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Jennifer S. Rosa

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RECENT DEVELOPMENT IN NEW YORK LAW

-Chapters 118 and 208 of the laws of 1999: The New York Legislature develops a pseudo animal rights agenda

JENNIFER S. ROSA*

In 1965, the New York State Legislature made torturing, beating, mutilating, killing, or failing to feed animals a misdemeanor offense.¹ That statute, section 353 of the Agriculture and Markets Law, had remained substantially unchanged for almost 35 years.² In the summer of 1999, however, two bills concerning crimes against animals were signed into law. Chapter 118 adds a subdivision to section 353 creating the felony of *aggravated* cruelty to animals, while chapter 208 amends the Penal and Environmental Conservation Law by banning canned shoots.³ Upon initial review, the bills, signed within a week of each other, appear to signal a new initiative for animal rights protection in New York. Yet, a more thorough examination reveals that these new laws are clearly not the beginning of a trend to criminalize mistreatment of animals resulting from any increased sensitivity to animals' rights.

The conduct prohibited by section 353 reads like a laundry list of types of abuse: overdriving, overloading, torturing, or cruelly beating; unjustifiably injuring, maiming, mutilating, or

* J.D. Candidate, June 2001, St. John's University School of Law; B.A., The George Washington University.

¹ See N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991).

² The section was amended in 1985, changing the mandatory fine from \$500 to \$1,000. See *id.*

³ See 1999 N.Y. LAWS 118 (codified in N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1991 & Supp. 1999)); 1999 N.Y. LAWS 208 (codified in N.Y. ENVTL. CONSERV. LAW § 11-1904 (McKinney 1997 & Supp. 1999)). For a definition of canned shoots, see *infra* notes 44-46 and accompanying text.

killing; denying, neglecting, or refusing to provide proper sustenance; and the catch-all of willfully furthering, instigating or engaging in any act of, or leading to cruelty.⁴ Exempted from this rule is the use of animals for scientific tests, experiments or investigations by state-approved laboratories or institutions, which might otherwise be classified as cruelty.⁵ Other sections of the Agriculture and Markets Law deal with different specific types of abuses, such as the transportation or fighting of animals.⁶

⁴ See N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991). The text of the statute reads, in pertinent part:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, . . . or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Id.

⁵ The exception clause reads, in part, as follows: "Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations, involving the use of live animals, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health." *Id.* Animal experimentation, whether for scientific research into diseases or to test new products intended for humans, is viewed by many animal rights activists as a form of cruelty. This is usually either because the testing facility keeps the animals in small cages indoors and subjects them to painful experiments without anesthetics or because improved technology makes the continuation of animal experimentation unnecessary. Proof of the consumer demand for an end to animal testing can be seen in some widely distributed cosmetic and beauty products that display labels asserting that the product and/or ingredients were never tested on animals. With increased consumer awareness, some companies are also choosing to disclose that their products do not contain any animal by-products, which are used in a wide range of products, such as many nail polish removers. Groups such as People for the Ethical Treatment of Animals publish lists of companies that continue to test their products on animals and lists of ingredients that are derived from animals so that consumers can make informed decisions about products they choose to purchase.

⁶ See N.Y. AGRIC. & MKTS. LAW § 351 (prohibiting the fighting of animals), § 355 (prohibiting the abandonment of animals), § 356 (prohibiting the failure to provide adequate food and drink to animals that have been impounded), § 359 (prohibiting the carrying of animals in a cruel manner), § 359-a (governing the proper transportation of horses), § 361 (addressing the interference with or injury to domestic animals), § 362 (governing the depositing of substances dangerous to animals when in a public place), § 365 (governing the clipping or cutting of dogs' ears), § 368 (prohibiting the unlawful operation upon the tails of horses) (McKinney 1991).

In *People v. Bunt*,⁷ the existing law withstood an attack upon its constitutionality on due process grounds. In this case of first impression, the defendant moved for a declaratory judgment that section 353 was unconstitutional for vagueness and therefore denied him the constitutional requirement of notice of the prohibited conduct.⁸ The defendant, Bunt, was accused of beating a dog with a baseball bat.⁹ Bunt was not provoked nor did act in self-defense when he beat the dog to the point where the animal was no longer able to move.¹⁰

After a review of other jurisdictions' treatment of similarly worded statutes, the court held that the statute was constitutional.¹¹ The court noted that while other states' statutes were imprecisely drafted, their purpose remained clear: to punish those who treated animals cruelly.¹² The average person understands the meaning of the word "cruelty," the court observed, and even if the statute itself was unclear, it became clear when read together with the pertinent definitions.¹³ The court held that for conduct to fall within the statute's definition of "cruelty," it must be "unjustified" as determined by the trier of fact.¹⁴ The defendant's argument that the statute "prohibits virtually any and all human conduct towards animals" did not persuade the court.¹⁵ The court in *Bunt* used a common sense approach in construing the statute by not allowing grammatical

⁷ 462 N.Y.S.2d 142 (J. Ct. 1983).

⁸ *See id.* at 142.

⁹ *See id.* at 142-43.

¹⁰ The charge was based on an eyewitness whose deposition, quoted in the opinion of the court, stated that Bunt "raised the bat above his head and hit Spunky [the dog] in the back . . . Defendant continued hitting Spunky with the bat . . . Even after Spunky was lying on the ground not moving, Bruce (the defendant) repeatedly hit him in the head and body with the baseball bat." *Id.* at 143 (internal quotations omitted).

¹¹ *See id.* at 146. The court considered the judicial treatment of similar statutes in Oklahoma and Indiana. *See id.* at 144.

¹² *See id.* at 144-45. Speaking about Oklahoma's interpretation of its statute, the court in *Bunt* observed: "In sustaining the statute the court noted that while the statute is loosely drawn, nevertheless it reveals its main purpose to punish those who are cruel to animals." *Id.* at 144.

¹³ *See id.* The court noted that "the New York statute defines in Agriculture and Markets Law [§] 350(2) that 'torture' or 'cruelty' includes every act, omission, or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted." *Id.*

¹⁴ *Id.* at 145.

¹⁵ *Id.* at 143.

imperfections to work contrary to the purpose of the rule, as the defendant's position had advocated.¹⁶

The application of section 353 was challenged recently in *People v. Voelker*.¹⁷ This case implicated the defendant's First Amendment right to freedom of speech.¹⁸ Eric Voelker videotaped the decapitation of three live iguanas in his Brooklyn apartment and had his acts televised on a program aptly titled "Sick and Wrong."¹⁹ Voelker challenged the application of section 353 because his acts of cruelty had only been discovered when they were televised.²⁰ The defendant argued that application of section 353 in this situation qualified as a content-based restriction on his right to free speech and was therefore unconstitutional.²¹ The court agreed that content-based restrictions were unconstitutional, but refused to recognize this particular statute as an effort to restrict the content of otherwise free speech. The statute is, instead, exactly what it says: "a restriction against torturing, injuring, maiming, mutilating or killing animals."²² It does not contemplate modes of communication, and even if it serves to "prohibit the torturing of an animal as a form of expression, such a statute would not be unconstitutional where it serves a legitimate governmental interest."²³ The court in *Voelker* noted that the Supreme Court has recognized the protection of animals as a legitimate governmental interest, even in a context affecting religious practices.²⁴ The court pointed out the absurdity of the

¹⁶ "[T]he words control the punctuation marks, and not the punctuation marks the words. . . . Punctuation in writings, therefore, may sometimes shed light upon the meaning of the parties, but it must never be allowed to overturn what seems the plain meaning of the whole document." *Id.* at 145 (quoting *Travelers Ins. Co. v. Pomerantz*, 207 N.Y.S. 81, 87 (Sup. Ct. N.Y. County 1924)).

¹⁷ 658 N.Y.S.2d 180 (N.Y.C. Crim. Ct. Kings County 1997).

¹⁸ *See id.* at 181.

¹⁹ *Id.*

²⁰ *See id.* at 184. The defendant argued that his televised acts, that were normally relegated to restaurant kitchens, were the motivation for the prosecution. *See id.*

²¹ *See id.*

²² *Id.*

²³ *Id.* (citing *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 567 (1991)).

²⁴ *See Voelker*, 658 N.Y.S.2d at 184 (stating that "the U.S. Supreme Court has indicated that a neutral anti-cruelty statute which is limited to the government's legitimate interest in the prevention of cruelty to animals may be upheld despite its effect on religious observance") (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 538 (1993)).

defendant's assertion, which by its rationale would allow criminals of all stripes to escape the law by televising their crimes.²⁵

The defendant in *Voelker* also argued that the accusatory instrument was insufficient because the district attorney did not set forth the basis for the assertion that the acts were done without justification, as required by the statute.²⁶ To make out a prima facie showing under the statute, the court said that the district attorney need only allege facts that establish the defendant unjustifiably injured, maimed, or killed the animals.²⁷ The court held that decapitation did injure, maim, or kill.²⁸ Furthermore, the court was not satisfied with the defendant's argument that because he cooked and ate the iguanas, his conduct was justified.²⁹ The *Voelker* court then relied on the *Bunt* decision to conclude that the allegations regarding the unjustifiable nature of the defendant's conduct were suitably left as an issue for the trier of fact.³⁰ The court said that if the defendant's conduct had resulted in temporary, unavoidable acts unaccompanied by criminal intent, and were necessary to preserve the safety of the property involved, or to prevent danger or injury to such property, then such acts could be considered justifiable rather than torture.³¹ Since the defendant had not asserted a justification on such grounds, his motion to dismiss was denied.³²

²⁵ See *Voelker*, 658 N.Y.S.2d at 184 ("A defendant cannot shelter himself from prosecution by the mere televising of a criminal act. . . . Such an argument defies common sense and cannot be sustained.").

²⁶ See *id.* at 181.

²⁷ See *id.* at 183.

²⁸ See *id.*

²⁹ See *id.* at 182. Legal slaughtering of animals for food is allowed by license from the commissioner of the New York State Department of Agriculture and Markets. See N.Y. AGRIC. & MKTS. LAW § 96-b (McKinney 1991); cf. N.Y. AGRIC. & MKTS. LAW § 96-c (a) (McKinney 1991) (exempting farmers who butcher their own animals for use by their household); AGRIC. & MKTS. LAW § 96-d (McKinney 1991) (labeling the slaughter of animals in an unlicensed establishment as unlawful); AGRIC. & MKTS. LAW § 96-z-9 (McKinney 1991) (defining criminal slaughter as a class E felony).

³⁰ See *Voelker*, 658 N.Y.S.2d at 183 (citing *People v. Bunt*, 462 N.Y.S.2d 142 (J. Ct. 1983)).

³¹ See *id.*

³² See *id.* at 183-84.

I. NEW LEGISLATIVE ACTION

In the first substantial addition to section 353 in over three decades, the Legislature has added subsection (a), creating a felony for aggravated cruelty to animals. The new subsection reads in pertinent part:

A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty" shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.³³

The class of infractions that warrant the felony status of section 353-a are limited in two significant ways from those which receive misdemeanor status under the original section 353. Section 353-a protects a limited class of animals and seeks to define conduct that qualifies as aggravated cruelty. First, the class of animals protected under section 353-a is limited to the protection of "companion animals," while section 353 covers all animals.³⁴ The definition of "companion animal" was added and includes "any dog, or cat . . . [and] any other domesticated animal normally maintained in or near the household of the owner."³⁵ This definition includes strays, which are frequently the targets of violence.³⁶ It is not clear whether the iguanas in *Voelker* would qualify as a "companion animal."³⁷

³³ N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1991 & Supp. 1999); see also William Glaberson, *Legal Pioneers Seek to Raise Lowly Status of Animals*, N.Y. TIMES, Aug. 18, 1999, at A1 (noting that in 1994, 44 states had animal cruelty misdemeanors, and to date, 27 states have upgraded to felonies).

³⁴ Compare N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1991 & Supp. 1999) (applying to a "companion animal"), with N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991) (applying to "any animal, whether wild or tame").

³⁵ 1999 N.Y. LAWS 118, § 2 (*amending* N.Y. AGRIC. & MKTS. LAW § 350(5) (McKinney 1991 & Supp. 1999) (emphasis added)). Farm animals are specifically excluded from the definition of companion animals. See *id.*

³⁶ See *id.*; see also Senator Roy M. Goodman's Sponsor Memorandum accompanying S. 5166A, 222nd Legis. Sess. (1999) (noting that § 353-a includes specific protection of stray dogs and cats because they frequently fall victim to "heinous acts of cruelty") [hereinafter Goodman's Sponsor Memorandum].

³⁷ The status of iguanas would depend on whether they are considered domesticated. This raises interesting issues concerning whether animals such as iguanas, snakes, or turtles that live in cages, inside a house, apartment, or garage qualify as domesticated animals. Is "domesticated" for certain animals synonymous with not living in the wild?

Additionally, the Legislature outlined the conduct necessary to support a felony conviction. Section 353-a requires that the injury to the "companion animal" be serious or result in death.³⁸ The defendant must also have intended to cause extreme pain or have acted in a depraved or sadistic manner.³⁹ Section 353 merely requires that the injury be unjustified or done with willful cruelty, but does not call for an evaluation of the nature of the defendant's behavior.⁴⁰ If exhibited today, the conduct of the defendants in *Voelker* and *Bunt* would likely justify prosecution under section 353-a.⁴¹ It appears that many of the cases of animal cruelty previously prosecuted under section 353 will also fit within section 353-a, allowing prosecutorial discretion in choosing whether to seek a felony conviction against a particular defendant.

Throughout the legislative process, section 353-a was cited as a tool to prosecute the most abhorrent acts of animal cruelty and as a deterrent against this conduct in the future. The sponsor of the legislation in the Senate, Roy M. Goodman, elaborated in his supporting memorandum accompanying the bill that, "[g]iven the growing public recognition of the rights of animals to be treated in a humane fashion, this bill seeks to

³⁸ See N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1991 & Supp. 1999).

³⁹ See *id.*

⁴⁰ See *id.* § 353.

⁴¹ The defendant's actions in *Voelker* would almost certainly satisfy the aggravated cruelty element of § 353-a. Similarly, in *Bunt*, the defendant's conduct would also rise to the level of aggravated cruelty. Bunt's motivation for attacking Spunky, the dog, was to deter the dog from approaching his female dog that was in heat. See *People v. Bunt*, 462 N.Y.S.2d 142, 143 (J. Ct. 1983). A witness, however, recounted that Bunt continued to beat Spunky even after the dog stopped moving and ceased to be a threat. See *id.* Bunt's conduct could be viewed as an attempt to cause "extreme physical pain" to the dog or characterized as "especially depraved or sadistic," thereby satisfying the aggravated cruelty element of § 353-a. See N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1991 & Supp. 1999).

In 1998, Thomas Capriola was charged with animal cruelty when he was discovered producing animal mutilation videos that portray women wearing high heels stepping on and mutilating or killing small animals, including mice and frogs. Mr. Capriola was charged with a misdemeanor offense. See Edward Wong, *Long Island Case Sheds Light on Animal-Mutilation Videos*, N.Y. TIMES, Jan. 25, 2000, at B4. Today, Mr. Capriola would likely be charged under the New York felony statute. Because he was selling these videos, he could also be prosecuted under a new federal law that makes the creation or distribution of "a depiction of animal cruelty" for 'commercial gain,' an offense punishable by up to five years in prison. See *id.* It is interesting to note that this arrest resulted from a call from Mr. Capriola's girlfriend to the Suffolk County Society for the Prevention of Cruelty to Animals. See *id.*

ensure that these cases not be handled as petty matters by increasing the most flagrant acts to a felony.⁴² In the approval memorandum filed by the Governor upon signing this new amendment, which was referred to as "Buster's Law" for a cat that had been doused with kerosene and burned, he stated that "[b]y providing felony treatment for aggravated cruelty to animals, the bill not only adequately punishes those who prey on defenseless animals, but also sends a clear message that such cowardly and despicable acts of violence will not be tolerated."⁴³

The second law recently passed by the legislature concerning the treatment of animals bans canned shoots or hunts.⁴⁴ Canned hunting is the practice of paying a fee to kill, either by gun, bow and arrow, or spear, an animal that has been tied down, hobbled, staked, caged, boxed, or penned inside a fenced area.⁴⁵ The animals normally involved in this "sport" are big-game animals that have been raised in captivity or imported from other continents.⁴⁶

Ranches in New York, and elsewhere, that offer canned hunts are lucrative businesses.⁴⁷ While existing laws protected "threatened," "endangered," and wild animals, the new

⁴² Goodman's Sponsor Memorandum, *supra* note 36. See generally Glaberson, *supra* note 33, at A18 (noting that 27 states now make cruelty to animals a felony); Victoria Rivkin, *Animal Law Practitioners Seek Justice, Not Dollars*, N.Y. L.J., Oct. 18, 1999, at 1 (noting that the continued existence of cruelty to animals has made animal rights law a growing field).

⁴³ Governor George E. Pataki's Approval Memorandum 3, A. 8338-A signed as Chapter 118, 222nd Legis. Sess. (June 28, 1999) [hereinafter Pataki's Approval Memorandum].

⁴⁴ See 1999 N.Y. LAWS 208 (codified as N.Y. ENVTL. CONSERV. LAW § 11-1904 (McKinney 1997 & Supp. 1999)). New York is one of several states to ban canned hunting. See generally Debra West, *Ranch Hunting: One Person's Sport, Another's Slaughter*, N.Y. TIMES, May 11, 1999, at B1 (noting that New Jersey and Connecticut have banned canned hunting along with several other states).

⁴⁵ See 1999 N.Y. LAWS 209 (codified as N.Y. ENVTL. CONSERV. LAW § 11-1904 (McKinney 1997 & Supp. 1999)). The sponsor of the bill in the assembly noted that the goal of canned shooting is to assure a "trophy [for] a person who [has] paid a fee." Assemblyman Stringer's Sponsor Memorandum accompanying A. 1738-A, 222nd Legis. Sess. (1999) [hereinafter Stringer's Sponsor Memorandum]; see also West, *supra* note 44, at B6 (citing a member of the Humane Society who "attributes the growth in ranch hunting to a quest for stuffed animal trophies that hunters like to display").

⁴⁶ See generally West, *supra* note 44, at B1.

⁴⁷ See *id.* at B6 (estimating that the market in Texas for ranch hunting in Texas is a \$100 million per year industry). At one ranch in New York, where there are approximately 200 "hunters" per year, the prices range from \$500 to \$8000 per animal with lodging fees of almost \$150 per night. See *id.*

legislation was designed to close the gaps and protect other animals.⁴⁸ As such, the act prohibits the canned shooting of "non-native big game mammals," which includes big game mammals that have been imported from other countries and mammals native to North America that have been raised in captivity.⁴⁹ An exception is made for farm animals or animals subjected to approved testing.⁵⁰ The prohibition of canned shoots is applicable only to ranches of less than ten contiguous acres.⁵¹

The law also provides two alternative penalties for ranchers convicted of hosting canned shoots. One option is to charge the ranch owner with a misdemeanor punishable by a fine of up to \$2,500, or a jail term of up to one year, or both.⁵² The court is given an alternative option of levying a larger fine if the defendant has gained money or property through the commission of the crime.⁵³ This is likely to be the case in canned shoots where the ranch owner is paid a fee by the "hunter," usually corresponding to a predetermined worth of the animal killed.⁵⁴ This alternative penalty allows the court to require the payment of an amount that does not exceed twice the value of the defendant's gain from the canned shoot, with a cap of five thousand dollars.⁵⁵

⁴⁸ See Stringer's Sponsor Memorandum, *supra* note 45.

⁴⁹ 1999 N.Y. LAWS 208 (codified as N.Y. ENVTL. CONSERV. LAW § 11-1904 (McKinney 1997 & Supp. 1999)); see also Stringer's Sponsor Memorandum, *supra* note 45; West, *supra* note 44 (identifying animals that have been hunted on canned shooting ranches).

⁵⁰ See 1999 N.Y. LAWS 208 (codified as N.Y. ENVTL. CONSERV. LAW § 11-1904(2)(a-c) (McKinney 1997 & Supp. 1999)) (providing that the law will not prohibit the taking, hunting, or trapping of animals if provided by New York State law or regulation, the slaughtering of animals allowed by New York Agriculture and Markets Law or by the U.S. Department of Agriculture, and the killing of a dangerous animal, which is likely to injure or kill someone); see also Stringer's Sponsor Memorandum, *supra* note 45.

⁵¹ See 1999 N.Y. LAWS 208 (codified as N.Y. ENVTL. CONSERV. LAW § 11-1904(1)(a)(3-4) (McKinney 1997 & Supp. 1999)).

⁵² See 1999 N.Y. LAWS 208, § 4, amending N.Y. ENVTL. CONSERV. LAW § 71-0921 (adding § 71-0921(13)).

⁵³ See *id.*; see also *id.* at § 1, amending N.Y. PENAL LAW § 80.05(5) (McKinney 1998).

⁵⁴ See West, *supra* note 44, at B6 (identifying the range of predetermined fees for certain animals); see also Stringer's Sponsor Memorandum, *supra* note 45.

⁵⁵ See 1999 N.Y. LAWS 208, § 1, amending N.Y. PENAL LAW § 80.05(5).

II. THE HIDDEN PITFALLS OF THE NEW LAWS

While these two new laws purport to recognize the innate rights of animals and to provide greater protection for animals in New York, the benefits provided by these amendments are limited to the peripheral results of the expected enforcement of the laws. This is illustrated by the goals behind the creation of a felony for aggravated cruelty to animals under section 353-a, which are far removed from any recognition of innate animal rights. Additionally, the prohibition of canned shooting is so diluted that it will do little more than take up space in McKinney's.

A clue that the true ire of the Legislature was not directed toward the immediate curbing of intentionally cruel acts inflicted on helpless animals is provided by Senator Roy M. Goodman, the sponsor of the Senate bill. After referring to the different types of abuses inflicted on animals, Senator Goodman shifted focus away from the rights of animals and notes the association of animal abuse with violence against people.⁵⁶ While there may not be any evidence that the Senator's district has a disproportionate number of violent criminals, there has recently been a large amount of attention paid to extensively publicized school shootings. These recent events may have provided the impetus for the bill's passage. By the time the bill was passed by the full Senate, the Majority Leader, Senator Joseph Bruno, barely made reference to the violent acts animals are subjected to in the press release announcing the bill's passage.⁵⁷ Instead, his press release reiterated a statement by Senator Goodman about serial killers and added the assertion that "[m]ost of the children involved in the recent spate of school murders have a background of torturing and killing animals."⁵⁸ Senator Bruno noted that prosecution under this statute would identify "deviant behavior," while Senator Goodman described the bill as a way of

⁵⁶ See Goodman's Sponsor Memorandum, *supra* note 36 ("The connection between animal abusers and violence towards humans shows that virtually every serial killer had a history of abusing animals before turning their attention to people.").

⁵⁷ See Senator Joseph Bruno, *Senate Passes Bill to Combat Animal Cruelty*, New York State Senate Press Release (June 14, 1999).

⁵⁸ *Id.*

dealing with "disturbed individuals who abuse animals before they commit more serious crimes."⁵⁹

In describing the importance of the bill he was signing, the Governor's approval memorandum echoed the Senate's concerns by stating that "gruesome acts [of torture endured by animals], coupled with recent studies that reveal a correlation between violence against animals and future acts of violence against humans, underscore the need to enhance penalties for animal cruelty."⁶⁰

The need for stricter animal cruelty laws to prevent a possible future murderer is not a novel idea. The histories of some of this country's most infamous serial killers and the abuse of animals in their backgrounds have been discussed in numerous articles.⁶¹ Perhaps the most recent frequently analyzed case has been that of serial killer Jeffrey Dahmer.⁶²

⁵⁹ *Id.* The belief that crimes against humans are always more serious than those committed against animals, while a widely held belief, is not the only view. Practitioners of animal law are trying to change the way the legal system views animals as property. See Glaberson, *supra* note 33, at A1 (noting that animal rights lawyers are "filing novel lawsuits and producing new legal scholarship to try to chip away at the fundamental principle of American law that animals are property and have no rights"). One commentator, a former Supreme Court clerk and current professor of animal law at Rutgers University, has urged animal rights lawyers to be more aggressive. See *id.* at A18. Professor Francione suggested that animal rights lawyers "file suit on behalf of gorillas, asserting that 'they should be declared to be 'persons' under the Constitution,' with constitutional rights." *Id.* The Animal Legal Defense Fund, an organization of lawyers working for animal rights, has a staff attorney developing novel approaches to establishing legal rights for animals, including the use of legal precedents relied on to emancipate people from slavery. See *id.* at A18.

⁶⁰ Pataki's Approval Memorandum, *supra* note 43. The governor mentions the recent studies but interestingly made no mention of the recent school shootings, which have raised a lot of questions regarding prediction of violent behavior toward humans and of signs exhibited by the shooters prior to their acts. See Charlotte A. Lacroix, DVM, JD, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 8-9 (1998) (discussing studies which show a correlation between animal cruelty and other criminal behavior).

⁶¹ See Lacroix, *supra* note 60, at 8-9 (noting that serial killers and mass murderers including Albert Desalvo, also known as the "Boston Strangler," Ted Bundy, and Jeffrey Dahmer, all had past histories of animal abuse); A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, 30 PROSECUTOR 31 (Jan./Feb., 1996). Ritter, a prosecutor, noted that many infamous serial killers abused animals in their youth and that this trait is so common that the FBI has included it in its profile of serial killers. See *id.* at 32; see also Dahmer *May Have Impaled Animals as Teen: Animal Cruelty Common Trait of Serial Killers*, SAN DIEGO UNION-TRIB., Aug. 8, 1991, available in 1991 WL 8885515 (recounting how neighbors of serial killer Jeffrey Dahmer found cats, frogs, and the head of a dog impaled or staked to trees); Michael Killian, *Cruelty to Animals: Just*

Hopefully, animals will see some actual protection under this legislation. Indeed, some prosecutors are more apt to take a potential felony prosecution more seriously than they would a petty misdemeanor charge.⁶³ These cases often have a great deal of press value as human interest stories and should therefore add to prosecutorial motivation to provide additional resources for their investigation of animal cruelty cases.⁶⁴ As elected officials, prosecutors have a special interest in cases that will be covered by the evening news.

Much like section 353-a, the canned shoot legislation under section 11-1904 also fails to recognize the existence of any fundamental rights for animals and, therefore, fails to provide adequate protection. As an issue not specific to New York, there has also been a movement at the national level to prohibit canned shooting. For several years, Congress has introduced legislation in both houses to ban canned shoots.⁶⁵ Past versions of this legislation have failed to pass and the versions currently in Congress have not been the subject of substantial action, due in part to opposition from a strong lobby against any such regulation.⁶⁶ The federal regulation would, if enacted, be focused

the Beginning, DET. NEWS, Sept. 3, 1991, available in 1991 WL 4661651. Killian, a former police officer and animal cruelty investigator, noted the connection between animal abuse and violence toward humans and warned that society "cannot afford to take crimes against animals lightly." *Id.*

⁶² See Killian, *supra* note 61. The newspaper articles from 1991 detailing the accounts of Jeffery Dahmer's history of abusing animals as a child are multitudinous.

⁶³ See Steve Ann Chambers, *Animal Cruelty Legislation: The Pasado Law and Its Legacy*, 2 ANIMAL L. 193, 195 (1996) (explaining that prosecutors in Washington were more willing to prosecute animal cruelty cases after the legislature passed a law which made certain types of animal abuse a felony); Joshua Marquis, *The Kittles Case and Its Aftermath*, 2 ANIMAL L. 197, 199-201 (1996) (explaining that the legislation which makes animal abuse a felony helps encourage prosecutors to prosecute animal cruelty cases).

⁶⁴ See Marquis, *supra* note 63, at 201 ("A prosecutor has to know whether he is going to receive community support and not just ridicule for . . . [prosecuting animal cruelty] cases.")

⁶⁵ The Captive Exotic Animal Protection Act of 1999 was introduced in the 106th Congress. See S. 1345, 106th Cong. (1999); H.R. 1202, 106th Cong. (1999).

⁶⁶ On the day of its introduction, the Senate bill was referred to the Committee on the Judiciary. The House version of the bill was referred to the Committee on the Judiciary and then to the Subcommittee on Crime. Neither bill has been reported to the floor for action by either body. See *id.*; see also West, *supra* note 44, at B6 (quoting the senior vice president of the Humane Society of the United States, Wayne Pacelle, who predicted that this version of the legislation will likely not pass because of the powerful Texas lobby where ranch hunting is a \$100 million dollar a

on the impact of interstate and international trade in exotic animals that can sometimes result in the unlawful trade of endangered or threatened species.⁶⁷

The impact of the legislation under Chapter 208, which bans "canned shoots," is miniscule because it only applies to owners, operators, and managers of ranches that are ten acres or less.⁶⁸ Statements from supporters and opponents of this legislation all seem to indicate that no one knows for sure the number or size of canned hunting ranches that exist in New York State.⁶⁹ Up to this point, these ranches have gone unregulated and information regarding their number or size is lacking.

The legislation that passed under Chapter 208 was an altered version of that which had originally been proposed by an

year business); Nancy Perry, *The Fruits of Our Labor: Results from the First Session of the 105th Congress—1997 Federal Legislative Summary*, 4 ANIMAL L. 137, 141 (1998) (noting that the Captive Exotic Animal Protection Act did not pass during the first session of the 105th Congress); Lisa Weisberg, *Content: Third Annual Conference on Animals and the Law*, 15 PACE ENVTL L. REV. 515, 523 (1998) (indicating that while there is strong public support for legislation such as the Captive Exotic Animal Protection Act, this type of legislation is not enacted or is watered down due to the influence of the "powerful and financially resourceful hunting and trapping lobby, and the conservation agencies that are greatly influenced by them"); Jamie Elizabeth Wrage, *Taking Aim at Canned Hunts Without Catching Game Ranches in the Crossfire*, 30 LOY. L.A. L. REV. 893 (1997) (discussing canned hunting regulation at the federal and state levels).

⁶⁷ See generally Robert J. Shaw, Note, *Nabbing the Gourmet Club: Utilizing RICO Enforcement and Punitive Provisions to Curb the International Trade of Endangered Species*, 42 N.Y.L. SCH. L. REV. 283, 286-90 (1998) (discussing various federal endangered species protection measures). Cf. *News Channel 4: Unfair Game* (NBC television broadcast, Nov. 4-5, 1999) (investigating the trail of "surplus" exotic animals from the Six Flags Wild Safari in Jackson, N.J. through an animal dealer in North Carolina to hunting ranches in Pennsylvania and Texas). In one segment, Alan Green, co-author of *Animal Underworld: Inside America's Black Market for Rare and Exotic Species* (Public Affairs 1999), was interviewed and discussed how tame and exotic animals from zoos and animal parks often end up at hunting preserves. See *News Channel 4: Unfair Game* (NBC television broadcast, Nov. 5, 1999).

⁶⁸ See 1999 N.Y. LAWS 208, § 2 (adding § 11-1904).

⁶⁹ See *Bill Would Ban Hunting Big Game on Little Plots*, N.Y. TIMES, June 17, 1999, at B10 ("Officials at the American Society for the Prevention of Cruelty to Animals, which drafted the legislation, are uncertain whether there are any hunting ranches in New York State on properties small enough to be affected by this bill."); *'Canned Hunts' to be Restricted Under New Law*, N.Y. TIMES, July 13, 1999, at B5 (quoting a Department of Environmental Conservation spokeswoman who conceded that canned hunts are infrequent); West, *supra* note 44, at B6 ("Officials at the ASPCA and Humane Society estimate that there are four or five big-game hunting ranches in New York, but there is no way to know for sure.").

animal rights group.⁷⁰ The state agency responsible for enforcement of Chapter 208, the Department of Environmental Conservation, and the American Society for the Prevention of Cruelty to Animals (ASPCA), an animal rights group that had supported the bill, both doubt that it would regulate any existing ranch because of the acreage limitation.⁷¹ The addition of the acreage limitation represents a concession to these special interest groups and insures that any existing ranch over ten acres in size will not be subjected to the statute's penalties.⁷²

The penalty options available under Chapter 208 further complicate the effectiveness of the legislation. Many of the fees charged by the ranchers for kills of specific animals available on their ranches are so large that even the strictest application of the penalty under the statute would not outprice the fee paid by the customer.⁷³ Rancher would have little to fear in an economic sense from the enforcement of this statute. Only the possibility of a jail sentence of up to two years might visit true hardship on the owners or managers of these ranches.

CONCLUSION

While the step up from a misdemeanor to a felony in the fight against animal cruelty is a change few would disagree with,

⁷⁰ See *Bill Would Ban Hunting Big Game on Little Plots*, *supra* note 69, at B10 (quoting an ASPCA official who stated that "[t]he opposition [to Chapter 208] was tremendous"); see also West, *supra* note 44, at B6 (noting that in the six years since its introduction in New York, pressure from the National Rifle Association, property rights and sportsmen lobbies have left it less restrictive than the original version).

⁷¹ See *Bill Would Ban Hunting Big Game on Little Plots*, *supra* note 69, at B10 (noting that the ASPCA does not know whether any of the ranches in New York are less than ten acres and hence will be regulated); *'Canned Hunts' to be Restricted Under New Law*, *supra* note 69, at B5 (quoting a Department of Environmental Conservation spokeswoman who did not know of any ranches that would be regulated under the new law); see also Rivkin, *supra* note 42, at 4 (noting that Elinor Molbegott, former general counsel for the ASPCA, assisted in drafting the new law).

⁷² See *'Canned Hunts' to be Restricted Under New Law*, *supra* note 69, at B5 ("State Assembly Sponsor of the new law, Scott Stringer, a Manhattan Democrat, said the 10-acre limit was added to make the bill acceptable to the Republican Senate [and further noted] 'The only way we were going to pass this was to make some accommodation.'").

⁷³ See West, *supra* note 44, at B6 (noting that prices for taking a deer can range from \$500 to \$8,000); see also *News Channel 4: Unfair Game* (NBC television broadcast, Nov. 4, 1999). In an interview, Faye Leydig from the Glen Savage Hunting Ranch in Fairhope, PA, said that animals can go for \$10,000, and that when hunters "draw blood, they buy." *Id.*

the discretion prosecutors exercise could potentially allow this new tool to be used exclusively against young people who may harbor proclivities toward harming people. There are also many that agree prosecutors should have the availability of a serious charge, so that those people demonstrating the warning signs of "typical" killers can be locked up before their behaviors escalate. In the current climate, however, where it seems as though there is an epidemic of school violence, prosecutorial zeal may become an issue. There is no age limit to those who are abusing animals. Older people might well escape prosecution under the felony charge if the focus of the law remains as narrow as the reasons for which it was enacted. That result would be a great disservice to animals and the New Yorkers who care about them.

While the initial thought to ban canned hunting completely would have been a boon to animal rights groups, legitimate hunters, and customs officials alike, the present state of affairs seems to be anti-competition regulation for the current market of ranches. In New York, proponents of animal rights will have to keep up the fight for a true legal recognition of animals' inherent rights, a victory which must come another day.

