

The Voiceless Dog to the Silenced Human: Congress Incentivizing States to Report Data on the Nation’s Unprioritized Crime

Kelci S. Binau*

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“[Animal cruelty] is a crime against society. By paying attention to [these crimes], we are benefitting all of society.

—John Thompson¹

* J.D. Candidate, University of the Pacific, McGeorge School of Law, 2018; B.A., University of Nevada, Reno, 2010, M.Ed., University of Nevada, Reno, 2013. I would like to extend my profound thanks to my Faculty Advisor Professor Courtney Lee, my Primary Editor Hannah, the *Law Review* staff, my “law school life partner” Jessica, and my “law school mom” Chris. I would also like to thank my parents, sister, and aunt, Judy, Joel, Kirsha, and Jan for their open ears during “therapy sessions,” and ongoing positivity and support. But most of all, I would like to thank my husband Steve and my dogs, Fabio, Pennie, & Ben for their never-ending support, love, and patience as I follow my childhood dreams. This journey was amazing because of all of you!

1. *Tracking Animal Cruelty: FBI Collecting Data on Crimes Against Animals*, FED. BUREAU OF INVESTIGATION (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> (quoting John

I. INTRODUCTION

A ray of sunshine illuminates the dirty-blond locks of a young, innocent-looking boy.² His laughter fills the air as he clammers across slimy, slippery rocks at the edge of a creek while trying to catch a large frog.³ This paints a picture of an inquisitive young boy who traverses and explores nature.⁴ This boy could have grown up to become a biologist or scientist.⁵ Much against society's expectations, the boy hunting frogs grew up to become one of the most infamous serial killers, Jeffrey Dahmer.⁶

Instead of catching the frog and caring for it as a pet or releasing it back into its natural habitat, Jeffrey tortured and mutilated the amphibian by impaling the frog's head on a stick.⁷ The ray of sunshine morphed into a metaphorical dark cloud as Jeffrey continued to desensitize and distance himself from society by impaling more dogs', cats', and frogs' heads on sticks.⁸ Dahmer, now a "convicted serial killer and sex offender," continued on this destructive path, brutally murdering and sexually assaulting seventeen men.⁹ If a national animal cruelty tracking system had been in place, incentivizing states to promulgate laws requiring the tracking and reporting of animal cruelty, law enforcement could have potentially stopped Dahmer and saved many innocent lives.¹⁰ Such a system may have prevented Dahmer's progression from harming animals to becoming a serial killer.¹¹

Thompson [hereinafter *Tracking Animal Cruelty*] (on file with *The University of The Pacific Law Review*).

2. See Daniel Goleman, *Clues to a Dark Nurturing Ground for One Serial Killer*, N.Y. TIMES NEWS SERVICE (Aug. 7, 1991), <http://www.nytimes.com/1991/08/07/us/clues-to-a-dark-nurturing-ground-for-one-serial-killer.html?pagewanted=all> (on file with *The University of The Pacific Law Review*) (explaining that Jeffrey Dahmer would find and impale frogs in his neighborhood and surrounding forests).

3. See Goleman, *supra* note 2 (explaining that Jeffrey Dahmer would find and impale frogs in his neighborhood and surrounding forests).

4. See *id.* (explaining that Jeffrey Dahmer would find and impale frogs in his neighborhood and surrounding forests while out exploring as a young boy).

5. See *id.* (explaining that children who commit childhood crimes generally do not grow up to be serial killers).

6. Lorna Benson, *Animal Cruelty May be Sign of Deeper Human Problems*, MPR NEWS (July 6, 2006, 5:48 PM), <http://www.mprnews.org/story/2006/07/06/animalkillers> (on file with *The University of The Pacific Law Review*); see Goleman, *supra* note 2 (explaining that children who commit childhood crimes generally do not grow up to be serial killers).

7. *Animal Abuse and Human Abuse: Partners in Crime*, PETA, <http://www.peta.org/issues/companion-animal-issues/companion-animals-factsheets/animal-abuse-human-abuse-partners-crime/> (last visited Oct. 16, 2016) [hereinafter *Animal and Human Abuse*] (on file with *The University of The Pacific Law Review*); see Goleman, *supra* note 2 (explaining that children who commit childhood crimes generally do not grow up to be serial killers).

8. *Animal and Human Abuse*, *supra* note 7.

9. *Jeffrey Dahmer Biography*, A&E TELEVISION NETWORKS (July 21, 2016), <http://www.biography.com/people/jeffrey-dahmer-9264755> (on file with *The University of The Pacific Law Review*).

10. *Infra* Part IV (suggesting that Congress use its spending power to incentivize states to promulgate laws to mandate law enforcement agencies to report animal cruelty data to NIBRS).

11. *Infra* Part V.

Psychological studies demonstrate a clear link between animal abuse and human violence.¹² Children and adults who are exposed to, or partake in, animal abuse “become desensitized to violence and [lose] the ability to empathize with victims.”¹³ When animal abusers go unpunished and continue to abuse animals, they become fully desensitized and often begin to seek a more escalated thrill by committing larger crimes, including crimes against humans.¹⁴

Currently, no comprehensive, national data on animal cruelty offenses exists, although the “vast majority of states indicat[ed] that collecting animal cruelty data would be useful.”¹⁵ Animal abusers are likely to continue harming animals after they are convicted, largely due to the fact that when caught in one state, they will simply cross state lines to adopt animals and continue the abuse in a different state.¹⁶ If Congress took a more aggressive approach and provided animal shelters and pounds with comprehensive, national data, such adoption agencies would be equipped to run background checks and be better able to stop out-of-state animal abusers.¹⁷

Due to the lack of nationally collected animal cruelty data, law enforcement agencies are not outfitted with the education or training necessary to combat and sever the link between animal and human abuse.¹⁸ Many state animal cruelty laws reflect this lack of information by continuing to categorize animal cruelty as a misdemeanor, failing to recognize the significance of the crime.¹⁹ Due to the threat that convicted animal abusers pose to neighborhoods and families, this lack of data creates concern for the general welfare of the United States of America and the safety of its citizens.²⁰

12. See *infra* Part II.A (describing the psychological link between animal and human abuse).

13. *What is the Link?*, NAT’L LINK COALITION, <http://nationallinkcoalition.org/what-is-the-link> (last visited Oct. 9, 2017) (on file with *The University of The Pacific Law Review*).

14. ALLIE PHILLIPS, NAT’L DIST. ATTORNEYS ASS’N, UNDERSTANDING THE LINK BETWEEN VIOLENCE TO ANIMALS AND PEOPLE 3 (June 2014), available at <http://nationallinkcoalition.org/wp-content/uploads/2014/06/Allies-Link-Monograph-2014.pdf> [hereinafter *Link Between Violence to Animals and People*] (on file with *The University of The Pacific Law Review*).

15. LYNN A. ADDINGTON & MARY LOU RANDOUR, ANIMAL WELFARE INST., ANIMAL CRUELTY CRIME STATISTICS: FINDINGS FROM A SURVEY OF STATE UNIFORM CRIME REPORTING PROGRAMS 8 (2012), available at https://awionline.org/sites/default/files/products/ca-12fbireportfinal040312_0.pdf (on file with *The University of The Pacific Law Review*).

16. Steven Wells, *Legally Brief: Christmas Comes Early for Animals—as Abuser Registry Takes Hold in NYC*, ANIMAL LEGAL DEF. FUND (Dec. 20, 2013), <http://aldf.org/blog/christmas-comes-early-for-animals-as-abuser-registry-takes-hold-innyc/> (on file with *The University of The Pacific Law Review*).

17. See CHARLES DOYLE, CONG. RES. SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS 1 (2007) (demonstrating that similarly to the Adam Walsh Act with sexual predators, Congress could apply the same tactics to prevent further animal abuse).

18. ADDINGTON & RANDOUR, *supra* note 15, at 3 (explaining that the tracking of animal cruelty in NIBRS will provide vital information to law enforcement).

19. N.C. GEN. STAT. ANN. § 14-360 (West 2015); W. VA. CODE ANN. § 61-8-10 (West 2008).

20. Kelly Dedel, *Animal Cruelty: Guide No. 65*, U. AT ALB. (2012), http://www.popcenter.org/problems/animal_cruelty/print/ (on file with *The University of The Pacific Law Review*).

Despite the clear psychological link between animal cruelty and human violence, it was not until January 1, 2016, that the Federal Bureau of Investigation (FBI) began tracking animal cruelty crimes in its own category.²¹ The FBI currently collects data on a voluntary basis from state and city law enforcement agencies and compiles the data into the Bureau's National Incident-Based Reporting System (NIBRS).²² Statistics demonstrate that "[o]nly about 31 percent of the country is represented in NIBRS today,"²³ depicting that the vast majority of States do not contribute to NIBRS at all. Congress has not enacted legislation to govern and support law enforcement agencies with reporting and collecting animal cruelty offense data.²⁴

The FBI took the first step; now, Congress and states need to follow to promote the general welfare of the nation.²⁵ Congress should use its Spending Clause power to incentivize states to report animal cruelty crimes to NIBRS.²⁶ This will raise state and law enforcement participation, thus creating a more comprehensive national collection of data from which law enforcement agencies and researchers can compile statistics.²⁷ The federal government will provide the comprehensive data necessary to educate law enforcement agencies and address the link between animal cruelty and subsequent human abuse, which will create safer neighborhoods, cities, and states.²⁸ The proposed changes will serve as a statement by the United States of America that the nation is taking a step towards breaking the link between animal and human abuse, and will no longer stand for the loss of innocent lives.²⁹

Part II of this Comment discusses the well-established link between animal and human abuse, a brief history explaining the federal government's role in promoting the general welfare under the Constitution, and past success of Congress's spending power in collecting criminal data.³⁰ Next, Part III discusses the FBI's history of tracking animal cruelty crimes and analyzes the benefits and obstacles that states face in submitting data to the current data collection

21. Colby Itkowitz, *A Big Win for Animals: The FBI Now Tracks Animal cruelty like it Tracks Homicides*, THE WASH. POST (Jan. 6, 2016), <https://www.washingtonpost.com/news/inspired-life/wp/2016/01/06/a-big-win-for-animals-the-fbi-now-tracks-animal-abuse-like-it-tracks-homicides/> (on file with *The University of The Pacific Law Review*).

22. *Id.*; *Tracking Animal Cruelty*, *supra* note 1.

23. *See Tracking Animal Cruelty*, *supra* note 1 (demonstrating that at the federal level animal cruelty data is only collected through NIBRS).

24. *Id.*

25. *See Itkowitz*, *supra* note 21 (explaining that the FBI now tracks animal cruelty as it does other crimes, in a separate category).

26. *Infra* Part IV.

27. *Infra* Part IV.

28. *Infra* Part IV.

29. *See Tracking Animal Cruelty*, *supra* note 1 (depicting that the nation's step towards collecting animal cruelty data will enable law enforcement agencies to take a more educated approach to stop animal cruelty convicts from murdering animals and humans).

30. *Infra* Part II.

regime.³¹ Finally, Part IV provides a proposal for the federal government to collect truly comprehensive national animal cruelty data.³²

II. BACKGROUND

To understand why Congress should incentivize states to mandate their law enforcement agencies to report animal cruelty crimes to NIBRS, it is useful to examine the link between animal and human abuse, the history of the FBI tracking crimes and animal cruelty, and a brief overview of Congress's spending powers.³³

A. *The Link Between Animal and Human Abuse*

"If somebody is harming an animal, there is a good chance they also are hurting a human."

— *John Thompson*³⁴

Contrary to popular belief, animal cruelty, quite often, consists of more than cruel and repeated violence toward an animal.³⁵ While the legal definition of "animal cruelty" varies from state to state, animal cruelty can entail neglect and failure to take care of an animal, such as leaving an animal tethered outside during poor weather without shelter or water.³⁶ Additionally, animal cruelty can involve animal hoarding, failure to seek veterinary care, dog fighting, and sexual assault.³⁷

The absence of public education on animal abuse leads many of us to believe that a child who abuses an animal is not destined to become a mass murderer.³⁸ Society expects that when a child throws a firecracker or shoots a pellet gun at an animal, his or her parents condemn the behavior, and the child learns not to repeat that type of act.³⁹ However, some children continue to hurt and kill

31. *Infra* Part III.

32. *Infra* Part IV.

33. *Infra* Part II.

34. *Tracking Animal Cruelty*, *supra* note 1 (quoting John Thompson, Deputy Executive Director of the National Sheriffs' Association).

35. B. Clausen, *Animal Cruelty Laws by State: Is It a Crime to Abuse an Animal?*, DOPPLR (Mar. 29, 2016), <http://www.dopplr.com/animal-cruelty-laws/> (on file with *The University of the Pacific Law Review*).

36. *Id.*

37. *Id.*; *Link Between Violence to Animals and People*, *supra* note 14 (explaining a 2011 Sacramento, California case where a man was sentenced to "ten years in prison and was required to register as a sex offender for the sexual abuse of a Chihuahua named Shadow").

38. See Gail F. Melson, *Do Mass Killers Start Out by Harming Pets?*, PSYCHOL. TODAY (Feb. 20, 2013), <https://www.psychologytoday.com/blog/why-the-wild-things-are/201302/do-mass-killers-start-out-harming-pets> (on file with *The University of The Pacific Law Review*) (explaining that no single factor is definitive in "predicting the next mass shooter").

39. *Id.*

animals even after their parents scold them.⁴⁰ The child that continues harming animals will do so as he or she matures, which can lead to boredom and the pursuit of a more challenging kill: humans.⁴¹ Jeffrey Dahmer was the latter type of child.⁴² Dahmer intentionally and repeatedly abused animals without remorse and, similar to other mass murderers, bragged about his acts to his friends.⁴³ Unsatisfied with killing animals, Dahmer turned to abusing humans and became a mass murderer.⁴⁴

Psychologists find that animal cruelty is often the first sign of a disturbed individual who may later escalate to harming humans or committing mass killings.⁴⁵ “[M]any kill or torture animals, because, to them, the animals symbolically represent people.”⁴⁶ Studies show that seventy percent of those who repeatedly abuse animals have also committed one or more other crimes and forty percent have committed “violent crimes against people.”⁴⁷

Along with Jeffrey Dahmer, many other serial killers began by abusing animals before progressing and escalating to human victims.⁴⁸ Some of these serial killers include Albert DeSalvo, the “Boston Strangler;” David Berkowitz, the “Son of Sam;” Keith Jespersion, the “Happy Face Killer;” and, Ted Bundy.⁴⁹ Forty-three percent of school shooters abused animals first, including the Columbine shooters and Kipland Kinkel, the Thurston High School shooter.⁵⁰ Both history and decades of psychological studies prove that there is a clear link between animal and human abuse.⁵¹

40. *But cf. id.* (describing the opposite of this situation where the scolded child learns their dabble in animal cruelty was bad and stops their behavior).

41. *Link Between Violence to Animals and People*, *supra* note 14.

42. Goleman, *supra* note 2.

43. *See* Melson, *supra* note 38 (explaining that fifteen year old Kip Kinkel shot his parents “before emptying three guns at his class mates,” and “often bragged to others at school about how he tortured animals”).

44. Goleman, *supra* note 2 (demonstrating that Dahmer began with abusing animals at a young age and progressed to abusing humans).

45. Melson, *supra* note 38.

46. Tim Battle, *Animal Cruelty, Domestic Violence and Child Abuse: The Many Victims of Violence*, 30 *LAWNOW* 63, 64–5 (2006) (quoting Special Agent Alan C. Brantley, FBI’s National Center for the Analysis of Violent Crime).

47. SUSAN McDONALD, *CHILDHOOD ANIMAL ABUSE AND VIOLENT BEHAVIOR: A BRIEF REVIEW OF THE LITERATURE* 3 (2011), available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/summaryofanimalabuseliteraturefinal.pdf> (on file with *The University of the Pacific Law Review*).

48. Battle, *supra* note 46; Melson, *supra* note 38.

49. Melson, *supra* note 38; *see* Battle, *supra* note 46 (describing that Jeffrey Dahmer, Albert DeSalvo, and David Berkowitz were each convicted of killing at least 12 men or women and Keith Jespersion “murdered more than 160 victims” and “had previously killed dozens of cats and other small animals.”).

50. Arnold Arluke & Eric Madfis, *Animal Abuse as a Warning Sign of Massacres: A Critique and Refinement*, 18 *HOMICIDE STUD.*, no. 1, 2013, at 7, 17.

51. *Infra* Part II.A.

B. Link Between Animal Cruelty and Other Crimes

Animal cruelty is directly linked to many other violent crimes.⁵² Research shows that animal cruelty is closely linked to crimes such as child abuse and neglect, elder abuse, and domestic violence.⁵³ When members of law enforcement respond to reports of animal cruelty, they often discover other forms of abuse.⁵⁴ The Chicago Police Department released a study demonstrating that 65% of those arrested for animal cruelty have also been arrested for battery against a person.⁵⁵ Collecting comprehensive national data and tracking animal abuse crimes will help law enforcement reduce and prevent closely connected crimes.⁵⁶

Abusers of humans often try to intimidate and scare their victims into silence.⁵⁷ Abusers employ a variety of tactics to achieve this goal, such as threatening or hurting those closest to the victim, including the victim's pet.⁵⁸ Sixty-eight percent of households own pets, and many of those families consider their pet to be a member of the family.⁵⁹ Because pets are generally submissive, abusers of humans "kill, hurt or threaten animals to exert power over the human victims."⁶⁰ Human victims often stay with their abusers solely out of fear that if they leave or attempt to leave, the abusers will kill their pets.⁶¹

When abusers' children witness animal cruelty, they acquire unhealthy behaviors and beliefs and often begin abusing animals to alleviate their own fears and frustrations.⁶² Often, when these children become adults, they abuse animals in front of their own children, further perpetuating the powerful cycle of animal cruelty and domestic violence.⁶³ This cycle of violence infects society with

52. *Id.*

53. *How Are Animal Abuse and Family Violence Linked?*, THE NAT'L LINK COALITION, <http://nationallinkcoalition.org/what-is-the-link> (last visited Oct. 16, 2016) [hereinafter *Animal Abuse and Family Violence*] (on file with *The University of the Pacific Law Review*); MCDONALD, *supra* note 47.

54. *Link Between Violence to Animals and People*, *supra* note 14 (demonstrating the link between animal and human abuse).

55. Ryan Grenoble, *FBI Now Tracks Animal Cruelty Just Like Homicides, Arson and Assault*, HUFFINGTON POST (Jan. 8, 2016, 1:37 PM), http://www.huffingtonpost.com/entry/fbi-animal-abuse-tracking_us_568fd1d9e4b0cad15e6468c8 (on file with *The University of the Pacific Law Review*).

56. Danielle K. Campbell, *Animal Abusers Beware: Registry Laws in the Works to Curb your Abuse*, 48 VAL. U. L. REV. 271, 286 (2014) (explaining that when interviewed, law enforcement interviewees felt having animal abuse statistics "would be 'invaluable for targeting "hot spots" within the community, conducting comparative analysis of similar types of cases, and assessing the appropriateness of future legislative proposals to amend the anti-cruelty statutes.'").

57. *How are Animal Abuse and Family Violence Linked?*, *supra* note 54.

58. *Id.*

59. *Link Between Violence to Animals and People*, *supra* note 14 (impressing that the 68% of households owning a pet equate to approximately 82.5 million pets in the U.S.).

60. *How are Animal Abuse and Family Violence Linked?*, *supra* note 54.

61. Clausen, *supra* note 35.

62. *Animal and Human Abuse*, *supra* note 7.

63. *Link Between Violence to Animals and People*, *supra* note 14 (impressing that the 68% of households

generations of children who abuse animals and humans.⁶⁴ To stop this cycle, Congress and the states must take a more aggressive approach to learning about and tracking animal cruelty—the connecting link to many other crimes.⁶⁵

C. *Is the FBI Tracking of Crimes Successful in Collecting Comprehensive National Data?*

“It’s not about protecting people or animals, it’s protecting them both.”

—Mary Lou Randour⁶⁶

In 1930, the FBI began the Uniform Crime Reporting Program (UCR) to collect data on crimes through the Summary Reporting System (SRS).⁶⁷ The SRS combined data the FBI collected from volunteering law enforcement agencies in broad categories, but did not allow for detailed reports of specific incidents.⁶⁸ The SRS produced general reports on only the most serious offenses, which created a lack of information regarding other crimes, such as animal cruelty.⁶⁹

In the 1990s, the FBI shifted from the SRS to the National Incident-Based Reporting System (NIBRS).⁷⁰ Its intent was to arm states and law enforcement agencies with more detailed reports, allowing them to address and combat crimes more effectively.⁷¹ However, states were reluctant to transition to NIBRS because of the cost and time required to implement a new system.⁷²

Due to derisory participation, the FBI and the Bureau of Justice Statistics (BJS) began collaborating with numerous states that expressed interest in participating in NIBRS.⁷³ The FBI’s goal was to assist the top 100 most-populated agencies and 300 other randomly selected agencies with the transition

owning a pet equate to approximately 82.5 million pets in the U.S.); *see also* Clausen, *supra* note 35 (elaborating that women and children are present for 75% of animal cruelty, and that children who witness such abuse are “three times more likely to be violent towards an animal compared to those in a peaceful household”).

64. *How are Animal Abuse and Family Violence Linked?*, *supra* note 54.

65. *Infra* Part IV.

66. Itkowitz, *supra* note 21.

67. ADDINGTON & RANDOUR, *supra* note 15, at 2.

68. U.S. DEP’T OF JUST.—FED. BUREAU INVESTIGATION, A GUIDE TO UNDERSTANDING NIBRS 5 (2011), available at <https://ucr.fbi.gov/nibrs/2011/resources/a-guide-to-understanding-nibrs> [hereinafter *A Guide to NIBRS*] (on file with *The University of the Pacific Law Review*).

69. *A Guide to NIBRS*, *supra* note 68, at 5.

70. ADDINGTON & RANDOUR, *supra* note 15, at 2 (elaborating that the NIBRS program provides information of the “victim, offender and arrestee-demographics, incident details regarding weapons, items taken, and injuries incurred, and any arrest details” as opposed to the small summary of the crime the SRS program provided); *A Guide to NIBRS*, *supra* note 68, at 7 (explaining the NIBRS program allows law enforcement agencies to “report offense and arrest data for 22 Group A offense categories (including 46 specific crimes) rather than the SRS only reporting 8 Part I offenses).

71. *A Guide to NIBRS*, *supra* note 68, at 8.

72. *Id.*

73. *Id.*

from SRS to NIBRS.⁷⁴ While the FBI and BJS had valorous goals, neither agency had a large enough presence, or sufficient resources, to get 100 percent of law enforcement agencies to participate in reporting.⁷⁵ Furthermore, states voiced concerns that NIBRS, while more expansive than SRS, still did not individually categorize many significant crimes, including animal cruelty.⁷⁶ To achieve its goal of protecting the public from animal cruelty offenders, the federal government must take a more aggressive approach in collecting comprehensive animal cruelty data.⁷⁷ Prior to January 1, 2016, the FBI collected law enforcement reports of the most egregious crimes—including homicide, kidnapping, and rape—but did not specifically track animal cruelty crimes.⁷⁸ Before 2016, the FBI collected data on animal cruelty crimes through NIBRS under an “All Other Offenses” catchall category.⁷⁹ Crimes that fall into the catchall category “cannot be identified for analysis” and are limited to only “crimes for which arrests have been made.”⁸⁰ The criminal justice system has not been able to analyze animal cruelty crimes on a national level because the collected data has been reported under a catchall category, rather than in its own category.⁸¹ The lack of nationally collected data on animal cruelty offenses leaves law enforcement agencies uneducated about how best to combat and reduce high animal cruelty recidivism rates and the link to human violence.⁸² Additionally, due to the lack of data, animal cruelty laws at the state and federal level have remained both stagnant and marginal because lobbyists have not had the requisite data to support campaigns for more aggressive laws.⁸³

The FBI hopes that creating a separate category for animal cruelty in NIBRS will allow law enforcement to track animal abuse and patterns.⁸⁴ “Identifying and analyzing animal cruelty crimes [will] provide an important tool for law enforcement”⁸⁵ because it will allow agencies to better “allocate officers and financial resources to handle these cases, track trends and deploy accordingly.”⁸⁶ It will also help law enforcement to more easily track the degree to which those

74. *Id.*

75. *Id.*

76. *See id.* (demonstrating that NIBRS, until 2016, continued to track animal cruelty in a catch-all category).

77. *Infra* Part IV.

78. *Id.*; ADDINGTON & RANDOUR, *supra* note 15, at 3.

79. *Animal Cruelty Crime Statistics*, *supra* note 15.

80. *Id.*

81. *Id.*

82. Dedel, *supra* note 20; *see also* ADDINGTON & RANDOUR, *supra* note 15, at 3 (explaining that the tracking of animal cruelty offenses in NIBRS will provide vital information to law enforcement).

83. *See* N.C. GEN. STAT. ANN. § 14-360 (West 2015) (demonstrating that cruelty to animals, including killing an animal, is merely categorized as a misdemeanor), W. VA. CODE ANN. § 61-8-19 (West 2008) (depicting another example where animal abuse that may lead to death is categorized as a misdemeanor).

84. *Tracking Animal Cruelty*, *supra* note 1.

85. *Id.* (quoting Dr. Mary Lou Randour).

86. Grenoble, *supra* note 56.

accused of animal crimes later progress to human violence.⁸⁷ The nation can then begin to identify the factors, characteristics, and mental states common to these types of criminals and begin to break the link between animal and human abuse.⁸⁸ The first collection of animal cruelty statistics became available in 2017, but experts maintain that “at least three to five years” of data is needed to assess any reliable patterns.⁸⁹

The federal government took a step in the right direction when it created a specific category to track animal cruelty through NIBRS; however, a more aggressive approach is necessary.⁹⁰ Despite this progress, comprehensive national animal cruelty data will remain nonexistent because NIBRS collects data on a voluntary basis, and law enforcement agencies receive no incentive to participate.⁹¹

D. Congress’s Constitutionally Granted Spending Power

While protecting the general welfare is largely left to the states, the U.S. Constitution authorizes Congress to promote the general welfare through the Spending Clause.⁹² Article I, Section 8, clause 1 of the United States Constitution grants Congress the power “to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.”⁹³ Thus, Congress is authorized to promote the general welfare through the promulgation of statutes.⁹⁴

When Congress wants states to participate in programs or follow certain policies, it can use its spending power and condition federal grants to meet that goal.⁹⁵ To improve reporting rates, Congress should use its spending power to incentivize states to promulgate laws mandating their law enforcement agencies to report animal cruelty crimes to NIBRS.⁹⁶

The Supreme Court established a five-prong test to analyze the constitutionality of Congress’s use of its spending power.⁹⁷ First, Congress must

87. *Id.*

88. *Supra* Part II.C.1 (discussing how this knowledge is currently unknown because of past data collecting methods).

89. *Tracking Animal Cruelty*, *supra* note 1.

90. *Supra* Part II.C. (depicting that there are still flaws in the NIBRS system that must be addressed).

91. *Id.*

92. U.S. CONST. art. 1, § 8, cl. 1.

93. *Id.*

94. See Lynn A. Baker, *The Spending Power After NFIB v. Sebelius*, 37 HARV. J. L. & PUB. POL’Y 71 (2014) (demonstrating that Congress has implemented its spending power through statutes).

95. *Id.*

96. *Infra* Part IV (analyzing a potential use of Congress’s spending power to incentivize states to report animal cruelty to NIBRS).

97. *South Dakota v. Dole*, 483 U.S. 203 (1987) (discussing the four prongs that must be met in order for Congress’s use of its spending power to be found constitutional); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2566 (2012) (adding a fifth prong to the test of whether or not Congress’s use of its spending power is

use its spending power “in the pursuit of the general welfare.”⁹⁸ Second, the condition Congress imposes on the states to receive federal funds must be unambiguous.⁹⁹ Third, the condition must be reasonably related to “a purpose for which the funds are expended.”¹⁰⁰ Fourth, there must be no independent bar, such as a constitutional bar, that would prevent the grant of the federal funds.¹⁰¹ Finally, the condition cannot be unconstitutionally coercive “as to pass the point at which pressure turns into compulsion.”¹⁰² If Congress follows these factors to guide the use of its spending power to incentivize states to report animal cruelty to NIBRS, courts are likely to find its actions constitutionally valid.¹⁰³

Congress has successfully used its spending power to incentivize states to report and collect data.¹⁰⁴ When President Bush signed the Adam Walsh Child Protection and Safety Act (the Act) in 2006, Congress employed its spending power to help collect sexual predator data on a national level.¹⁰⁵ The Act was intended to address both the high recidivism rates of child sexual predators and increasing reports of child sexual violence.¹⁰⁶ One core purpose of the Act was to reformulate federal, sex offender registration requirements “to make the system more uniform, more inclusive, more informative, and more readily available to the public online.”¹⁰⁷

Under the Act, each jurisdiction must report child sexual offenses to a sex offender registry that conforms to the Act’s requirements.¹⁰⁸ The Act commissions the Attorney General as the liaison between Congress and states, in an attempt to improve low participation rates Congress has experienced in the past when transitioning states to a new or different reporting system.¹⁰⁹ The Attorney General must establish an assistance grant program to help states implement the procedures necessary to conform to the Act’s requirements.¹¹⁰ The Act mandates that the Attorney General consult and work with participating

constitutional).

98. U.S. CONST. art. 1, § 8, cl. 1; *United States v. Butler*, 297 U.S. 1 (1936); *Dole*, 483 U.S. at 203.

99. *Dole*, 483 U.S. at 203.

100. *Id.* at 203; *Massachusetts v. United States*, 435 U.S. 444, 461 (1978).

101. *Dole*, 483 U.S. at 203.

102. *Sebelius*, 132 S. Ct. at 2566 (discussing the addition of the fifth prong “unconstitutionally coercive”).

103. *Supra* Part II.D. (discussing the Supreme’s Court five-factor test to find Congress’s use of its spending power to be constitutionally valid).

104. See CHARLES DOYLE, CONG. RES. SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS I (2007) (demonstrating only one example where Congress has successfully used its spending power to incentivize states).

105. See *id.* (demonstrating that Congress will revoke 10% of federal funding from states not in compliance with the act).

106. 42 U.S.C.A. § 16901 (West 2006).

107. Cong. Res. Serv., RL 33967.

108. 42 U.S.C.A. § 16912 (West 2006) (establishing that the guidelines and regulations for the registry requirement shall be interpreted and implemented by the Attorney General).

109. 42 U.S.C.A. § 16926 (West 2006).

110. *Id.*

jurisdictions to ensure that the necessary software and protocols are developed and implemented smoothly.¹¹¹

Congress gave jurisdictions three years after the Act was signed, and one year after software development, to comply with the Act.¹¹² Exercising its spending power, Congress stated it would revoke ten percent of existing federal funds from any jurisdiction that did not comply with the Act within the provided timeframe.¹¹³ Additionally, Congress gave a bonus payment to any jurisdiction that substantially implemented the requirements under the Act within two years of enactment.¹¹⁴ Unlike NIBRS, where state support is minimal due to lack of federal incentives, the Act has garnered strong support from States.¹¹⁵

While many people have brought federalism challenges against the Act, no party has challenged it as an unconstitutional exercise of Congress's spending power.¹¹⁶ The Act does not raise constitutional concerns regarding spending power because Congress stayed within the authority granted by the Constitution, as well as federal and policy goals.¹¹⁷

III. LAYING OUT THE PROBLEM

This section of the Comment will demonstrate that the current FBI NIBRS program by itself is inadequate to collect comprehensive, national animal cruelty data because it is collected solely on a voluntary basis and does not incentivize states to participate.¹¹⁸ Additionally, this section discusses the problems with the current state of the FBI NIBRS tracking of animal cruelty crimes, and the more inherent issues associated with the national collection of criminal data on a voluntary basis.¹¹⁹

111. *Id.*

112. 42 U.S.C.A. § 16924 (West 2006) (additionally, the "Attorney General may authorize up to two 1-year extensions of the deadline").

113. 42 U.S.C.A. § 16925(a) (West 2006).

114. 42 U.S.C.A. § 16926 (elaborating that the bonus payment would be either "10% of the total received by the jurisdiction under the SOMA program" if implemented not later than one year, and "5 percent of such total, if not later than 2 years").

115. See Press Release, Dep't of Just. Off. of Just. Programs, Smart Office Announces Nearly \$4.3 Million in Grants to Enhance Sex Offender Registry and Notification Programs (Oct 2, 2008) [hereinafter *Press Release, Grants to Sex Offender Registry*] (on file with *The University of the Pacific Law Review*) (explaining that providing states with incentive to participate leads to greater participation than purely voluntary programs).

116. Robin Morse, Note, *Federalism Challenges to the Adam Walsh Act*, 89 B.U. L. REV. 1753, 1759 (2009).

117. See *United States v. Perry*, 788 F.2d 100, 109 (3d Cir. 1986) (citing *Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937) and *Helvering v. Davis*, 301 U.S. 619 (1937)) ("Congress can use its spending powers to coerce conduct consistent with its views of the general welfare in ways that it perhaps could not otherwise command."); Corey Rayburn Yung, *The Sex Offender Registration and Notification Act and the Commerce Clause*, 21 FED. SENT'G REP., No. 2, 2008, at 133, 134 (explaining that Congress has the authority to condition federal funds to promote federal goals and therefore quells new constitutional questions).

118. *Infra* Part III. (briefly summarizing the inadequacies of NIBRS).

119. *Id.*

A. Inadequacies of Current FBI Tracking Techniques

Realizing the danger animal abusers pose to the public, the FBI began tracking animal cruelty crimes on January 1, 2016.¹²⁰ By creating a separate category to track animal cruelty offenses, “law enforcement agencies and the advocacy groups that pushed for the inclusion in the FBI database. . . [hope] the results will reveal a more complete picture of the nature of cruelty to animals,” as well as provide more insight into the link between animal cruelty and human abuse.¹²¹ Tracking these crimes will show how often they occur, demonstrate trends, and provide new insight into a crime not previously analyzed on a national level.¹²²

Currently, agencies reporting animal cruelty crimes can place the abuse into one of four categories: “simple/gross neglect, intentional abuse and torture, organized abuse (like dogfighting and cockfighting) and animal sexual abuse.”¹²³ Organizations that lobbied for more descriptive NIBRS categories explain that many agencies can use this information to educate and specifically target intervention efforts to prevent animal cruelty crimes and “crimes for which animal cruelty serves as a marker.”¹²⁴

Currently the FBI NIBRS program collects data on a voluntary basis from law enforcement agencies.¹²⁵ Unfortunately, “[o]f the nearly 18,000 law enforcement agencies in the country—including city police, university/college police, county police and sheriffs, state police, tribal police, and even some federal agencies—only about 30% contribute crime data to NIBRS.”¹²⁶ Of that 30%, statistics further display that only a fraction of law enforcement agencies participate in contributing animal cruelty data.¹²⁷ Animal abuse researchers believe the reason for low participation rates is that NIBRS recently added a separate animal cruelty category in 2016, and law enforcement agencies may still be learning about it.¹²⁸ These researchers further speculate that agencies still view

120. *Tracking Animal Cruelty*, *supra* note 1.

121. *Id.*

122. *A Guide to NIBRS*, *supra* note 68, at 3.

123. Grenoble, *supra* note 56.

124. *Tracking Animal Cruelty*, *supra* note 1 (elaborating that crimes that serve as a marker include but are not limited to child abuse, elder abuse, and domestic violence).

125. *A Guide to NIBRS*, *supra* note 68, at 3.

126. *FBI Tracks Animal Cruelty*, LAST CHANCE FOR ANIMALS, <http://www.lcanimal.org/index.php/campaigns/other-issues/fbi-tracks-animal-cruelty> (last visited Apr. 7, 2017) (on file with *The University of the Pacific Law Review*).

127. See Lisa Fleming, *Talk of the Town: Where is the FBI's Animal Cruelty Data in Florida?* (Jan. 13, 2017), <http://naplesherald.com/2017/01/13/talk-of-the-town-where-is-fbis-animal-cruelty-data-in-florida/> (on file with *The University of the Pacific Law Review*) (explaining that it is unlikely, given how recently animal cruelty was added to NIBRS, that all state participating in NIBRS have upgraded their systems to participate in also reporting animal cruelty).

128. *Id.* (explaining that it is unlikely, given how recently animal cruelty was added to NIBRS, that all state participating in NIBRS have upgraded their systems to participate in also reporting animal cruelty).

animal crimes as a misdemeanor and are not willing or do not have the necessary resources to report another crime.¹²⁹

Unfortunately, due to the lack of legislation mandating and controlling the data collection process, the number of reporting agencies varies from year-to-year.¹³⁰ Some state law enforcement agencies change their reporting practices or fail to report.¹³¹ Such sporadic and unregulated reporting distorts the accuracy of the NIBRS reports.¹³² Additionally, the FBI often finds an agency has underreported its data, causing the FBI to omit that data altogether.¹³³ The FBI states that due to unpredictable law enforcement reporting, criminal data from NIBRS is not useful in analyzing national criminal trends.¹³⁴

For decades, critics have noted that voluntary reporting programs such as NIBRS are plagued with a variety of problems, including “the failure of local and state officials to pass along accurate data to the FBI if they submitted any reports at all.”¹³⁵ The FBI’s efforts to collect national data on a voluntary basis for many crimes have failed to produce credible statistics.¹³⁶ One clear example is the federal government’s attempt to collect national hate crime statistics.¹³⁷ Despite Congress’s efforts in 1991 to collect national, hate crime statistics, decades later researchers are still without national data.¹³⁸ There, Congress did not use its spending power to incentivize states to promulgate legislation mandating law enforcement agencies to report hate crimes.¹³⁹ Congress essentially created yet another voluntary reporting system that provided little assistance to participating states and resulted in untrained law enforcement agencies and the collection of inaccurate data.¹⁴⁰ As a result, the prevalence of hate crimes is vastly understated, and the lack of concrete statistics makes it difficult to determine both recidivism

129. See N.C. GEN. STAT. ANN. § 14-360 (West 2015), W. VA. CODE ANN. § 61-8-10 (West 2008) (demonstrating that some states still view animal cruelty as a misdemeanor offense); see also Campbell, *supra* note 53 (explaining that police officers often dismiss reports of animal abuse believing they have more important issues to deal with and not finding animal abuse to be significant enough).

130. *A Guide to NIBRS*, *supra* note 68, at 3.

131. Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 411 (2002).

132. *Id.* (explaining that the lack of credible statistics makes it impossible for analysts to ascertain concrete trends); *Preliminary Semiannual Uniform Crime Report, January-June, 2016*, FBI:UCR, <https://ucr.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2016/preliminary-semiannual-uniform-crime-report-januaryjune-2016> (last visited Apr. 8, 2017) (on file with *The University of the Pacific Law Review*) (displaying that Orlando, FL reported 65 murders in 2016, yet a mere 9 in 2015).

133. *Preliminary Semiannual Uniform Crime Report*, *supra* note 133 (displaying that Orlando, FL reported 65 murders in 2016, yet a mere 9 in 2015 and that Bridgeport, Connecticut’s data for 2016 was not included in the report for property crime or larceny theft).

134. *A Guide to NIBRS*, *supra* note 68, at 3.

135. Rubinowitz & Perry, *supra* note 132, at 411.

136. *Id.* at 411–12.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*; Dedel, *supra* note 20.

rates and hate crime trends.¹⁴¹ Participating law enforcement agencies continue to misreport hate crimes, which makes the data difficult to compare year-to-year.¹⁴²

The FBI's efforts to collect national data on a voluntary basis for arrest rates have also failed to produce credible statistics.¹⁴³ Law enforcement agencies provide the same reasons for either not reporting or submitting incomplete reports to the FBI on juvenile crimes as they do for inadequately reporting animal cruelty crimes: agencies continue to rate offenses and generally only report the crimes their agency considers to be amongst the "most serious offenses."¹⁴⁴ The lack of representation due to incomplete and inconsistent reporting has led to major consequences.¹⁴⁵ In analyzing arrest data, incomplete reporting has led individuals to improperly infer and report offense rates of juveniles.¹⁴⁶ Relying on improper data, rehabilitation clinics, psychologists, law enforcement agencies, and many other groups have created plans to combat, reduce, and prevent juvenile offense rates all based off of incorrect data.¹⁴⁷

America, the "[g]reatest Nation in the World," is notorious for incorrectly recording criminal data.¹⁴⁸ Former FBI Director James Comey publicly admitted that the U.S. "face[s] a data shortage on the violent crime front," and due to that shortage, the FBI "can't tell [the public] on a national level how many shootings there were in any particular city last weekend."¹⁴⁹ Comey, criminologists, and social justice advocates recognize that without comprehensive data, conversations and education in policing, reform, and justice will remain uninformed and disconnected.¹⁵⁰ The FBI and advocates for the collection of comprehensive data provide a variety of reasons why national data is not a reality; yet chief among them is the belief that the archaic method of voluntary data reporting is primarily to blame.¹⁵¹ Now that data is being used for novel purposes, new collection and reporting methods need to be implemented to better unify and educate our law enforcement agencies.¹⁵²

141. Rubinowitz & Perry, *supra* note 132, at 411–12.

142. *Id.* at 412.

143. MICHAEL D. MALTZ, U.S. DEPT. OF JUST., BRIDGING GAPS IN POLICE CRIME DATA 19 (1999), available at <https://www.bjs.gov/content/pub/pdf/bgpcd.pdf> (on file with *The University of the Pacific Law Review*).

144. *Id.*; HOWARD N. SNYDER, U.S. DEPT. OF JUST., JUVENILE ARRESTS 1999 3 (2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/218096.pdf> (on file with *The University of the Pacific Law Review*).

145. Maltz, *supra* note 144, at 19.

146. Snyder, *supra* note 145, at 3; Maltz, *supra* note 144, at 41.

147. Maltz, *supra* note 144, at 19.

148. Alice Brennan, *Why is the Greatest Nation in the World Shockingly Bad at Recording Crime Data?*, FUSION TV (June 23, 2016, 12:58 PM), <http://tv.fusion.net/story/302325/fbi-crime-data-reporting/> (on file with *The University of the Pacific Law Review*).

149. *Id.*

150. Snyder, *supra* note 145, at 3.

151. Brennan, *supra* note 149.

152. Maltz, *supra* note 144, at 41.

Incentivizing law enforcement agencies to make the move to NIBRS “is critical to the success of this data collection effort.”¹⁵³ “Without the support of state and local law enforcement agencies, any [effort to collect data will be] ineffective.”¹⁵⁴ The FBI, state, and local law enforcement agencies face many obstacles in adding animal cruelty crimes to NIBRS.¹⁵⁵ All will face technical challenges and costs associated with adding computer programs to track and retrieve the new data.¹⁵⁶ Finding the money, personnel, and resources to create a new sector to report animal cruelty crimes may not be a feat that states are willing to tackle.¹⁵⁷ However, if the federal government incentivizes state law enforcement agencies to collect animal cruelty data and submit reports, the success and quality of data collection will be greatly enhanced.¹⁵⁸

B. Importance of Additional Steps and More Descriptive Guidelines for the Collection of Animal Cruelty Data

Because the FBI UCR systems have failed to produce national criminal data, Congress has taken a more aggressive approach against certain crimes it considers a substantial national threat.¹⁵⁹ As previously introduced, the Act was created in response to a lack of comprehensive national data on sex offenders, the need for more information for law enforcement agencies to analyze in the battle against sexual predators, and the lack of uniformity in tracking of sexual predators amongst the states.¹⁶⁰

All fifty states, including “the District of Columbia and the territory of Guam,” are linked to the Act, however only thirty percent of law enforcement agencies participate in NIBRS.¹⁶¹ Attorney General Alberto Gonzales explained that the Act’s requirement for a national registry of sex offenders is an important tool to protect the public, and is truly comprehensive “with information for all 50 states available nationwide.”¹⁶² The Act saves innocent children from sexual

153. ADDINGTON & RANDOUR, *supra* note 15, at 3.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *See infra* Part IV (analyzing the success of collecting national data on animal cruelty if states were incentivized and supported in doing so).

159. *See* CHARLES DOYLE, CONG. RESEARCH SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS I (2007) (demonstrating that in 2006, when the Adam Walsh Act was signed, despite the FBI’s UCR program collecting data voluntarily, the federal government was compelled to take a more aggressive approach towards tracking sex offenders).

160. *Id.*

161. *Press Release, Grants to Sex Offender Registry, supra* note 116.

162. *Id.*

predators by providing law enforcement across the nation with the requisite information to educate themselves and better track sexual predators.¹⁶³

Ideally, the federal government should provide state law enforcement agencies with clear guidelines for animal cruelty reports.¹⁶⁴ Similar to the Act's requirements, each animal cruelty report should include the alias used by the animal abuser as well as characteristics of the offender—including his or her age, gender, physical description, method of operation, organizational affiliations, and psychological state.¹⁶⁵ Each report should clearly depict the facts in extensive detail to make it feasible to identify a repeat offender.¹⁶⁶ Given the high recidivism rates of animal abusers, this would greatly further the FBI's goal of providing law enforcement agencies with data to assist in lowering animal cruelty recidivism rates.¹⁶⁷

By clearly spelling out what was expected of states, the Act effectively increased the amount and strength of child sexual predator data.¹⁶⁸ By directing the collection of national criminal data through the Act, the federal government did not experience issues like it did with data collection through NIBRS because Congress used its spending power to incentivize participating states.¹⁶⁹ Additionally, data collected through the Act can be compared annually, unlike NIBRS reports, because participating agencies continue to report year-to-year since the Act conditions the receipt of federal funds upon participation.¹⁷⁰

Although the federal government has taken a step in the right direction with tracking animal cruelty crimes in its own category, time and history have shown that the path towards collecting comprehensive, national animal cruelty data requires many more steps.¹⁷¹ Unless Congress uses means similar to those employed in the Act, it is likely that voluntary reporting will continue to lead to the underreporting of animal cruelty crimes and a lack of comprehensive animal

163. Richard A. Paladino, *The Adam Walsh Act as Applied to Juveniles: One Size Does Not Fit All*, 40 HOFSTRA L. REV. 269, 279 (2014).

164. *See generally* Cong. Res. Serv., RL 33967 (describing the many sections within the Act and demonstrating the clear guidance given to participating states).

165. 42 U.S.C.A. §16914 (West 2016).

166. *See id.* (enumerating some of the information states must report and keep record of to help track sex offenders).

167. *Supra* Part II.B. (discussing the FBI's goals in attempting to collect national crime data).

168. 42 U.S.C.A. § 16914.

169. *See* 42 U.S.C.A. § 16925 (West 2006) (showing the use of Congress's spending power).

170. *See* 42 U.S.C.A. § 16925 (demonstrating Congress conditioning ten percent of federal funds).

171. *See* Rubinowitz & Perry, *supra* note 132, at 41 (demonstrating that Congress taking the step to track hate crimes was a good start, however decades later the voluntary reporting is still and will never be enough to collect comprehensive national hate crime data).

cruelty data.¹⁷² Congress should take a more comprehensive and direct approach to protect society from animal abusers.¹⁷³

IV. PROPOSAL

If Congress incentivized states to report animal cruelty convictions to NIBRS, what would the future look like for animal cruelty?¹⁷⁴ The answer may lie in the mutual interest of both Congress and states in enacting legislation to promote the general welfare.¹⁷⁵ Congress should use its spending power to incentivize states to report animal cruelty convictions to NIBRS by conditioning a percentage of federal funds on state compliance with this goal.¹⁷⁶

A. *The Adam Walsh Act as a Model for the Collection of Animal Cruelty Crimes Nationally*

The Supreme Court rarely strikes down a Congressional plan incentivizing states to report crimes to the government as unconstitutional.¹⁷⁷ The events that led the FBI to track child sex offenders are nearly identical to those that led the FBI to track animal abusers.¹⁷⁸ Additionally, the federal government's goals in tracking both crimes are essentially indistinguishable.¹⁷⁹ The next logical step is for Congress to apply the same procedures to protect animal cruelty victims as it did to protect children from sex offenders.¹⁸⁰

172. See Rubinowitz & Perry, *supra* note 132, at 411 (analogizing the tracking of animal cruelty crimes with tracking of hate crimes and if Congress continues on the same path that it did with hate crimes, decades later the nation will be left with no national animal cruelty data).

173. *Id.*

174. *Infra* Part IV. (analyzing the future of national data with the use of Congress's spending power to incentivize states to report animal abuse data to NIBRS).

175. U.S. CONST. art. 1, § 8, cl. 1.

176. *Infra* Part IV (while the discussion of other sections of the Adam Walsh Act are outside the scope of this paper, the Act provides a model that could be followed for the education and prevention of animal cruelty crimes).

177. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

178. 42 U.S.C.A. § 16901 (West 2006); see *Tracking Animal Cruelty*, *supra* note 1 (depicting the FBI's goal is to protect the public from animal cruelty convicts and to better educate law enforcement agencies of such convicts' tendencies); CHARLES DOYLE, CONG. RESEARCH SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS I (2007) (explaining the goal of the Adam Wash act was to protect the public and children from sexual predators and to better educate law enforcement of such predators' tendencies and save children from being abused or killed).

179. See *Tracking Animal Cruelty*, *supra* note 1 (explaining that by tracking animal abusers law enforcement will become better educated to combat such crimes and save both animal an human lives); see also Cong. Res. Serv., RL 33967 (explaining that the Act seeks to "provide more information on a wider range of offenders, and make the information more readily available to the public and law enforcement officials").

180. *Infra* Part IV (analyzing the future of national data with the use of Congress's spending power to incentivize states to report animal abuse data to NIBRS).

1. Implementation of Congress's Spending Power

Congress exercised its spending power to incentivize states to report sexual violence against children to the federal government, and parallel reasoning suggests Congress should do the same for animal cruelty.¹⁸¹ Title I of the Sex Offender Registration Notification Act (SORNA)¹⁸² revokes ten percent of existing federal funds from states that fail to participate in the national tracking of sex offenders.¹⁸³ Congress's use of its spending power in this provision is valid under the Constitution because, as noted previously, Congress has the authority to condition federal funds on state compliance with national goals.¹⁸⁴ Congress should take similar steps to address concerns about animal cruelty and the progression to human abuse.¹⁸⁵ Similar to Congress's process in drafting the Act, Congress will need to comply with the test outlined above in Part II.D for its spending power to be upheld as constitutional.¹⁸⁶

Similar to the means employed by Congress in the Act, Congress should condition a state's receipt of a percentage of federal funds on whether that state requires its law enforcement agencies to report animal cruelty crimes to NIBRS.¹⁸⁷ Congress could offer an additional grant of federal funding to states that promulgate such laws.¹⁸⁸ Alternatively, like in the Act, Congress could reduce ten percent of existing federal funds in any area rationally related to animal cruelty.¹⁸⁹ Ultimately, states will have the choice to comply with federal goals, pass a law, and receive a percentage of federal funding, or states may choose not to pass a law and not receive such funding.¹⁹⁰

First, the power of Congress to spend "must be in pursuit of the general welfare."¹⁹¹ Congress must present a rational basis demonstrating its use of

181. *Id.*

182. 42 U.S.C.A. § 16902 (West 2006).

183. 42 U.S.C.A. § 16925 (West 2006).

184. *See* United States v. Perry, 788 F.2d 100, 109 (3d Cir. 1986) (citing *Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937) and *Helvering v. Davis*, 301 U.S. 619 (1937)) ("Congress can use its spending powers to coerce conduct consistent with its views of the general welfare in ways that it perhaps could not otherwise command."); Corey Rayburn Yung, *The Sex Offender Registration and Notification Act and the Commerce Clause*, 21 FED. SENT'G REP. 133, 134 (2008) (explaining that Congress has the authority to condition federal funds to promote federal goals and therefore quells new constitutional questions).

185. *Infra* Part IV.A.1. (discussing the parallels between the Act used to combat sexual abuse and the need for a system to combat animal abuse).

186. 42 U.S.C.A. § 16925(a).

187. 42 U.S.C.A. § 16925(a).

188. 42 U.S.C.A. § 16926 (West 2006).

189. 42 U.S.C.A. § 16925(a).

190. *South Dakota v. Dole*, 483 U.S. 203 (1987) (discussing the process involved between state and Congress when Congress uses its spending power to condition federal funds to the states).

191. U.S. CONST. art. 1, § 8, cl. 1; *Dole*, 483 U.S. at 207; *United States v. Butler*, 297 U.S. 1 (1936).

spending power is linked to protecting the general welfare.¹⁹² Courts generally defer to Congress on this issue.¹⁹³

Congress should withhold a portion of law enforcement funds from states refusing to promulgate laws mandating their law enforcement agencies to report animal cruelty crimes to NIBRS.¹⁹⁴ States with differing animal cruelty laws create a dangerous law enforcement problem: animal abusers could move or travel to states with either relaxed or no animal cruelty reporting laws.¹⁹⁵ This would advance the general welfare by enhancing the collection of national data on animal cruelty crimes, enabling law enforcement agencies and researchers to track and identify common characteristics in animal abusers.¹⁹⁶ Law enforcement agencies should use the national data to inform their policies, which will lead to lower recidivism rates and law enforcement protecting people and animals from further harm.¹⁹⁷ Ultimately, Congress would be promoting the general welfare by incentivizing states to report to NIBRS and conditioning a percentage of federal law enforcement funds.¹⁹⁸

Second, Congress must unambiguously employ its spending power.¹⁹⁹ States must be aware of the effects of choosing or not choosing to enact legislation with such encumbrances attached.²⁰⁰ Furthermore, Congress cannot mandate states to promulgate a law because the Constitution reserves the power to enact laws promoting the general welfare for the states.²⁰¹ If Congress describes the terms of the funding in the same manner it did when enacting the Act, states will clearly understand the consequences of their decisions to comply or not comply.²⁰² States will understand that they can either promulgate a law mandating law enforcement agencies to report to NIBRS and continue to receive existing federal funds, or not promulgate the law and have a portion of existing federal funds revoked.²⁰³ By

192. *Dole*, 483 U.S. at 203 (explaining that this was a valid use of Congress's spending power, the Court explained that it was foreseeable that a child in a state with a higher drinking age would use the highway to travel to the next state with a lower drinking age, get drunk, and then drive drunk on the highways to return to their home state, thereby creating a rational link between the condition of federal funds for highways and states increasing the drinking age to 21).

193. *Dole*, 483 U.S. at 207 n.2; Baker, *supra* note 85.

194. *Infra* Part IV (analyzing the future of national data with the use of Congress's spending power to incentivize states to report animal abuse data to NIBRS).

195. *See Dole*, 483 U.S. at 203 (analogizing the problems presented in *Dole* with problems the U.S. would face with states having differing animal cruelty reporting laws).

196. *Infra* Part IV (analyzing the future of national data with the use of Congress's spending power to incentivize states to report animal abuse data to NIBRS).

197. *See Dedel*, *supra* note 20 (demonstrating that law enforcement need data to further educate themselves and plan rescue efforts to stop the furtherance of animal violence).

198. *Dole*, 483 U.S. at 203.

199. *Id.* at 203; *Pennhurst St. Shc. v. Halderman*, 451 U.S. 1, 17 (1981).

200. *Dole*, 483 U.S. at 203; *Halderman*, 451 U.S. at 17.

201. Baker, *supra* note 85.

202. 42 U.S.C.A. § 16923 (West 2006) (enumerating the Act's requirements for the states); *Dole*, 483 U.S. at 203.

203. *Dole*, 483 U.S. at 203; *Halderman*, 451 U.S. at 17.

clearly explaining the conditional terms of the federal funding, Congress will comply with constitutional requirements for this second prong.²⁰⁴

Third, Congress's conditional state funding must be reasonably related to Congress's purpose and interest.²⁰⁵ In this context, Congress's purpose would be to save animal and human lives by strengthening national data on animal cruelty and ultimately to assist in educating law enforcement agencies on how to track and prevent animal cruelty and other linked crimes.²⁰⁶ Despite different crimes, the purposes behind the Act and this proposal are similar.²⁰⁷ The Act, cutting ten percent of federal funding to law enforcement agencies was related to Congress's purpose and interest in protecting children.²⁰⁸ If Congress cut ten percent of existing federal funding or offered an additional ten percent of law enforcement federal funding to states that promulgate a law for submitting animal cruelty data, courts would find the conditional funding to be reasonably related to Congress's purpose.²⁰⁹

Due to the link between animal cruelty and other crimes such as child abuse, domestic violence, elder abuse, sexual violence, and homicide, Congress can choose from a plethora of areas to condition federal funding related to its purpose and interest.²¹⁰ For example, Congress could provide federal funding to states to assist in the reporting of animal cruelty data to the FBI, to provide therapy for children who are charged with animal cruelty, or to create workshops where law enforcement can analyze nationally-collected data.²¹¹ There are many areas Congress could choose from to condition federal funding that relate to the purpose and interest of its conditional grants.²¹²

Fourth, there must be no independent bar that prevents granting federal funds.²¹³ For example, the Constitution prohibits Congress from using its spending power to aid religion.²¹⁴ The Constitution does not bar Congress from

204. *Dole*, 483 U.S. at 203; *Haldeman*, 451 U.S. at 17.

205. *Dole*, 483 U.S. at 203; *Massachusetts v. United States*, 435 U.S. 444, 461 (1978).

206. Addington & Randour, *supra* note 15 at 2.

207. 42 U.S.C.A. § 16901 (West 2006); see *Tracking Animal Cruelty*, *supra* note 1 (depicting the FBI's goal is to protect the public from animal cruelty convicts and to better educate law enforcement agencies of such convicts' tendencies); CHARLES DOYLE, CONG. RESEARCH SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS 1 (2007) (explaining the goal of the Adam Walsh act was to protect the public and children from sexual predators and to better educate law enforcement of such predators' tendencies and save children from being abused or killed).

208. 42 U.S.C.A. § 16925(a) (West 2006); *Dole*, 483 U.S. at 203.

209. 42 U.S.C.A. § 16925(a); *Dole*, 483 U.S. at 203; *Massachusetts v. U.S.*, 435 U.S. at 461.

210. See *infra* Part II.A (demonstrating the link between animal abuse and many other crimes).

211. *Dole*, 483 U.S. at 203 (explaining that the federal funding needs to go to an area of national concern).

212. *Id.*

213. *Id.* at 203; *Lawrence County v. Lead-Deadwood Sch. Dist.*, 469 U.S. 256, 269-70 (1985).

214. U.S. CONST. amend. I (additionally, Congress may not use their spending power to ban libraries from possessing certain literature pertaining to animal abuse or they may be in violation of the guarantee of freedom of speech).

using its spending power to incentivize states to mandate their law enforcement agencies to report animal crimes to NIBRS.²¹⁵ Overall, it is unlikely that a court would find Congress's use of its spending power for the general welfare to be unconstitutional.²¹⁶

Fifth, if Congress revokes existing federal funding, it should only revoke a small percentage so the condition is not unconstitutionally coercive.²¹⁷ Congress's exercise of its spending power becomes unconstitutionally coercive when it revokes so much funding that states have no choice but to participate.²¹⁸ The Supreme Court upheld Congress's use of its spending power when Congress conditioned ten percent of state and federal funding through the Act, finding that a ten percent cut in federal funding was not a large enough amount to force states participation.²¹⁹

If Congress conditioned ten percent of existing federal funds on states promulgating a law mandating their law enforcement agencies to submit data to NIBRS, its spending power would not be found to be unconstitutionally coercive.²²⁰ If this use of Congress's spending power is challenged, courts will most likely find that this reduction of federal funding will neither negatively impact the average state budget nor impose vastly greater responsibilities on the states.²²¹ Further, courts often defer to and give Congress broad authority to decipher the best use of its spending power.²²² On balance, if Congress follows this test, courts will likely find its action to be constitutionally valid.²²³

2. *Oversight and Tools Provided to States*

As an additional attempt to incentivize state law enforcement agencies to report data to NIBRS, the FBI began to “offer contributors tools that [would] facilitate participation in the NIBRS.”²²⁴ While it is important to assist states through this transitory phase, all law enforcement agencies—not just those that demonstrate some interest in contributing—should be offered the tools to ease into the mandatory reporting to NIBRS.²²⁵ However, the FBI has a limited

215. U.S. CONST. art. 1, § 8, cl. 1.

216. U.S. CONST. amend. I (establishing that there is not a constitutional bar that prevents Congress from setting conditions on the receipt of federal funding).

217. Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2604 (2012).

218. *See id.* at 2629 (explaining that the 2010 Medicare repeal was a complete overhaul of the Medicare program and the threat to revoke the state's entire Medicare funding was too coercive and left the states with no choice but to participate).

219. Morse, Note, *supra* note at 1759.

220. *Sebelius*, 132 S. Ct. at 2629.

221. *Id.*

222. South Dakota v. Dole, 483 U.S. 203, 207 (1987).

223. *Id.*

224. *A Guide to NIBRS*, *supra* note 68, at 8.

225. *Id.*

amount of resources.²²⁶ Given that only 30% of agencies participate in NIBRS and that the FBI has tried unsuccessfully to increase participation for decades, this is another situation where Congress should assist.²²⁷

Under the Act, the Attorney General is required to work with and support jurisdictions in developing Internet sites and uniform registries.²²⁸ Furthermore, the Act directs the Attorney General to establish an assistance grant program to support states in implementing the registries and their roles under the Act.²²⁹ Congress, in incentivizing states to mandate their law enforcement agencies to report animal cruelty data to NIBRS, like the Act, should include a section requiring the Attorney General to assist with the initial development of the appropriate platform necessary to report data to NIBRS.²³⁰ The Attorney General's assistance would alleviate much of the states' hesitation to find or make resources to report data for yet another crime.²³¹ The Attorney General should use the current assistance program designed for the Act as a template to make assistance easier.²³²

V. CONCLUSION

“Those who understand this linkage of crimes towards animals and people are in a better position to prevent future violence and protect their communities.”

—Allie Phillips²³³

Animal cruelty convicts, with up to a one hundred percent recidivism rate, pose a grave threat to society.²³⁴ Not only do they threaten society's valued family pets, but also human lives.²³⁵ If Congress uses its spending power to incentivize states to require their law enforcement agencies to report animal cruelty crime data to NIBRS by either creating conditional grants or revoking existing federal funding, society will benefit in a multitude of ways.²³⁶ The

226. *See Id.* (demonstrating the FBI and Bureau of Justice were only able to assist a limited number of law enforcement agencies as opposed to all law enforcement agencies).

227. *FBI Tracks Animal Cruelty*, *supra* note 127.

228. 42 U.S.C.A. § 16923 (West 2006).

229. 42 U.S.C.A. § 16926 (West 2006).

230. 42 U.S.C.A. § 16926.

231. 42 U.S.C.A. § 16923.

232. *Supra* Part IV.A. (describing the Act and the Attorney General's role under the Act).

233. *Link Between Violence to Animals and People*, *supra* note 14 (impressing that the 68% of households owning a pet equate to approximately 82.5 million pets in the U.S.).

234. *First Strike and You're Out: A Model Law*, ANIMAL LEGAL DEF. FUND <http://aldf.org/resources/advocating-for-animals/first-strike-and-youre-out-a-model-law/> (last visited Apr. 7, 2017) (on file with *The University of the Pacific Law Review*).

235. *Supra* Part I.B. (depicting the link between animal and human abuse).

236. *Supra* Part III. (depicting the need for states to be incentivized through the use of Congress's spending power).

federal government could finally fill the gap and produce comprehensive, national data to educate law enforcement agencies on how best to fight the battle against animal cruelty and other closely-linked crimes.²³⁷ Collected national data would arm states with the requisite information to track animal abusers who evade criminal convictions by crossing state lines.²³⁸ Shelters and pounds would be equipped to run background checks and stop abusers from adopting animals.²³⁹ State laws mandating reports to NIBRS could ultimately result in the federal government saving lives and severing the link between animal and human abuse.²⁴⁰

When the FBI created the UCR system almost a century ago, the goal was to collect national, comprehensive data that would finally provide law enforcement agencies and researchers the necessary information to track, learn about, and prevent future crimes.²⁴¹ The FBI intended the conversion from SRS to NIBRS to be the final step in the collection of national criminal data.²⁴² However, despite these admirable goals, NIBRS continues to leave the nation and law enforcement agencies with much to be desired.²⁴³ Even supporters of the more extensive and detailed NIBRS reports and the creation of a separate category to track animal cruelty crimes acknowledge that the program will only ever produce a miniscule amount of data as long as reports are collected only on a voluntary basis.²⁴⁴

Recognizing the need for nationwide criminal databases and the collection of comprehensive data, Congress created legislation such as the Adam Walsh Child Safety Protection Act to incentivize states to participate in the fight against crime and the protection of their neighborhoods.²⁴⁵ Congress employed its spending power to either advance or revoke federal funding in order to incentivize participation.²⁴⁶ Because of this incentive, more states began to upload data

237. *Supra* Part II (discussing how state law enforcement agencies, due to a lack of national data, lack education, training, and knowledge of how best to combat the progression of animal abuse to human abuse).

238. Wells, *supra* note 16.

239. *Supra* Part II (explaining how the lack of animal abuse data leads to relaxed state laws and allows convicted animal abusers in one state to cross state lines and continue abusing animals).

240. *Supra* Part I (explaining the link between animal and human abuse and the need to bring awareness and change to the collection of animal abuse data).

241. ADDINGTON & RANDOUR, *supra* note 15, at 2.

242. *See id.* (elaborating that the NIBRS program provides information of the “victim, offender and arrestee-demographics, incident details regarding weapons, items taken, and injuries incurred, and any arrest details” as opposed to the small summary of the crime the SRS program provided); *and see A Guide to NIBRS*, *supra* note 68 at 1 (explaining the NIBRS program allows law enforcement agencies to “report offense and arrest data for 22 Group A offense categories (including 46 specific crimes) rather than the SRS only reporting 8 Part I offenses).

243. ADDINGTON & RANDOUR, *supra* note 15 at 2.

244. *Last Chance for Animals Launches ‘FBI Tracks Animal Cruelty’ Campaign to Increase Participation in FBI Animal Cruelty Database*, MARKET WIRED (Sept. 2016, 2:56 PM), <http://www.marketwired.com/press-release/last-chance-animals-launches-fbi-tracks-animal-cruelty-campaign-increase-participation-2161941.htm> (on file with *The University of the Pacific Law Review*).

245. 42 U.S.C.A. § 16901 (West 2006).

246. 42 U.S.C.A. § 16925(a) (West 2006).

thereby immediately enhancing the quality and quantity of data collected.²⁴⁷ Additionally, the federal government relieved much of the hesitation and reluctance that states previously experienced with new programs by providing adequate support and oversight.²⁴⁸

When states and Congress work together to protect the nation with a mutual goal of promoting the general welfare, America's families reap the benefits.²⁴⁹ The public policy goals behind both the Act and the FBI tracking animal cruelty crimes are identical: the government wants to protect and save innocent lives.²⁵⁰ Therefore, Congress should employ its spending power to promote the general welfare and protect the public from animal abusers.²⁵¹ Comprehensive, national data on animal cruelty crimes will bring uniformity across states, provide law enforcement agencies with the necessary knowledge to battle twenty-first century crimes, and bring justice to innocent victims once and for all.²⁵² "When we keep animals safe from harm, we also keep children and adults safe."²⁵³ The nation has suffered long enough; Congress should take this integral step towards educating the nation's law enforcement agencies and finally severing the link between animal cruelty and human abuse.²⁵⁴

247. *Press Release, Grants to Sex Offender Registry, supra* note 116.

248. 42 U.S.C.A. § 16926 (West 2006).

249. *See generally Tracking Animal Cruelty, supra* note 1 (explaining the benefits society will receive with the FBI, states, and law enforcement working together to track animal cruelty); CHARLES DOYLE, CONG. RESEARCH SERV., RL 33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS 1 (2007) (demonstrating the benefits to society the Act would provide by Congress and the states working together).

250. 42 U.S.C.A. § 16901; *see generally Tracking Animal Cruelty, supra* note 1 (explaining that by tracking animal abusers law enforcement will become better educated to combat such crimes and save both animal and human lives); Cong. Res. Serv., RL 33967 (explaining the goal of the Adam Wash act was to protect the public and children from sexual predators and to better inform law enforcement of such predators' tendencies).

251. *Supra* Part IV (analyzing the future of national data with the use of Congress's spending power to incentivize states to report animal abuse data to NIBRS).

252. Snyder, *supra* note 145, at 3.

253. Melson, *supra* note 38.

254. *See Tracking Animal Cruelty, supra* note 1 (explaining that animal cruelty is a crime that is linked to many other crimes and the Federal government realizes that more aggressive steps need to be taken to combat this crime).