

CALIFORNIA LAW AND FERRETS:  
ARE THEY TRULY “WILD WEASELS”?

By  
David L. Herman\*

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Since 1933, the state of California has banned ownership of the ferret (*Mustela putorius furo*), officially labeling it a wild animal that menaces public safety and the state’s native wildlife.<sup>1</sup> The California Department of Fish and Game (CDFG) and the California Department of Health Services (CDHS) have claimed that the ferret is a savage animal, a danger to small children, a vector of rabies, and a potentially feral predator of endangered animals, particularly birds. Yet California is one of only two American states (along with Hawaii) to ban the ownership and importation of this increasingly popular pet. Legislation has been

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\* David L. Herman is a second-year student at King Hall School of Law, University of California, Davis. Mr. Herman holds a Bachelor of Arts degree in Political Science from the University of California, San Diego.

<sup>1</sup> See CAL. FISH & GAME CODE § 2118(b) (West 1998).

repeatedly introduced in recent years to legalize ferret ownership, although it has failed to win a majority in the California legislature. This Article examines the stances of California and other states on ferrets, including classification (as either a wild or a domestic animal), rabies vaccination, and licensing. It also examines the scanty case law on ferrets, analyzes the claims of ferret supporters and opponents, and ultimately advocates the legal ownership of ferrets and classification of ferrets as domestic animals, albeit with several restrictions.

## I. BACKGROUND

### A. What is a Ferret?

The ferret (*Mustela putorius furo* or *Mustela furo*) is a small carnivorous mammal of the family Mustelidae, order Carnivora. It is related to the European polecat (its direct descendant), the weasel, the mink, the badger, the wolverine, and the otter.<sup>2</sup> It ranges in size from three-quarters to three and one-half pounds, and up to sixteen inches in length.<sup>3</sup> People have bred ferrets in captivity since Roman times to hunt rabbits and rats (hence the verb "to ferret"), and to work in small confines where human hands cannot reach, for example, threading cables and wire through long narrow conduits.<sup>4</sup> Ferrets have lived in America since at least 1875.<sup>5</sup> Today, ferrets in the United States are usually raised and kept as pets, not hunting animals.<sup>6</sup> In California, an estimated 100,000 to 500,000 ferrets are presently (and illegally) kept as pets.<sup>7</sup> In Michigan, where ferret ownership was legalized in 1994, an estimated 200,000 are kept.<sup>8</sup>

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<sup>2</sup> In this Article, the name "ferret" refers only to *M. putorius furo*/*M. furo* and not to the North American black-footed ferret (*Mustela nigripes*). The larger, distantly related *M. nigripes* is not a pet species. Currently listed as an endangered species by the U.S. Fish and Wildlife Service, the black-footed ferret has been almost wiped out by human alteration of the U.S. prairie and the destruction of the prairie dog, its main food supply. See 50 C.F.R. § 17.11 (1998).

<sup>3</sup> See *Fifty Fun Ferret Facts*, FERRETS, Jan.-Feb. 1998, at 47.

<sup>4</sup> See *Call in the Ferrets*, SACRAMENTO BEE, Oct. 8, 1999, at A20 (detailing a U.S. Air Force officer's use of ferrets to thread cables for Russian-American Year 2000 missile-defense computer at American military base).

<sup>5</sup> See D. P. MANNIX, *A SPORTING CHANCE: UNUSUAL METHODS OF HUNTING* 91 (1967); C. MORTON & F. MORTON, *FERRETS: EVERYTHING ABOUT PURCHASE, CARE, NUTRITION, DISEASE, BEHAVIOR, AND BREEDING* 63 (1985).

<sup>6</sup> See Mary R. SHEFFERMAN, *THE FERRET: AN OWNER'S GUIDE TO A HAPPY HEALTHY PET* 15-16 (1996).

<sup>7</sup> See RONALD M. JUREK, *A REVIEW OF NATIONAL AND CALIFORNIA POPULATION ESTIMATES OF PET FERRETS* 1 (CAL. DEPT. FISH AND GAME, BIRD AND MAMMAL CONSERVATION PROGRAM REPT. 98-09, 1998); KENNETH W. UMBACH, *FERRETS: A SELECTIVE OVERVIEW OF ISSUES AND OPINIONS* 1 (CAL. STATE LIBRARY, CAL. RESEARCH BUREAU NOTE VOL. 4, No. 3, MAY 30, 1997).

<sup>8</sup> See UMBACH, *supra* note 7, at 2.

### B. Ferrets and the Law: Other States

To date, every American state except California and Hawaii has legalized ferret ownership; many states have done so just in the last decade.<sup>9</sup> Several states require proof of rabies vaccination.<sup>10</sup> Some require licenses (especially for breeders).<sup>11</sup> Many ban the use of ferrets in hunting.<sup>12</sup>

A major split among the states concerns whether ferrets are considered wild or domestic animals. This status is of critical significance for tort liability: generally, an owner of wild animals is strictly liable for all the injuries they caused.<sup>13</sup> On the other hand, owners of domestic animals, in the absence of statutes to the contrary, are strictly liable only for animals known to have a vicious disposition, and for farm animals (including horses, cattle, swine, goats, and chickens) that have trespassed onto others' lands.<sup>14</sup> Several states' legislatures have explicitly defined ferrets as domestic animals, while others have classified ferrets as wild animals.<sup>15</sup> Some states' courts have placed ferrets in the "wild" category through judicial decisions.<sup>16</sup>

### C. Ferrets and California Law

In California, a wild animal is defined as "any animal . . . which is not normally domesticated in this state as determined by the [fish and game] com-

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<sup>9</sup> See *id.* at 1.

<sup>10</sup> See, e.g., FLA. STAT. CH. 828.30(1) (1998); GA. CODE ANN. § 27-5-5(b)(1)(K) (1999); MD. CODE ANN., NAT. RES. I § 18-318(a) (1998); MASS. ANN. LAWS CH. 131, § 77(1) (LAW. CO-OP. 1999); MICH. STAT. ANN. § 12.481(202) (LAW. CO-OP. 1999); N.H. REV. STAT. ANN. § 436:100 (1999); R.I. GEN. LAWS § 4-13-31(e) (1998).

<sup>11</sup> See, e.g., 520 ILL. COMP. STAT. 5/3.23 (West 1999); MASS. ANN. LAWS CH. 131, § 77(2) (LAW. CO-OP. 1999).

<sup>12</sup> See, e.g., CONN. GEN. STAT. § 26-87 (1999); 520 ILL. COMP. STAT. 5/2.33(d) (West 1999); IOWA CODE § 481A.53 (1997); KAN. STAT. ANN. § 32-1003(d) (1997); KY. REV. STAT. ANN. § 150.355(1) (MICHIE 1998); MD. CODE ANN., NAT. RES. I § 10-410(l) (1998).

<sup>13</sup> See *MAY v. BURDETT*, 115 ENG. REP. 1213 (Q.B. 1846); RESTATEMENT (SECOND) OF TORTS § 507 (1977).

<sup>14</sup> See, e.g., CAL. CIV. CODE § 3342 (West 1999) (creating strict liability for dog bite); *Vigue v. Noyes*, 550 P.2d 234 (Ariz. 1976) (stating common-law rule); *Levy v. McKay*, 253 S.E.2d 872 (Ga. App. 1979) (same); RESTATEMENT (SECOND) OF TORTS §§ 508, 509 (1977).

<sup>15</sup> See MD. CODE ANN., HEALTH-GEN. I § 18-219(b)(3) (1998); N.H. REV. STAT. ANN. § 436:99(1-b) (1999); N.D. CENT. CODE § 23-36-01(5) (1999); R.I. GEN. LAWS § 4-13-1.2(8) (1998); VT. STAT. ANN. tit. 20, § 3541(4) (1999) (domestic); also see, e.g., GA. CODE ANN. § 27-5-5(b)(1)(K) (1999); S.C. CODE ANN. § 47-5-50 (Law. Co-op. 1998) (wild).

<sup>16</sup> See *Gallick v. Barto*, 828 F. Supp. 1168, 1172 (M.D. Pa. 1993) (ruling that ferrets are "wild" animals under Pennsylvania law).

mission."<sup>17</sup> It is unlawful to import or possess certain wild animals in California. Although ferrets are not specifically listed, Fish and Game Code section 2118 bans importation and possession of any animals in the order Carnivora except domestic cats and dogs.<sup>18</sup> Possession of a wild animal proscribed by section 2118 is a misdemeanor, punishable by up to six months confinement and a \$1000 fine.<sup>19</sup>

The Fish and Game Code describes ferrets, and all other animals in the family Mustelidae, as "undesirable and a menace to the native wildlife, the agricultural interests of the state, or to the public health or safety."<sup>20</sup> From 1933 to 1974, the code specifically listed ferrets as banned wild animals, though it was amended in 1974 to include all members of the Mustelidae.<sup>21</sup> Ferrets are specifically listed in the California Code of Regulations as banned wild animals.<sup>22</sup> Furthermore, the Fish and Game Code not only provides for criminal punishment of ferret owners under sections 12000 and 12002, but also requires that any ferrets be removed from California within seventy-two hours of discovery by the authorities, or be killed.<sup>23</sup>

## II. CONCERNS ABOUT LEGALIZING AND DOMESTICATING FERRETS

### A. Rabies and Vaccination

One factor used to support California's ban on ferrets and other states' classification of them as wild animals concerns the transmission of rabies from ferrets to humans, and the possibility and efficacy of vaccination. The question of rabies is addressed in two cases (from federal courts in Pennsylvania and New York) and a California Department of Health Services report.<sup>24</sup> However, changes

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<sup>17</sup> CAL. FISH & GAME CODE § 2116 (West 1999).

<sup>18</sup> See CAL. FISH & GAME CODE § 2118(b) (West 1999).

<sup>19</sup> See CAL. FISH & GAME CODE § 12000 (West 1999); CAL. FISH & GAME CODE § 12002 (West 1999).

<sup>20</sup> CAL. FISH & GAME CODE § 2118(b) (West 1999); CAL. CODE REGS. tit. 14, § 671 (1998).

<sup>21</sup> See 1933 Cal. Stat. ch. 76, § 1; 1974 Cal. Stat. ch. 1503, § 2.

<sup>22</sup> CAL. CODE REGS. tit. 14, § 671(c)(2)(K) (1998).

<sup>23</sup> See CAL. FISH & GAME CODE § 2122 (West 1999); CAL. FISH & GAME CODE § 2189 (West 1999).

<sup>24</sup> See *New York City Friends of Ferrets v. New York City*, 876 F. Supp. 529 (S.D.N.Y. 1995), *aff'd*, 71 F.3d 405 (2d Cir. 1995); *Raynor v. Maryland Dept. of Health and Mental Hygiene*, 676 A.2d 978 (Md. App. 1996); DENNY G. CONSTANTINE ET AL., *PET EUROPEAN FERRETS: A HAZARD TO PUBLIC HEALTH, SMALL LIVESTOCK, AND WILDLIFE* 23, 24, 36 (Dec. 1988) (claiming that "no rabies vaccine can be guaranteed to be effective in ferrets" and recommending immediate euthanization of ferrets for rabies testing).

in vaccination technology and veterinarian rabies-quarantine protocols have nearly eliminated most of the concerns.

In 1990, the U.S. Department of Agriculture (USDA) approved the use of IMRAB-3, a rabies vaccine for ferrets.<sup>25</sup> This vaccine has been proven to be at least 94.4% effective in preventing rabies, whereas the USDA minimum is 86.7%.<sup>26</sup> In fact, IMRAB-3 has the same effectiveness rate as canine rabies vaccines.<sup>27</sup> The vaccine's manufacturer, Rhone Mirieux, informed the California Department of Fish and Game that the vaccine meets all federal requirements and advised CDFG to stop asserting otherwise.<sup>28</sup> Many states requiring vaccination for ferrets have specified the use of a USDA-approved vaccine.<sup>29</sup>

In addition, the National Association of State Public Health Veterinarians (NASPHV) recently revised its procedures for rabies control in its *Compendium of Animal Rabies Control*. The 1998 *Compendium* changed the post-exposure requirement for ferrets from immediate killing to a ten-day quarantine, and the NASPHV has informed all state public health agencies of the change.<sup>30</sup> The previous standard was cited in *New York City Friends of Ferrets v. New York City* as a justification for banning ferrets.<sup>31</sup> The NASPHV's change places ferrets on the same level as cats and dogs for purposes of post-exposure examination, eliminating the justification for classifying ferrets as wild merely because of rabies fears.

Statistical analysis also dispels many of the fears of rampant ferret-carried rabies. Reports by the Centers for Disease Control (CDC), which are tabulated in the Journal of American Veterinary Medical Association's annual *Rabies Surveillance in the United States*, indicate that the incidence of rabies in ferrets is far lower than for cats, dogs, raccoons, or skunks. Between 1989 and 1997, only 14 cases of rabies were reported in ferrets, compared to 1311 for dogs, 2279 for

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<sup>25</sup> See Richard K. Bossart, *Ferret Rabies Information Summary* (last visited Oct. 29, 1999) <http://www.acmeferret.com/infobank/research.htm> (on file with author).

<sup>26</sup> See *id.* (referring to Apr. 6, 1994 letter to CDFG Director Boyd Gibbons by Rhone Mirieux president D. G. Hildebrand).

<sup>27</sup> See *id.*

<sup>28</sup> See Umbach, *supra* note 7, at 3.

<sup>29</sup> See, e.g., FLA. STAT. ch. 828.30 (1998); GA. CODE ANN. § 27-5-5(b)(1)(K) (1999); N.H. REV. STAT. ANN. § 436:99(II) (1999).

<sup>30</sup> See *Ferrets and the 1998 Compendium of Animal Rabies Control: State by State Compliance Reports* (last visited July 15, 1999) <<http://www.acmeferret.com/infobank/states.htm>> (on file with author).

<sup>31</sup> See 876 F. Supp. 529, 536, 537 (S.D.N.Y. 1995), *aff'd*, 71 F.3d 405 (2d Cir. 1995).

cats, 16,203 for skunks, and 33,306 for raccoons.<sup>32</sup> According to another report, the CDC recorded only 21 cases of rabies in ferrets between 1958 and 1996, compared to 146 cases in dogs in 1995 alone.<sup>33</sup> In 1994, a nationwide survey of public health laboratories reported 592 cases of rabid domesticated animals (out of 8224 wild and domesticated animals diagnosed with rabies); only one rabid ferret — domestic or feral — was found.<sup>34</sup> Also, no transmission of rabies from a ferret to a person has ever been recorded.<sup>35</sup>

The Humane Society of the United States (HSUS), in its *Statement on Ferrets as Companion Animals*, has stated that all ferrets should be vaccinated against rabies, and has urged state and local health agencies to implement the revised NASPHV *Compendium* procedures.<sup>36</sup> Whereas the CDHS has adopted a new rabies compendium that recommends the “possibility” of a fourteen-day quarantine for ferrets found to have bitten someone, other states have codified the revised *Compendium*.<sup>37</sup> Clearly, it would be in the best interests of California to require vaccinations. In addition, the legalization of ferret ownership would increase the rate of vaccinations by eliminating the fear of current owners that their pets will be confiscated during or after a trip to a veterinarian.<sup>38</sup> Indeed,

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<sup>32</sup> See Frances L. Reid-Sutton et al., *Rabies Surveillance in the United States During 1989*, 197 J. AM. VETERINARY MED. ASS'N 1571, 1576 (1990); Iyorlumun J. Uhaa et al., *Rabies Surveillance in the United States During 1990*, 200 J. AM. VETERINARY MED. ASS'N 920, 922 (1992); John W. Krebs et al., *Rabies Surveillance in the United States During 1991*, 201 J. AM. VETERINARY MED. ASS'N 1836, 1839 (1992); John W. Krebs et al., *Rabies Surveillance in the United States During 1992*, 203 J. AM. VETERINARY MED. ASS'N 1718, 1721 (1993); John W. Krebs et al., *Rabies Surveillance in the United States During 1993*, 205 J. AM. VETERINARY MED. ASS'N 1695, 1699 (1994); John W. Krebs et al., *Rabies Surveillance in the United States During 1994*, 207 J. AM. VETERINARY MED. ASS'N 1562, 1565 (1995); John W. Krebs et al., *Rabies Surveillance in the United States During 1995*, 209 J. AM. VETERINARY MED. ASS'N 2031, 2034 (1996); John W. Krebs et al., *Rabies Surveillance in the United States During 1996*, 211 J. AM. VETERINARY MED. ASS'N 1525, 1528 (1997); John W. Krebs et al., *Rabies Surveillance in the United States During 1997*, 213 J. AM. VETERINARY MED. ASS'N 1713, 1716 (1998).

<sup>33</sup> See Charles E. Rupprecht et al., *Current Issues in Rabies Prevention in the United States: Health Dilemmas, Public Coffers, Private Interests*, 111 PUB. HEALTH REP. 402, 403.

<sup>34</sup> See *id.* at 402, 404.

<sup>35</sup> See Richard K. Bossart, *Ferret Rabies Information Summary* (last visited Oct. 29, 1999) <<http://www.acmeferret.com/infobank/research.htm>> (on file with author).

<sup>36</sup> See HSUS *Statement on Ferrets as Companion Animals* (last visited July 15, 1999) <<http://www.acmeferret.com/infobank/hsus1998.htm>> (on file with author).

<sup>37</sup> See, e.g., N.H. REV. STAT. ANN. § 436:105-b(II) (1999); N.D. CENT. CODE § 23-36-03(3) (1999); *Ferrets and the 1998 Compendium of Animal Rabies Control: State by State Compliance Reports* (last visited July 15, 1999) <<http://www.acmeferret.com/infobank/states.htm>> (on file with author).

<sup>38</sup> See UMBACH, *supra* note 7, at 6.

the California Veterinary Medical Association (CVMA) has officially supported legalization of ferrets for this very reason.<sup>39</sup>

### B. Potential Harm to Small Children

Another important question involves safety. Several supporters of the current ban on ferrets, and of their classification as wild animals, argue that the animals may attack small children. This issue has arisen in the past, and even provided the basis for the preeminent legal case on ferrets, namely *Gallick v. Barto*.<sup>40</sup> Indeed, *Gallick* stated that ferret attacks on small children justify the inclusion of ferrets with wild animals.<sup>41</sup>

The California Department of Health Services has further examined this issue in its report, *Pet European Ferrets*. The report presents statistical analysis of unprovoked ferret attacks on infants and older children in the United States and England, including attacks by rabid ferrets. In all, CDHS reported 100 attacks by ferrets in California between 1978 and 1987, in addition to 325 attacks in Arizona and Oregon during the same period.<sup>42</sup> These figures included 37 unprovoked attacks on infants and small children, 11 of which occurred in California.<sup>43</sup> The report concludes that "there seems to be no conclusion other than ferrets are miscast as pets . . . in light of the potential for devastating attacks on infants."<sup>44</sup>

However, other types of pets also attack, and even kill, small children. The Humane Society has stressed this point in its *Statement on Ferrets as Companion Animals*: "The HSUS recommends that children, particularly infants, never be left unsupervised with ferrets (or with any companion animal)."<sup>45</sup>

In the case of dog attacks, the HSUS's concerns are especially acute. The *Journal of the American Medical Association* has reported that dogs bite about

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<sup>39</sup> See Letter from Dick Schumacher, Executive Director, Cal. Veterinary Med. Ass'n, to David L. Herman (Dec. 3, 1999) (on file with author).

<sup>40</sup> See 828 F. Supp. 1168 (M.D. Pa. 1993).

<sup>41</sup> See *id.* at 1168, 1172.

<sup>42</sup> DENNY G. CONSTANTINE ET AL., *PET EUROPEAN FERRETS: A HAZARD TO PUBLIC HEALTH, SMALL LIVESTOCK, AND WILDLIFE* 8, 12 (Dec. 1988).

<sup>43</sup> See *id.* at 4.

<sup>44</sup> See *id.* at 37.

<sup>45</sup> *HSUS Statement on Ferrets as Companion Animals*, (last visited July 15, 1999) <<http://www.acmeferret.com/infobank/hsus1998.htm>> (on file with author).

2 million people each year.<sup>46</sup> In all, dogs killed 204 people between 1979 and 1988, with about 42% of fatalities resulting from pit bull attacks.<sup>47</sup> Furthermore, children under the age of ten account for 70% percent of dog bite fatalities; children five years of age or younger account for about 50% of fatalities and infants suffer an especially high death rate from dog bites.<sup>48</sup> Therefore, if the possibility of attack is the primary indicator of wildness, dogs and cats should also be classified as wild animals.<sup>49</sup>

Alleged savagery of ferrets toward small children must be considered in the context of attack and fatal-attack frequencies of dogs and other popular domestic pets, and cannot be relied on to justify prohibiting ownership. Given statistics showing high rates of attacks and fatalities, fairness would require the prohibition of dogs as well, especially pit bulls, since their attacks are as "savage" as those inflicted by ferrets, and are far more frequent (when comparing the numbers of dogs and ferrets, and the number of dog and ferret bites).

### *C. Feral Ferrets and Impacts on Wildlife*

One of the main considerations regarding the legalization of ferrets (and their classification as domestic and not wild animals) is the likelihood that these animals may escape and form feral colonies, thus ravaging the local wildlife and especially harming endangered animals. Several studies have addressed feral ferrets, and an application of their findings indicates that the menace to California's wildlife by feral ferrets has been exaggerated.

The key studies of feral ferrets center on New Zealand; thousands of ferrets were introduced there in the late nineteenth century to control the rampant increase in feral rabbits (themselves descendants of rabbits brought with the English settlers less than a half-century earlier).<sup>50</sup> By 1900, ferrets had become established in the wild, and eventually the New Zealand government considered them pests.<sup>51</sup> The California Department of Fish and Game has cited the New

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<sup>46</sup> See Jeffrey J. Sacks et al., *Dog-Bite Related Fatalities from 1979 Through 1988*, 262 J. AM. MED. ASS'N 1492 (1989).

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* at 1490-92.

<sup>49</sup> See *Gallick v. Barto*, 828 F. Supp. 1168 (M.D. Pa. 1993).

<sup>50</sup> See C. KING, *THE HANDBOOK OF NEW ZEALAND ANIMALS* 320, 330 (1990).

<sup>51</sup> See *id.*



Zealand feral ferret experience as a justification for banning ferrets.<sup>52</sup> Similar studies on feral ferret populations on San Juan Island (Puget Sound, Washington) have also been cited by the CDFG.<sup>53</sup> Reports of feral ferrets have also been generated in the Australian state of Queensland, where ownership of ferrets is illegal.<sup>54</sup> Feral ferrets were also reported from New Mexico in the mid-1980s. As in New Zealand, the New Mexico ferrets were the offspring of animals that had been purposefully introduced in large numbers to control "pests" (in this case, prairie dogs).<sup>55</sup>

Yet the concerns raised by these studies and reports are largely inapplicable to California. In fact, the studies actually alleviate fears of the potential of ferrets for destroying wildlife in general and birds in particular.

First, New Zealand is a self-contained island ecosystem, about 1000 miles from the nearest continent, without any large native predators that could control the ferret population (i.e., domestic dogs and domestic cats, as well as birds of prey and other forms of wildlife).<sup>56</sup> The same is true to a lesser extent in Australia, where the only predatory carnivore that predates the European settlement is the dingo (the feral descendant of dogs brought to Australia by the aborigines). In the absence of such apex predators, ferrets are more likely to thrive in the wild. Second, the European settlers and their dogs, cats, and other imported animals had become the primary destroyers of wildlife before the introduction of ferrets. As one researcher has noted, "[T]he mustelids [i.e., ferrets and weasels] cannot be proved to be directly responsible for any of the long list of island populations of birds that we know to have gone extinct since the human colonization of New Zealand."<sup>57</sup> Third, at least one study has indicated that ferrets would not be a menace to birds, since examinations of wild ferrets show

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<sup>52</sup> See UMBACH, *supra* note 7, at 4; Cal. Dept. of Fish and Game, *Domestic Ferret Issues in California* (last visited Oct. 16, 1999) <[http://www.dfg.ca.gov/hcpb/ferret\\_issues.html](http://www.dfg.ca.gov/hcpb/ferret_issues.html)>; Californians for Ferret Legalization, *Misinformation of the Week - No. 4* (visited July 15, 1999) <<http://www.ferretnews.org/misinfo4.html>> (on file with author) (reprinting excerpt of letter written Mar. 25, 1994 by CDFG Director Boyd Gibbons).

<sup>53</sup> See Cal. Dept. of Fish and Game, *Domestic Ferret Issues in California* (last visited Oct. 16, 1999) <[http://www.dfg.ca.gov/hcpb/ferret\\_issues.html](http://www.dfg.ca.gov/hcpb/ferret_issues.html)> (on file with author).

<sup>54</sup> See *id.* (quoting reports from Queensland Dept. of Natural Resources officer).

<sup>55</sup> *Id.*

<sup>56</sup> See UMBACH, *supra* note 7, at 4-5.

<sup>57</sup> C. King, *Introduced Predators and Conservation*, 42 NEW ZEALAND ENV'T 11, 14 (1984).

that birds comprise only a small percentage of the ferret diet, with the bulk being made up of rabbits and hares.<sup>58</sup>

In addition, the appearances of feral ferrets in New Zealand and New Mexico are the result of an introduction of ferrets for a purpose other than pet ownership — namely, as a form of alternative pest control. As large numbers of these animals were systematically turned loose to kill populations of animals considered to be pests, their odds of establishing feral colonies would presumably be much higher than for ferrets that are kept as housebound pets. However, the CDFG has not specifically addressed the differences in potential havoc between the occasional escape of pet ferrets, as opposed to systematic releases.

By contrast, the domestic cat (*Felis domesticus*), whether living as a pet or running loose in feral form, exceeds the ferret in its danger to wildlife, primarily birds. Each year in the United States, cats kill hundreds of millions of migratory songbirds; a report by ornithologist Stanley Temple of the University of Wisconsin estimated that at least 20 million — and perhaps as many as 150 million — songbirds are killed by cats every year in rural Wisconsin alone.<sup>59</sup> Another estimate placed the daily kill of songbirds by cats in the United States at 4.4 million.<sup>60</sup>

The domestic cat, like the ferret, is a non-native predator in California; the U.S. Fish and Wildlife Service reports that “[f]eline predation is not ‘natural’ . . . The ‘tabby’ that sits curled up on your couch is not a *natural predator* and has never been in the natural food chain in the Western Hemisphere.”<sup>61</sup> Indeed, cats — like ferrets — were originally imported into America as “working” animals (to control rats and other pest animals), prior to breeding and ownership as household pets.<sup>62</sup>

A report by University of Wisconsin researchers states that “[w]orldwide, cats may have been involved in the extinction of more bird species than any

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<sup>58</sup> See G. P. Smith et al., *Diet of Feral Ferrets (Mustela furo) from Pastoral Habitats in Otago and Southland, New Zealand*, 22 NEW ZEALAND J. ZOOLOGY 363-369 (1995) (describing ferrets as “opportunistic generalist predators,” although primarily preying on rabbits).

<sup>59</sup> U.S. Fish and Wildlife Service, *Migratory Songbird Conservation* (last visited Oct. 16, 1999) <<http://www.fws.gov/r9mbmo/pamphlet/songbrd.html>> (on file with author).

<sup>60</sup> U.S. Fish and Wildlife Service, San Francisco Bay Nat'l Wildlife Refuge, *Protecting Wildlife from Domestic Cats* (last visited Oct. 16, 1999) <<http://www.r1.fws.gov/sfbnwr/cats.html>> (on file with author).

<sup>61</sup> U.S. Fish and Wildlife Service, *Migratory Songbird Conservation* (last visited Oct. 16, 1999) <<http://www.fws.gov/r9mbmo/pamphlet/songbrd.html>> (on file with author) (emphasis in original).

<sup>62</sup> See *id.*

other cause, except habitat destruction” and lists several bird species whose existence is currently threatened by cats, including least terns and loggerhead shrikes.<sup>63</sup> The Wisconsin report also noted that cats introduced to Florida’s barrier islands have nearly destroyed several unique rodent species.<sup>64</sup> By contrast, CDFG’s concern over escaped ferrets wreaking havoc on least terns is countered by correspondence from the Massachusetts Department of Fisheries & Wildlife that states that “[t]here has never been a recorded case of tern predation by a ferret in Massachusetts . . . in fact, I have never heard of such a case anywhere in North America.”<sup>65</sup>

Furthermore, the hunting effectiveness of domestic cats, which rivals the efficiency of wild predators, is enhanced by the inability to suppress the desire to hunt with adequate supplemental food; “[e]ven when fed regularly by people, a cat’s motivation to hunt remains strong, so it continues hunting.”<sup>66</sup> Indeed, well-fed domestic cats, not needing to hunt for survival, can wait patiently for birds and other hard-to-catch prey to wander into range.<sup>67</sup> The steady food supply from people, whether owners or other well-intentioned cat lovers, helps keep cat populations high at times when populations of regular prey animals are low (thus triggering declines in natural predator populations), and allows cats to continue to hunt common and rare species alike.<sup>68</sup>

Cats can compete with native predators, and eat many of the same prey species. Also, cat densities are greater and are often not limited by territory. Some parts of rural Wisconsin have as many as 114 cats per square mile — a density several times greater than all midsized native predators combined.<sup>69</sup>

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<sup>63</sup> John S. Coleman et al., *Cats and Wildlife: A Conservation Dilemma* (last visited Oct. 16, 1999) <<http://wildlife.wisc.edu/extension/catfly3.htm>> (on file with author).

<sup>64</sup> *See id.*

<sup>65</sup> Cal. Dept. of Fish and Game, *Domestic Ferret Issues in California* (last visited Oct. 16, 1999) <[http://www.dfg.ca.gov/hcpb/ferret\\_issues.html](http://www.dfg.ca.gov/hcpb/ferret_issues.html)>; Californians for Ferret Legalization, *Misinformation of the Week—No. 1* (last visited July 15, 1999) <<http://www.ferretnews.org/misinfo1.html>> (on file with author) (quoting letter by Mass. Fisheries & Wildlife Assistant Director Thomas French).

<sup>66</sup> John S. Coleman et al., *Cats and Wildlife: A Conservation Dilemma* (last visited Oct. 16, 1999) <<http://wildlife.wisc.edu/extension/catfly3.htm>> (on file with author).

<sup>67</sup> *See* U.S. Fish and Wildlife Service, San Francisco Bay Nat’l Wildlife Refuge, *Protecting Wildlife from Domestic Cats* (last visited Oct. 16, 1999) <<http://www.r1.fws.gov/sfbnwr/cats.html>> (on file with author).

<sup>68</sup> *See* John S. Coleman et al., *Cats and Wildlife: A Conservation Dilemma* (last visited Oct. 16, 1999) <<http://wildlife.wisc.edu/extension/catfly3.htm>> (on file with author); Pat Roberto, *Whose Right to Life? The Cat Rescue Movement vs. Wildlife Defenders* (last visited Oct. 16, 1999) <<http://www.dfg.ca.gov/hcpb/cat.html>> (on file with author).

<sup>69</sup> John S. Coleman et al., *Cats and Wildlife: A Conservation Dilemma* (last visited Oct. 16, 1999) <<http://wildlife.wisc.edu/extension/catfly3.htm>> (on file with author).

In the context of this statistical evidence on cats, CDFG's fears of escaped and hungry ferrets multiplying quickly and destroying rare birds and other endangered species seem exaggerated. The ferret diet, when compared to that of cats, is skewed heavily toward rabbits and hares, and small rodents, the sort of prey species that cats would also pursue, in addition to the bird species that cats catch more successfully than ferrets. Cats make the transition to feral life more easily than ferrets, as evidenced by the difficulty in finding feral ferret populations in areas that were neither (a) islands without competing natural predators nor (b) heavily "seeded" with ferrets in order to control various animals considered pests. Therefore, a ban on ferrets based on their potential threat to endangered and other native species would be ineffective without a concurrent prohibition of cat ownership because of their well-documented destruction of bird populations.

*D. Gallick v. Barto and Its Progeny:  
Are Ferrets Really Wild and Dangerous?*

*Gallick v. Barto*, the leading hornbook example of ferret case law, involved an infant girl who had been badly mauled when left alone with a ferret.<sup>70</sup> In the ensuing diversity litigation, the court held that ferrets were wild animals under Pennsylvania law because they could form feral colonies, were prone to attacking infants and small children, and could transmit rabies to humans. This case has been cited in two other ferret cases, both of which merit close examination in conjunction with analysis of *Gallick*: *New York City Friends of Ferrets v. New York City* and *Raynor v. Maryland Dept. of Health and Mental Hygiene*.<sup>71</sup>

In *Friends of Ferrets*, a ferret rights group filed suit for a declaratory judgment that a New York City ordinance banning ferret-keeping violated the Equal Protection Clause of the Fourteenth Amendment; the suit also requested injunctive relief against enforcement of the regulation and the city's classification of ferrets as wild animals.<sup>72</sup> The District Court for the Southern District of New York granted summary judgment for the defendants, holding that the city's ban was rationally related to the police powers of protecting public safety and health.<sup>73</sup>

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<sup>70</sup> See 828 F. Supp. 1168 (M.D. Pa. 1993).

<sup>71</sup> See 876 F. Supp. 529 (S.D.N.Y. 1995), *aff'd*, 71 F.3d 405 (2d Cir. 1995); 676 A.2d 978 (Md. App. 1996).

<sup>72</sup> See 876 F. Supp. 529, 532 (S.D.N.Y. 1995), *aff'd*, 71 F.3d 405 (2d Cir. 1995).

<sup>73</sup> See *id.* at 540.

To support its holding, the court cited *Gallick* and a variety of studies of ferret attacks on children (primarily the California Department of Health Services' *Pet European Ferrets*), as well as the official recommendations of the Centers for Disease Control and the National Association of State Public Health Veterinarians, which recommended death, rather than quarantine, for rabid ferrets.<sup>74</sup> The court also referred to the *Pet European Ferrets* report on feral ferrets as further support for its holding that the city's ban was rational.<sup>75</sup>

In *Raynor*, the Maryland Department of Health and Mental Hygiene (MDHMH) brought a suit against the owner of a pet ferret that had bitten a teenage girl, seeking the seizure of the ferret and its immediate destruction for rabies testing.<sup>76</sup> Following the issuance of an injunction to compel releasing the ferret to MDHMH, the owner filed a counterclaim for conversion and inverse condemnation.<sup>77</sup> The owner appealed the grant of MDHMH's motion to dismiss, but the Maryland Court of Special Appeals affirmed the trial court's judgment on the grounds that MDHMH's classification of ferrets as wild animals and its euthanization policy were rationally calculated to protect the public health.<sup>78</sup>

The Court of Special Appeals, in denying the owner's claim to compensation under the state and federal constitutions, stated that the Centers for Disease Control recommendations issued in 1991 preferred euthanization to quarantine for testing ferrets.<sup>79</sup> Inclined to give "great deference" to the CDC's findings, the court held that the classification of ferrets as wild animals was proper.<sup>80</sup> Furthermore, the owner could not recover for loss of the ferret because killing something classified as a potentially diseased wild animal is a valid protection of public health through the elimination of a public nuisance.<sup>81</sup> Takings that meet this standard are not compensated under the law.<sup>82</sup>

Yet the previous analysis of rabies, attacks on small children, and feral ferret populations indicate that the holdings of *Gallick*, *Friends of Ferrets*, and *Raynor* may be obsolete. An effective vaccine has been developed and tested, and is required for legal ownership of ferrets in several states. The NASPHV

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<sup>74</sup> See *id.* at 535.

<sup>75</sup> See *id.* at 537.

<sup>76</sup> See 676 A.2d 978, 981 (Md. App. 1996).

<sup>77</sup> See *id.* at 982.

<sup>78</sup> See *id.* at 991, 992.

<sup>79</sup> See *id.* at 986.

<sup>80</sup> See *id.*

<sup>81</sup> See *id.* at 991, 992.

<sup>82</sup> *Id.* at 991.

protocol for rabies exposure in ferrets has been changed from immediate euthanization to the ten-day quarantine used for cats and dogs. More states have legalized possession of ferrets since *Gallick*, *Friends of Ferrets*, and *Raynor*, leaving California and Hawaii as the remaining holdouts. The statistics on animal attack show that ferrets are less dangerous to small children than dogs on a per-capita basis, and the Humane Society of the United States has stated that all companion animals, including cats and dogs, should be kept away from small children. Additional studies in New Zealand and the United States have indicated that the fear of feral ferrets is mostly unwarranted due to an absence either of island ecosystems bereft of natural and competing non-native predators or an absence of intentional mass releases of ferrets into the environment.

In fact, Maryland, the state of the *Raynor* case, has departed sharply from its anti-ferret stance. Just six months after the Maryland Court of Appeal ruled that ferrets, as wild animals, could be killed without testing for rabies, the Maryland legislature enacted a battery of statutes to effectively nullify *Raynor* and protect ferrets. The legislature listed ferrets as domestic animals that could not be banned in Maryland, instituted rabies vaccination requirements, and changed the rabies-observation standard for ferrets from immediate euthanization to the same rabies quarantine as for cats and dogs.<sup>83</sup> Thus Maryland provides an example of how ferrets are being treated under the law in the same manner as cats and dogs, as domestic animals.

To provide a striking contrast, many dangerous animals can be imported or possessed in California without a permit, even though they are neither domesticated nor ever could be. For instance, there is no provision in Fish and Game Code section 2118, or in title 14, section 671 of the California Code of Regulations, prohibiting possession of a pet rattlesnake in California, even though rattlesnakes are wild animals posing a menace to public safety. In fact, six different rattlesnake species may be legally possessed in California, because they are "natives," even though they are some of the most aggressive and dangerous animals in the Western Hemisphere.<sup>84</sup> Thus, one can own a rattlesnake in California without any interference from the state, unless the snake bites someone.<sup>85</sup>

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<sup>83</sup> See MD. CODE ANN., HEALTH-GEN. I § 18-219(b)(3) (1998); MD. CODE ANN., HEALTH-GEN. I § 18-318(a) (1998); MD. CODE ANN., HEALTH-GEN. I § 18-320(a)-(b) (1998).

<sup>84</sup> See CAL. CODE REGS. tit. 14, § 671(c)(7)(E) (1998)

<sup>85</sup> See CAL. FISH & GAME CODE § 2118(f) (West 1999); see also *Rattler's Kiss Nearly Fatal for Carlsbad Man on Dare*, SAN DIEGO UNION-TRIB., July 30, 1999, at B-2 (detailing owner of pet rattlesnake being grievously injured while trying to kiss snake).

In light of vaccination advances, near-total legalization of ownership throughout the United States, classification of ferrets as domestic animals, and revision of rabies testing, it is evident that the holdings of *Gallick*, *Friends of Ferrets*, and *Raynor* are largely inapplicable to the situation in California and should not be regarded as authoritative.

### III. SUGGESTIONS FOR CALIFORNIA: LEGALIZATION AND RECLASSIFICATION AS DOMESTIC ANIMALS

#### A. *The Latest Legislation: AB 854*

On February 24, 1999, California Assemblyman Jim Cunneen (R-San Jose) introduced Assembly Bill 854 (hereinafter AB 854), the latest legislative proposal to legalize possession of ferrets in California.<sup>86</sup> AB 854 passed the Assembly on May 27, 1999, by a vote of seventy-three to nine, and, as of October 1999, was pending in the California Senate Appropriations Committee.<sup>87</sup>

AB 854 is not a full-legalization statute, but rather an amnesty for ferrets. This bill, which is tentatively designated as Fish and Game Code sections 2220 and 2221, would allow legal possession of ferrets present in California as of April 20, 1999, provided that their owners can produce documentation of rabies vaccination (with a USDA-approved vaccine) and spaying or neutering.<sup>88</sup> The CDFG, CDHS, and the California Department of Food and Agriculture would be required to conduct a study to determine current and potential impacts of ferrets on California's environment, native wildlife, agriculture, and public health and safety. CDFG would then have to present the results to the Legislature and the Fish and Game Commission by April 1, 2001.<sup>89</sup> The Legislature and Commission would then determine whether to remove the ferret from Fish and Game Code section 2118's list of prohibited wild animals.<sup>90</sup>

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<sup>86</sup> See Noah Isackson, *Ferret Owners, Now Underground, Hope New Bill Will End Ban*, SAN DIEGO UNION-TRIB., May 19, 1999, at A-7; see also *1999 Bill Tracking CA A.B. 854*, Sept. 9, 1999, available in LEXIS, Legislation & Politics, U.S. States, Combined Bill Tracking & Bill Text (Current Session), CA Bill Tracking and Full-Text Bills.

<sup>87</sup> See *1999 Bill Tracking CA A.B. 854*, Sept. 9, 1999, available in LEXIS, Legislation & Politics, U.S. States, Combined Bill Tracking & Bill Text (Current Session), CA Bill Tracking and Full-Text Bills.

<sup>88</sup> See *1999 Bill Text CA A.B. 854*, Aug. 19, 1999, available in LEXIS, Legislation & Politics, U.S. States, Combined Bill Tracking & Bill Text (Current Session), CA Bill Tracking and Full-Text Bills.

<sup>89</sup> See *id.*

<sup>90</sup> See *id.*

If AB 854 were enacted, it would be possible that ferrets currently owned in California might be safe from confiscation, but could not be replaced through importation if the section 2118 ban on importation remained in force. Therefore AB 854 is a half-measure at best, and can only be seen as a provisional measure to be taken before any legalization of ferret ownership and reclassification of ferrets as domestic animals could occur. Yet even this limited amnesty is under attack; a staff recommendation to the California Senate Appropriations Committee suggested that the amnesty program be deleted entirely, and that AB 854 should be limited to the CDFG study before *any* legalization of ferrets, no matter how narrow in scope, could occur.<sup>91</sup>

Nevertheless, AB 854's use of a study to determine detrimental effects, in conjunction with an amnesty, would be more beneficial to ferret owners and the state of California than a study without amnesty. A 1997 report analyzing a legislative proposal similar to AB 854 noted that "this option would provide at least some assurance that impacts would be studied properly . . . while enabling ferret owners to have their pets vaccinated, spayed or neutered, and provided with other necessary and appropriate veterinary care."<sup>92</sup> Thus AB 854, although suffering from some flaws, would still be an improvement to the status quo.

### *B. Future Trends: Implementation of Policy for Legalization and Reclassification*

Assuming that AB 854 — or some other bill with similar features — passes both houses of the California Legislature, the next question that arises is: How would future management of the ferret issue be handled?

Kenneth Umbach presents the best proposal in his report *Ferrets: A Selective Overview of Issues and Opinions*. Umbach proposes (in opposition to unrestricted ownership, continued prohibition, or an ownership-and-study proposal similar to AB 854) ownership with four requirements: (1) sale only through licensed breeders or animal welfare agencies, (2) vaccination against rabies and other animal diseases, (3) spaying or neutering before sale, and (4) a public education program to inform prospective ferret owners, and other pet owners, about the appropriate circumstances for ferret ownership.

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<sup>91</sup> See *California Committee Analysis*, Aug. 23, 1999, available in LEXIS, Legislation & Politics, U.S. States, CA Legislative Committee Analysis of Pending Bills.

<sup>92</sup> See UMBACH, *supra* note 7, at 4-5; see also Letter from Dick Schumacher, Executive Director, Cal. Veterinary Med. Ass'n, to David L. Herman (Dec. 3, 1999) (on file with author) ("Our members need to have the ability to hospitalize ferrets when needed without [being] cited by Fish & Game").



Umbach's suggestions are reasonable and compatible with the concerns of the various California agencies. As noted earlier, vaccination is usually required for ownership of ferrets, and spaying and neutering are also required in some states.<sup>93</sup> Limiting sales to licensed breeders and sellers would help to ensure compliance with animal control laws, particularly with regard to vaccination and spaying and neutering, as well as ensuring that prospective owners would obtain healthy, properly treated ferrets instead of sick and mistreated animals. The spaying and neutering requirements would sharply reduce the likelihood of feral colonies establishing themselves through the escape of unaltered ferrets capable of reproducing. A public education program could also protect pet owners — and their families — from making the mistake of buying animals that are unsuited to their households. After all, ferrets are not suitable for everyone, particularly for families with very young children (as is the case with other pets). Such a program could also persuade owners to properly care for their ferrets and reduce the chances of attack or escape.

#### IV. CONCLUSION

California's hostile stance toward the ferret is more antiquated and unjustified than ever due to increasingly ferret-friendly legislation in other states, the development of an effective rabies vaccine, and statistical evidence indicating that ferret feral capabilities and destructiveness toward children and wildlife are exaggerated. As of 1999, California and Hawaii remain the only states that ban ferret ownership; many states not only allow ownership, but classify ferrets as domestic animals and not as wild animals. The few cases to address the issue, although negative, are limited by recent developments and studies, and by legislation reversing or limiting their holdings. Thus, California's classification of ferrets as "undesirable" wild animals should be reconsidered, and ultimately abandoned, to be replaced with qualified and restricted legalization and reclassification of ferrets as domestic animals under section 655 of the California Civil Code, whose ownership is protected by the California Constitution.<sup>94</sup>

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<sup>93</sup> See GA. CODE ANN. § 27-5-5(b)(1)(K) (1999); MASS. ANN. LAWS ch. 131, § 77(2) (Law. Co-op. 1999); MICH. STAT. ANN. § 12.481(108a) (Law. Co-op. 1999); N.H. REV. STAT. ANN. § 436:99(1-b) (1999).

<sup>94</sup> See CAL. CONST. art. I, § 1 (outlining protection of property); CAL. CIV. CODE § 655 (West 1998) ("There may be ownership . . . of all domestic animals"); *People v. Fimbres*, 288 P. 19 (Cal. App. 1940) (stating dog or other domestic animal is property).

