³⁰

IV. TREND TOWARD PROTECTION IN CIVIL LAW

A. Tackling Puppy Mills Through Increased Regulation

With the ever-increasing problem of pet overpopulation, the public eye has turned its attention toward puppy mills—“high-volume dog and cat breeding operations.”¹³¹ The Texas Legislature responded to this concern by implementing dog and cat breeding regulations in Occupations Code Chapter 802, the Dog or Cat Breeders Act.¹³² After a failed attempt in 2009, the legislature finally passed Chapter 802 in 2011, requiring pet breeders to have a license and regulating the pet-breeding facility standard.¹³³ Chapter 802 requires a dog or cat breeder, defined as “a person who possesses 11 or more adult intact female animals and is . . . in the business of breeding those animals” and sells “not fewer than 20 animals in a calendar year,” to obtain a license from the Texas Department of Licensing and Regulation (the Department).¹³⁴ The breeder must also allow the Department to conduct a pre-licensing inspection of the premises through third-party inspectors.¹³⁵ Perhaps most importantly, Chapter 802 establishes minimum standards that dog and cat breeders must abide by in caring for the animals.¹³⁶ With regard to dog breeders, each animal must be given daily exercise in an area at least three times the size of the animal’s primary enclosure.¹³⁷ The animal’s primary enclosure must be large enough “to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position.”¹³⁸ Cage bottoms can be wire

127. See PENAL § 42.105(g).

128. See *id.*; see generally *Gonzalez*, 2012 WL 1142479, at *1 (upholding defendant’s conviction of felony cruelty to a livestock animal for cockfighting; defendant was sentenced to one year in prison, which the trial court suspended for five years).

129. See PENAL § 42.105(g).

130. See discussion *infra* Part IV.

131. See Hightower, *supra* note 13, at 907.

132. TEX. OCC. CODE ANN. § 802.101 (West 2012).

133. See *id.* § 802.101; Hightower, *supra* note 13, at 907.

134. OCC. §§ 802.002 (West 2012), .101.

135. OCC. § 802.103 (West 2012).

136. OCC. § 802.201 (West 2012).

137. *Id.* § 802.201(b)(2)(c).

138. *Id.* § 802.201(b)(5)(b).

but cannot have any sharp surfaces or be wide enough for the animal's paws to extend through.¹³⁹ Furthermore, dog cages cannot be stacked more than three high.¹⁴⁰ Each breeding animal must also be given at least one regular veterinary examination per year and must be given an "adequate period" between breeding cycles.¹⁴¹ Chapter 802 does not limit the number of animals that a breeder may house or produce.¹⁴² Though somewhat revolutionary in terms of being the first Texas regulation for dog and cat breeders, the Puppy Mill Law is vague and somewhat lax in comparison to the regulations implemented in other states.¹⁴³

Changes in the civil statutes have tackled more than housing standards, however. The Texas Legislature has also addressed the need to care for animals during natural disasters.¹⁴⁴

B. Companion Animals in Evacuation Plans: The Consequences of Hurricane Katrina

Under threat of Hurricane Katrina, owners had to leave behind approximately 50,000 pets during evacuation.¹⁴⁵ At the time, Louisiana did not have any laws that required shelters to house pets during an emergency.¹⁴⁶ Consequently, volunteer animal rescue organizations transported many of the animals out of Louisiana and allowed new families to adopt them.¹⁴⁷ The Texas Legislature has recognized the potential conflicts that can arise concerning companion animals during emergencies, particularly because "[m]any people have such love and loyalty for their four-legged family members that they will refuse to evacuate during disasters if they are not allowed to bring their pets with them."¹⁴⁸ In response to this problem, the legislature passed H.B. 88 in 2007, which mandates that natural disaster evacuation plans include provisions for companion and service animals.¹⁴⁹ In particular, under this bill, the Texas Division of Emergency Management must "assist political subdivisions in developing plans for the humane evacuation, transport, and temporary sheltering of service animals and household pets in a disaster."¹⁵⁰ This law

139. *Id.* § 802.201(b)(5)(d).

140. *Id.* § 802.201(b)(7).

141. *Id.* § 802.201(b)(3), (8) (defining an adequate period as merely being "consistent with breed standards").

142. *Id.* § 802.201.

143. See discussion *infra* Part V.B.

144. See discussion *infra* Part IV.B.

145. Lacy L. Shuffield, *Pet Parents - Fighting Tooth and Paw for Custody: Whether Louisiana Courts Should Recognize Companion Animals as More Than Property*, 37 S.U. L. REV. 101, 121 (2009).

146. *Id.* at 121-22.

147. *Id.* at 122.

148. Hightower, *supra* note 13, at 907.

149. See TEX. GOV'T CODE ANN. § 418.043(11) (West 2012); Hightower, *supra* note 13, at 907.

150. GOV'T § 418.043(11); *cf.* Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No. 109-308, 120 Stat 1725 (codified as amended at 42 U.S.C. §§ 5196, 5170 (2006)) (federal law with similar provisions to protect companion animals during natural disasters).

proved to be effective during Hurricanes Gustav and Ike in 2008.¹⁵¹ Those evacuating with pets were allowed to bring their animals on public transportation.¹⁵² Companion animals were also given emergency housing, often in separate areas of the same buildings that housed their owners.¹⁵³

Texas has made great strides by including pets in evacuation plans. However, Texas has perhaps made an even bigger impact by recognizing the dangers pets face at home.¹⁵⁴

C. Violence Against Humans and Animals: Recognizing the Connection Through Domestic Violence Protective Orders

1. The Link: Translation of Violence from Animal to Human

“‘The link’ refers to the connection” between violent acts toward humans and abusive acts toward animals.¹⁵⁵ This link is particularly strong in situations of family violence.¹⁵⁶ Abusive partners frequently threaten or actually harm their victims’ pets to keep them from leaving the home or seeking help.¹⁵⁷ Put simply, “[a]nimal abuse is just another way for batterers to assert power and control over their victims.”¹⁵⁸ Animal abuse is often a symptom of domestic violence because animals can so easily be used to dominate victims, usually women, who refuse to abandon their pets to be tortured or killed.¹⁵⁹ For instance, one study found that 71% of battered women who own pets reported that their abusive partners threatened, harmed, or killed a companion animal.¹⁶⁰ In a different study, a survey of 101 battered women found that 25% admitted to delaying leaving their abusive partners out of fear for their pets.¹⁶¹ In light of this alarming connection, Texas addressed the need for increased companion animal protection in situations of domestic violence.¹⁶²

151. See Hightower, *supra* note 13, at 907–08.

152. See *id.* at 908.

153. See *id.*

154. See discussion *infra* Part IV.C.

155. See Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 YALE J.L. & FEMINISM 97, 100 (2001).

156. See *id.*

157. Allie Phillips, *How the Dynamics Between Animal Abuse and Child Abuse Affect the Forensic Interview Process*, 1 REASONABLE EFFORTS, no. 4, 2004, at 1, available at http://www.ndaa.org/reasonable_efforts_v1no4.html.

158. Jennifer Robbins, Note, *Recognizing the Relationship Between Domestic Violence and Animal Abuse: Recommendations for Change to the Texas Legislature*, 16 TEX. J. WOMEN & L. 129, 133 (2006); see generally *Celinski v. State*, 911 S.W.2d 177 (Tex. App.—Houston [1st Dist.] 1995, writ ref’d) (affirming the conviction of a man who tortured and killed his girlfriend’s two cats because he believed that she loved the cats more than she loved him).

159. See Robbins, *supra* note 158, at 129, 133 (using the example of a woman who returned to her abusive husband because he sent her photographs of him cutting off her dog’s ears, along with the ears).

160. Gentry, *supra* note 155, at 103.

161. Robbins, *supra* note 158, at 136.

162. See TEX. FAM. CODE ANN. § 85.021 (West 2008 & Supp. 2012).

2. Texas Adapts: Senate Bill 279

In 2011, the Texas Legislature passed Senate Bill 279, amending the Texas Family Code to include pets, companion animals, and assistance animals in domestic violence protective orders.¹⁶³ Under this statute, the court may prohibit a person from “removing a pet, companion animal, or assistance animal . . . from the possession of a person named in the order.”¹⁶⁴ Furthermore, and perhaps more importantly, the court may prohibit persons who have committed family violence from “harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal . . . that is possessed by a person protected by an order or by a member of the family or household of a person protected by an order.”¹⁶⁵ Though it may seem minor, this law is a manifestation of the recognition of the link between violence against animals and violence against humans.

Like protective orders, another animal issue that the legislature should examine is the types of damages available for an individual suffering from the loss of a pet.¹⁶⁶

D. Texas Tort Law: What Is an Animal Worth?

1. Background on Recovery for Harm to Animals

Courts take different positions when addressing what an owner can recover when a pet has been injured or killed.¹⁶⁷ Recovery of damages for animals creates a unique conflict because animals are recognized as property by law, and yet, are capable of experiencing pain and suffering.¹⁶⁸ Even so, no court has ever recognized the pain and suffering of an animal in awarding damages.¹⁶⁹ Various courts have recognized seven general types of recovery available for harm to animals: fair market value, consequential damages, intrinsic value, intentional acts and punitive damages, mental anguish or suffering of the owner, loss of companionship, and noneconomic and nonemotional value.¹⁷⁰

163. See *id.*; Hightower, *supra* note 13, at 908.

164. FAM. § 85.021(1)(C); Hightower, *supra* note 13, at 908.

165. FAM. § 85.022(b)(7) (West 2012); Hightower, *supra* note 13, at 908.

166. See discussion *infra* Part IV.D.

167. See FAVRE, *supra* note 23, at 126–27. Compare *Corso v. Crawford Dog & Cat Hosp.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (“This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property . . . [Thus] . . . the plaintiff is entitled to damages beyond the market value of the dog.”), with *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691–92 (Iowa 1996) (rejecting the argument that the intrinsic value of a dog should be considered in awarding damages for injury to the dog).

168. See FAVRE, *supra* note 23, at 127.

169. See *id.*

170. See *id.* at 128–48.

Fair Market Value: If an animal has a market value, damages will be calculated based on the market value at the time of the loss of the animal or based on the difference between the animal's value before and after the injury.¹⁷¹ Courts may also consider special value, such as when an animal is used for breeding purposes, in assessing damages.¹⁷²

Consequential Damages: Consequential damages are split into two categories: "additional expenses and loss of income or loss of use."¹⁷³ An owner must show that an expense would not have occurred, such as a veterinary care bill, but for the injury to the animal.¹⁷⁴

Intrinsic Value: Perhaps the most controversial type, intrinsic damages have been awarded when an animal has no market value, such as a mixed-breed dog or common house cat.¹⁷⁵ Intrinsic value damages are based on the individual animal in relation to its value to the owner.¹⁷⁶

Intentional Acts and Punitive Damages: Courts have also awarded punitive damages to punish those who intentionally harm another person's animal.¹⁷⁷ The defendant must act in a malicious and willful manner or in "reckless disregard for the rights of the animal and its owner."¹⁷⁸

Mental Anguish or Suffering: Though many courts are reluctant, some have awarded damages for the injury or death of a companion animal when it "represents an increasingly significant threat to the mental well-being of the owner."¹⁷⁹ Courts have drawn the line for awards in different places, and the exact method of calculating recovery is unclear.¹⁸⁰

Loss of Companionship: Also controversial, a few courts have allowed owners to recover for the mental pain and suffering caused by the loss of a companion animal, as they are frequently treated as family members in today's society.¹⁸¹

171. See *Kaufman v. Langhofer*, 222 P.3d 272, 275 (Ariz. Ct. App. 2009) ("Arizona law is consistent with the majority position classifying animals as personal property and limiting damages for their negligent injury or death to their fair market value."); *FAVRE*, *supra* note 23, at 128.

172. See *FAVRE*, *supra* note 23, at 128.

173. See *id.* at 131.

174. See *Phillips v. N.C. State Univ.*, 697 S.E.2d 433, 438–39 (N.C. Ct. App. 2010) (awarding consequential damages for a single breeding cycle when defendant's negligence caused a broodmare's death); *FAVRE*, *supra* note 23, at 131–32.

175. See *FAVRE*, *supra* note 23, at 135.

176. See *Sherman v. Kissinger*, 195 P.3d 539, 548 (Wash. Ct. App. 2008) (allowing the plaintiffs to present evidence to prove the intrinsic value of their pet); *FAVRE*, *supra* note 23, at 135.

177. See *FAVRE*, *supra* note 23, at 137.

178. See *Wilson v. City of Eagan*, 297 N.W.2d 146, 151 (Minn. 1980) (allowing the plaintiff to recover punitive damages after a police officer intentionally killed his pet cat), *superseded by rule as stated in Soucek v. Banham*, 524 N.W.2d 478 (Minn. Ct. App. 1994); *FAVRE*, *supra* note 23, at 137.

179. See *Gill v. Brown*, 695 P.2d 1276, 1277–78 (Idaho Ct. App. 1985) (allowing plaintiffs to seek damages for mental anguish when the defendant shot and killed the plaintiffs' donkey); *FAVRE*, *supra* note 23, at 139.

180. See *FAVRE*, *supra* note 23, at 139–40.

181. See *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980) (allowing recovery for loss of companionship after a boarding facility negligently caused the death of the plaintiff's dog); *FAVRE*, *supra* note 23, at 146–47.

Noneconomic or Nonemotional Value: This type of recovery focuses on “the value that the animal represented to the owner before the harm occurred rather than the suffering after the event.”¹⁸² This is not sentimental value, but rather, value such as improved physical health due to the companionship of an animal.¹⁸³

Though states differ on what damages are allowed for the loss of an animal, the Supreme Court of Texas has chosen to decide whether or not to allow owners to recover the intrinsic or sentimental value of an animal.¹⁸⁴

2. *Are Pets Really Just Property?*

As Texans question how the law should value companion animals, an old case has recently attained the spotlight.¹⁸⁵ In *Heiligmann v. Rose*, a Supreme Court of Texas case from 1891, the plaintiff sued the defendant for poisoning and killing her Newfoundland dogs.¹⁸⁶ The dogs were well trained, and one particular dog could signal the arrival of a man, woman, or child by a distinct bark.¹⁸⁷ The dogs would sell for five dollars each, but the owner claimed that she would not take fifty dollars for the dogs.¹⁸⁸ The jury awarded the owner \$75 but did not specify if the damages were actual or exemplary damages.¹⁸⁹ The supreme court held that although there was no evidence that the dogs had any market value, the jury could infer special value because the dogs were serviceable and useful to the owner; thus, she could receive compensation for damage to her property.¹⁹⁰ The court specifically stated that a lack of market value should not impede the owner’s ability to recover: “The wrong-doer cannot escape the consequences of his acts by saying, ‘You have suffered no damages,’ for the law implies that some damages result from every illegal

182. See FAVRE, *supra* note 23, at 148. *Contra* *Oberschlake v. Veterinary Assocs.* Animal Hosp., 785 N.E.2d 811, 814 (Ohio Ct. App. 2003) (finding that “Ohio does not recognize noneconomic damages for injury to companion animals”).

183. See FAVRE, *supra* note 23, at 148.

184. See Respondents’ Brief on the Merits at viii, *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013) (No. 12-0047) [hereinafter Respondents’ Brief on the Merits, *Strickland*].

185. See *Heiligmann v. Rose*, 81 Tex. 222, 225 (Tex. 1891) (“The authorities well settle that dogs are property . . .”); Sabrina DeFabritiis, *Barking up the Wrong Tree: Companion Animals, Emotional Damages and the Judiciary’s Failure to Keep Pace*, 32 N. ILL. U. L. REV. 237, 246, n. 56 (2012) (describing *Heiligmann* and the animals-as-property theory as “archaic”); Randy Turner & Lisa Turner, *Damages Recoverable for the Death of a Companion Animal?*, 74 TEX. B.J. 918, 918 (2011) (comparing the *Heiligmann* rule to modern cases and calling for the Supreme Court of Texas to overrule it).

186. *Heiligmann*, 81 Tex. at 225.

187. *Id.*

188. *Id.* There is some confusion as to what amount the dogs would actually sell for, as the court notes that the appellee testified that the dogs were worth twenty-five dollars each, but that she could have sold them for five dollars each. See *id.*

189. *Id.* at 224.

190. *Id.* at 226 (“The law recognizes a property in dogs, and for a trespass and infraction of this right the law gives the owner his remedy.”). Notably, the court did not identify what made the dogs useful and serviceable to the owner, other than perhaps one dog’s skill of alerting the owner to approaching visitors. See *id.* at 225–26.

trespass or invasion of another's rights."¹⁹¹ Modern courts struggle to interpret this holding.

3. *New Interpretations: Petco and Medlen*

In *Petco v. Schuster*, the Third Court of Appeals of Texas examined the types of damages that a pet owner can recover for the loss of a dog and came to the traditional conclusion.¹⁹² In *Petco*, the plaintiff took her schnauzer, Licorice, to an Austin, Texas, Petco store to be groomed.¹⁹³ When she came back to get Licorice, Schuster saw her dog running through traffic.¹⁹⁴ Licorice had escaped from a Petco employee during a bathroom break.¹⁹⁵ Schuster found Licorice four days later; the dog had been killed by traffic.¹⁹⁶ Schuster then filed suit against Petco for gross negligence, breach of contract, and conversion.¹⁹⁷ The district court awarded damages on each of Schuster's claims, including mental anguish and loss of companionship or intrinsic value.¹⁹⁸ Petco appealed the award of damages for mental anguish, counseling costs, lost wages, and loss of companionship.¹⁹⁹ Based on an analysis of *Heiligmann v. Rose*, the court held that because dogs are personal property for damages purposes, Schuster could only recover for the market value of Licorice and for any special services provided by the dog.²⁰⁰ The court expressly excluded from damages the value of the dog's companionship or other sentimental considerations.²⁰¹

The Second District Court of Appeals came to a different conclusion in the highly controversial decision of *Medlen v. Strickland*.²⁰² In this case, the Medlens sued Carla Strickland, an animal shelter employee, for negligently causing the death of their dog, Avery.²⁰³ Avery escaped from the Medlens' backyard and was picked up by animal control.²⁰⁴ Jeremy Medlen went to the animal shelter to get Avery but did not have enough money with him to pay the

191. *Id.* at 226.

192. *See Petco Animal Supplies Inc. v. Schuster*, 144 S.W.3d 554, 557 (Tex. App.—Austin 2004, no pet.).

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* Petco did not originally answer Schuster's suit, and she took a default judgment. *Id.* Schuster claimed replacement value, various pet ownership expenses, lost wages, mental anguish, and loss of companionship. *Id.*

198. *Id.* at 558.

199. *Id.* at 560.

200. *Id.* at 561.

201. *Id.*

202. *Medlen v. Strickland*, 353 S.W.3d 576 (Tex. App.—Fort Worth 2011), *rev'd*, 397 S.W.3d 184 (Tex. 2013).

203. *Id.* at 577.

204. *Id.*

fine for Avery's release.²⁰⁵ The shelter agreed to place a "hold for owner" tag on Avery's cage so that the Medlens could return with enough money.²⁰⁶ Despite the hold for owner tag, Strickland placed Avery on a list of dogs to be euthanized and when the Medlens returned to pick up Avery, they learned of his euthanasia.²⁰⁷ Because Avery had no market value, the Medlens sued for his intrinsic value as an irreplaceable companion.²⁰⁸ The trial judge dismissed the lawsuit for failure to "state a claim for damages recognized at law," and the Medlens appealed.²⁰⁹

In an opinion authored by Judge Gabriel, the Second Court of Appeals held that the owners could receive damages based on the sentimental value of pets.²¹⁰ The court "interpret[ed] *Heiligmann* in light of subsequent supreme court decisions"²¹¹ to mean that pet owners can recover for pets that "were of a special value to the owner."²¹² The court also noted that Texas law had significantly changed since *Heiligmann*, particularly in that Texans can now recover for the sentimental value of personal property, which was not possible in 1891.²¹³ As individuals can recover sentimental damages for "the loss or destruction of all types of personal property," the court held that the Medlens could recover for Avery's sentimental or intrinsic value because the category of personal property includes pets.²¹⁴ The opinion concluded with a powerful thought, perhaps indicating the direction that Texas animal law is moving in: "Dogs are unconditionally devoted to their owners. Today, we interpret timeworn supreme court law in light of subsequent supreme court law to acknowledge that the special value of 'man's best friend' should be protected."²¹⁵ Strickland subsequently petitioned the Supreme Court of Texas, which granted the petition, and the parties presented oral arguments on January 10, 2013.²¹⁶

4. *A Dog's Worth: Dollars and Cents*

In a unanimous opinion, the Supreme Court of Texas held that a person can only recover economic value for the loss of a pet: "Where a dog's market value is unascertainable, the correct damages measure is the dog's 'special or pecuniary value' (that is, its actual value)—the economic value derived from its 'usefulness and services,' not value drawn from companionship or other non-

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.* at 581.

211. *Id.* at 580.

212. *Id.* (quoting *Heiligmann v. Rose*, 81 Tex. 222, 226 (Tex. 1891)).

213. *Id.* at 580.

214. *Id.*

215. *Id.* at 580–81.

216. See Transcript of Oral Argument, *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013) (No. 12-0047).

commercial considerations.”²¹⁷ While noting the special value that pets hold to their owners, the court held that its ruling in *Heiligmann* stood for economic value, not sentimental, stating that “special value” refers “not to the dog-human bond but to the dollars-and-cents value traceable to the dog’s usefulness and services.”²¹⁸ Emphasizing that the valuation criteria for damages is commercial and objective, the court reversed the decision of the Second Court of Appeals and rendered judgment for Strickland.²¹⁹

The court began by observing the importance pets hold in the lives of their owners.²²⁰ It quickly noted, however, that though owners may view their pets as family, the law views them as property.²²¹ Even so, as the court acknowledged, property damages have been based on more than market value.²²² In *Brown v. Frontier Theaters*, the court granted sentimental value for the loss of irreplaceable family heirlooms that were destroyed in a fire.²²³ In refusing to grant similar reasoning to the Medlens’ case, the court noted that the feelings one has for heirlooms are sentimental and sentimental value is based on nostalgia; however, the love one has for a pet is a present feeling, based on the traits of the animal.²²⁴ Therefore, as sentiment is a different emotion than the love one has for a pet, sentimental value is not available for the loss of a pet.²²⁵ In crafting this distinction, the court created contradictions that are difficult to reconcile.

First, the court implied that the Medlens disguised a personal injury claim as a property claim.²²⁶ Because of this impression, the court retreated from a property analysis and held that *emotional* damages are not available for the loss of a pet.²²⁷ This argument ignores the true “gravamen” of the Medlens’ claim: damages for the loss of their property.²²⁸ Second, the court emphasized that emotion cannot play a role in determining damages for the loss of a pet, though sentimentality, which plays a role in determining damages for other types of

217. *Strickland*, 397 S.W.3d at 192 (quoting *Heiligmann*, 81 Tex. at 225–26).

218. *Id.* at 189 (quoting *Heiligmann*, 81 Tex. at 225) (internal quotation marks omitted).

219. *Id.* at 189, 197–98.

220. *Id.* at 187–88 (relaying statistics on pet ownership in America).

221. *Id.* at 188.

222. *Id.* at 189; see *City of Tyler v. Likes*, 962 S.W.2d 489, 497 (Tex. 1997); *Porras v. Craig*, 675 S.W.2d 503, 506 (Tex. 1984); *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299, 304–05 (Tex. 1963).

223. *Brown*, 369 S.W.2d at 305 (“In such cases [where property has little to no market value] the most fundamental rule of damages that every wrongful injury or loss to persons or property should be adequately and reasonably compensated requires the allowance of damages in compensation for the reasonable special value of such articles to their owner *taking into consideration the feelings of the owner* for such property.” (emphasis added)).

224. *Strickland*, 397 S.W.3d at 190.

225. See *id.* at 190–91.

226. *Id.* at 191 (“Loss of companionship, the gravamen of the Medlens’ claim, is fundamentally a form of *personal-injury* damage, not property damage.”).

227. *Id.* at 192.

228. See Respondents’ Brief on the Merits, *Strickland*, *supra* note 184, at ix.

property, is unquestionably emotional.²²⁹ In order to distinguish sentimentality, it noted that pets generally play a greater role in our daily lives than do heirlooms; therefore, we form stronger connections with our pets.²³⁰ Due to this strong connection, the emotions one feels for a pet are stronger than sentiment, meaning that pet owners cannot recover sentimental value.²³¹ Yet heirlooms do not provide services, which the court stated are required to measure damages when the market value of a pet is unascertainable.²³² The logical conclusion of this dichotomy is that people care too much about their pets to the point that “emotion-based,” sentimental damages cannot be permitted. Pets are property; therefore, personal injury claims are impermissible, but they are property that we care for too much.²³³ Essentially, pet owners are stuck in purgatory and cannot recover because they care too deeply for what the law considers to be property.²³⁴

After refusing to extend sentimental damages for the loss of a pet, the court delineated several policy reasons for its decision. Specifically, it noted the liability of veterinarians, animal-shelter workers, and police officers.²³⁵ Notably, the court did not explain, other than for financial reasons, why these groups should not be held accountable if they negligently harm or kill an animal.²³⁶ It reasoned that the cost of veterinary care would increase dramatically and ultimately harm animals by forcing owners to euthanize rather than seek treatment.²³⁷ Furthermore, the court believed that it would open police officers to litigation for taking action when necessary.²³⁸ In performing a

229. See *Strickland*, 397 S.W.3d at 189. The court explained that valuation must be “commercial and objective,” “reject[ing] emotion-based liability.” *Id.* Thus, value cannot be drawn from “non-commercial considerations.” *Id.* at 192.

230. *Id.* at 190–92.

231. See *id.* at 190–92, 196.

232. See *id.* at 192.

233. See *id.* at 188, 192. The court acknowledged this contradiction. See *id.* at 192 (“The law is no stranger to incongruity . . .”).

234. See *id.* at 193 (noting that the benefit of owning a dog is relational, not financial).

235. *Id.* at 194.

236. Cf. Rebecca Poling, *AVMA, TVMA, AKC, and Others Oppose Texas Appeals Court Ruling That Pets Have “Sentimental Value”*, DFW ANIMAL RESCUE (Nov. 30, 2011), <http://www.dfwanimalrescue.com/2011/11/avma-tvma-akc-and-others-oppose-texas-appeals-court-ruling-that-pets-have-sentimental-value/> (noting that the animal organizations opposed to sentimental value damages have a financial stake in such litigation and supporting the idea that such damages would encourage accountability).

237. *Id.*; cf. Amicus Curiae Brief of the No Kill Advocacy Center in Support of Respondents at 16–17, *Strickland*, 397 S.W.3d 184 (No. 12-0047) [hereinafter Brief for No Kill Advocacy Center, *Strickland*] (“Furthermore, the gravamen of the TVMA’s argument—that costs of care will rise beyond people’s ability or willingness to pay if lawsuits and awards increase—has been debunked by an analysis performed by ABD Insurance, the second largest veterinary liability insurer: ABD determined that if emotional damages for companion-animal loss were allowed (albeit capped at \$25,000), premiums would rise by only \$212 per year, which amounts to—on average—a mere thirteen cents per customer.”); Kathryn Zeiler, *Medical Malpractice Liability Crisis or Patient Compensation Crisis?*, 59 DEPAUL L. REV. 675, 682 (2010) (“Recent studies, however, have demonstrated fairly convincingly that tort reforms do not substantially reduce insurance premiums.”).

238. *Strickland*, 397 S.W.3d at 194. Compare *City of Garland v. White*, 368 S.W.2d 12, 16 (Tex. Civ. App.—Eastland 1963, writ ref’d n.r.e.) (holding police officers liable for killing a dog when they trespassed

cost-benefit analysis, the court determined that the cost of litigation outweighs the benefit of legally recognizing the value of pets to their owners.²³⁹ It claimed that the Medlens sought the same legal footing as people who lose spouses or children, when, in fact, the Medlens sought the same legal footing as those who lose valuable property, even if that value is not financial.²⁴⁰

Finally, the court decided that the legislature is the best forum for granting sentimental damages for the loss of a pet.²⁴¹ Noting other state legislatures that have passed such laws, the court found that the legislature is in the best position to determine the types of animals that one would be allowed to recover for, the maximum amount of damages allowed, and whether such damages would be permitted for negligence or only malice.²⁴² Ultimately, the supreme court's decision is disappointing because it fails to legally recognize that the true value of animals is far from monetary.

The major accomplishments achieved by the Texas legislature and some Texas courts in recent years cannot be ignored, but they also cannot be cause for complacency. Texas laws are far from flawless and must continue to develop if this state is to be an advocate for all of its inhabitants.

V. RECOMMENDATIONS

A. Criminal Penalties: Room for Improvement

As discussed, Texas has made several improvements in recent years to the Texas Penal Code regarding animal cruelty.²⁴³ Due to additions such as Queso's Law and felony punishment for those involved in dogfighting, the ALDF removed Texas from its list of the best states in which to abuse animals.²⁴⁴ The Humane Society now classifies Texas as having moderate animal protection laws.²⁴⁵ Hopefully, however, Texas's evolution has only just begun. Texas still needs stronger protection laws, more effective prosecution, and a move away from antiquated ideas to truly become a safe haven for animals.

on the owner's property with the intent to kill the dog), *with* *Wethington v. Mann*, 172 S.W.3d 146, 151–52 (Tex. App.—Beaumont 2005, no pet.) (holding that a police officer acted within his discretion to kill a dog that displayed signs of aggression).

239. See *Strickland*, 397 S.W.3d at 195–96.

240. See *id.* at 195; Respondents' Brief on the Merits, *Strickland*, *supra* note 184, at ix.

241. *Strickland*, 397 S.W.3d at 197.

242. *Id.*

243. See *supra* Part III.

244. See Hightower, *supra* note 13, at 906.

245. See *State Rankings 2011*, HUMANE SOC'Y OF THE U.S., www.humanesociety.org/about/state/humane_state_ranking_2011.html (last visited Sept. 28, 2013) (classifying Texas as having twenty-seven out of sixty-six possible points, placing Texas on the high end of the moderate range states, which obtained between twenty and twenty-seven points).

I. A Look at the Cream of the Crop: Why California and Illinois Top the List

The 2011 Humane State Rankings, conducted by the Humane Society, list California as the number one state in terms of animal protection laws.²⁴⁶ The 2012 U.S. Animal Protection Laws Rankings, conducted by the ALDF, list Illinois as number one.²⁴⁷ These states have enacted a number of progressive laws to reach the top of these lists.²⁴⁸ For example, California, like Texas, mandates felony penalties for animal cruelty, but unlike Texas, California requires counseling for animal cruelty offenders.²⁴⁹ Texas only requires counseling for juvenile offenders.²⁵⁰ Judges have the option to require those convicted of animal abuse to “attend a responsible pet owner course sponsored by a municipal animal shelter,” but this is not mandatory, nor is it psychological counseling.²⁵¹ Like California, Illinois requires evaluation and treatment for those convicted of animal torture.²⁵² Aside from counseling, California prohibits individuals convicted of certain misdemeanors from owning, caring for, or living with any animal for five years, or ten years if convicted of a felony.²⁵³ Illinois also prevents certain types of felons from owning unsterilized or vicious dogs for a period of ten years.²⁵⁴ Those prohibited from owning animals include felons who violated the Humane Care for Animals Act, an Illinois state law, and felons convicted of certain drug charges.²⁵⁵ Texas has no such restrictions, and judges can merely order the removal of the abused animal.²⁵⁶ Furthermore, California does not distinguish between torture and starvation when defining animal cruelty.²⁵⁷ California allows courts to punish beating, mutilating, and depriving an animal of necessary sustenance with a felony sentence.²⁵⁸ Illinois, however, requires two convictions for a felony sentence.²⁵⁹ California and Illinois also require veterinarians to report

246. *Id.*

247. 2012 U.S. Animal Protection Laws Rankings, ANIMAL LEGAL DEF. FUND 1, 3, aldf.org/custom/rankings/ALDF2012USRankingsReport.pdf (last visited Sept. 28, 2013).

248. *See infra* text accompanying notes 249–60.

249. *See* CAL. PENAL CODE § 597(h) (West 2010 & Supp. 2013) (“[I]f a defendant is granted probation for a conviction under this section, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders.”).

250. TEX. FAM. CODE ANN. § 54.0407 (West 2008).

251. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12(m) (West 2006 & Supp. 2012).

252. 510 ILL. COMP. STAT. ANN. 70/3.03 (2004).

253. CAL. PENAL CODE § 597.9 (West Supp. 2013).

254. 720 ILL. COMP. STAT. ANN. 5/12-36 (Supp. 2013).

255. *Id.*; BRUCE A. WAGMAN ET AL., ANIMAL LAW CASES AND MATERIALS 163 (4th ed. 2010) (“The legislative intention behind the law was to minimize the chances of a return to prior illegal conduct by individuals who have demonstrated their predilection for such activity. Drug crimes were likely included because of the undisputed connection between drug use and animal fighting.”).

256. *See* TEX. HEALTH & SAFETY CODE ANN. § 821.023(d) (West 2003).

257. *See* CAL. PENAL CODE § 597 (West 2012).

258. *See id.* § 597(d). The statute allows punishment by either a felony or a misdemeanor, but does not mandate that neglect can only be punishable by a misdemeanor. *Id.*

259. 510 ILL. COMP. STAT. ANN. 70/3.01 (2012).

suspected animal cruelty and grant them immunity from civil liability for reporting.²⁶⁰ Texas grants immunity to veterinarians who choose to report suspected abuse, but does not require reporting.²⁶¹ California and Illinois have set the bar high, but Texas can improve even more on these progressive models.

2. Recommendations for Improving Criminal Statutes

Texas should follow the example set by Illinois and California, but should go even further. First, Texas should allow felony punishment for cases of animal cruelty by neglect. Prosecutors should have the option to seek felony convictions for extreme mistreatment. For example, in *Pointon v. State*, the defendant was convicted of seven counts of cruelty to livestock animals after the Denton County Sheriff's Office seized seventeen horses from the defendant because she had starved and neglected the animals.²⁶² The veterinarian testified that the horses were severely emaciated and that their hooves were so overgrown and weak from improper care that some could barely move.²⁶³ On the jury's recommendation, the trial court suspended the sentences and gave Pointon twenty-four months of community supervision.²⁶⁴ Under the current Cruelty to Nonlivestock Animals statute, Pointon cannot receive felony punishment for this degree of neglect until her third conviction.²⁶⁵ Prosecutors should at least have the option to pursue a felony conviction for severe cases of abuse, such as in *Pointon v. State*.²⁶⁶ The legislature should give Texas courts the discretion to decide whether particularly heinous instances of neglect merit felony punishment.

Furthermore, in following the precedent set by California and Illinois, Texas should require some type of psychological treatment for animal abusers.²⁶⁷ Animal abuse frequently leads to violence against humans, and the criminal justice system should use this knowledge to attempt to prevent further crimes against animals or people.²⁶⁸ Though the same could be said for other crimes, modest punishment by fines or even incarceration may not treat the

260. CAL. BUS. & PROF. CODE §§ 4830.5, 4830.7 (West 2011); 510 ILL. COMP. STAT. ANN. 70/3.07.

261. See TEX. OCC. CODE ANN. § 801.3585 (West 2012).

262. *Pointon v. State*, No. 02-10-00353-CR, 2011 WL 6260863, at *1–2 (Tex. App.—Fort Worth Dec. 15, 2011, no pet.) (mem. op., not designated for publication).

263. *Id.* at *3–*6.

264. *Id.* at *11.

265. See TEX. PENAL CODE ANN. § 42.09(c) (West 2011).

266. Cf. *Pointon*, 2011 WL 6260863, at *6 (explaining that some of the animals had abscesses and parasites and all were, as described by one veterinarian, lethargic like “sacks of meat on legs,” and designating this type of crime as a misdemeanor).

267. See *supra* notes 249–52 and accompanying text.

268. See Interview by Randall Lockwood and Ann W. Church with Alan C. Brantley, *An FBI Perspective on Animal Cruelty*, in THE LINK BETWEEN HUMAN ABUSE AND ANIMAL VIOLENCE 223, 223–27 (Andrew Linzey ed., 2009) [hereinafter *An FBI Perspective on Animal Cruelty*] (discussing how the FBI uses a history of animal abuse in conducting threat assessments, as animal cruelty frequently leads to violence against humans).

source of the problem—a psychological issue.²⁶⁹ Simply requiring a convicted animal abuser to pay a fine, or even to spend time in jail, will not prevent future crimes, especially if the individual is not monitored.²⁷⁰

Next, Texas should prohibit individuals convicted of any form of animal abuse from owning, caring for, or living with any animal for at least a specified period of time.²⁷¹ Punishment for abusing one animal will do little good if the person is permitted to simply go out and get another animal.²⁷² In order to enforce this rule, Texas should create an animal abuser registry.²⁷³ A registry would require anyone convicted of animal abuse to register in a database, much like sex offenders are required to do.²⁷⁴ Such a registry could prevent individuals like Shon Rahrig, a man convicted of animal torture, from claiming more victims.²⁷⁵ Rahrig was convicted in Ohio of torturing several cats and a puppy adopted from a local shelter by poking out their eyes, breaking their legs and jaws, and cutting off their paws.²⁷⁶ Rahrig was forbidden from owning an animal for five years.²⁷⁷ However, Rahrig merely relocated and was seen at another animal adoption event.²⁷⁸ By creating a registry and requiring breeders and shelters to check the registry before allowing individuals to adopt animals, Texas could prevent known animal abusers from claiming more victims.²⁷⁹ The Texas Senate passed S.B. 779, a bill that would create the animal abuser registry, but it was left pending in the House Criminal Jurisprudence Committee during the 2011 legislative session.²⁸⁰ The legislature should pass this bill so that animal caregivers have a way to prevent known abusers from obtaining more animals. These few changes would have a significant impact on

269. See generally Naseem Stecker, *Domestic Violence and the Animal Cruelty Connection*, 83 MICH. B.J., Sept. 2004, at 36, 37 (“[A]lthough animals are legally defined as property, cruelty to animals has different psychological, social, and ontological implications than other property crimes.”).

270. See *An FBI Perspective on Animal Cruelty*, *supra* note 268, at 223.

271. Compare CAL. PENAL CODE § 597.9 (West Supp. 2013) (prohibiting persons convicted of certain cruelty violations from residing with a pet for a minimum number of years), with 720 ILL. COMP. STAT. ANN. 5/12-36 (Supp. 2013) (prohibiting certain felons from residing with certain pets for a period of ten years after incarceration).

272. See Stephen Wells, *ALDF Launches Campaign to Expose Animal Abusers*, ANIMAL LEGAL DEF. FUND (Feb. 22, 2010), www.aldf.org/blog/aldf-launches-campaign-to-expose-animal-abusers/.

273. Cf. Stacy A. Nowicki, Comment, *On the Lamb: Toward a National Animal Abuser Registry*, 17 ANIMAL L. 197, 197 (2010) (“A national animal abuser registry has the potential to provide law enforcement agencies with a much-needed tool for tracking animal abusers . . .”).

274. See Ashton Marra, *States Look to Establish Online Animal Abuser Registries*, ABC NEWS (Jan. 21, 2012, 9:58 AM), <http://abcnews.go.com/blogs/headlines/2012/01/states-look-to-establish-online-animal-abuser-registries/> (discussing the first animal registry law, passed by Suffolk County, New York); Wells, *supra* note 272.

275. *States Urged to Establish Public Registries of Animal Abusers*, ANIMAL LEGAL DEF. FUND (Feb. 18, 2010), <http://aldf.org/press-room/states-urged-to-establish-public-registries-of-animal-abusers/>.

276. *Id.*

277. *Id.*

278. *Id.*

279. See Nowicki, *supra* note 273, at 197.

280. See Tex. S.B. 779, 82d Leg., R.S. (2011).

animal welfare in Texas and would demonstrate the state's commitment to caring for all of its inhabitants.

3. *More Bite, Less Bark: Giving Prosecutors Effective Resources*

Those who search Lexis and Westlaw for Texas animal cruelty cases will not find an abundance of judicial opinions. Animal abusers are not always prosecuted because district attorneys' offices do not always have the resources to effectively proceed to trial on animal cruelty issues.²⁸¹ Also, politics can play a role, particularly in rural areas, where the citizens may not feel that animals are deserving of much attention and advocacy.²⁸² Furthermore, prosecutors and law enforcement frequently lack the resources to investigate animal cruelty claims effectively.²⁸³ Luckily, the trend in Texas seems to be moving toward increased prosecution.²⁸⁴ The Harris County District Attorney's Office (HCDAO) recently took the trailblazing step of creating an Animal Cruelty Section to investigate and prosecute animal abusers.²⁸⁵ The HCDAO has gone from prosecuting fifty-two animal abuse cases in 1996 to prosecuting 257 cases involving 1,209 animals in 2010.²⁸⁶ The HCDAO not only prosecutes but also advocates for animal protection legislation with organizations like the Texas Humane Legislation Network.²⁸⁷ The HCDAO recently supported bills making cockfighting illegal and permitting pets to be included in domestic violence protective orders.²⁸⁸ Perhaps even more significantly, the HCDAO works with local law enforcement to instruct officers on how to properly investigate animal cruelty and care for seized animals.²⁸⁹ Furthermore, the HCDAO conducts community outreach programs to educate citizens on animal-related issues.²⁹⁰ The HCDAO has effectively tackled all of the issues that communities face in

281. See *Why Prosecutors Don't Prosecute*, ANIMAL LEGAL DEF. FUND, www.aldf.org/article.php?id=245 (last visited Sept. 29, 2013) ("[M]any courts are under funded and overwhelmed with cases and some prosecutors are forced to work on cases they feel they can win.").

282. *Id.* ("[U]tilitarian attitudes towards animals in certain jurisdictions, particularly rural areas, often play a large role.").

283. See *id.*

284. See Heather Cook & George Flynn, *Animal Cruelty as a Cause of Action: A Look at What Harris County Is Doing*, 74 TEX. B.J. 910, 911 (2011).

285. See *id.* The article also discusses how Angel, a pit bull puppy, became a mascot for the Animal Cruelty Section after she was found with thirteen broken bones by animal abuse investigators. *Id.*

286. See *id.* ("Consequently, the section has quickly become a statewide model for other prosecuting agencies that recognize the importance of fighting animal cruelty and plan to establish similar units.").

287. See *id.* The Texas Humane Legislation Network is a nonprofit organization "that fights for the enactment and enforcement of laws to protect animals from neglect and abuse." *About THLN*, TEX. HUMANE LEGIS. NETWORK, <http://www.thln.org/index.cfm?pageID=E1D6B42B-3048-7B4D-7B89-A46FBC89749A> (last visited Sept. 29, 2013).

288. See TEX. PENAL CODE ANN. § 42.105 (West Supp. 2012); Cook & Flynn, *supra* note 284.

289. See Cook & Flynn, *supra* note 284, at 911 (discussing the creation of animal specialist positions and the provision of veterinary care for animals "once criminal charges are accepted").

290. See *id.*

confronting animal cruelty: successful investigation, prosecution, intervention, animal welfare, and education.²⁹¹

Unfortunately, the future of Texas animal prosecution, at least in Harris County, is questionable.²⁹² Harris County elected a new district attorney in November 2012, and conflicting information has since been reported concerning the fate of the Animal Cruelty Section.²⁹³ It appears that District Attorney Mike Anderson initially chose to eliminate the Animal Cruelty Section, as well as the Environmental Crimes and Consumer Fraud sections.²⁹⁴ The decision to eliminate the Animal Cruelty Section could signify that Texas is retreating from its recent progressive movement. This retreat would be a tremendous setback for Texas animal law. But, after receiving an onslaught of calls from concerned citizens regarding the Section, the HCDAO released a statement to reassure the public that it is still committed to prosecuting animal cruelty; however, the HCDAO dissolved the Animal Cruelty Section and placed a single animal cruelty specialist in the Family Criminal Division of the Special Victims Bureau.²⁹⁵ Whether this decision will tarnish the effectiveness of HCDAO animal cruelty prosecution, only time will tell.²⁹⁶

Despite this potentially significant blow, the effort to increase animal cruelty prosecution is moving forward.²⁹⁷ The Dallas County District Attorney's Office has taken a tremendous step by announcing that it is creating an Animal Cruelty Unit.²⁹⁸ The Dallas District Attorney's Office has teamed up with Safer Dallas Better Dallas, a nonprofit organization supporting law enforcement efforts, to raise \$200,000 to fund this animal cruelty unit.²⁹⁹ Assistant District Attorney David Alex, who has experience trying animal

291. *See id.*

292. *See generally* Clarissa Kay Bauer, *The Animal Cruelty Section Is Gone*, LAWS FOR PAWS: AN ANIMAL L. BLOG (Jan. 15, 2013), www.lawsforpawsblog.com/2013/01/the-animal-cruelty-section-is-gone.html [hereinafter *The Animal Cruelty Section Is Gone*] (discussing the newly elected district attorney's decision to eliminate the Animal Cruelty Section).

293. *Compare id.* (detailing the original decision to eliminate the Animal Cruelty Section), with Clarissa Kay Bauer, *Official Statement from the District Attorney's Office*, LAWS FOR PAWS: AN ANIMAL L. BLOG (Jan. 14, 2013), <http://www.lawsforpawsblog.com/2013/01/the-district-attorney-speaks.html> [hereinafter *Official Statement from the District Attorney's Office*] (updating readers with a statement from the district attorney's office claiming that the section has not been eliminated).

294. *See Action Alert: Harris County Eliminates Animal Cruelty Division*, TEX. HUMANE LEGIS. NETWORK (Jan. 21, 2013), <http://www.thln.com/?pageID=5F90EC93-3048-C277-111BECF8D519C3EE>; *The Animal Cruelty Section Is Gone*, *supra* note 292 (giving no information as to the reason for eliminating these sections).

295. *See Official Statement from the District Attorney's Office*, *supra* note 293.

296. *See id.*

297. *See, e.g.,* Rebecca Poling, *Dallas DA's Office Announces New Animal Cruelty Unit*, EXAMINER.COM (Nov. 28, 2012), www.examiner.com/article/dallas-da-s-office-announces-new-animal-cruelty-unit.

298. *See id.*

299. Matt Goodman, *Dallas County DA Teams with Nonprofit to Fund Animal Abuse Unit*, WFAA (Dec. 4, 2012, 3:42 PM), <http://www.wfaa.com/news/local/dallas/Dallas-County-DA-teams-with-nonprofit-to-fund-animal-abuse-unit-182063301.html>.

cruelty cases, will head the unit.³⁰⁰ Alex stated that ineffective investigations have thwarted animal cruelty prosecutions in the past and that he expects the unit to provide the resources to secure more convictions.³⁰¹ The Dallas County District Attorney's Animal Cruelty Unit hopefully indicates a trend of increased prosecution throughout Texas.

For this trend to continue, more counties must take action; however, smaller counties may face different challenges than Harris County and Dallas County.³⁰² Small counties may not have the funding, resources, or even the demand to set up animal cruelty units.³⁰³ Even so, each county can implement new policies to tackle animal abuse.³⁰⁴ The crucial first step would be for prosecutors to instruct law enforcement on what they need from an investigation in order to successfully prosecute animal abusers.³⁰⁵ Oftentimes, animal cruelty investigations are subpar and prosecutors do not feel confident enough to take those cases to trial.³⁰⁶ Prosecutors can remedy this problem by teaching officers which investigative techniques are most helpful for successful prosecution.³⁰⁷ If solid investigations are conducted, prosecutors are more likely to seek conviction.³⁰⁸ If funding is the predominant obstacle blocking increased prosecution, the district attorneys in small counties can reach out to charity organizations for fundraising assistance like Dallas County has done.³⁰⁹ Small counties can also reach out to the ALDF for assistance.³¹⁰ The ALDF has considerable experience in taking on animal abusers, and the organization is more than willing to provide instruction, aid, and resources to district attorneys' offices.³¹¹ By taking the simple step to educate law enforcement about how to build stronger cases and increase convictions, prosecutors all over Texas can make sure that animal cruelty laws are effectively implemented.³¹²

300. *Id.*

301. *Id.*; accord Cook & Flynn, *supra* note 284, at 911.

302. *Cf. Why Prosecutors Don't Prosecute*, *supra* note 281 (explaining that a lack of funds discourages prosecutors from prosecuting animal cruelty).

303. *See id.*

304. *Cf. Cook & Flynn*, *supra* note 284, at 911 (describing the ways in which larger counties increased animal cruelty prosecution).

305. *Id.* (describing Harris County's success resulting from educating law enforcement).

306. *See id.*

307. *See id.* (discussing the HCDAO protocol of treating the victim animals in cruelty cases as evidence which requires officers to remove the animals from the crime scene).

308. *See Why Prosecutors Don't Prosecute*, *supra* note 281.

309. *See Goodman*, *supra* note 299.

310. *See Why Prosecutors Don't Prosecute*, *supra* note 281.

311. *See id.*

312. *Cf. Cook & Flynn*, *supra* note 284, at 911 (describing Harris County's increased rate of success which resulted from implementing similar measures).

B. *Is Texas Doing the Bare Minimum to Stop Puppy Mills?*

Texas finally recognized the puppy mill problem and recently passed a law to regulate dog and cat breeders.³¹³ But did the legislature merely do the bare minimum? Chapter 802 allows breeders to use stacked wire cages; permits breeders to keep animals on wire surfaces at all times; permits breeders to keep animals in cages only large enough to turn around and lie down in for twenty-three hours a day; and uses vague terms such as requiring that there be an “adequate period” between breeding cycles.³¹⁴ Thankfully, the Puppy Mill Law does require that facilities be inspected and that any suspected animal cruelty be reported; however, the Licensed Breeder Advisory Committee thought much more was necessary.³¹⁵ The Licensed Breeder Advisory Committee was created to research issues concerning dog and cat breeders and to recommend standards of care to the Texas Department of Licensing and Regulation Commission, which reviewed the recommendations and decided what standards to actually adopt into Chapter 802.³¹⁶ The Commission rejected recommendations “that animals be provided enough space, based on size and breed, to offer an animal resting room away from feces or food; that cage flooring include at least 50% solid surface . . . and that only a licensed veterinarian . . . be allowed to deliver a Caesarian birth, dock and [sic] animal’s ears or tail, declaw a cat, or ‘debarb’ a dog.”³¹⁷ It seems that the Commission has created a regulation, but not a substantial one.

1. *Opposition to the Puppy Mill Law*

Some argue, however, that the Puppy Mill Law is actually going too far by regulating the animal-breeding industry.³¹⁸ The Responsible Pet Owners Alliance (RPOA), a Texas organization claiming to advocate for animals, as well as people who choose to wear fur and visit the circus, recently filed a complaint in the United States District Court for the Western District of Texas, asking the court to issue an order “barring the State of the [sic] Texas and the Texas Department of Licensing and Regulation from issuing permits, conducting inspections, reviewing applications, accepting fees of any kind and/or taking any action to enforce either the Act or the Rules.”³¹⁹ As a basis

313. See TEX. OCC. CODE ANN. § 802 (West 2012).

314. See OCC. § 802.201.

315. See Jordan Smith, *Better than Nothing? Controversial Puppy Mill Regulations Pass*, AUSTIN CHRON. (Mar. 28, 2012, 5:36 PM), www.austinchronicle.com/blogs/news/2012-03-28/better-than-nothing/ (explaining that the Licensed Breeder Advisory Committee consisted of “animal welfare experts, veterinarians, one animal control expert, and . . . four breeders”).

316. *Id.*

317. Smith, *supra* note 315; see OCC. § 802.201.

318. See Complaint at 3–4, *Arnett v. Denton*, No. 1:12-CV-00913-JRN (W.D. Tex. Oct. 1, 2012).

319. See *id.* at 1; see also *About Us*, RESPONSIBLE PET OWNERS ALLIANCE, www.responsiblepetowners.org/About_Us/about_us.html (last visited Sept. 29, 2013) (explaining RPOA’s organizational mission).

for its requested relief, the RPOA claimed: (1) that § 802.003 and § 802.005 violate the Equal Protection Clause in that they treat breeders of dogs and cats used for certain purposes differently from other breeders, (2) that parts of Chapter 802 are unconstitutionally vague, (3) that RPOA members have been denied due process, and (4) that § 802.062 subjects people to unreasonable searches and seizures in violation of the Fourth Amendment.³²⁰ The Puppy Mill Law, however, is a regulation not unlike those that require inspections for child care facilities.³²¹ Such inspections are reasonable to maintain minimum standards.³²² Furthermore, one certainly does not have a constitutional right to abuse animals. A federal district judge agreed and denied the claim.³²³

2. *What the Puppy Mill Law Lacks*

For comparison, an examination of Nevada's puppy mill statute reveals that it is much more detailed than the Texas Puppy Mill Law.³²⁴ In setting out guidelines for animal enclosures, Nevada expressly forbids wire flooring and cage stacking.³²⁵ Nevada also requires breeders to give dogs and cats that are at least six months of age a primary enclosure based on a mathematical formula.³²⁶ Breeders must remove any excrement from the animal's primary enclosure at least once per day, disinfect the enclosure once per day, and ensure that all other pens are cleaned at least once every two weeks.³²⁷ Furthermore, Nevada requires dealers and retailers to provide the purchaser of a dog or cat with a written statement that describes the dealer's contact information, the animal's veterinary history, local sterilization requirements, and the animal's breeding history.³²⁸ Perhaps most drastically, Nevada allows any animal control agent employed by the agency that issued an animal breeder's license to "enter and inspect the premises specified on the permit at any reasonable hour."³²⁹ The Nevada puppy mill law is much more comprehensive than the Texas law and

320. Complaint, *Arnett*, *supra* note 318, at 5–6.

321. *Cf.* TEX. HUM. RES. CODE ANN. § 42.044(b) (West 2013) (“[T]he department shall inspect all licensed or certified [child care] facilities at least once a year . . .”).

322. *Cf.* William Gormley Jr., *Regulating Child Care Quality*, 563 ANNALS AM. ACAD. POL. & SOC. SCI. 116, 116 (1999) (“Child care quality depends on child care regulation as plants depend on water.”).

323. *See* Patrick M. Walker, *Federal Judge Strikes Down Challenge to Texas's New 'Puppy Mill' Law*, STAR-TELEGRAM (Feb. 1, 2013), <http://www.star-telegram.com/2013/02/01/4594239/federal-judge-strikes-down-challenge.html>.

324. *See* NEV. REV. STAT. §§ 574.010–.670 (2011).

325. NEV. REV. STAT. § 574.390.

326. NEV. REV. STAT. § 574.400 (requiring the enclosure's floor space in square feet to equal “the mathematical square of the sum of 6 inches plus the length of the dog or cat measured from the tip of its nose to the base of its tail . . . [divided by] 144”).

327. NEV. REV. STAT. § 574.430.

328. NEV. REV. STAT. §§ 574.460–.70 (2011).

329. NEV. REV. STAT. § 574.353(6).

addresses many of the concerns involved with large-scale breeding operations, such as wire cage bottoms and cleanliness standards.³³⁰

3. *More Than the Minimum: Improving the Puppy Mill Law*

The Puppy Mill Law is necessary, but simply insufficient as it is written. First, Chapter 802 does not limit the number of animals that can be bred or kept on a property, it allows unqualified people to perform surgical operations on animals, and it is merely a “rubber stamp” of existing practices.³³¹ To truly be effective at combating puppy mills, Chapter 802 needs to set out meaningful standards with specificity that will actually serve to promote animal welfare.³³² Breeders should not be permitted to churn out countless animals for the sake of profit.³³³ So many valuable purebred animals end up in shelters.³³⁴ Allowing such unbridled breeding is irresponsible. Texas should, at the very least, limit the number of breeding animals that a dog or cat breeder can keep.³³⁵ Chapter 802 currently applies only to breeders who have eleven or more adult intact females but does not limit the number of breeding animals that may be kept, nor does the statute even apply to breeders who keep fewer than eleven breeding females.³³⁶ Furthermore, allowing breeders to cram puppies and kittens into stacked wire crates with minimal exercise and perhaps no exposure to fresh air or even sunlight should not hold up as a minimum standard of care.³³⁷ Chapter 802 should be revised to require that at least a portion of each animal’s cage have a solid bottom to provide relief from the pressure of the wire.³³⁸ The Puppy Mill Law should also set out more stringent standards for

330. See NEV. REV. STAT. §§ 574.010–.670 (2011); cf. Melissa Towsey, Comment, *Something Stinks: The Need for Environmental Regulation of Puppy Mills*, 21 VILL. ENVTL. L.J. 159, 177 (2010) (describing the health and environmental issues involving puppy mills).

331. Smith, *supra* note 315 (quoting Nicole Paquette, senior state director for the Humane Society of the United States, on the Commission’s adoption of the U.S. Department of Agriculture’s minimum standards).

332. Cf. NEV. REV. STAT. § 574 (implementing very specific puppy mill standards in Nevada).

333. *L.A. Council Votes to Ban Stores from Selling Non-Rescue Dogs, Cats*, L.A. TIMES (Oct. 24, 2012, 1:10 PM), www.latimesblogs.latimes.com/lanow/2012/10/la-pet-store-sales-ban.html. The City of Los Angeles even went so far as to ban pet stores from selling dogs, cats, and rabbits obtained from commercial breeders in an effort to combat puppy mills. *Id.*

334. See *Pets by the Numbers*, HUMANE SOC’Y OF THE U.S., http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html (last visited Sept. 29, 2013) (estimating that 25% of dogs in shelters are purebred).

335. Cf. VA. CODE ANN. § 3.2-6507.2 (West 2009) (limiting commercial dog breeders to “no more than 50 dogs over the age of one year at any time for breeding purposes”).

336. See TEX. OCC. CODE ANN. § 802.002(8) (West 2012).

337. See generally OCC. § 802.201(b)(2)(A) (West 2012) (requiring licensed breeders to provide daily exercise to each animal over twelve weeks old in an area that “may be composed of natural turf or soil” (emphasis added)); see also *Today Show Airs HSUS Investigation into Huge Internet Puppy Broker: Purebred Breeders, LLC, Supplied Sick Puppies for Sale On Nearly 800 Websites*, HUMANE SOC’Y OF THE U.S. (Dec. 7, 2011), http://www.humanesociety.org/news/press_releases/2011/12/purebred_breeders_120711.html (noting that puppy mills are identifiable as places “where dogs are often stacked in cramped wire cages”).

338. Cf. IND. CODE ANN. § 15-21-4-1 (West 2010) (forbidding commercial dog breeders from housing “a dog in a cage containing a wire floor unless the cage contains an accommodation that allows the dog to be off

the cleanliness of animal enclosures, such as specifically requiring daily cleanings.³³⁹ Finally, the law should reflect the recommendations from the expert committee, including requiring a veterinarian to perform all surgical procedures.³⁴⁰ If the Commission that sets regulations refuses to implement recommendations from the expert committee it appointed, why does such a committee even exist? Chapter 802 is an important step toward taking down puppy mills, but should be strengthened to include more specific regulations to prevent breeders like the Maggie Pets/Heddins Kennel from maintaining operations.³⁴¹

C. Dollars and Sense: Recovery of Sentimental Damages for the Loss of a Pet Should Be Permitted

The Supreme Court of Texas incorrectly held that pet owners cannot receive sentimental value for the loss of their pets.³⁴² The court held that Texas common law does not allow for recovery for sentimental damages for a pet, sentimental damages should not be available because owners are too attached to their pets, and that allowing for such recovery would adversely affect other areas, such as over-burdened courts and veterinary practices.³⁴³ Allowing for sentimental damages, however, “will not lead to the parade of horrors claimed,” nor will it cause the sky to fall.³⁴⁴ In Texas, dogs are property.³⁴⁵ Individuals typically can recover for destruction of their property based only on its market value, but that is not always the case.³⁴⁶ Texas has recognized that certain types of property that have no market value are still valuable to their owners, and, thus, damages can be awarded.³⁴⁷ This specific issue is what all of

the wire floor”); NEV. REV. STAT. § 574.390 (2011) (forbidding the use of wire floors in animal cages).

339. Cf. NEV. REV. STAT. § 574.430 (2011) (requiring Nevada animal breeders to clean cages daily).

340. Smith, *supra* note 315.

341. See discussion *supra* Part I.

342. Strickland v. Medlen, 397 S.W.3d 184, 198 (Tex. 2013).

343. See discussion *supra* Part IV.D.4. Compare Amicus Curiae Brief for the American Kennel Club et al. in Support of Petition for Review at 9, Strickland, 397 S.W.3d 184 (No. 12-0047) (stating that “there would be ‘no sensible or just stopping point’” for emotion-based damages in pet litigation (quoting Rabideau v. City of Rome, 627 N.W.2d 795, 802 (Wis. 2001))), with Brief for No Kill Advocacy Center, Strickland, *supra* note 237, at 16 (“Contrary to their predictions of doom and gloom, veterinarians across jurisdictions—including those with significantly more liberal tort regimes than Texas—are not facing particularly burdensome insurance premiums . . .”).

344. Brief for No Kill Advocacy Center, Strickland, *supra* note 237, at 2, 17.

345. See Heiligmann v. Rose, 61 S.W. 931, 932 (Tex. 1891). Professor Gregory Berns of Emory University recently conducted a study on how dogs’ brains work and found that dogs might feel emotions equitable to those of humans. Gregory Berns, *Dogs are People, Too*, N.Y. Times (Oct. 5, 2013), http://www.nytimes.com/2013/10/06/opinion/sunday/dogs-are-people-too.html?pagewanted=all&_r=1&_. As a result, Professor Berns suggested that we should reconsider classifying dogs and other animals as property. *Id.*

346. See Brown v. Frontier Theatres, Inc., 369 S.W.2d 229, 304 (Tex. 1963).

347. See *id.* at 305 (stating that heirlooms “generally have no market value which would adequately compensate their owner for their loss or destruction”); Brief for Law Professors Opposing Petition for Review as Amici Curiae Supporting Respondents at 13, Strickland, 397 S.W.3d 184 (No. 12-0047) [hereinafter Brief

the naysayers fail to focus on: dogs are *property* with special value, and Texas has allowed for recovery for that special value!³⁴⁸ Therefore, the only logical answer to the issue raised in *Strickland v. Medlen* is: Yes, Texas courts should allow pet owners to recover for the loss of a pet, for the destruction of property, in the form of sentimental damages when the pet has no real market value.³⁴⁹

The court held that sentimental damages for a pet would be equivalent to loss of consortium, a personal injury remedy.³⁵⁰ Strickland claimed that dogs are not deserving of the same status as humans in the eyes of the law and that public policy demands that dogs be treated as inferior.³⁵¹ Finally, Strickland argued, and the court agreed, that public policy required that owners not be allowed sentimental damages because doing so would burden the courts and lead to “potentially astronomical damage awards.”³⁵² These arguments, however, ignore the basis of the Medland’s claim. They are seeking property damages for the loss of their dog, their personal property.³⁵³ This is not the same as loss of consortium, mental anguish, or any other sort of personal injury claim.³⁵⁴ This is a property issue, plain and simple.³⁵⁵ It is doubtful that anyone expects million-dollar lawsuits to ensue because Texas courts allow for recovery for the sentimental value of pets.³⁵⁶ Frankly, this case is not about recovering a lot of money, it is not about burdening the courts, and it is not about opening the floodgates of frivolous-lawsuit hell.³⁵⁷ This case is about recognizing that because Texas classifies dogs as property and Texas allows for sentimental recovery for property, then it is only just and fair to allow for sentimental recovery for dogs and other pets.³⁵⁸

The Texas Legislature should do what the supreme court failed to do and mandate that Texas property damages include sentimental value for the loss of a pet, particularly when market value is nil.³⁵⁹ By doing so, the legislature will

for Law Professors, *Strickland*] (“*Brown* sets forth the rule that applies to personal property that has no market value but has a primary value to the owner based in sentiment.”).

348. See generally *Brown*, 369 S.W.2d at 305 (citing *Shewalter v. Wood*, 183 S.W. 1127 (Mo. Ct. App. 1916)) (“Where such special value is greater than the market value, it becomes the only criterion for the assessment of damages.”).

349. See Respondents’ Brief on the Merits, *Strickland*, *supra* note 184, at 9.

350. *Strickland v. Medlen*, 397 S.W.3d 184, 191 (Tex. 2013).

351. See Petitioners’ Brief on the Merits at 25, *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013) (No. 12-0047).

352. *Id.* at 26–27.

353. See Respondents’ Brief on the Merits, *Strickland*, *supra* note 184, at ix (“This case has nothing to do with mental anguish damages . . . This case—plainly and simply—is about whether Texas property owners are entitled to seek intrinsic damages for the destruction of personal property where that property has little or no market or pecuniary value.”).

354. See *id.*

355. *Id.*

356. See Brief for No Kill Advocacy Center, *Strickland*, *supra* note 237, at 15.

357. See *id.* at 16.

358. See Respondents’ Brief on the Merits, *Strickland*, *supra* note 184, at ix.

359. See *supra* notes 347–58 and accompanying text.

equalize the playing field.³⁶⁰ The supreme court's holding means that individuals who own expensive, purebred animals can recover damages for the animal's value.³⁶¹ In contrast, the person who owns the loveable but—at least according to market value—worthless mutt is left without a remedy.³⁶² Pet owners know that each animal holds a special value and cannot simply be replaced by buying a new one.³⁶³ The Supreme Court of Texas had an opportunity to set the record straight and announce that this state recognizes that animals hold significant value to their owners, regardless of the number on a price tag. Because it failed to do so, the legislature should rectify the court's decision.

VI. CONCLUSION

Despite some shortcomings, the Texas Legislature must be applauded for its efforts to pass protective laws and improve the standing of animals in the State of Texas.³⁶⁴ The past few legislative sessions have done more for animal welfare in Texas than previously anticipated or even hoped for.³⁶⁵ Even so, animal advocates must continue to demand reform where it is needed, and must push for more progressive, protective legislation.³⁶⁶

While felony punishments for those who torture stray dogs and cats or participate in animal fighting are a welcome addition, the legislature should give judges more discretion to award felony convictions for offenses that do not fit the statutory definition of torture.³⁶⁷ The law should not permit individuals to commit heinous crimes, such as those in *Pointon v. State*, three times before any serious punishment can be given.³⁶⁸ Furthermore, alternative methods of punishment, such as psychological counseling, may be necessary to prevent repeat offenses.³⁶⁹ In that light, prosecutors must be given the incentive and the resources to take on animal cruelty cases and pursue convictions.³⁷⁰ Enhancing

360. Brandy Arnold, *Texas Supreme Court to Rule on Sentimental Value of Dogs*, THE DOGINGTON POST (Jan. 11, 2013), <http://dogingtonpost.com/texas-supreme-court-to-rule-on-sentimental-value-of-dogs/>.

361. *Id.*

362. *Id.*

363. See JOHN GROGAN, *MARLEY & ME: LIFE AND LOVE WITH THE WORLD'S WORST DOG* 279 (2005) (“A person can learn a lot from a dog, even a loopy one like ours Marley taught me about living each day with unbridled exuberance and joy, about seizing the moment and following your heart. He taught me to appreciate the simple things—a walk in the woods, a fresh snowfall, a nap in a shaft of winter sunlight. And as he grew old and achy, he taught me about optimism in the face of adversity. Mostly, he taught me about friendship and selflessness and, above all else, unwavering loyalty.” (internal quotation marks omitted)).

364. See discussion *supra* Parts III–IV.

365. See discussion *supra* Parts III–IV.

366. See discussion *supra* Part V.

367. See discussion *supra* Part V.A.2.

368. See discussion *supra* Part V.A.2.

369. See discussion *supra* Part V.A.2.

370. See discussion *supra* Part V.A.3.

the criminal statutes will have no effect if prosecutors are unable to effectively implement them.³⁷¹

Furthermore, even though implementing a puppy mill law is a major improvement for Texas, Chapter 802 needs to be more specific in setting out regulations for proper animal care.³⁷² The Maggie Pets/Heddins Kennel, potentially the largest puppy mill in Texas history, stacked its crates only two high, which is permissible under the current law.³⁷³ Because Chapter 802 uses vague language and requires only very low standards of care, the Puppy Mill Law is not the groundbreaking statute that Texas needs.³⁷⁴ We can do better than the bare minimum.

Finally, if Texas is going to continue to view animals as personal property, then animals must be treated as such in tort litigation.³⁷⁵ It is disparate to allow a person to recover sentimental damages for a sentimental photo of a pet when its market value is practically nonexistent, but not to allow recovery for the loss of the actual living animal.³⁷⁶ The supreme court should not have chosen to classify living property as less valuable than inanimate property.³⁷⁷ To do so was counterintuitive and unjust.³⁷⁸

Animal welfare remains a serious and relevant matter of public interest.³⁷⁹ In order to meet the demands of an increasingly concerned society, Texas must adapt by continuing to implement stronger and more effective protective laws.³⁸⁰ In doing so, Texas can become a center for animal advocacy and protection.³⁸¹

371. See discussion *supra* Part V.A.3.

372. See discussion *supra* Part V.B.3.

373. See *supra* note 7 and accompanying text.

374. See discussion *supra* Part V.B.3.

375. See discussion *supra* Part V.C.

376. See Respondents' Brief on the Merits, *Strickland*, *supra* note 184, at 5–6 (comparing recovery for destruction of the taxidermic body of a dog to recovery for destruction of the actual living dog).

377. See discussion *supra* Part V.C.

378. See discussion *supra* Part V.C.

379. See discussion *supra* Part I.

380. See discussion *supra* Part V.

381. See discussion *supra* Part V.