



## MODEL ADOPTION STERILIZATION STATUTE

### Introduction by Professor Henry Mark Holzer

Too often, the press reports that someone has been charged with cruelty to animals after officials discover a large number of cats in a small house or apartment, or dozens, or even scores, of dogs in a garage or backyard.

The caretaker (or, too frequently, the “collector”)—often living without electricity or hot water, and spending her meager resources on food for the animals—plaintively laments that “ I’m just an animal lover, trying to provide a home for unwanted animals.”

If she wasn’t a collector, she probably had tried to place the homeless animals somewhere, but either no one would take them, or the shelter would euthanize them. Everyone active in the animal rights field knows of many such stories.

The roots of the scandalous overpopulation of cats and dogs, of the overflowing shelters, and of the relentless annual destruction of countless millions of these hapless living creatures, run very deep. But where?

Although I’ve been a lawyer for nearly fifty years, and was a teacher of law for more than two decades, I have to acknowledge that lawyers as individuals and contemporary American law as an institution are *by themselves* impotent to eliminate the problem that is euphemistically called “overpopulation.”

Yes, lawyers who are prosecutors can enforce cruelty laws. Lawyers who are judges can treat harshly someone found guilty of abandonment of animals. Lawyers who are in private practice can donate time to help shelters and SPCA’s.

But as laudable and important as these kinds of efforts are, they consist of little more than plunging fingers into a crumbling dike. Indeed, because of the root cause of the problem, these lawyers and the institution they serve—the legal system—are impotent to eliminate permanently the “overpopulation” problem. And so, the killing goes on.

Especially impotent is the source of law, the political process, which typically is nothing more than compromise and expediency and merely reflects what usually uninformed voters want at any given moment.

One has a right to ask why two of our principal social institutions—law and politics—can't put an end to this unceasing slaughter, an uncivilized phenomenon which one would expect in some third-world backwater, but not in the most advanced nation ever to grace the earth.

The answer is not difficult, in principle: legal thought and political action are not primaries, not fundamental, not causes. They are consequences of philosophy, of morality, of ethics, of ideas. How lawyers, judges and legislators act flows from ideas that they hold, from their values, from their beliefs.

Regrettably for two thousand years the dominant ideas concerning non-human animals have been that they have no rights, and that they exist for the pleasure of human beings to be exploited as human-kind sees fit.

Professional philosophers like Tom Regan have been aware of this for years. The Book of Genesis tells us that God granted human dominion over the animals, and that after the flood Noah sacrificed animals to the Lord who (so it is written) liked the "sweet smell."

Greece's (perhaps the world's), most influential philosopher, Aristotle, believed and taught that animals existed for the sake of man.

Ancient Rome's attitude toward animals was exemplified by the bloody forerunner to today's bullfights, the coliseum.

Hundreds of years later, drawing on scripture and Aristotelian philosophy, Aquinas restated the proposition that the dominion of humans over animals is complete. As influential as was Aquinas, the philosophical father of animal abuse was probably the renowned philosopher-mathematician Rene Descartes. Animals, he held, were automations, literally. According to Descartes, because animals lacked a Christian soul they lacked consciousness. Therefore, he asserted, animals experienced neither pleasure nor pain. Doubtless, this theory provided Descartes with the rationalization necessary to allow his dissection of unanesthetized animals.

One need look no further than Descartes's ideas to understand the connection between philosophy and "overpopulation." Eavesdrop sometime on a shelter's telephone: "Can you take our cat. We're moving" "We have to give up our dog, she's gotten too large for our apartment" "We wanted our kids to see 'the miracle of birth,' but now we're stuck with these kittens." Though these callers never heard of Rene Descartes, they are acting on the basis of his ideas: animals are inanimate objects, they have no rights, and are as disposable as used napkins.

Accordingly, to end overpopulation through politics or law, or any other means, philosophic ideas have to be changed. There must be a new morality regarding animals. Just as slavery in the United States and despotism abroad have rightly been condemned as unacceptable violations of human rights, so too must the abuse of animals be condemned as a violation of their rights.

And just as so-called “higher purpose” or “noble cause” or “benign paternalism” can not be accepted to justify or rationalize the violation of human rights, those concepts are equally unacceptable as an excuse to violate animal rights. Just as there can be no real freedom if human rights are violated, we cannot have a just, humane, society built on the abuse of animals and on the corpses of the countless “unwanted.”

Ultimately, the best answer to the “overpopulation” problem is to implement the principle of Animal Rights. It is an idea whose time has come, and it is the principle for which ISAR stands.

ISAR has prepared a monograph proposing mandatory spay/neuter as one way to reduce overpopulation of companion animals.

An integral part of that proposal deals with shelter animals. That part is presented below as a stand-alone statute.

First, a prefatory note.

Lest there be any question about the constitutionality of animal protection legislation in general, and the following statute in particular, it can quickly be laid to rest.

The Tenth Amendment to the Constitution of the United States gives the states (and thus political subdivisions like counties, cities, towns and villages) the power to enact virtually any laws they wish that are reasonably related to the public health, safety and welfare. On the other hand, neither at the state nor federal level is there any constitutional right to foster the breeding of countless numbers of unwanted dogs and cats.

## Model Statute

WHEREAS, there have been, and there are, within this jurisdiction a substantial number of unwanted cats and dogs lacking permanent homes, many of whom are healthy animals; and

WHEREAS, these cats and dogs through no fault of their own have an adverse impact on the public health, safety, welfare, and environment; and

WHEREAS, the impact of these animals includes but is not limited to the transmission of disease, the injury of humans and other animals, the creation of hazards to vehicular traffic, and the drain of public finances; and

WHEREAS, many of these cats and dogs are euthanized by shelters, humane societies, and other similar organizations; and

WHEREAS, euthanizing cats and dogs, except for bona fide medical reasons, is inhumane and abhorrent to the residents of this jurisdiction; and

WHEREAS, euthanizing cats and dogs, except for bona fide medical reasons, is not an effective, economical, humane, or ethical, solution to the problem of unwanted cats and dogs; and

WHEREAS, as an alternative to euthanasia of unwanted cats and dogs, shelters, pounds, humane societies and similar organizations foster and are able to secure the adoption of otherwise unwanted cats and dogs; and

WHEREAS, such adoptions promote the public health, welfare, safety and environment and substantially reduce the overpopulation problem; and

WHEREAS, an important aspect of such promotion and reduction is that adopted dogs and cats, and those lost by their owners, be prevented from reproducing,

NOW, THEREFORE, be it enacted as follows:

Section 1. Short title.

This act shall be known, and may be cited, as the Adoption Sterilization Act.

Section 2. Mandatory sterilization.

No shelter, pound, humane society, or similar organization, whether public or private, whose principal purpose is securing the adoption of dogs and cats, shall release any such animal to its owner, custodian or an adopter unless the dog or cat has first been sterilized by spaying or neutering.

### Section 3. Medical exceptions to sterilization

(a) No dog or cat need be sterilized if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that an animal is medically unfit for the spay/neuter procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the animal's death.

(b) The dog or cat's age shall not *per se* constitute medical unfitness.

(c) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person or entity having control of the dog or cat to immediately comply with all provisions of this act.

(d) Possession of the certificate referred to in subsection (a) of this section shall constitute a defense to liability under the penalty provisions of this act.

### Section 4. Penalties.

Each unauthorized failure-to-sterilize violation of this act by a shelter, pound, humane society, or similar organization shall be punishable by a fine of \$200.00.

If during the disqualification period provided by Section 3 the dog or cat breeds, the individual or entity in control of the animal shall be punished as follows:

(a) The first violation shall constitute an offense, punishable by a fine of \$1,000.00.

(b) The next two violations will constitute separate offenses for which an additional civil fine of \$1,000.00 shall be imposed for each violation.

(c) Immediately following the third offense, subsequent violations will be punishable as the lowest grade misdemeanor. A \$1,000.00 fine will also be imposed for each offense after the third.

### Section 5. Effective date.

This act shall be effective when it is approved according to law.