

# IS REGISTERING AS AN ANIMAL ABUSER IN ILLINOIS ABUSIVE TO THE OFFENDER? AN EXAMINATION OF THE PROPOSED ILLINOIS ANIMAL ABUSE REGISTRY

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## I. INTRODUCTION

Imagine a scenario: an Illinois mother, Jill, finds a dog on the streets. She considers how much her two young children would adore having a pet. She knows she could not afford to purchase the dog at a shelter, because she can barely afford to feed and clothe her children and pay the bills for the apartment. Although Jill is trying to provide the best that she can for her family, she fails to pay the rent and is evicted. Faced both with the high cost of caring for the dog, now named Jack, and her children's wishes to bring him along, Jill has to decide what to do with the dog, pack, and move within twenty-four hours. Despite her growing attachment and the children's pleas, she decides to leave Jack behind. Her main priorities are her children and providing for them, and she knows she cannot afford to keep Jack. She feels the money will be better spent on her children. The landlord fails to check the premises for a few days and, upon inspection of the apartment, a police officer finds the animal has been left and neglected. Jill left an address with the landlord, and the police officer locates her and charges her with cruel treatment.<sup>1</sup> Using his own subjective discretion to determine the dog is "starved," the police officer determines it is best to charge her instead of

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1. See Human Care for Animal Act, 510 ILL. COMP. STAT. 70/3.01 (2013).

educating her.<sup>2</sup> She is convicted of a Class A misdemeanor and is fined \$1000.<sup>3</sup>

If Illinois' proposed animal abuse registry<sup>4</sup> passes, Jill would be required to register as an animal abuser. Finding employment will be hard because prospective employers will find her on the public registry, and she will still be faced with an impoverished life and two suffering children. This Comment will explain why the proposed animal abuse registry in Illinois should not be passed because it pushes constitutional limitations, is impractical, and would be ineffective in meeting its goals. Section II of this Comment will provide background information on animal abuse registries, including Illinois' proposed registry, and other relevant Illinois registries. Section III will discuss the constitutional limits any registry in Illinois faces. Section IV of this Comment will discuss the problems associated with an animal abuse registry in Illinois.

## II. BACKGROUND

Protecting the interests of animals has been a growing concern in recent years.<sup>5</sup> As such, several national registries have been created<sup>6</sup>, yet they are ineffective. Several states also have attempted to create statewide animal abuse registries, but have failed to pass legislation.<sup>7</sup> The alleged justifications are minimized when compared to the failures discussed below. This is evidence enough of why Illinois's proposed registry should not be passed, and if so, would fail as well.

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2. See ASPCA, ANIMAL CRUELTY: THE LAW IN ILLINOIS 13, 17 (2007) [hereinafter *Animal Cruelty*, ASPCA] (discussing Illinois' animal abuse laws to provide guidance for those involved in the investigatory process). The American Society for the Prevention of Cruelty to Animals (ASPCA) encourages law enforcement to choose between educating or charging a person, while exercising their discretion. *Id.* at 13–14. It states, “This comes down to a judgment call based on gut feelings as much as anything else. Remember that you must apply objective criteria, and not base your decision on how you personally feel that animals should be treated.” *Id.* at 13. Animal Cruelty overlaps with a violation of Owner's Duties. *Id.* at 17. The ASPCA advises that, “It is up to the investigator and prosecutor, and then the judge or jury, to determine when failure to provide adequate food or water crosses the line to starvation, and when failure to provide humane care becomes cruelly treating an animal.” *Id.*
  3. See 730 ILL. COMP. STAT. 5/5-4.5-55 (2013) (listing maximum sentences for a Class A Misdemeanor).
  4. See *infra* Part II.F and accompanying text.
  5. See Randall Lockwood, *Animal Cruelty Prosecution: Opportunities for Early Response to Crime and Interpersonal Violence*, AM. PROSECUTORS RES. INST. 1, 6 (July 2006), <http://nationallinkcoalition.org/wp-content/uploads/2013/01/Prosecutors-LinkNDAA-APRI.pdf>.
  6. See, e.g., DNAPETS, <http://www.dnapets.org/about.aspx> (last visited Mar. 9, 2015); Stacy A. Nowicki, Comment, *On the Lamb: Toward A National Animal Abuser Registry*, 17 ANIMAL L. 197, 229-33 (2010).
  7. See Nowicki, *supra* note 6.

### A. The Alleged Need for an Animal Abuse Registry

In 1821, Maine was the first state to view animal abuse as a crime.<sup>8</sup> Before this, states did not view harming animals as a crime. In the following thirty years, newly enacted laws reflected the concern not so much for the welfare of animals, but for the possibility of these crimes leading to crimes against humans.<sup>9</sup> Also, states reacted to the public's interest in protecting animals from unnecessary harm by creating penalties for egregious abuse.<sup>10</sup> In recent years, public interest in animal protection has grown.<sup>11</sup> Illinois enacted the Humane Care for Animals Act on October 1, 1973.<sup>12</sup> The Act defines duties an owner owes to his or her pet, violations when the duties are not met, and penalties associated with such violations.<sup>13</sup>

Recent laws have not just addressed the physical welfare of animals, but a greater societal need as well. A link has been recognized between animal abuse and other violence.<sup>14</sup> Studies have shown that animal cruelty can be a "predictor crime."<sup>15</sup> It has been said that "those who have a history of repeated acts of intentional violence towards animals are at higher risk for exhibiting similar violence or lawlessness towards people in the future."<sup>16</sup> Further, retrospective studies of incarcerated violent offenders reveal that they often have a high frequency of animal abuse offenses in their childhood.<sup>17</sup> Scholars believe animal cruelty can also be an indicator crime where animal abuse likely indicates the offender is abusing someone else.<sup>18</sup> It is also suggested that cruelty to animals destabilizes communities.<sup>19</sup>

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8. Lockwood, *supra* note 5, at 6.

9. *Id.*

10. *Id.* at 9.

11. *Id.*

12. 1973-1974 Ill. Laws 2852 (codified as 510 ILL. COMP. STAT. 70/1).

13. 510 ILL. COMP. STAT. 70/3-3.04 (2013).

14. See *Animal Cruelty and Human Violence: A Documented Connection*, HUMANE SOC'Y (Apr. 25, 2011),

[http://www.humanesociety.org/issues/abuse\\_neglect/qa/cruelty\\_violence\\_connection\\_faq.html](http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html) (discussing and citing the relationship between animal abuse and human violence).

15. Randall Lockwood, *Counting Cruelty: Challenges and Opportunities in Assessing Animal Abuse and Neglect in America*, in *THE INTERNATIONAL HANDBOOK OF ANIMAL ABUSE AND CRUELTY: THEORY, RESEARCH, AND APPLICATION* 87, 88 (Frank R. Ascione ed., Purdue U. Press 2008).

16. *Id.*; Lockwood, *Animal Cruelty Prosecution*, *supra* note 5, at 10.

17. Lockwood, *Counting Cruelty*, *supra* note 15, at 88. See Christopher Hensely et al., *Recurrent Childhood Animal Cruelty: Is There a Relationship to Adult Recurrent Interpersonal Violence?*, 34 CRIM. JUST. REV. 248, 254 (2009) (studies showing an association of childhood animal abuse and violence against humans as they become adults).

18. Lockwood, *Counting Cruelty*, *supra* note 15, at 88 (explaining how observing animal abusers "can often lead to the discovery of people who have been harmed by the same perpetrator, or who are at high risk of being harmed . . . Serious animal neglect can also be an indicator of a variety of social problems that need to be addressed.").

19. *Id.* at 87 (stating that, although animal cruelty is seen as a low-level offense that may be overlooked by authorities, many people view animals as innocent victims and find animal cruelty very disturbing); Lockwood, *Animal Cruelty Prosecution*, *supra* note 5, at 12.

Lastly, prosecuting animal cruelty is consistent with the balanced approach model of juvenile justice.<sup>20</sup> The balanced approach model addresses “community safety, offender accountability and competency development.”<sup>21</sup>

The abovementioned reasoning indicates how animal abuse laws may prevent violence against humans by preventing animal abuse. Yet, the only animal abuse registry to successfully pass is at the county level in one state, and numerous states have failed to pass statewide registries.

## B. National Registries

Generally, animal abuse registries intend to compile information about animal abusers within a geographic location into a searchable database. Currently, no public statewide or national animal abuse registries exist.<sup>22</sup> A few animal interest organizations have created their own animal abuse registries, but they are arguably ineffective because they are informal and rely on information provided by the public.<sup>23</sup> The Animal Legal Defense Fund (“ALDF”) Criminal Justice Program maintains a national database of animal cruelty cases and current model animal protection laws; however, it is only available to prosecutors, judges, legislators, and researchers.<sup>24</sup> At one point, one public registry, called “Through Their Eyes (TTE), The National Animal Abuse Registry,” was a nonprofit organization based in New Hampshire.<sup>25</sup> The registry was an entirely volunteer-run organization, and it did not receive any government funding.<sup>26</sup> The registry was a simple spreadsheet where users could browse by an abuser’s last name, and it provided the offender’s name, case information, location, and possibly a photo.<sup>27</sup> The website is no longer maintained, emphasizing the ineffectiveness of this type of registry.

Another website, Pet-Abuse.com, maintains records of animal abuse cases from the United States, Canada, the United Kingdom, New Zealand,

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20. Lockwood, *Animal Cruelty Prosecution*, *supra* note 5, at 13 (“In the case of juvenile offenders, animal cruelty may be one of the earliest serious offenses to be reported and prosecuted, providing the opportunity for intervention at a stage where it is most likely to have positive long-term effects.”).

21. *Id.*

22. For an overview of the alternatives to animal abuser registries, *see* Nowicki, *supra* note 6 (discussing the two national registries and the challenges associated).

23. *See* DNAPETS, *supra* note 6; Nowicki, *supra* note 6.

24. *Criminal Justice Program*, ALDF, <http://aldf.org/about-us/programs/criminal-justice-program/> (last visited Mar. 9, 2015) (discussing the Criminal Justice Program and the services it provides).

25. *See* Nowicki, *supra* note 6, at 229.

26. *Id.*

27. *Id.* at 229–30.

Australia, and Spain.<sup>28</sup> The website's registry is called Animal Abuse Registry Database Administration System (AARDAS), and it is publically accessible.<sup>29</sup> It encompasses a sophisticated advanced search, allowing visitors to search by name, zip code, animal type, and case type.<sup>30</sup> Although appealing, the subjective nature of the database raises serious doubts as to the effectiveness of the website. The website admits it uses its own discretion when inputting data, such as classifying cases, and the crime cited may not necessarily be the true crime that was charged.<sup>31</sup>

### C. Enacted Animal Abuse Registries

As mentioned above, the only government created animal abuse registries exist on a county basis. The first government entity to pass such a registry was Suffolk County, New York, on October 12, 2010.<sup>32</sup> The county's police department contracts with the Suffolk County Society for the Prevention of Cruelty to Animals (SCSPCA) to establish and maintain a registry.<sup>33</sup> The law requires Suffolk County residents who have been convicted of an animal abuse crime and are eighteen or older to register with the Suffolk County Animal Abuse Registry.<sup>34</sup> Failure to register will result in a \$1000 fine or possible jail time.<sup>35</sup> Offenders must provide their name, aliases, current address, and a photo.<sup>36</sup> A person is required to remain on the registry "for five years following his or her release from incarceration or the date judgment was rendered, whichever is later."<sup>37</sup> However, registered persons who are subsequently convicted of animal abuse crimes must remain on the registry for ten years following their most recent conviction.<sup>38</sup> Although the Suffolk County SPCA claims the Animal Abuse Registry

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28. *Database of Criminal Animal Cruelty Cases*, PET-ABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database.php](http://www.pet-abuse.com/pages/cruelty_database.php) (last visited Mar. 9, 2015).

29. *Animal Cruelty Database Notes*, PET-ABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database/database\\_notes.php](http://www.pet-abuse.com/pages/cruelty_database/database_notes.php) (last visited Mar. 9, 2015).

30. *Database Cases*, PET-ABUSE.COM, *supra* note 28.

31. *Database Notes*, PET-ABUSE.COM, *supra* note 29.

32. SUFFOLK COUNTY, N.Y., CODE ch. 299, art. IV (2010).

33. *Id.* § 299-27 (stating that the county will contract with qualified organizations, but there's no information on a specific entity.)

34. *Id.* § 299-26 (defining animal abuse crime as, "The commission of the following enumerated crimes against an animal: animal fighting, as defined in the New York State Agriculture and Markets Law ("AML") § 351; overdriving, torturing and injuring animals; failure to provide proper sustenance, as defined in AML § 353; aggravated cruelty to animals, as defined in AML § 353-a; abandonment of animals, as defined in AML § 355; failure to provide proper food and drink to an impounded animal, as defined in AML § 356; interference with or injury to certain domestic animals, as defined in AML § 361; harming a service animal in the first degree, as defined in New York State Penal Code § 242.15.").

35. SUFFOLK COUNTY, CODE § 299-31.

36. *Id.* § 299-28(A).

37. *Id.* § 299-28(B).

38. *Id.* § 299-28(D).

Website is currently available, one wonders why more than three years later no offenders are registered on the public website, and it merely serves as a template for what “could be” in terms of a registry.<sup>39</sup>

On May 17, 2011, Rockland County, New York, became the second county in the nation to adopt an animal abuse registry.<sup>40</sup> The county found it was in the best interest of its citizens to adopt a local law modeled after Suffolk County’s registry because of the serious problems associated with animal abuse.<sup>41</sup> The Rockland County Sheriff’s department is empowered to establish and maintain an Animal Abuser Registry.<sup>42</sup> The requirements are modeled off of the Suffolk County Animal Abuse Registry.<sup>43</sup> Offenders must remain on the registry for four years and, if subsequently convicted of another animal abuse crime, are required to remain for an additional four years.<sup>44</sup> Offenders must pay an annual fee of \$50.<sup>45</sup> The law also makes it illegal for a person, shelter, or humane society, to knowingly or unknowingly sell or offer to sell an animal to an offender on the registry.<sup>46</sup>

That same year, on October 11, 2011, Albany County, New York, became the third county in the nation to pass legislation creating an animal abuse registry, called the “Animal Abuse Registry Law.”<sup>47</sup> The online registry requires the name, address, and a photo of any Albany County resident who is of the age sixteen or older and has been convicted of an “Animal Abuse Crime.”<sup>48</sup> The county police department contracted with the Mohawk & Hudson River Humane Society (MHRHS) to establish and maintain the registry.<sup>49</sup> Offenders are placed on the registry for ten years.<sup>50</sup>

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39. SUFFOLK COUNTY S.P.C.A., <https://suffolkspca.org/Abuser%20Registry.html> (last visited Mar. 9, 2015).

40. ROCKLAND COUNTY, N.Y., CODE ch. 230, art. II (2011), available at <http://www.ecode360.com/15306524>; Stephan Otto, *Rockland County, New York Unanimously Approves Animal Abuser Registry!*, ALDF (May 18, 2011), <http://aldf.org/blog/rockland-county-new-york-unanimously-approves-animal-abuser-registry/> (discussing the passage of Rockland County’s animal abuse registry).

41. ROCKLAND COUNTY, CODE § 230-5.

42. *Id.* § 230-7.

43. *Id.* § 230-8 (requiring all residents who are eighteen years of age or older and who are convicted of an animal abuse crime to submit his or her name, aliases, address, and photo).

44. *Id.* § 230-8(F).

45. *Id.* § 230-9.

46. *Id.* § 230-11.

47. ALBANY COUNTY, N.Y., LOCAL LAW K (2011), available at <http://access.albanycounty.com/legislature/resolutions/2011/20111011/LocalLawK.pdf>; Ian Carr, *Albany County, NY Passes Nation’s Third Animal Abuser Registry Law*, ALDF (Oct. 12, 2011), <http://aldf.org/blog/albany-county-ny-passes-nations-third-animal-abuser-registry-law/> (discussing the new county legislation).

48. *Id.* § 5.

49. *Id.* § 4; *Animal Abuser Registry*, MOHAWK HUDSON HUMANE SOC’Y, <http://www.mohawkhumane.org/registry.html> (last visited Mar. 9, 2015) (explaining the Albany County Animal Abuser Registry and providing the offenders, which currently only includes one person).

50. *Id.* § 4.

This law makes it a crime for any person or shelter to give, sell, or adopt an animal to an offender on the registry, which is punishable by fine of \$5000.<sup>51</sup>

New York City followed the lead of neighboring counties by adopting an animal abuse registry on February 4, 2014.<sup>52</sup> The New York City Council voted unanimously to override former Mayor Bloomberg's veto to create the animal abuser registry across the five boroughs.<sup>53</sup> The registry is only accessible by certain, specified groups.<sup>54</sup> The law empowers the New York City Department of Health and Mental Hygiene to create and maintain the registry, which shall contain the names and addresses of residents who have been convicted of an animal abuse crime.<sup>55</sup> Each offender must be registered for five years or, if subsequently convicted of another animal abuse crime, must remain registered for ten years following his or her most recent conviction.<sup>56</sup>

#### D. All Proposed State Animal Abuse Registries Have Failed

In response to a perceived statewide need, several states have introduced legislation creating a statewide public animal abuse registry, but all have failed to pass.<sup>57</sup> These states include: Alaska, California, Colorado, Rhode Island, and Tennessee.<sup>58</sup>

Alaska introduced the first bill proposing a state animal abuser registry in 1996.<sup>59</sup> The proposed legislation required an animal abuser residing in the state to provide, at a minimum, his or her name, aliases, address, place of employment, date of birth, animal abuse convictions, dates and places of animal abuse convictions, and driver's license number.<sup>60</sup> The duty to register would be relieved ten years after discharge from a conviction of animal abuse.<sup>61</sup> Under the proposed legislation, this information would not have

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51. *Id.* § 7.

52. NEW YORK CITY, N.Y., ADMIN. CODE tit. 17, ch. 15 (2014), available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1194780&GUID=4283D6A7-F421-44D9-AFCD-0053D523B89A&Options=ID%7CText&FullText=1>.

53. Chris Green, *NYC Creates City-Wide Animal Abuser Registry!*, ALDF (Feb. 5, 2014), <http://aldf.org/blog/nyc-creates-city-wide-animal-abuser-registry/>.

54. NEW YORK CITY, N.Y., ADMIN. CODE § 17-1502 (“Such registry shall be in electronic form and shall be made available to all law enforcement agencies, district attorneys, duly incorporated humane societies, societies for the prevention of cruelty to animals, dog or cat protective associations, animal control officers, pet shops and animal shelters operating in the city of New York.”).

55. *Id.* § 17-1502.

56. *Id.* § 17-1503.

57. Nowicki, *supra* note 6, at 221–28.

58. *Id.* (explaining the seven proposed bills and their demise).

59. S. 238, 19th Leg., 2d Sess. (Ala. 1996).

60. *Id.*

61. *Id.*

been publicly accessible.<sup>62</sup> However, the bill failed to make it past the State's Judiciary Committee.<sup>63</sup>

Six years later, Colorado introduced a bill designed to create the "State Registry of Animal Cruelty Offenders."<sup>64</sup> The bill required any Colorado resident who committed animal cruelty or aggravated cruelty to register with the Colorado Bureau of Investigation.<sup>65</sup> The Colorado General Assembly declared it necessary to enact such a bill to address animal cruelty and its many associated problems.<sup>66</sup> Some of the associated problems cited include: consistent patterns of animal abuse among perpetrators of child abuse, spousal abuse, and elder abuse; that many animal abusers are adolescents, some as young as four years old; and animal cruelty is a great indicator that "a person is developing a detrimental pattern of behavior in which power and control is sought by inflicting injury upon others."<sup>67</sup> The Colorado registry would have been made available to the public.<sup>68</sup> The bill was passed with amendments in the Colorado Senate.<sup>69</sup> It was then assigned to the House State, Veterans, & Military Affairs Committee, where it was postponed indefinitely.<sup>70</sup>

A year later, in 2003, Rhode Island proposed a bill that included a statewide animal abuse registry.<sup>71</sup> The bill would have made local law enforcement agencies responsible for obtaining offender information and maintaining the registry for five years.<sup>72</sup> It would have required the offender to provide his or her name, aliases, date of birth, Social Security number, address, place of employment, date and place of animal abuse offense, a photograph, fingerprints, and any tattoos or scars.<sup>73</sup> Besides the Social Security number, all information would have been available to the public through the Internet.<sup>74</sup> The bill never passed.<sup>75</sup>

In 2008, the Tennessee Senate introduced a bill creating the "Tennessee Animal Abuser Registration, Tracking and Verification Act of 2008."<sup>76</sup> Any person who committed aggravated cruelty to animals, felony animal fighting, or bestiality would have had to comply with the registry.<sup>77</sup> Violation of the

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62. *Id.*

63. *Id.*

64. S. 02-48, 63d Gen. Assemb., 2d Reg. Sess. (Colo. 2002).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* (bill summary).

70. *Id.*

71. H.R. 5817, 2003 Gen. Assemb., Jan. Sess. (R.I. 2003).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. S. 2676, 105th Gen. Assemb., Reg. Sess. (Tenn. 2008).

77. *Id.*



bill would have been a Class E felony only punishable by a fine.<sup>78</sup> The bill focused on public safety and awareness. As originally introduced, the bill required an exhaustive list of information required for the registry.<sup>79</sup> The bill was amended to remove many of the requirements, leaving similar requirements as Illinois' proposed bill.<sup>80</sup> As amended, the bill required the offenders to pay a one-time fee of \$50.<sup>81</sup> The bill ultimately died in the Tennessee House.<sup>82</sup>

Two years later, Senator Dean Florez introduced an animal abuse registry in the California Senate on February 19, 2010.<sup>83</sup> The Bill, drafted with the aid of The Animal Legal Defense Fund,<sup>84</sup> required "any person, over 18 years of age, convicted of felony animal abuse, as defined, to register with the appropriate law enforcement agency, as provided."<sup>85</sup> The offender would have been required to provide similar information as the other registries, but it was not as exclusive.<sup>86</sup> Certain information would have been available to the public through the Internet, which would have been maintained by the California Department of Justice.<sup>87</sup> The offender would also have been required to register for life.<sup>88</sup> The Bill moved through the Senate Judiciary Committee in April, however, it failed to pass due to extreme cost estimates provided by the State Department of Justice.<sup>89</sup>

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78. *Id.*

79. *Id.* (as originally introduced).

80. *Id.* ("Under this amendment, the registry would consist of a person's name, date of birth, address, all animal abuse convictions, conviction dates and locations, the person's photograph, and any other identifying data that the TBI deems necessary.").

81. *Id.* (originally the bill required a first-time fee of \$275, plus an annual fee of up to \$100).

82. *Id.*

83. S. 1277, 2009-2010 Leg., Reg. Sess. (Cal. 2010).

84. Jesse McKinley, *Lawmakers Consider an Animal Abuse Registry*, N.Y. TIMES, Feb. 21, 2010, <http://www.nytimes.com/2010/02/22/us/22abuse.html?th&emc=th&r=0>. See also Cal. S. 1277 (Apr. 19, 2010 bill analysis).

85. Cal. S. 1277 (legislative digest).

86. *Id.* (requiring the person to give his or her legal name, aliases, current address, name and address of employer, conviction information, and "any other information as may be required by the Department of Justice.").

87. *Id.*

88. *Id.*

89. *Animal Abuser Registry Proposed in California: 6/14/10 Update*, ALDF (June 14, 2010), <http://aldf.org/press-room/animal-abuser-registry-proposed-in-california/> ("While other states considering abuser registry legislation have compiled fiscal estimates ranging from \$19,000 to \$60,000 for costs of implementation of such registries, California's DOJ, in stark contrast, submitted estimates to the Senate Appropriations Committee ranging from \$750,000 to \$2 million. Owing to legislative deadline constraints, ALDF and the bill's sponsor were unable to successfully challenge these figures.").

### E. Illinois Registries

Illinois has recognized the societal need to protect children and the public by enacting two other abuse-related registries.<sup>90</sup> The Habitual Child Sex Offender Registration Act, later amended as the Sex Offender Registration Act (the SORA), was the first statewide registry adopted in Illinois.<sup>91</sup> SORA, in tandem with the Sex Offender Community Notification Law (Notification Law) provides an extensive scheme for the registration of sex offenders in Illinois and the dissemination of information to the public regarding the offenders.<sup>92</sup> Not surprising, the purpose of enacting the SORA and the Notification Law was “to create an additional measure of protection for children from the increasing incidence of sexual assault and child abuse.”<sup>93</sup> The Illinois Supreme Court has long held registering under the SORA does not constitute punishment because the purpose is not to punish offenders, but rather enhance public safety.<sup>94</sup> The First District Court of Appeals for Illinois upheld the SORA and the Notification Laws against challenges based on due process, right to privacy, and equal protection.<sup>95</sup> It held, echoing the Illinois Supreme Court, that two statutes did not violate an offender’s right to privacy under the Illinois Constitution because an offender’s crimes and addresses are already public information.<sup>96</sup> The court

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90. See Sex Offender Registration Act, 730 ILL. COMP. STAT. 150/1-12 (2014); Murderer and Violent Offender Against Youth Registration Act, 730 ILL. COMP. STAT. 154/1-105 (2014). However, Illinois has enacted other offender registries, which include the Methamphetamine Manufacturer Registry Act, 730 ILL. COMP. STAT. 180/1-10 (2014), and the Arsonist Registration Act, 730 ILL. COMP. STAT. 148/1-10 (2014).

91. Habitual Sex Offender Registration Act, Pub. Act. No. 84-1279, 1986 Ill. Laws 1467 (codified as amended at 730 ILL. COMP. STAT. 150/1-150/12) (requiring any person who has been charged of any of the listed offenses in 150/2(B),(C) to register, when the charge results in “a conviction for the commission of the offense or attempt to commit the offense, a finding of not guilty by reason of insanity of committing the offense or attempting to commit the offense, or a finding not resulting in an acquittal at a hearing for the alleged commission or attempted commission of the offense.” The offender must remain on the registry for ten years).

92. *People v. Beard*, 851 N.E.2d 141, 144 (Ill. App. Ct. 2006) (citing *People v. Malchow*, 739 N.E.2d 433, 437 (Ill. 2000)); see 730 ILL. COMP. STAT. 152 (2013) (requiring the Illinois State Police to establish and maintain a statewide Sex Offender Database for persons who have been convicted of certain sex offenses and/or crimes against children); Illinois Sex Offender Information, *Disclaimer*, ILL. ST. POLICE, <https://www.isp.state.il.us/sor/> (last visited Mar. 9, 2015) (explaining what the registry is, how it works, and important reminders, while also providing access to the Sex Offender Database).

93. *Id.* (citing *Malchow*, 739 N.E.2d at 437); see *Leshner v. Trent*, 944 N.E.2d 479, 483 (Ill. App. Ct. 2011) (“The purpose of the Sex Offender Registration Act is to enhance public safety by enabling law enforcement agencies to keep track of sex offenders.”).

94. *People v. Adams*, 581 N.E.2d 637, 641 (Ill. 1991); *Malchow*, 739 N.E.2d at 438; *Leshner*, 944 N.E.2d at 484.

95. *Beard*, 851 N.E.2d at 150.

96. *Id.* at 148; *People v. Cornelius*, 821 N.E.2d 288, 300 (Ill. 2004) (holding that the criminal lowered the reasonable expectation of privacy by committing a crime that resulted in his prosecution and a public record).

also held that the SORA and the Notification Law do not violate the Equal Protection Clause because they are rationally related to “furthering legitimate state interest of protecting children from sex offenders.”<sup>97</sup> Lastly, this court and the Illinois Supreme Court have both held the SORA and the Notification Law do not violate an offender’s due process right.<sup>98</sup>

The second registry currently in force in Illinois is the Child Murderer and Violent Offender Against Youth Registration Act, which is a registry for all violent offenders against children.<sup>99</sup> The information is not open to the public and only a limited group of persons can see the registry.<sup>100</sup> The offender must remain on the registry for at least ten years after convicted or for their natural life if previously subjected to registration under this Act or the SORA.<sup>101</sup> Illinois courts have not yet addressed the constitutional limitations of this registry.

#### F. Illinois’ Proposed Animal Abuse Registry HR 4188

On January 8, 2014, Illinois State Representative Maria Antonia (Toni) Berrios, D-Chicago, introduced a bill, HR 4188, creating an Animal Abuse Registry.<sup>102</sup> It proposes to amend the State Finance Act creating the Animal Abuse Registry Fund, as well as amending the Humane Care for Animals Act by detailing how the Registry will work.<sup>103</sup> The bill provides that the Department of Agriculture “shall create and maintain the animal abuse registry.”<sup>104</sup> It further states, “Any person 18 years of age or older that resides in or is domiciled in this State that has been convicted of a violation of Sections 3.01, 3.02, or 3.03 of this Act shall register with the Department within thirty calendar days after the date of conviction to be placed on the animal abuse registry.”<sup>105</sup> Currently, an offender convicted of Section 3.01

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97. *Id.* at 206.

98. *Id.* at 1486–48; *In re J.W.*, 787 N.E.2d 747, 757 (Ill. 2004) (holding that the Registration Act and Notification Law do not infringe on fundamental rights and are subject to the rational basis test).

99. 730 ILL. COMP. STAT. 154/1-105 (2014).

100. 730 ILL. COMP. STAT. 154/55 (“Except as provided in the Murderer and Violent Offender Against Youth Community Notification Law, the statements or any other information required by this Act shall not be open to inspection by the public, or by any person other than by a law enforcement officer or other individual as may be authorized by law and shall include law enforcement agencies of this State, any other state, or of the federal government.”); 730 ILL. COMP. STAT. 154/95 (requiring the disclosure of certain information to boards of institutions, school boards or principals of non-public schools, child care facilities, and libraries in areas where the offender is required to register or is employed).

101. 730 ILL. COMP. STAT. 154/40.

102. H.R. 4188, 98th Gen. Assemb., Reg. Sess. (Ill. 2014). *See also* T.J. Fowler, *Animal Abuse Registry Proposed*, THE S. ILLINOISAN (Jan. 22, 2014), [http://thesouthern.com/news/animal-abuse-registry-proposed/article\\_3814cb50-832a-11e3-b8d9-0019bb2963f4.html](http://thesouthern.com/news/animal-abuse-registry-proposed/article_3814cb50-832a-11e3-b8d9-0019bb2963f4.html) (discussing the proposed bill).

103. Ill. H.R. 4188.

104. *Id.*

105. *Id.*

is guilty of animal cruelty,<sup>106</sup> convicted of Section 3.02 is guilty of aggravated animal cruelty,<sup>107</sup> or convicted of Section 3.03 is guilty of animal torture (hereafter called the Offenses).<sup>108</sup> Offenders must provide the Department with their name, date of birth, address, and offense for which he or she has been convicted.<sup>109</sup> The offender must register annually and pay an annual fee of \$50 to the Department, which would be used to fund the registry.<sup>110</sup>

Distinct from other Illinois registries, once a person is convicted of one of the three violations, the offender is indefinitely listed on the registry unless that person first “demonstrates to the court that he or she has undergone psychiatric or psychological testing, the result of which indicates by clear and convincing evidence his or her capable and sound mental capacity and ability to own and properly care for an animal in a humane manner.”<sup>111</sup> Any person on the registry is not allowed to own a companion animal or be employed at an “animal shelter, pound, pet shop, zoo, or other business establishment where companion animals are present.”<sup>112</sup> Similar to the SORA, the registry would also be publicly accessible and include the offense for which the offender has been convicted.<sup>113</sup> Failure to register would be a

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106. Humane Care for Animals Act, 510 ILL. COMP. STAT. 70/3.01 (2013) (“Cruel treatment. No person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal. No owner may abandon any animal where it may become a public charge or may suffer injury, hunger or exposure. A person convicted of violating this Section is guilty of a Class A misdemeanor. A second or subsequent conviction for a violation of this Section is a Class 4 felony.”).

107. 510 ILL. COMP. STAT. 70/3.02 (“Aggravated animal cruelty. (a) No person may intentionally commit an act that causes a companion animal to suffer serious injury or death. Aggravated cruelty does not include euthanasia of a companion animal through recognized methods approved by the Department of Agriculture unless prohibited under subsection (b). (b) No individual, except a licensed veterinarian as exempted under Section 3.09, may knowingly or intentionally euthanize or authorize the euthanasia of a companion animal by use of carbon monoxide. (c) A person convicted of violating Section 3.02 is guilty of a Class 4 felony. A second or subsequent violation is a Class 3 felony.”).

108. 510 ILL. COMP. STAT. 70/3.03 (“Animal torture. (a) A person commits animal torture when that person without legal justification knowingly or intentionally tortures an animal. For purposes of this Section, and subject to subsection (b), “torture” means infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the animal. (b) For the purposes of this Section, “animal torture” does not include any death, harm, or injury caused to any animal by any of the following activities: (1) any hunting, fishing, trapping, or other activity allowed under the Wildlife Code, the Wildlife Habitat Management Areas Act, or the Fish and Aquatic Life Code; (2) any alteration or destruction of any animal done by any person or unit of government pursuant to statute, ordinance, court order, or the direction of a licensed veterinarian; (3) any alteration or destruction of any animal by any person for any legitimate purpose, including, but not limited to: castration, culling, declawing, defanging, ear cropping, euthanasia, gelding, grooming, neutering, polling, shearing, shoeing, slaughtering, spaying, tail docking, and vivisection; and (4) any other activity that may be lawfully done to an animal. (c) A person convicted of violating this Section is guilty of a Class 3 felony.”).

109. H.R. 4188, 98th Gen. Assemb., Reg. Sess. (Ill. 2014).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

Class B misdemeanor for the first offense, and subsequent violations would be considered Class 4 felonies.<sup>114</sup>

Speaking in regard to the legislative intent, Berrios said the Bill would reduce repeat offenses “by addressing the weakness of current animal cruelty penalties.”<sup>115</sup> Berrios further stated she introduced the Bill for tougher penalties aimed at animal abusers, considering one of the animal abuse crimes is only a Class A misdemeanor.<sup>116</sup>

### III. CONSTITUTIONAL LIMITATIONS

When a state requires certain criminals to register their personal information to a public registry, it faces constitutional limitations.<sup>117</sup> If Illinois’ proposed animal abuse registry passes, it will most likely face constitutional challenges based on infringement of procedural due process rights, substantive due process, and personal privacy rights. As mentioned above, Illinois courts have upheld the Sex Offender Registration Act, which serves as a public deterrence and promotes public safety.<sup>118</sup>

When a statute’s constitutionality is challenged, Illinois courts traditionally consider the legislative intent and the statutory construction of the statute.<sup>119</sup> It is well established that statutes are presumed constitutional, and the challenging party must prove the statute is invalid.<sup>120</sup> Illinois courts have a duty to construe the statute in a reasonable way that upholds its constitutionality.<sup>121</sup> Although the Illinois’ Animal Abuse Registry has not been enacted, these principles will govern how an Illinois court would analyze the constitutional limitations if the registry passes.

#### A. Due Process Challenge

The Fourteenth Amendment provides, “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”<sup>122</sup> The

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114. *Id.*

115. Fowler, *supra* note 102.

116. *Id.*

117. See, e.g., George L. Blum, Annotation, *Constitutional Challenges to State Child Abuse Registries*, 36 A.L.R. 6TH 475 (2008) (discussing the cases that have reviewed constitutional challenges to state child abuse registries); *People v. Beard*, 851 N.E.2d 141, 144 (Ill. App. Ct. 2006) (where defendant alleged the SORA and the Notification Law of Illinois violated due process, right of privacy, and equal protection because his crime was not sexually motivated); *People v. Malchow*, 739 N.E.2d 433 (Ill. 2000).

118. See *supra* notes 90–94.

119. See, e.g., *Malchow*, 739 N.E.2d 433 (applying the rules of statutory interpretation to the SORA); *People v. Adams*, 581 N.E.2d 637, 640 (Ill. 1991) (assessing the constitutionality of the SORA and the legislative history).

120. *Malchow*, 739 N.E.2d at 437.

121. *Id.*

122. U.S. CONST. amend. XIV, § 1.

Amendment has been interpreted to protect both procedural due process and substantive due process rights.<sup>123</sup> Procedural due process requires a person in danger of a serious deprivation of life, liberty, or property due to government action to be given notice and an opportunity to be heard.<sup>124</sup> Substantive due process requires the government to have a reasonable justification, which serves a legitimate governmental interest, before taking a person's life, liberty, or property.<sup>125</sup> An offender who is placed on an animal abuse registry would likely challenge the statute alleging it violates both their procedural due process and substantive due process rights.

### 1. Procedural Due Process Challenge

Under a procedural due process claim, the court must first determine whether the government is infringing upon a protected life, liberty, or property interest.<sup>126</sup> The Supreme Court has held that a right to reputation does not exist absent a showing of the loss of a previously held legal right.<sup>127</sup> The “stigma-plus” test was extended in terms of loss of government employment in *Siegert v. Gilley*.<sup>128</sup> The Court held that a “plaintiff would need to show the loss of employment was contemporaneous and coincided with the harm to the terminated employee’s reputation; that is, the stigmatic injury must arise as the employee is being terminated.”<sup>129</sup>

Once the court determines the government is infringing on a protected life, liberty, or property interest, the court must determine how much process is due. The Supreme Court has developed a three-factor balancing test to determine how much process is due.<sup>130</sup> The three factors are: (1) “the private interest that will be affected by the official action;” (2) “the risk of an

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123. Jill Wieber Lens, *Procedural Due Process and Predictable Punitive Damage Awards*, 2012 BYU L. REV. 1, 10 (discussing the difference between procedural and substantive due process and the significance it has on punitive damages).

124. ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 523 (2d ed. 2002); *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *People v. Beard*, 851 N.E.2d 141, 145 (Ill. App. Ct. 2006).

125. CHERMERINSKY, *supra* note 124, at 524; *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *Beard*, 851 N.E.2d at 145.

126. *Beard*, 851 N.E.2d at 145 (citing *People v. Cornelius*, 821 N.E.2d 288, 304 (Ill. 2004)).

127. *Paul v. Davis*, 424 U.S. 693, 708–09 (1976) (where a Kentucky police department placed plaintiff’s name on a list of active shoplifters and circulated to local merchants. Plaintiff claimed circulation of his name had injured his reputation, but the Court held he had no protected interest in his reputation alone, “apart from some more tangible interests”); Eric J. Mitnick, *Procedural Due Process and Reputational Harm: Liberty as Self-Invention*, 43 U.C. DAVIS L. REV. 79, 91 (2009).

128. 500 U.S. 226 (1991).

129. Mitnick, *supra* note 127, at 100 (citing *Siegert*, 500 U.S. at 234).

130. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). The Court held that interest of an individual in continued receipt of social security benefits is a statutorily created “property” interest protected by the Fifth Amendment. *Id.* The Court balanced three factors to determine an evidentiary hearing was not required prior to the termination of disability benefits, and the then-present administrative procedures fully comported with procedural due process right. *Id.*

erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”<sup>131</sup>

Revisiting the introductory scenario, Jill could challenge the registry based on a procedural due process claim if the registry is passed. She could argue the registry causes harm to her reputation plus a tangible interest in liberty, as required by *Paul v. Davis*.<sup>132</sup> Under the “stigma-plus” test, a state’s listing of an individual’s name, birth date, and address on an employer-accessible abuse registry constitutes a stigma attached to the accused. This is arguably more defaming than posting notice of active shoplifters<sup>133</sup> or posting a notice that an individual may not be sold alcoholic beverages.<sup>134</sup> In the latter case, the Supreme Court ruled that the notice infringed upon the plaintiff’s protected liberty interest due to his reputation plus the loss of his right to buy alcohol.<sup>135</sup> That case is similar to the case of an animal offender being placed on a public registry, which employers will see, because his or her reputation is tainted and it damages his or her opportunity for employment. The proposed registry prevents offenders from working at shelters, pounds, pet shops, zoos, or other business where animals are present.<sup>136</sup> The latter category already places an unreasonable barrier for employment, but coupled with the damaging employer-accessible registry, it is hard to deny that registrants would be faced with a loss of reputation plus a loss of employment opportunities.

An animal abuser has similar living restrictions as sex offenders who cannot live within “500 feet of a school, playground, or any facility providing programs or services exclusively directed toward people under age 18.”<sup>137</sup> Such limitations on one’s liberty must be equated to the severity of the offense. Overall, there is a general understanding across all jurisdictions that community notification negatively affects reputation.<sup>138</sup> This, coupled with

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131. *Id.*

132. 424 U.S. at 708–09.

133. *See id.* at 694.

134. *See* Wisconsin v. Constantineau, 400 U.S. 433, 435–36 (1971).

135. *Id.* at 437.

136. H.R. 4188, 98th Gen. Assemb., Reg. Sess. (Ill. 2014).

137. *Frequently Asked Questions*, ILL. SEX OFFENDER INFO., <http://www.isp.state.il.us/sor/faq.cfm?CFID=105490341&CFTOKEN=43125f2a41e68840-0A67BB8F-A3AB-8467-21C6171012057B6B&jsessionId=ec307aad4881a94027084fd6134017623433#unsupervised> (last visited Mar. 9, 2015).

138. *See, e.g.,* Wayne A. Logan, *Criminal Law: Liberty Interests in the Preventive State: Procedural Process and Sex Offender Community Notification Laws*, 89 J. CRIM. L. & CRIMINOLOGY 1167, 1172 n.25 (1999).

the extensive and onerous registration obligations on registrants, could satisfy the “stigma-plus” test.<sup>139</sup>

The Supreme Court has held the loss of employment must be concurrent with the stigmatizing result, however, this was decided in terms of public employment.<sup>140</sup> It is not implausible for a registrant to be stigmatically injured while being terminated. Therefore, an argument based on reputational injury and loss of employment could be recognized as a protected interest by an Illinois court. A protected interest could also be found based on the negative reputation plus the extensive registration requirements.

Once the Illinois court recognizes that Jill has a protected liberty interest, which the government is infringing upon through the registry, they will determine how much process is due using the three-factor analysis. Regarding the first factor, requiring Jill to register would harm her reputation and her interest in employment. An individual on any registry is branded by the state as a person to be feared and avoided. Animal abusers suffer harm to their reputations by way of public information of their offense and possible jail time. Justice Brennan noticed in the dissent of *Paul v. Davis* that state condemnation of “individuals as criminals . . . thereby brand[s] them with one of the most stigmatizing and debilitating labels in our society.”<sup>141</sup> An individual’s reputation cannot be replaced by some other credibility, as one might be able to receive other government benefits other than social security.<sup>142</sup>

As to the second factor, requiring all offenders convicted of animal cruelty, aggravated animal cruelty, or animal torture to register for the proposed registry involves a risk of erroneous deprivation because wrongful conviction is possible. An experiment testing the “the innocent defendant’s dilemma” showed both guilty and innocent students accepted an offered plea bargain and confessed to the alleged conduct.<sup>143</sup> Specifically, “[A]lmost

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139. Lower courts are split regarding sex offender registrations, with most concluding the additional burden of registering satisfies the second part of the test. *See, e.g.,* Mitnick, *supra* note 127, at 135 (discussing the due process limitations on sex offender community notification laws); *See also* Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 364–65 (2006) (citing a collection of cases).

140. *Siebert v. Gilley*, 500 U.S. 226, 229 (1991) (where the plaintiff’s employment had been terminated and he had been rendered ineligible for future government employment).

141. 424 U.S. 693, 714 (Brennan, J., dissenting); *see* Mitnick, *supra* note 127, at 110 (discussing how “reputation might most usefully be conceptualized as constitutive of social identity and individual self-concepts.”).

142. *See generally* Mathews v. Eldridge, 424 U.S. 319 (1976).

143. Lucian E. Dervan & Vanessa A. Edkins, *The Innocent Defendant’s Dilemma: An Innovative Empirical Study of Plea Bargaining’s Innocence Problem*, 103 J. CRIM. L. & CRIMINOLOGY 1, 33 (2013) (“In this article, Professors Dervan and Edkins discuss a recent psychological study they completed regarding plea bargaining and innocence. The study, involving dozens of college students and taking place over several months, revealed that more than half of the innocent participants were willing to falsely admit guilt in return for a benefit.”).



nine out of ten guilty study participants accepted the deal, while slightly fewer than six out of ten innocent study participants took the same path.”<sup>144</sup> This recent study shows the tendency for innocent individuals to take a plea bargain in return for a reduced punishment.<sup>145</sup> Additionally, convicted animal abusers either pay their fine or serve their time in prison for their wrongdoing, which is payment for their crime. The current procedures are sufficient to deter animal abusers from abusing animals or humans.

As to the third factor, the intent of the proposed legislation is to protect animals, reduce repeat offenders, and allow employers “to see if people they were thinking of hiring would ensure that animals were safe.”<sup>146</sup> These interests should be inferior to an offender’s interest in her reputation and employment because of the social and personal significance of reputation, as mentioned above, and the vitality of employment. However, requiring the state to provide additional procedures may come with high fiscal and administrative burdens.

As of now, the proposed bill only requires the offender to provide the Department of Agriculture with certain information.<sup>147</sup> The burden of requiring a pre-deprivation hearing would result in the Department spending time and money for every individual case. As the Supreme Court held in *Mathews v. Eldridge*, it is not plausible a court would find a pre-deprivation hearing reasonable.<sup>148</sup> Although a court may find Jill has a protected interest in her reputation plus future employment, an Illinois court may find that the proposed amendment may provide sufficient due process. However, Illinois courts should recognize the significance of an offender’s protected interest and compel the State to provide further process, such as a registration hearing to determine if registering is necessary.

## 2. *Substantive Due Process*

Under a substantive due process claim, the court “asks whether the government has an adequate reason for taking away a person’s life, liberty or property,” and “looks to whether there is a sufficient justification for the government’s action.”<sup>149</sup> Courts first look to whether the government is infringing upon a fundamental right of all people.<sup>150</sup> If the court finds the action allegedly infringes upon a fundamental right, the court will apply strict scrutiny.<sup>151</sup> The government must then show the infringement is necessary

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144. *Id.* at 33.

145. *Id.* at 35–36.

146. Fowler, *supra* note 102 (discussing the genesis of the bill).

147. H.R. 4188, 98th Gen. Assemb., Reg. Sess. (Ill. 2014).

148. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

149. CHEMERINSKY, *supra* note 124, at 11.

150. *People v. Cornelius*, 821 N.E.2d 288, 304 (Ill. 2004).

151. *Id.*

to serve a compelling government interest, and the statute must be “narrowly tailored” or the “least restrictive means” to achieve such interests.<sup>152</sup> However, if the court determines the action does not involve a fundamental right, the court will apply the rational basis test.<sup>153</sup> The government action is presumed constitutional, and the challenger must prove the action is not rationally related to a legitimate government interest.<sup>154</sup> The Supreme Court has interpreted the U.S. Constitution to include a right of privacy that applies to “personal decisions involving ‘marriage, procreation, contraception, family relationships, and child rearing and education.’”<sup>155</sup>

The Illinois Supreme Court has held that the information offenders are required to register under the SORA and the Notification Law is not subject to the federal right to privacy because the information is not within any of the recognized privacy rights.<sup>156</sup> Seeing as the Supreme Court has only recognized a limited amount of privacy rights, it is unlikely Illinois courts would find an animal abuser’s information is protected by the federal right to privacy.

#### B. Illinois’ Express “Personal Privacy”

A registrant may allege that the proposed animal abuse registry impermissibly infringes upon his or her constitutional right to privacy under the Illinois Constitution. Such may be alleged under the implied right provided in the U.S. Constitution, as mentioned above, and the explicit privacy right under the Illinois Constitution.<sup>157</sup>

Although a registrant is unlikely to survive an attack on their federal right to privacy, the Illinois Constitution explicitly provides for a right of privacy, which extends “‘beyond federal constitutional guarantees by expressly recognizing a zone of personal privacy’ and this provision is stated ‘broadly and without restrictions.’”<sup>158</sup> The court must first determine “whether the defendant has a reasonable expectation of privacy” in his

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152. *Id.*

153. *Id.*

154. *Id.*

155. *Carey v. Population Servs. Int’l*, 431 U.S. 678, 685 (1977) (citing *Roe v. Wade*, 410 U.S. 113, 152–53 (1973)). *See also* *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (marriage); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541–42 (1942) (procreation); *Eisenstadt v. Baird*, 405 U.S. 438, 453–54 (1972) (contraception); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (family relationships); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (child rearing); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (education).

156. *People v. Malchow*, 739 N.E.2d 433, 441 (Ill. 2000); *People v. Beard*, 851 N.E.2d 141, 148 (Ill. 2006).

157. *Malchow*, 739 N.E.2d at 441.

158. *Id.* (quoting *Kunkel v. Walton*, 689 N.E.2d 1047, 1055 (Ill. 1997)); *Beard*, 851 N.E.2d at 148.

information, in this case the animal abuser's personal information.<sup>159</sup> Then the court will consider whether mandating public access to the personal information "unreasonably invades that privacy expectation."<sup>160</sup> The SORA and the Notification Law have been upheld against such an attack with the Supreme Court of Illinois, holding that an individual "does not have a reasonable expectation of privacy in his sex offender information because that information is already public as part of the court record and the dissemination of that information is the result of the defendant's own criminal conduct."<sup>161</sup> However, the court noted the purpose of that registry is to protect children and allow law enforcement to monitor sex offenders, and the Notification Law is intended to protect the public; therefore, the information was never private.<sup>162</sup>

In Jill's case and any other potential registrants', her expectation of privacy should be analyzed differently than a sex offender's expectation. It seems the purpose of the registry would be for establishments looking to sell animals or hire individuals to work with animals to view the list, whereas the purpose of the sex offender registry is for law enforcement to monitor sex offenders, which protect children and the public. The two purposes are quite different. One is to protect animals, which cannot view the registry themselves, and the other is to protect society, as they may be harmed. It can be said an animal abusers' court record is public information, but Jill and other offenders have a reasonable expectation that the information will not be viewed by an employer, absent a reason to inquire into a background search. Further, Jill has a reasonable expectation of privacy in regard to her personal information, including where she lives. A court should recognize a qualifying registrant has a reasonable expectation of privacy.

A public registration of personal and court information would unreasonably invade Jill's and other similarly situated individuals' expectation of privacy. Unlike the SORA, other less invasive means are available to prevent an animal abuser from buying animals. It is also unreasonable to require convicted animal abusers not to be employed at an establishment where companion animals are present. The all-encompassing "other business establishment where companion animals are present" allows any employer to refuse employment and use this information in employment decisions. A public registration that does not further public safety should constitute an unreasonable invasion of a registrant's expectation of privacy.

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159. *Cornelius*, 821 N.E.2d at 298 (explaining Illinois' guarantee of personal privacy in terms of the SORA and the Notification Law).

160. *Id.*

161. *Beard*, 851 N.E.2d at 148 (citing *Cornelius*, 821 N.E.2d at 300).

162. *Cornelius*, 821 N.E.2d at 297-98 (discussing how the Illinois Supreme Court held that the pre-amendment Notification Law, which allowed public inspection upon request, was constitutional, and the amendment to the Notification Law creating Internet access does not infringe on a defendant's personal privacy rights).

#### IV. IMPLICATIONS OF STATEWIDE ANIMAL ABUSE REGISTRY

##### A. Impracticality of the Registry

A statewide animal abuse registry is not practical in Illinois and should not be adopted. Illinois is in no place financially to establish the first statewide registry. Further, the flaws in the bill will suppress any benefits the proposed bill may have.

In recent years, legislatures and advocates have often cited the link between cruelty to animals and the potential for violence to people as their motivation for new animal protection laws.<sup>163</sup> The research cited shows that serial sex offenders have a history of animal abuse before they graduate to human victims.<sup>164</sup> Two problems arise when relying on this data. First, if one speculates as to when this behavior begins, it would presumptively be during an offender's childhood. The State loses its argument as to the offender's information on the registry being public information because juvenile court records are sealed and minors would not be required to register. Second, the State is chastising an animal abuser for the potential to commit a future crime. Although research supports this link, the State cannot charge a man with a crime before he has done it, especially when the crime involves such a severe "graduation" from animal to humans.

Further, the rights of an animal cannot be placed over the rights of a human. It is true that animals need a voice because they cannot speak for themselves, that they feel pain, and animal abuse is wrong, but an animal abuse registry is not the most effective means to protect animals. Humans run the world. They work to ensure the population is fed, clothed, and housed. They are provided with individual or group rights, as recognized by the U.S. and state constitutions. After World War II, the United Nations established certain basic human rights by adopting the Universal Declaration of Human Rights.<sup>165</sup> Both international human rights and federally

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163. See, e.g., *Animal Cruelty*, ASPCA, *supra* note 2, at 17 (assessing that there is widespread recognition of this link, and in recent years there are been "a noticeable increase in interests in animal cruelty cases").

164. *Animal Cruelty*, HUMANE SOC'Y, *supra* note 14.

165. *International Human Rights Law*, OF. HIGH COMMISSIONER HUM. RTS., <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx> (last visited Mar. 9, 2015). The website discusses how international human rights law developed and the authority behind it. *Id.* The website also explains how the adoption of the Universal Declaration of Human Rights established, "basic civil, political, economic, social and cultural rights that all human beings should enjoy." *Id.* Over time, the agreement has "been widely accepted as the fundamental norms of human rights that everyone should respect and protect." *Id.* See Jamie Mayerfeld, *The Democratic Legitimacy of International Human Rights Law*, 19 IND. INT'L & COMP. L. REV. 49, 57-59 (2009) (presenting that human rights encompass four principles: Persons have a fundamental interest in security; persons have a fundamental interest in autonomy; persons are inviolable; and persons deserve to be recognized and treated as equals).

recognized rights show the importance of being an individual person. There comes a point where the rights of animals must give way to a human's rights.

The proposed bill should not be passed as written because the current language is impractical. Such implications include that the registration would be too expensive for the State to implement, too expensive for a registrant, and is harsher than Illinois' sex offender registry.

The proposed bill should not be passed because of the financial burden associated with it and the current financial state of Illinois. As of June 30, 2012, Illinois has \$47.2 billion in bond debt service, including \$30.3 billion in principal and \$16.9 billion in interest.<sup>166</sup> If this is any indication of the senseless volume of money the State is spending, an animal abuse registry should be a low priority of the Illinois legislature. Although the language of the proposed bill states the \$50 registration fee will "be used by the Department for establishing and maintaining the animal abuse registry,"<sup>167</sup> an initial cost of starting the registry will have to be paid by the State. The cost of creating the registry can range from \$19,000 to \$60,000 and potentially \$750,000 to \$2 million, as estimated by the California Department of Justice.<sup>168</sup>

The proposed bill would also implicate poverty barriers. Any person who is in a similar situation as Jill would not be able to afford the required \$50 annual registration fee. Illinois would need this registration fee to support the registration, but it should not be to the detriment of the offenders. An annual fee of \$50 may not seem substantial, but the cost would burden an already impoverished criminal. As the proposal is written, an offender is required to pay for the rest of his or her life, unless the offender proves he or she has been rehabilitated. That means on top of the annual fee, Jill would have to pay for psychiatric or psychological testing. The statute does not provide what kind, type, or the amount of treatment is required to deem Jill rehabilitated. It is difficult to think she, or most criminals, could afford the mandated treatment. The cost of treatment is not the end solution. Jill must go to court to prove "by clear and convincing evidence" that the psychiatric or psychological treatment resulted in her "capable and sound mental capacity and ability to own and properly care for an animal in a humane manner."<sup>169</sup> The abovementioned costs associated with the registry will result in poverty, lifetime registration, and an inability to maintain registration.

Lastly, as the proposed bill is written, registration would be harsher than the Illinois sex offender registration, which requires registration for more

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166. *Debt Levels*, ST. OF ILL. COMPTROLLER, <http://www.ioc.state.il.us/index.cfm/fiscal-condition/debt-levels/> (last visited Mar. 9, 2015) (explaining the debt levels in Illinois as of 2012).

167. H.R. 4188, 98th Gen. Assemb., Reg. Sess. (Ill. 2014).

168. *California Registry*, *supra* note 89.

169. Ill. H.R. 4188.

heinous crimes. Registrants would be prohibited from working “at an animal shelter, pound, pet shop, zoo, or other business establishment where companion animals are present.”<sup>170</sup> Such a restriction will likely prevent registrants from working most places because numerous stores allow customers to bring their pets into the store. On the other hand, Illinois sex offenders are only prohibited from working with children or youth-related programs.<sup>171</sup>

Although Illinois’ proposed animal abuse registry is trying to limit the offender’s interaction with potential victims, like the sex offender limitations, the last employment limitation is too broad. A similar catch-all phrase does not limit sex offenders because it would be impossible to limit their employment from anywhere children are present, as a slightly similar complication faces animal offenders and animals. Furthermore, registrants would be required to register until they are deemed capable to care for an animal after psychological treatment.<sup>172</sup> Sex offenders are only required to register for ten years, unless an individual has been found to be a sexually violent person or becomes subject to registration again.<sup>173</sup> The higher burden the proposed registry would place on registered individuals is far more than necessary.

#### B. Ineffectiveness of the Registry

A statewide animal abuse registry most likely would be ineffective because it will not reach its intended goals and current registries are ineffective. Current sex offender and abuser registries provide examples of ineffective registries. Legislators often cite the goal to decrease recidivism as a reason for implementing a sex offender registry. However, statewide studies comparing registered and unregistered sex offenders show the rates of recidivism between the two groups are not statistically significant.<sup>174</sup> Illinois claims the same objective, and it will only result in the same

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170. *Id.*

171. 720 ILL. COMP. STAT. 5/11-9.3(c) (2013) (“It is unlawful for a child sex offender to knowingly operate, manage, be employed by, volunteer at, be associated with, or knowingly be present at any: (i) facility providing programs or services exclusively directed toward persons under the age of 18; (ii) day care center; (iii) part day child care facility; (iv) child care institution; (v) school providing before and after school programs for children under 18 years of age; (vi) day care home; or (vii) group day care home.”).

172. Ill. H.R. 4188.

173. Sex Offender Registration Act, 730 ILL. COMP. STAT. 150/7 (2013).

174. See *The Iowa Sex Offender Registry and Recidivism*, IOWA DEP’T OF HUM. RTS. 1, 10 (Dec. 2000), [http://www.humanrights.iowa.gov/cjip/images/pdf/01\\_pub/SexOffenderReport.pdf](http://www.humanrights.iowa.gov/cjip/images/pdf/01_pub/SexOffenderReport.pdf) (discussing Iowa sex offender recidivism rates); see also Kristen Zgoba et al., *An Analysis of the Effectiveness of Community Notification and Registration: Do the Best Intentions Predict the Best Practices?*, 27 JUST. Q. 667, 670 (2009) (noting one study about sex offenders in Washington found a significant statistical difference, but it may be due to other factors).

ineffectiveness. Animal abuse registries take it one step further, expecting to prevent animal abusers from harming humans. If sex offender registries do not reduce repeat sex offenses against children, animal abuse registries certainly will not decrease potential abuses against humans by offenders who have never before harmed a human.

It is also unlikely that the proposed registry will efficiently work. As mentioned above, the first animal abuse registry was enacted in 2010, on a county basis, and the registry is supposed to be publicly accessible on the Internet.<sup>175</sup> After four years, this small-scale registry has yet to provide a single piece of offender information.<sup>176</sup> In fact, none of the county registrations are currently operable.<sup>177</sup> Compared to a county-based registry, the probability of a statewide registry succeeding is poor. Creating the registry will take an immense amount of time and money, seeing as how this will be the first statewide registry. Although the State may be able to compile a registry administered by the Department of Agriculture, it is questionable as to who will be able to access the information. This also defeats the purpose of making a registry public.

## V. CONCLUSION

Illinois' proposed public animal abuse registry should not be passed by the Illinois General Assembly because of the myriad of problems presented, and, if passed, will likely cause controversy in Illinois courts. It clearly compromises an individual's constitutional rights because it pushes the boundaries of due process and personal privacy. It would also be impractical because of Illinois' current financial crisis and the harsh ramifications it would impose upon taxpayers, administrators, and offenders. Lastly, the registry would be ineffective at attaining the proposed goals of protecting the public and animals from future abuse and enforcing a statewide registry. Prohibiting animal abusers from owning subsequent animals can be accomplished with other less intrusive means, including: animal shelters conducting background checks on individuals wanting to buy or adopt and creating a private registration that only shelters can obtain. If this bill is passed, individuals like Jill could likely be forced into a position where they could lose their children, their homes, or driven to commit other crimes.

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175. SUFFOLK COUNTY, N.Y., CODE ch. 207, art. IV (2010).

176. SUFFOLK COUNTY S.P.C.A., *supra* note 39.

177. *See supra* Part II.C and accompanying text.

