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NOTE

Made in the Midwest: Missouri's Puppy Mill Problem and How It Should Be Fixed

Bailey M. Schamel*

I. INTRODUCTION

In 2012, the U.S. Humane Society began publishing a yearly Horrible Hundred list.¹ This list includes a compilation of puppy breeding and/or puppy brokering facilities known to violate the minimal animal care standards set by the federal government, and the most recent list was published in 2017.² For five straight years, since the Horrible Hundred's inception, Missouri has topped the list.³ The problems with these breeders are often egregious; for example, one breeder had more than twenty-five dogs found underweight, sick, or injured in one year, and another breeder was twisting off the tails of puppies.⁴ The United States has about 10,000 puppy mills, and approximately thirty percent of them are located in Missouri.⁵ Missouri has a puppy breeding problem that must be addressed.

This Note discusses the laws and regulations surrounding commercial dog breeding in Missouri and the United States generally and how these laws can be improved to prevent the issues currently facing the state and country. The federal Animal Welfare Act ("AWA"), the minimum standards it sets, and Missouri's Canine Cruelty Prevention Act ("MO-CCPA") are discussed at length in Part II. Part III analyzes critiques of the MO-CCPA from those who opposed its passing and why these critiques exist. Finally, Part IV discusses what laws exist in other states and what Missouri should change to prevent the existence of numerous problematic puppy mills, which will hopefully remove it from the top spot on the Horrible Hundred list in the future.

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1. See HUMANE SOCIETY OF THE U.S., THE HORRIBLE HUNDRED 2017 1 (2017), <https://www.humanesociety.org/sites/default/files/docs/2017-horrible-hundred.pdf>.

2. *Id.*

3. *Id.*

4. See *id.* at 13, 23.

5. Pamela M. Prah, *Missouri's Puppy Mill Politics: Dog Breeder's Outmaneuver Animal Rights Movement*, SEATTLE TIMES (May 25, 2011), <https://www.seattletimes.com/life/lifestyle/missouris-puppy-mill-politics-dog-breeders-outmaneuver-animal-rights-movement/>.

II. LEGAL BACKGROUND

Two major areas of law are important to the discussion of the puppy mill problem in Missouri – the AWA and the MO-CCPA. Both are discussed fully below.

A. Animal Welfare Act

The federal government promulgated the AWA and vested enforcement of its provisions in the United States Department of Agriculture (“USDA”). The AWA encompasses requirements regarding the transportation, purchase, sale, housing, care, handling, and treatment of animals intended to be kept as pets.⁶ It applies to a wide variety of animals, including dogs.⁷ Animal and Plant Health Inspection Service (“APHIS”), an agency of the USDA, has inspectors that examine licensed breeders for potential AWA violations.⁸ These inspectors enforce USDA regulations through several methods: formal prosecution, suspension or loss of a license, monetary fines, cease and desist orders, or confiscation or euthanasia of animals.⁹

The AWA applies to any person who deals animals.¹⁰ A dealer is defined as any person “who buys or sells any dog, or negotiates the purchase or sale of any dog, for use as a pet”¹¹ These animal dealers must be licensed with the USDA.¹² Breeders need a license if they have more than four breeding females on their premises, regardless of ownership.¹³ Any person that breeds and sells dogs directly to a pet owner for the buyer’s own use as a pet is exempt from these licensing requirements.¹⁴ This kind of breeder avoids selling dogs to a store, like PetSmart or Pet Land, and sells directly to individuals who wish to buy a dog for companionship. However, these breeders must not buy any animals for resale, must do all sales face-to-face, and must not sell any animals to a research facility, dealer, or pet store.¹⁵

To obtain a license from the USDA, breeders must meet certain minimum requirements. One of those requirements is the maintenance of a comprehen-

6. *Introduction to APHIS Animal Care and the Regulatory Process*, USDA: ANIMAL AND PLANT HEALTH INSPECTION SERVICE 10 (Apr. 25, 2016), https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/1-Intro-USDA-APHIS-3-2016-Slides.pdf.

7. *Id.* at 12.

8. *Id.* at 14.

9. *Id.* at 16.

10. *Id.* at 24.

11. *See id.*

12. *Id.*

13. *Id.* at 26.

14. *Id.* at 29.

15. *Id.*

sive veterinary care program that ensures the animals in the breeder's care receive adequate veterinary care.¹⁶ To comply with the AWA and attain a license from the USDA, this comprehensive program must include a breeding facility, an attending veterinarian, a written program of veterinary care (when the veterinarian is only employed part-time and is not at the facility full-time), sufficient facilities, trained personnel, and a program kept updated with changes in operations.¹⁷ Additionally, the attending veterinarian must have regularly scheduled visits to the facility and make written comments or recommendations.¹⁸ If the veterinarian finds problems with the breeder, he or she may make recommendations for the breeder to fix the problems.¹⁹ If the problems are not fixed, the veterinarian may report the breeder to the USDA, just as any concerned prospective buyer could.

The AWA also has exercise requirements.²⁰ It requires breeders to “develop, document (in writing), and follow a plan that provides dogs with the opportunity to exercise.”²¹ The exercise plan must be reviewed and approved by a veterinarian and must be available for APHIS inspection.²² Individually-housed dogs – i.e., dogs in their own cage or run²³ – that do not share a living space with other dogs are exempt from these exercise requirements if they are in a cage or run that is “two times the required floor space for that particular dog.”²⁴ Required space for a dog is six inches longer than its length squared (the dog's length does not include the tail).²⁵ When dogs are in group housing, no exercise opportunities are required if the cage or run is one hundred percent of the space required for each individual dog.²⁶ That is, if each dog requires four square feet of space and there are two dogs within the same enclosure, then as long as there are eight square feet in the enclosure, the dogs would need no additional exercise to comply with the AWA regulations.

16. See generally *Program of Veterinary Care*, USDA: ANIMAL AND PLANT HEALTH INSPECTION SERVICE (Apr. 25, 2016), https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/4-VetCare-3-2016-Slides.pdf.

17. *Id.* at 4.

18. *Id.* at 8.

19. *Id.*

20. See *Exercise*, USDA: ANIMAL AND PLANT HEALTH INSPECTION SERVICE (Apr. 25, 2016), https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/5-Exercise-3-2016-Slides.pdf.

21. *Id.* at 4.

22. *Id.* at 5.

23. A run for a dog is a fenced in, locked area, usually outdoors where dogs are free to run. This is different than a cage, which is normally smaller and does not have space for the dog to run.

24. *Exercise*, *supra* note 20, at 9.

25. *Housing Part 2*, USDA: ANIMAL AND PLANT HEALTH INSPECTION SERVICE 22 (Apr. 25, 2016), https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/9-Housing-Part-2-3-2016-Slides.pdf.

26. *Exercise*, *supra* note 20, at 13.

In addition to spacing requirements, the USDA has other regulations for enclosures. These enclosures must be “[d]esigned and constructed of suitable materials, [s]tructurally sound, [and k]ept in good repair”²⁷ They must also “. . . [p]rotect animals from injury, [s]ecurely contain animals, [and k]eep animals dry and clean.”²⁸ There cannot be any sharp points or edges, and the floors must keep feet and legs from falling through spaces in slats or mesh.²⁹ The dogs must have enough space to “[t]urn around freely, stand, sit and lie down in a normal comfortable position and [to] walk in a normal manner.”³⁰ The enclosures must also be sheltered from extreme temperatures and weather (but outside enclosures are still allowed).³¹ The USDA defines extreme temperatures as exposure to temperatures below forty-five degrees Fahrenheit or above eighty-five degrees Fahrenheit for more than four consecutive hours.³² Dogs must also be kept in compatible groups, which means if they are housed with other dogs, they cannot fight.³³

B. Missouri’s Canine Cruelty Prevention Act

There are two important aspects of the MO-CCPA: the standards it sets and the enforcement scheme. Both are discussed fully below.

1. Standards Set by the MO-CCPA

Aside from the licensing regulations of the AWA, dog breeders in Missouri must comply with the MO-CCPA, which is enforced by the Missouri Department of Agriculture (“MDA”).³⁴ In November of 2010, Missouri voters passed Proposition B, then-titled the Puppy Mill Cruelty Prevention Act, by a narrow majority of fifty-two percent.³⁵ When then-Missouri Governor Jay Nixon signed the bill on April 27, 2011, he changed the name of the legislation to the MO-CCPA and eliminated the proposed act’s fifty breeding dog limit.³⁶ He also changed the voter-backed law’s requirements for floor space (twenty-five square feet for small dogs, thirty square feet for medium-size dogs, and thirty-five square feet for large dogs) and replaced them with requirements that

27. *Housing Part 2*, *supra* note 25, at 10.

28. *Id.*

29. *Id.* at 11.

30. *Id.* at 12.

31. *Id.* at 13.

32. *Id.* at 43.

33. *See id.* at 15–17.

34. MO. REV. STAT. § 273.345 (2016).

35. Chris Blank, *Missouri Governor Signs Compromise on Voter-Approved Prop. B, ‘Puppy Mill Cruelty Prevention Act’*, L.A. TIMES (Apr. 28, 2011), <http://latimesblogs.latimes.com/unleashed/2011/04/missouri-governor-signs-compromise-on-voter-approved-prop-b-puppy-mill-cruelty-prevention-act.html>.

36. *Id.*; *see also* S.B. 113 & 95, 96th Gen. Assemb., Reg. Sess. (Mo. 2011).

tripled Missouri's previous minimum space requirements,³⁷ resulting in less space.

First and foremost, dog breeders must apply for a license and comply with the standard of care requirements set out by the MO-CCPA.³⁸ This license expires annually.³⁹ To obtain a license in Missouri, breeders must have an inspection "by the state veterinarian, his designee, or an animal welfare official" to ensure the facilities meet the minimum standards.⁴⁰ After breeders are initially granted the license, they are still subject to, at a minimum, annual inspections or an inspection "upon a complaint to the department."⁴¹ Any individual can complain to the department – concerned buyers, veterinarians, or concerned individuals who simply see the conditions of the puppy mill. The State may refuse to issue, renew, or revoke a license for a few reasons, including violations of the MO-CCPA, a conviction for any violation of federal or state law "relating to the disposition or treatment of animals," or a failure to follow the requirements set out by the AWA, which includes failing an annual inspection.⁴² Operating without a license in Missouri is a Class A misdemeanor, which is punishable by up to one year in prison or a fine not to exceed \$2,000.⁴³

The MO-CCPA covers "any person having custody or ownership of more than ten female covered dogs for the purpose of breeding those animals and selling any offspring."⁴⁴ "Covered," for purposes of the MO-CCPA, means any type of domestic dog.⁴⁵ No language in the statute mentions a restriction on male dogs.⁴⁶ It should be noted that, by statute, if a breeder has three or more intact females and is breeding dogs for commercial sale, a license is required.⁴⁷ The MO-CCPA has six major areas of regulation that must be met for each dog: sufficient food and clean water, veterinary care, sufficient housing, sufficient space in kennels, regular exercise, and adequate rest between breeding cycles.⁴⁸

The minimum amount of veterinary care required under MO-CCPA is an annual exam by a licensed veterinarian.⁴⁹ Additionally, the veterinary care requirement entails prompt treatment of serious injury or illness by a licensed

37. Blank, *supra* note 35.

38. MO. REV. STAT. § 273.327.

39. *Id.*

40. *Id.* § 273.331.

41. *Id.*

42. *Id.* § 273.329.

43. *Id.*; *Missouri Misdemeanor Guide - Class A, B, C, D, Unclassified*, CARVER, CANTIN & MYNARICH, <https://carvercantin.com/missouri-misdemeanor/>, (last visited Mar. 9, 2019) [hereinafter *Missouri Misdemeanor Guide*].

44. MO. REV. STAT. § 273.345.3.

45. *Id.* § 273.345.4(2).

46. *See generally id.* § 273.345.

47. *Id.* § 273.325(8).

48. *Id.* § 273.345.3(1)–(6).

49. *Id.* § 273.345.4(3).

veterinarian and humane euthanasia when necessary using lawful techniques that have been approved by the American Veterinary Medical Association.⁵⁰ To comply with the sufficient housing requirements of the MO-CCPA, Missouri breeders must provide a sanitary facility with a solid surface for the dog to lie on.⁵¹ The housing must also protect the dog from the weather and be properly ventilated.⁵² Lastly, dogs within the same enclosure must be compatible.⁵³

The MO-CCPA also requires that breeders provide dogs with “sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs.”⁵⁴ This means there must be enough space for each dog to turn in a complete circle without difficulty and lie down and fully extend his or her limbs “without touching the side of an enclosure or another dog.”⁵⁵ The minimum allowable space in an enclosure is approximately triple the space requirement that Missouri previously set.⁵⁶ Additionally, since January 1, 2016, wire strand flooring in enclosures has been prohibited, as changes in flooring requirements were phased in by the MO-CCPA.⁵⁷

It is also important to consider the exercise requirements laid out in the statute. Those covered by this statute must provide their dogs with regular exercise.⁵⁸ Breeders must develop and comply with a licensed veterinarian-approved exercise plan and allow for their dogs to have the maximum opportunity for outdoor exercise.⁵⁹ As of January 1, 2016, all enclosures must “provide constant and unfettered access to an attached outdoor run.”⁶⁰

Lastly, breeders are required to give their dogs adequate rest between breeding cycles.⁶¹ Adequate rest is defined as, at the very least, “ensuring that female dogs are not bred to produce more litters in any given period than what is recommended by a licensed veterinarian as appropriate for the species, age, and health of the dog.”⁶² Covered parties must also maintain all sales and veterinary records for the two previous years, and these records must be made

50. *Id.*

51. *Id.* § 273.345.4(9).

52. *Id.*

53. *Id.*

54. *Id.* § 273.345.4(10).

55. *Id.* § 273.345.4(10)(b).

56. *Commercial Breeders*, MO. DEP’T OF AGRIC., <http://agriculture.mo.gov/animals/ACFA/commercialbreeders.php> (last visited Mar. 11, 2019). The MDA’s website has a calculator in which you can determine how much space would be necessary for different sized dogs. *See id.*

57. MO. REV. STAT. § 273.345.7(3).

58. *Id.* § 273.345.4(6).

59. *Id.*

60. *Id.* § 273.345.7(2).

61. *Id.* § 273.345.4(1).

62. *Id.*

available to a state veterinarian.⁶³ For state licenses, dog breeders could now pay up to \$2,500 instead of the previous limit of \$500.⁶⁴

2. Enforcement Scheme

To enforce the MO-CCPA, the Missouri Office of the Attorney General established the Canine Cruelty Prevention Unit.⁶⁵ The Canine Cruelty Prevention Unit is committed to the ongoing prosecution of violations of the MO-CCPA.⁶⁶ The Missouri Office of the Attorney General claims it has rescued 7,100 animals since January of 2009 as a result of these efforts.⁶⁷

Missouri has also established punishments for violations of the MO-CCPA, which can be found in section 273.347 of the Missouri Revised Statutes.⁶⁸ This statute provides that whenever a state animal welfare official or state veterinarian finds occurrences of MO-CCPA violations without correction, the Missouri director of agriculture may request that the State bring a civil action in the circuit court of the county where violations have occurred “for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order.”⁶⁹ The court may also issue a civil penalty for each violation, but it cannot issue a penalty of more than \$1,000 for each violation.⁷⁰

Missouri also uses this statute to criminalize canine cruelty.⁷¹ The statute defines the crime of canine cruelty, among other things, as the repeated violation of the MO-CCPA as well as the violation of other animal care statutes that “pose a substantial risk to the health and welfare of animals.”⁷² In Missouri, this crime is a Class C misdemeanor.⁷³ However, if the person charged has previously pleaded guilty or been found guilty of a violation of the animal welfare statutes, it is a Class A misdemeanor.⁷⁴ Missouri’s attorney general or a county prosecuting attorney can bring an action “in the county where the crime has occurred for criminal punishment.”⁷⁵ In Missouri, a Class C misdemeanor is punishable by up to fifteen days in prison or a fine not to exceed \$700, and

63. *Id.* § 273.345.5.

64. Blank, *supra* note 35.

65. *Canine Cruelty Prevention Unit*, MO. ATT’Y GEN., <https://www.ago.mo.gov/civil-division/agriculture-environment/canine-cruelty> (last visited Jan. 17, 2019).

66. *Id.*

67. *Id.*

68. *See generally* MO. REV. STAT. § 273.347.

69. *Id.* § 273.347.1.

70. *Id.*

71. *Id.* § 273.347.2.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* § 273.347.3.

a Class A misdemeanor is punishable by up to one year in prison or a fine not to exceed \$2,000.⁷⁶

A charge for canine cruelty under section 273.347 does not prevent the State from charging the problematic puppy mill owner with animal abuse.⁷⁷ A person is guilty of animal abuse if he or she: (1) intentionally kills an animal in a manner not allowed or expressly exempted by other Missouri laws, (2) intentionally causes an animal injury or suffering, or (3) has ownership or custody of an animal and knowingly fails “to provide adequate care which results in substantial harm to the animal.”⁷⁸ The crime of animal abuse is normally a Class A misdemeanor.⁷⁹ However, if the person has previously been found guilty of animal abuse or intentionally caused an animal injury or suffering and this injury was “the result of torture or mutilation consciously inflicted while the animal was alive,” then the crime is treated as a Class E felony.⁸⁰ Class E felonies are punishable by no more than four years in prison.⁸¹

III. RECENT DEVELOPMENTS

A. Arguments For and Against the MO-CCPA

When the MO-CCPA was first enacted, it received mixed reactions. Democratic Senator Jolie Justus claimed, “It’s going to go a long way to curb [Missouri’s] reputation as a puppy mill capital.”⁸² When Proposition B was first passed, before then-Governor Jay Nixon’s changes, Kathy Warnick, the President of the Humane Society of Missouri, stated that dogs in Missouri’s breeding facilities “will no longer have to suffer the unspeakable cruelty and inhumane conditions that have plagued them for so long. From this point forward, a more humane and compassionate standard of care will prevail for Missouri’s dogs.”⁸³

Others, however, were not so hopeful. Opponents of Proposition B voiced several concerns when it was first passed, and those same concerns still exist today. First, opponents are concerned that increased regulations are not necessary, as Missouri already had regulations in place.⁸⁴ Another concern, backed by the American Kennel Club and the Missouri Veterinary Medical

76. *Missouri Misdemeanor Guide*, *supra* note 43.

77. MO. REV. STAT. § 273.347.4.

78. *Id.* § 578.012.1(3).

79. *Id.* § 578.012.2.

80. *Id.*

81. *Complete Guide to Felonies in Missouri*, CARVER, CANTIN & MYNARICH, <https://carvercantin.com/felonies-in-missouri/> (last visited Mar. 11, 2019).

82. Blank, *supra* note 35.

83. *Missouri’s Proposition B Narrowly Passes*, OZARKSFIRST.COM, <http://www.ozarksfirst.com/news/missouris-proposition-b-narrowly-passes/70000900> (last visited Mar. 11, 2019).

84. *Id.*

Association, is that the actual law did nothing to protect animals' welfare.⁸⁵ Instead, they argue it creates more expenses for responsible breeders abiding by the law, which may force these reputable breeders to go out of business.⁸⁶

The major criticism advanced by those who oppose the MO-CCPA is that it essentially ignores one of the biggest problems plaguing Missouri regarding puppy mills and does nothing to address the issue of "disreputable dog breeders" who were already ignoring the laws currently in place and who will not likely follow the new laws put into place under the MO-CCPA.⁸⁷ Another criticism advanced by those who oppose the MO-CCPA is that it "decrease[s] selection and increase[s] prices of dogs available to the public."⁸⁸ Animal agriculturalists opposed to the MO-CCPA also worry it could be the first step for the U.S. Humane Society to advocate for further statutes that will regulate farmers and livestock in Missouri.⁸⁹

B. Problems in Missouri Persist After the MO-CCPA

Some concerns – namely, that the increased restrictions were going to do nothing to prevent those who already ignore the laws in Missouri – have proven true. In 2017, Missouri had nineteen problematic dog breeders (puppy mills) on the U.S. Humane Society's Horrible Hundred list.⁹⁰ Of these nineteen puppy mills, thirteen were "repeat offenders."⁹¹ Of the thirteen repeat offenders, five of them have been on the list more than twice.⁹² Two of the violators have even been on the list five times – once each year since the Horrible Hundred list began.⁹³ These puppy mills are on this list because of violations found by both the USDA and the MDA.⁹⁴

The problems occurring at these nineteen puppy mills are vast in nature. One breeder from Curryville, Missouri, had a customer complain about a sick puppy sold in June of 2016 that allegedly required \$3,000 in medical care to survive.⁹⁵ In August of 2015, the USDA issued an Official Warning for Violation of Federal Regulations against this same breeder "for conducting regulated activity without a USDA license on at least eleven different dates."⁹⁶ The

85. *Missouri Dog Breeding Regulation, Proposition B (2010)*, BALLOTEDIA, [https://ballotpedia.org/Missouri_Dog_Breeding_Regulation,_Proposition_B_\(2010\)](https://ballotpedia.org/Missouri_Dog_Breeding_Regulation,_Proposition_B_(2010)) (last visited Mar. 11, 2019).

86. *Missouri's Proposition B Narrowly Passes*, *supra* note 83.

87. *Id.*

88. *Id.*

89. *Id.*

90. THE HORRIBLE HUNDRED 2017, *supra* note 1, at 2.

91. *See id.* at 19–30.

92. *See id.*

93. *Id.* at 19–21, 23.

94. *Id.* at 1.

95. *Id.* at 27.

96. *Id.*

facility is now licensed.⁹⁷ In August of 2016, just a year later, the MDA found several serious animal violations at this breeder's facility, including dogs with fleas and missing fur and two lame dogs.⁹⁸ After supposedly eleven straight years of state law violations, there was no evidence that this problematic dog breeder in Curryville ever paid a fine to the MDA.⁹⁹

A different breeder in West Plains, Missouri, had at least four concurrent years of animal care violations.¹⁰⁰ The USDA found five different repeat violations in July of 2016, which included a dog with a bleeding, open wound and a female dog that was so skinny her ribs and hip bones were protruding.¹⁰¹ In December of 2016, the USDA then found problems with "excessive grime and mud."¹⁰² This kennel is still in operation.¹⁰³ Another breeder in Ava, Missouri, had dogs found with gaping, draining, or open wounds and repeatedly failed to get veterinary treatment for sick and injured dogs.¹⁰⁴ From 2013 to 2016, the MDA found sick or injured dogs at this kennel.¹⁰⁵ Dogs in need of medical care included multiple dogs that were underweight, a dog with a skin lesion that extended across its abdomen, and a dog who was limping and was not taken to the veterinarian even though the kennel was instructed to have him treated.¹⁰⁶ There have also been repeated problems found with dogs that did not have sufficient protection from the cold and puppies whose feet were passing through wire flooring, which poses a serious risk of entrapment.¹⁰⁷ This kennel is still in operation.¹⁰⁸ One of the breeders was shut down after several years of documented animal care violations, which included more than 500 pages of USDA enforcement records and consumer complaints.¹⁰⁹ Missouri clearly has a puppy mill problem that needs to be fixed.

IV. DISCUSSION

Missouri's problem rests in a lack of substantive punishment for repeated violations of animal care laws. This Part begins with a discussion of the importance of preventing puppy mills and then describes the adequacy of Missouri's standards. This Part ends with an explanation of how Missouri's enforcement provisions should be amended to mirror states that have had more success in curtailing dangerous puppy mills.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 27–28.

103. *Id.* at 28.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 28–29.

108. *Id.*

109. *Id.* at 29.

A. *The Importance of Preventing Puppy Mills*

Some individuals may not see animal or canine cruelty as something to worry about – at least not enough to render such cruelty a felony. However, because animal abuse can be an initial indicator of other serious problems in society, it is behavior worth deterring.¹¹⁰ The Chicago Police Department conducted a study between 2001 and 2004 that “revealed a startling propensity for offenders charged with crimes against animals to commit other violent offenses toward human victims.”¹¹¹ Sixty-five percent of those arrested for animal crimes had previously been arrested for battery against another person.¹¹² According to a six-year study conducted in eleven metropolitan cities, abuse of pets is also one of four indicators of domestic violence.¹¹³ Between seventy-one and eighty-three percent of women who entered domestic violence shelters reported their partners had also abused or killed the family pet.¹¹⁴ In another study, pet abuse was concurrently found in eighty-eight percent of families under supervision for physical abuse of their children.¹¹⁵ Animal neglect is also often “one of the first indicators of distress in the household.”¹¹⁶ A person who cannot provide minimal care for a pet “is more likely to neglect the basic needs of other dependents in the household.”¹¹⁷ Often times, children who live with parents who neglect pets are taken into foster care.¹¹⁸

Some may think these studies and their results – which were limited to the realm of domestic abuse occurring in the home – do not apply to those breeding puppies for sale. However, those who abuse dogs for profit are far worse – they are rewarded financially for their abuse. Those who demonstrate a lack of empathy for animals will likely demonstrate a lack of empathy for humans. Individuals who put profit before the safety and welfare of the dogs they sell to people are dangers to society. A lack of desire to care for an animal in a way that ensures the animal’s health and safety is a statistical indication that the person will cause more issues – either with his or her partner or with his or her children. Punishing these individuals by making canine cruelty a felony can help ensure they cannot cause any harm to innocent victims – humans or animals.

110. See *Animal Cruelty and Human Violence*, HUMANE SOC’Y OF THE U.S. (Apr. 23, 2011), http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html?credit=web_id91402394.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

B. Adequacy of Standards Set by Missouri's Canine Cruelty Prevention Act

The American Society for the Prevention of Cruelty to Animals (“ASPCA”), a non-profit organization dedicated to preventing animal cruelty, considers the minimum welfare standards for puppy mills set by the AWA to be “extremely inadequate” and poorly enforced.¹¹⁹ The ASPCA urges that because these federal standards “are woefully inadequate,” it is necessary for states “to enact higher standards of care and oversight for commercial breeders that go above and beyond the bare minimums” set by the AWA.¹²⁰

The ASPCA compiled a chart comparing each state’s puppy mill laws and regulations and listed ideal standards for each state.¹²¹ According to the ASPCA, cage space should be at least twice as large as required by the AWA, and dogs should exercise through constant, unfettered access to an outdoor exercise run.¹²² Moreover, wire flooring and cage stacking should be prohibited.¹²³ Furthermore, breeders should be required to give annual dog exams prior to every breeding attempt.¹²⁴ Lastly, the ASPCA suggests that inspections should be mandatory both prior to licensing and at least once per year after but adds that “inspections conducted at the discretion of the enforcing agency are still better than no inspections at all.”¹²⁵

Within this puppy mill state law chart comparison, the ASPCA states that the standards set by the MO-CCPA are among the strongest in the country.¹²⁶ The chart praises certain areas of the MO-CCPA, including the mandatory inspections for new facilities, cage space requirements, exercise requirements, ban on wire flooring and stacking of crates, requirements for veterinary care, and adequate rest between breeding cycles.¹²⁷ Missouri has the correct standards of care in place, but the enforcement and the lack of substantial punishment renders these standards ineffectual.

C. The Need for Stronger Enforcement in Missouri

This Section discusses Missouri’s need for stronger enforcement through more severe punishments and state measures targeted at eradicating problematic puppy mills.

119. *State Puppy Mill Chart*, ASPCA (Feb. 12, 2015), <https://www.asPCA.org/sites/default/files/puppy-mill-chart.pdf>.

120. *Id.*

121. *See id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *See id.*

127. *Id.*

1. Increased Prosecutions

One issue with the enforcement scheme is that it is left entirely to the discretion of the Missouri director of agriculture, the Missouri attorney general, and county prosecutors.¹²⁸ This means that, if the State wants to, it can ignore repeated violations of these statutes – as it has likely done with the puppy mills that repeatedly make the U.S. Humane Society’s Horrible Hundred List due to the low number of prosecutions and a high number of violations of both federal and state law.¹²⁹ There are, of course, some situations in which it would seem undesirable to prosecute those who violate the MO-CCPA. The requirements are specific and prosecuting a breeder for a simple slip-up when attempting to follow the standards may seem harsh. It is in these situations that the argument for State prosecutorial discretion is the strongest. However, giving the State this broad discretion is a grave error. Those simple slip-ups should still be within the discretion of the State to punish. When violations of the MO-CCPA manifest a danger to the dog’s safety, prosecution should be mandatory as a means of ensuring compliance with the law.

The revocation and denial of licenses to breeders by the Missouri director of agriculture are also almost entirely discretionary; the Missouri director of agriculture *may* deny or revoke someone’s license for violations of the MO-CCPA but is not required to do so.¹³⁰ Again, this allows the State to ignore repeated violations – even those that manifest a danger to the safety of the dogs. As mentioned above, it took over 500 pages of USDA enforcement records and consumer complaints to revoke one Missouri breeder’s license.¹³¹ As a reminder, violations of the federal standards set by the AWA and enforced by the USDA – which represent the bare minimum – are a basis for revoking a breeder’s license.¹³² It is absurd it took that many violations for the State to revoke the breeder’s license because, while the breeder accumulated these violations, she put several dogs’ health and safety at risk. There should have been a mandatory duty to revoke her license before such a dire situation was reached, and there needs to be such a duty moving forward. At some point, a denial or revocation of a license should be mandatory, whether it be at a certain number of violations or convictions. There should be a threshold at which the State can no longer ignore problematic puppy breeders and must revoke their licenses. This will prevent repeat offenders from operating because, if they continue to do so, they can be punished by up to a year in prison or a fine of up to \$2,000.¹³³

Removing this discretion from the Missouri director of agriculture will help increase prosecutions in the State of Missouri and decrease the number of

128. See MO. REV. STAT. § 273.347 (2016).

129. See generally THE HORRIBLE HUNDRED 2017, *supra* note 1.

130. See MO. REV. STAT. § 273.329.

131. See THE HORRIBLE HUNDRED 2017, *supra* note 1, at 29.

132. MO. REV. STAT. § 273.329.

133. *Id.*; see *Missouri Misdemeanor Guide*, *supra* note 43.

problematic puppy mills. Missouri itself is evidence that increased prosecutions lead to fewer puppy mills. In fact, in the first three years after the MO-CCPA was passed, “[thirty-seven] businesses or individuals were referred to the attorney general for prosecution for violating the [MO-CCPA].”¹³⁴ Around 1,300 dogs were rescued in the first three years, and the businesses and individuals referred for prosecution resulted in “more than \$25,000 in civil fines and nine licenses being revoked for terms ranging from three to [ten] years.”¹³⁵ In the two years before the MO-CCPA took effect, only ten businesses or individuals were referred to the attorney general for violation of animal welfare laws.¹³⁶ No civil fines were assessed.¹³⁷ However, with the passage of time, the law has lost its once powerful effect,¹³⁸ and it is now necessary to remove the State’s discretion in certain cases to ensure prosecution increases once again.

2. More Severe Punishment

Another problem with the enforcement scheme of the MO-CCPA is the severity (or lack thereof) of punishment. There are two main enforcement avenues: civil and criminal.¹³⁹ The civil fine is up to \$1,000 for each violation, while the criminal fine can be either up to \$700 or up to \$2,000 for each violation depending on whether the person has prior canine cruelty convictions.¹⁴⁰ It can also be punishable by up to fifteen days in prison or up to one year in prison depending on whether the accused has previously been convicted of canine cruelty.¹⁴¹ In some instances, prison time may rise to four years.¹⁴²

These punishments are not severe enough to prevent repeat offenders from continuing to ignore the MO-CCPA. Puppy mill puppies are not cheap – in fact, purebred puppies that are sold as companion animals usually average around \$800 in price.¹⁴³ Puppies that are bought for work or competition can

134. *Prosecutions, Fines Increase in Puppy Mill Cases*, MULESKINNER (Aug. 25, 2014), <https://www.digitalburg.com/muleskinner/prosecutions-fines-increase-in-puppy-mill-cases/>.

135. *Id.*

136. *Id.*

137. *Id.*

138. Paul Solotaroff, *The Dog Factory: Inside the Sickening World of Puppy Mills*, ROLLING STONE (Jan. 3, 2017), <https://www.rollingstone.com/culture/features/the-dog-factory-inside-the-sickening-world-of-puppy-mills-w457673>.

139. MO. REV. STAT. § 273.347 (2016).

140. *See id.*; *Missouri Misdemeanor Guide*, *supra* note 43.

141. *See* MO. REV. STAT. § 273.347; *Missouri Misdemeanor Guide*, *supra* note 43.

142. *See* MO. REV. STAT. § 578.012(2); *Complete Guide to Felonies in Missouri*, *supra* note 81.

143. Krista Mifflin, *The Price of a Purebred Puppy: You Should Get What You Pay For*, SPRUCE (Feb. 15, 2017), <https://www.thespruce.com/the-price-of-purebred-puppy-1113629>.

be as expensive as \$1,500.¹⁴⁴ Some companion animals, like the popular French Bulldog, can cost up to \$3,000.¹⁴⁵

These puppy mills make far too much money on their dogs to care about a \$700 or \$2,000 fine for a conviction of canine cruelty, a \$2,000 fine for operating without a license, or a \$1,000 civil fine. Their indifference intensifies when the civil and criminal punishments for failing to follow the standards are inconsistently enforced at the discretion of the State. Fifteen days in prison is just a slap on the wrist. Once the fifteen days (or fewer) are up, breeders can go back to violating the law until they get caught again. Even if they do get caught again, no guarantee exists that the State will prosecute them a second time or that the reports of these violations will result in a revocation of their license. Even if their license gets revoked, they will likely continue to operate without a license until they get caught – the fine for which is at most \$2,000 or up to one year in prison.

The punishment of spending one to four years in prison is a little more severe, but it is likely still not severe enough to deter problematic breeders. Additionally, the probability of someone being charged and convicted for canine cruelty or animal cruelty twice is low, especially when one considers the fact the State picks and chooses when to charge individuals. This is not to say the MO-CCPA has not helped at all. In fact, it initially drove hundreds of commercial breeders out of business – in 2010, there were 1,414 breeders in Missouri, and in January 2017, there were 844.¹⁴⁶ However, the MO-CCPA has lost its once powerful effect. The number of prosecutions has fallen, fewer license revocations occur, and breeders with egregious puppy mill conditions break the laws and pay little or nothing in fines.¹⁴⁷ The MDA insists this decrease is because “the majority of breeders have fallen under compliance.”¹⁴⁸ However, Missouri still predominates the Horrible Hundred list – in 2016, puppy breeders located in Missouri made up almost one-third of the list.¹⁴⁹

If the State’s hesitancy to revoke licenses in the face of severe repeat offenders is any indication, then the State will likely not make the decision to charge the same individual twice with canine cruelty.¹⁵⁰ The same issue applies to someone being charged for animal cruelty twice, which could land them in prison for up to four years if the State would take action. However, considering the rate of prosecutions is already low, this is not likely, and problematic puppy breeders remain free to break the law, harming innocent animals in the process.

144. *Id.*

145. James Harleman, *The 10 Most Expensive Purebred Dogs Ever*, ROVER.COM: THE DOG PEOPLE, <https://www.rover.com/blog/expensive-purebred-dogs/> (last visited Mar. 11, 2019).

146. Solotaroff, *supra* note 138.

147. *Id.*

148. *Id.*

149. *Id.*

150. *See generally*, THE HORRIBLE HUNDRED 2017, *supra* note 1.

The State's hesitancy to revoke licenses also lowers the chances that a problematic breeder will lose his or her license and be punished for operating without a license. Even if the punishment of up to one year in prison is enforced in a situation, the problematic breeder will likely start his or her breeding back up once released. The enforcement scheme allows for repeat offenders to continue operating their problematic breeding practices. Making repeat canine cruelty convictions a felony, combined with increased prosecution as discussed above, will help curb this problem.¹⁵¹ Additionally, making violations of the MO-CCPA that involve multiple dogs (i.e., if more than ten dogs' health are put at risk) a felony would also curb the puppy mill issues Missouri faces. Finally, making the punishment for operating without a license more severe may also help.

One state that has more severe punishments for animal neglect is Oregon. In Oregon, animal neglect in the first degree is defined as when a person "intentionally, knowingly, recklessly or with criminal negligence . . . [f]ails to provide minimum care for an animal in the person's custody or control and the failure to provide care results in serious physical injury or death to the animal."¹⁵² This crime is considered a Class A misdemeanor,¹⁵³ which is punishable in Oregon by a fine up to \$6,250 and/or up to one year in jail.¹⁵⁴ However, animal neglect in the first degree becomes a Class C felony when the person has been convicted of animal neglect in the first degree before, the offense involved ten or more animals, or the offense was committed knowingly in the presence of a minor child.¹⁵⁵ Class C felonies in Oregon are punishable by up to a \$125,000 fine and/or up to five years in jail.¹⁵⁶ Oregon ranks in the top five states in the country by the U.S. Humane Society for its protections for puppy mill dogs and for people who purchase dogs from pet stores.¹⁵⁷ Oregon had zero puppy mills on the Horrible Hundred list in 2017.¹⁵⁸

While the crime of animal neglect in Oregon differs slightly from the Missouri crime of canine cruelty, there is one important similarity: both involve a violation of a standard of care for animals. The MO-CCPA sets standards of care for dogs in breeding facilities and committing canine cruelty involves a violation of these standards.¹⁵⁹ The crime of animal neglect in Oregon

151. *See supra* Section IV.B.1.

152. O.R.S. § 167.330(1)(a) (2018).

153. *Id.* § 167.330(2).

154. *Oregon Misdemeanor Crimes and Penalties*, ROMANO LAW P.C., <https://romanolawpc.com/misdemeanor-crimes-oregon/> (last visited Mar. 11, 2019).

155. O.R.S. § 167.330(3).

156. Mark Theoharis, *Oregon Felony Crimes by Class and Sentences*, CRIM. DEF. LAW, <https://www.criminaldefenselawyer.com/resources/criminal-defense/felony-of-fense/oregon-felony-class.htm> (last visited Mar. 11, 2019).

157. Jon Patch, *The Humane Society of the United States Ranks State Puppy Mill Laws* (Mar. 12, 2012), <https://talkinpets.com/new/latest-items/item/922-the-humane-society-of-the-united-states-ranks-state-puppy-mill-laws.html>.

158. THE HORRIBLE HUNDRED 2017, *supra* note 1, at 29.

159. MO. REV. STAT. § 273.347(2) (2016).

involves a violation of the minimum care standards, which are set by its other laws.¹⁶⁰ Oregon has taken the steps that Missouri should, which are making repeat failures to provide a certain standard of care a felony and making it a felony for a person to commit animal neglect involving multiple dogs.¹⁶¹ Most importantly, for the more severe punishments to have any effect, prosecutions need to increase.

3. Other Changes Missouri Can Make

Increasing prosecutions and making the punishments more severe for those who violate the MO-CCPA are important objectives, but there are other steps Missouri can take to fight its puppy mill problem. One way is to prevent pet shops from purchasing and selling dogs from problematic puppy mills that have received citations for violating the AWA and the MO-CCPA. For example, Virginia passed a law making it a Class 1 misdemeanor for pet shops to sell or offer dogs for adoption that they purchased from a person who has received “a citation for direct or critical violations or citations for three or more indirect or noncritical violations for at least two years prior to the procurement of the dog” from the USDA under the AWA.¹⁶² Pet shops are also prohibited from selling or offering dogs for adoption that they purchased from a person who has received “two consecutive citations for no access to the facility prior to the procurement of the dog” from the USDA.¹⁶³ Finally, pet shops in Virginia are not allowed to sell or offer dogs for adoption they purchased from individuals who knowingly obtained the dog, either directly or indirectly, from another person who has received such citations as described above.¹⁶⁴

The same law also makes it a Class 1 misdemeanor for an unlicensed breeder to sell a dog to a pet shop.¹⁶⁵ Pet shops must maintain records that verify compliance with the law for a minimum of two years after the sale of any dog.¹⁶⁶ A person who violates this provision is guilty of a Class 1 misdemeanor for each dog sold or offered for sale.¹⁶⁷ A Class 1 misdemeanor in Virginia is punishable by a fine of up to \$2,500 and/or no more than a year in jail.¹⁶⁸ Virginia was ranked by the U.S. Humane Society as the state with the strongest protections for puppy mill dogs and for consumers who purchase

160. O.R.S. § 167.330.

161. *Id.* § 167.330(3).

162. VA CODE ANN. § 3.2-6511.1 (2018).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* § 18.2-11.

these dogs from pet stores.¹⁶⁹ Virginia, too, has zero puppy mills on the Horrible Hundred list in 2017.¹⁷⁰ Oregon proposed legislation that would completely ban pet stores from selling puppies from breeders and would instead require the dogs sold in pet stores to be from rescue organizations, animal shelters, or humane societies.¹⁷¹

Missouri would be wise to at least follow in Virginia's path and make it illegal for pet shops to sell or offer dogs for adoption they purchase from problematic breeders. This would encourage those breeders who are motivated by money to comply because their sales could be affected if they fall short, especially because each dog sold or offered for sale would constitute a crime. The punishment, and the fines, could add up quickly and would likely be a way of motivating breeders to comply, especially given Virginia's success. Missouri could go so far as to follow Oregon, but that would punish even those breeders who follow the law, which is something that would probably not be wise.

V. CONCLUSION

Missouri has a puppy mill problem that needs to be addressed. The MO-CCPA does a great job of raising the minimum standards of care set by the federal government in the AWA. However, its enforcement is lackluster and allows for repeat offenders to continue operating, either legally with a license or illegally without a license, due to the discretion given to the State regarding when to punish offenders and the lack of severity of the punishments issued. The enforcement statute should be amended to remove the broad discretion given to the State when determining whether charges, civil or criminal, should be brought. It should also be amended to make canine cruelty a felony. Operating without a license should also be made into a felony. If the State makes these changes and uses the Canine Cruelty Prevention Unit to enforce these changes, the number of problematic puppy mills in Missouri would likely decrease, and Missouri would hopefully be removed from the top of the U.S. Humane Society's Horrible Hundred List once and for all.

169. Patch, *supra* note 157.

170. THE HORRIBLE HUNDRED 2017, *supra* note 1, at 1.

171. Tracy Loew, *Oregon's Puppy Mill Bill Could Be Expanded to Include Rescue Organizations*, STATESMAN J. (Feb. 13, 2018), <https://www.statesmanjournal.com/story/news/politics/2018/02/13/oregons-puppy-mill-bill-could-expanded-include-rescue-organizations/334037002/>.