

**DEATH WITHOUT DIGNITY:
THE MISNOMER OF EUTHANASIA IN THE
STATE ANIMAL SHELTER SYSTEM AND
A CALL FOR A NO-KILL FLORIDA**

KATHERINE SLOAN*

I.	INTRODUCTION	261
II.	THE MISNOMER OF EUTHANASIA.....	262
	A. <i>The Dawning of the SPCA</i>	262
	B. <i>The SPCA Loses Its Way</i>	263
	C. <i>Florida Law and Euthanasia</i>	265
III.	THE NO-KILL MOVEMENT FINDS A FOOTHOLD.....	269
	A. <i>New Hampshire</i>	270
IV.	FLORIDA: THE ROAD TO NO-KILL STATUS	274
	A. <i>Current Florida Law</i>	276
	B. <i>A Better Way</i>	278
	1. Increasing the Number of Adoptions	278
	a. Reforming Retail Pet Stores.....	279
	b. Reuniting Lost Pets with Owners	283
	c. Partnerships with Private Rescue Groups and the Importance of Fosters	284
	2. Decreasing the Number of Animals Entering Shelter Facilities Statewide.....	285
	a. Statewide Low Cost Sterilization Programs.....	286
	b. Eradicating Breed Bans	286
V.	CONCLUSION.....	289

I. INTRODUCTION

In 2011, a video surfaced that would shock and horrify animal lovers across the nation. The clip depicts thirty-two year old Beau Anderson—a state certified animal euthanasia specialist—wrapping a leash around the neck of a conscious dog to hold the same in an upright position standing on two legs, and systematically jamming a hypodermic needle filled with poison into the chest of the animal as it cries.¹ Anderson missed his target (the heart of the

* J.D. Candidate, Barry University School of Law (2017). Sloan is currently the Chief Justice of Moot Court, a Note & Comment Editor of the *Barry Law Review*, and the Secretary of the Student Animal Legal Defense Fund. After graduation she would like to focus her practice on intellectual property and animal law. She would like to express her gratitude to her husband for his unwavering support. Additionally, a special debt of gratitude is also owed to Winky Sloan, Katherine's Pembroke Welsh Corgi that she rescued from a local animal

struggling animal) three times before finally landing the killing blow.² He was then shown dragging the dead dog by the neck to a pile of other victims and discarding the body as one would a dirty rag.³ Unfortunately, this scene is all too common in the animal shelter arena in which millions of homeless animals are put to death in some of the most inhumane ways imaginable. This article addresses the process of shelter animal “euthanasia,” the impropriety of the same, and serves as a call to action for Florida legislators to implement the processes necessary to afford animals the dignity they deserve. In five-years or less, Florida could become a No-Kill state by: (1) requiring retail pet stores to obtain animals for sale from state animal shelters; (2) implementing strategies to reunite lost pets with owners; (3) partnering with private rescue organizations and fostering systems; (4) lowering the cost of sterilization programs for low-income families; and (5) eradicating breed bans statewide.

II. THE MISNOMER OF EUTHANASIA

It is impossible to begin an article addressing the No-Kill Movement⁴ without first examining the history of the of the United States (Humane Society).

A. *The Dawning of the SPCA*

The modern movement for the humane treatment of animals began in 1866 when Henry Bergh founded the first Society for the Prevention of Cruelty to Animals (SPCA) in New York City.⁵ At the time, animals outnumbered New York City residents, and homeless animals—including various livestock—were frequently seen lumbering through the streets eating garbage.⁶ Bergh

shelter. Winky was discarded by her former owner and it is her beautiful spirit that prompted Katherine to author this note.

1. Bonnie Snider, *Heart Stick “Euthanasia Specialist” Arrested in Kentucky*, EXAMINER (Nov. 19, 2011, 9:38 AM), <https://web.archive.org/web/20160221091516/http://www.examiner.com/article/heart-stick-euthanasia-specialist-arrested-kentucky>.

2. *Id.*

3. *Id.*

4. See Andrea Toback, *Animal Shelters and the No Kill Movement*, ENCYCLOPEDIA BRITANNICA: ADVOCACY FOR ANIMALS (Jan. 14, 2008), <http://advocacy.britannica.com/blog/advocacy/2008/01/animal-shelters-and-the-no-kill-debate/> (defining No-Kill as a movement requiring all adoptable and treatable animals to be placed into suitable homes with a 90% success rate to allow for the humane euthanization of up to 10% of the intakes to the shelter in order to account for creatures too sick, wounded, or violent to be adopted).

5. NATHAN J. WINOGRAD, *REDEMPTION: THE MYTH OF PET OVERPOPULATION AND THE NO KILL REVOLUTION IN AMERICA* 7 (2d ed. 2009).

6. *Id.*

discovered—through his various travels—his passion for the prevention of animal cruelty and wanted to create a society aimed at eradicating the unethical treatment of animals, in particular, horses.⁷ Under the guidance of Bergh and his *Declaration of the Rights of Animals*, legislation was passed and great strides were made to overhaul the treatment of animals in New York City.⁸

After the death of Bergh, the humane movement for animals ceased to exist for practical purposes.⁹ In fact, his SPCA accepted a contract, which obligated it to begin the oversight and administration of the pound in New York City.¹⁰ This decision was widely rebuffed by Bergh during his lifetime, and so began the SPCA's descent into the regulation and control of the animal population.¹¹

B. The SPCA Loses Its Way

In the summer of 1978, Phyllis Wright—a celebrated animal rights advocate employed by the Humane Society—published an article, *Why Must We Euthanize?*, in the *Humane Society News*.¹² Wright detailed that she “personally put 70,000 dogs and cats to sleep.”¹³ Wright went on to say, “[w]e know that death, humanely administered, is not an evil, but a blessing to animals who are of no comfort to themselves or to the world because they are unwanted . . .”¹⁴ Wright's essay coined the phrase, “putting animals to sleep,” and argued that killing a homeless animal was a kindness.¹⁵ There began the public's introduction to the concept of pet overpopulation and the suggestion that killing was a necessary part of humanity's responsibility for the care and oversight of homeless creatures.¹⁶ Wright suggested, and the public accepted with open-mouthed enthusiasm, that as a result of improper animal care and supervision, companion animals began to breed at alarming rates and the only justifiable solution was

7. *Id.* at 8.

8. *Id.*

9. *Id.* at 15.

10. *Id.* at 13.

11. *See id.* at 11-15.

12. *Id.* at 19-20; Phyllis Wright, *Why Must We Euthanize?*, HUMANE SOC'Y NEWS 24-25 (1978).

13. *Id.*

14. *Id.*

15. WINOGRAD, *supra* note 5, at 19-20; Wright, *supra* note 12, at 24; *see generally* Lee Anne Fennell, *Killing With Kindness: An Inquiry Into the Routinized Destruction of Companion Animals*, 3 BETWEEN THE SPECIES (2003).

16. WINOGRAD, *supra* note 5, at 19-20.

euthanasia.¹⁷ In essence, Wright asserted that an animal is useless and worthless if it is not a part of the human home.

As a direct result of Wright's widely popular essay, animal shelters across the nation instituted a policy of killing animals brought into the facility.¹⁸ Deeming the process, "putting them to sleep," Wright provided an "emotionally acceptable pretext" for the widespread killing of adoptable animals within the shelter systems.¹⁹ The public was thereby lulled into thinking that the process was a spiritual one and that the routine shelter killing was a positive experience for the animal.²⁰ Wright went on to argue that no one wants to kill, but that the killing of millions of animals was imperative to control the population, and blamed the general public and irresponsible ownership for the rising numbers of homeless animals throughout the country.²¹

In contrast to the belief of the public that the organization, People for the Ethical Treatment of Animals (PETA), is a defender of animal rights and in conflict with the ideals of Wright, PETA widely supported her work and to this day insists that killing is a kindness to homeless animals.²² In fact, PETA has publicly admitted that it does not subscribe to the belief that animals have a right to life at all.²³ This is evidenced, perhaps most disturbingly, by the statistics of the PETA-run animal shelters. In 2006, PETA summarily executed 97% of the animals they took into their shelters.²⁴ This number dwarfs the national average wherein roughly 44% of the nation's animals that enter shelters are put to death.²⁵ Specifically, PETA's stance on euthanasia is that it is, "often the most compassionate and dignified way for unwanted animals to leave the world."²⁶

Following the publication of Wright's essay, the term "euthanasia" became the quintessential expression for the killing of

17. *See id.* The use of the term "companion animals" is referring to domesticated dogs and cats.

18. *See id.*

19. *Id.* at xviii, 20; "Such 'putting down' of companion animals has been written of in glowing, almost spiritual terms by some humane professionals." *Id.* at 2; Fennell, *supra* note 15, at 2.

20. *See* WINOGRAD, *supra* note 5, at 20; *see also* Fennell, *supra* note 15, at 2 ("Such 'putting down' of companion animals has been written of in glowing, almost spiritual terms by some humane professionals.").

21. *See* Wright, *supra* note 12.

22. *See* WINOGRAD, *supra* note 5, at 5-6.

23. *Id.* at xix.

24. *Id.*

25. *Pets by the Numbers*, HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html (last visited Nov. 27, 2016).

26. *Animal Rights Uncompromised: 'No-Kill' Shelters*, PETA, <http://www.peta.org/about-peta/why-peta/no-kill-shelters/> (last visited Nov. 27, 2016).

millions of animals each year. Webster's dictionary defines euthanasia as: "the act or practice of killing or permitting the death of hopelessly sick or injured individuals (as persons or domestic animals) in a relatively painless way for reasons of mercy."²⁷ Thus, by its very definition, euthanasia does not cover the killing of an otherwise healthy animal. This article will henceforth refer to the process by more appropriate terminology demonstrating the cruelty of the procedure.

C. Florida Law and Euthanasia

Currently, the state of Florida addresses the issue of the euthanasia of animals in section 828.058, *Florida Statutes*, which provides that an animal may be legally rendered dead by injecting (either intravenously or through an intraperitoneal injection) a lethal solution into its body.²⁸

The very existence of the statute indicates that the Florida legislature has acceded to the theory that "euthanasia" is a reasonable resolution to the "overpopulation" problem. Florida has limited the methods by which animals may be killed by organizations to what is deemed to be the most humane approach,²⁹ yet examination of the side effects and exact precision required for administration reveals that the process is anything but humane.

27. *Euthanasia*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2014).

28. Section 828.058, *Florida Statutes*, provides:

(1) Sodium pentobarbital, a sodium pentobarbital derivative, or other agent the Board of Veterinary Medicine may approve by rule shall be the only methods used for euthanasia of dogs and cats by public or private agencies, animal shelters, or other facilities which are operated for the collection and care of stray, neglected, abandoned, or unwanted animals. A lethal solution shall be used in the following order of preference:

- (a) Intravenous injection by hypodermic needle;
- (b) Intraperitoneal injection by hypodermic needle; or
- (c) If the dog or cat is unconscious with no corneal reflex, intracardial injection by hypodermic needle.

(2) A dog or cat may be tranquilized with an approved and humane substance before euthanasia is performed.

(3) Succinylcholine chloride, curare, curariform mixtures, any substance which acts as a neuromuscular blocking agent, or a chamber which causes a change in body oxygen may not be used on a dog or cat for any purpose. However, whenever an emergency situation exists which requires the immediate euthanasia of an injured, diseased, or dangerous animal, a law enforcement officer, a veterinarian, or an agent of a local animal control unit or the designee of such an agent may humanely destroy the animal . . .

FLA. STAT. §§ 828.058(1)-(3) (2016).

29. *See id.* (limiting the administration of lethal drugs for euthanasia of dogs and cats to three "humane" methods and requiring the drugs to be used in preferential order).

Florida's preferred method for the execution of animals involves the injection of sodium pentobarbital intravenously.³⁰ With this method, sodium pentobarbital is directly injected into the animal's vein, carried by the circulatory system to the heart and eventually enters the brain.³¹ In order for the "label dose"³² to be properly administered, the animal must be (1) large enough to allow the technician to adequately locate a viable vein; (2) calm; and (3) not so ill or injured so as to render veins collapsed or unusable.³³ This process is virtually impossible to complete on tiny dogs and cats, as it is too difficult to locate usable veins, or animals that are terrified of human contact because they cannot be rendered calm enough to properly inject the chemical.³⁴ The seal on sodium pentobarbital vials is so secure that the needle inserted to withdraw the correct dose is automatically dulled and cannot be inserted into the animal without causing severe pain.³⁵ As such, a new needle must be used for the injection into the homeless animal if the process is truly to be humane.³⁶ Moreover, the technician must ensure that the bevel of the needle is pointed up and at a shallow angle to ensure that the needle merely pierces the vein, but does not pass entirely through it to the other side.³⁷ This process is extremely difficult to master without proper training; thus to ensure the least amount of suffering for the animal, a technician must be highly specialized.³⁸ Without proper training, the technician runs the risk of piercing the vein wall or missing the vein entirely, instead injecting the drug outside and causing the drug to pool under the skin.³⁹ Failure to properly execute this technique increases the likelihood for extreme agony experienced by the animal.⁴⁰ This is what is commonly referred to as "blowing the vein," which causes the animal tremendous torment due to chemical imbalances in the body caused by the high pH level of the drug.⁴¹

In order to exterminate animals with veins that are too small for intravenous injection, shelters also administer the sodium

30. FLA. STAT. § 828.058(1) (2016).

31. HUMANE SOC'Y OF THE U.S., EUTHANASIA REFERENCE MANUAL 4 (2nd ed. 2013).

32. *See id.* at 6 (defining "label dose" as 30%-50% more than the technical "lethal dose" which would render an animal dead).

33. *Id.* at 7.

34. *Id.*

35. *Id.* at 11.

36. *Id.*

37. *Id.* at 14-15.

38. *Id.* at 17.

39. *Id.* at 21.

40. *Id.* at 17.

41. *Id.* at 21.

pentobarbital via intraperitoneal (IP) injection.⁴² This procedure involves the injection of sodium pentobarbital directly into the animal's abdominal cavity, the space in the abdomen surrounding most of the internal organs.⁴³ Unfortunately, this is preferred practice for the extermination of the young; frequently in animals less than five weeks of age.⁴⁴ Specifically, The Humane Society advocates that this procedure is most effective for young/tiny animals because their veins are too small for intravenous injection and those that are fearful of human handling because it does not require the precision of intravenous injection.⁴⁵ The problem with this technique is that the drug takes significantly longer to reach the heart and brain, ultimately exposing the animal to extended distress before death.⁴⁶ A higher dose of the drug is required for this method, and there is a high risk that the substance will enter the organs causing the animal pain prior to losing consciousness.⁴⁷ Additionally, this process results in an extended involuntary excitement period referenced in greater detail below.⁴⁸

The final procedure that is permissible in Florida involves intracardiac injection, or "heart sticking,"⁴⁹ as it is commonly known.⁵⁰ Intracardiac injection involves injecting the sodium pentobarbital directly into the heart of the animal.⁵¹ This process is extremely painful for the animal, and in Florida is only to be used when the animal is completely unresponsive.⁵²

However, Florida has allowed for an additional caveat that is often exploited by shelter administrators. As referenced above, Florida permits an animal to be murdered by any "humane" means necessary in circumstances deemed an emergency.⁵³ This includes occurrences wherein the animal is extremely sick or injured or has

42. *Id.* at 23.

43. *Id.* at 22.

44. *Id.* at 23, 25.

45. *Id.* at 22-23.

46. *SEE METHODS FOR THE EUTHANASIA OF DOGS AND CATS, WORLD SOC'Y FOR THE PROT. OF ANIMALS*, <http://www.icam-coalition.org/downloads/Methods%20for%20the%20euthanasia%20of%20dogs%20and%20cats-%20English.pdf>; *Cf. HUMANE SOC'Y OF THE U.S., supra* note 31, at 23.

47. *METHODS FOR THE EUTHANASIA OF DOGS AND CATS, supra* note 46, at 15-16; *HUMANE SOC'Y OF THE U.S., supra* note 31, at 23.

48. *METHODS FOR THE EUTHANASIA OF DOGS AND CATS, supra* note 46, at 16; *HUMANE SOC'Y OF THE U.S., supra* note 31, at 25.

49. *Cardiac Heartsticking*, ANIMAL AID USA, <http://animalaidusa.org/legislation/cardiac-heartsticking/> (last visited Nov. 27, 2016).

50. *HUMANE SOC'Y OF THE U.S., supra* note 31, at 26.

51. *Id.*

52. *Id.* at 26-27.

53. FLA. STAT. § 828.058(3) (2016) ("[W]henver an emergency situation exists which requires the immediate euthanasia of an injured, diseased, or dangerous animal, . . . an agent of a local animal control unit . . . may humanely destroy the animal . . .").

been deemed by shelter employees to be aggressive.⁵⁴ Although it stands to reason that the intention of the legislators was to provide leeway for shelter workers and law enforcement to handle extreme emergencies, this portion of the statute allows for shelter workers to employ the inhumane heart sticking procedure under the guise of handling aggressive dogs. The result of this legislative loophole is that hundreds of thousands of animals may be subjected to a process that effectively involves pinning an animal that is not sedated to the floor and popping its heart with a hypodermic needle. When this process is performed on a conscious animal, the animal is subjected to intense pain as the needles are pushed through the dense nerves surrounding the chest cavity, and the poison is injected directly into the chambers of its still-beating heart.⁵⁵ Even to the most trained technician, finding the chambers of the heart is extremely difficult and the problem is only exacerbated by the fact that the position of the heart can vary across members of the same species and even in the same breed.⁵⁶ As archaic and primeval as this method seems, this is permitted under Florida law in cases of emergency.⁵⁷ Yet, to the general public, this practice is widely unpublicized and a virtual unknown. To the public, animals are simply “put to sleep,” and given a reprieve from the cruelty of life on earth.

The whisper of death does not simply envelope an animal injected with sodium pentobarbital. In contrast, there are four stages of demise that follow the administration of the drug prior to death.⁵⁸ The first stage—voluntary excitement—causes the animal to lose coordination and to become sensitive to stimuli.⁵⁹ The animal can react violently as the brain’s inhibitory centers slowly shut down making the animal disoriented, and it is in this stage that shelter volunteers have the possibility of being injured by an otherwise gentle animal.⁶⁰ The second stage—involuntary excitement—causes the animal to engage in uncontrolled motor activity, such as leg paddling and vocalizations.⁶¹ The animal slips further into a state of surgical anesthesia—the third stage—where the animal loses sensation to all feeling.⁶² The animal descends into the medullary paralysis stage—the final stage—

54. *Id.*

55. HUMANE SOC’Y OF THE U.S., *supra* note 31, at 28.

56. *See id.* at 28.

57. *See* FLA. STAT. § 828.058(3) (2016).

58. HUMANE SOC’Y OF THE U.S., *supra* note 31, at 4-7.

59. *Id.* at 5.

60. *Id.*

61. *Id.*

62. *Id.* at 5-6.

which stops the animal's body from breathing and all core functions cease.⁶³ At this point, the animal is considered dead, though muscle contractions and spasms may follow for several minutes.⁶⁴ In fact, the animal may continue to make gasping sounds as a reflex action immediately following the final phase of death.⁶⁵ The Humane Society stresses that verifying the death of the animal is the most critical part of the killing procedure.⁶⁶ In September of 2014, in Birmingham, Alabama, a black-and-brown mutt was sentenced to death and injected with sodium pentobarbital.⁶⁷ His body was placed into a container to await disposal the following day.⁶⁸ When shelter volunteers entered the facility the next morning, the dog was moving around the shelter, very much alive.⁶⁹ Stories like this are rampant and illustrate dramatically the failures of the current system for killing unwanted animals.

Thus, through the years the mission of the animal rights movement disintegrated into the perverted system of mass slaughter that currently exists in shelters across the country today. In direct contrast to the very definition of euthanasia, currently, approximately 2.4 million healthy, adoptable pets are killed in shelters each year in the U.S.⁷⁰ These animals are dying at alarming rates and, in many cases, in a state of complete agony until their bodies finally give up the will to live. There must be a better way.

III. THE NO-KILL MOVEMENT FINDS A FOOTHOLD

The story of a brave dog named Bummer is one that most San Franciscans are quite familiar with. One fateful day in 1861, two stray dogs were fighting in the streets while humans looked on without taking action.⁷¹ The smaller dog, Lazarus, was bitten by a larger dog and in the process his leg was almost entirely severed.⁷² It was at this moment that Bummer (another stray dog) ran to

63. *Id.* at 6.

64. *Id.*

65. *Id.*

66. *Id.* at 41.

67. Associated Press, *Dog named 'Lazarus' survives euthanasia attempt*, DAILY NEWS (Oct. 5, 2014, 3:43 PM), <http://www.nydailynews.com/news/national/dog-named-lazarus-survives-euthanasia-attempt-article-1.1964074>.

68. *Id.*

69. *Id.*

70. *Pets by the Numbers*, *supra* note 25.

71. WINOGRAD, *supra* note 5, at 33.

72. *Id.*

defend the smaller dog, subsequently carrying it to safety.⁷³ Bummer remained with the injured Lazarus, bringing it food until its leg was healed.⁷⁴ It was this selfless act of love that inspired the city and made the two dogs instant celebrities.⁷⁵ At the time, San Francisco enforced extreme laws surrounding the impounding of stray animals.⁷⁶ In fact, it was illegal at the time for an animal to be on the street without a collar and a verifiable owner.⁷⁷ Dogs who were taken in as strays were eventually put to death at an alarming rate.⁷⁸ Unfortunately, Lazarus was eventually impounded, prompting public outrage.⁷⁹ Petitions circulated for his release and the city stood united in its demand for an exemption from the Canine Murder Law for this animal.⁸⁰ After members of influential high society became involved, the dogs were released, and a call for reform of the shelter system began to take shape.⁸¹ The leader of this animal reform movement was a friend of Henry Bergh, James Hutchinson.⁸² He rallied a city and, although it took many years to find full public support, eventually the No-Kill Movement gained a foothold and began to take shape in San Francisco.⁸³

Although various cities nationwide aspired to become No-Kill, implementing successful strategies proved to be an overwhelming and seemingly impossible task.⁸⁴ After 150 years, however, one state finally found a way to successfully implement a No-Kill strategy statewide.⁸⁵ New Hampshire—to date the most successful No-Kill state in the nation⁸⁶—has successfully committed to and implemented a No-Kill strategy for public and private animal shelters. A No-Kill system is not only possible, but is also already being done throughout our nation and even internationally.

A. *New Hampshire*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 34.

80. *Id.* at 33-34.

81. *Id.* at 34.

82. *Id.*

83. *Id.* at 35.

84. See PETER MARSH, GETTING TO ZERO: A ROADMAP TO ENDING ANIMAL SHELTER OVERPOPULATION IN THE UNITED STATES, at v (2012) [hereinafter MARSH, GETTING TO ZERO].

85. *Id.*

86. *Id.*

In the 1980s, New Hampshire made considerable progress in reducing its state's animal shelter death rate.⁸⁷ However, four other states in the New England region had achieved a lower euthanasia rate than New Hampshire by 1992.⁸⁸ Shelter advocate Barbara Carr decided that although many states would be proud to be ranked so low on this totem pole of shame, this was not good enough, and began the process of using shelter statistics to change legislative policies and reduce the kill rate in her state.⁸⁹

The first step in becoming a No-Kill state was to show the general public the severity of the problem.⁹⁰ Put simply, the public needed to see how intensely the shelter system was bleeding out in order to call for change.⁹¹ Animal advocates decided to illustrate, in a very tangible way, how many animals were affected by the shelter's euthanasia policies with the "Chain of Collars."⁹² In the summer of 1992, shelter advocates strung together one collar for each shelter animal murdered at a facility during the first seven months of that year.⁹³ Inscribed on the collar was a crude description of the animal; the resultant chain stretched for nearly a mile around the state capitol building.⁹⁴ This physical representation of the sheer volume of murders provided the public with an understanding of how widespread the issue had become.⁹⁵

Next, animal advocates examined the raw statistics of the animals that entered New Hampshire facilities as well as other state facilities throughout the country annually.⁹⁶ Researchers identified the obvious issue first: that as the intake numbers increased, so too did the number of animals who were killed to make room within shelters.⁹⁷ Thus, reduction of the population of homeless animals who entered the facilities became the primary focus for animal advocates.

In an effort to formulate the most effective programs, researchers examined several states' methods for reducing shelter

87. MARSH, GETTING TO ZERO, *supra* note 84, at 11.

88. *Id.* at 11.

89. *See id.* at 11-20.

90. *Id.* at 3.

91. *Id.*

92. *Id.* at 1-2.

93. *Id.*

94. *Id.* at 2.

95. *See id.* at 4.

96. *Id.* at 13-14.

97. *See* PETER MARSH, REPLACING MYTH WITH MATH: USING EVIDENCE-BASED PROGRAMS TO ERADICATE SHELTER OVERPOPULATION 7 (2010) [hereinafter MARSH, REPLACING MYTH WITH MATH]; *see also* MARSH, GETTING TO ZERO, *supra* note 84, at 22.

intakes, compiling data from those that had been successful.⁹⁸ A pre-release sterilization program had been implemented in the six largest counties in California and had resulted in a 10% reduction in future intake rates across the animal shelters therein.⁹⁹ Moreover, increased sterilization of those animals released by the animal shelters was proven to result in a higher retainer rate once the animal was placed into a home.¹⁰⁰ Statistics revealed that sexually intact dogs were twice as likely to be relinquished to a shelter than those that had been fixed.¹⁰¹ Statistics also revealed that sexually intact cats were 3.3 times more likely to be surrendered to a shelter than cats that had previously been sterilized.¹⁰²

Additionally, researchers identified cost as one of the primary barriers to spay and neuter objectives, with the majority of surrendered animals coming from low-income homes.¹⁰³ As a result, New Hampshire animal advocates implored state legislators to reconsider the spay and neuter bill that had previously been rejected by legislators.¹⁰⁴ After intense legislative debate and campaigning by advocates, the bill reached the Governor, who signed New Hampshire Senate Bill 151 into law.¹⁰⁵ The enacted bill “requir[ed] an animal population fee in addition to licensure fees for certain dogs and establish[ed] a state animal population control program.”¹⁰⁶ Specifically, Chapter 437-A created a statewide, publicly funded spay and neuter program.¹⁰⁷ As a result, low-income residents of the state who were eligible for

98. See MARSH, GETTING TO ZERO, *supra* note 84, at 16; See also MARSH, REPLACING MYTH WITH MATH, *supra* note 97, at 1-5 (associating the cause of overpopulation in animal shelters and the ineffectiveness of programs with the lack of reliable data; and claiming that the application of valuable data in remedying these issues is crucial for success).

99. MARSH, REPLACING MYTH WITH MATH, *supra* note 97, at 13.

100. *Id.* at 9.

101. *Id.* at 10.

102. *Id.*

103. See *id.* at 11; See also MARSH, GETTING TO ZERO, *supra* note 84, at 11-14 (attributing a steep decline in shelter intakes throughout the state of New Hampshire and a 75% reduction in the statewide euthanasia rate to a state-funded spay and neuter program that significantly lowered the cost of sterilization).

104. MARSH, GETTING TO ZERO, *supra* note 84, at 8-9.

105. *Id.*

106. S.B. 151, 1993 Leg., Reg. Sess. (N.H. 1993).

107. N.H. REV. STAT. § 437-A:2 (2015).

various statewide assistance programs¹⁰⁸ were now also eligible for reduced-cost spay and neuter services.¹⁰⁹

Educating the general public as to the proper timing for sterilization was also a key factor in the success of New Hampshire.¹¹⁰ A study revealed that many pet owners allowed their animals to breed because they believed it was in the best interest of the animal to have one successful breeding attempt prior to sterilization.¹¹¹ In fact, early sterilization greatly reduces the risk of various forms of cancer in companion animals.¹¹² By working with local veterinarians, state legislators and shelter employees were able to effectively spread the message that an animal should be sterilized immediately upon reaching sexual maturity.¹¹³ Moreover, data collection began surrounding the reasons for owner relinquishments in the state.¹¹⁴ 40% of dog owners and 33% of cat owners who surrendered an animal cited an unwanted behavior as the primary cause.¹¹⁵ Notably, a great number of the behaviors cited had distinct ties to the fact that the animal was sexually intact, including urination in the home, aggressiveness, and roaming tendencies.¹¹⁶

The results of this legislation were dramatic.¹¹⁷ Between 1994 and 1999, the state's eight largest shelters admitted approximately 31,000 fewer dogs and cats than in the six years preceding the program.¹¹⁸ Over this time period, the state's euthanasia rate dropped 75%.¹¹⁹ With additional revenue from increased dog licenses issued throughout the state, resulting from new state legislation integrating rabies vaccines records with licensing

108. N.H. REV. STAT. ANN. § 437-A:3 (2014) (qualifying residents are those that are eligible for the following: Food Stamp Program, Supplemental Security Income Program, Food Stamp Program, Supplemental Security Income Program, Aid to Families with Dependent Children Act, Aid to the Needy Blind program, Medicaid, the Old Age Assistance program, and the Aid to the Permanently and Totally Disabled program).

109. N.H. REV. STAT. § 437-A:2 (2015).

110. MARSH, REPLACING MYTH WITH MATH, *supra* note 97, at 15.

111. *Id.*

112. *Id.*

113. MARSH, GETTING TO ZERO, *supra* note 84, at 12.

114. *Id.* at 14.

115. MARSH, REPLACING MYTH WITH MATH, *supra* note 97, at 19-20.

116. *Id.*

117. See MARSH, GETTING TO ZERO, *supra* note 84, at 12 (showing how far euthanasia rates drop because of legislation).

118. *Id.* at 27.

119. *Id.* at 12.

records,¹²⁰ adequate funding for the initiative was secured, additionally covering the implementation of vital marketing strategies to notify the public of its existence.¹²¹

A New Hampshire shelter had committed itself to becoming No-Kill by the year 2000.¹²² Surprisingly, it reached the status of No-Kill by 1999,¹²³ and to date, is the most positive example for other shelters desiring to achieve a similar status.

[I]n 2009, nine large shelters in New Hampshire . . . [euthanized] 468 dogs with severe health or behavioral problems. During that year, these same shelters placed 2039 dogs and puppies . . . into new homes in the state. These shelters did not put down a single dog or cat to make room for another animal that had become homeless.¹²⁴

With a primary focus on sterilization and reducing the costs associated with sterilization, these shelters were able to help eliminate the senseless killing of adoptable animals.¹²⁵

Although New Hampshire remains the only state to have been deemed by some as successfully transitioned to No-Kill, numerous cities and counties across the nation have done so by implementing similar programs to that of New Hampshire. Success is possible with “community commitment.”

IV. FLORIDA: THE ROAD TO NO-KILL STATUS

It was 4:15 p.m. on a Friday when a family member—hoping he would be placed for adoption—surrendered a small, black and white, pit bull named Zeus to Hernando County Animal Services.¹²⁶ Within fifteen minutes the puppy had been put to death after being deemed “unadoptable” by the shelter’s two-person evaluation team.¹²⁷ Zeus was assessed and summarily executed in the time it takes to boil a pot of water.¹²⁸ What is perhaps even more disturbing is that a shelter volunteer took a picture of Zeus upon his entry into the

120. *See id.* at 60-61.

121. *Id.* at 61-62.

122. *Id.* at 15.

123. *Id.*

124. *Id.* at 25-26.

125. *Id.* at 27.

126. Michael D. Bates, *Hernando County Animal Services under fire for killing dog*, TAMPA BAY TIMES (Mar. 19, 2013, 3:45 AM), <http://www.tbo.com/news/herando-county-animal-services-under-fire-for-killing-dog-394407>.

127. *Id.*

128. *Id.*

facility and posted the picture on her personal Facebook page that evening in an attempt to find him a home, not knowing that Zeus had already been killed.¹²⁹ Within hours an individual contacted the volunteer, wanting to adopt Zeus first thing Monday morning.¹³⁰ Zeus was never adopted. Zeus was never held. Zeus will never have a family to call his own.

The execution of adoptable animals is not only inhumane, but also entirely unnecessary. Nationally, about 165 million dogs and cats live in homes across the U.S.¹³¹ It is estimated that the number of savable animals in shelters across the nation is up to 4.5 million.¹³² This amounts to less than 3% of the total number of animals that currently live in homes across the country.¹³³ Moreover, every year about twice as many people are looking to bring a new dog or cat into their home than the total number of dogs and cats entering shelters.¹³⁴ With so many American homes seeking to add a new animal companion to their homes each year, it seems glaringly obvious that it is possible to house 100% of the savable animals that currently reside in animal shelters in the U.S.¹³⁵ In order to achieve this goal nationwide, changes must first be implemented within each state. This article will focus on changes that can be made in the state of Florida specifically.

Statistics are difficult to obtain for the entire state, but on a county-by-county basis, where statistics are more readily accessible, the problem is glaringly obvious. In 2014, the most recent year for which statistics have been made available, 12,908 dogs and cats entered Pinellas County Animal Services and 6,543 died there, with 5,691 of that number being from shelter decided euthanasia.¹³⁶ In 2015, Seminole County reported that 7,605 dogs and cats were taken in by shelters in the twelve preceding months.¹³⁷ Of those cats and dogs, 3,713 were killed in these facilities.¹³⁸ That amounts to a kill-rate of 48.8% of all dogs and cats admitted.

129. *Id.*

130. *Id.*

131. WINOGRAD, *supra* note 5, at xi.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. PINELLAS CTY. ANIMAL SERVS., 2014 SHELTER INTAKE AND OUTCOMES REPORT (2014), <http://www.pinellascounty.org/animalservices/stats/2014/AS-CY-2014.pdf> (The 12,908 for intakes includes 805 animals in which owner requested euthanaization).

137. SEMINOLE CTY. ANIMAL CONTROL BD., REGULAR MEETING AGENDA, THURSDAY, DEC. 10 (2015), <http://www.seminolecountyfl.gov/core/fileparse.php/3296/urlt/Agenda-package-12-10-15.pdf>.

138. *Id.*

A. Current Florida Law

In 2015, the Animal Legal Defense Fund released the tenth annual year-end report ranking the animal protection laws of each state.¹³⁹ Florida was ranked as the fourteenth best state in the nation for animal protection.¹⁴⁰ This is largely due to the fact that Florida, along with eighteen other jurisdictions, instituted a statewide ban on breed-specific legislation in 2015.¹⁴¹ Additionally, Florida law is quite detailed regarding the punishment for animal cruelty.¹⁴² For example, an individual convicted of aggravated animal cruelty receives a felony of the third degree and may serve up to five years in prison, pay a fine up to \$10,000, or both.¹⁴³ If that individual knowingly and intentionally tortures or cruelly mistreats an animal (on his or her first offense), he or she faces a mandatory financial penalty of \$2,500 and is subjected to psychological counseling or an anger management treatment program.¹⁴⁴ Moreover, the state goes so far as to make it a criminal offense to neglect an animal by failing to provide the animal with adequate living quarters, food, and water.¹⁴⁵ Further, section 828.24, *Florida Statutes*, specifically forbids anyone in the state to kill an animal, except by what is referred to as “humane methods.”¹⁴⁶

However, this caveat is precisely the problem with current legislation in Florida and where the state must make vast improvement. Current Florida law allows for the killing of animals within the shelter system without regard for the health or adoptability of each animal.¹⁴⁷ Moreover, as referenced in Section II of this article, the methods prescribed by Florida law for these killings are anything but humane.¹⁴⁸ Despite all of the legislation Florida has enacted to protect animals from cruel and inhumane treatment, these laws do little, if anything at all, to protect dogs like Zeus that enter the system and leave in a body bag.

Similar to the legislation that was so successful in New Hampshire, section 823.15, *Florida Statutes*, provides for the

139. See 2015 U.S. Animal Protection Laws Rankings, ANIMAL LEGAL DEFENSE FUND 2 (2015), <http://aldf.org/wp-content/uploads/2015/12/Rankings-Report-2015.pdf>.

140. *Id.* at 6.

141. *Id.* at 4.

142. See, e.g., FLA. STAT. § 828.12 (2016).

143. FLA. STAT. § 828.12(2).

144. FLA. STAT. § 828.12(2)(a).

145. FLA. STAT. § 828.13.

146. FLA. STAT. § 828.24.

147. See FLA. STAT. § 828.058.

148. See *supra* Section II.C.

mandatory sterilization of shelter animals prior to adoption.¹⁴⁹ If the animal has not reached sexual maturity, adopters are required under this section to sign a commitment to guarantee that the animal will be sterilized within thirty days from the date of adoption, or immediately upon reaching sexual maturity.¹⁵⁰ The statute expressly declares it “to be the public policy of the state that every feasible means be used to reduce the incidence of birth of unneeded and unwanted puppies and kittens.”¹⁵¹

This terminology articulates that animals not currently owned are “unneeded,” suggesting that the Florida legislature refuses to recognize an animal’s worth in the absence of human interest.¹⁵² Perhaps equally disconcerting is that the sterilization requirement is included under Title XLVI: Crimes, Chapter 823: Public Nuisances of the Florida Statutes.¹⁵³ Additionally, Florida defines an animal as “every living dumb creature.”¹⁵⁴ Thus, despite the fact that the state seems to purport a commitment to animal welfare and a desire to remedy the companion animal “overpopulation” problem with a statute requiring sterilization similar to that imposed by the state of New Hampshire, the sentiment behind the same, and the lack of specificity to which the statute actually makes sterilization by pet owners financially feasible, renders the legislation deficient. New Hampshire implemented legislation that specifically articulated reductions in the price of sterilization for qualifying residents.¹⁵⁵ Florida has not.¹⁵⁶

Further, it is not enough to require that residents of Florida sterilize their animals in an effort to combat public nuisance. Legislators must see that animals have inherent worth, and that man, as the creature in dominion of the animals, has a duty to protect them, not because they are dumb, but because animals inherently matter.¹⁵⁷

If New Hampshire can eliminate the process of killing healthy, adoptable animals with low cost spay and neuter initiatives, surely the state of Florida can achieve No-Kill status by strategically placing reforms within the state system. Due to the fact that

149. FLA. STAT. § 823.15(3)(a) (2016).

150. *Id.*

151. FLA. STAT. § 823.15(1) (2016).

152. *But see* Judith E. Koons, *Earth Jurisprudence: The Moral Value of Nature*, 25 PACE ENVTL. L. REV. 263, 296-305 (2008); *cf.* WINOGRAD, *supra* note 5, at xix-xx (revealing that PETA has publicly admitted that it does not subscribe to the belief that animals have a right to life at all).

153. *See* FLA. STAT. § 823.15 (2016).

154. FLA. STAT. § 828.02.

155. S.B. 151, 1993 Leg., Reg. Sess. (N.H. 1993).

156. *See* FLA. STAT. § 823.15(4) (2016).

157. *See* Koons, *supra* note 152, at 325-37.

Florida has a much larger population than New Hampshire,¹⁵⁸ Florida will need to implement greater initiatives in order to achieve similar results to those in New Hampshire. However, Florida can become No-Kill quickly with the implementation of a two-prong strategy: (1) increase the number of adoptions from state animal shelters, and (2) decrease the number of admissions to state animal shelters.

B. A Better Way

1. Increasing the Number of Adoptions

It seems obvious that Florida's No-Kill commitment can only be reached by first increasing the number of adoptions from state animal shelters. Section 823.15, *Florida Statutes*, mandates that all Florida animal shelters must collect and publish data of the statistics of animal admissions, adoptions, and euthanasia on a monthly basis.¹⁵⁹ This initiative was required to begin in 2013 in an effort to lift the veil of secrecy that appears to have shrouded the municipal animal shelter world for years. Unfortunately, despite this requirement, recent statistics are still not available to the general public. However, a census conducted by the University of Florida in 2013 revealed numbers for 110 Florida shelters statewide.¹⁶⁰

An interim analysis of this data . . . reveal[ed] that [Florida] animal shelters admitted 213,763 dogs and 233,806 cats for a total of 447,569, with more animals admitted as strays than owner-surrenders. Dogs were more likely to be adopted than cats, . . . [and] [t]he statewide intake rate was 23 cats & dogs per 1,000 [Florida] residents. The statewide euthanasia rate was 11 cats & dogs per 1,000 residents. The overall live release rate for the state was found to be 50% . . . including 37% for cats and 64% for dogs.¹⁶¹

158. *United States by Size*, WORLDATLAS, <http://www.worldatlas.com/aatlas/infopage/usabysiz.htm> (last visited Nov. 27, 2016).

159. See FLA. STAT. § 823.15(2)(a) (2016).

160. CC Miller et al., *Florida Shelter Animal Census: A Snapshot of Statewide Intake and Disposition*, UNIVERSITY OF FLORIDA HEALTH SHELTER MED. (2014), <https://vetmed-maddie.sites.medinfo.ufl.edu/files/2014/03/Abstract-Miller.pdf>.

161. *Id.*

This means that half of all animals admitted to Florida shelters are being executed. This is significantly higher than the national average, which indicates that 31% of dogs and 41% of cats that enter animal shelters nationwide are euthanized.¹⁶²

In light of the fact that 43% of companion animals are purchased from either a breeder or from a retail pet store,¹⁶³ the first logical step in combating the overpopulation of unwanted animals is to regulate the retail pet industry. Moreover, Florida must address the issue of the countless animals who are lost, subsequently enter state shelters, and are then never returned to their owners. Finally, Florida must demand a partnership between private rescue organizations and state animal shelters, to unite animal welfare activists statewide and allow for more stray animals to be fostered across the state, thereby thinning the number of animals residing in state shelter facilities.

a. Reforming Retail Pet Stores

The first step to increasing the number of adoptions from state animal shelters is to reform the market for the sale of companion animals. Currently, Florida is one of twenty-seven states that have enacted laws regulating the treatment of animals offered for sale within the state.¹⁶⁴ Section 828.29, *Florida Statutes*, sets forth the requirements of vaccines, examination, and certification by licensed veterinarians, as well as the conditions in which animals must be housed if offered for sale in retail pet shops.¹⁶⁵ Unfortunately, for all of the great strides that have been made to protect and regulate animals that are offered for sale, an untold number of the same are being supplied to Florida pet stores from puppy mills. Puppy mills are defined as operations that breed animals in inhumane conditions with the primary focus on maximizing output with little regard to health of the animals produced therein.¹⁶⁶ In fact, the large majority of pet stores acquire their animal “inventory” from puppy mills.¹⁶⁷ Puppy mill dogs are regularly unhealthy, and

162. *Pet Statistics*, AM. SOC'Y FOR PREVENTION CRUELTY TO ANIMALS (2016), <https://www.aspca.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics>.

163. *Pets By The Numbers*, *supra* note 25.

164. *The Current State of Pet Shop Laws*, BORN FREE USA, http://www.born-freeusa.org/b4a1_petshoplaws_currentstate.php (last visited Nov. 27, 2016).

165. FLA. STAT. § 828.29 (2016).

166. Michele Lazarow, *The Pet Store and Puppy Mill Connection*, SUN SENTINEL (Sep. 29, 2015), <http://www.sun-sentinel.com/opinion/commentary/fl-viewpoint-puppy-mills-20150929-story.html>.

167. *Id.*; *Don't Buy into Puppy Mills*, HUMANE SOC'Y OF THE U.S., <http://www.humane-society.org/dont-buy-into-puppy-mills.html?referrer=https://www.google.com/> (last visited Nov. 27, 2016).

those that serve as breeding stock are forced to live in disgusting environments with little contact with the outside world.¹⁶⁸ These puppy mills have even begun breeding various mixed breeds that effectively amount to a mix of two American Kennel Club recognized dog breeds to create dogs that are a more desirable size to consumers, or even dogs that do not subject patrons to allergic reactions.¹⁶⁹ These breeds have become so desirable by a public that claims to stay away from shelters in an effort to have purebred animals, that in 2007, the Kennel Club began

allowing dogs owners to register their crossbreeds on one or more of its established registers in an attempt to recognize and legitimize these mixed breeds.¹⁷⁰

The Florida legislature can combat the issue of shelter overpopulation and prohibit the funding of puppy mills by reforming the framework of retail pet stores. Essentially, pet stores must be regulated by the state government and required to obtain their “inventory” from state animal shelters. Thus, local pet stores would only be permitted to sell companion animals to patrons provided the animals are secured from shelters.¹⁷¹

Such reform would have the positive effect of eliminating the market for puppy mills that do not operate in compliance with local animal laws, as well as help increase the adoption numbers of state animal shelters. In fact, various cities across the nation have already successfully implemented programs of this nature.¹⁷² Casselberry, Florida became the first city in Central Florida to enact such a ban on the sale of dogs and cats.¹⁷³ Currently, 108 cities nationwide have enacted similar legislation.¹⁷⁴ Although Casselberry only enacted a partial ban forbidding new businesses from setting up operations within the county—and did not apply measures of reform retroactively to those stores currently selling

168. *Id.*

169. See Brittany Ferrara, *The Truth Behind Hypoallergenic Designer Hybrid Dogs*, EXAMINER (Feb. 19, 2013, 6:10 PM), <https://web.archive.org/web/20160123143310/http://www.examiner.com/article/the-truth-behind-hypoallergenic-designer-hybrid-dogs>.

170. See *Designer Dogs*, KENNEL CLUB, <http://www.thekennelclub.org.uk/our-resources/media-centre/issue-statements/designer-dogs/> (last visited Nov. 27, 2016) (allowing cross-breed dogs to be registered on one or more of the Kennel Club’s established registers).

171. See CASSELBERRY, FLA., CODE §18-2 (2015).

172. See *Jurisdictions with Retail Pet Bans*, BEST FRIENDS ANIMAL SOCIETY, <http://bestfriends.org/resources/jurisdictions-retail-pet-sale-bans> (last visited Nov. 27, 2016).

173. CASSELBERRY, FLA., CODE §18-2 (2015).

174. See *Jurisdictions with Retail Pet Bans*, *supra* note 172.

pets—the decision was met with praise from various local animal activists.¹⁷⁵

The strategy is justifiable as a matter of public policy. By 2011, 56% of American homes included at least one animal.¹⁷⁶ Of those pet owners, 63.2% consider their pet one of the family.¹⁷⁷ Animals are a valuable and important part of our society, and thus necessitate protection.¹⁷⁸ Beyond this value to humanity, animals are living and breathing creatures that have a right to life.¹⁷⁹

Similarly, the Board of Cosmetology in the state of Florida regulates manicure and pedicure specialists.¹⁸⁰ This is primarily a matter of public policy as well, since these specialists directly affect human health and safety. As such, nail technicians are required to be licensed and the salons frequently undergo inspections to ensure strict compliance with the laws.¹⁸¹ The health and safety of millions of animals is directly affected by the sale of the same, and thus also requires similar strict regulation.

The public's interest in purchasing a dog or cat from a pet store originates from multiple misconceptions about the animals that are available at the shelter versus the animals found in the retail stores.¹⁸² One common misconception is that purebred animals cannot be obtained from state shelters.¹⁸³ In fact, the Humane Society estimates that 25% of dogs within the shelter system are purebred animals.¹⁸⁴ Thus, although the retail pet regulations would likely make the acquisition of these breeds slightly more difficult, the animal shelters are able to comply with the current market demands for purebred dog breeds.¹⁸⁵

Moreover, in light of popularity of the aforementioned “designer breeds,” many more Americans are not only tolerating mixed breed dogs, but are actually seeking them.¹⁸⁶ Thus, the demand for such

175. See Casselberry, Fla., Ordinance No. 2015-1430 (Nov. 9, 2015); Bethany Rodgers, *Casselberry adopts partial ban on pet shop sales of dogs, cats*, ORLANDO SENTINEL (Nov. 9, 2015, 7:34 PM), <http://www.orlandosentinel.com/news/breaking-news/os-casselberry-pet-ban-approval-20151109-story.html>.

176. *Pets by the Numbers*, *supra* note 25.

177. *Id.*

178. See Koons, *supra* note 152.

179. See *Thomas Berry's Ten Principles of Jurisprudence*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, <http://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/> (last visited Nov. 27, 2016).

180. FLA. STAT. §§ 477.015-.016 (2016).

181. FLA. STAT. §§ 477.014, .025 (2016).

182. See Lisa Towell, *Myths About Pet Stores and Breeders*, PETA PRIME, (Jan. 18, 2012, 5:36 AM), <http://prime.peta.org/2012/01/myths>.

183. *Id.*

184. *Pets by the Numbers*, *supra* note 25.

185. See *id.*

186. See *Designer Dogs*, *supra* note 170.

breeds will be satisfied through shelter acquisitions since 75% of dogs in shelters would qualify as a “designer breeds.”¹⁸⁷ Requiring local pet stores to obtain animals from a state animal shelter allows for the general public to be exposed to a greater number of homeless animals during the quest to acquire a new pet. Of course, these retail pet bans would not affect local responsible breeders. Provided a local breeder does not open a retail pet store, the breeder—under the proposed legislation—would still be permitted to responsibly breed animals to be sold to the general public.

In order to ensure that breeders are behaving responsibly, Florida legislators should implement a breeder-licensing program similar to the platform that is currently in existence for various service industry providers such as hair stylists and manicure and pedicure specialists.¹⁸⁸ Such licensure would require that the breeder pay a licensing fee¹⁸⁹—thereby raising necessary revenue to assist state animal shelters in the care of homeless animals—as well as comply with a reasonable standard of care for the animal as defined by the legislature.

A model for this standard of care already exists in Florida wherein the state has codified what form of animal neglect constitutes animal cruelty.¹⁹⁰ The licensure requirement should require inspections of the breeding and housing facility—similar to those conducted by health inspectors regulating the beauty industry.¹⁹¹ These inspections would ensure that breeders maintained adequate conditions for the health and welfare of the animals raised therein. Additionally, similar requirements to those currently imposed on retail pet stores in the state of Florida should also be mandated to ensure that each breeder has the animals inspected and vaccinated by veterinarians.¹⁹² The requirement for vaccination against rabies is already mandated by the state,¹⁹³ and such requirement on local breeders would only serve to ensure greater compliance with the same.

The proposed legislation would cause limited disruption to responsible Florida breeders, but the effects of the new laws would be two-fold. First, the legislation would disrupt the puppy mill business within the confines of the state, and would allow the officials to properly prosecute violators of the existing Florida law forbidding animal mistreatment.¹⁹⁴ Since a majority of Florida

187. See *Pets by the Numbers*, *supra* note 25.

188. See, e.g., FLA. STAT. §§ 477.019, .0201 (2016).

189. See, e.g., FLA. STAT. § 447.026.

190. See FLA. STAT. § 828.12.

191. See FLA. STAT. § 477.025.

192. See FLA. STAT. § 828.29.

193. See FLA. STAT. § 828.30.

194. See, e.g., FLA. STAT. § 828.12.

retail pet stores currently acquire animals from puppy mills, regulation requiring the animals to be brought in from state shelters would effectively cut off those individuals that run puppy mills from their primary source of income. Moreover, by requiring licensing fees, the state would have an additional source of income to assist the state animal shelters in the care of homeless animals. The purpose of the proposed legislation is not to deny residents a source of revenue or the ability to earn a living, but rather to balance the interest of Floridians with the health, safety, and welfare of companion animals.

b. Reuniting Lost Pets with Owners

Another often overlooked problem that Florida animal shelters are currently facing is that of a low rate of return of lost animals to their owners.¹⁹⁵ It is estimated that only 26% of lost dogs that enter the shelter system are ever reunited with an owner, and as few as 5% of lost cats are returned to a previous owner.¹⁹⁶ The issue appears to stem from the lack of a centralized system aimed at reuniting lost animals with their owners once local animal authorities pick them up.

Currently, there is no single database in the state for the advertisement of animals that have entered facilities. This means that once an owner has discovered that an animal has gone missing, the owner must ascertain which county found her pet, and must either visit the facility to search for her animal or, in the cases of those counties that do advertise homeless animals on the internet, must find the appropriate webpage on which to look for their animal friend.¹⁹⁷

Moreover, many of the websites that do advertise the animals that have entered the facility provide poor quality photos that make it difficult for an owner to determine that her pet is housed therein.¹⁹⁸ Streamlining the system—and providing multiple pictures of each animal—would allow for more members of the general public who have lost an animal to identify and subsequently become reunited with their beloved family member.

195. *Pet Statistics*, *supra* note 162.

196. *Id.*

197. *See, e.g.*, ORANGE COUNTY ANIMAL SERVICES, <http://www.orangecountyfl.net/AnimalsPets.aspx#VuhYgcccZPII> (last visited Nov. 27, 2016).

198. *See, e.g., id.*

Additionally, educating the public as to the importance of pet identification tags and chips is paramount to assisting in this process. In 2007, “[o]n average, only 1.8 percent of all stray dogs and cats taken to participating shelters had microchips.”¹⁹⁹ Of those animals that had a microchip, over 72% were reunited with their proper owner.²⁰⁰ According to the research, the return-to-owner rate for cats with a microchip was twenty times higher than in those without a microchip, and for dogs 2.5 times higher.²⁰¹ The implications are clear: microchips increase the likelihood that an animal will be returned to its family. If an owner takes issue with the physical invasion of a microchip, there are multiple services that sell pet “licenses,” that provide thorough contact information that would assist authorities in returning the pet to its family.²⁰²

c. Partnerships with Private Rescue Groups and the Importance of Fosters

Perhaps the most important step towards increasing the number of adoptions from state animal shelters involves cooperation with the hundreds of private pet rescue groups statewide.²⁰³ Currently, there are hundreds of private rescue organizations throughout Florida.²⁰⁴ These rescue groups are usually staffed by volunteers who band together and attempt to alleviate the pressure on the municipal animal shelters due to the sheer volume of animals brought in each day.²⁰⁵

The fact that these groups use their own private resources to care for the animals, there is often no brick and mortar facility that can be utilized to house them.²⁰⁶ As such, these private animal rescue organizations tend to rely heavily on foster homes to nurture the animals during the adoption process.²⁰⁷ These

199. Emily Caldwell, *Microchips Result In A High Rate of Return of Shelter Animals to Owners*, OHIO ST. U. RES. NEWS, <http://researchnews.osu.edu/archive/shelterchip.htm>.

200. *Id.*

201. *Id.*

202. *See, e.g.*, MY PETDMV, <https://www.mypetdmv.com> (last visited Nov. 27, 2016).

203. *See Florida Dog Rescue Group Directory*, RESCUE SHELTER NETWORK, <http://dog.rescueshelter.com/Florida> (last visited Nov. 27, 2016).

204. *See id.*

205. *Learn About Pet Adoption*, THE SHELTER PET PROJECT, <http://theshelterpetproject.org/about-pet-adoption/> (last visited Nov. 27, 2016).

206. *Adoption FAQs*, THE SHELTER PET PROJECT, <http://theshelterpetproject.org/about-pet-adoption/faqs> (last visited Nov. 27, 2016).

207. *Foster Homes*, PET ALLIANCE, <http://petallianceorlando.org/community-involvement/foster-homes/>.

homes voluntarily provide a safe and healthy environment for the animals while they await a permanent home.²⁰⁸

This foster care system is strikingly analogous to that encouraged by the Department of Children and Family Services (DCF).²⁰⁹ As such, a model currently exists in which state legislators can base a foster system for shelter animals. Foster homes would need to undergo certification of a similar nature to that required by DCF to ensure that the animals are being transferred into the proper environment before adoption.²¹⁰ Additionally, various financial incentives should be offered to those that participate in the program, which could be funded from resources that would otherwise be earmarked for the care of animals in shelter facilities. Further, while in foster care, the animal will be exposed to a family that may decide to permanently adopt him or her. At the very least, being housed in foster care will expose the animal to interaction with humans, and the dog or cat will experience less emotional trauma than that which is currently noted to occur in state shelters.²¹¹ A partnership with these groups will allow for resources to be more evenly distributed; and by increasing the number of temporary homes for the animals within the system, more space would be available in the state facility itself for those animals that require greater medical care or behavioral modification.

2. Decreasing the Number of Animals Entering Shelter Facilities Statewide

The second prong that must be satisfied in order to achieve No-Kill status in Florida is a decrease the number of animals entering shelter facilities. Much like New Hampshire, Florida should examine the statistics of shelter animals as the necessary first step. It is only through obtaining clear statistics—as is currently required by state law—that any positive steps can be undertaken towards the goal of becoming a No-Kill state. New Hampshire legislators needed to understand the sheer volume of animals that entered the state facilities every year in order to determine how to best draft legislation to address the problem. Florida is no different.

208. *Id.*

209. See *Foster Care*, DEP'T OF CHILDREN AND FAMILY SERVS., <http://www.myflfamilies.com/service-programs/foster-care> (last visited Nov. 27, 2016).

210. See *id.*

211. *The Emotional Lives of Shelter Dogs, Part One*, DOGS OUT LOUD, (Nov. 29, 2012), <http://www.dogsoutloud.org/2012/11/the-emotional-lives-of-shelter-dogs-part-one/>.

a. Statewide Low Cost Sterilization Programs

As discussed in Section III of this article, Florida currently has a sterilization requirement for all animals that are adopted from state animal shelters.²¹² Unfortunately, Florida currently does not have legislation that sets forth a statewide, low-cost spay and neuter program for low-income families like that which was so successful in lowering euthanasia rates in New Hampshire.²¹³ This needs to change. The state of New Hampshire was able to achieve a 75% drop in statewide euthanasia rates in seven years through sterilization legislation.²¹⁴ It is therefore imperative that Florida follows suit in an effort to save thousands of healthy animals that walk the halls of the state facilities each year. By reducing the cost associated with spay and neuter procedures Florida would increase the likelihood that an animal would be fixed, thereby reducing the number of unplanned and unwanted animal pregnancies statewide.

The goal of the proposed legislation to reduce the costs associated with spaying and neutering an animal is to encourage those individuals who do not understand proper breeding techniques to sterilize companion animals. This initiative will go hand in hand with the breeder licensure requirement outlined above, and will inevitably assist in lowering shelter intake rates by decreasing the number of animal births statewide. Regulating breeders throughout the state and providing for low cost sterilization alternatives for those unlicensed to engage in animal breeding would ensure that only professionals with sufficient knowledge of proper breeding techniques would be operating statewide, and would reduce the number of unhealthy animals—due to improper breeding²¹⁵—entering the state system each year. As the number of animal intakes decrease, the “need” to execute animals to make space within the municipal animal shelter will be eliminated.

b. Eradicating Breed Bans

An important step towards decreasing the number of animal intakes into state facilities is to disallow breed bans within the state of Florida. Presently, various counties throughout the state have implemented city ordinances that forbid citizens from

212. See FLA. STAT. § 823.15(3) (2016).

213. See N.H. REV. STAT. ANN. § 437-A:2 (1993).

214. MARSH, GETTING TO ZERO, *supra* note 84, at 1.

215. See *Inbreeding*, KENNEL CLUB, <http://www.thekennelclub.org.uk/health/breeding-for-health/inbreeding/> (last visited Nov. 29, 2016).

owning various breeds of dogs that are considered by the city to be dangerous.²¹⁶ One commonly regulated “breed” is known as the “pit bull,” but the term is more accurately characterized as a category of dogs because the “pit bull” includes American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, and English Bull Terriers.²¹⁷

One such example of this has been implemented in Miami-Dade County.²¹⁸ No pit bull dogs have been permitted to be sold, purchased, obtained, brought into Miami-Dade County, or otherwise acquired by residents of Miami-Dade County anytime since April 14, 1989.²¹⁹ “No such newly acquired pit bull dogs may be kept, maintained, or otherwise harbored within Miami-Dade County.”²²⁰ Violation of the city ordinance may result in the issuance of a civil violation notice, and humane destruction of the pit bull dog by order of a court of competent jurisdiction.²²¹ Moreover, the ordinance requires “[e]very veterinary office, kennel, commercial breeder, commercial animal establishment, pet shop, and dog grooming business” to post a pit bull sign stating in English, Spanish, and Creole the following:

BOTH PURE AND MIXED BREED PIT BULL DOGS ARE CLASSIFIED AS DANGEROUS. IT HAS BEEN ILLEGAL TO ACQUIRE A NEW PIT BULL DOG SINCE JANUARY 1, 1990. FAILURE TO REGISTER, MUZZLE, CONFINE, AND INSURE A PIT BULL IS A VIOLATION OF THE LAW SUBJECT TO SEVERE PENALTY. Section 5-17.1, Miami-Dade Code.²²²

Subsequently, this ordinance was challenged and found to not be a violation of equal protection and remains in effect to date.²²³ However, the Florida legislature disagrees with the court’s finding

216. See, e.g., MIAMI-DADE COUNTY, FLA., ORDINANCE NO. 89-22 (Apr. 4, 1989).

217. *Breed Specific Legislation*, ASPCA, <http://www.aspc.org/animal-cruelty/dog-fighting/breed-specific-legislation> (last visited Nov. 27, 2016).

218. See MIAMI-DADE COUNTY, FLA., CODE § 5-17 (1989).

219. See MIAMI-DADE COUNTY, FLA., CODE § 5-17.6(b) (1989) (requiring persons to comply with the provisions of this section “after the passage of ninety (90) days after the effective date of Ordinance Number 89-22”); see also MIAMI-DADE COUNTY, FLA., CODE § 5-17.4 (1989) (mandating that every pit owner in Miami-Dade County must register their dog with Animal Services).

220. *Id.*

221. MIAMI-DADE COUNTY, FLA., CODE § 5-17(b)(1)-(2) (1989).

222. MIAMI-DADE COUNTY, FLA., CODE § 5-17.7 (1989).

223. See *State v. Peters*, 534 So. 2d 760 (Fla. 3d DCA 1988) (finding that the ordinance regulating pit bulls did not violate equal protection and is rationally related to the important government purpose).

that breed bans are constitutional.²²⁴ Specifically, section 767.14, *Florida Statutes*, prohibits local governments from banning any specific breed of dog.²²⁵ Thus, the ordinance has been directly preempted, and yet, the county continues to operate with a breed specific ban. This is seemingly justified by dog bite statistics that have deemed pit bulls as a dangerous breed,²²⁶ and the counties appear to rely on the classification of pit bulls as dangerous animals in support of the offending ordinance.²²⁷

As many as 4.5 million people are bitten by dogs each year in the U.S.²²⁸ Although pit bulls have been identified by the American Veterinary Medical Association (AVMA) as a breed more commonly associated with dog bites, the AVMA specifically articulated in its report detailing the findings of various dog bite census collections that it cannot be held that pit bulls are more dangerous than other dog breeds; or even that they are more likely to attack a person because this elevation in the statistics may very well be a direct result of the popularity of the breed among those owners who specifically train the animals for illegal dogfighting.²²⁹ Unfortunately, as a direct result of misinterpretation of studies such as these, city ordinances like the one outlined above continue to operate throughout the state. Additionally, many private insurance companies are now refusing to insure those that own so-called “dangerous breeds.”²³⁰ Accordingly, homeowners are being forced to surrender their pets to state animal shelters in order to live in apartments and homes.²³¹

Of greatest concern is that the incidence of dog bites have a high rate of co-occurrence with other intervening and preventable circumstances.²³² A major concurrent factor in 87.1% of 256 dog bite incidents was the absence of an able-bodied person that could

224. See, e.g., FLA. STAT. § 767.14 (2016).

225. See *id.* (“Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs, . . . provided that no such regulation is specific to breed . . .”).

226. *Literature Review on the Welfare Implications of the Role of Breed in Dog Bite Risk and Prevention*, AM. VETERINARY MED. ASS’N 1 (2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/dog_bite_risk_and_prevention_bgnd.pdf [hereinafter *Role of Breed*].

227. See Peters, 534 So. 2d at 764.

228. *Dog Bite Prevention*, AM. VETERINARY MED. ASS’N, <https://www.avma.org/public/Pages/Dog-Bite-Prevention.aspx> (last visited Nov. 27, 2016).

229. *Role of Breed*, *supra* note 226.

230. Wayne T. Price, *Choose: Beloved Pet or Homeowners Insurance*, FLA. TODAY, May 13, 2002 at 2A.

231. See *id.*

232. Gary J. Patronek et al., *Co-occurrence of Potentially Preventable Factors in 256 Dog Bite-Related Fatalities in the United States (2000-2009)*, 243 J. AM. VETERINARY MED. ASS’N 1726 (2013).

intervene.²³³ In 85.2% of the cases, the victims had an incidental or unfamiliar relationship with dogs.²³⁴ Additionally, in 84.4% of the cases, the owners had failed to neuter the dog and the behavior was at least marginally correlated with the animal's sexual maturity.²³⁵ In 76.2% of cases, the dog was kept isolated from regular positive human interaction; 37.5% of the time and the human owner of the dog was proven to have been guilty of prior mismanagement.²³⁶ Finally, in 21.1% of the cases, the owners had a history of abuse and neglect toward dogs.²³⁷

Four or more of these factors co-occurred in 80.5% of the dog bites that resulted in deaths.²³⁸ It is important to note that a valid breed determination was possible for only 17.6% of the dog bites studied, and of that small percentage, over twenty breeds, including two known mixes, were identified.²³⁹ Thus, it is impossible to definitively link pit bulls—or other such designated dangerous breeds—to an increased risk of violence.²⁴⁰ Compounding the inaccuracy of the numbers is the classification of multiple breeds as a “pit bull.”²⁴¹ Thus, the incidence of dog bites resulting from an attack by a pit bull becomes an inflated number that in actuality reflects bites by five different breeds simultaneously.

The Florida legislature should enforce section 767.14, *Florida Statutes*, statewide. These city ordinances that ban various breeds that have been undeservingly named dangerous have directly contributed to the shelter overpopulation issue. The legislature clearly intended to specifically forbid such classification based on breed, and this law preempts any laws enacted by the various cities within the state. Furthermore, a ban based on inaccurate statistics is patently unacceptable and cannot be supported by the state legislature.

V. CONCLUSION

The number of animals that enter shelter facilities each year is staggering. While society seems to have resigned itself to the “necessary evil” of euthanasia, the very term by definition does not embrace the mass killing of healthy and adoptable beings. Many of these creatures never have a chance to find a home and enrich

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *See id.*

241. *See Breed Specific Legislation, supra* note 217.

the lives of many. Despite current societal beliefs, the execution of millions of animals each year is not only inhumane, but also entirely unnecessary.

Florida legislators must end this cruel treatment of animals and, in order to do so, must begin by acknowledging that animals—like all beings—have a right to life. In support of this right, it is essential that the state of Florida put an immediate halt to the practice of “euthanasia,” and publicly declare that healthy and adoptable animals will no longer be executed within the borders of the state. To achieve this, legislators must implement simple strategies to increase the number of animals adopted from state shelters each year, and to decrease the number of animals taken into the shelter systems. Through a methodical application of retail pet store reform, increased breeder regulation, microchipping, and a centralized system to advertise what animals are currently in protective custody, the number of adoptions from state shelters can dramatically increase. State legislators must also pass legislation creating and funding a low-cost spay and neuter program for low-income families and must enforce existing state statutes that preempt city ordinances that enact breed specific bans.

With a concerted community effort, the state of Florida can achieve No-Kill status. We must be a voice for those innocent creatures that otherwise cannot speak for themselves. We must save them. We are their only hope.