

REVISION OF THE AWA AND REMOVAL OF ZOOS AS AN EXEMPT CATEGORY OF THE STATE ANTI-CRUELTY STATUTE FOR STRONGER PROTECTION OF CAPTIVE WILDLIFE IN MICHIGAN

Julia Luttig

INTRODUCTION 1

I. The Dichotomy Between Legitimate Zoological Institutions and “Roadside” Zoos 4

 A. Accredited Zoos 5

 B. Non-Accredited, Roadside Zoos 7

 i. Examples of Roadside Zoos in Michigan 9

II. The Animal Welfare Act 11

 A. Expansion of the AWA to Include All Captive Species 12

 B. Expansion in Specificity and Detail of Animal Care Standards 13

 C. Amending the AWA to Include Operational Requirements for Zoos 16

 D. Expanding the AWA to Prohibit Wildlife Encounters with Visitors 17

 E. Provision for Increased Frequency and Thoroughness of Zoo Inspections by APHIS 18

 i. License Renewal for Violating Facilities Must be Prohibited 19

 F. Addition of a Citizen-Suit Provision to the AWA 20

III. State of Michigan Anti-Cruelty Laws 22

 A. Distinction Between Zoos and Other Categories Exempt from the Michigan Anti-cruelty Statutes 22

 B. Benefits of Extending the Michigan Anti-Cruelty Statute to Zoos 24

 C. Outcomes of Expanding the State Anti-Cruelty Statute to Include Zoos 27

CONCLUSION 29

INTRODUCTION

Driving “Up North” Michigan, thousands of vehicles will pass conspicuous signs with intriguing, enticing black bears. The signs offer a once-in-a-lifetime opportunity to hold an endearing bear cub at a local rescue center. Intrigued by the opportunity, tourists will take the next exit to small, yet exotic zoo. They have arrived at Oswald’s Bear Ranch, one of Michigan’s countless roadside zoos. The expectation was playful, flourishing, young bears but that is far from the case. They see a handful of bears in a small, dirty cage pacing back and forth. They hear the cries of the cubs, with their mother nowhere in sight. They witness zoo staff striking a bear

resisting being held down for a photograph with visitors.¹ Where did the bears come from and why is such poor treatment allowed? How this can possibly be legal? The conditions at Oswald's Bear Ranch, while shocking, are not uncommon for facilities commonly known as "roadside zoos." Because of the unacceptable conditions in numerous zoos throughout Michigan, the Animal Welfare Act must be revised to greater protect captive wildlife, and zoos must be removed as an exempt category under the Michigan anti-cruelty statute.

Roadside zoos are facilities, typically far smaller than accredited zoological institutions, that promote opportunities for the public to engage with animals through interactive experiences such as feeding, holding, and photo opportunities.² Roadside zoos can be in compliance with the law, while simultaneously holding animals captive in horrifying conditions. At the federal level, the Animal Welfare Act (AWA) is the primary federal statute enacted to protect animals.³ Anti-cruelty statutes at the state level can be productive in providing additional protection to captive animals, unless the state is one which exempts zoos entirely from its scope.⁴ Michigan is one of six states that fully exempt zoos from the state anti-cruelty statute.⁵

Without the imposition of a state statute, zoos are required to conform solely with the requirements of the AWA. Compliance with the AWA requires meeting basic levels of care for animals but lacks in scope as it applies only to warm-blooded mammals.⁶ Also, the AWA does not account for several critical parts of an animal's welfare including exercise and enrichment.⁷

¹ Katherine Sullivan, *Numbers Don't Lie, and These Says Oswald's Bear Ranch Is No Rescue*, People for the Ethical Treatment of Animals, (Oct. 16, 2019), <https://www.peta.org/features/oswalds-bear-ranch-bears/>.

² Jennifer Jacquet, *America, Stop Visiting Roadside Zoos--They Make Money from the Inhumane Treatment of Animals*, The Guardian, (Nov. 26, 2016), <https://www.theguardian.com/sustainable-business/2016/nov/27/roadside-zoos-america-animal-cruelty-welfare>.

³ Kali S. Grech, *Overview of the Laws Affecting Zoos*, Michigan State University College of Law (2004), <https://www.animallaw.info/article/overview-laws-affecting-zoos>.

⁴ *Id.*

⁵ Mich. Comp. Laws § 750.50(12)(d).

⁶ See Dana Mirsky, "Very Complex Questions:" Zoos, Animals, and the Law, 46 WMMELPR 217, 221 (2021).

⁷ *Id.* at 243.

The AWA also lacks a citizen suit provision, making it nearly impossible for concerned citizens to bring suit for enforcement.⁸ Enforcement of the statute is left in the hands of the Animal and Plant Health Inspection Service (APHIS), an agency that is incredibly understaffed and regularly fails to vigorously enforce welfare policies.⁹ Third party accreditation is available for zoos, typically requiring higher levels of welfare.¹⁰ Accreditation by the Association of Zoos & Aquariums (AZA), while praised, is not required, and is held by only roughly ten percent of facilities in the United States.¹¹

The Michigan animal anti-cruelty statute must be amended to remove the exemption for “the operation of a zoological park or aquarium.”¹² Under the state statute, the definition of adequate care is expanded from that of the AWA and would grant animals access to necessities such as exercise.¹³ The state statute is more specific than the AWA in terms of requirements for providing veterinary care to an animal and the duty to refrain from allowing an animal to suffer.¹⁴ Most importantly, where the AWA often neglects to penalize violating facilities in a meaningful way, the Michigan statute allows for greater fines and possible jail time.¹⁵ Extending the protections of the Michigan anti-cruelty statute to zoos would create a meaningful change, and fill in several gaps in animal welfare protections left open by the AWA.

First, this article analyzes the dichotomy between legitimate, accredited zoological institutions, and roadside zoos. Understanding the difference between these types of facilities is

⁸ *Id.* at 223.

⁹ See Emily Jenks, *The Bear Necessities: Why Captive Exhibited Animals Need Stronger Regulation Based on their Species-Specific Biological Needs*, 2019 MISTLR 1081, 1096-97 (2019).

¹⁰ See Jonathan Peloquin, *Amending the Endangered Species Act: Wildlife Protection in a Post-Tiger King Society*, 90 *Geo. Wash. L. Rev. Arguendo* 1, 4 (2022).

¹¹ Jenks, *supra* note 9, at 1105.

¹² Mirsky, *supra* note 6, at 223.

¹³ Mich. Comp. Laws §750.50(1)(a).

¹⁴ *Id.* §750(2)(d)-(e).

¹⁵ *Id.* §750.50(4).

critical to understanding how changes in federal and state law could eliminate a significant number of roadside zoos, while permitting accredited zoos to survive under firm guidelines. Second, this article will examine the current requirements of the AWA, to show how expansion in scope and specificity are critical. Specifically, this section will address the need for the AWA to extend to all captive animals, and to include species specific welfare provisions as well as a citizen suit provision. Third, this article will discuss the benefits of extending the Michigan anti-cruelty statute to zoos. This includes an analysis of the difference between zoos and other categories exempt from the state statute. Finally, this article will consider the effects of the proposed statute changes and provide suggestions for rehoming animals inevitably displaced by the changes in state and federal law.

I. The Dichotomy Between Legitimate Zoological Institutions and “Roadside” Zoos

To understand how revisions to the AWA and removal of zoos as an exempt category to the Michigan anti-cruelty statute will improve captive welfare, it is imperative to recognize the difference amongst zoos in Michigan, and how they vary greatly in the level of care they provide for animals. There is a dichotomy between legitimately run zoological institutions, typically accredited by the AZA, and what are commonly referred to as “roadside” zoos. AZA accredited zoos meet guidelines across various areas of animal welfare and contribute to conservation efforts.¹⁶ Conversely, roadside zoos seldom meet the welfare standards necessary to satisfy the requirements of the AZA.¹⁷ Strengthened state and federal regulations would close roadside zoos due to their propensity for animal cruelty while allowing accredited zoos to persist in society under firm guidelines.

¹⁶ *The Accreditation Process of The Association of Zoos & Aquariums and Animal Welfare*, Ass’n of Zoos and Aquariums, 3, (2021), https://assets.speakcdn.com/assets/2332/aza_accreditation_process_and_welfare_final.pdf.

¹⁷ *Roadside Zoos*, Animal Legal Defense Fund, <https://aldf.org/issue/roadside-zoos/>.

A. Accredited Zoos

Accredited zoos seek to provide additional welfare beyond what is required by the AWA.¹⁸ In addition to the inspections conducted by APHIS, AZA zoos undergo an intense inspection process as part of the application for accreditation.¹⁹ Inspectors spend multiple days at the facility, interview staff, inspect records, and evaluate animal welfare across each area of the property.²⁰ A detailed report is compiled and sent to the accreditation commission to review at its next hearing.²¹ Accreditation guidelines require member zoos to meet specific standards for animal welfare, care, management, and veterinary medicine.²² Aside from the direct care of animals, there are standards for conservation, education, interpretation, and scientific advancement.²³ Finally, member zoos are required to meet requirements for staffing, support organizations, finances, strategic planning, physical facilities, safety/security, and guest services.²⁴ Additional certifications can be gained through the Global Federation of Animal Sanctuaries (GFAS) and the American Sanctuary Association (ASA) which both require meeting more vigorous standards associated with wildlife sanctuaries.²⁵

The AZA defines animal welfare and wellness as “an animals collective physical and mental states over a period of time and measured on a continuum from good to poor.”²⁶ The AZA’s recognition of mental welfare as a component of an animal’s wellness sets the AZA

¹⁸ Rachel Garner, *How to Understand Zoo Accreditation*, Why Animals Do the Thing, (July 4, 2016), <https://www.whyanimalsdothething.com/how-to-understand-zoos-accreditation/>.

¹⁹ *Accreditation Basics*, Ass’n of Zoos and Aquariums, 3, <https://www.aza.org/becoming-accredited?locale=en>.

²⁰ *Id.*

²¹ *Id.*

²² *The Accreditation Standards and Related Policies*, Ass’n of Zoos and Aquariums, 13, (2024), <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

²³ *Id.*

²⁴ *Id.*

²⁵ Simon Williams, *Unsafe Havens: Improving Third-Party Accreditation of Wildlife Sanctuaries*, 93 NYULR 1351, 1370 (2018).

²⁶ *The Accreditation Standards and Related Policies*, *supra* note 22, at 6.

standards apart from those of the AWA greatly. The AZA requires member zoos to provide enrichment for animals which it stipulates as “a process to ensure that the behavioral and physical needs of an animal are being met by providing opportunities for species-appropriate behaviors and choices.”²⁷ Enrichment comes in a variety of forms. Member zoos commonly use toys, socialization opportunities, and interaction with experienced trainers to provide animals with variety, exercise, and mental stimulation.²⁸ Zoos will attempt to simulate the animal’s natural environment through puzzle feeders and live hunting opportunities to provide animals with the freedom to hunt and forage for their food.²⁹ A Denver Zoo has even attempted to enrich animals through their exceptional sense of smell by using essential oil aromatherapy to provide animals with an abundant array of scents to explore.³⁰

AZA member zoos also must meaningfully contribute to conservation, education, interpretation, and scientific advancement.³¹ Popular conservation initiatives include population biology and monitoring, reintroduction, and conservation education.³² AZA SAFE (Saving Animals from Extinction) seeks to protect threatened species through an established recovery plan and strategic engagement activities through collaboration with member zoos.³³ For example, since 1992 the San Diego Zoo has been able to rebuild the population of the California Condor in the wild from twenty-two birds to over 240 through the California Condor Recovery Program.³⁴

²⁷ *Id.*

²⁸ Eric Hamilton, *Zoo Keeps Animals Healthy, Happy, with Play, Exercise*, Milwaukee Journal Sentinel, (June 13, 2015), <https://archive.jsonline.com/news/milwaukee/zoo-keeps-animals-healthy-happy-with-play-exercise-b99518698z1-307266721.html>.

²⁹ *Id.*

³⁰ David Kelly, *Aromatherapy, Where Aromas Are Everything*, Los Angeles Times, (Dec. 26, 2023), <https://www.latimes.com/archives/la-xpm-2003-dec-26-na-apes26-story.html>.

³¹ *The Accreditation Standards and Related Policies*, *supra* note 22.

³² Karlyn Marcy, *Why Zoos and Aquariums Are Beneficial*, Ass’n of Zoos and Aquariums, (Nov. 13, 2020), <https://www.aza.org/connect-stories/stories/benefits-of-zoos?locale=en>.

³³ *What is SAFE?*, Ass’n of Zoos and Aquariums, <https://www.aza.org/aza-safe>.

³⁴ Marcy, *supra* note 23.

Other zoos contribute to SAFE by hosting educational programs that inform the visiting public on topics critical to conservation such as habitat loss and sustainable purchasing recommendations.³⁵ AZA member zoos conduct groundbreaking research in the areas of animal health, basic biology, habitat conservation, sustainability, and conservation education.³⁶ In 2019 over twenty-six million dollars were invested by member zoos toward animal research.³⁷

Finally, accreditation requires sufficient finances and staffing. AZA zoos often spend over twenty million dollars per year on the animals alone.³⁸ Prior to accreditation zoos must prove that they are in a financial position to support the animals. Member zoos are required to employ sufficient staff to ensure that the animals are properly attended to. This includes veterinary care professionals.³⁹

B. Non-Accredited, Roadside Zoos

The popular TV show *Tiger King*, captivated audiences in 2020 and began to shed light on the deplorable conditions found at roadside zoos.⁴⁰ Roadside zoos, often referred to as “roadside menageries” are harmful facilities with a reputation for “confinement in small cages, unsanitary conditions, inadequate food and veterinary care, lack of mental stimulation, and promotion of potentially dangerous interactions with patrons.”⁴¹ These are typically small,

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Karlyn Marcy, *Interesting Zoo and Aquarium Statistics*, Ass’n of Zoos and Aquariums, (May 5, 2021), <https://www.aza.org/connect-stories/stories/interesting-zoo-aquarium-statistics?locale=en#:~:text=How%20much%20money%20do%20zoos,just%20spent%20on%20animal%20care>.

³⁹ *The Accreditation Standards and Related Policies*, *supra* note 22, at 32.

⁴⁰ Todd Spangler, ‘*Tiger King*’ Ranks as TV’s Most Popular Show Right Now, According to Rotten Tomatoes, Variety, (Mar. 29, 2020), <https://variety.com/2020/digital/news/tiger-king-most-popular-tv-show-netflix-1203548202/>.

⁴¹ Virginia C. Thomas, *Roadside Zoo: A Term in Search of Legal Definition?*, 101 MICH B J 52 (Mar. 2022), <https://www.michbar.org/journal/Details/ArticleID=4364>.

unaccredited institutions that focus primarily on entertainment rather than animal welfare.⁴² Roadside zoos falsely advertise as a “rescue” or “sanctuary” when in reality they are captive breeders and exotic animal dealers.⁴³ Animals are frequently kept in small spaces or cages with little space to move around and explore natural movements.⁴⁴ Enrichment opportunities including socialization and other mentally stimulating activities are seldom.⁴⁵ Facilities are not maintained in a sanitary manner, and animal waste often accumulates, which can lead to diseases and other forms of sickness.⁴⁶

One of the most concerning aspects of roadside zoos is their desire to create opportunities for the public to engage hands-on with the animals for an additional fee. Animals are often tied down, or even drugged with sedatives to accommodate photo opportunities resulting in health complications such as trouble eating and shortened lifespan.⁴⁷ Allowing the public to interact with wildlife free of any physical barrier is incredibly dangerous for both animals and humans.⁴⁸ Wild animals are largely unpredictable and can cause tremendous harm to visitors if provoked.⁴⁹ Interactive experiences place undue stress on animals, often young in age, by stripping them from their mother and exposing them to uncomfortable touching and holding by tourists.⁵⁰ As young animals mature and grow physically, they are less suitable for visitor interactions and risk being killed or sold into the exotic animal trade if the zoo does not wish to pay to maintain them

⁴² Tala DiBenedetto, *Detailed Discussion of Welfare Standards for Animals Used in Zoos and Exhibition*, Animal Legal & Historical Center, (2020), <https://www.animallaw.info/article/detailed-discussion-welfare-standards-animals-used-zoos-and-exhibition>.

⁴³ *Roadside Zoos*, Tigers in America, <https://tigersinamerica.org/roadside/>.

⁴⁴ Vani Jaishankar, *The Truth About Roadside Zoos*, Safe Worldwide, (July 25, 2023), <https://safeworldwide.org/news-articles/the-truth-about-roadside-zoos/>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Kat Eschner, *The Big Unsexy Problem with Tiger Selfies*, Smithsonian Magazine, (Aug. 15, 2017), <https://www.smithsonianmag.com/science-nature/the-big-unsexy-problem-with-tiger-selfies-180964489/>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ DiBenedetto, *supra* note 42.

once can no longer exploit them for financial gain.⁵¹ Mature female animals are often kept solely to support captive breeding and undergo tremendous stress due to giving birth repetitively.⁵²

i. Examples of Roadside Zoos in Michigan

Oswald's Bear Ranch, located in Newberry, Michigan, is home to one of the most atrocious roadside zoos in the state. The facility holds itself out as a "wildlife rescue service" which is "leading the way in conservation science."⁵³ Bear cubs are forced to live in small, rusted cages and are separated from their mothers to participate in dangerous encounters with the public, where cubs are exploited for photo opportunities where visitors can touch, feed, and pet the cubs.⁵⁴ They hold themselves out to the public as a rescue center, yet eighty-one percent of their bears were born into captive breeding and were acquired from exotics dealers or other roadside zoos.⁵⁵ If bears show a sign of being "mean" they are killed based on staff's belief that mean bears should be "made into jerky."⁵⁶ Bears often act with what is perceived as aggression due to natural instincts or in response to abuse.⁵⁷ Bears at Oswald's have died from drug overdose, collapsed structures, and from being shot during an attempt to escape. The USDA has reported a series of violations against the zoo including use of physical abuse, allowing children to hand feed the bears, feeding the already overweight bears fatty restaurant scraps, and failure to maintain secure enclosures.⁵⁸

The horrifying practices observed at Oswald's are not the exception for roadside zoos throughout Michigan. The Children's Pony Ranch in Trenton has been known to cut off horse's

⁵¹ *Id.*

⁵² *Id.*

⁵³ Sullivan, *supra* note 1.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

tails, leaving them unable to repel bugs during the hot summer months.⁵⁹ It is believed that the horsehair is sold for manufacturing hair extensions and violin strings.⁶⁰ Indian Creek Zoo in Lambertville holds underweight, limping animals without addressing the animal's veterinary needs.⁶¹ Due to nonsecure enclosures, the zoo has had instances of animals escaping captivity, never to be found.⁶² At Sunrise Side Nature Trail and Exotic Park, animals have been found covered in their own feces, while others suffer from untreated wounds and hair loss.⁶³ Sunrise Side recently had its license revoked after several years of ignored AWA violations.⁶⁴ Supes Exotic Jungle in Fenton allows the public to interact with and touch their sharks, stingrays, and starfish.⁶⁵ The facility retains just three employees to care for the animals, and often takes the animals to visit parties and schools where additional forced interaction with the public occurs.⁶⁶ Critchlow Alligator Sanctuary in Athens purchases alligators that former pet owners wish to surrender when they become too large to handle.⁶⁷ Alligators are not native to Michigan and they are housed next to a noisy, busy highway.⁶⁸ The owner claims that the gators experience stressors such as excessive heat, rain, and relocation to the outdoors after having never been outside.⁶⁹

⁵⁹ Kat Stafford, *Trenton Police: Ponies, Horse Have Part of Tails Cut Off*, Detroit Free Press, (April 14, 2016), <https://www.freep.com/story/news/local/michigan/wayne/2016/04/14/trenton-police-ponies-horse-have-part-tails-cut-off/83032710/>.

⁶⁰ *Id.*

⁶¹ *Michigan Roadside Zoo Fined Thousands After PETA Alerts USDA*, People for Ethical Treatment of Animals, (Dec. 7, 2022), <https://www.peta.org/blog/indian-creek-zoo-fined/>.

⁶² *Id.*

⁶³ Elena Waldman, *Sunrise Side Owner James Svoboda's License Permanently Revoked for Litany of AWA Violations*, People for Ethical Treatment of Animals, (Dec. 15, 2022), <https://www.peta.org/blog/feds-seek-further-action-against-owner-of-shuttered-sunrise-side-nature-trail-exotic-park/>.

⁶⁴ *Id.*

⁶⁵ Vera Hogan, *Supe's Exotic Jungle Owners to Seek Proper Approvals*, Tri-County Times, (Mar. 11, 2016), https://www.tctimes.com/news/supe-s-exotic-jungle-owners-to-seek-proper-approvals/article_92cc6a84-e7bf-11e5-9947-03a5005c1d53.html.

⁶⁶ *Id.*

⁶⁷ Brian O'Keefe, *A "half-tank holiday" trip to the Critchlow Alligator Sanctuary*, Western Michigan Univ., (Aug. 18, 2023), <https://www.wmuk.org/wmuk-news/2023-08-18/a-half-tank-holiday-to-the-critchlow-alligator-sanctuary>.

⁶⁸ *Id.*

⁶⁹ *Id.*

II. The Animal Welfare Act

The Animal Welfare Act must be revised both in scope and in specificity to provide greater welfare for captive wildlife. The AWA, passed in 1966, is currently the sole piece of federal legislation designed to protect the welfare of animals in zoos.⁷⁰ Currently, the AWA has multiple significant flaws that create problematic gaps in the federal protection of captive wildlife. First, the AWA extends protection to only warm-blooded mammals.⁷¹ Amongst the endless unprotected species are birds, fish, reptiles, and farm animals. Second, compliance under the AWA requires meeting only relatively vague baseline requirements that zoos must provide for the welfare of warm-blooded mammals.⁷² The bar is far too low. Additionally, the AWA fails to prohibit various abusive practices such as the use of whips.⁷³ Another significant concern is that while the AWA sets out minimum requirements for an animal's basic needs such as shelter and sanitation, there is absolutely no requirement for zoos to provide non-primate animals with any form of mental or physical stimulation, enrichment, or socialization.⁷⁴

Zoos are inspected by the Animal and Plant Health Inspection Service (APHIS), which is continuously understaffed, with inspectors that are often not trained to pick up on certain signs of abuse and neglect.⁷⁵ In recent years, the number of citations issued by inspectors has dropped, with zero warnings, initiated cases, or referrals during the first three quarters of 2018.⁷⁶ Finally, the AWA lacks a citizen suit provision that allows concerned citizens to bring suit for

⁷⁰ DiBenedetto, *supra* note 42.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Captive Animals*, Animal Legal Defense Fund, https://aldf.org/focus_area/captive-animals/.

⁷⁴ DiBenedetto, *supra* note 42.

⁷⁵ Karin Brulliard, *USDA's Enforcement of Animal Welfare Laws Plummeted in 2018, Agency Figures Show*, Wash. Post (Oct. 18, 2018), https://www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummeted-agency-figures-show/?noredirect=on&utm_term=.e115968f4bac.

⁷⁶ David Favre, *Animal Law: Welfare, Interests, and Rights* 310 (Wolters Kluwer 3rd ed. 2020).

enforcement of the AWA.⁷⁷ In jurisdictions that exempt zoos from the state anti-cruelty statute, there is an assumption that zoos need not be included under the state statute because the AWA already provides adequate protection for captive life at the federal level. This is not true. The AWA must be expanded in scope and revised to lay out more strict requirements for the treatment, handling, and care of captive wildlife both physically and mentally.

A. Expansion of the AWA to Include All Captive Species

The AWA must be expanded in scope to cover all species being exhibited by zoos. This will expand AWA protections to species such as reptiles including turtles, lizards including the Komodo Dragon, crocodiles, amphibians, frogs, toads, fish, and birds such as flamingos, penguins, and eagles. The AWA also fails to cover farm animals, which are commonly a part of petting zoos.⁷⁸ Petting zoos are known to operate live pony carousels which “treat animals like inanimate carnival equipment.”⁷⁹ Children are permitted to ride the ponies and often kick and pull the overworked horses which spend long hours in the strenuous heat.⁸⁰ Often food and water will be withheld to prevent the ponies from having an accident or needing to take a bathroom break.⁸¹ The AZA extends requirements for welfare to any “non-domesticated animal life”, covering any species “maintained in a public park. . .that include animals which are free-ranging within the exhibit.”⁸² It is not uncommon under the AWA to have more unprotected species than

⁷⁷ See Karen McDonald, *Creating a Private Cause of Action Against Abusive Animal Research*, 134 U. PA. L. Rev. 399 (1986).

⁷⁸ David Favre, *Overview of U.S. Animal Welfare Act*, Animal Legal & Historical Ctr., (2002), <https://www.animallaw.info/article/overview-us-animal-welfare-act#:~:text=The%20animals%20covered%20by%20the,excluding%20birds%2C%20rats%20and%20mice.>

⁷⁹ *What PETA Wants Every Parent to Know About Pony Rides and Live Carousels*, People for the Ethical Treatment of Animals, <https://www.peta.org/features/pony-rides-live-carousels/#:~:text=Live%20pony%20carousels%20treat%20animals,fitting%20or%20carelessly%20rigged%20tackl>

e.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *The Accreditation Standards and Related Policies*, *supra* note 22, at 8.

those which are protected at a zoo. The Detroit Zoo is home to over 200 species, only thirty-one of which are warm-blooded mammals.⁸³ This means that eighty-five percent of species at the Detroit Zoo receive no protection under the AWA. While the Detroit Zoo holds accreditation through the AWA, roadside zoos do not, leaving countless animals with no protection. Modeled after the AZA standard, the AWA must extend its scope to cover all species held at zoos to provide an equal opportunity for welfare to all animals regardless of their size, status, or prestige. This critical expansion will ensure that all zoo animals are protected on a federal level and provided at minimum with basic care.

B. Expansion in Specificity and Detail of Animal Care Standards

Currently, AWA standards for welfare are minimal and fail to provide for the animal's best interest.⁸⁴ While zoos are required to provide animals with food and water on an intermittent basis, there is no requirement for the animals to have access to water at all times.⁸⁵ It is only required to provide access to food once per day.⁸⁶ Zoos are required only to give each animal enough space to stand up, not enough space to roam freely or exercise.⁸⁷ Animals being transported are granted no minimum amount of space, only enough room to "have a supply of air sufficient for normal breathing."⁸⁸ Throughout the AWA there is a great deal of vague terms that allow zoos to make subjective interpretations against the best interest of the animals. For example, the AWA requires that "a sufficient number of adequately trained employees shall be utilized to maintain the professionally acceptable level of husbandry practices."⁸⁹ There is a high level of subjectivity in what number of employees is truly needed to maintain the animals. This

⁸³ *Zoo Animals*, Detroit Zoo, <https://detroitzoo.org/animals/zoo-animals/?group=mammals>.

⁸⁴ Jenks, *supra* note 9, at 1095.

⁸⁵ 9 C.F.R. §3.130 (2020).

⁸⁶ *Id.* §3.129 (2020).

⁸⁷ *Id.* §3.128 (2020).

⁸⁸ *Id.* §3.138(c) (2022).

⁸⁹ *Id.* §3.132 (2022).

is a theme throughout, where overuse of terms such as “sufficient” and “good” are open to harmful interpretation. The AWA also entirely fails to recognize the importance of psychological enrichment or socialization for captive animals.⁹⁰

The AWA should be amended to model the level of specificity provided by the AZA. To meet AZA standards, there is a series of requirements which are far stricter than that of the AWA that must be met.⁹¹ First, the zoo must provide a positive, clean, safe, and spacious living environment for each species.⁹² The AZA has drafted species specific Animal Care Manuals that member zoos must educate their staff on and comply with.⁹³ For example, within the Tiger Care Manual, there are specific requirements for the ideal temperate depending on the specific species of tiger.⁹⁴ Under the AZA there must be socialization opportunities, fit to match the needs of each animal based on species preference and needs.⁹⁵ For example, within the Penguin Care Manual, there are strict requirements that the birds social needs are met by requiring a minimum of ten birds in an exhibit.⁹⁶ The Sea Otter Manual requires that otters are provided enrichment by requiring the ability for the animals to engage in surface swimming, grooming, diving, barrel rolls, foraging, rafting, wrestling, and resting on land.⁹⁷

Zoos must additionally provide adequate and timely veterinary care to all animals.⁹⁸ This includes general veterinary services, diagnostic testing, quarantine, preventive medicine,

⁹⁰ DiBenedetto, *supra* note 42.

⁹¹ *About Us*, Ass’n of Zoos and Aquariums, <https://www.aza.org/about-us>.

⁹² *About AZA Accreditation*, Ass’n of Zoos and Aquariums, <https://www.aza.org/what-is-accreditation>.

⁹³ *Animal Care Manuals*, Ass’n of Zoos and Aquariums, <https://www.aza.org/animal-care-manuals>.

⁹⁴ *Tiger Care Manual*, Ass’n of Zoos and Aquariums, 9, https://assets.speakcdn.com/assets/2332/tiger_care_manual_2016.pdf.

⁹⁵ *About AZA Accreditation*, *supra* note 92.

⁹⁶ *Penguin Care Manual*, Ass’n of Zoos and Aquariums, 24, https://assets.speakcdn.com/assets/2332/penguin_care_manual_aza_final_2014.pdf.

⁹⁷ *Sea Otter Care Manual*, Ass’n of Zoos and Aquariums, 79, https://assets.speakcdn.com/assets/2332/sea_otter_care_manual_2019.pdf.

⁹⁸ *Animal Care Manuals*, *supra* note 93.

management of diseases, disorders, injuries, and isolation.⁹⁹ The zoos must also provide proper nutrition.¹⁰⁰ This varies greatly by animal, and detailed information can be found in the Animal Care Manuals.¹⁰¹ For example, the Eastern Indigo Snake requires a rodent based diet as well as natural prey including fish, frogs, and snakes.¹⁰² Conversely, the Jellyfish Care Manual indicates that jellyfish require a diet of krill, fish eggs, wild plankton, and blood worms.¹⁰³ Animal Care Manuals provide instructions for “feeding enrichment” which provides stimulation.¹⁰⁴

Most importantly, the zoo must provide enrichment programs that seek to mirror the animal’s natural habitat. This requirement is critical, and greatly sets the AZA requirements apart from the AWA requirements. Under the AWA, the requirement is solely to provide an animal with shelter.¹⁰⁵ Shelter alone will not create a meaningful life for the animals if the “shelter” is a small room with a concrete floor, no other animals, and no toys. Under the AWA this would be acceptable, as the only requirement is that the animals have enough space to stand up.¹⁰⁶ The AZA raises the bar by requiring that zoos attempt to mimic the natural habitat of the animals.¹⁰⁷ The Detroit Zoo seeks to mimic that natural habitat of a penguin by providing the birds a 33,000 square foot area, which includes a 326,000 gallon water feature that allows the penguins to dive up to twenty-five feet in depth.¹⁰⁸ There are over seventy-five penguins in the exhibit, which

⁹⁹ *Chimpanzee Care Manual*, Ass’n of Zoos and Aquariums, 34-43, <https://assets.speakcdn.com/assets/2332/chimpanzeeecaremanual2010r.pdf>.

¹⁰⁰ *Animal Care Manuals*, *supra* note 93.

¹⁰¹ *Id.*

¹⁰² *Eastern Indigo Snake Care Manual*, Ass’n of Zoos and Aquariums, 14, https://assets.speakcdn.com/assets/2332/indigosnakecaremanual_2011r.pdf.

¹⁰³ *Jellyfish Care Manual*, Ass’n of Zoos and Aquariums, 29, https://assets.speakcdn.com/assets/2332/jellyfish_care_manual_second_edition_2021_final.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ 9 C.F.R §3.128 (2020).

¹⁰⁶ *Id.*

¹⁰⁷ *Animal Habitat Design*, Smithsonian National Zoological Park Conservation Biology Inst., https://nationalzoo.si.edu/sites/default/files/documents/steam_wrapup_exhibit.pdf.

¹⁰⁸ *The Polk Penguin Conservation Center is the Most Extraordinary Center for Penguins in the World*, Detroit Zoo, <https://penguins.detroitzoo.org/>.

allows the animals to socialize and eat in groups as they would in the wild.¹⁰⁹ The AZA’s Lion Care Manual requires that lions are provided lighting that mimics the wild, as well as trees for shade, surfaces to mar, deadfall for scratching, multi-level pathways, and tall grasses/bushes for visual privacy from guests.¹¹⁰ The Capybara Care Manual seeks to mimic the animal’s natural habitat through a pool, mud wallows, mulch, and hay.¹¹¹

C. Amending the AWA to Include Operational Requirements for Zoos

The AWA must be expanded to include provisions for finances, governing, staffing, and safety. Apart from how they directly care for and handle animals, there are added operational requirements that AZA zoos must conform with.¹¹² First, each zoo must provide educational opportunities for visitors.¹¹³ This can vary from lectures on animals and their habitats, to short films about sustainability, and is intended to “enhance the public’s understanding of wildlife and the need to conserve the places animals live.”¹¹⁴ AZA member zoos must also participate in conservation efforts.¹¹⁵ This can be in the form of financial assistance, research, education, or rehabilitation.¹¹⁶ Some member zoos may focus on energy and natural resource conservation while others focus on collaborative conservation with colleges and universities.¹¹⁷ The zoos must also have proper safety policies to protect both the animals and the visitors.¹¹⁸ This includes setting requirements for emergency procedures, storage of hazardous materials, animal security,

¹⁰⁹ *Id.*

¹¹⁰ *Lion Care Manual*, Ass’n of Zoos and Aquariums, 18, https://assets.speakcdn.com/assets/2332/lion_care_manual_20121.pdf.

¹¹¹ *Capybara Care Manual*, Ass’n of Zoos and Aquariums, 7, https://assets.speakcdn.com/assets/2332/capybara_care_manual_2021.pdf.

¹¹² *About AZA Accreditation*, *supra* note 92.

¹¹³ *Id.*

¹¹⁴ *Conversation Education*, Ass’n of Zoos and Aquariums, <https://www.aza.org/conservation-education?locale=en>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *The Guide to Accreditation of Zoological Parks and Aquariums*, Ass’n of Zoos and Aquariums, 6, (2023), https://assets.speakcdn.com/assets/2332/guide_to_accreditation.pdf.

¹¹⁸ *Accreditation Basics*, *supra* note 19.

and escape procedures.¹¹⁹ There also must be proper staff trainings so that those who are interacting with the animals for cleaning, feeding, and care are able to do in a way that is safe for both themselves and the animals.¹²⁰ The zoo must hire and maintain an adequate number of staff members to ensure that animals are receiving enough daily care and are not forced to go without due to staff shortages.¹²¹ The zoo must maintain ample finances to ensure it is able to provide for the animal's needs.¹²² The zoo must have a governing body that avoids power being held by one or a few select individuals.¹²³ Zoos should have clear processes for hiring/firing personnel, decision making processes, and procedures for day-to-day management.¹²⁴ To provide animals with the best level of care, a diverse set of opinions is ideal, thus respectable zoos should prioritize “diversity, equity, access, and inclusion” when making hiring and leadership decisions.¹²⁵

D. Expanding the AWA to Prohibit Wildlife Encounters with Visitors

Roadside zoos thrive on offering patrons the opportunity for direct contact with animals. The AWA should be expanded to include a provision that prohibits interactions between wildlife and visitors free of a physical barrier. The negative effects of forced interactions between animals and visitors are boundless. Feeding interactions result in overfeeding, lack of foraging motivations, disrupted natural feeding behaviors, and unintentional positive reinforcement.¹²⁶ Petting interactions can result in bites, stress on the animals, as well as fear and pain.¹²⁷ Riding

¹¹⁹ *The Guide to Accreditation of Zoological Parks and Aquariums*, *supra* note 117, at 44.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 42.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Neil D'Cruze et al., *A Global Review of Animal–Visitor Interactions in Modern Zoos and Aquariums and Their Implications for Wild Animal Welfare*, Nat'l Library of Med., (Jun. 8, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6617332/>.

¹²⁷ *Id.*

interactions typically involve animal restraint and the use of painful stimuli in the training process.¹²⁸ Additionally, “animals can sometimes carry harmful germs that can spread to people and cause illness.”¹²⁹ The addition of a provision prohibiting animal interactions with the public free of a physical barrier would limit the funding of roadside zoos that pride themselves on hands-on animal encounters.

E. Provision for Increased Frequency and Thoroughness of Zoo Inspections by APHIS

Additionally, the AWA must be amended to allow for more through and frequent inspections. Inspection authority is granted to the United States Department of Agriculture (USDA), which delegates the responsibility to APHIS.¹³⁰ In order to operate any form of zoo, it is required to obtain a license from APHIS, subjecting the zoo the yearly inspections.¹³¹ There are over 8,000 facilities that require inspection yearly and, in most cases, only two inspectors per state.¹³² In recent years, the number of warnings and complaints issued by the USDA has fallen drastically.¹³³ During the first three quarters of 2018, there were no warnings issued amongst over 8,000 facilities and only one \$2,000 fine to a facility that was already out of business.¹³⁴ The agency has adopted an approach of “working more closely with alleged violators rather than a protracted investigative process that numerous internal audits have faulted for ineffectiveness.”¹³⁵ Warnings take on average one year to be issued.¹³⁶ In 2016, under the

¹²⁸ *Id.*

¹²⁹ *Zoonotic Diseases*, Ctr. for Disease Control, <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>.

¹³⁰ *Grech*, *supra* note 3.

¹³¹ *Id.*

¹³² Karin Brulliard, *USDA's Enforcement of Animal Welfare Laws Plummeted in 2018, Agency Figures Show*, Wash. Post, (Oct. 18, 2018), https://www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummeted-agency-figures-show/?noredirect=on&utm_term=.e115968f4bac.

¹³³ Brulliard, *supra* note 75.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

direction of President Trump, the agency stopped posting inspection records online for public access, which in the past had served as a deterrent for violating facilities.¹³⁷ While facilities are alleged to be inspected each year, records show that inspection typically occurs every one to three years.¹³⁸

One solution to the shortcomings of the current APHIS inspection process would be to increase licensing fees for all registered zoo facilities. This would allow for additional inspectors to be hired and trained, guaranteeing that all 8,000 facilities are inspected at least once per year. Ideally, it would be beneficial to conduct inspections two or three times per year so that facilities could be examined to ensure they are meeting welfare standards in Michigan's drastically different seasons. Additionally, it is critical that inspectors are given the clearance to conduct investigations free of the facilities bias, guidance, or influence.¹³⁹ With the support of additional staffing, inspectors should be able to spend enough time at each facility that they are able to examine every corner, rather than a brisk walk through only to areas of a representative of the facilities choosing.

i. License Renewal for Violating Facilities Must be Prohibited

The AWA must be amended to prohibit the USDA from issuing a license renewal to a facility undergoing investigation for noncompliance. This concern was highlighted by the court's decision in *Animal Legal Defense Fund, Inc. v. Perdue*.¹⁴⁰ The court held that the AWA was permitted to reissue a license to Cricket Hollow, an Iowa facility undergoing an open investigation for present noncompliance, as well as cited noncompliance in the past.¹⁴¹ Cricket

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Animal Legal Defense Fund, Inc. v. Perdue*, 872 F.3d 602 (D.C. 2018).

¹⁴¹ *Id.* at 606.

Hollow received roughly seventy-six violations in three years.¹⁴² While the AWA requires compliance with the act to receive a renewed license, the USDA is permitted enforce its own renewal process due to *Chevron* deference which gives agencies unique decision making authorities.¹⁴³ Under the current AWA regime, problematic zoos will be written up and scheduled to appear in court for possible sanctions, however while awaiting its turn in the legal system can be granted a renewed license as long as the renewal fee is paid.¹⁴⁴ The USDA should not be permitted to enable red-flagged facilities to renew a license until the violations have been cleared. Facilities that are in non-compliance with the AWA should be required to cease operations if their license lapses during the investigation period, and only allowed to obtain a new license once all violations have been corrected.

F. Addition of a Citizen-Suit Provision to the AWA

Finally, the AWA must be amended to include a citizen-suit provision to allow individuals to bring suit challenging violations to the AWA. Currently, it is difficult for concerned citizens to bring suit demanding enforcement of the AWA.¹⁴⁵ A productive citizen suit provision will “include express language granting a private right of action that allows for judicial review of agency actions, and outlines procedural mechanics for when, where, and how review can be permitted.”¹⁴⁶ The AWA does not set forth aggressive animal protection requirements or thorough inspection policies, thus animal advocates must be permitted to litigate alleged violations to the AWA. Currently, citizens struggle to gain standing under Article III requirements.¹⁴⁷ To prevent dismissal in federal court, the constitutional requirements are that

¹⁴² *Id.* at 618.

¹⁴³ *Id.* at 610.

¹⁴⁴ *Id.*

¹⁴⁵ 16 U.S.C. § 1540(g).

¹⁴⁶ De Anna Hill, *Combating Animal Cruelty with Environmental Law Tactics*, 4 *Journal of Animal Law* 19, (2008), <https://www.animallaw.info/article/combating-animal-cruelty-environmental-law-tactics>.

¹⁴⁷ *See Perdue*, 872 F.3d at 617-18.

(1) the plaintiff has suffered or will suffer an injury, (2) the injury is caused by defendant's conduct, and (3) a decision in favor of the plaintiff will remedy the plaintiff's injury.¹⁴⁸

It is difficult to satisfy these requirements. For example, in *Glickman v. Animal Legal Defense Fund*, the plaintiff was only permitted standing because he “had specific knowledge of normal primate behaviors, and he witnessed primates living in inhumane conditions and showing signs of distress.”¹⁴⁹ Even with standing, the plaintiff lost on the merits when the court decided that USDA regulations met the minimum requirements of the AWA.¹⁵⁰ The Endangered Species Act (ESA) contains a citizen suit provision.¹⁵¹ The provision has allowed individuals to bring successful suits that that advocate for biological and psychological needs of captive animals that fall under endangered species.¹⁵² For example, in *Kuehl v. Sellner*, the Eight Circuit affirmed the district court's finding that the term “harass” includes lack of psychological care and opportunity for social engagement.¹⁵³ The language of the ESA states that “any person may commence a civil suit on his own behalf to enjoin any person ... who is alleged to be in violation of any provision of this chapter or regulation.”¹⁵⁴ The AWA must be amended to include similar language and allow for challenges to enforcement related issues. The provision must contain language that would allow a private citizen to bring a suit against APHIS following the inspection of a zoo if there is suspected non-compliance during an inspection. A private citizen may visit a roadside zoo and witness animals that are injured or in distress due to poor treatment. This citizen should have the right to sue APHIS for failure to enforce the AWA by allowing the facility to operate

¹⁴⁸ *Glickman v. Animal Legal Defense Fund*, 154 F.3d 426, 431 (D.C. 1998).

¹⁴⁹ Jenks, *supra* note 9, at 1112.

¹⁵⁰ See *Glickman*, 154 F.3d at 440.

¹⁵¹ *Kuehl v. Sellner*, 887 F.3d 845, 856 (8th Cir. 2018).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ 16 U.S.C §1540(g)(1)(A).

with no repercussions. It is reasonable for zoo visitors to demand to view animals being treated humanely.

III. State of Michigan Anti-cruelty Laws

To supplement the requirements of the AWA, each state has its own anti-cruelty statutes.¹⁵⁵ However, Michigan is one of six states that fully exempts zoos from the scope of the state statute.¹⁵⁶ Cities and counties may enforce their own anti-cruelty statutes, but most lack the resources to adequately protect captive wildlife in a meaningful way.¹⁵⁷ Considering the current shortfalls of the AWA, application of the Michigan anti-cruelty statute to zoos is needed immediately to provide captive animals with much due protection.

A. Distinction Between Zoos and Other Categories Exempt from the Michigan Anti-Cruelty Statutes

To understand the need for expansion of the Michigan anti-cruelty statute to include zoos, it is critical to recognize the difference between zoos and other categories exempt from the scope of the state statute. Zoos must be removed from the exception to the Michigan animal cruelty laws promulgated under Mich. Comp. Laws § 750.50(12)(a)-(h). While the definition of animal cruelty varies across jurisdictions, state statutes tend to agree that it is ethically and socially unacceptable to unnecessarily or intentionally injure or kill an animal.¹⁵⁸ However, there are clear exceptions carved into this social norm. Many agree it is okay to kill pests and rodents, when necessary, within reason, if done in a way that minimizes suffering. This is especially true if the pest or rodent is inside their home.¹⁵⁹ Others agree it is okay to kill animals for human meat

¹⁵⁵ Grech, *supra* note 3.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Sarah Williams, *Detailed Discussion of Michigan Anti-animal Cruelty Law*, Animal Legal and Historical Ctr., (2002), <https://www.animallaw.info/article/detailed-discussion-michigan-anti-animal-cruelty-law>.

¹⁵⁹ Michael Gonchar, *Should You Feel Guilty About Killing Spiders, Ants or Other Bugs?*, The New York Times, (Nov. 19, 2014), <https://archive.nytimes.com/learning.blogs.nytimes.com/2014/11/19/should-you-feel-guilty-about-killing-spiders-ants-or-other-bugs/>.

consumption.¹⁶⁰ Much of this reasoning stems from people's desire to treat nonhuman animals with a different level of moral care than they do humans, and certain nonhuman animals with more moral attention than others.¹⁶¹ Zoos are incredibly different from the other exempt categories. The other categories include fishing/hunting, trapping/wildlife control, horse racing, pest/rodent control, farming/livestock, and scientific research.¹⁶²

There is a straightforward argument that animal cruelty in any of the exempt categories under the Michigan statute is unethical. Hunting and fishing involves killing animals, often for sport or meat. Trapping and wildlife control results in the death of the animal, which is inherently cruel. Horse racing is an extreme form of animal stress and suffering, purely for human entertainment and financial gain. Pest control, while necessary, kills bugs and rodents with poison and traps. Farming livestock results in animals being killed for human consumption, often living in deplorable conditions prior to death. Scientific research is the purest form of animal exploitation for human advancement and progress. This is not to say that any of the mentioned practices should be abolished, as many of them are necessary and commonplace in society. However, zoos do not belong on the list of situations that make their very premise killing off or purporting exploitation on an animal for human safety, consumption, comfort, or entertainment.

While it is impossible to benefit from livestock or hunting without killing the animal, it is possible for society to benefit from a zoo while simultaneously treating the animals with care, respect, and dignity for their entire life. While it is incredibly difficult to exploit a horse through

¹⁶⁰ Katharina Buchholz, *Eating Meat Is the Norm Almost Everywhere*, Statista, (Mar. 30, 2023), <https://www.statista.com/chart/24899/meat-consumption-by-country/>.

¹⁶¹ Jeffrey Lockwood, *The Moral Standing of Insects and the Ethics of Extinction*, Florida Entomological Soc'y, (Mar. 1987), <https://doi.org/10.2307/3495093>.

¹⁶² Mich. Comp. Laws §750.50(12)(a)-(h).

horse racing without causing it immense pain and stress, it is possible to create a zoo where animals are protected from unwanted, harmful physical contact with humans. While it is impossible to derive the aspired benefits from research animals without ultimately subjecting the animal to an experience directly adverse to its safety and comfort, it is fully possible to house a zoo animal in a way that recognizes and meets its daily needs, while also supporting and fulfilling its wants through ample enrichment. While it is impossible to effectively complete a pest or rodent control task without minimizing the species existence on this planet, it is possible for a zoo to foster, support, and create new life for species most endangered and threatened. This is not to turn a blind eye to the fact the zoos have a pecuniary interest, but it is to highlight the fact that zoos can exist in a way that does not involve any cruel treatment of animals, while providing animals with the stimulation necessary to live and full and happy life. The other exempt categories pose a situation where it is impossible to support the animal's livelihood. Zoos have a unique opportunity to treat animals correctly, and it should not be tolerated for them to be treated poorly. The world is not going to eliminate zoos anytime soon, thus there is an obligation to protect animals that will remain in zoos for years to come.

B. Benefits of Extending the Michigan Anti-Cruelty Statue to Zoos

At the state level in Michigan, §750.50 handles animal anti-cruelty and other prohibited conduct.¹⁶³ However, as outlined by the statute's exemption subsection, "this section does not prohibit the lawful killing or other use of an animal including the following...[t]he operation of a zoological park or aquarium."¹⁶⁴ The zoo exemption must be removed. Extending the protections of the state anticruelty law to captive wildlife would have a substantial impact on determining the level of care that zoos in Michigan will be required to provide for animals. In the definitions

¹⁶³ *Id.* §750.50.

¹⁶⁴ *Id.* §750.50(12)(d).

section of the statute, there are clear descriptions of what is necessary to achieve adequate care, sanitary conditions, shelter, water, and state of good health.¹⁶⁵ With definitions far more specific than those of the AWA, the state statute will eliminate certain baseline issues with zoos by requiring that they achieve levels of welfare greater than those required by the AWA. For example, the requirement for “sanitary conditions” prohibits overcrowding, “water” specifics that water must be always available unless otherwise suggested by a licensed veterinarian, and “shelter” recognizes that the needs will vary depending on the species, age, and physical condition and includes natural features.¹⁶⁶ Requiring zoos to comply with the state laws will provide a greater level of care than the AWA is capable of alone.

Application of the state anticruelty statutes to zoos will also greatly expand the scope of species protected. As previously mentioned, the AWA does not recognize cold-blooded animals within its scope.¹⁶⁷ However, the Michigan statute defines “animal” to include “a vertebrate other than a human being.”¹⁶⁸ This expands the scope of captive animals receiving any form of protection greatly, pulling in species including reptiles, birds, fish, and amphibians. The state anti-cruelty statute also attempts to fill in gaps left open by the AWA. Under the Michigan statute’s definition of “adequate care”, exercise is considered essential in the same way as food and water.¹⁶⁹ This is pivotal, as requiring animals to be given the opportunity to exercise will decrease physical and mental health complications and prevent the suffering that arises when an animal is trapped in a small space with little opportunity to move around.¹⁷⁰ Looking at the language of the Michigan statute, it is likely that “neglect” which is defined as a “fail[ure] to

¹⁶⁵ *Id.* §750.50(1)(a)-(o).

¹⁶⁶ *Id.*

¹⁶⁷ Grech, *supra* note 3.

¹⁶⁸ Mich. Comp. Laws §750.50(1)(b).

¹⁶⁹ *Id.* §750.50(1)(a).

¹⁷⁰ Grech, *supra* note 3.

sufficiently and properly care for an animal to the extent that the animal's health is jeopardized" includes failure to provide any form of social or environmental enrichment opportunities.¹⁷¹

The state statute also includes a provision that prohibits zoos to "negligently allow any animal, including one who is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain."¹⁷² Many zoos will argue that their animals were only left to suffer because they simply did not have the staffing, the financing, or the time to care for the animals as they should.¹⁷³ This can be a struggle even for accredited zoos.¹⁷⁴ Negligently failing to provide for enough time, money, or staff to care for animals is not excuse no matter how hard the zoo attempts to be in compliance. Zoos should not be open or licensed if they do not have the knowledge, expertise, time, money, and staffing to ensure that animals will be properly cared for. Additionally, there is a significant argument that forced interactions between visitors and animals results in "unnecessary neglect, torture, and pain."¹⁷⁵

Additionally, it is critical to note that while the AWA is a civil statute, the Michigan anti-cruelty statute is a criminal statute.¹⁷⁶ The penalties associated with the state statute are considerably greater than those of the AWA.¹⁷⁷ A violation involving one animal is a misdemeanor requiring up to ninety-three days imprisonment, a fine of up to \$1,000, and/or up to two-hundred hours of community service.¹⁷⁸ A violation involving two or three animals is a misdemeanor punishable by up to one year imprisonment, a \$2,000 fine, and/or three-hundred

¹⁷¹ Mich. Comp. Laws §750.50(1)(h).

¹⁷² *Id.* §750.50(2)(f).

¹⁷³ Jessica Pierce & Marc Bekoff, *A Postzoo Future: Why Welfare Fails Animals in Zoos*, 21 *J. Applied Animal Welfare Sci.* 43, 45 (2018) <https://www.tandfonline.com/doi/full/10.1080/10888705.2018.1513838>.

¹⁷⁴ *Id.*

¹⁷⁵ Mich. Comp. Laws §750.50(2)(f).

¹⁷⁶ *Id.* §750.50.

¹⁷⁷ *Id.* §750.50(4).

¹⁷⁸ *Id.* §750.50(4)(a)(i)-(iii).

hours of community service.¹⁷⁹ Once a violation involves four or more animals it is considered a felony.¹⁸⁰ Depending on the number of animals involved, and the number of prior convictions held, punishment can include up to seven years imprisonment, \$10,000 in fines, and/or 500 hours of community service.¹⁸¹ Violators can also be referred by the court for mandatory psychiatric or psychological counseling.¹⁸² Additionally, “the court may order the defendant to pay the costs of the care, housing, and veterinary medical care for the animal, as applicable.”¹⁸³ Finally, the court can ban a violator from owning or possessing an animal for a period of time, or permanently.¹⁸⁴ The state statute should apply to zoos in Michigan to serve as a deterrent, and to adequately punish violators.

C. Outcomes of Expanding the State Anti-Cruelty Statute to Include Zoos

The goal of expanding the state anti-cruelty statute to apply to zoos is to minimize the number of roadside and other noncompliant zoos throughout the state. As explored earlier, roadside zoos are notorious for harmful practices and neglectful standards of welfare.¹⁸⁵ While many roadside zoos have been able to survive due to the inconsiderable requirements of the AWA, it is expectant that many would not be able to if required to comply with the Michigan anti-cruelty statute. The objective would be to shut down zoos that are not able to comply with the state standards for adequate care, protection shelters, food, water, and sanitary conditions.¹⁸⁶ Additionally, zoos will be prohibited from allowing animals to unnecessarily suffer.¹⁸⁷ This will

¹⁷⁹ *Id.* §750.50(4)(b)(i)-(iii).

¹⁸⁰ *Id.* §750.50(4)(c).

¹⁸¹ *Id.* §750.50(4)(e)(i)-(iii).

¹⁸² *Id.* §750.50(5).

¹⁸³ *Id.* §750.50(8).

¹⁸⁴ *Id.* §750.50(9).

¹⁸⁵ DiBenedetto, *supra* note 42.

¹⁸⁶ Mich. Comp. Laws §750.50(1)(a)-(o).

¹⁸⁷ *Id.* §750.50(2)(f).

require providing adequate veterinary care, which many roadside zoos do not currently comply with and may not have the funds to acquire.

With the objective of expanding the state statute being to close the majority of roadside zoos in Michigan, it is inevitable that animals will need to be rehomed. It will be critical to ensure that captive animals from noncompliant zoos are not left to become pets of violators or transferred to another roadside zoo.¹⁸⁸ It is unrealistic to expect that captive wildlife will be able to be released straight into the wild, as most captive animals lack the necessary survival skills needed to thrive in the natural world.¹⁸⁹ Animals may be able to be rehomed to accredited zoos that have the capacity and willingness to accept new animals. A two-toed sloth at the Detroit Zoo, “Molasses”, was taken in after the closure of a nearby roadside zoo in 2018.¹⁹⁰ However, surplus animals already pose an issue for accredited zoos when species are reproducing at a high rate in captivity.¹⁹¹ If remaining accredited zoos are going to take in animals from roadside zoos, they will need to be provided with compensation to cover additional costs of providing rehomed animals with adequate care and space. For example, providing a tiger with food, shelter, and medical care for its lifetime can cost over \$25,000.¹⁹² An option for this funding could be to impose a rehoming fee on any facility that is being closed due to noncompliance.

Surplus animals could also be relocated to accredited animal sanctuaries. An animal sanctuary is a facility that provides a “temporary or permanent safe haven to animals in need while meeting the principles of true sanctuaries: providing excellent and humane care for their

¹⁸⁸ Christina M. Russo, *Don't Ever Visit Roadside Zoos. Here's Why*, The Dodo, (Jun. 29, 2015), <https://www.thedodo.com/hey-america-this-is-your-local-zoo-1155061454.html>.

¹⁸⁹ Corrine Henn, *The Shocking Truth About What Happens to 'Surplus' Zoo Animals*, One Green Planet, (2020), <https://www.onegreenplanet.org/animalsandnature/the-shocking-truth-about-what-happens-to-surplus-zoo-animals/>.

¹⁹⁰ *Animal Rescues*, Detroit Zoo, <https://detroitzoo.org/animal-rescues/>.

¹⁹¹ R. Scott Nolen, *Zoos Wrestle with Fate of Surplus Animals*, Am. Veterinary Med. Ass'n, (Nov. 15, 2002), <https://www.avma.org/javma-news/2002-12-01/zoos-wrestle-fate-surplus-animals>.

¹⁹² *Id.*

animals in a non-exploitative environment” and designating ethical policies for tours, trade, exhibition, acquisition, disposition, breeding, and more.¹⁹³ Sanctuaries typically are far more spacious than typical zoos and may have greater capacity to take on additional animals.¹⁹⁴ With the help of zoos and sanctuaries, captive born animals may be able to be introduced into the wild.¹⁹⁵ This has the potential to have a positive effect on endangered populations.¹⁹⁶ Additional sanctuaries could be established to house relocated populations, however this would be expensive.

CONCLUSION

The Animal Welfare Act must be revised to greater protect captive wildlife, and zoos must be removed as an exempt category under the Michigan anti-cruelty statute. Captive wildlife in Michigan is currently left to suffer horrendous conditions in roadside zoos that provide little welfare. The loose requirements of the AWA empower roadside zoos to provide animals with the bare minimum. The AWA currently lacks in scope, as it only applies to warm-blooded mammals.¹⁹⁷ It also contains vague requirements for animal welfare, fails to recognize the need for physical and mental stimulation, and lacks a citizen suit provision. The AWA must be amended to cover all captive wildlife, to provide more specific requirements, and to include a citizen suit provision. Additionally, the state statute in Michigan for anti-cruelty exempts zoos from the scope of its protection. This exemption must be removed to allow zoos access to the specific anti-cruelty provisions and criminal penalties.

¹⁹³ *What is a Sanctuary*, Glob. Fed’n of Animal Sanctuaries, <https://sanctuaryfederation.org/about-gfas/what-is-a-sanctuary/>.

¹⁹⁴ Alexis Stella, *Sanctuaries Not Zoos*, Univ. of Indianapolis, <https://reflector.uindy.edu/2017/10/11/sanctuaries-not-zoos/>.

¹⁹⁵ Richard Primack, *Essentials of Conservation Biology* (Sinauer Assoc., Inc. 6th ed. 2014).

¹⁹⁶ *Id.*

¹⁹⁷ Mirsky, *supra* note 6.