

FEEDING FIDO: THE CASE FOR RESTITUTION IN OHIO ANIMAL-CRUELTY CONVICTIONS

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I. INTRODUCTION

In 1999, the Hamilton County Society for the Prevention of Cruelty to Animals (SPCA) confiscated 188 dogs in “deplorable condition” from Anita Bybee’s property.¹ During her prosecution, the SPCA had to board Ms. Bybee’s dogs for almost four months. They spent almost \$130,000 caring for the dogs. The prosecutor provided the trial court with the SPCA’s bill² and upon conviction, the court ordered Ms. Bybee to pay almost \$120,000 in restitution to the SPCA.³ On appeal, though, the First District reversed the restitution order based on an incorrect interpretation of Ohio’s financial sanctions statutes. The SPCA was left to cover Ms. Bybee’s bill.

Unfortunately, the First District is not alone in misinterpreting the law and reversing restitution. As a result, animal welfare organizations⁴ not only have to care for and rehabilitate the animals rescued from abuse, but they also have to find their own way to pay for the expenses incurred.⁵ This additional financial burden is unacceptable. As this article will demonstrate, Ohio statute allows for restitution to be paid to animal welfare organizations, and the Ohio appellate courts are wrong in overturning trial court orders.

In the animal-cruelty cases surveyed in Ohio over the last twenty years,⁶ trial courts have

¹ State v. Bybee, 731 N.E.2d 232, 233 (Ohio Ct. App. 1st Dist. 1999).

² *Id.* (showing the SPCA had spent \$131,261.50 over 112 days in caring for the dogs).

³ *Id.* (reducing the amount of restitution ordered because the money made on adopting some of the dogs could off-set the total incurred.)

⁴ In this article, unless I am discussing a statute or case that specifies a named organization, I will use “animal welfare organization” to collectively encompass Humane Societies, animal shelters, and rescue organizations, all of which are defined differently under the law, as will be discussed further below.

⁵ In 2017, for instance, the Cleveland Animal Protective League (APL) received over \$8 million in contributions from the public, to use toward humane investigations, rehabilitation, and costs of caring for abused animals. See CLEVELAND APL, *2017 Annual Report* 15 (Jul. 19, 2018), <https://clevelandapl.org/wp-content/uploads/2018/10/2017-Annual-Report-FINAL.pdf>

⁶ See State v. Bybee, 731 N.E.2d 232 (Ohio Ct. App. 1st Dist. 1999); State v. Walker, 2005-Ohio-5592, 841 N.E.2d 376 (Ohio Ct. App. 2d Dist. 2005); State v. Ham, 2009-Ohio-3822, 2009 WL 2370908 (Ohio Ct. App. 3d Dist. Aug. 3, 2009); State v. Brewer, 2015-Ohio-2217, 2015 WL

consistently ordered convicted offenders to pay restitution to the animal welfare organizations caring for the offenders' abused animals.⁷ On appeal, courts reversed at least \$160,000 of the ordered restitution in those cases.⁸ The appellate courts have given varying reasons for reversing restitution, all of which are misinterpretations of Ohio statute. Initially, the courts argued that restitution can only be assessed to compensate for property damage. While companion animals are considered property under common law, the courts did not consider their abuse to be "property damage."⁹ As companion animals have come to be treated more like family than property,¹⁰ Ohio appellate courts have revised their arguments for reversing restitution: now restitution can only be made to victims or survivors of victims, but not to victimized companion animals.¹¹ Interestingly,

3542806 (Ohio Ct. App. 4th Dist. May 28, 2015); *State v. Leslie*, 2011-Ohio-2727, 2011 WL 2225152 (Ohio Ct. App. 4th Dist., Jun. 1, 2011); *State v. Dixon*, 2006-Ohio-2114, 2006 WL 1120688 (Ohio Ct. App. 6th Dist. Apr. 28, 2006); *State v. Covey*, 2000 WL 638951, (Ohio Ct. App. 6th Dist. May 19, 2000); *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512 (Ohio Ct. App. 10th Dist. Aug. 29, 2006).

⁷ Restitution is only assessed when the abuser is convicted of animal cruelty. In cases without convictions, the entity caring for the abused animal would not receive any financial support from the defendant in the case.

⁸ *See State v. Bybee*, 731 N.E.2d 232; *State v. Walker*, 841 N.E.2d 376; *State v. Ham*, 2009-Ohio-3822, 2009 WL 2370908; *State v. Leslie*, 2011-Ohio-2727 (though restitution amount was never disclosed in the appellate decision); *State v. Covey*, 2000 WL 638951; *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512.

⁹ *See State v. Bybee*, 731 N.E.2d at 235 (holding that the "expenses incurred in caring for animals removed from Bybee's kennel were not property damage as defined in" the Ohio Revised Code); *State v. Walker*, 841 N.E.2d at 385 (holding that the court could only have ordered restitution if Walker's crime "had caused property damage"); *State v. Covey*, 2000 WL 638951 at *8 (reminding us that "Ohio law does not permit a court to order a defendant to make restitution for expenses not related to property damage").

¹⁰ *See ANIMAL LEGAL DEFENSE FUND, COMPANION ANIMALS 1* (last visited Oct. 27, 2018) <https://aldf.org/focus-area/companion-animals/>.

¹¹ *See State v. Ham*, 2009-Ohio-3822, 2009 WL 2370908 at *14 (using *Angus* to find that restitution could not be paid to the Wyandot County Humane Society for the costs incurred in caring for defendant's dog); *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512 at *7 (Ohio Ct. App. 10th Dist., 2006) (reading the Ohio statute to "authorize[] restitution to be made to the victim or survivors of the victim for economic loss").

not all appellate courts overturn restitution in cases of animal cruelty.¹²

The courts' inconsistent misinterpretation of statutes is even more frustrating when compared with restitution orders in cases that do not involve animal cruelty. In those, Ohio courts have upheld restitution on appeal to be paid to non-victims.¹³ In fact, the Ohio Supreme Court, while never directly ruling on restitution in cases of animal cruelty, determined in *State v. Bartholomew*, that the Ohio financial sanctions statute allows restitution to be paid to third parties, and not only to victims.¹⁴

If we want to punish the offender upon conviction and also deter future crime,¹⁵ the trial courts should continue assessing restitution consistently in all cases of animal cruelty, and the orders

¹² See *State v. Brewer*, 2015-Ohio-2217, 2015 WL 3542806 *1 (“upholding” restitution because there was no final, appealable order from the lower court for which the Fourth District could review); *State v. Dixon*, 2006-Ohio-2114, 2006 WL 1120688 at *2 (“upholding” restitution order by trial court in part because the defendant did not appeal on those grounds).

¹³ See *State v. Shifflet*, 44 N.E.3d 966, 985 (Ohio Ct. App. 4th Dist. 2015) (allowing restitution to be paid to the parents of victims to be used for the medical costs of the victims); *State v. Horton*, 99 N.E.3d 1090, 1106 (Ohio Ct. App. 10th Dist. 2017) (allowing restitution to a third party, non-victim, because it had no effect on the defendant’s guilty plea and was not plain error as defendant argued).

¹⁴ *State v. Bartholomew*, 894 N.E.2d 307, 312 (Ohio 2008) (“[W]e hold that R.C. 2929.18(A)(1) [financial sanctions] authorizes a trial court to order that a criminal defendant pay restitution to the reparations fund for payments made by the fund to a victim of a crime” because “[i]f the General Assembly had truly intended that restitution could be paid only to a victim, it would have eliminated adult probation departments, clerks of courts, and other agencies as designated by the court as possible payees.”)

¹⁵ See OHIO REV. CODE ANN § 2929.11(A); OHIO REV. CODE ANN § 2929.21(A) (West 2018) (stating that the purposes of both misdemeanor and felony sentencing “are to protect the public from future crime by the offender and others and to punish the offender.” As of Oct. 28, 2019, felony sentencing is also intended to “promote the effective rehabilitation of the offender” In misdemeanor sentencing, “to achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.” In felony sentencing, the purposes are achieved by “detering the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.”)

should not be overturned on appeal.¹⁶ Those who choose to abuse animals should be held accountable for the costs involved with rehabilitating their victims. Restitution in cases of animal cruelty is not only allowed under Ohio law, it is the appropriate punishment for those convicted.

Part II of this article will review Ohio's restitution laws as well as anti-cruelty statutes that have shifted over the years in purpose and enforcement. Part III will examine why the Ohio appellate courts need to affirm restitution orders in animal-cruelty convictions based on their holdings in non-animal cruelty cases. Part IV will conclude with a recommendation to the Ohio Supreme Court to uphold restitution in cases of animal cruelty based on their ruling in *Bartholomew*.

II. FROM PROPERTY TO VICTIM: THE SHIFT IN STATUS IN ANTI-CRUELTY STATUTES¹⁷

A. *When Animals Were Only Property*

Animal protection laws have evolved from protecting the property of humans to protecting the animals themselves. The early evolution of animal anti-cruelty laws somewhat mirrors the beginning of child protection laws in the United States. Interestingly, the first child-abuse prosecution in the United States occurred in 1874 with the help of the American Society for the

¹⁶ See OHIO REV. CODE ANN § 2929.22(A) (West 2018) (granting the court “discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code. Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense . . . a court that imposes a sentence upon an offender for a misdemeanor *may impose on the offender any sanction* or combination of sanctions under section[] . . . 2929.28 [financial sanctions] of the Revised Code.” (emphasis added))

¹⁷ The focus here is on Western law and so begins with property concerns because those were the first instances of animal “protection” at Common Law. But it should be noted that anti-cruelty laws and the humane treatment of animals has been an ideal in Eastern traditions for much longer. See Mosad HaRav Kook, *THE ANIMALS’ LAWSUIT AGAINST HUMANITY* (Rabbis Anson Laytner & Dan Bridge trans., Fons Vitae, 2005) (1949). The first version of the story was written in Arabic, by Sufi Muslims, in the tenth century A.D.

Prevention of Cruelty to Animals (ASPCA).¹⁸ There were no child-protection laws in place at the time to penalize parents who physically abused their children, nor were there any formal organizations to advocate for children, and so the ASPCA assisted in moving the case through the legal system.¹⁹ As the country moved toward an understanding that parents, as the guardians of their children, owe their children certain duties under the law, states passed legislation regarding the protection of children.²⁰ While every state also has legislation concerning cruelty toward animals, and many recognize that owners, as guardians, owe certain duties to their animals, the animals retain the legal status of “property.”²¹

The beginning of animal protection laws in the American colonies can be traced back to the book of Genesis and the “dominion doctrine” which authorized man to rule over all living creatures.²² Animals were valued as instruments for human use²³ and were only regarded as a

¹⁸ See Howard Markel, M.D., *The Child Who Put a Face on Abuse*, N.Y. TIMES, Dec. 15, 2009, at D5.

¹⁹ See *id.* (After neighbors reported a “severely battered and neglected” ten-year-old girl, the Department of Public Charities and Correction looked into the allegations. The caseworker assigned, though, had no legal recourse for the girl and turned to the ASPCA for assistance since, at the time, they had been working to save horses from abuse and the caseworker rightly assumed that an organization that was trying to prevent harm to animals would likely also want to prevent harm to children. The ASPCA hired an attorney who took the case to the New York State Supreme Court and won the girl’s removal from the abusive home. The girl’s adopted mother was convicted on “several counts of assault and battery.” As a result of the case, the New York Society for the Prevention of Cruelty to Children formed as “the first child protective agency in the world.”).

²⁰ See *id.*

²¹ See Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 70 (1999) [hereinafter Frasch, *State Statutes*]; HUMANE SOC’Y U.S., ANIMAL CRUELTY FACTS AND STATS 3 (Aug. 31, 2015)

http://www.humanesociety.org/issues/abuse_neglect/facts/animal_cruelty_facts_statistics.html.

²² See Gary L. Francione, *Animals, Property and Legal Welfarism: “Unnecessary” Suffering and the “Humane” Treatment of Animals*, 46 RUTGERS L. REV. 721, 734 (1994) (explaining that William Blackstone, in his *Commentaries*, quoted *Genesis* 1:28).

²³ See *id.* at 732.

means to a human end.²⁴ In 1641, the Massachusetts Bay Colony created a statute that appears to be concerned with animal cruelty, but was actually meant to protect humans.²⁵ The statute reads, “No man shall exercise any Tirrany or Crueltie towards any brute Creature which are usually kept for man’s use.”²⁶ However, based on case law at the time, “the statute was principally concerned with preserving public morals”²⁷ and not with protecting the animals.²⁸

In the early half of the nineteenth century, animals were “protected” as property under “malicious mischief and trespass” statutes.²⁹ Since animals were regarded as the property of their owner,³⁰ these statutes created a duty that others not damage the owner’s property.³¹ For animal cruelty to be criminalized under a malicious mischief and trespass statute, the cruelty in question had to “manifest malice toward the owner” of the harmed animal, not to the animal itself.³² The harm to the animal itself was not a cognizable claim. If an offender harmed an animal without exhibiting “malice” or hostility toward the animal’s owner, then the animal’s harm “did not

²⁴ *See id.*

²⁵ Pamela D. Frasch et al., *ANIMAL LAW IN A NUTSHELL* 23 (West Academic Publishing 2d ed. 2106) [hereinafter Frasch, *NUTSHELL*].

²⁶ Massachusetts Body of Liberties §92 (1641), <https://www.constitution.org/bcp/mabodlib.htm#001>.

²⁷ Frasch, *NUTSHELL*, *supra* note 25, at 26; *see also* Commonwealth v. Turner, 14 N.E. 130, 131-32 (Mass. 1887) (“The statute does not define an offense against the rights of property in animals, nor against the rights of the animals that are in a sense protected by it. The offense is against the public morals, which the commission of cruel and barbarous acts tends to corrupt.”).

²⁸ *But see* Turner, 14 N.E. 130 at 132 (still holding that “[t]he right to kill a captive fox does not involve the right to inflict unnecessary suffering upon it in the manner of its death, any more than the right to kill a domestic animal involves the right to inflict unnecessary suffering upon it, or to cruelly kill it.”).

²⁹ *See* David Favre and Viven Tsang, *The Development of the Anti-Cruelty Laws During the 1800’s*, 1993 DETROIT C. L. REV. 1, 4 (1993), https://www.animallaw.info/article/development-anti-cruelty-laws-during-1800s#N_1_.

³⁰ Gary L. Francione, *ANIMALS, PROPERTY & THE LAW* 121 (Temple U. Press 1995) [hereinafter Francione, *THE LAW*].

³¹ *See id.* at 125-6 (noting that the property was an inanimate object – like a rock – but even a dog was considered an inanimate piece of property at common law).

³² *Id.* at 121.

generally constitute malicious mischief.”³³ If the property damage did not personally harm the owner, there was no action.

B. *The Beginning of Anti-Cruelty Statutes*

In 1821, the first anti-cruelty law was enacted in the United States.³⁴ The earliest laws, while concerned with the treatment of animals, protected only horses and cattle from torture,³⁵ because these animals were “commercially valuable.”³⁶ The laws were still concerned with the treatment of animals only insofar as their harm would decrease their value to their human owner. It was not until 1867, in New York, that legislation was enacted³⁷ that was explicitly concerned with the animals themselves.³⁸ This was the first anti-cruelty statute to apply to “any living creature” – not just those that were commercially valuable to their owners – and to increase the list of offenses.³⁹ It banned animal fighting, imposed duties of care, and granted immunity to anyone entering a private property to rescue an animal.⁴⁰

More states followed the example set by New York and enacted anti-cruelty statutes “to represent a shift from pure property protection to a concern for animals whether or not they were owned.”⁴¹ Today, a stray, unowned dog is protected under the same anti-cruelty statutes in the same manner as a dog living with a guardian. Anti-cruelty laws even prohibit owners from

³³ *Id.*

³⁴ *See Favre, supra note 29, at 6.*

³⁵ *See id.* at 6.

³⁶ *See id.* at 9.

³⁷ *See id.* at 11 (This law was drafted in part by Henry Bergh, the same man at the ASPCA who assisted with the first child-abuse prosecution in the United States in 1874).

³⁸ *See id.* at 10.

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ *Id.*

inflicting cruelty on their own animals.⁴² The statutes no longer exist to protect the owner's property, but instead to protect the "property" – or victim – itself.⁴³ As anti-cruelty statutes developed and expanded protections for animals, the common law also incrementally shifted away from regarding domestic animals as mere property.⁴⁴

Companion animals – generally what we consider pets such as cats and dogs – are now treated more like family than property⁴⁵ and anti-cruelty laws in many jurisdictions have been updated to reflect this.⁴⁶ The rationale for this shift in the law is due in part to the realization that

⁴² See Joan E. Schaffner, *AN INTRODUCTION TO ANIMALS AND THE LAW*, 15 (Palgrave Macmillan 2011).

⁴³ *Contra* Frasch, *NUTSHELL*, *supra* note 25, at 24 (because of the history in our legal system of regarding animals as property, some state anti-cruelty statutes only forbid "unnecessary" suffering and not the outright killing of an animal because of the right to destroy under property law); *but see* John G. Sprankling and Raymond R. Coletta, *PROPERTY: A CONTEMPORARY APPROACH*, 89 (West Academic Publishing, 2018) (stating that "[a] number of courts have refused to enforce provisions in wills that direct the killing of animals" and "[a] sweeping policy conclusion that a dog owner can shoot a healthy, happy dog for no reason is not justifiable under the law [even though the defendant argued the right to destroy under property law], does not comport with the legislature's statutory scheme, [and] is no defense to the crime of Cruelty to Animals" citing *Commonwealth v. Kneller*, 999 A.2d 608, 612 (Pa. Super Ct. 2010)).

⁴⁴ See *e.g.*, *McDougall v. Lamm*, 48 A.3d 312, 324 (N.J. 2012) (recognizing that "pets have a value in excess of that which would ordinarily attach to property" and allowing "costs in excess of the animal's value that represent pecuniary losses associated with medical treatment, [or] damages based on the intrinsic value of the pet"); *Corso v. Crawford Dog and Cat Hospital*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (overruling precedent and holding that an actionable tort was committed and that "a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property. . . . [A] dog is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness.").

⁴⁵ See ANIMAL LEGAL DEFENSE FUND, *COMPANION ANIMALS* 1 (last visited Oct. 27, 2018) <https://aldf.org/focus-area/companion-animals/> [hereinafter ALDF, COMPANIONS]; see also *LITIGATING ANIMAL LAW*, *supra* note 28, at 83.

⁴⁶ See generally OHIO REV. CODE ANN § 959.13 (West 2018); OHIO REV. CODE ANN § 959.131 (West 2018); Ohio's Goddard's Law, ANIMAL L. COALITION 2 (Oct. 1, 2013), <https://animallawcoalition.com/ohiosgoddards-law/> (In 2003, Ohio enacted a separate anti-cruelty statute specifically for companion animals. It was updated in 2016 and gives greater protections to companion animals – those kept in residential dwellings and even in pet stores – and finally including felony convictions for some first offenses. Ohio's original anti-cruelty law that was enacted in 1977 is still in effect, but it punishes cruelty to non-companion animals as a misdemeanor. Because society's attitudes toward companion animals has shifted in a way that

“humans have a moral duty to the animals themselves.”⁴⁷ No longer do we view animals solely as property, but rather we are concerned for their welfare,⁴⁸ enough so that we criminalize their suffering at the hands of other humans.⁴⁹ This can be attributed to animals’ sentience⁵⁰ or simply for their stature as family members in modern households.⁵¹ Advocates, and even some states,⁵² prefer to use the term “guardian” rather than “owner” when referring to the person or organization that holds title in the animal.⁵³ In this way, they can work within the legal system of property with terms that “more accurately reflect[] the legal obligations that humans should have with respect to animals.”⁵⁴ “The idea is that a ‘guardian’ has enforceable rights and obligations different from an owner’s. This means that a guardian is more accountable to the public interest than an owner is.”⁵⁵ In this way, states and advocates have worked within the current legal framework to “promote [a]

they are thought of more as family members than property, even Ohio added a specific law that recognized the value of companion animals and increased the penalties for harm to them).

⁴⁷ See Schaffner, *supra* note 42, at 15.

⁴⁸ See e.g., *People v. Speegle*, 62 Cal. Rptr. 2d 384, 391 (Cal. Ct. App. 3d Dist. 1997) (“In our society, those who mistreat animals are the deserved object of obloquy, and their conduct is wrongful of itself and not just as a matter of legislative declaration.”).

⁴⁹ See ASPCA, *Position Statement on Protection of Animal Cruelty Victims 2* (last visited Oct. 9, 2018) <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-protection-animal-cruelty-victims>; Schaffner *supra* note 42, at 22.

⁵⁰ See Schaffner, *supra* note 42, at 192 (explaining that anti-cruelty statutes generally apply to “sentient animals,” which is understandable because cruelty is defined as the intentional infliction of pain and in order for cruelty to exist, the victim must be capable of experiencing the pain. Schaffner also points to foreign constitutions and revised anti-cruelty laws within the states as illustrative of our valuation of animals as beings we must protect.); see also *Speegle*, 62 Cal. Rptr. 2d at 393 (finding that the defendant’s argument that the NWSPCA had a duty to mitigate their costs by euthanizing her animals “a reflection of the lack of concern for her animals as living sentient creatures . . .”).

⁵¹ See ALDF, *COMPANIONS*, *supra* note 45, at 1.

⁵² See *LITIGATING ANIMAL LAW*, *supra* note 28, at 83 (Rhode Island was the first state to designate “guardians” under statute).

⁵³ See *id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

personal responsibility”⁵⁶ in the person who holds title in the animal, without explicitly bestowing any legal rights on the animals.⁵⁷

However, some advocates contend that anti-cruelty laws “arguably [do] grant animals legal rights because they define a substantive guarantee to adequate food, water and shelter; [and] impose a duty on the human owner to provide” these necessities.⁵⁸ The laws even provide a mechanism for enforcement through seizure of the animals from owners who do not fulfill their duties.⁵⁹ This further supports declaring title holders “guardians” rather than merely “owners” because under traditional guardianships, the law will intervene to remove the child or ward from the guardian’s care if “the guardian fails to fulfill mandated obligations.”⁶⁰

Even in the forfeiture of animals in cruelty prosecutions, the law distinguishes the animals from other property forfeitures.⁶¹ While real property “lacks [the] volition, sentience, and the ability to suffer” that animals possess,⁶² forfeited animals “require ongoing supervision, board, veterinary attention, and protection from” the abuser – often the owner.⁶³ Forfeiture is mandated in cruelty investigations or upon conviction because removing the animal from the owner’s care – or lack thereof – is in the best interest of the animal, not because the animals are property to be retained as evidence in the prosecution.⁶⁴

⁵⁶ *Id.* at 84.

⁵⁷ *Id.*

⁵⁸ Schaffner, *supra* note 42, at 19.

⁵⁹ *Id.* at 19.

⁶⁰ *Id.*

⁶¹ See Adam P. Karp, JD, MS, *Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction Restitution Under Animal Cruelty Statutes*, 70 A.L.R.6th 329 § 2 (2011).

⁶² See *id.*

⁶³ See *id.*

⁶⁴ Madeline Bernstein and Barry M. Wolf, *Time to Feed the Evidence: What to Do With Seized Animals*, ENVIRONMENTAL LAW INSTITUTE, 3 (2005), <https://elr.info/sites/default/files/articles/35.10679.pdf> (Bernstein and Wolf admit though that

Recognizing that animals are more than just property and that their welfare is valued in our society, legislatures in every state have enacted anti-cruelty laws with felony provisions.⁶⁵ The federal government has also attempted to more broadly enforce animal cruelty laws, but this remains a state-level issue.⁶⁶ A minority of states have increased their advocacy for the protection of companion animals even further by creating “pet courts.”⁶⁷ Similar to the juvenile justice system, pet courts include specialized dockets that only review misdemeanor violations of animal laws.⁶⁸ These courts enforce animal laws and educate the public on the proper treatment of animals.⁶⁹ This approach can help ensure that prosecutions of animal cruelty are taken seriously and that offenders are adequately deterred from committing future crimes.

C. *The Link Between Animal Cruelty and Human Violence*

The argument that we have a moral duty to protect animals from abuse⁷⁰ is strengthened

some states do consider the animals to only be evidence and this is one of the reasons why pre-trial forfeiture is not allowed in those jurisdictions. This argument is taken up later in this Note).

⁶⁵ See Frasch, *State Statutes*, *supra* note 21, at 70; HUMANE SOC’Y U.S., *supra* note 21, at 3.

⁶⁶ See e.g., THE HUMANE SOCIETY OF THE UNITED STATES, *Help pass a national animal cruelty law* (2019),

<https://secure.humanesociety.org/site/Advocacy?cmd=display&page=UserAction&id=7572> (Congress is finally seriously considering legislation titled the “Preventing Animal Cruelty and Torture (PACT) Act,” which would “make it a federal crime to commit malicious cruelty to an animal on federal property or in interstate commerce. Federal law already prohibits animal fighting, as well as the creation and trade in obscene video depictions of animals being crushed, burned, drowned, suffocated, impaled or subjected to other forms of egregious cruelty—but the underlying cruelty itself is not banned. The PACT Act will create a federal anti-cruelty statute that complements the cruelty laws in the 50 states.”); ANIMAL WELFARE INSTITUTE, *Preventing Animal Cruelty and Torture (PACT) Act* (2018), <https://awionline.org/content/preventing-animal-cruelty-and-torture-pact-act> (a felony conviction under the PACT Act would carry with it “up to seven years in prison.”).

⁶⁷ See Schyler P. Simmons, *What is the Next Step for Companion Pets in the Legal System? The Answer May Lie with the Historical Development of the Legal Rights for Minors*, 1 TEX. A&M L. REV. 253, 258 (Fall 2013).

⁶⁸ *Id.* at 259.

⁶⁹ *Id.* at 259.

⁷⁰ See Schaffner, *supra* note 42, at 15.

by the evidence that cruelty to animals is a predictor of cruelty to humans. Cruelty to animals is inextricably linked to domestic violence; it is one of four factors that can accurately predict domestic violence.⁷¹ In one study, eighty-five percent of domestic violence victims reported that pets in their homes were also abused.⁷² Evidence demonstrates that “abusers are highly likely to engage in other forms of violent and antisocial criminal behavior.”⁷³ For instance, animal abuse can foreshadow violent crimes against humans: “[s]tudies have demonstrated a predictive link between those who deliberately and violently kill cats and dogs and those who engage in the serial killing of humans.”⁷⁴ Studies have also linked animal abuse in juveniles to criminal – often violent – activity in adults.⁷⁵ One study found that ninety-six percent of juvenile sex offenders also sexually assaulted animals.⁷⁶ The Humane Investigators of the Cleveland Animal Protective League (APL), for instance, are required to report suspected child abuse that they discover when investigating cases of animal cruelty as one often accompanies the other.⁷⁷ To adequately fulfill the purposes of both misdemeanor and felony sentencing in Ohio,⁷⁸ our judicial system should be concerned with deterring those who harm animals from escalating to human harm.

D. *Ohio’s First Anti-Animal-Cruelty Statute*

⁷¹ See *id.* at 29; HUMANE SOCIETY U.S., *supra* note 21, at 3.

⁷² See ANIMAL WELFARE INSTITUTE, PET AND WOMEN SAFETY (PAWS) ACT (last visited Jan. 23, 2019) <https://awionline.org/content/pet-and-women-safety-paws-act>.

⁷³ See LITIGATING ANIMAL LAW, *supra* note 28, at 474.

⁷⁴ See *id.*

⁷⁵ See Schaffner, *supra* note 42, at 29.

⁷⁶ Fleming et al., *Characteristic of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals*, 10 SOCIETY & ANIMALS 1, 31 (Mar. 1, 2002).

⁷⁷ CLEVELAND APL, *supra* note 5, at 6.

⁷⁸ See OHIO REV. CODE ANN § 2929.22(B)(1)(e) (West 2018) (advising the courts to take into consideration the likelihood that an offender will commit future crimes when determining the appropriate sentence for misdemeanor convictions.); see also OHIO REV. CODE ANN § 2929.12(A), (B)(2) (West 2018) (advising the courts to take into consideration the physical harm suffered by the victim – which we consider to be the abused animals – and the likelihood of recidivism based on the crime.)

Ohio’s “Cruelty to Animals” statute went into effect in 1977.⁷⁹ While it prohibits torture and cruelty to animals, the maximum penalty for an offender is a second degree misdemeanor.⁸⁰ The maximum sentence for a misdemeanor in the second degree is no more than ninety days in jail and a fine of \$750,⁸¹ even if the offender tortures an animal. O.R.C. § 959.13 requires that fines that are assessed upon conviction be given to societies for the prevention of cruelty to animals (SPCAs) if one should exist in the “county, township, or municipal corporation where such violation occurred.”⁸²

The statutory financial sanctions for misdemeanors in Ohio give the courts the authority to force the owner-abuser to forfeit the animals.⁸³ The organizations to which the animals are forfeited may then sell the abused animals and apply any profits from the sale to pay for the “expenses incurred” in caring for the animals from the time of seizure.⁸⁴

E. Goddard’s Law: A Move in the Right Direction

As pets have become more valuable in American households,⁸⁵ legislatures across the country have increased penalties for cruelty to companion animals.⁸⁶ In 2003, Ohio enacted O.R.C. § 959.131.⁸⁷ In 2016, the statute was amended and became known as Goddard’s Law, named after

⁷⁹ OHIO REV. CODE ANN § 959.13 (West 2018).

⁸⁰ OHIO REV. CODE ANN § 959.99(D) (West 2018).

⁸¹ OHIO REV. CODE ANN § 2929.28(A)(2)(a)(ii) (West 2018); OHIO REV. CODE ANN § 959.24(A)(2) (West 2018).

⁸² O.R.C. § 959.13(C).

⁸³ O.R.C. § 959.99(D).

⁸⁴ *Id.*

⁸⁵ Lyman Stone, *Fewer Babies, More Pets? Parenthood, Marriage, and Pet Ownership in America*, INST. FOR FAM. STUD. 6 (Nov. 15, 2017), <https://ifstudies.org/blog/fewer-babies-more-pets-parenthood-marriage-and-pet-ownership-in-america> (reporting that increases in spending on pets illustrate how much Americans value their pets, to the extent that millennials may be replacing traditional families with pets instead.)

⁸⁶ See HUMANE SOC’Y U.S., *supra* note 21, at 3.

⁸⁷ See 2002 S.B. 221, 124th Gen. Assemb., Reg. Sess. (Ohio 2003).

the local Cleveland weatherman who advocates for animal welfare, especially of companion animals.⁸⁸ While O.R.C. § 959.13 protects all animals, Goddard’s Law gives greater protection to companion animals – which includes any animal kept in a residential dwelling and also cats and dogs in pet stores.⁸⁹ Under Goddard’s Law, cruelty to companion animals is a misdemeanor of the first degree, and in some cases, even a felony of the fifth degree for the first offense.⁹⁰

Specific to Goddard’s Law,⁹¹ impounding agencies include county humane societies,⁹² animal shelters, or law enforcement agencies that impound animals for animal cruelty investigations.⁹³ The impounding agency can receive compensation during the impoundment by a bond or cash deposit from the offender.⁹⁴

F. *Restitution: What is it and Why Does it Matter?*

Upon conviction of animal cruelty, the courts often require that the offenders forfeit the abused animals.⁹⁵ The animals are then turned over to animal welfare organizations. In the worst cases of abuse, euthanasia is sometimes the only humane option. But the animals that can survive

⁸⁸ See *Ohio’s Goddard’s Law*, ANIMAL L. COALITION 2 (Oct. 1, 2013), <https://animallawcoalition.com/ohios-goddards-law/>

⁸⁹ See O.R.C. § 959.131(A)(1).

⁹⁰ See O.R.C. § 959.99(E) (requiring the *mens rea* of “knowingly” causing harm to be convicted of a felony).

⁹¹ See OHIO REV. CODE ANN § 959.132 (West 2018).

⁹² Humane Societies are statutorily constructed under O.R.C. § 1717.05. They employ agents who can arrest persons violating anti-cruelty laws. Human Societies are also allowed to receive court costs charged to those convicted of animal cruelty under O.R.C. § 1717.10. Rescue organizations and animal shelters are not Humane Societies. The Public Animal Welfare Society, Inc. (PAWS), for instance, is an Ohio rescue organization that takes in animals from cruelty cases, but because they are not formally a Humane Society, they are not allowed to receive any funding that might come from convictions of animal cruelty. Interestingly, PAWS Ohio helped advocate for Goddard’s Law, though the law itself does not provide them with any financial resources. See *Animal Welfare*, PAWS OHIO, <http://www.pawsohio.org/animal-rights> (last visited Oct. 23, 3018).

⁹³ See O.R.C. § 959.132(A)(2).

⁹⁴ See O.R.C. § 959.132(C).

⁹⁵ See O.R.C. § 959.99(D), (E)(6)(a).

without suffering are rehabilitated with a goal of adoption.⁹⁶ Owners of domestic animals can attest to the cost of veterinarian bills under ordinary circumstances. The physical, emotional, and behavioral issues that abused animals must overcome in order to be adopted can be astronomical. In cruelty cases of hoarding, it is not uncommon for hundreds of animals to be seized and forfeited at once. Often, the forfeited animals are not just domestic pets: prominent Ohio cases have involved horses and bears.⁹⁷ The costs to board and rehabilitate these animals can quickly get out of control. This is why some states, with anti-cruelty and financial sanctions statutes similar to Ohio's, assess and implement restitution upon conviction of animal cruelty.

For example, during a five-year period in New Hampshire, sixty-one cases⁹⁸ of animal cruelty cost the animal welfare organizations caring for the abused animals over a half million dollars.⁹⁹ The sixteen most prominent cases alone cost the New Hampshire SPCA \$263,358 just in boarding and veterinary care for the animals.¹⁰⁰ The New Hampshire courts ordered those

⁹⁶ The Cleveland APL is the humane society for Cuyahoga County and is primarily funded through donations, though adoption fees are a secondary source of support. *See* CLEVELAND ANIMAL PROTECTIVE LEAGUE, *Frequently Asked Questions*, <https://clevelandapl.org/about-us/about-the-apl/cleveland-apl-faqs/> (last visited Nov. 25, 2018). The Cleveland APL was able to adopt out 87% of the animals they took in during 2017, though not all of those animals were cruelty rescues.

⁹⁷ *See, e.g.*, *State v. Walker*, 841 N.E.2d 376; *State v. Dixon*, 2006-Ohio-2114, 2006 WL 1120688.

⁹⁸ In comparison, Cleveland Humane Investigators rescued over one thousand animals from cases of cruelty and neglect just in 2017 alone, but unfortunately there are no equivalent data reports in our area and so New Hampshire was selected to highlight. If we extrapolate the costs that follow in the NH cases, we could likely conclude that the costs seen in one year in Cleveland could be seventeen times higher. *See* CLEVELAND APL, *supra* note 5, at 6.

⁹⁹ GOVERNOR'S COMMISSION ON THE HUMANE TREATMENT OF ANIMALS, COST ANALYSIS OF ANIMAL CRUELTY IN NEW HAMPSHIRE, 33 (2008) [hereinafter N.H. COMMISSION]. The Commission was created by Executive Order to understand how animal abuse was being dealt with in New Hampshire and to provide recommendations to prevent future abuse.

¹⁰⁰ N.H. COMMISSION, *supra* note 57, at 14-15. These sixteen cases were all cared for by the New Hampshire Society for the Prevention of Cruelty to Animals (NHSPCA), though other groups also board animals in New Hampshire anti-cruelty cases. Veterinary care includes costs for euthanasia when necessary. The costs here do not include the costs of the police and prosecution of each case, which would add about \$2,000 per case for felony charges.

convicted in the sixteen cases to pay \$161,765 in restitution,¹⁰¹ which is a significant amount, but still only about half of what the NHSPCA needed.

Ohio law allows courts to impose restitution in both felony and misdemeanor convictions to “the victim of the offender’s crime . . . in an amount based on the victim’s economic loss.”¹⁰² The law allows for the victim to have a representative “if a victim is . . . incapacitated, incompetent, or deceased, or if the victim chooses to designate another.”¹⁰³ The representative may receive restitution on behalf of the victim. For felonies only, “[i]f the court imposes restitution, the court shall order that the restitution be made to the victim in open court . . . or to another agency designated by the court.”¹⁰⁴

For the last sixty-five years, Ohio statute has given permission to anyone to “take possession” of any animal “in order to protect . . . [it] from neglect.”¹⁰⁵ The law specifies that “[t]he necessary expenses for food and attention given to an animal . . . may be collected from the owner of such animal.”¹⁰⁶ If Ohio law allows anyone who rescues an animal from neglect to be compensated by the owner for expenses incurred, it logically follows that an animal welfare organization should be granted restitution from the owner for their incurred expenses.

G. Working with the Laws We Have to Make the Most Impact

There is debate about whether advocacy in the field of animal law should favor animal rights over animal welfare; whether the law should change to grant animals legal rights and no

¹⁰¹ *Id.* at 14.

¹⁰² OHIO REV. CODE ANN § 2929.18(A)(1) (West 2018); OHIO REV. CODE ANN § 2929.28(A)(1) (West 2018).

¹⁰³ OHIO REV. CODE ANN § 2930.02 (West 2018).

¹⁰⁴ O.R.C. § 2929.18(A)(1).

¹⁰⁵ OHIO REV. CODE ANN. § 1717.13 (West 2018).

¹⁰⁶ O.R.C. § 1717.13; *see also*, OHIO REV. CODE ANN. § 1717.01 (West 2018) (stating that “in every law relating to animals” a person includes a corporation and an animal “includes every living dumb creature.”)

longer qualify them as mere property.¹⁰⁷ However, regardless of the legal status of animals, we should all be able to agree that our morals compel us to treat animals humanely. As ethical agents, we want to protect animals from abuse. But even more, we should want to prosecute animal abuse because the evidence shows that it is linked with violence toward humans. The best way to demonstrate that we take animal cruelty seriously is to adequately prosecute and sentence those convicted of abuse, which includes holding animal abusers responsible for the costs in rehabilitating the abuse victims through restitution orders. By overturning restitution, the Ohio appellate courts are demonstrating that they do not consider the deterrence of animal abuse to be a priority. This must – and can – change, using the laws we currently have in Ohio.

III. HOW RESTITUTION CAN PROVIDE THE FINANCIAL SUPPORT TO ANIMAL WELFARE ORGANIZATIONS THAT ANTI-CRUELTY STATUTES DO NOT

While the authors of Goddard’s Law likely relied on existing statutory language to financially support the animal welfare organizations that would care for the abused animals forfeited to them, we cannot. Current anti-cruelty statutes fall short in their concern for the animals after their rescue and provide little to no support for the long-term care of the animals. Restitution would ensure adequate financial support, and Ohio law allows restitution to be ordered in cases of animal cruelty. Restitution would also help deter future crime and adequately punish those convicted of animal cruelty. If a person abuses an animal, the most commonsense punishment would hold the offender responsible for the animal’s rehabilitation.

¹⁰⁷ The welfarists believe that “using” animals is ethical so long as they are treated humanely and their welfare is taken into consideration. Animal rights generally advocate for an abolition of all “uses” of animals solely to benefit humans. While those who advocate for welfare and for rights both advocate to eliminate pain and suffering by animals, the welfare approach is a bit more moderate and may be more palatable from a legal standpoint, given our current statutes. *See* Schaffner, *supra* note 42 at 171; *see also* Frasch, *State Statutes*, *supra* note 21, at 70.

A. *Fines, Bonds, and Adoption Fees Are Not Enough*

Under Ohio’s animal-cruelty statute that pre-dates Goddard’s Law, fines assessed can be given to societies for the prevention of cruelty to animals (SPCAs).”¹⁰⁸ This sounds helpful for the organizations and some appellate court judges are even aware of this statutory option.¹⁰⁹ However, the penalty of animal cruelty under O.R.C § 959.13 is a second degree misdemeanor,¹¹⁰ with a maximum fine of \$750.¹¹¹ That amount will not go far in rehabilitating an abused animal, let alone several.¹¹² Courts sometimes merge multiple offenses into one conviction,¹¹³ which means that a woman who is convicted of abusing several dogs, for instance, may only be sentenced to one count of animal cruelty, and only fined for that one count.¹¹⁴ The fines recouped in animal-cruelty cases are not enough to support the SPCAs that care for the abused animals. In *Bybee*, the fines totaled \$4,500 while the SPCA incurred \$117,000 in expenses.¹¹⁵

Further, the statute itself notes that it is entirely possible that a SPCA may not exist in the

¹⁰⁸ O.R.C. § 959.13(C).

¹⁰⁹ *See e.g.*, *State v. Bybee*, 731 N.E.2d at 235; *State v. Leslie*, 2011-Ohio-2727, 2011 WL 2225152, at *9 . In both *Bybee* and *Leslie*, the Courts of Appeal told the animal welfare organizations that they could just use the money collected from the fines to cover their costs, not realizing the inadequacy of the amounts collected. Even though the charges were filed after Goddard’s Law went into effect, the *Leslie* case was prosecuted under O.R.C. § 959.13(A)(1) because the defendant had farm animals – not companion animals – confiscated.

¹¹⁰ O.R.C. § 959.99(D).

¹¹¹ O.R.C. § 2929.28(A)(2)(a)(ii).

¹¹² *See State v. Walker*, 841 N.E.2d at 385 (reversing a \$32,000 restitution order to pay for the seven bears that were seized upon the defendant’s conviction.)

¹¹³ *But see State v. Nix* 283 P.3d 442, 449 (Or. Ct. App. 2012), *aff’d*, 334 P.3d 437 (Or. 2014) (reversing the circuit court’s merger of 20 counts of animal cruelty into one conviction because the twenty animals each constituted an individual victim of the animal neglect and under Oregon law, the anti-merger statute provides that defendants be convicted separately for each.)

¹¹⁴ *See State v. Bybee*, 731 N.E.2d at 233 (convicting defendant of only six charges of animal cruelty even though 188 dogs were confiscated from her home due to abuse and neglect. Therefore, rather than collecting fines on all 188 cases of neglect, the defendant only had to pay the court fines on the six convictions.)

¹¹⁵ *See id.*

jurisdiction where the offender is convicted. If a rescue organization or animal shelter is caring for the forfeited animals instead, they are statutorily unable to receive any of the fines collected from the conviction.¹¹⁶

To its credit, since Goddard's Law increased the charges for animal cruelty, the convictions under it carry fines of \$1,000 or \$2,500.¹¹⁷ Unfortunately, the final version of Goddard's Law specifies that all fines collected be given to county humane societies and earmarked for training humane agents.¹¹⁸ None of the money is allowed to be used to pay for the expenses incurred in caring for the seized companion animals. The authors of Goddard's Law, perhaps unwittingly, actually made it even less likely that financial assistance would be provided to care for the abused animals.

The authors of Goddard's Law may have assumed that O.R.C. § 959.132 included adequate financial assistance for those rehabilitating seized animals. O.R.C. § 959.132 discusses the seizure and impoundment of companion animals under Goddard's Law.¹¹⁹ Impounding agencies under the statute include county humane societies, animal shelters, or law enforcement agencies that

¹¹⁶ O.R.C. § 959.13(C).

¹¹⁷ See O.R.C. § 2929.28(A)(2)(a)(i) and O.R.C. § 2929.18(A)(3)(e), though we should not really celebrate. Ohio animal-cruelty fines are still well below the national average, which ranges from \$5,000 to \$10,000. The only jurisdictions with lower fine amounts than Ohio are Rhode Island and Guam (HUMANE SOC'Y U.S., *State Animal Cruelty Chart*, http://www.humanesociety.org/assets/pdfs/abuse/state_animal_cruelty_laws_13.pdf (last visited Oct. 9, 2018)).

¹¹⁸ O.R.C. § 959.131(H) (reading, "the clerk of court shall forward all fines the clerk collects . . . to . . . pay the fine moneys to the county humane society or the county, township, municipal corporation, or state law enforcement agency in this state that primarily was responsible for or involved in the investigation and prosecution of the violation. If a county humane society receives any fine moneys under this division, the county humane society shall use the fine moneys either to provide the training that is required for humane agents under section 1717.06 of the Revised Code or to provide additional training for humane agents.")

¹¹⁹ O.R.C. § 959.132.

impound animals for animal cruelty investigations.¹²⁰ The impounding agency can receive compensation during the impoundment by a bond or cash deposit from the offender.¹²¹ But the statute even admits that the offender may not post the bond, in which case the impounding agency is left to “determine the disposition of the companion animal.”¹²² The court *may* order the offender, upon conviction, to pay the costs that the impounding agency incurred during impounding.¹²³ However, in the cases highlighted below, the courts tend not to implement this discretionary section of the statute.

Under O.R.C. § 959.13, the organizations to which abused animals are forfeited are allowed to sell the animal(s) and apply profits from the sale to pay for the “expenses incurred” in caring for the animal(s) from the time of seizure.¹²⁴ The authors of the statute may argue that this is sufficient to financially assist the organizations. Some appellate courts have even noted this in reversing restitution orders.¹²⁵ What those authors and judges do not appreciate, though, is that in order to adopt out abused animals, significant rehabilitation may be required first. Again, while applying adoption fees to the costs of caring for the forfeited animals may seem helpful, the amount of profit from the adoption of an animal would likely be inadequate to cover the costs of caring for it.¹²⁶ Additionally, the statute mandates that any remaining profits (if there are any) be paid to the

¹²⁰ O.R.C. § 959.132(A)(2), but note that rescue organizations that receive the animals after impounding are not included in the statute.

¹²¹ O.R.C. § 959.132(C).

¹²² O.R.C. § 959.132(E)(3), which may unfortunately mean that impounding agencies could choose euthanasia if they cannot afford to incur the costs of rehabilitation.

¹²³ O.R.C. § 959.132(F)(1).

¹²⁴ O.R.C. § 959.99(D).

¹²⁵ *See e.g.*, State v. Leslie, 2011-Ohio-2727, 2011 WL 2225152, at *9.

¹²⁶ *See* Bybee, 731 N.E.2d at 233 (seizing 188 dogs); State v. Walker, 841 N.E.2d at 377 (seizing seven bears). These are not inexpensive cases to care for.

owner of the animal¹²⁷ – the one who was convicted of abusing it.¹²⁸ This statutory allowance to use adoption fees for expenses incurred is not included in Goddard’s Law,¹²⁹ even though the domestic animals protected under Goddard’s Law would be easier to adopt than bears and horses seized under O.R.C. § 959.13.¹³⁰

B. Restitution Orders in Animal-Cruelty Convictions

The appellate courts do not seem to understand the nuances of the animal-cruelty statutes in Ohio, which is compounded by their misinterpretation of restitution in these cases.

Anita Bybee was convicted of six charges of cruelty to animals under O.R.C. 959.13(A)(1),¹³¹ after the Hamilton County SPCA confiscated 188 neglected dogs from her property. Her no contest plea resulted in ninety days of house arrest and a paltry \$750 fine for each conviction, plus court costs.¹³² The prosecutor presented to the court a bill for \$131, 261.50 that the SPCA had incurred while boarding Ms. Bybee’s dogs for 112 days during the prosecution of the case.¹³³ They spent on average \$1,104 a day.¹³⁴ The trial judge, recognizing that a fine totaling \$4,500 was not going to cover the costs of caring for Ms. Bybee’s 188 seized dogs, ordered her to pay restitution as a condition of probation.¹³⁵ The restitution amount was set at \$117,625 – the

¹²⁷ O.R.C. § 959.99(D).

¹²⁸ This is just absurd.

¹²⁹ O.R.C. § 959.99(D) explicitly states that animals forfeited under O.R.C. § 959.13 – the animal cruelty law that pre-dated Goddard’s Law – may be sold and adoption fees can be used to cover expenses incurred in caring for them. The statute was not updated when Goddard’s Law was written to allow adoptions of animals forfeited under O.R.C. § 959.131 to be used to pay expenses incurred in caring for the companion animals.

¹³⁰ See, e.g., *State v. Walker*, 841 N.E.2d 376; *State v. Dixon*, 2006-Ohio-2114, 2006 WL 1120688.

¹³¹ *State v. Bybee*, 731 N.E.2d at 233. This case pre-dates Goddard’s Law.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

balance remaining after the SPCA recouped costs through adoptions.¹³⁶ When Ms. Bybee failed to timely pay restitution,¹³⁷ her probation was revoked and she was ordered to serve 540 days of house arrest.¹³⁸ She appealed and the First District Court of Appeals reversed the restitution order,¹³⁹ holding that the expenses the SPCA incurred for seizing the dogs as part of the investigation and prosecution were not “property damage” under Ohio law.¹⁴⁰

In 2005, after Goddard’s Law was enacted, Larry Angus, Jr. was convicted by a jury of two counts of animal cruelty under O.R.C. § 959.131(C)(2).¹⁴¹ The trial court ordered Mr. Angus to pay \$3,000 in restitution to the Capital Area Humane Society, which investigated the case and cared for Mr. Angus’s two seized dogs.¹⁴² Mr. Angus’s counsel did not object to the restitution order.¹⁴³ In his appeal, though, Mr. Angus challenged the restitution order and the Tenth District Court of Appeals remanded the case to the trial court, ordering that the restitution be deleted.¹⁴⁴ The Tenth District’s rationale was that while Ohio law allows restitution to be made to the victim of the crime,¹⁴⁵ the Humane Society was not the victim of this crime.¹⁴⁶

¹³⁶ *Id.*; *see also* O.R.C. § 959.99(D).

¹³⁷ After thirty-six months, Ms. Bybee had paid only \$1,243 in total.

¹³⁸ *State v. Bybee*, 731 N.E.2d at 234.

¹³⁹ *Id.* at 236.

¹⁴⁰ *Id.* at 234 (writing “expenses incurred in caring for animals removed from Bybee’s kennel were not property damage as defined in R.C. 2929.21(E), and the trial court erred in ordering restitution to the SPCA for those costs as a condition of probation.” O.R.C 2929.21(E) was repealed on July 31, 2003, but at the time of Bybee’s conviction, it read that restitution could be made for all or part of the property damage caused by the offense for which the person is convicted. *See* 2002 H.B. No. 490, 124th Gen. Assemb., Reg. Sess. (Ohio 2003).)

¹⁴¹ *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512 at *1.

¹⁴² *Id.* at *6; the prosecutor actually sought \$9,741 in restitution but the trial court reduced the amount.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at *7.

¹⁴⁵ *See* O.R.C § 2929.28.

¹⁴⁶ *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512 at *7 (stating “[t]he authority for financial sanctions, including restitution, is contained in R.C. 2929.28 . . . [which] authorizes restitution to be made to the victim or survivors of the victim for economic loss, and to the government, but

The most recent Ohio animal cruelty case on appeal is Jean Diamond's.¹⁴⁷ Twenty-seven cats and kittens,¹⁴⁸ many severely neglected, were seized from Ms. Diamond's property in 2017.¹⁴⁹ She was convicted of four counts of neglect under Goddard's Law, all second-degree misdemeanors.¹⁵⁰ The trial court ordered Ms. Diamond to pay \$5,000 in restitution¹⁵¹ to the Humane Society of Greater Dayton.¹⁵² On appeal, Ms. Diamond never contested the restitution order itself; she asserted ineffective counsel as her single assignment of error.¹⁵³ The Second District affirmed the trial court's judgement,¹⁵⁴ and by default upheld the restitution order. While the order was never appealed, the case is important to note because trial courts are still trying to order restitution in convictions under Goddard's Law, despite the appellate courts' practice of overturning them.

C. *A Double Standard: Restitution Orders in Non-Animal-Cruelty Convictions*

In the more recent animal cruelty cases, the appellate courts have overturned orders of restitution to animal welfare organizations, citing their status as a "non-victim."¹⁵⁵ Yet these same courts are upholding restitution to non-victims in cases that do not involve animal cruelty.

only for the cost of community control or for certain forms of confinement. We find no authority in R.C. 2929.28 that would authorize a sentencing court to reimburse a Humane Society for the cost of care of animals seized under R.C. Chapter 959.[131].")

¹⁴⁷ State v. Diamond, 2018-Ohio-3287, 2018 WL 3957092 (Ohio Ct. App. 2d Dist. Aug. 17, 2018).

¹⁴⁸ *Id.* at *3, 9 (stating that 25-28 cats remained on her property even after 27 were seized).

¹⁴⁹ *Id.* at *1.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² State v. Diamond, docket 17CRB01128 (Miamisburg Muni. Ct. Jan. 19, 2018), <https://web1.civicacmi.com/MiamisburgMC/Court/View.aspx?option=Docket>.

¹⁵³ State v. Diamond, 2018-Ohio-3287, 2018 WL 3957092 at *9.

¹⁵⁴ *Id.* at *14.

¹⁵⁵ See State v. Ham, 2009-Ohio-3822, 2009 WL 2370908 at *14 (using *Angus* to find that restitution could not be paid to the Wyandot County Humane Society for the costs incurred in caring for defendant's dog); State v. *Angus*, 2006-Ohio-4455, 2006 WL 2474512 at *7 (reading the Ohio statute to "authorize[] restitution to be made to the victim or survivors of the victim for economic loss").

Contradicting their own ruling in *State v. Angus*, the Tenth District upheld restitution to a “non-victim.” In 2017, Timothy S. Horton, who was a judge in the Tenth District Court of Appeals, was convicted “of failure to file accurate campaign statements in violation of R.C. 3517.13(B).”¹⁵⁶ The trial court ordered Judge Horton to pay \$2,065 in restitution to a local food bank.¹⁵⁷ This was a purely symbolic restitution order as the food bank was in no way a victim of Judge Horton’s crime, nor did the Judge cause property damage to the food bank. Judge Horton appealed the trial court’s order of restitution as plain error.¹⁵⁸ In this instance, the Tenth District upheld the order, arguing that it did not affect the outcome of the case; Judge Horton would have pled guilty without the restitution order in place.¹⁵⁹ The Tenth District even mentioned that ordering restitution to a food bank “is a deviation from a legal rule” based on their holding in *Angus*.¹⁶⁰ But they also decided that ordering restitution to a non-victim “is consistent with the overall purposes of misdemeanor sentencing” and was “based on some sound reasoning.”¹⁶¹

Even the Ohio Supreme Court allows restitution to be applied to non-victims in non-animal-cruelty cases. In *State v. Bartholomew*, the defendant was convicted of rape of a minor, a first degree felony.¹⁶² During sentencing, the trial court ordered him to pay \$426 in restitution to a

¹⁵⁶ *State v. Horton*, 99 N.E.3d 1090, 1092 (Ohio Ct. App. 10th Dist. 2017). In part, Judge Horton was accused of using campaign funds to pay for a private campaign dinner at a cost of almost \$2,000.

¹⁵⁷ *Id.* at 1095.

¹⁵⁸ *Id.* at 1106.

¹⁵⁹ *Id.* at 1106.

¹⁶⁰ *Id.* at 1105 (explaining that “Horton urges that the trial court committed plain error by directing him to pay restitution to a third-party non victim . . . in violation of R.C. 2929.28(A)(1) We conclude that in this case the trial court’s award of restitution to the Mid-Ohio Food Bank is a deviation from a legal rule. We do not conclude, however, that it constitutes plain error, as Horton contends.”).

¹⁶¹ *Id.* at 1102. The trial court considered the purpose of misdemeanor sentencing in ordering restitution: to change the Judge’s behavior, to rehabilitate him, and ensure he make amends to the public. *See id.* at 1101; O.R.C. § 2929.21(A).

¹⁶² *State v. Bartholomew*, 894 N.E.2d at 308.

crime victim’s fund for his victim’s counseling.¹⁶³ Mr. Bartholomew’s counsel did not object to the restitution order at trial,¹⁶⁴ but Mr. Bartholomew appealed it. The Third District reversed, holding that Ohio’s restitution statute “does not authorize the trial court to order . . . restitution to a third party.”¹⁶⁵ The State appealed and the Ohio Supreme Court upheld the restitution order.¹⁶⁶ The court argued that O.R.C 2929.18(A)(1)¹⁶⁷ is written to allow restitution to be paid to an “agency designated by the court,”¹⁶⁸ and it follows then that restitution can be paid to non-victims.¹⁶⁹

As shown, the Ohio Courts of Appeal have reversed restitution orders for a variety of misinterpretations of Ohio’s financial sanctions statutes. In some cases, the courts contradict even themselves, depending on the crime. The courts’ rationales are inaccurate and the Ohio Supreme Court should step in to ensure that restitution is consistently ordered – and upheld – in convictions of animal cruelty.

D. For Uniformity’s Sake! An Argument for Equality in Animal-Cruelty Convictions

If restitution is upheld to support non-victims in non-cruelty cases, it should be upheld in animal cruelty cases as well. Even though Ohio’s anti-cruelty laws do not adequately address the rehabilitation of rescued animals, other statutory language does. If Ohio law can be used to give restitution to a food bank, it can also be used to provide restitution to animal welfare organizations. O.R.C. § 109.42 is the “Compilation of statutes relative to victim’s rights.” Section 109.42 (A)(13) lists one of the rights of victims as “[t]he possibility of receiving restitution from an offender . . .

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 309.

¹⁶⁶ *Id.* at 312.

¹⁶⁷ This is the financial sanctions statute for felony sentencing.

¹⁶⁸ *State v. Bartholomew*, 894 N.E.2d at 310.

¹⁶⁹ *Id.*

pursuant to section . . . 2929.18 [felony financial sanctions] or 2929.28 [misdemeanor financial sanctions] of the Revised Code.” Since *Bartholomew* allows the term “victim” to be applied to third-party funds,¹⁷⁰ animal welfare organizations should be recognized as victim (representatives) in cruelty convictions and receive restitution from the convicted offender.

Restitution amounts are discretionary. In Ohio, for any misdemeanor greater than a minor misdemeanor, or for any felony, the court may impose – at its discretion – “restitution by the offender to the victim of the offender’s crime or any survivor of the victim”¹⁷¹ While the amount that may be collected in fines is set by statute and determined based on the conviction,¹⁷² the amount ordered in restitution is at the discretion of the court. Ohio trial courts have used this discretion to impose restitution on those convicted of animal cruelty, specifically to assist the animal welfare organizations caring for the abused animals. The problem is that appellate courts are reversing the restitution orders because they are misinterpreting the law. Generally, this is because the appellate courts read the statute and assume that a “victim” must be a person. But as non-animal-cruelty cases prove, victims are not just people, and the money does not even have to be given directly to the victim.¹⁷³

What is most frustrating is that the same Ohio appellate courts that reversed restitution in animal-cruelty convictions seem to forget their own holdings when it comes to non-cruelty cases. In *Angus*, the Tenth District held that financial sanctions statutes only allow restitution to be paid to victims and that the Humane Society could not be considered a “victim” because it was not

¹⁷⁰ *Id.* (stating that “the purpose of R.C. 2929.18(A)(1) is to require the offender to reimburse the victim – or whatever entity paid the victim – for the economic loss caused by the crime.”).

¹⁷¹ See O.R.C. § 2919.18(A)(1); O.R.C. § 2929.28(A)(1).

¹⁷² See O.R.C. § 2929.28(A)(2)(a); O.R.C. § 2919.18(A)(3).

¹⁷³ See *e.g.*, *State v. Eggeman*, 2004-Ohio-6495, 2004 WL 2785951 at *8 (Ohio Ct. App. 3d Dist. Dec. 6, 2004) (holding “that an offender may be ordered to compensate third parties as well as victims for economic loss resulting from the offense.”)

directly harmed by the offender. This argument would be stronger if the Tenth District did not overrule itself in *Horton*.

In *Horton*, the Tenth District illustrated how restitution can be paid to “non-victims” under Ohio law: they upheld a restitution order to be paid to a food bank.¹⁷⁴ The court even mentioned that ordering restitution to a food bank “is a deviation from a legal rule” based on their own ruling in *Angus*.¹⁷⁵ But they also acquiesced that ordering restitution to a non-victim upheld a purpose of sentencing.¹⁷⁶ The Tenth District confirmed that trial courts have discretion when it comes to ordering restitution.

While appellate courts no longer use the animals-as-property argument to overturn restitution orders, some do not want to admit that the animals are victims of the crime. Even if they do not want to give the animals restitution directly,¹⁷⁷ the courts should still allow restitution to be given to third parties, such as animal welfare organizations. In *Bartholomew*, the Court noted that O.R.C 2929.18(A)(1) allows restitution to be paid to an “agency designated by the court,”¹⁷⁸ ruling that the Third District erred in holding that courts can only order restitution to be paid to victims.¹⁷⁹ Restitution may be given to non-victims, specifically to funds that are used to pay for the damages

¹⁷⁴ State v. Horton, 99 N.E.3d at 1106.

¹⁷⁵ *Id.* at 1105.

¹⁷⁶ *Id.* at 1101-2 (stating that “the trial court thus was required to protect the public from future crimes by Horton and to punish Horton. And to achieve the purposes of misdemeanor sentencing, in accordance with R.C. 2929.21(A) the trial court was required to consider the impact of Horton’s offense upon the victim, the need for changing Horton’s behavior, rehabilitating Horton, and ‘making restitution to the public, or the victim and the public.’” Horton’s victim was the public, and the Tenth District supported the trial court for taking into consideration how Horton’s offense impacted his victim.).

¹⁷⁷ Which is somewhat understandable since animals generally do not have bank accounts for the restitution payments.

¹⁷⁸ State v. Bartholomew, 894 N.E.2d at 310.

¹⁷⁹ *Id.*

the offender caused.¹⁸⁰ The Court further states that “[i]f the General Assembly had truly intended that restitution could be paid only to a victim, it would have eliminated adult probation departments, clerks of courts, and other agencies designated by the court as possible payees.”¹⁸¹ Under this ruling, there is ample room to argue that if a court assigned restitution payments to an agency such as an animal welfare organization, it would be upheld by the Ohio Supreme Court under *Bartholomew*.¹⁸²

Since *Bartholomew*, some courts of appeal have expanded the ruling, upholding restitution orders to non-victims and/or third parties that can manage the money and use it to assist victims. The Fourth District allowed restitution to be awarded to parents of minor victims because the parents incurred the medical costs of the victims.¹⁸³ The “non-victim” (the parents) who received the restitution funds represented the victim. In our cases, the animal welfare organizations represent the animal victims. Ohio law defines a “victim’s representative” as a person who is designated to “exercise the rights” of an incapacitated, incompetent, or deceased victim.¹⁸⁴ An abused animal, if no longer viewed as property under the law, is just as vulnerable as an incapacitated human.¹⁸⁵ Designating animal welfare organizations as representatives of the animal victim would allow the organizations to receive restitution under *Bartholomew*.

¹⁸⁰ *Id.* at 312.

¹⁸¹ *Id.*

¹⁸² *But see*, State v. Christman, 2009-Ohio-6555, 2009 WL 4810318 at *3 (Ohio Ct. of App. 12th Dist. Dec. 14, 2009) (stating that under *Bartholomew* a reparations fund is a permissible third party to receive reparations, but an insurance company is not, except the court provides no case law to support this rule); State v. Johnson, 2014-Ohio-4826, 2014 WL 5493964 at *2 (Ohio Ct. of App. 10th Dist. Oct. 30, 2014) (citing *Christman*’s unsupported statement to reverse restitution for yet another reason.)

¹⁸³ *See* State v. Shifflet, 44 N.E.3d at 985. In our cases, the animal welfare organizations incur the costs of the animal victims.

¹⁸⁴ O.R.C. § 2930.02.

¹⁸⁵ Connecticut, for instance, enacted a type of guardian ad litem program in cases of animal cruelty. *See* CONN. GEN. STAT. ANN. § 54-86n (West 2018).

Some appellate courts have expanded the *Bartholomew* rule to hold that restitution need not be confined to the entities listed in Ohio’s statute.¹⁸⁶ The cases specifically reference O.R.C. § 2929.18, which is the financial sanction statute for felonies,¹⁸⁷ and would be applicable to felony convictions under Goddard’s Law. According to the interpretation of *Bartholomew* by the Second, Third, and Eighth District Courts of Appeal,¹⁸⁸ if restitution is agreed upon by both parties, such as during a hearing, it cannot be overturned.¹⁸⁹ The defendants in *Bybee* and *Angus* never contested their restitution orders at trial.¹⁹⁰ From this expansion of *Bartholomew* then, it would follow that the restitution orders in those cases should be upheld on appeal. Whether we agree with this expansion of *Bartholomew*, the Ohio Supreme Court allows restitution to be paid to third-party entities that can use the money to assist the victims of the crime. Therefore, restitution in animal cruelty convictions should be upheld for animal welfare organizations that are assisting the animal victims.

IV. A RECOMMENDATION TO THE OHIO SUPREME COURT

Restitution should be ordered and upheld in cases of animal cruelty for clarity and for

¹⁸⁶ See e.g., *State v. Johnson*, 2012-Ohio-1230, 2012 WL 1018721 at *4 (Ohio Ct. App. 2d Dist., 2012); *State v. Stewart*, 2008-Ohio-5823, 2008 WL 4831476 at *3 (Ohio Ct. App. 3d Dist. 2008); *State v. Maurer*, 63 N.E.3d 534, 541 (Ohio Ct. App. 8th Dist. 2016). O.R.C. 2929.18(A)(1) lists the entities that may receive restitution as “the victim . . . , to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court.”).

¹⁸⁷ See e.g., *State v. Johnson*, 2012-Ohio-1230, 2012 WL 1018721 at *2; *State v. Stewart*, 2008-Ohio-5823, 2008 WL 4831476 at *3; *State v. Maurer*, 63 N.E.3d at 541 (holding that O.R.C. 2929.18(A)(1) “does not specifically restrict the parties from agreeing to an award of restitution that is not provided for in the statute.”).

¹⁸⁸ The Fourth District also inadvertently holds this. See *State v. Samuels*, 2003-Ohio-6106, 2003 WL 22704409 at *3 (Ohio Ct. App. 4th Dist. Nov. 10, 2003). While this predates *Bartholomew*, *Samuels* holds that “absent an explicit agreement by the parties concerning the type and the amount of restitution requested in the instant case, we are unwilling to conclude that the trial court require the appellant to make restitution.”

¹⁸⁹ See *State v. Johnson*, 2012-Ohio-1230, 2012 WL 1018721 at *4.

¹⁹⁰ *Bybee* is a First District case and *Angus* is a Tenth District case.

equity. Trial courts have discretion to award restitution. They need to be able to count on the appellate courts to uphold their orders. As this article has demonstrated, appellate courts overturn restitution payments to non-victims in some cases and uphold it in others. The appellate courts need to consistently apply the law. If appellate courts can uphold restitution for a third-party food bank that has nothing to do with a conviction for a campaign finance violation,¹⁹¹ then an animal welfare organization that boards abused animals during an anti-cruelty prosecution should surely be granted restitution. Ohio law gives anyone who rescues an animal from neglect the right to be compensated by the owner for expenses incurred.¹⁹² An animal welfare organization should also be compensated for expenses incurred while rescuing animals from cruelty. *Bartholomew* states that the correct and consistent application of restitution under Ohio law is to allow restitution to be paid to agencies designated by the court.¹⁹³ The law does not specify what an agency is or when an agency is an appropriate designee.¹⁹⁴ As such, the trial courts should be able to choose which agency to designate to receive the restitution. The cases surveyed illustrate that trial courts choose to designate animal welfare organizations as the recipients,¹⁹⁵ and since this is entirely in line with Ohio law, it should not be reversed upon appeal.

The purposes of sentencing in Ohio, whether misdemeanor or felony, are to deter future crime and punish the offender.¹⁹⁶ Cruelty to animals is a predictor of crime against humans.¹⁹⁷

¹⁹¹ See *State v. Horton*, 99 N.E.3d at 1106.

¹⁹² See O.R.C. § 1717.13.

¹⁹³ *State v. Bartholomew*, 894 N.E.2d at 310-11.

¹⁹⁴ See O.R.C. § 2929.18(A)(1).

¹⁹⁵ See *State v. Bybee*, 731 N.E.2d at 233; *State v. Walker*, 841 N.E.2d at 380; *State v. Ham*, 2009-Ohio-3822, 2009 WL 2370908 at *1; *State v. Brewer*, 2015-Ohio-2217, 2015 WL 3542806 at *1; *State v. Leslie*, 2011-Ohio-2727, 2011 WL 2225152 at *1; *State v. Dixon*, 2006-Ohio-2114, 2006 WL 1120688 at *1; *State v. Covey*, 2000 WL 638951 at *5; *State v. Angus*, 2006-Ohio-4455, 2006 WL 2474512 at *2.

¹⁹⁶ See O.R.C. § 2929.11(A); O.R.C. § 2929.21(A).

¹⁹⁷ See *Schaffner*, *supra* note 42, at 29.

Punishing those convicted of animal cruelty should be taken seriously in order to rehabilitate and deter the offender. Felony sentencing purposes are achieved in part when the offender has to make restitution to the victim of his crime or the public. The costs that the public incurs from the damages caused by animal cruelty offenders are significant. Animal welfare organizations should be able to depend on restitution when they investigate cases of animal abuse and rehabilitate the seized animals. The person convicted of the crime should be responsible for the costs of rehabilitating their animals.