

Notes

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

By
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This Note reviews Ohio animal cruelty convictions and makes an argument that restitution should be paid in those cases to the caretakers of the seized animals. First, this Note walks through the changing status of animals under the law from strictly property to the first anti-cruelty statutes imposed in Ohio. There is further discussion of what restitution means in cases like anti-cruelty and why it matters. The discussion then turns to why the current allowed financial sanctions are not enough to pay the fees required in housing and taking care of seized animals. Several cases in Ohio where restitution was ordered, or the order was reversed, are laid out to show the impact that cost and restitution have on the organizations that care for these animals. The Note concludes with a recommendation to the Ohio Supreme Court to make sure that restitution is ordered and upheld, as appellate courts in Ohio have a history of overturning trial court orders of restitution.

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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 nearly four months and spent more than \$130,000 caring for the dogs.² The prosecutor provided the trial court with the SPCA’s bill and upon conviction, the court ordered Ms. Bybee to pay almost \$120,000 in restitution to the SPCA.³ On appeal, the Ohio First District Court of Appeals (First District) reversed the restitution order based on an incorrect interpretation of Ohio’s financial sanctions statute.⁴ The SPCA was left to cover Ms. Bybee’s bill.⁵

Unfortunately, the First District is not alone in misinterpreting the law and reversing restitution. As a result, animal welfare organizations⁶ not only have to care for and rehabilitate the animals rescued from abuse, but they also have to find a way to pay for the expenses incurred.⁷ This additional financial burden is unacceptable. As this Note will demonstrate, Ohio statutes allow for restitution to be paid to animal welfare organizations, and the Ohio appellate courts are wrong in overturning trial court orders.

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

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

³ *Id.* at 233–34 (reducing the amount of restitution ordered because the money made on adopting some of the dogs could off-set the total incurred).

⁴ *Id.* at 234–35 (holding that the trial court erred in interpreting expenses incurred in caring for animals as property damage under O.R.C. 2929.21 (E)).

⁵ *See id.* at 235 (providing the SPCA with means to recoup its expenses through civil action or fines after reversing the restitution order).

⁶ For purposes of this Note, the phrase *animal welfare organization* collectively encompasses Humane Societies, animal shelters, and rescue organizations, unless a statute or case specifies a named organization. Each of these organizations is defined differently under the law, as will be discussed further below.

⁷ *See, e.g.*, CLEVELAND APL, 2017 ANNUAL REPORT 15 (2018), <https://clevelandapl.org/wp-content/uploads/2018/10/2017-Annual-Report-FINAL.pdf> [<https://perma.cc/ZW3G-EWXV>] (accessed Apr. 26, 2020) (stating that in 2017, 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.).

In the animal cruelty cases surveyed in Ohio over the last twenty years, trial courts have consistently ordered convicted offenders to pay restitution to the animal welfare organizations caring for the offenders' abused animals.⁸ On appeal, courts reversed a total of more than \$160,000 of the ordered restitution from those cases.⁹ The appellate courts have given varying reasons for reversing restitution, all of which are misinterpretations of Ohio statutes. Initially, the courts argued that restitution can only be assessed to compensate for property damage.¹⁰ While companion animals are considered property under common law, the courts did not consider the abuse of these animals to be 'property damage.'¹¹ As companion animals have come to be treated more like family than property,¹² Ohio appellate courts have revised

⁸ See, e.g., *Bybee*, 731 N.E.2d at 234 (stating the trial court ordered animal cruelty defendant to pay restitution in the amount of \$117,625); *State v. Walker*, 841 N.E.2d 376, 377 (Ohio Ct. App. 2005) (stating that the defendant was ordered to pay \$32,127 in restitution for animal cruelty); *State v. Ham*, No. 16-09-01, 2009 WL 2370908, at *1 (Ohio Ct. App. 2009) (stating that the trial court ordered the defendant to pay \$3,126.72 in restitution for animal cruelty); *State v. Brewer*, No. 14CA10, 2015 WL 3542806, at *1 (Ohio Ct. App. 2015) (stating that the court ordered the defendant to pay \$1,271.00 to local animal shelter for care of abused dog); *State v. Leslie*, Nos. 10CA17, 10CA18, 2011 WL 2225152, at *1 (Ohio Ct. App. 2011) (stating the court ordered the defendant to pay restitution, though not discussing the monetary amount of the order); *State v. Dixon*, No. H-05-021, 2006 WL 1120688, at *2 (Ohio Ct. App. 2006) (stating the court suspended defendant's jail sentence on the condition that she pay \$461 in restitution); *State v. Covey*, No. L-98-1173, 2000 WL 638951, at *5 (Ohio Ct. App. 2000) (stating defendant had to pay restitution in the amount of \$8,359.12 for the costs of treatment and care to the Toledo Humane Society); *State v. Angus*, No. 05AP-1054, 2006 WL 2474512, at *2 (Ohio Ct. App. 2006) (stating the trial court ordered \$3,000 in restitution to the Humane Society). Restitution is only assessed when the abuser is convicted of animal cruelty. See OHIO REV. CODE ANN. § 959.132(F) (West 2016). In cases without convictions, the entity caring for the abused animal would not receive any financial support from the defendant.

⁹ In total, \$164,237.84 in known restitution was reversed. See *Bybee*, 731 N.E.2d at 234–35 (finding the trial court erred in ordering the animal cruelty defendant to pay restitution and that the amount of \$117,625 was excessive); *Walker*, 841 N.E.2d at 385 (finding the order for \$32,127 in restitution in error because “the trial court did not have the authority to order Walker to pay restitution for the upkeep and care of animals that were not the subject of the criminal charge”); *Ham*, 2009 WL 2370908, at *14 (finding that the trial court erred in ordering the defendant to pay \$3,126.72 in restitution); *Leslie*, 2011 WL 2225152, at *1 (reversing the restitution order); *Covey*, 2000 WL 638951, at *5 (reversing and vacating the order for restitution in the amount of \$8,359.12); *Angus*, 2006 WL 2474512, at *6–7 (finding the trial court erred ordering \$3,000 in restitution).

¹⁰ See, e.g., *Walker*, 841 N.E.2d at 384–85 (restricting restitution to “property damage caused by the crime”).

¹¹ See *Bybee*, 731 N.E.2d at 234 (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); *Walker*, 841 N.E.2d at 385 (holding that the court could only have ordered restitution if Walker’s crime “had caused property damage or personal injury to a victim”); *Covey*, 2000 WL 638951, at *8 (providing a reminder that “Ohio law does not permit a court to order a defendant to make restitution for expenses not related to property damage”).

¹² See *Companion Animals*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/focus-area/companion-animals/> [https://perma.cc/W8PM-RU7V] (accessed Apr. 26, 2020) (“Com-

their arguments for reversing restitution: now restitution can only be made to victims or survivors of victims, but not to the organizations that care for victimized companion animals.¹³ Not all appellate courts reach the question of restitution in cases of animal cruelty.¹⁴

The courts' inconsistent interpretation of statutes is even more frustrating when compared with restitution orders in cases that do not involve animal cruelty. In those cases, Ohio courts have upheld on appeal restitution for non-victims.¹⁵ In fact, the Supreme Court of Ohio, while never directly ruling on restitution in cases of animal cruelty, determined in *State v. Bartholomew* that the Ohio financial sanctions statute allowed restitution not only for victims, but also for third parties.¹⁶

If we want to punish the offender upon conviction and also deter future crime,¹⁷ the trial courts should continue assessing restitution consistently in all cases of animal cruelty and the orders should not be overturned on appeal.¹⁸ Those who choose to abuse animals should be

panion animals are those animals who share our homes and lives. Because we consider these animals to be family, because they *are* family, companion animals enjoy more legal protections than other animals.”).

¹³ See *Ham*, 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); *Angus*, 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”).

¹⁴ See *Brewer*, 2015 WL 3542806, at *1 (deciding to not reach the restitution issue because there was no final, appealable order from the lower court for which the Fourth District Court of Appeals could review); *Dixon*, 2006 WL 1120688, at *2 (upholding restitution order by trial court in part because the defendant did not appeal on those grounds).

¹⁵ See *State v. Shifflet*, 44 N.E.3d 966, 985 (Ohio Ct. App. 2015) (allowing restitution to be paid to the parents of victims in part for the incurred medical costs of the victims); *State v. Horton*, 99 N.E.3d 1090, 1106 (Ohio Ct. App. 2017) (allowing restitution to be paid 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).

¹⁶ *State v. Bartholomew*, 894 N.E.2d 307, 311–12 (Ohio 2008) (“[W]e hold that R.C. 2929.18(A)(1) 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.”).

¹⁷ See OHIO REV. CODE ANN. § 2929.11(A) (West 2018) (stating the overriding purposes of felony sentencing, including the intent to “promote the effective rehabilitation of the offender,” 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”); OHIO REV. CODE ANN. § 2929.21(A) (West 2018) (stating the purposes of misdemeanor sentencing “are to protect the public from future crime by the offender and others and to punish the offender” and “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”).

¹⁸ See OHIO REV. CODE ANN. § 2929.22(A) (West 2018) (“[A court has] 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 . . .

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 Note 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 its ruling in *Bartholomew*.

II. FROM PROPERTY TO VICTIM: THE SHIFT IN STATUS IN ANTI-CRUELTY STATUTES¹⁹

A. *When Animals Were Merely Property*

Animal protection laws have evolved from protecting the property of humans to protecting the animals themselves.²⁰ The early evolution of animal anti-cruelty laws somewhat mirrors the beginning of child protection laws in the United States. The first child abuse prosecution in the United States occurred in 1874 with the help of the American Society for the Prevention of Cruelty to Animals (ASPCA).²¹ 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, so the ASPCA assisted in moving the case through the legal system.²² At the time, the ASPCA had been working to save horses from abuse and the caseworker of the abused girl assumed—correctly—that an organization attempting to prevent

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).

¹⁹ 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 generally MOSAD HARAV KOOK, *THE ANIMALS' LAWSUIT AGAINST HUMANITY* vii-x (Rabbis Anson Laytner & Dan Bridge trans., Fons Vitae ed., 2005) (containing an "interfaith and multicultural fable . . . address[ing] environmental and animal rights issues" first written in the tenth century A.D. in Arabic by Sufi Muslims and later translated into Hebrew, Latin, and English).

²⁰ See David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800's*, 1993 DET. C.L. REV. 1 (1993), <https://www.animallaw.info/article/development-anti-cruelty-laws-during-1800s#N> [<https://perma.cc/5EAT-W93F>] (accessed Apr. 26, 2020) ("The legal system began the century viewing animals as items of personal property During the first half of the century, lawmakers began to recognize that an animal's potential for pain and suffering was real and deserving of protection . . . [t]he last half of the nineteenth century saw the adoption of anti-cruelty laws . . .").

²¹ Howard Markel, *Case Shined First Light on Abuse of Children*, N.Y. TIMES (Dec. 14, 2009) <https://www.nytimes.com/2009/12/15/health/15abus.html?auth=login-email&login=email> [<https://perma.cc/K6PN-ZDTH>] (accessed Apr. 26, 2020).

²² See *id.* (showing that after neighbors reported a "severely battered and neglected" ten-year-old girl, the Department of Public Charities and Correction looked into the allegations).

harm to animals would likely also want to prevent harm to children.²³ 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.²⁴ The girl's adopted mother was convicted on "several counts of assault and battery."²⁵ 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."²⁶

As the country moved toward an understanding that parents—the guardians of their children—owe their children certain duties under the law, states passed legislation regarding the protection of children.²⁷ However, 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.'²⁸

The origin 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.²⁹ Animals were valued as instruments for human use and were only regarded as a means to a human end.³⁰ In 1641, the Massachusetts Bay Colony created a statute that appeared concerned with animal cruelty, but was actually meant to protect humans.³¹ The statute reads, "No man shall exercise any Tirrany or Crueltie towards any brute Creature which are [usually] kept for man[']s use."³² However, based on case law at the time,

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See id.* (discussing the differences between child protection in nineteenth century America and now).

²⁸ *See* Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 69 (1999) ("Every state has an anti-cruelty statute."); *Animal Cruelty Facts and Stats*, HUMANE SOC'Y U.S., <http://www.humanesociety.org/resources/animal-cruelty-facts-and-stats> [<https://perma.cc/73KA-NYJU>] (accessed Apr. 26, 2020) ("[A]nimal cruelty laws now include felony provisions in all fifty states."); *Animals' Legal Status*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/animals-legal-status/> [<https://perma.cc/PZ78-2WPK>] (accessed Apr. 26, 2020) ("[A]nimals are still defined within the United States legal system as property . . .").

²⁹ *See* Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 RUTGERS U. L. REV. 721, 734–35 (1994) (explaining that William Blackstone, in his *Commentaries*, quoted *Genesis* 1:28).

³⁰ *Id.* at 732 (arguing that putting an "emphasis . . . upon the instrumental value of animals, and not on any inherent value that the animals may have . . . is reflective of the notion that animals are property—they are, as a matter of law, means to human ends").

³¹ *See* PAMELA D. FRASCH ET AL., ANIMAL LAW IN A NUTSHELL 23 (West Academic Publishing 2d ed. 2016) (explaining the Massachusetts Bay Colony statute repeatedly cited preservation of public morals as justification for its anti-cruelty laws).

³² MASS. BODY OF LIBERTIES § 92 (1641) (replaced by PROVINCIAL CHARTER (1691)), <https://oll.libertyfund.org/pages/1641-massachusetts-body-of-liberties> [<https://perma.cc/2XFS-MKG3>] (accessed Apr. 26, 2020).

“the statute was principally concerned with preserving public morals”³³ and not with protecting the animals.³⁴

In the early half of the nineteenth century, animals were ‘protected’ as property under ‘malicious mischief and trespass’ statutes.³⁵ Since animals were regarded as the property of their owners,³⁶ these statutes created a duty that others not damage this property.³⁷ 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.³⁸ 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 harm “did not generally constitute malicious mischief.”³⁹ If the property damage did not personally harm the owner, there was no action.⁴⁰

B. The Beginning of Anti-Cruelty Statutes

In 1821, the first anti-cruelty law was enacted in the United States.⁴¹ The earliest laws, while concerned with the treatment of animals, protected only horses and cattle from torture⁴² because these animals were ‘commercially valuable.’⁴³ It was not until 1867, in New York, that legislation explicitly concerned with the animals themselves was enacted.⁴⁴ This was the first anti-cruelty statute to apply to “any living creature”—not just those that were commercially valuable to

³³ FRASCH ET AL., *supra* note 31, at 24; *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.”).

³⁴ *But see* Turner, 14 N.E. at 132 (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”).

³⁵ *See* Favre & Tsang, *supra* note 20, at 5–6 n.25 (citing State v. Bruner, 12 N.E. 103, 104 (Ind. 1887) (“There is a well-defined difference between the offense of malicious or mischievous injury to property, and that of cruelty to animals.”)).

³⁶ GARY L. FRANCIONE, ANIMALS, PROPERTY & THE LAW 121 (1995).

³⁷ *See id.* at 125–26 (noting that the property was an inanimate object—like a rock—but a dog was considered an inanimate piece of property at common law).

³⁸ *Id.* at 121.

³⁹ *Id.*

⁴⁰ *Id.* at 122.

⁴¹ *See* Favre & Tsang, *supra* note 20, at 8 (indicating “the earliest statute yet uncovered” was passed “in Maine in 1821”).

⁴² *See id.* (“[T]he Maine statute only applied to commercially valuable animals: horses and cattle.”).

⁴³ *See id.* at 7 (“The purpose of this law was to protect commercially valuable property from the interference of others, not to protect animals from pain and suffering.”).

⁴⁴ *See id.* at 15 (noting that the law following the 1866 legislation that dealt solely with animal abandonment was greatly expanded and 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).

their owners—and to increase the list of offenses.⁴⁵ The statute banned animal fighting, imposed duties of care, and granted immunity to anyone entering a private property to rescue an animal.⁴⁶

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, regardless of whether or not they were owned.⁴⁷ Today, a stray, unowned dog is protected under the same anti-cruelty statutes in the same manner as a dog living with a guardian.⁴⁸ Anti-cruelty laws even prohibit owners from inflicting cruelty on their own animals.⁴⁹ The statutes no longer exist to protect an owner's property, but instead aim to protect the 'property'—or victim—itsself.⁵⁰ As anti-cruelty statutes developed and expanded protections for animals, the common law also incrementally shifted away from regarding domestic animals as mere property.⁵¹

Companion animals—generally cats and dogs—are now treated more like family than property⁵² and anti-cruelty laws in many juris-

⁴⁵ *Id.* at 16.

⁴⁶ *Id.*

⁴⁷ *Id.* at 20–22.

⁴⁸ See *Position Statement on Protection of Animal Cruelty Victims*, ASPCA, <https://www.asPCA.org/about-us/asPCA-policy-and-position-statements/position-statement-protection-animal-cruelty-victims> [https://perma.cc/6XDW-S7VA] (accessed Apr. 26, 2020) (“Local, state and federal anti-cruelty laws . . . make cruelty a crime whether the offense is committed against an animal that has an owner or against an animal that is unowned.”).

⁴⁹ See JOAN E. SCHAFFNER, *AN INTRODUCTION TO ANIMALS AND THE LAW* 15 (2011) (noting change in anti-cruelty laws from owner's not being restricted in their treatment of their own animals to laws prohibiting cruelty inflicted by the owner of the animal).

⁵⁰ *Contra* FRASCH ET AL., *supra* note 31, at 23–24 (stating that 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 property under the law). *But see* JOHN G. SPRANKLING & RAYMOND R. COLETTA, *PROPERTY: A CONTEMPORARY APPROACH*, 88–89 (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)).

⁵¹ See, e.g., *McDougall v. Lamm*, 48 A.3d 312, 324–25 (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 & Cat Hosp.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (overruling precedent, holding that an actionable tort was committed, and stating that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property” and that “a dog . . . is something else . . . [and] [t]o say it is a piece of personal property and no more is a repudiation of our humaneness”).

⁵² See *Companion Animals*, *supra* note 12 (noting that companion animals are treated as family members and as such “enjoy more legal protections than other animals”); see also Stacy L. Kelly, *Ownership, Custody, and Keeping of Animals*, in *LITIGATING ANIMAL LAW DISPUTES* 81, 84 (Joan Schaffner & Julie Fershtman eds., 2009) (“If one examines cases over the last few decades, it is obvious that the courts are using less

dictions have been updated to reflect this.⁵³ The rationale for this shift in the law is due in part to the realization that “humans have a moral duty to the animals themselves.”⁵⁴ No longer do we view animals solely as property, but rather we are concerned for their welfare⁵⁵ enough that we criminalize their suffering at the hands of other humans.⁵⁶ This can be attributed to animals’ sentience⁵⁷ or simply to their stature as family members in modern households.⁵⁸ Advocates, and even some states,⁵⁹ prefer to use the term *guardian* rather than *owner* when referring to the person or organization that holds title in the animal.⁶⁰ In this way, advocates can work within the legal system of property with terms that “more accurately [reflect] the legal obliga-

property language and more custody and visitation language . . . as if pets were family members.”).

⁵³ See generally OHIO REV. CODE ANN. §§ 959.13, 959.131 (West 2018) (detailing statutes for offenses related to domestic animals); Russ Mead, *Ohio’s Goddard’s Law*, ANIMAL L. COALITION (Oct. 1, 2013), <https://animallawcoalition.com/ohios-goddards-law/> [<https://perma.cc/VP52-ZPJA>] (accessed Apr. 26, 2020) (stating that 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 attitude toward companion animals has shifted in a way that 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).

⁵⁴ See SCHAFFNER, *supra* note 49, at 15 (noting moral duty as one of the justifications for expanding the law to prohibit owners from cruelly treating their animals).

⁵⁵ See, e.g., *People v. Speegle*, 62 Cal. Rptr. 2d 384, 391 (Cal. Ct. App. 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.”).

⁵⁶ *Position Statement on Protection of Animal Cruelty Victims*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-protection-animal-cruelty-victims> [<https://perma.cc/4YQC-8F92>] (accessed Apr. 26, 2020) (“Local, state and federal anti-cruelty laws prohibit causing unjustified pain, suffering, harm, or death to animals, and generally require an animal’s owner to provide adequate food, water and care. . . . [T]he law sets animals apart from other forms of property in an important respect—by acknowledging that animals, unlike inanimate objects, are living, breathing beings, with the capacity to suffer and to feel pain, regardless of whether they are in fact ‘owned’ by a human being.”); SCHAFFNER *supra* note 49, at 22.

⁵⁷ See SCHAFFNER, *supra* note 49, 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 its costs by euthanizing her animals was “a reflection of the lack of concern for her animals as living sentient creatures”).

⁵⁸ See *Companion Animals*, *supra* note 12 (“Because we consider these animals to be family, because they *are* family, companion animals enjoy more legal protections than other animals.”).

⁵⁹ See Kelly, *supra* note 52, at 83 (stating that Rhode Island was the first state to designate ‘guardians’ under statute).

⁶⁰ *Id.*

tions that humans should have with respect to animals.”⁶¹ “The idea is that a guardian has enforceable rights and obligations different from an owner. This means that a guardian is more accountable to the public interest than an owner is.”⁶² In this way, states and advocates have worked within the current legal framework to “promote [a] personal responsibility”⁶³ in the person who holds title in the animal, without explicitly bestowing any legal rights on the animals.⁶⁴

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.⁶⁵ The laws even provide a mechanism for enforcement through seizure of the animals from owners who do not fulfill their duties.⁶⁶ 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.”⁶⁷

Even in the forfeiture of animals in cruelty prosecutions, the law distinguishes the animals from other property forfeitures.⁶⁸ While real property “lacks [the] volition, sentience, and the ability to suffer” that animals possess,⁶⁹ forfeited animals “require ongoing supervision, board, veterinary attention, and protection from” the abuser—often the owner.⁷⁰ 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 animal is property to be retained as evidence in the prosecution.⁷¹

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.⁷² The federal govern-

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 84.

⁶⁴ *Id.*

⁶⁵ SCHAFFNER, *supra* note 49, at 19.

⁶⁶ *Id.*

⁶⁷ Kelly, *supra* note 52, at 84.

⁶⁸ See Adam P. Karp, Annotation, *Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction Restitution Under Animal Cruelty Statutes*, 70 A.L.R. 6th § 2 (2011) (distinguishing animals from other property (e.g. drugs)).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Madeline Bernstein & Barry M. Wolf, *Time to Feed the Evidence: What to Do with Seized Animals*, 35 ENVTL. L. REP. NEWS & ANALYSIS 10679, 10679–80 (2005) (summarizing various state statutes and practices). Bernstein and Wolf admit that 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. *Id.* at 10681. This argument is taken up later in this Note.

⁷² See Frasch et al., *supra* note 28, at 69–70 (noting the progress states have made in upgrading to felony provisions); *Animal Cruelty Facts and Stats*, *supra* note 28 (“With

ment has also strengthened the enforcement of animal cruelty laws.⁷³ A minority of states have increased their advocacy for the protection of companion animals even further by creating ‘pet courts.’⁷⁴ Similar to the juvenile justice system, pet courts include specialized dockets that only review misdemeanor violations of animal laws.⁷⁵ These courts enforce animal laws and educate the public on the proper treatment of animals.⁷⁶ 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 abuse⁷⁷ is strengthened 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.⁷⁸ In one study, 85% of domestic violence shelters reported that women at their facilities indicated pets in their homes were also abused.⁷⁹ Evidence demonstrates that “abusers are highly likely to engage in other forms of violent and antisocial criminal behavior.”⁸⁰ For instance, animal abuse can foreshadow vio-

South Dakota joining the fight in March of 2014, animal cruelty laws now include felony provisions in all 50 states.”).

⁷³ In November 2019, The PACT Act passed, creating a federal anti-cruelty statute that complements the cruelty laws in the 50 states. See Preventing Animal Cruelty and Torture (PACT) Act, 18 U.S.C. § 1 (2019) (making it “unlawful for any person to purposely engage in animal crushing in or affecting interstate or foreign commerce or within the special maritime and territorial jurisdiction of the united states”); *Preventing Animal Cruelty and Torture (PACT) Act*, ANIMAL WELFARE INST., <https://awionline.org/content/preventing-animal-cruelty-and-torture-pact-act> [https://perma.cc/4ET4-74S2] (accessed Apr. 27, 2020) (summarizing the PACT Act, including that a felony conviction under the PACT Act would carry with it “up to seven years in prison”).

⁷⁴ 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 (2013) (describing pet courts as allowing for “judges who are more sympathetic to companion pets” and linking their creation “to the increased value people place on their companion pets”).

⁷⁵ *Id.* at 259.

⁷⁶ *Id.*

⁷⁷ See SCHAFFNER, *supra* note 49, at 15 (stating the law has expanded to protect animals from cruelty justified by a moral duty that humans have towards animals).

⁷⁸ See *id.* at 29 (stating that “animal cruelty is one of four factors that predict interpersonal violence”); *Animal Cruelty Facts and Stats*, *supra* note 28, at 3 (“Data on domestic violence and child abuse cases reveal that a staggering number of animals are targeted by those who abuse their children or spouses.”).

⁷⁹ See *Pet and Women Safety (PAWS) Act*, ANIMAL WELFARE INST., <https://awionline.org/content/pet-and-women-safety-paws-act> [https://perma.cc/RQX5-88XE] (accessed Apr. 27, 2020) (indicating that 85% of domestic violence shelters reported women disclosing incidents of pet abuse).

⁸⁰ See Dana Campbell & Pamela Frasch, *Criminal Law*, in LITIGATING ANIMAL LAW DISPUTES 473–74 (Joan Schaffner & Julie Fershtman eds., 2009) (explaining animal abusers are often involved in other criminal behavior).

lent 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.”⁸¹ Studies have also linked animal abuse in juveniles to criminal—often violent—activity in adults.⁸² One study found that 96% of juvenile sex offenders also sexually assaulted animals.⁸³ The Humane Investigators of the Cleveland Animal Protective League (APL) are required to report suspected child abuse that they discover when investigating cases of animal cruelty as one often accompanies the other.⁸⁴ To adequately fulfill the purposes of both misdemeanor and felony sentencing in Ohio,⁸⁵ 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

Ohio’s Cruelty to Animals statute went into effect in 1977.⁸⁶ While it prohibits torture and cruelty to animals, the maximum penalty for an offender is a second-degree misdemeanor.⁸⁷ The maximum sentence for a misdemeanor of the second degree is no more than ninety days in jail and a fine of \$750,⁸⁸ even if the offender tortures an animal. Section 959.13 of the Ohio Revised Code 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.”⁸⁹

The statutory financial sanctions for misdemeanors in Ohio give the courts the authority to force the owner-abuser to forfeit the animal(s) that were the subject of abuse.⁹⁰ 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.⁹¹

⁸¹ SCHAFFNER, *supra* note 49, at 29.

⁸² *See id.* (“Childhood animal abuse is linked to other forms of aggressive behavior . . . and criminal activity as an adult, including violent behavior.”).

⁸³ William M. Fleming et al., *Characteristic of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals*, 10 SOC’Y & ANIMALS 1, 41 (2002).

⁸⁴ CLEVELAND APL, *supra* note 7, at 6.

⁸⁵ *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).

⁸⁶ OHIO REV. CODE ANN. § 959.13 (West 2018).

⁸⁷ OHIO REV. CODE ANN. § 959.99(D) (West 2018).

⁸⁸ OHIO REV. CODE ANN. §§ 2929.24, 2929.28(A)(2) (West 2018).

⁸⁹ OHIO REV. CODE ANN. § 959.13(C).

⁹⁰ OHIO REV. CODE ANN. § 959.99(D).

⁹¹ OHIO REV. CODE ANN. § 959.99(D).

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

As pets have become more valuable in American households,⁹² legislatures across the country have increased penalties for cruelty to companion animals.⁹³ In 2003, Ohio enacted Section 959.131.⁹⁴ In 2016, the statute was amended and became known as Goddard's Law, named after the local Cleveland weatherman who advocates for animal welfare, particularly the welfare of companion animals.⁹⁵ While Section 959.13 protects all animals, Goddard's Law gives greater protection to companion animals—which includes any animal kept in a residential dwelling, as well as cats and dogs in pet stores.⁹⁶ 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.⁹⁷

Goddard's Law specifies that impounding agencies are county humane societies,⁹⁸ animal shelters, or law enforcement agencies that impound animals for animal cruelty investigations.⁹⁹ The impounding

⁹² See Lyman Stone, *Fewer Babies, More Pets? Parenthood, Marriage, and Pet Ownership in America*, INST. FOR FAM. STUD. (Nov. 15, 2017), <https://ifstudies.org/blog/fewer-babies-more-pets-parenthood-marriage-and-pet-ownership-in-america> [<https://perma.cc/754A-X7ZV>] (accessed Apr. 27, 2020) (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).

⁹³ See *Animal Cruelty Facts and Stats*, *supra* note 28 (discussing state legislative trends for animal protection).

⁹⁴ 2002 S.B. 221, 124th Gen. Assemb., Reg. Sess. (Ohio 2003).

⁹⁵ See Mead, *supra* note 53 (discussing the history and formation of Goddard's Law).

⁹⁶ See OHIO REV. CODE ANN. § 959.131(A)(1) (defining companion animal).

⁹⁷ See OHIO REV. CODE ANN. § 959.99(E) (requiring the *mens rea* of 'knowingly' causing harm to be convicted of a felony).

⁹⁸ Humane societies in Ohio are statutorily constructed. OHIO REV. CODE ANN. § 1717.05 (WEST 2020). They employ agents who can arrest persons violating anti-cruelty laws. OHIO REV. CODE ANN. § 1717.04 (West 2020). Humane societies are also allowed to receive court costs charged to those convicted of animal cruelty. See OHIO REV. CODE ANN. § 1717.10 (West 2020) (stating that humane societies may be reimbursed by convicted persons for services rendered). Rescue organizations and animal shelters are not humane societies. OHIO REV. CODE ANN. § 1717.03 (West 2020) (specifying the way in which humane societies must be created and structured). The Public Animal Welfare Society, Inc. (PAWS), for instance, is an Ohio rescue organization that takes in animals from cruelty cases, but because it is not formally a humane society, it is not allowed to receive any funding that might come from convictions of animal cruelty. *About Us*, PAWS OHIO, <http://www.pawsohio.org/about-us> [<https://perma.cc/TQ68-L68K>] (accessed Apr. 27, 2020) (outlining who PAWS Ohio is: a nonprofit humane rescue group). Interestingly, PAWS Ohio helped advocate for Goddard's Law, though the law itself does not provide them with any financial resources. *Animal Welfare*, PAWS OHIO, <http://www.pawsohio.org/animal-rights> [<https://perma.cc/EY3F-EVAM>] (accessed Apr. 27, 2020) (providing information on PAWS Ohio's involvement with the passing of Goddard's Law).

⁹⁹ OHIO REV. CODE ANN. § 959.132(A)(2).

agency can receive compensation during the impoundment by a bond or cash deposit from the offender.¹⁰⁰

F. Restitution: What Is It and Why Does It Matter?

Ohio courts often require that, upon conviction of animal cruelty, offenders forfeit the abused animals.¹⁰¹ The animals are then turned over to animal welfare organizations.¹⁰² In the worst cases of abuse, euthanasia is sometimes the only humane option, but the animals that can survive without suffering are rehabilitated with a goal of adoption.¹⁰³ Owners of domestic animals can attest to the high 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 significant, causing the cost of needed rehabilitation and vet care to be astronomical. In cruelty cases of hoarding, it is not uncommon for hundreds of animals to be seized and forfeited at once.¹⁰⁴ Often, the forfeited animals are not just domestic pets: prominent Ohio cases have involved horses and bears.¹⁰⁵ The costs to board and rehabilitate these animals can quickly get out of control.¹⁰⁶ 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 cases of animal cruelty cost the animal welfare organizations caring for the abused animals over a half-million dollars.¹⁰⁷

¹⁰⁰ See OHIO REV. CODE ANN. § 959.132(C) (noting that payment of a bond or cash deposit may be required for the "care and keeping" of an impounded companion animal).

¹⁰¹ See OHIO REV. CODE ANN. § 959.99(D), (E)(6)(a) (stating that a court may order forfeiture of animals for requisite code violations).

¹⁰² OHIO REV. CODE ANN. § 959.99(E)(6)(a).

¹⁰³ See *Frequently Asked Questions*, CLEVELAND ANIMAL PROTECTIVE LEAGUE, <https://clevelandapl.org/about-us/about-the-apl/cleveland-apl-faqs/> [<https://perma.cc/MWQ3-4G93>] (accessed Apr. 27, 2020) (noting the condition of animals who are adopted out as part of a Second Chance Program). 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. *Id.* The Cleveland APL was able to adopt out 89% of the animals it took in during 2018, though not all of those animals were cruelty rescues. CLEVELAND ANIMAL PROT. LEAGUE, 2018 ANNUAL REPORT (2018), <https://clevelandapl.org/wp-content/uploads/2019/10/2018-Annual-Report-FINAL.pdf> [<https://perma.cc/37B8-WBZE>] (accessed Apr. 27, 2020) (indicating in 2018 there were 6,669 intakes and 5,945 adoptions).

¹⁰⁴ See Colin Berry et al., *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167, 175 (2005) (illustrating the large number of animals often found in hoarding cases).

¹⁰⁵ See, e.g., *Walker*, 841 N.E.2d at 377 (stating the trial court ordered the defendant to pay \$32,127 in restitution for the upkeep of seven bears seized by the court); *Dixon*, 2006 WL 1120688, at *1 (detailing the defendant's animal cruelty charge against a horse).

¹⁰⁶ See, e.g., *Bybee*, 731 N.E.2d at 233 (providing illustration of the costs incurred by agencies during impoundment).

¹⁰⁷ GOVERNOR'S COMMISSION ON THE HUMANE TREATMENT OF ANIMALS, COST ANALYSIS OF ANIMAL CRUELTY IN NEW HAMPSHIRE 10 (2008). The Commission was created by Executive Order to understand how animal abuse was being dealt with in New Hamp-

The sixteen most prominent cases alone cost the New Hampshire SPCA \$263,358 just in boarding and veterinary care for the animals.¹⁰⁸ The New Hampshire courts ordered those convicted in the sixteen cases to pay \$161,765 in restitution,¹⁰⁹ which is a significant amount, but still only about half of what the NHSPCA needed to cover the costs incurred in boarding and veterinary care.

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.”¹¹⁰ 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.”¹¹¹ 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.”¹¹²

For the last sixty-five years, an Ohio statute has given permission to anyone to ‘take possession’ of any animal “in order to protect . . . [the animal] from neglect.”¹¹³ 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.”¹¹⁴ 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 Existing Laws 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 longer qualify them

shire and to provide recommendations to prevent future abuse. *Id.* at 1. In comparison, Cleveland Humane Investigators rescued over 1,000 animals from cases of cruelty and neglect just in 2017 alone, but unfortunately there are no equivalent data reports in this area so New Hampshire was selected to highlight. *See* CLEVELAND APL, *supra* note 7, at 6 (indicating 1,078 “[c]ats, dogs, and other animals [were] rescued from cruelty or neglect” in 2017). If the costs of the New Hampshire cases are extrapolated, one could likely conclude that the costs seen in one year in Cleveland could be seventeen times higher.

¹⁰⁸ *Id.* (stating the animals in 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. *Id.*

¹⁰⁹ *Id.* at 14.

¹¹⁰ OHIO REV. CODE ANN. §§ 2929.18(A)(1), 2929.28(A)(1) (West 2016).

¹¹¹ OHIO REV. CODE ANN. § 2930.02 (West 2020).

¹¹² OHIO REV. CODE ANN. § 2929.18.

¹¹³ OHIO REV. CODE ANN. § 1717.13 (West 2020).

¹¹⁴ OHIO REV. CODE ANN. §§ 1717.13, 1717.01 (West 2020) (stating that “in every law relating to animals” a person includes a corporation and an animal “includes every living dumb creature”).

as mere property.¹¹⁵ However, regardless of the legal status of animals, moral agents should agree that animals deserve to be treated humanely and should be protected from abuse. But even more, society should want to prosecute animal abuse because the evidence shows that it is linked to violence toward humans. The best way to demonstrate that animal cruelty is taken 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 existing laws in Ohio.

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

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. Unfortunately, this resulted in anti-cruelty statutes that 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 be to hold the offender responsible for the animal's rehabilitation.

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).¹¹⁶ This sounds helpful for the organizations, and some appellate court judges are even aware of this statutory option.¹¹⁷ However, the penalty for animal cruelty under Section 959.13

¹¹⁵ The welfarists believe that using animals is ethical so long as they are treated humanely and their welfare is taken into consideration. Animal rights advocates generally support the 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. SCHAFFNER, *supra* note 49, at 171–72. See also Frasch et al., *supra* note 28, at 69.

¹¹⁶ OHIO REV. CODE ANN. § 959.13(C).

¹¹⁷ In both *Bybee* and *Leslie*, the Courts of Appeals told the animal welfare organizations that they could use the money collected from the fines to cover their costs, not realizing the inadequacy of the amounts collected. See, e.g., *Bybee*, 731 N.E.2d at 235 (noting “the SPCA’s ability to receive fines collected pursuant to R.C. 959.13”); *Leslie*, 2011 WL 2225152, at *24 (“The Revised Code contains provisions that provide financial assistance for humane societies in cases such as this.”). Even though the charges were

of the Ohio Revised Code is a second degree misdemeanor,¹¹⁸ with a maximum fine of \$750.¹¹⁹ That amount will not go far in rehabilitating an abused animal, let alone several.¹²⁰ Courts sometimes merge multiple offenses into one conviction,¹²¹ 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.¹²² 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.¹²³

Further, the statute itself notes that it is entirely possible that an SPCA might not exist in the jurisdiction where the offender is convicted.¹²⁴ If a rescue organization or animal shelter is caring for the forfeited animals instead of an SPCA, it is statutorily barred from receiving any of the fines collected from the conviction.¹²⁵

To its credit, since Goddard's Law increased the charges for animal cruelty, the convictions under it carry fines of up to \$1,000 for a first degree misdemeanor or up to \$2,500 for a fifth degree felony.¹²⁶ Unfortunately, the final version of Goddard's Law specifies that all fines collected must be given to county humane societies and earmarked for training humane agents.¹²⁷ None of the money is al-

filed after Goddard's Law went into effect, the *Leslie* case was prosecuted under O.R.C. Section 959.13(A)(1) because the defendant had farm animals—not companion animals—confiscated. *Id.* at *3.

¹¹⁸ OHIO REV. CODE ANN. § 959.99(D).

¹¹⁹ OHIO REV. CODE ANN. § 2929.28(A)(2)(a)(ii).

¹²⁰ See *Walker*, 841 N.E.2d at 377, 393 (reversing an order to pay \$32,127 in restitution for the seven bears that were seized upon the defendant's conviction).

¹²¹ *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 decision to merge the twenty counts of animal cruelty into one conviction because each animal qualified as a separate victim of the animal neglect, and Oregon's anti-merger statute provides that defendants be convicted separately for each).

¹²² See *Bybee*, 731 N.E.2d at 236 (holding that *Bybee*'s six convictions for cruelty to animals be merged into one because the offenses stemmed from one continuing instance of neglect, not separate abusive acts for each dog).

¹²³ *Id.* at 233.

¹²⁴ OHIO REV. CODE ANN. § 959.13(C).

¹²⁵ See OHIO REV. CODE ANN. § 959.13(C) (stating that “[a]ll fines collected for violations of this section shall be paid to the [SPCA]”).

¹²⁶ OHIO REV. CODE ANN. §§ 2929.28(A)(2)(a)(i), 2929.18(A)(3)(e). However, this is not cause for celebration. 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. *State Animal Cruelty Chart*, HUMANE SOC'Y U.S., http://www.humanesociety.org/assets/pdfs/abuse/state_animal_cruelty_laws_13.pdf [https://perma.cc/5WML-ZPXG] (accessed Oct. 9, 2018) (site no longer available) (on file with author).

¹²⁷ OHIO REV. CODE ANN. § 959.131(H) (“[T]he clerk of court shall forward all fines the clerk collects . . . [to] pay the fine moneys to the county humane society or the county . . . [i]f 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.”).

lowed to be used to pay for the expenses incurred in caring for the seized companion animals. The authors of Goddard's Law, perhaps unwittingly, 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 Section 959.132 of the Ohio Revised Code included adequate financial assistance for those rehabilitating seized animals. Section 959.132 discusses the seizure and impoundment of companion animals under Goddard's Law.¹²⁸ Impounding agencies under the statute include county humane societies, animal shelters, or law enforcement agencies that impound animals during animal cruelty investigations.¹²⁹ The impounding agency can receive compensation during the impoundment by a bond or cash deposit from the offender.¹³⁰ But the statute even admits that if the offender fails to post bond, or the bond expires and is not renewed, the impounding agency is left to "determine the disposition of the companion animal."¹³¹ Upon conviction, the court *may* order the offender to pay the costs that the impounding agency incurred during impoundment.¹³² However, in the cases highlighted below, the courts tend not to implement this discretionary section of the statute.

Under Section 959.99 of the Ohio Revised Code, the organizations to which abused animals are forfeited are allowed to sell the animals and apply profits from the sale to pay for the "expenses incurred" in caring for the animal from the time of seizure.¹³³ The authors of the statute may argue that this is sufficient to assist the organizations financially; some appellate courts have even noted this in reversing restitution orders.¹³⁴ 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.¹³⁵ Additionally, the statute mandates that any remaining profits, if there are any, be paid to the owner of the animal—the one who was convicted of abusing it.¹³⁶ This

¹²⁸ OHIO REV. CODE ANN. § 959.132.

¹²⁹ OHIO REV. CODE ANN. § 959.132(A)(2). Note that rescue organizations that receive the animals after impounding are not included in the statute.

¹³⁰ OHIO REV. CODE ANN. § 959.132(C).

¹³¹ OHIO REV. CODE ANN. § 959.132(E)(3). Allowing the impounding agency to make this determination may unfortunately mean that impounding agencies could choose euthanasia if they cannot afford to incur the costs of rehabilitation.

¹³² OHIO REV. CODE ANN. § 959.132(F)(1).

¹³³ OHIO REV. CODE ANN. § 959.99(D).

¹³⁴ See, e.g., *Leslie*, 2011 WL 2225152, at *9 (noting that the sale of the animals could have helped recoup some or all of the expenses).

¹³⁵ See *Bybee*, 731 N.E.2d at 233 (seizing 188 dogs); see also *Walker*, 841 N.E.2d at 377 (seizing seven bears). In such cases, caring for this number of dogs or bears is expensive.

¹³⁶ OHIO REV. CODE ANN. § 959.99(D).

statutory allowance to use adoption fees for expenses incurred is not included in Goddard's Law,¹³⁷ even though the domestic animals protected under Goddard's Law would be easier to adopt than bears and horses seized under Section 959.13.¹³⁸

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 Section 959.13(A)(1) of the Ohio Revised Code after the Hamilton County SPCA confiscated 188 neglected dogs from her property.¹³⁹ Her no-contest plea resulted in ninety days of house arrest and a paltry \$750 fine for each conviction, plus court costs.¹⁴⁰ The prosecutor presented the court with a bill for \$131,261.50—the amount that the SPCA had incurred while boarding Ms. Bybee's dogs for 112 days during the prosecution of the case.¹⁴¹ It spent, on average, \$1,104 a day.¹⁴² 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.¹⁴³ The restitution amount was set at \$117,625—the balance remaining after the SPCA recouped costs through adoptions.¹⁴⁴ When Ms. Bybee failed to timely pay restitution,¹⁴⁵ her probation was revoked and she was ordered to serve 540 days of house arrest.¹⁴⁶ She appealed and the First District reversed the restitution order, 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.¹⁴⁷

¹³⁷ Section 959.99(D) was not updated when Goddard's Law was written to allow the adoptions of animals forfeited under O.R.C. § 959.131 to be used to pay expenses incurred in caring for companion animals. Section 959.99(D), only pertains to non-companion animals.

¹³⁸ See, e.g., *Walker*, 841 N.E.2d at 377 (showing that bears were confiscated); see also, *Dixon*, 2006 WL 1120688, at *1 (showing that horses were confiscated).

¹³⁹ *Bybee*, 731 N.E.2d at 233. It is important to note that this case pre-dates Goddard's Law.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*; see also OHIO REV. CODE ANN. § 959.99(D) (allowing adoption profits to go towards the cost of care for the animals).

¹⁴⁵ After thirty-six months, Ms. Bybee had paid only \$1,243 in total. *Bybee*, 731 N.E.2d at 234.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* ("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"). Section 2929.21(E) of the Ohio Revised Code 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

In 2005, after Goddard's Law was enacted, a jury convicted Larry Angus, Jr. of two counts of animal cruelty under Section 959.131(C)(2).¹⁴⁸ 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.¹⁴⁹ Mr. Angus's counsel did not object to the restitution order.¹⁵⁰ However, in his appeal, Mr. Angus challenged the restitution order and the Tenth District Court of Appeals (Tenth District) remanded the case to the trial court ordering that the restitution be deleted.¹⁵¹ The Tenth District's rationale was that, while Ohio law allows restitution to be made to the victim of the crime,¹⁵² the Humane Society was not the victim of this crime.¹⁵³

The most recent Ohio animal cruelty case on appeal is Jean Diamond's.¹⁵⁴ Twenty-seven cats and kittens, many severely neglected, were seized from Ms. Diamond's property in 2017.¹⁵⁵ She was convicted of four counts of neglect under Goddard's Law, all second-degree misdemeanors.¹⁵⁶ The trial court ordered Ms. Diamond to pay \$5,000 in restitution to the Humane Society of Greater Dayton.¹⁵⁷ On appeal, Ms. Diamond never contested the restitution order itself; she asserted ineffective counsel as her single assignment of error.¹⁵⁸ The Second District Court of Appeals affirmed the trial court's judgment and, by default, upheld the restitution order.¹⁵⁹ 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.

caused by the offense for which the defendant is convicted. 2002 H.B. No. 490, 124th Gen. Assemb., Reg. Sess. (Ohio 2003).

¹⁴⁸ *Angus*, 2006 WL 2474512, at *1.

¹⁴⁹ *Id.* at *6. The prosecutor actually sought \$9,741 in restitution, but the trial court reduced the amount.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at *7.

¹⁵² OHIO REV. CODE ANN. § 2929.28.

¹⁵³ *Angus*, 2006 WL 2474512, at *7 (“The authority for financial sanctions, including restitution, is contained in R.C. 2929.28 . . . [This Section] authorizes restitution to be made to the victim or survivors of the victim for economic loss, and to the government, but 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.”).

¹⁵⁴ *State v. Diamond*, No. 27904, 2018 WL 3957092, at *1 (Ohio Ct. App. Aug. 17, 2018).

¹⁵⁵ *Id.* at *3, *9 (stating 27 cats were seized while an additional 25 to 28 cats remained on her property).

¹⁵⁶ *Id.* at *1.

¹⁵⁷ *Id.*; Final Disposition, *State v. Diamond*, 17CRB01128 (Miamisburg Mun. Ct. Jan. 11, 2018).

¹⁵⁸ *Diamond*, 2018 WL 3957092, at *9.

¹⁵⁹ *Id.* at *14.

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 ‘non-victims.’¹⁶⁰ Yet these same courts are upholding restitution to non-victims in cases that do not involve animal cruelty.

Contradicting their own ruling in *State v. Angus*, the Tenth District upheld restitution to a non-victim. In 2017, Timothy S. Horton, a former judge in the Tenth District, was convicted “of failure to file accurate campaign statements in violation of R.C. 3517.13(B)” after using campaign funds to pay for private campaign dinners at a cost of almost \$2,000.¹⁶¹ The trial court ordered Judge Horton to pay \$2,065 in restitution to a local food bank.¹⁶² 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.¹⁶³ 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.¹⁶⁴ The Tenth District even mentioned that ordering restitution to a food bank “is a deviation from a legal rule” based on its holding in *Angus*.¹⁶⁵ But the court 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.”¹⁶⁶

Even the Supreme Court of Ohio 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.¹⁶⁷ During sentencing, the trial court ordered him to pay \$426 in restitution to a crime victim’s fund for his victim’s counseling.¹⁶⁸ Mr. Bartholomew’s counsel did not object to the restitution order at trial, but Mr.

¹⁶⁰ See *Ham*, 2009 WL 2370908, at *14 (using the holding in *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 because it was neither victim nor survivor of the victim); *Angus*, 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”).

¹⁶¹ *State v. Horton*, 99 N.E.3d 1090, 1092 (Ohio Ct. App. 2017).

¹⁶² *Id.* at 1095.

¹⁶³ *Id.* at 1106.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 1104–05 (“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.”).

¹⁶⁶ *Id.* at 1101–02. The trial court considered the purpose of misdemeanor sentencing in ordering restitution: to change the judge’s behavior, to rehabilitate him, and to ensure he makes amends to the public.

¹⁶⁷ *Bartholomew*, 894 N.E.2d at 308.

¹⁶⁸ *Id.*

Bartholomew appealed it.¹⁶⁹ The Third District reversed, holding that Ohio's restitution statute "does not authorize the trial court to order . . . restitution to a third party."¹⁷⁰ The State appealed, and the Supreme Court of Ohio upheld the restitution order.¹⁷¹ The court found that the financial sanctions statute for felony sentencing, Section 2929.18(A)(1) of the Ohio Revised Code, is written to allow restitution to be paid to an "agency designated by the court," and it follows then that restitution can be paid to non-victims.¹⁷²

As shown, the Ohio Courts of Appeals 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 Supreme Court of Ohio 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. Section 109.42 of the Ohio Revised Code is the "compilation of all statutes relative to victim's rights."¹⁷³ Section 109.42 (A)(13) lists one of the rights of victims as "[t]he possibility of receiving restitution from an offender . . . pursuant to section . . . 2929.18 [felony financial sanctions], or 2929.28 [misdemeanor financial sanctions] of the Revised Code."¹⁷⁴ Since *Bartholomew* allows the term 'victim' to be applied to third-party funds,¹⁷⁵ animal welfare organizations should be recognized as 'victim representatives' in cruelty convictions and receive restitution from the convicted offender.

Restitution amounts are discretionary.¹⁷⁶ 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."¹⁷⁷ While the

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 309.

¹⁷¹ *Id.* at 312.

¹⁷² *Id.* at 309–10; OHIO REV. CODE ANN. § 2929.18(A).

¹⁷³ OHIO REV. CODE ANN. § 109.42 (West 2019).

¹⁷⁴ OHIO REV. CODE ANN. § 109.42.

¹⁷⁵ *Bartholomew*, 894 N.E.2d at 310 (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").

¹⁷⁶ See OFFICE OF JUDICIAL SERVICES, SUPREME COURT OF OHIO, RESTITUTION IN ADULT COURTS (2020) ("Imposition [of restitution] is discretionary with the trial court.").

¹⁷⁷ OHIO REV. CODE ANN. §§ 2929.18(A)(1), 2929.28(A)(1) (West 2020).

amount that may be collected in fines is set by statute and determined based on the conviction, the amount ordered in restitution is at the discretion of the court.¹⁷⁸ 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.¹⁷⁹ 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, not an animal or an organization.¹⁸⁰ 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.¹⁸¹

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 financial sanctions statutes only allow restitution to be paid to victims and the Humane Society could not be considered a victim because it was not directly harmed by the offender.¹⁸² This argument would be stronger if the Tenth District did not overrule its own precedent in *Horton*.¹⁸³

In *Horton*, the Tenth District illustrated how restitution can be paid to ‘non-victims’ under Ohio law by upholding a restitution order paid to a food bank.¹⁸⁴ The court even mentioned that ordering restitution to a food bank “is a deviation from a legal rule” based on its own ruling in *Angus*.¹⁸⁵ But it also acquiesced that ordering restitution to a non-victim upheld a purpose of sentencing.¹⁸⁶ The Tenth District con-

¹⁷⁸ See OHIO REV. CODE ANN. § 2929.28(A)(2)(a) (listing restitution amounts for different misdemeanors); see also OHIO REV. CODE ANN. § 2919.18(A)(3) (listing restitution amounts owed for different felonies); but see *State v. Lelain*, 994 N.E.2d 423, 429 (Ohio 2013) (stating that the Ohio statute grants trial courts the discretion to impose restitution at an amount not to exceed the economic loss suffered as a result of the offense).

¹⁷⁹ See *State v. Marcellino*, Nos. 2019-G-0195, 2019-G-0196, 2019 WL 6311765, at *1, *5 (Ohio Ct. App. Nov. 25, 2019) (holding that the Humane Society could not recover restitution for caring for abused horses after the trial court awarded \$14,773.03 in restitution).

¹⁸⁰ See *Ham*, 2009 WL 2370908, at *1 (holding that the defendant did not need to pay restitution to humane society since it was not a victim of the defendant’s animal cruelty).

¹⁸¹ See, e.g., *State v. Eggeman*, No. 15-04-07, 2004 WL 2785951, at *8 (Ohio Ct. App. 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”).

¹⁸² *Angus*, 2006 WL 2474512, at *7.

¹⁸³ *Horton*, 99 N.E.3d at 1106.

¹⁸⁴ *Id.* at 1106–07.

¹⁸⁵ *Id.* at 1105.

¹⁸⁶ *Id.* at 1101–02 (“[T]he 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’s consideration of how Horton’s offense impacted the victim. *Id.*

firmed that trial courts have discretion when it comes to ordering restitution.¹⁸⁷

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—which is somewhat understandable since animals generally do not have bank accounts for restitution payments—the courts should still allow restitution to be given to third parties such as animal welfare organizations. In *Bartholomew*, the Court noted that Section 2929.18(A)(1) allows restitution to be paid to an agency designated by the court, ruling that the Third District erred in holding that courts can only order restitution to be paid to victims.¹⁸⁸ Restitution may be given to non-victims, specifically to funds that are used to pay for the damages the offender caused.¹⁸⁹ The Court further stated 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.”¹⁹⁰ 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 Supreme Court of Ohio under *Bartholomew*.¹⁹¹

Since *Bartholomew*, some appellate courts have expanded the ruling, upholding restitution orders to non-victims, third parties, or both that can manage the money and use it to assist victims. The Fourth District Court of Appeal allowed restitution to be awarded to parents of minor victims because the parents incurred the medical costs of the victims.¹⁹² In the Ohio 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.¹⁹³ An abused animal, if no longer viewed as property under the law, is just as vulnerable as an incapacitated human.¹⁹⁴ Designating animal welfare organizations as

¹⁸⁷ *Id.* at 1107.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 312.

¹⁹⁰ *Id.*

¹⁹¹ *But see* State v. Christman, Nos. CA2009-03-007, C2009-03-008, 2009 WL 4810318, at *3 (Ohio Ct. App. Dec. 14, 2009) (stating that under *Bartholomew*, a reparations fund is a permissible third party to receive restitutions, but an insurance company is not; however, the court provides no case law to support this rule); State v. Johnson, No 14AP-336, 2014 WL 5493964, at *2 (Ohio Ct. App. Oct. 30, 2014) (citing *Christman*’s unsupported statement to reverse restitution for yet another reason).

¹⁹² *Shifflet*, 44 N.E.3d at 985.

¹⁹³ OHIO REV. CODE ANN. § 2930.02.

¹⁹⁴ Connecticut, for instance, enacted a type of guardian ad litem program in cases of animal cruelty. See CONN. GEN. STAT. ANN. § 54-86n (West 2019) (“In any prosecution under [S]ection 53-247, or in any court proceeding pursuant to [S]ection 22-329a or in the criminal session of the Superior Court regarding the welfare or custody of a cat or dog, the court may order, upon its own initiative or upon request of a party or counsel for a party, that a separate advocate be appointed to represent the interests of justice.”).

representatives of the animal victim would allow the organizations to receive restitution under *Bartholomew*.

Some appellate courts have expanded the *Bartholomew* rule to hold that restitution need not be confined to the entities listed in Ohio's statute.¹⁹⁵ The cases specifically reference Section 2929.18 of the Ohio Revised Code, the financial sanction statute for felonies,¹⁹⁶ 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 Appeals,¹⁹⁷ if restitution is agreed upon by both parties, such as during a hearing, it cannot be overturned.¹⁹⁸ The defendants in *Bybee* and *Angus* never contested their restitution orders at trial.¹⁹⁹ From this expansion of *Bartholomew*, it would follow that the restitution orders in those cases should be upheld on appeal. Whether this expansion of *Bartholomew* is followed, the Supreme Court of Ohio 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 SUPREME COURT OF OHIO

Restitution should be ordered and upheld in cases of animal cruelty both for clarity and equity. Trial courts have discretion to award

¹⁹⁵ See e.g., *State v. Johnson*, No. 24288, 2012 WL 1018721, at *4 (Ohio Ct. App. 2012) (“[W]e find that R.C. 2929.18(A)(1) does not prohibit an award of restitution to an insurance company when the award is made pursuant to the express plea agreement between the State and the defendant. Upon review, we conclude that the trial court did not err when it ordered Johnson to pay restitution to Grange Insurance Company.”); *State v. Stewart*, No. 16-08-11, 2008 WL 4831476, at *4 (Ohio Ct. App. 2008) (“Because we find that R.C. 2929.18(A)(1) does not prohibit an award of restitution to a government agency when such award is made pursuant to the express plea agreement of the State and the defendant, we find that the trial court did not err in ordering Stewart to pay restitution to the Wyandot County Sheriff's Department.”); *State v. Maurer*, 63 N.E.3d 534, 541 (Ohio Ct. App. 2016) (“Consequently, where a defendant orally agrees to pay restitution to a known third-party claimant, and also acquiesces to the inclusion of the restitution agreement in the plea, then this agreement is enforceable.”). Section 2929.18(A)(1) of the Ohio code allows courts to order that restitutions be made to “the victim . . . or any survivor of the victim,” or “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.” OHIO REV. CODE ANN. § 2929.18(A)(1).

¹⁹⁶ *Johnson*, 2012 WL 1018721, at *4; *Stewart*, 2008 WL 4831476, at *4; *Maurer*, 63 N.E.3d at 541.

¹⁹⁷ The Fourth District also inadvertently holds this. See *State v. Samuels*, No. 03CA8, 2003 WL 22704409, at *3 (Ohio Ct. App. 2003) (predating *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”).

¹⁹⁸ See *Johnson*, 2012 WL 1018721, at *4.

¹⁹⁹ *Bybee* is a First District case and *Angus* is a Tenth District case.

restitution, and they need to be able to count on the appellate courts to uphold their orders. As this Note demonstrates, 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,²⁰⁰ 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.²⁰¹ 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.²⁰² The law does not specify what an agency is or when an agency is an appropriate designee.²⁰³ As such, the trial courts should be able to choose which agency will receive the restitution. The cases surveyed illustrate that trial courts choose to designate animal welfare organizations as the recipients.²⁰⁴ Since this is entirely in line with Ohio law, it should not be reversed upon appeal.

The purposes of sentencing in Ohio, whether for a misdemeanor or a felony, are to deter future crime and punish the offender.²⁰⁵ Because cruelty to animals is a predictor of crime against humans,²⁰⁶ the punishment assigned to those convicted of animal cruelty should be severe enough to deter the offender. Further, felony sentencing purposes are achieved in part when offenders have to make restitution to the victims of their crimes or to the public. Those convicted of felony cruelty should be required to reimburse the public for the significant costs that are incurred from the damages caused by those offenders. If deterrence and restitution are goals in Ohio sentencing laws, then those convicted of cruelty to animals should be responsible for the costs of rehabilitating their animals. As demonstrated, the law allows for restitution to be

²⁰⁰ *Horton*, 99 N.E.3d at 1106.

²⁰¹ OHIO REV. CODE ANN. § 1717.13.

²⁰² *Bartholomew*, 894 N.E.2d at 310, 312.

²⁰³ OHIO REV. CODE ANN. § 2929.18(A)(1).

²⁰⁴ See *Bybee*, 731 N.E.2d at 233 (ordering the defendant to pay restitution to the SPCA); *Walker*, 841 N.E.2d at 380; *Ham*, 2009 WL 2370908, at *1 (ordering the defendant to pay restitution to the Wyandot County Humane Society); *Brewer*, 2015 WL 3542806, at *1 (ordering the defendant to pay restitution to the Gallia County Animal Shelter); *Leslie*, 2011 WL 2225152, at *1 (ordering the defendant to pay restitution to the Hocking County Humane Society); *Dixon*, 2006 WL 1120688, at *1, *4 (ordering the defendant to pay restitution to the Huron County Humane Society); *Covey*, 2000 WL 638951, at *1, *11 (ordering the defendant to pay restitution to the Toledo Humane Society); *Angus*, 2006 WL 2474512, at *7 (ordering the defendant to pay restitution to the Capital Area Humane Society).

²⁰⁵ OHIO REV. CODE ANN. §§ 2929.11(A), 2929.21(A).

²⁰⁶ See SCHAFFNER, *supra* note 49, at 29.

given to animal welfare organizations that investigate cases of animal abuse and rehabilitate the seized animals. These organizations deserve to rely on restitution from those convicted of cruelty.