

Animal Cruelty by Another Name: The Redundancy of Animal Hoarding Laws

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I. INTRODUCTION

Police officers and officials from the New Jersey Society for the Prevention of Cruelty to Animals served a warrant at the home of Wanda Oughton on March 26, 2009.¹ There they found “93 cats that had virtually destroyed the interior of the structure.”² The two-story, million dollar brick home in the upscale Chester Township neighborhood of Morris County, New Jersey, was “filled with feline urine and fecal matter” in piles that “reached two feet high.”³

For New Jersey health officials, this sad and somewhat bizarre story is not unique. Less than two years ago, in Bergen County, health officials condemned a 12,000-square-foot mansion containing 62 live cats, as well as a couple dozen dead ones.⁴ In a house emitting an odor

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¹ Tanya Drobness, *Nearly 80 Cats Found Inside \$1 Million Chester Township Home*, http://www.nj.com/news/index.ssf/2009/03/nearly_80_cats_found_inside_1.html (last visited July 22, 2009).

² Lawrence Ragonese & Brian T. Murray, *Chester Twp. Woman Accused of Hoarding 93 Cats Faces Animal Cruelty Complaints*, http://www.nj.com/news/index.ssf/2009/03/owner_of_1m_chester_home_expec.html (last visited July 22, 2009).

³ *Id.*

⁴ Brian T. Murray, *Charges Filed in Historic Animal Hoarding Case*, http://www.nj.com/news/index.ssf/2007/08/23_dead_dogs_and_cats_found_in.html (last visited July 22, 2009).

so intense that it alerted a delivery man to the presence of the ill-treated animals, authorities spent the day following the arrest literally digging cats out of the walls.⁵

As New Jersey's experience indicates, incidents of animal hoarding are not uncommon. In fact, the Humane Society of the United States reports that hoarding causes more animal deaths and injuries than intentional, violent abuse.⁶ Because every hoarding incident involves scores of animal victims, a magnitude of suffering is inevitable. Animal hoarding, as a phenomenon, has surely entered the public consciousness. Dramatic news articles, like those out of New Jersey, are difficult to ignore and hard to forget. Moreover, popular television shows like *30 Rock* and *Scrubs* have used animal hoarding for comic effect.⁷

This media attention complicates the prosecution of animal hoarders. On the one hand, as a result of these news articles and

⁵ *Id.*

⁶ See Randall Lockwood & Barbara Cassidy, *Killing with Kindness?*, THE HUMANE SOCIETY NEWS OF THE HUMANE SOCIETY OF THE UNITED STATES, Summer 1988.

⁷ Although there are surely a number of examples of hoarding behavior used on television for comic effect, a few come specifically to mind. In an episode of *30 Rock*, comedienne Jane Krakowski plays a character called "cat lady." On encountering her, Tracy Morgan exclaims, "this honky Grandma be trippin'!" *30 Rock: Pilot* (NBC television broadcast Oct. 11, 2006). In *Scrubs*, the unnamed character, Janitor, is shown with his army of taxidermed squirrels. A habit which, he later remarks, might not be particularly healthy. *Scrubs: My First Kill* (NBC television broadcast Sep. 21, 2004). Note also the Crazy Cat Lady character from *The Simpsons Movie*, a reference that I borrow, with gratitude, from Megan Renwick.

media portrayals, the average American is at least aware of the existence of “the crazy cat lady.” On the other hand, popular depictions of animal hoarding behavior often ignore its psychological complexities, relying instead on emotional themes designed to “capture readers’ attention and make disparate facts behind cases understandable by packaging them in familiar formats.”⁸ As a result, the average person’s understanding of animal hoarding—perhaps even the average judge’s understanding of this behavior—is likely to be unsophisticated.⁹

This article first examines the failure of general animal cruelty laws to address situations like those in New Jersey. The next section considers one proposed alternative: the creation of laws specifically designed to address animal hoarding. The final section rejects this proposal, and instead offers a combination of legislative reform and enforcement strategies to effectively deter animal hoarding behavior.

II. HISTORY

Animal hoarding presents unique challenges to the legal system.¹⁰ However, in all but a few states, a general anti-cruelty provision is used to prosecute animal hoarders, rather than a law

⁸ Arnold Arluke et al., *Press Reports of Animal Hoarding*, 10 SOC’Y & ANIMALS 113 (2002), available at <http://www.psyeta.org/sa/sa10.2/arluke.shtml>.

⁹ Arluke, *supra* note 8; See also Lisa Avery, *From Helping to Hoarding to Hurting: When the Acts of “Good Samaritans” Become Felony Animal Cruelty*, 39 VAL. U. L. REV. 815 (2005).

¹⁰ See generally Gary Patronek et al., *Long-term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167 (2005).

specifically designed to address hoarding behavior.¹¹ The failures inherent in this approach have been noted by scholars.¹² First, the intent element in many anti-cruelty criminal statutes may be difficult to meet when prosecuting a hoarder who earnestly believes that he or she was helping the animals.¹³ Second, anti-cruelty laws—and the prosecutors and judges who implement them—often fail to recognize the extent to which animal hoarding is symptomatic of a larger psychological condition. When underlying psychological issues go unaddressed, the rate of recidivism for convicted hoarders is staggeringly high.¹⁴

A. THE FAILURE OF ANIMAL CRUELTY LAWS

The anti-cruelty laws in many states were designed to combat deliberate animal abuse.¹⁵ In response to horrific stories of violence

¹¹ 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008) (Illinois passed the first animal hoarding statute.); HAW. REV. STAT. § 711-1109.6 (2009); See also S. 205 (Vt. 2002), available at <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>.

¹² See Avery, *supra* note 9, at 838–841; Patronek, *supra* note 10, at 172.

¹³ See HOARDING OF ANIMALS RESEARCH CONSORTIUM, ANIMAL HOARDING: STRUCTURING INTERDISCIPLINARY RESPONSES TO HELP PEOPLE, ANIMALS AND COMMUNITIES AT RISK (2006), 1, 21 [hereinafter HARC]. This report defines many types of hoarders, among them the “rescuer hoarder,” who has a “strong sense of mission to save animals” and believes that he or she “is the only one who can provide adequate care” to the animals.

¹⁴ Rebecca Simmons, *Behind Closed Doors: The Horrors of Animal Hoarding*, <http://www.hsus.org/ace/21192> (last visited July 22, 2009) (Noting that “[m]ost hoarders revert to old behaviors unless they receive ongoing mental health assistance and monitoring.”).

¹⁵ HARC, *supra* note 13, at 21.

and animal torture, some states have even stiffened the penalty for this kind of wanton abuse.¹⁶ However, such laws are not an effective tool for combating animal hoarding, which is often “not characterized by deliberate intent to harm or by direct abuse.”¹⁷ A legal system which focuses principally on cases of malicious, intentional abuse is ill-equipped to address situations “where neglect is the primary feature—a characteristic common in animal hoarding cases.”¹⁸

In *Commonwealth v. Vonderheid*, a Pennsylvania appellate court found “a complete lack of any willful neglect, cruel wantonness, or wickedness” in the actions of the defendant, and so refused to affirm his conviction for animal cruelty.¹⁹ The court so held, despite the miserable conditions under which the defendants’ animals languished. The defendant operated a roadside attraction called the Red Rock Game Farm, and for this purpose owned 44 different domestic and exotic animals. During the cold winter months, these animals were housed in a storage building. Officers from the Pennsylvania Society for the Prevention of Cruelty to Animals inspected this facility, and found it notably insufficient. Rain leaked into the building, the cages which held the monkeys and some larger members of the cat family were too small and “the water buffalo was snubbed to a post so that he could not move freely, nor lower his head to be allowed to lie down.”²⁰

¹⁷ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Commonwealth v. Vonderheid*, 28 Pa. D. & C.2d 101, 106–107 (Pa.Quar.Sess. 1962).

²⁰ *Id.* at 103.

The Pennsylvania appellate court, despite these facts, declined to affirm the defendant's conviction under the state's animal cruelty statute at the time. The statute subjected to punishment any person who "wantonly or cruelly ill-treats, overloads, beats or otherwise abuses any animal."²¹ As applied in a previous Pennsylvania case, the statutory term "wantonly" demanded that an act be "intentional, as distinguished from accidental or involuntary."²² The *Vonderheid* court, unconvinced that the neglect was intentional, reversed the lower court's conviction.

The prosecution of animal hoarders is also difficult where an animal cruelty statute fails to clearly state *any* intent requirement. Admittedly, courts will attempt to apply such statutes, even absent a particular *mens rea*, by balancing "the growing concern for the protection of animals with the discretion that humans have with respect to the treatment of their animals."²³ However, in these situations, it is often the case that "the language of the statute is too vague for a proper determination of the *mens rea*," and so the statute is found unconstitutional.²⁴

²¹ *Id.* at 101 (citing Penal Code of June 24, 1939, Pub. L. No. 872 § 942, 18 PA. STAT. § 942.).

²² *Commonwealth v. Harris*, 36 Pa. D. & C. 122, 125 (Pa. Quar. Sess. 1939).

²³ *Davis v. State*, 806 So.2d 1098, 1102 (Miss. 2001).

²⁴ *Id.* at 1104. See also *People v. Rogers*, where a statute defined animal cruelty as "unjustifiably" injuring, maiming, mutilating, or killing an animal, the court held that "the statute fail[ed] to clearly define the proscribed conduct so one can avoid engaging in it in the first place without having to guess at its meaning." *People v. Rogers*, 703 N.Y.S.2d 891, 893 (N.Y. City Ct. 2000).

B. THE PSYCHOLOGY OF ANIMAL HOARDING

Medical researchers agree that animal hoarding behavior has a strong psychological component.²⁵ While many hoarders can lucidly argue that their accumulation of animals is merely a lifestyle choice, a hoarder's assessment of his own behavior is often skewed and unreliable.²⁶ This is particularly true where the hoarding behavior is accompanied by focal delusion (the insistence, in the face of evidence to the contrary, that obviously under-fed and ill-treated animals are healthy).²⁷

Although animal hoarding is becoming increasingly subject to scrutiny and research, it is still poorly understood by psychologists.²⁸ Animal hoarding behavior coincides with the presence of a number of different psychological conditions, but has not been shown to be caused by any of them. While animal hoarding certainly seems to have a compulsive dimension, some researchers doubt that hoarding

²⁵ Thomas Maier, *On Phenomenology and Classification of Hoarding: A Review*, 110 ACTA PSYCHIATRICA SCANDINAVICA 323 (2004); Alicia Kaplan & Eric Hollander, *Comorbidity in Compulsive Hoarding: A Case Report*, 9 CNS SPECTRUMS 71 (2004).

²⁶ Kelly Milner, *Collectors Think Their Animals Are Healthy*, WYO. TRIB-EAGLE (Cheyenne WYO at A9, citing Randall Lockwood).

²⁷ Randy Frost, *People Who Hoard Animals*, 17 PSYCHIATRIC TIMES 25, 25-29 (2000).

²⁸ "Animal hoarding is not yet recognized as indicative of any specific psychological disorder." Gary J. Patronek, *The Problem of Animal Hoarding*, MUN. LAW., May-June 2001, at 6, 7. See also Frost, *supra* note 27, at 25-29 and Gary J. Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult-to-Study Population*, 114 PUB. HEALTH REP. 81, 86 (1999).

behaviors are a specific symptom of obsessive-compulsive disorder.²⁹ Other researchers have investigated the incidence of aspects of post-traumatic stress disorder and attention deficit/hyperactivity disorder among animal hoarders.³⁰ In this study, hoarders, when compared to a control group, reported a greater number of traumatic experiences and symptoms of inattention and hyperactivity.³¹ However, even the most ambitious of animal hoarding studies have yet to identify a root cause of the behavior.

In fact, the medical community has yet to agree upon a clear, consistent definition of animal hoarding behavior itself.³² One proposed definition identifies an animal hoarder as:

[S]omeone who accumulates a large number of animals; fails to provide minimal standards of nutrition, sanitation and veterinary care; and fails to act on the deteriorating condition of the animals . . . or the environment . . . or the negative impact of the collection on their own health and well-being.³³

²⁹ On the one hand, Dr. Stephanie LaFarge argues that hoarding is a symptom of obsessive-compulsive disorder. Laura Maloney, *Disorder Drives Some to Get Hundreds of Pets*, TIMES-PICAYUNE (New Orleans, LA), Feb. 26, 2004, at 2. But on the other hand, some clinicians disagree. Kevin D. Wu & David Watson, *Hoarding and Its Relation to Obsessive-Compulsive Disorder*, 43 BEHAV. RES. & THERAPY 897 (2005).

³⁰ Randy Frost et. al., *Relationships Among Compulsive Hoarding, Trauma, and Attention Deficit/Hyperactivity Disorder*, 43 BEHAV. & RES. THERAPY 269 (2005).

³¹ *Id.*

³² Maier, *supra* note 25.

³³ Frost, *supra* note 27, at 25-26 (quoting Gary J. Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult-to-Study Population*, 114 PUB. HEALTH REP. 81, 82).

However, while many hoarders are discovered in unsanitary, and even toxic, living conditions, this kind of self-neglect does not always accompany hoarding.³⁴

Other definitions have been proposed. Some of these definitions are minimally descriptive, defining hoarding merely as a “behavioural abnormality characterized by the excessive collection of poorly useable objects.”³⁵ On the other hand, the Hoarding of Animals Research Consortium, an interdisciplinary organization of researchers, has created an elaborate taxonomy, identifying three different types of hoarders: 1) the overwhelmed caregiver; 2) the rescuer hoarder; and 3) the exploiter hoarder.³⁶ Unfortunately, this system of often-overlapping categorizations brings us no closer to an effective, clinical definition of animal hoarding behavior.

However animal hoarding may ultimately be defined, it is still true that hoarding behavior has a recognized and widely accepted psychological component.³⁷ This psychological component greatly complicates the process of adjudicating and punishing animal hoarders. In fact, psychologists note that “adjudication of cases rarely alters the behavior.”³⁸ As a result of these difficulties, “[w]ithout a long-term plan and support for the hoarder, the available evidence indicates that recidivism approaches one hundred percent.”³⁹

³⁴ Maier *supra* note 25, at 334.

³⁵ *Id.* at 323.

³⁶ HARC, *supra* note 13, at 19.

³⁷ See *supra* note 25. See also *supra* note 29.

³⁸ Frost, *supra* note 27, at 28.

³⁹ Patronek, *supra* note 10, at 173.

III. ANALYSIS

Motivated by these criticisms, some legal scholars have proposed the adoption of specific anti-hoarding statutes.⁴⁰ These statutes are meant to address the failure of anti-cruelty laws to effectively punish animal hoarders and deter further hoarding behavior. To date, two states have adopted such laws: Illinois and Hawaii.⁴¹ However, these statutes suffer from a number of defects, and are not an effective remedy to the problem of animal hoarding.

A. ANIMAL HOARDING LAWS, CONSIDERED

The nation's first animal hoarding law was adopted in Illinois.⁴² Before this law, the state's general anti-cruelty statute, the Humane Care for Animals Act (hereinafter, "the Illinois Act") was used to

⁴⁰ *Id.* at 187. And for a particularly compelling argument in favor of anti-hoarding laws, see also Megan Renwick, Note, *Animal Hoarding: A Legislative Solution*, __ U. LOUISVILLE L. REV. __, __ (2009). Renwick argues that hoarding laws are necessary because, without them, "It may not be clear under what laws a hoarder can be charged; prosecutors and judges may not take hoarding seriously; the media may portray the hoarder in a sympathetic light and generate public support for him or her; the potential costs of prosecuting a hoarding case may be daunting." (The pagination of this issue of the University of Louisville Law Review had not been completed as of publication of this article. Citation to a specific page number was not possible.)

⁴¹ 510 ILL. COMP. STAT. ANN. 70 *et seq.* (West 2008); HAW. REV. STAT. § 711- 1109.6 (2009); See also S. 205 (Vt. 2002), available at <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>.

⁴² See Lisa Avery, *From Helping to Hoarding to Hurting: When the Acts of "Good Samaritans" Become Felony Animal Cruelty*, 39 VAL. U.L. REV. 815, 843-844 (2005).

prosecute animal hoarders.⁴³ The Illinois Act enumerated duties owed by pet owners to their animals:

“Owner’s duties. Each owner shall provide for each of his animals:

- (a) sufficient quantity of good quality, wholesome food and water;
- (b) adequate shelter and protection from the weather;
- (c) veterinary care when needed to prevent suffering; and
- (d) humane care and treatment.⁴⁴

However, in the wake of some distressing, widely publicized cases of animal hoarding, the legislature determined that the Illinois Act was insufficient.⁴⁵ In 2001, the Illinois Act was amended to include the following definition of “companion animal hoarder”:

[A] person who (i) possesses a large number of companion animals; (ii) fails to or is unable to provide what he or she is required to provide under [the “owner’s duties” section of the Act]; (iii) keeps the companion animals in a severely overcrowded environment; and (iv) displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the companion animals are living and the deleterious impact they have on the companion animals’ and owner’s health and well-being.⁴⁶

Under the Illinois Act, a defendant who meets the definition of “companion animal hoarder” has not committed an independent criminal offense. However, when a pet owner is convicted of cruelty or neglect and is determined to be a “companion animal hoarder,” a

⁴³ 510 ILL. COMP. STAT. ANN. 70/2.10. (West 2008).

⁴⁴ 510 ILL. COMP. STAT. ANN. 70/3.

⁴⁵ Sarah Antonacci, *Legislation Introduced Aimed at Controlling Animal Hoarding*, THE STATE J-REG (Springfield, IL), Feb 6, 2001, at 9.

⁴⁶ 510 ILL. COMP. STAT. ANN. 70 *et seq.* (West 2008).

number of alternate sentencing avenues—including mandatory psychological counseling for offenders—are available to judges.⁴⁷

In 2008, Hawaii became the second state to adopt an animal hoarding statute. Under the Hawaii statute, animal hoarding is, itself, a misdemeanor criminal offense:

A person commits the offense of animal hoarding if the person intentionally, knowingly, or recklessly:

- (a) Possesses more than fifteen dogs, cats, or a combination of dogs and cats;
- (b) Fails to provide necessary sustenance for each dog or cat; and
- (c) Fails to correct the conditions under which the dogs or cats are living, where conditions injurious to the dogs', cats', or owner's health and well-being result from the person's failure to provide necessary sustenance.⁴⁸

The Hawaii statute goes on to define “necessary sustenance” as access to sufficient food, water, shelter and clean, adequate space.⁴⁹ The Hawaii statute, like the Illinois Act, also provides for emergency impoundment for veterinary care⁵⁰ and forfeiture of the animals unless

⁴⁷ Under the Illinois Act, a defendant convicted of cruelty or neglect who meets the definition of “companion animal hoarder” must undergo a psychological evaluation, and may be ordered to undergo appropriate treatment. 510 ILL. COMP. STAT. ANN. 70/3-3.03. Also, the Act, as amended, provides for an owner of an impounded animal to post a security bond. 510 ILL. COMP. STAT. ANN. 70/3.05. Where this bond is not posted and a judge finds that the animal should not be returned to the owner, the animal is forfeited. 510 ILL. COMP. STAT. ANN. 70/12. Additionally, the act provides for emergency impoundment of an animal for the purposes of veterinary care. *Id.*

⁴⁸ HAW. REV. STAT. § 711-1109.6 (2009).

⁴⁹ HAW. REV. STAT. § 711-1100.

⁵⁰ HAW. REV. STAT. § 711-1109.1.

the hoarder posts a security bond.⁵¹ Unlike the Illinois statute, the Hawaii statute does not require psychological evaluation and treatment for those convicted of animal hoarding.

An animal hoarding statute has been proposed to the Vermont state legislature, although it has not been made into law. In many ways, the Vermont proposal is similar to the Illinois Act. The Vermont proposal creates a four-part definition of an “animal hoarder,” similar to the definition found in the Illinois Act.⁵² Additionally, under the Vermont proposal, animal hoarding is not an independent criminal offense, but a person convicted of cruelty or neglect and identified as an animal hoarder is subjected to a psychological evaluation.⁵³

B. ANIMAL HOARDING LAWS, REJECTED

Animal hoarding laws are plagued by a number of defects. Although there is considerable variety among the anti-hoarding statutes that have been passed or proposed, they share certain failings.⁵⁴ Animal hoarding behavior continues to puzzle the psychological community, and so the varying statutory definitions of

⁵¹ HAW. REV. STAT. § 711-1109.2.

⁵² S. 205 (Vt. 2002), *available at* <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>.

⁵³ *Id.*

⁵⁴ Although there are differences among the statutes, each employs a nearly identical definition of animal hoarding. 510 ILL. COMP. STAT. ANN. 70 *et seq.* (West 2008); HAW. REV. STAT. § 711- 1109.6 (2009); *See also* S. 205 (Vt. 2002), *available at* <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>. These statutes echo the definition found in Gary Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult-to-Study Population*, 114 PUB. HEALTH REP. 81, 82.

hoarding behavior are loose and often contradictory. Animal hoarding laws have co-opted the language of already existing animal cruelty laws, and, when applied, these anti-hoarding statutes often prove wholly redundant. Additionally, anti-hoarding statutes employ vague, subjective language that is susceptible to constitutional challenges. Ultimately, animal hoarding laws are unlikely to provide the most effective remedy to animal hoarding behavior.

1. ANIMAL HOARDING BEHAVIOR IS ILL-DEFINED

In response to the failure of general animal cruelty laws to address the psychological dimension of hoarding behavior, anti-hoarding statutes have been enacted in a few states.⁵⁵ However, animal hoarding's psychological component eludes definition. To date, the medical literature has not conclusively established what, if any, psychological condition gives rise to hoarding behavior.⁵⁶ Moreover, no universally accepted definition of animal hoarding exists.⁵⁷ Given this uncertainty, attempts to define animal hoarding by statute are likely to result in confusing, contradictory outcomes.

Animal hoarding laws are designed to address the psychological dimension of hoarding behavior. One anti-hoarding law contains a provision for mandatory psychological counseling for offenders.⁵⁸ Moreover, the definition of hoarding behavior employed by this statute

⁵⁵ 510 ILL. COMP. STAT. ANN. 70 *et seq.* (West 2008); HAW. REV. STAT. § 711- 1109.6 (2009).

⁵⁶ See *supra* notes 28 and 29.

⁵⁷ See Maier, *supra* note 25.

⁵⁸ 510 ILL. COMP. STAT. ANN. 70/3-3.03 (West 2008).

echoes the definition of hoarding behavior found in some of the psychological literature.⁵⁹

However, animal hoarding is in the midst of a definitional crisis. Medical researchers have been unable to conclusively determine what, if any, psychological condition causes hoarding behavior.⁶⁰ Moreover, the psychological community has not arrived at a universally accepted definition of hoarding behavior itself and, at present, animal hoarding is not a listed condition in the Diagnostic and Statistical Manual of Mental Disorders.⁶¹

This definitional crisis is particularly apparent in the context of the “self-neglect” requirement imposed by some anti-hoarding statutes. The Illinois Act defines an animal hoarder as a person who fails to understand “the deleterious impact [the conditions] have on the companion animals’ and owner’s health and well-being.”⁶² Illinois’s definition of animal hoarding, which assumes a “negative impact of the collection on [the owner’s] health and well-being,” echoes the writing of some medical researchers.⁶³

However, Vermont’s proposed anti-hoarding statute makes no mention of the owner’s health and well-being.⁶⁴ And, under the Hawaii statute, animal hoarding exists “where conditions injurious to the dogs’,

⁵⁹ Compare 510 ILL. COMP. STAT. ANN. 70/2.10-3 (West 2008), with Patronek, *supra* note 54, at 85.

⁶⁰ See *supra* notes 28 and 29.

⁶¹ See *supra* note 25.

⁶² 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008).

⁶³ Frost, *supra* note 27, at 25 (citing Patronek, *Hoarding of Animals*, 114 PUB. HEALTH REP. 81, 82).

⁶⁴ S. 205 (Vt. 2002), available at <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>.

cats', or owner's health and well-being result" from the neglect.⁶⁵ Presumably, the use of the conjunction "or" indicates that self-neglect is not a necessary condition for the offense of animal hoarding under Hawaiian law.

A legislature may look to available medical research when debating the inclusion of a self-neglect requirement in a proposed anti-hoarding statute. However, public policy considerations also weigh on this determination. And so, while the statutory definition of animal hoarding should be faithful to the medical literature, it should also aid in accomplishing the purpose of anti-hoarding statutes: preventing and punishing the mistreatment of animals.

The self-neglect requirement may ultimately frustrate the purpose of an anti-hoarding statute. In the context of a law designed to prevent and punish the mistreatment of animals, it seems unnecessary to require a showing that harm has been visited on humans as well.⁶⁶ This requirement seems particularly counterproductive if it would provide an effective defense to an otherwise guilty hoarder. Additionally, many hoarders do not occupy the same living space as their animals. Where this is the case, the self-neglect requirement may go unmet even though the anti-hoarding statute would have otherwise been violated.⁶⁷

The creators of animal hoarding statutes are thereby faced with a dilemma. On the one hand, the anti-hoarding statutes, if drafted in a way that is faithful to the definition of animal hoarding proposed by

⁶⁵ HAW. REV. STAT. § 711-1109.6 (emphasis added).

⁶⁶ Renwick, *supra* note 40, at ____.

⁶⁷ *Id.*

many clinicians, may fail to address all instances of hoarding behavior. On the other hand, the anti-hoarding statutes, if drafted broadly enough to address all instances of hoarding behavior, may depart from the medical community's understanding of hoarding.

2. ANIMAL HOARDING LAWS ARE REDUNDANT

Animal hoarding statutes are fundamentally redundant. Every anti-hoarding law, passed or proposed, ties the definition of animal hoarding to the definition of animal cruelty.⁶⁸ Admittedly, anti-hoarding statutes impose an additional, numerosity requirement. However, the numerosity requirement is, in some statutes, stated in such vague language that it inevitably collapses into other elements of the crime.⁶⁹ Where the behavior proscribed by an anti-hoarding statute is identical to the behavior proscribed by an anti-cruelty statute, and the number of animals that must be involved is an afterthought, an anti-hoarding law will only ever be violated where an anti-cruelty law has already been violated.

Animal hoarding, as defined by statute, can be reduced to two key elements: numerosity and behavior. Every anti-hoarding statute defines animal hoarding as a certain kind of behavior—usually the failure to provide adequate food, water or shelter—perpetrated on a certain number of animals.⁷⁰

Each state articulates the numerosity element differently. Some legislatures have created a bright-line rule, requiring a specific number

⁶⁸ 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008).

⁶⁹ *Id.* (The Illinois statute requires only that a "large" number of animals be possessed by the hoarder.).

⁷⁰ 510 ILL. COMP. STAT. ANN. 70/2, 2.10, 70/3; HAW. REV. STAT. § 711-1109.6 (2009).

of animals be involved.⁷¹ Others employ more ambiguous terms, demanding some kind of fact-based inquiry.⁷² In Hawaii, a perpetrator must own more than 15 animals to be guilty of the crime of animal hoarding.⁷³ In Illinois, where animal hoarding is not an independent criminal offense, a “large number” of animals must be involved.⁷⁴ The anti-hoarding statute proposed in Vermont required only five or more animals.⁷⁵

Admittedly, the simplicity of a bright-line rule is attractive. However, some scholars criticize this approach, as it prevents the legal system from intervening in a clear case of hoarding “until a hoarder has accumulated a certain number of animals.”⁷⁶ While a bright-line rule can be easily applied by judges and prosecutors, it may also have the unintended effect of creating a legal black hole, in which obviously criminal behavior will evade prosecution, so long as it is perpetrated on a limited number of animal victims.⁷⁷

On the other hand, where no fixed number of animals is demanded by an anti-hoarding statute, the result is an inevitable blurring of the numerosity and behavior requirements. While it is

⁷¹ HAW. REV. STAT. § 711-1109.6 (2009).

⁷² 510 ILL. COMP. STAT. ANN. 70/2, 2.10, 70/3.

⁷³ HAW. REV. STAT. § 711-1109.6.

⁷⁴ 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008).

⁷⁵ S. 205 (Vt. 2002), *available at* <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/S-205.HTM>.

⁷⁶ Renwick, *supra* note 40, at ____.

⁷⁷ However, even if an offender may escape prosecution under the anti-hoarding statute, presumably, an anti-cruelty statute, if effectively drafted, may allow for prosecution of the hoarder.

undoubtedly true that “no magic number of animals . . . qualifies a person as a hoarder,” the less guidance that the statutory language provides, the more courts must look to the adequacy of the food and shelter provided to the animals to satisfy the numerosity element.⁷⁸ Which is to say, the less clarity that the numerosity element provides, the more courts will simply look to the behavioral element, to satisfy both parts of the statute. Ultimately, these two elements become indistinguishable from one another.

In fact, many proponents of animal hoarding laws would encourage this blurring of the numerosity and behavior elements. For these scholars, it is not the number of animals in the space, or the degree of overcrowding in the space, but the “condition of the space and the care given to the animals” that indicates the occurrence of hoarding behavior.⁷⁹ However, once the numerosity and behavior elements of an anti-hoarding statute have blurred, it begs the question: if animal hoarding is not defined by the number of animals in a household, but by the treatment those animals receive, what is the difference between animal hoarding and animal cruelty? Ultimately, there is little difference between the two.

Where the numerosity element is no longer a key component of an anti-hoarding statute, animal hoarding laws are rendered fundamentally redundant. Most anti-hoarding laws tie the definition of animal hoarding to the definition of animal cruelty.⁸⁰ Consequently, the

⁷⁸ Renwick, *supra* note 40, at ____.

⁷⁹ *Id.*

⁸⁰ 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008) (incorporating language of its anti-cruelty statute with its anti-hoarding statute); HAW. REV. STAT. § 711-1109.6

behavior element of an anti-hoarding statute is nearly identical to the state's corresponding anti-cruelty statute.

Given the identical language employed by both statutes—and given the tendency to overlook the numerosity element—an anti-hoarding law will only be violated where an anti-cruelty law has already been violated. Simply owning thirty cats is not, *per se*, a criminal act, while owning thirty cats and failing to provide them with adequate food or shelter constitutes the offense of animal hoarding. However, owning thirty cats and failing to provide them with adequate food or shelter already constitutes the offense of animal cruelty under most state statutes.

The central distinction between an anti-hoarding statute and an anti-cruelty statute is the numerosity element, and this is precisely the part of an anti-hoarding statute that has been jettisoned from the analysis. Consequently, many scholars have reasoned that “despite [the] absence of animal hoarding laws . . . [state officials] can use animal cruelty statutes to effectively pursue charges against animal hoarders.”⁸¹

3. ANIMAL HOARDING LAWS ARE VAGUE AND SUBJECTIVE

Animal hoarding statutes employ arcane, subjective language that would likely be found unconstitutionally vague. Admittedly, animal cruelty statutes have, in most states, survived constitutional challenges. However, these anti-cruelty statutes have an element of

(noting the anti-hoarding statute uses the phrase “necessary sustenance”); HAW. REV. STAT. § 711-1100 (using the same phrase in the anti-cruelty statute).

⁸¹ Avery, *supra* note 9, at 845.

objectivity that is lacking in anti-hoarding statutes. This is particularly true where an anti-hoarding statute uses broad, unclear terms like “large” to articulate the numerosity standard.

Animal cruelty statutes have long been the subject of constitutional challenges.⁸² However, “most states faced with contentions of the vagueness of animal cruelty statutes have upheld their constitutionality.”⁸³

In *State v. Andree*, a Washington anti-cruelty statute proscribed the killing of “an animal by a means causing undue suffering.”⁸⁴ The defendant argued that the statutory language was unconstitutionally vague. The court evaluated the phrase “undue suffering” in context of the facts of the case, and so asked “whether a person of ordinary intelligence would understand that killing a kitten by stabbing it nine times with a hunting knife would cause undue suffering.”⁸⁵ Unsurprisingly, the court answered this question in the affirmative, and the statute survived the constitutional challenge.⁸⁶

Likewise, New York rejected a constitutional challenge to its animal cruelty statute in *People v. Bunt*.⁸⁷ Here, the word “cruelty,” itself, was at issue. The New York court noted, at the outset, that “the word ‘cruelty’ is one commonly known to an average person and it would be for a jury to determine whether the defendant acted in a

⁸² See *Moore v. State*, 107 N.E. 1 (Ind. 1914) (upheld a statute against a constitutional challenge for vagueness).

⁸³ *Avery*, *supra* note 9, at 845.

⁸⁴ *State v. Andree*, 954 P.2d 346, 348 (Wash. App. 1997).

⁸⁵ *Id.* at 349.

⁸⁶ *Id.*

⁸⁷ *People v. Bunt*, 462 N.Y.S.2d 142 (N.Y. Justice Ct. 1983).

cruel manner.”⁸⁸ The court then explained that the test for cruelty is “the justifiability of the act or omission,” and that this test would enable “a person of ordinary intelligence . . . [to] determine whether defendant’s act was prohibited and unjustified.”⁸⁹ Ultimately, the word “cruelty” was sufficiently well-defined, and the statute was not unconstitutional.⁹⁰

Both the New York and Washington anti-cruelty statutes survived a constitutional challenge for vagueness, as have the anti-cruelty statutes in most other states.⁹¹ The drafters of the Illinois and Hawaii animal hoarding statutes, hoping to avoid vagueness challenges to the new anti-hoarding legislation, wisely adopted the constitutionally-tested language from anti-cruelty statutes.⁹²

⁸⁸ *Id.* at 144.

⁸⁹ *Id.*

⁹⁰ *Id.* at 146.

⁹¹ However, note that constitutional challenges are sometimes successful, particularly where no specific *mens rea* is demanded by the statute. *Davis v. State*, 806 So.2d 1098 (Miss. 2001); *See also* *People v. Rogers*, 703 N.Y.S.2d 891 (N.Y.City Ct. 2000). A New York statute stated: “[a] person who . . . tortures . . . or unjustifiably injures, maims, mutilates or kills any animal . . . is guilty of a misdemeanor.” *Id.* at 892. Section 350(2) of that statute defined “Torture” or “Cruelty” as including “every act, omission, or neglect, where by unjustifiable physical pain, suffering or death is caused or permitted.” *Id.* The question in *Rogers* was whether the statute failed to clearly define the proscribed conduct so one can avoid engaging in it in the first place without having to guess at its meaning.” *Id.* at 893.

⁹² *See supra* note 80.

This strategy may not prove successful, however, because of unique aspects of anti-hoarding laws. On the one hand, an anti-hoarding statute that adopts the “Owner’s Duties” section of an anti-cruelty statute—precisely what the Illinois anti-hoarding law has done—is likely to survive a constitutional challenge to the parts of the statute demanding adequate treatment of the animals.⁹³ On the other hand, anti-cruelty statutes do not possess a numerosity element, and so the numerosity language in an anti-hoarding statute will not have been constitutionally vetted during the challenge to the anti-cruelty statute.

Undoubtedly, an anti-hoarding statute that relies on bright-line language is not unconstitutionally vague. The Hawaiian anti-hoarding law, which demands that more than 15 animals be involved before the crime of animal hoarding has been committed, is one example.⁹⁴ However, not every state’s anti-hoarding statute relies on fixed, objective criteria.

Every anti-cruelty statute that has survived a constitutional challenge incorporates a clear, objective standard of reasonableness. As explained by one court, statutory language is not void for vagueness if it “convey[s] sufficiently definite warnings of the proscribed conduct when measured by common understanding and practice.”⁹⁵ Many anti-cruelty statutes rely on terms like “necessary,” “adequate,” and “proper” when defining the care and treatment that owners owe their

⁹³ 510 ILL. COMP. STAT. ANN. 70/3 (West 2008).

⁹⁴ HAW. REV. STAT. § 711-1109.6.

⁹⁵ *Gardner v. Johnson*, 451 So.2d 477, 478 (Fla. 1984).

animals.⁹⁶ Although open to debate, these terms are sufficiently clear to allow “a person of ordinary intelligence . . . [to] determine whether defendant’s act was prohibited and unjustified.”⁹⁷

Unfortunately, in some states, the numerosity element of the anti-hoarding statute lacks this clarity and objectivity. The Illinois anti-hoarding law defines an animal hoarder as one who “possesses a large number of companion animals.”⁹⁸ Unlike “necessary,” “adequate,” “sufficient,” “needless,” or “proper,” the word “large” does not “convey[] sufficiently definite warnings of the proscribed conduct when measured by common understanding and practice.”⁹⁹ Instead, the word “large” invites a prosecutor or judge to enshrine her own, personal sensibilities as law.

A judge, applying the statutory term “large,” may find himself criminalizing behavior merely because he finds it bizarre. Unlike the word “cruel,” which in *Bunt* was defined by the justifiability of an action,¹⁰⁰ the word “large” makes reference to no such objective standard.¹⁰¹ Surely, living in a house with six cats, four dogs and twelve birds is not a lifestyle that attracts everyone. And surely some judges would find 22 animals to be a “large” number of animals, but a statute

⁹⁶ Kentucky criminalizes the failure to “provide adequate food, drink, space, or health care.” KY. REV. STAT. ANN. § 525.130(1)(a). Indiana defines abandonment as the failure to provide “for adequate long term care of the animal.” IND. CODE 35-46-3-0.5.

⁹⁷ *People v. Bunt*, 462 N.Y.S.2d 142, 144 (N.Y. Justice Ct. 1983).

⁹⁸ 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2008).

⁹⁹ *Gardner*, 451 So.2d at 478.

¹⁰⁰ *Bunt*, 462 N.Y.S.2d at 144.

¹⁰¹ *Id.*

should not empower a judge to give his own personal predilections the force of law.

Subjective language is particularly problematic in the context of animal hoarding behavior, which is already so poorly understood and often misrepresented.¹⁰² On the one hand, the statutory term “large” may invite a judge to criminalize behavior which he finds personally distasteful. On the other hand, a judge may also find himself failing to criminalize actions that an expert would consider to be animal hoarding. Not all hoarding behavior is perpetrated by the “crazy cat lady.” Most Americans have built a conception of animal hoarding out of equal parts popular myth and media representation.¹⁰³ However, this lay understanding of animal hoarding behavior is likely to be unsophisticated. A statute that permits a judge to employ his own, private understanding of hoarding behavior may also result in clear cases of hoarding going unpunished.

Proponents of animal hoarding laws tend to oppose bright-line numerosity standards.¹⁰⁴ They argue that to demand a fixed number of animals be involved in cases of animal hoarding is unrealistic, and limiting. Moreover, they argue that hoarding behavior can be identified by the conditions in which the animals are kept, not necessarily by the number of animals present.¹⁰⁵ However, bright-line rules may be a necessary evil. If the touchstone for the constitutional analysis of a statute is objective standards of reasonableness, then loose, subjective

¹⁰² Arluke, *supra* note 8.

¹⁰³ *Id.*

¹⁰⁴ Renwick, *supra* note 40, at ____.

¹⁰⁵ *Id.*

statutory terms like “large” will expose an anti-hoarding statute to constitutional challenges.

IV. RESOLUTION

Animal hoarding presents unique challenges to the legal system. The failures inherent in existing anti-cruelty laws are real. However, there are better ways to address these failures than the passage of redundant, potentially unconstitutional anti-hoarding laws. Instead, legislatures should ensure that anti-cruelty statutes effectively address hoarding behavior. Anti-cruelty statutes should not require some kind of heightened mental state for conviction. Additionally, anti-cruelty statutes should aid law enforcement officials in limiting instances of recidivism, not just among animal hoarders, but among all offenders who commit crimes against animals.

When drafted effectively, general animal cruelty statutes can be used to prosecute hoarders. In *Commonwealth v. Erickson*, animals were found in an excrement-covered apartment, in varying states of starvation and dehydration.¹⁰⁶ The defendant argued that “the animal cruelty statute requires proof of knowing and willful conduct, not merely wanton and reckless conduct.”¹⁰⁷ The court, however, disagreed. The Massachusetts animal cruelty statute required “proof of only a general intent” rather than “[t]he heightened mental state of ‘knowing’ and ‘willful’ conduct.”¹⁰⁸

¹⁰⁶ *Commonwealth v. Erickson*, 905 N.E.2d 127 (Mass. App. Ct. 2009).

¹⁰⁷ *Id.* at 131.

¹⁰⁸ *Id.*

Likewise, in *State v. Brooks*, Ohio prosecutors were successful in charging the owner of 46 horses under the state's anti-cruelty statute.¹⁰⁹ The defendant failed to provide sufficient food, water and medical care to the horses, despite the repeated warnings of friends and the animals' veterinarian.¹¹⁰ The defendant's knowledge that her failure to act would result in harm to the animals was sufficient to support a conviction for animal cruelty, despite the absence of any evidence of malice.¹¹¹

As these two cases indicate, a specific anti-hoarding statute is not necessary to ensure the successful prosecution of animal hoarders. Instead, state legislatures should draft anti-cruelty statutes that demand only an intentional act, rather than a willful or wanton act. Admittedly, many hoarders do not aim to break the law and even believe that they are helping the animals they hoard. But under a general intent theory "[i]t is not necessary that the defendant [know that he is] breaking the law, but it is necessary that [he intends] the act to occur which constitutes the offense."¹¹²

Altering the *mens rea* demanded by anti-cruelty statutes is only one part of the larger solution to the problem of animal hoarding. Recidivism is a common characteristic among animal hoarders.¹¹³ As anti-cruelty laws are reformed, these changes should aid courts and law

¹⁰⁹ *State v. Brooks*, 2008 WL 2876619, 3 (Ohio App. Ct. 2008).

¹¹⁰ *Id.* at 6-7.

¹¹¹ *Id.*

¹¹² *Erickson*, 905 N.E.2d at 131-132.

¹¹³ *Patronek*, *supra* note 10, at 173.

enforcement officials in identifying, prosecuting and rehabilitating repeat offenders.

One solution is to categorize animal cruelty as a felony offense. Many animal hoarders, following prosecution for an initial offense, will relocate to new communities and commit subsequent offenses.¹¹⁴ If animal cruelty was a felony offense, it would be more difficult for repeat offenders to leap-frog from one jurisdiction to the next.

Perhaps the most effective solution to the problem of recidivism is mandatory psychological counseling. Whatever its root cause may be, hoarding behavior is a psychological problem.¹¹⁵ Only by ensuring that hoarders receive the treatment they need can a state hope to discourage further incidents of animal hoarding.

Admittedly, mandatory psychological counseling is included as a key component of some anti-hoarding statutes.¹¹⁶ However, legislatures, rather than creating a new animal hoarding law, should instead modify existing anti-cruelty statutes to incorporate mandatory psychological counseling as a possible punishment. While it is true that animal hoarding behavior is likely the result of a psychological condition, so too are other behaviors which would fall under the purview of anti-cruelty statutes, including various forms of animal torture and intentional animal abuse.¹¹⁷ Amending existing anti-cruelty

¹¹⁴ HARC, *supra* note 13, at 32.

¹¹⁵ See *supra* note 25.

¹¹⁶ 510 ILL. COMP. STAT. ANN. 70/3-3.03 (West 2008).

¹¹⁷ "[A]busing animals, and possibly observing abuse by others, is likely to have negative developmental consequences." Clifton P. Flynn, *Why Family Professionals Can No Longer Ignore Violence Towards Animals*, 49 FAM. REL. 87, 87 (2000); See also Jeremy Wright & Christopher

statutes to incorporate mandatory psychological counseling would have the added benefit of affording treatment not only to animal hoarders, but also to offenders who have committed other crimes against animals.

V. CONCLUSION

In their present form, some anti-cruelty laws are not effective tools in the prosecution of animal hoarders. However, anti-hoarding statutes are a clumsy, redundant and potentially unconstitutional solution to this problem. Rather than creating new statutes designed to address animal hoarding behavior, legislatures should refine existing anti-cruelty statutes. These alterations should include amending the *mens rea* required by anti-cruelty statutes, so that the prosecutor need only show that the defendant acted intentionally, rather than willfully or maliciously. Additionally, these alterations should include measures designed to combat the problem of recidivism among animal hoarders by imposing required psychological evaluation and treatment as a possible sentence.