Why the ALI Should Redraft the Animal-Cruelty Provision of the Model Penal Code

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The Model Penal Code (MPC) is one of the most successful attempts to codify American criminal law. As a result, the MPC has been used widely by states to reform their penal codes accordingly. Unfortunately, similar to a lot of sections, the Model Penal Code has not revised “Cruelty to Animals” § 250.11 since its publication in 1962. Today, the lone animal-cruelty provision remains buried under a category entitled “Offenses Against Public Order and Decency,” despite the drastic change in the way society views companion animals. As a result, the MPC fails to provide any guidance to states looking to revise their animal-cruelty statutes to meet society’s demands. Instead, many states follow both the substance and placement of the MPC’s outdated animal-cruelty provision, which offers little protection to companion animals and weak criminal sentences to offenders. Additionally, states that have struck out on their own to revise such codes leave much to be desired. Animal-cruelty statutes vary drastically in severity and depth on a statewide basis. Based on ample evidence linking animal abuse with other violent crimes, this Note urges that the ALI undertake a much-needed revision of the animal-cruelty section as they start to re-examine some of the most outdated sections of the MPC. This Note also proposes that the ALI draw guidance from the placement and substance of strong state animal-cruelty statutes already in place. This modification has the potential to promote the seriousness of crimes against companion animals, while helping eradicate the notion that animal cruelty is a victimless crime. Additionally, a revised animal-cruelty section can act as a revised modernized guide to states that are in need of statutory revision. The ALI has an obligation to undertake this challenge.

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INTRODUCTION

After six years of ownership Douglas Juras decided that he no longer wanted Momma his cat.\(^1\) Instead of taking Momma to a shelter or trying to find her another home, thirty-six-year-old Juras sliced Momma’s throat with a box cutter.\(^2\) Because he missed the jugular artery and a neighbor heard her cries, Momma was able to wriggle free from his grasp and escape to the hands of law enforcement who responded to the neighbor’s call.\(^3\) However, after suffering shock from the blood loss, she was later euthanized at the humane hands of the police.

Juras plead guilty to animal cruelty, a Class A misdemeanor under North Dakota law.\(^4\) For this intentional act of cruelty, he sentenced to 400 hours of community service, one year of unsupervised probation, and ordered to pay $300 in court costs.\(^5\) This slap on the wrist is consistent with North Dakota’s disregard for the welfare of companion animals,\(^6\) where the criminal laws have not kept up with societal values.\(^7\) Further, North Dakota is not the only state employing outdated criminal code regarding animal abuse.

Had Juras committed the same acts in Illinois, for example, his crime would have been classified as a felony, and the sentence would have been more commensurate.\(^8\) Unfortunately, the punishment for animal-cruelty varies drastically from one state to the next. One reason for

\(^2\) *Id.*
\(^3\) *Id.*
\(^5\) *Cat’s Throat Sliced with Boxcutter Fargo, ND, supra*, note 1.
\(^8\) *See infra* Part IV.A.
this is that the Model Penal Code (MPC), which state legislatures have traditionally looked to for
guidance in modifying state penal codes, has not kept up with society’s values either. Under the
MPC, Juras’s horrific acts would have likely been treated the same. This Note argues that the
MPC’s animal-cruelty section desperately needs revision.

The MPC has been the most successful attempt to codify American criminal law. Even
before the MPC was first finalized, tentative versions were used by states to reform their penal
codes. In 1962, at the completion of the MPC, “Cruelty to Animals” was listed under “Part II.
Definition of Specific Crimes, Offenses Against Public Order and Decency, Article 250. Riot,
Disorderly Conduct and Related Offenses.” At that time, animal abuse was associated with
other morally reprehensible behaviors such as public intoxication, desecration of venerated
objects, gambling, prostitution, and abuse of corpses.

Today, despite mounting evidence linking animal cruelty with domestic violence, child
abuse, and murder among both juveniles and adults, crimes of “Cruelty to Animals” remains
buried under “Riot, Disorderly Conduct and Related Offenses.” Therefore, the statutory model
reflects a fifty-year-old view on animal cruelty, calling for minimal punishment, providing
inadequate terminology, and failing to recognize the broad range of acts that now constitute
animal abuse. In this way, the MPC fails to act as a guide for state penal-code reform, resulting
in animal-cruelty laws that vary drastically across the country.

11 Robinson, supra note 8, at 320.
12 Id. at 326.
14 Challener, supra note 11, at 502.
15 Id. at 503–04; see infra Part III.
17 See infra Part IV.
This Note proceeds in five parts. Part I discusses a brief history of the Model Penal Code and its pervasive influence on states drafting and revising their penal codes. Part II explores the evolution of state animal-cruelty laws. Part III discusses the connection between animal cruelty and other serious criminal offenses. Part IV then explains the lack of continuity among state animal-cruelty statutes, both good and bad, and how the MPC is adding to this disparity. Finally, Part V discusses how the MPC might model its revision of “Cruelty to Animals” and explains why a redraft of this provision is absolutely necessary.

I. HISTORY AND INFLUENCE OF THE MODEL PENAL CODE

The MPC is the closest thing to a comprehensive American criminal code.\(^1\) The United States is comprised of jurisdictions that have a total of fifty-two different criminal codes in addition to a federal penal code.\(^2\) The U.S. Constitution grants states the primary authority to impose criminal liability on its citizens pursuant to state interests or “street crimes.”\(^3\) Claiming that state criminal codes were “chaotic and irrational,”\(^4\) the American Law Institute (ALI)\(^5\) published the first version of the Code in 1962. Whereas restatements of law act as “general statements of principal digesting the state of the common law,” the purpose behind the MPC was to act as a comprehensive body of criminal law to be adopted by state legislatures across the country.\(^6\)

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\(^{1}\) Robinson, supra note 8, at 320

\(^{2}\) Id.

\(^{3}\) Id. (describing “street crimes” as “homicide, rape, robbery, assault, and theft”).

\(^{4}\) Id. at 323.

\(^{5}\) The ALI is a nongovernmental organization comprised of lawyers, judges, and law professors in the U.S. who typically draft “restatements” of an area of the law. Id. ALI’s mission was “to promote the clarification and simplification of the law and its better adaption to social needs . . . .” ALI Overview, AMERICAN LAW INSTITUTE, http://www.ali.org/index.cfm?fuseaction=about.creation (last visited Feb. 19, 2012).

After publication of the MPC in 1962, thirty-four states redrafted their criminal codes influenced in whole or in part by the MPC.\footnote{Robinson, supra note 8, at 324 (listing the states in order of recodification from 1962 to 1983).} The influence of the MPC has not been limited to state codes; thousands of court opinions have cited the MPC as persuasive authority for interpreting statutes and formulating criminal-law doctrine.\footnote{See e.g., Hawai‘i v. Aiwohi, 123 P.3d 1210, 1221 (Haw. 2010) (looking to the Model Penal Code to fill in gaps in the state law in distinguishing the three material elements of any criminal offense), Pennsylvania v. Henley, 459 A.2d 365, 369 (Pa. Super. Ct. 1983) (abolishing the legal impossibility defense based on insight from the Model Penal Code); \textit{see also} Robinson, supra note 8, at 327.} However, as influential as the MPC has proven to be, legal scholars have recognized that it has become notably dated in many areas of the law including rape, drug offenses, domestic violence, and bias crimes.\footnote{See Lynch, supra, note 26, at 230–35 (explaining that these areas are in need of statutory reform because they did not exist in the 1950s to the extent they do today); Robinson, supra note 8, at 329 (explaining the change in society’s views on the treatment of sex and drug offenses since the 1950s); Ameri\textit{can Law Institute, Model Penal Code & Commentaries, pt. II, vol. 3, at 309 (1980) [hereinafter \textit{MPC Commentaries}].} Likewise, the MPC’s “Cruelty to Animals” section has become terribly outdated. In the 1950s, animal cruelty was treated as a social misbehavior.\footnote{Id. at 425.} Therefore, the objective in drafting § 250.11 of the MPC in 1962 was to “prevent outrage to the sensibilities of the community.”\footnote{\textit{MPC Commentaries} § 250.11 (1962).} Following that objective, the animal-cruelty provision was categorized under “Offenses Against Public Order and Decency”\footnote{\textit{Id.} §§ 250.1–250.10, 250.12.} and viewed as petty mischief that affected the morals of society as a whole. Similar indecency offenses include behavior related to rioting, disorderly conduct, making false public alarms, harassment, public drunkenness, loitering, obstructing highways, disrupting meetings and processions, desecrating venerated objects, abusing corpses, and violating privacy.\footnote{Id.} The offenses in Article 250 are described as those that “affect a large number of defendants, involve a great proportion of public activity, and powerfully influence the...
view of public justice.” While in 1962 the public might have viewed animal cruelty as similar to these offenses, this Note will explore how this consensus has drastically evolved, while the MPC has not.

II. THE EVOLUTION OF STATE ANIMAL-CRUELTY LAWS

States began enacting animal-cruelty statutes in the first half of the nineteenth century. The first animal-cruelty statutes were not to promote animal welfare, but rather to “(1) protect the property rights of those who owned commercially valuable animals . . . and (2) prevent harm to human beings.” The owner of an animal had an interest in the animal only as a chattel. However, a change in this view was evident as early as post-Civil War, when the emancipation of slaves moved society toward “a more profound recognition toward the dignity of all beings.” In 1866, New York amended its animal-cruelty statute to expand the scope of animals protected and abusive acts covered. The amended statute read: “Every person who shall, by his act or neglect, maliciously kill, maim, wound, injure, torture, or cruelly beat any horse, mule, ox, cattle, sheep, or other animal, belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.” This animal-cruelty law then became the model for reformed animal-cruelty statutes throughout the country.

Although animals continued (and continue) to be regarded, legally, as personal property, courts began adopting the view that cruelty to animals was also degrading to the human

31 MPC Commentaries, supra note 35, at 309.
32 Id. at note 35.
33 Id. at note 35.
34 Margit Livingston, Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention, 87 IOWA L. REV. 1, 21 (2001). “Chattel” is thought to be derived from the word “cattle,” which was one of the most valuable animals and thus personal property. Id.
35 Id. at 24 (emphasis added).
36 Id. at 25.
37 NY AGRIC. & MKTS. § 26 (McKinney 1881).
38 Livingston, supra note 42, at 25.
perpetrator, human witnesses, and society as a whole. Animal cruelty was regarded as a problem that “diminished the human condition.” Not only were these laws meant to prevent and punish the destruction of property, but also to discourage and protect people from barbarous and uncivilized behavior that negatively impacted the general public. The type of behavior that aligned with humans committing animal cruelty was thought to be indicative of a character that also participated in excessive gambling, dissemination of pornography, public intoxication, loitering, and similar actions. As a result, the animal-cruelty provisions of many state codes were found in chapters entitled, for example, “Of Offenses Against Chastity, Decency and Morality,” reflected in the drafting of the MPC.

While most animal-cruelty statutes by 2002 still resembled their earlier counterparts, some state provisions have begun reflecting society’s increasing concern about animal welfare. Currently, all fifty states and the District of Columbia have some type of statute to protect animals from cruelty and neglect. Further, some states’ anti-cruelty statutes reflect the purpose of preventing cruelty to animals for the benefit of the animals as opposed to society. For example, Oregon catalogues its animal cruelty statute under “Offenses Against Public Health, Decency, and Animals.” In assigning a separate section for offenses against animals, the

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39 See e.g., Waters v. People, 46 P. 112, 113 (Colo. 1896) (“[The animal-cruelty law's] aim is not only to protect these animals, but to conserve public morals . . . .”); Johnson v. District of Columbia, 30 App D.C. 520, 522 (D.C. 1908) (explaining that the prevention of animal cruelty “is in the interest of peace and order and conduces to the morals and general welfare of the community”); see also Livingston, supra note 42, at 26.
40 Livingston, supra note 42, at 26.
41 Id. at 27–28.
42 Id. at 28.
45 Livingston, supra note 42, at 29.
46 Id.
48 OR. REV. STAT. § 167.310–167.390 (2011); see also Moore, supra note 55, at 95.
Oregon legislature recognizes that the primary purpose of the animal-cruelty provision is to protect animal welfare, not public health and property. Still, a number of modern animal-cruelty statutes have retained their purpose as “promot[ing] moral behavior and ‘improv[ing] human character’” rather than promoting animal welfare.

Not only has society’s conception about animal cruelty greatly evolved in the last 200 years, discussion about animal rights have “moved from the periphery and towards the center of political and legal debate.” Professor David Favre suggests that vertebrate animals should be considered under a new category of “living property” with at least some legal rights because animals have “individual interests worthy of our consideration.” Another legal scholar, Steven Wise, suggests that some animals, particularly large primates, are entitled to basic legal rights based on the sophisticated nature of animal minds. While many people continue to view the idea of animal legal rights as implausible, the growing animal-rights movement serves as another example of how attenuated the original concepts of animal cruelty are from today’s vision of protecting our companion animals.

III. THE CONNECTION BETWEEN ANIMAL CRUELTY AND OTHER SERIOUS OFFENSES

The animal-cruelty provision of the MPC was drafted in part to promote “moral behavior,” and in part to “prevent those who harm animals from engaging in other antisocial conduct that is harmful to humans.” Unfortunately, decades of research have demonstrated that the antisocial conduct perpetuated by animal abuse is much more severe than riot, disorderly

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49 Moore, supra note 55, at 95. Oregon also has a separate section entitled “Offenses Against Property.” Id.
50 Challener, supra note 11, at 503 (quoting Gary L. Francione, Animals, Property, and Legal Welfarism: “Unnecessary” Suffering and “Humane” Treatment of Animals, 46 Rutgers L. Rev. 721, 754 (1994)).
52 Wise, supra note 52, at 101.
53 Sunstein, supra note 59 at 387.
54 Wise, supra note 52, at 101.
55 Challener, supra note 11, at 503.
conduct, or public intoxication. As mentioned, the link between animal abuse and other serious crimes has become well established.\textsuperscript{56} The gambit of crimes ranges from domestic abuse within the home, to drug-related offenses, to serial killings and mass murder.\textsuperscript{57}

Several studies demonstrate that where there is domestic violence in the home, you will also likely find an abused animal.\textsuperscript{58} Killing or abusing an animal demonstrates an offender’s control and domination over the subject, similar to the mindset behind an offender’s violent action toward an abused partner or child.\textsuperscript{59} 68\% of women who reported domestic violence also reported animal abuse.\textsuperscript{60} Furthermore, 75\% of these incidences occurred in the presence of children.\textsuperscript{61} Where there is a child being abused or witnessing abuse, there is a strong probability that the child will adopt this behavior and continue both animal and human abuse in a generational cycle.\textsuperscript{62}

Additionally, children in homes where animal abuse is occurring are often subject to the abuse themselves.\textsuperscript{63} For example, in Kentucky, the county animal shelter was alerted that animals were being kept in the defendants’ garage without food, water, or ventilation.\textsuperscript{64} The county game warden responded to the complaint finding seventeen to twenty-three dogs in three

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\textsuperscript{56} Randall Lockwood, \textit{Animal Cruelty and Violence Against Humans: Making the Connection}, 5 \textit{Animal L.} 81, 81 (1999) (describing a compilation of fifty classic references to the connection in various fields of study over the last 200 years).


\textsuperscript{59} Sauder, \textit{supra} note 65, at 11–12.


\textsuperscript{61} \textit{Id.}

\textsuperscript{62} Sauder, \textit{supra} note 65, at 11–12; \textit{see also} Challener, \textit{supra} note 11, at 503–504 (describing studies showing that juveniles and adults who abuse animals are more likely to continue the abuse against humans).

\textsuperscript{63} Sauder, \textit{supra} note 65, at 13.

\textsuperscript{64} Schambon v. Kentucky, 821 S.W.2d 804, 806 (Ky. 1991).
to five inches of feces, no water, and in a temperature exceeding 90 degrees.\(^\text{65}\) After seizing the animals, investigators later discovered that their four children, ages five to thirteen, were being forced to perform anal and oral sex on both the defendants and other men and women while tied to a tree.\(^\text{66}\)

While animal abusers are four times more likely to commit property-related crimes, and three times more likely to commit drug-related offenses, they are also five times more likely to commit violent crimes such as assault, rape, and murder.\(^\text{67}\) Outside the home, some of the most notable violent offenders started out as animal abusers. For example, the “Son of Sam” serial murderer killed both his grandmother’s parrot and a neighbor’s dog before going on his infamous killing spree.\(^\text{68}\) Additionally, the gunmen in the Columbine High School shooting, which resulted in the death of twelve students and one teacher, had a history of mutilating animals prior to their mass murder, double suicide.\(^\text{69}\) Further, “seventy-five percent of violent offenders in prisons have earlier records of animal cruelty.”\(^\text{70}\) Psychologists conjecture that only the object of a serial killer’s violent actions change, the violent behavior does not.\(^\text{71}\) In the same way that acts of

\(^{65}\) Id.

\(^{66}\) Id. at 807–808.

\(^{67}\) Sauder, supra note 65, at 13–14; see also Slitting The Throat of Girlfriend’s Rottweiler, PET-ABUSE.COM, http://www.pet-abuse.com/cases/1678/AL/US/ (last visited Dec. 6, 2011) (describing how defendant slit the throat of his girlfriend’s Rottweiler resulting in conviction of misdemeanor animal cruelty and then broke his probation buying crack cocaine from an undercover agent).

\(^{68}\) Iannacone, supra note 65, at 753; Lockwood, supra note 64, at 83 (also describing infamous serial killer Jeffrey Dahmer’s fascination with animal corpses and incident of killing an entire tank of tadpoles in the third grade); see also Weslander, supra note 5 (explaining that serial killer BTK admitted that before he started strangling people to death, he killed numerous dogs and cats).


\(^{71}\) Sauder, supra note 65, at 14.
cruelty towards humans causes a great deal of harm to the humans involved, acts of animal cruelty cause a great deal of harm to both the animals and humans involved. As it turns out, acts of animal cruelty are indicative of a character that participates in much more severe actions than rioting or disorderly conduct.

IV. THE CURRENT “STATE” OF ANIMAL-CRUELTY LAWS

Animal-cruelty laws differ drastically from state to state. While some states recognize the large scope of criminal activity that animal abuse encompasses, others have failed to move beyond what is covered under the MPC. Further, how the act of animal cruelty is defined differs depending on what jurisdiction the crime was committed. One of the biggest issues is the disparity in maximum punishments. While forty-six states in addition to the District of Columbia have a felony animal-cruelty provision, each state varies drastically on what type(s) of crime(s) and animal(s) is covered. Location of the animal-cruelty provision within a state’s criminal code is also a good indicator of how progressive the anti-cruelty law is within the state. The following gives a brief insight into how state animal-cruelty statutes differ across the country and why some are more effective than others.

A. The Good, the Bad, and the Ugly

The animal-cruelty laws in Illinois, Maine, and Michigan are three of the most progressive statutes in the country. These three states are the only ones that have felony

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72 Moore, supra note 55, at 91.
74 See supra note 81.
75 See supra note 81.
76 Iannacone, supra note 65, at 748.
78 ANIMAL LEGAL DEF. FUND, 2010 STATE ANIMAL PROTECTION LAWS RANKINGS: COMPARING OVERALL STRENGTH AND COMPREHENSIVENESS 2 (2010) [hereinafter RANKINGS],
penalties available for cruelty, neglect, fighting, abandonment, and sexual assault. Further, all three statutes also treat animal cruelty violations separate from offenses against public order and decency in their criminal codes, providing coverage of animal abuse under its own chapter.

Illinois is deemed to have the one of the most effective animal-cruelty statutes because of its wide array of protections. For example, Illinois is the one of only two states that specifically defines animal hoarding. Besides recognizing a relatively new phenomenon, the Illinois animal-hoarding provision is progressive for two more reasons. First, it goes beyond traditional punishment by including a mental health component, which requires judges to order offenders to undergo psychological evaluation if convicted. Second, it includes specific definitions of an owner’s duties to their companion animal, leaving little room for misinterpreting, for example, “an open toilet bowl [as] an adequate source of water.”

Further, Illinois provides for mandatory forfeiture of animals upon conviction and also allows courts to restrict ownership when necessary. Veterinarians and other non-animal-related

http://www.aldf.org/downloads/ALDF2010StateRankingsReport.pdf. The ADLF study, the longest and most authoritative of its kind, researches fourteen broad categories to determine the ranking of state animal-protection laws each year. Id. These categories include: the range of statutory protections, adequacy of the definitions used, penalties for repeat offenders, and other categories regarding animal forfeiture, enforcement, and mitigation measures. Id.

Id. at 4. While other states provide felony penalties for cruelty or fighting, these are the only three states that provide felony penalties for all five offenses comprehensively.

See 510 ILL. COMP. STAT. 70/3.01 (2011) (placing cruel treatment of companion animals under Chapter 510. Animals); ME. REV. STAT. tit. 17, § 1031 (2011) (placing cruelty to animals under Chapter 42. Animal Welfare); MICH. COMP. LAWS. ANN. § 750.50(b) (2011) (placing the animal cruelty provision under Chapter IX. Animals).

Rankings, supra note 86, at 2.


510 ILL. COMP. STAT. 70/3 (2011); Renwick, supra note 90, at 599; see also 30 Dogs Seized, Odin, IL, PET-ABUSE.COM, http://www.pet-abuse.com/cases/18780/IL/US/ (last visited Feb. 29, 2012) (describing an Illinois man who plead guilty to animal cruelty for hoarding thirty dogs and was ordered to undergo mental evaluation in October 2011).

510 ILL. COMP. STAT. 7/3 (2011); Renwick, supra note 95, at 600.

510 ILL. COMP. STAT. 70/3.04 (2011); Rankings, supra note 86, at 4.
professionals are required to report suspected acts of animal-cruelty. Additionally, there are broad measures listed to mitigate the costs of care for abused pets seized by animal-welfare agencies. The Illinois statute also recognizes the effect of animal abuse on human victims, requiring mental health evaluations and counseling beyond animal hoarding convictions, and allowing pets to be included in domestic protective orders. Lastly, anyone convicted of animal torture, “infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the animal,” can face up to five years in prison.

The Maine and Michigan statutes also include notable sections that distinguish them as leaders in the anti-cruelty law arena. A major strength that the Maine statute possesses is that it provides police officers with an affirmative duty to enforce animal-protection laws. The police’s role in enforcing animal-cruelty laws is a vital first step in successful prosecution. While Michigan has some of the same strengths as the Illinois and Maine statutes, it also provides a few other positive distinctions. For example, Michigan gives humane officers broad law enforcement authority. When a state has an integrated plan in place to respond to animal-cruelty complaints, allowing other agencies enforcement authority can provide extra resources

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86 510 ILL. COMP. STAT. 70/3.07 (2011); RANKINGS, supra note 86, at 4.
87 510 ILL. COMP. STAT. 70/16.2–16.17 (2011); RANKINGS, supra note 86, at 4.
88 510 ILL. COMP. STAT. 70/3.03 (2011); RANKINGS, supra note 86, at 4.
89 510 ILL. COMP. STAT. 70/16.3 (2011); RANKINGS, supra note 86, at 4.
90 510 ILL. COMP. STAT. 70/3.03 (2011); see Kitten’s Head Ripped Off During Domestic Dispute Bethalto, IL, PET-ABUSE.COM, http://www.pet-abuse.com/cases/9663/IL/US/ (last visited Feb. 29, 2012) (sentencing defendant to two years imprisonment for ripping off a kitten’s head during a domestic dispute in exchange for a guilty plea).
91 ME. REV. STAT. tit. 17, § 1023 (2011); RANKINGS, supra note 86, at 4; see also Brief for the State Appellee at 9, Maine v. Clark, 866 A.2d 106 (Me 2008) (No. LIN-08-193), 2008 WL 5974812 (urging the Supreme Court of Maine to uphold the seizure of animals from the appellant’s puppy mill under § 1023).
92 See Sherry Ramsey, Enforcing State Animal Cruelty Laws: Interpreting the Laws to Obtain Successful Prosecutions, LEX CANIS (Ass’n of Prosecuting Attorneys, Washington D.C.) Spring 2010, at 2 (explaining that when police do not have a direct incentive to respond to animal-cruelty cases they often get shuffled to other agencies, disallowing prompt and consistent investigation).
93 See generally RANKINGS, supra note 86, at 4 (comparing the select provisions used by ALDF in determining the rank between the top five state animal cruelty statutes).
94 MICH. COMP. LAWS. ANN. § 750.52 (2011); see also MASS. GEN LAWS. ANN ch. 147 § 10 (2011) (allowing nonprofits to enforce anti-cruelty statutes when they have been appointed as special police officers).
necessary for successful reporting and investigation.\textsuperscript{95} Michigan also treats malicious animal cruelty as a felony punishable by up to four years imprisonment on the first conviction.\textsuperscript{96}

On the other end of the spectrum, Idaho, Kentucky, and North Dakota have been named three of the worst states for companion animals due to some of the weakest protection laws in the country.\textsuperscript{97} There are a few characteristics that separate the bad laws from the downright ugly. None of these three consider cruelty, neglect, or abandonment a felony.\textsuperscript{98} As demonstrated in the Introduction, the maximum penalty for cruelty to animals in North Dakota is seemingly minimal regardless of how horrific the act. Cruelty to animals is a Class A misdemeanor with a maximum jail sentence of one year.\textsuperscript{99} While Kentucky boasts the same \textit{tough} punishment,\textsuperscript{100} Idaho only allows a maximum jail sentence of one year upon the third conviction within fifteen years, unless found guilty of poisoning an animal.\textsuperscript{101} The maximum sentence in an animal cruelty-provision is critical. “It signals to a judge how opposed legislators think a society actually is to a particular wrong . . . [and] [b]ecause a judge usually will not impose a penalty near the maximum for a first ‘run-of-the-mill’ offense, the typical penalty for cruelty will remain low so long as the maximum penalty remains low.”\textsuperscript{102}

Moreover, while states like Michigan require veterinarians to report animal-abuse, veterinarians in Kentucky are prohibited from reporting either cruelty or animal fighting.\textsuperscript{103}

\textsuperscript{95} Ramsey, \textit{supra} note 100.
\textsuperscript{96} \textsc{Mich. Comp. Laws. Ann.} § 750.50(b) (2011).
\textsuperscript{97} Thornton, \textit{supra} note 6.
\textsuperscript{98} \textsc{Id.}
\textsuperscript{100} \textsc{Ky. Rev. Stat. Ann.} § 525.130 (West 2011).
\textsuperscript{102} Wise, \textit{supra} note 52, at 99. \textit{Cf. supra} note 102 and accompanying text with \textit{supra} note 114 and accompanying text.
\textsuperscript{103} Thornton, \textit{supra} note 6.
Moreover, Kentucky and Idaho’s felony penalty only applies to dog fighting, leaving out other types of animals. Despite the shortcomings of the entire Idaho animal-cruelty statute, the legislature succeeded in correctly placing the provision under a chapter entitled “Animal Care.” North Dakota’s provision is hidden under “Livestock,” and Kentucky follows the MPC, listing it under “Riot, Disorderly Conduct, and Related Offenses.”

While these two ends of the spectrum draw attention to the greatest disparity among animal-cruelty laws across the country, it is important to note that state legislatures are beginning to recognize the need for progressive change. Likewise, in the past fifteen years, legal academics have been calling for more modern animal-cruelty laws on a state-by-state basis. Unfortunately, as the wide disparity among U.S. animal-cruelty laws persists, it will continue to matter whether an animal abuser is, for example, a Kentucky resident or a Maine resident, in determining if companion animals like Momma (discussed in the Introduction) will see justice.

B. The MPC’s Role in Retarding the Evolution of State Animal-Cruelty Laws

States have received no new guidance for structuring an animal-cruelty section in their criminal codes since the publication of the MPC in 1962. As a result, most states have struck out


108 Between 2009 and 2010, Alaska strengthened its felony punishment for sexual assault on animals. [ALASKA STAT.] § 11.61.140 (West 2011); [Rankings, supra note 91, at 1. Further, eleven states including West Virginia, Arizona, Minnesota, and Oklahoma now have laws that allow companion animals to be included in domestic protective orders. Brief for a Group of American Law Professors as Amicus Curiae in Support of Neither Party at 22–23, United States v. Stevens, 130 S.Ct. 1577 (2010) (No. 08-769), 2009 WL 1681459 [hereinafter Brief for Law Professors]. Moreover, many states including Arkansas amended their statutes to improve the definition of care and provide for mental health evaluations and counseling for those convicted. [ARK CODE ANN.] § 5-62-102, 5-62-104 (West 2011); see also Thornto, supra note 6.


110 Cf. [KY. REV. STAT. ANN.] § 525.130 (West 2011) with [MAINE REV. STAT tit. 17 § 1031 (2011)].
on their own to mirror modern society’s view on animal-cruelty (whether they have met success or not is another question), while others have more or less retained the MPC or a similar version of § 250.11. As just discussed, this has resulted in a wide disparity in animal-cruelty statutes across the country, or worse—a failure to recognize the drastic difference between animal cruelty from other petty misbehaviors and the similarity of animal abuse to more serious violent crimes.\footnote{It is first important to analyze why § 250.11 is ineffective in order to understand how the MPC should be revised.}

The animal-cruelty provision in the MPC prevents meaningful enforcement and prosecution. The placement of the provision serves to underscore the misapprehension that these crimes are insignificant and of lesser importance.\footnote{It is first important to analyze why § 250.11 is ineffective in order to understand how the MPC should be revised.} Substantively, the MPC is flawed as well.

Section 250.11 “Cruelty to Animals” reads:

\begin{quote}
A person commits a misdemeanor if he purposely or recklessly:
\begin{enumerate}
\item subjects any animal to cruel mistreatment; or
\item subjects an animal in his custody to cruel neglect; or
\item kills or injures any animal belonging to another without legal privilege or consent of the owner.
\end{enumerate}
Sections (1) and (2) shall not be deemed applicable to accepted veterinary practices and activities carried on for scientific research.\footnote{The MPC fails to provide adequate definitions or guidance on the meaning of the words used in the offense, such as “animal” and “cruel” used in sections (1), (2), and (3) of § 250.11} The commentators felt that failure to define these terms would not “cause much trouble” in the section’s interpretation.\footnote{The commentators felt that failure to define these terms would not “cause much trouble” in the section’s interpretation.}
\end{quote}

1. What is an “animal?”

\footnotetext[111]{See supra Part III.}
\footnotetext[112]{Ramsey, supra note , at 2–3 (explaining the importance of the location of state animal-cruelty provision(s) within the state criminal code).}
\footnotetext[113]{MODEL PENAL CODE § 250.11 (1962).}
\footnotetext[114]{MPC Commentaries, supra note 35, at 426.}
\footnotetext[115]{Id.}
Contrary to the commentators’ speculation, the ALI could have contributed much in deliberating on what types of animals should enjoy protection from statutes drafted similar to the MPC.\textsuperscript{116} Further guidance on these this term might have minimized the disparity in state statutes, subsequently creating a patchwork of law. For example, some states have provided relatively broad definitions of “animals” such as “every living sentient creature not a human being,”\textsuperscript{117} while some have limited animal-cruelty statutes to pets, which includes dogs and cats.\textsuperscript{118} Other states have limited their animal-cruelty provision to “companion animals.”\textsuperscript{119} Yet, other states have failed to define “animal,” leaving it up to the courts to decide.\textsuperscript{120} This lack of guidance leaves open the question as to what categories of animals the MPC provision was intended to protect and whether the appropriate group is covered.

2. What is “cruel?”

Similar problems have arisen in light of the MPC’s failure to provide any kind of intended meaning of the word “cruel.” Some states have attempted to overcompensate for this failure by simply using more words to supplant it,\textsuperscript{121} often using antiquated language such as “overdriving and overworking” that is only relevant to working animals.\textsuperscript{122} Other states have

\textsuperscript{116} Id.
\textsuperscript{117} ME. REV. STAT. tit. 17 § 1101 (2011).
\textsuperscript{118} ALA. CODE § 13A-11-241 (2011) (applying certain cruelty practices only to cats and dogs); HAW. REV. STAT. § 711-1108.5 (2011) (limiting felony cruelty practices only to cats, dogs, and horses); see also Iannacone, supra note 65, at 760–761.
\textsuperscript{119} N.Y. AGRIC. & MKTS. LAW § 353(a)-1 (McKinney 2011) (limiting the felony animal-cruelty statute to companion animals); see also Iannacone, supra note 65, at 760.
\textsuperscript{121} Iannacone, supra note 65, at 760.
\textsuperscript{122} Animal Cruelty: Opportunities for Early Response to Crime and Interpersonal Violence, SPECIAL TOPIC SERIES (Am. Prosecutors Research Inst., Alexandria, VA) July 2006, at 15 [hereinafter Opportunities for Early Response]; see also CAL. PENAL CODE § 597(b) (2011) (describing animal cruelty as “every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal . . . or fails to provide the animal with proper food, drink, or shelter or
attempted to define “cruelty” more generally. Either way, the lack of guidance on what is intended by use of the word “cruel” in § 250.11 begs the question of what types of cruelty practices are actually included within each section of the provision. For example, in New York, aggravated cruelty is defined as conduct that “(i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.” This definition fails to take into account that not all cruel acts that cause extreme pain are apparent. Because of this common interpretation, New York courts have inconsistently provided a felony penalty for cases of extreme neglect. Recent cases in New York have interpreted this statute to mean that prosecutors must show that a defendant exhibited a pattern of neglect by the defendant. Leaving important words such as “cruel” and “animal” undefined in a statute makes it challenging for prosecutors and courts to correctly interpret the law.

3. Penalties under the MPC

Under the MPC animal-cruelty provision, the maximum punishment for this offense is a misdemeanor, undermining the importance of prosecuting animal-cruelty cases as discussed previously. Even in states that provide a felony penalty under their animal-cruelty statute, it often applies only to specific types of cruelty or provides minimal maximum incarceration protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor”); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 2011) (reading similar to the California provision).

123 WIS. STAT. § 951.02 (2011) (“No person may treat any animal . . . in a cruel manner.”); see also Iannacone, supra note 65, at 761.


125 Iannacone, supra note 65, at 758.

126 Id.

127 Id. at 758–759; Compare People v. Arroyo, 777 N.Y.S.2d 836, 846 (N.Y. Crim. Ct. 2004) (finding no aggravated cruelty under § 353 when defendant failed to provide veterinary care for a dog who had a grapefruit size tumor in his stomach) with People v. O’Rourke, 369 N.Y.S.2d 335, 342 (N.Y. Crim. Ct. 1975) (finding aggravated cruelty under § 353 for failing to provide medical attention to a working horse who was limping).

128 Ramsey, supra note 100, at 3.

129 MODEL PENAL CODE § 250.11 (1962).
time.\textsuperscript{130} In New York, the maximum sentence for a felony animal-cruelty violation “may not exceed two years.”\textsuperscript{131} Kentucky’s felony violation only applies to four-legged animal fighting.\textsuperscript{132} North Carolina’s maximum jail time for a conviction of cruelty is six months, even after the third subsequent offense.\textsuperscript{133} Not only does the MPC not provide adequate potential jail-time for offenders, it also fails to recognize the root of the problem by failing to provide measures to seize abused animals or require psychological treatment. Some scholars even advise that states should develop an animal-abuse registry or tracking system to protect animals from further abuse.\textsuperscript{134}

V. THE FUTURE OF THE MPC: A REVISED ANIMAL-CRUELTY SECTION

The ALI expresses that “the purpose of the Model Penal Code was to stimulate and assist legislatures in making a major effort to appraise the content of the penal law by a contemporary reasoned judgment.”\textsuperscript{135} In other words, the MPC intended\textsuperscript{136} “to promote the reform of the nation’s actual criminal codes, as adopted by state legislatures and Congress.”\textsuperscript{137} However, as early as 1980, the ALI recognized that the “constitutional background of the[] offenses [listed in Article 250] ha[d] changed significantly since the promulgation of the [MPC] in 1962.”\textsuperscript{138} While state legislatures have attempted reform on their own, this has led animal-cruelty laws to the same place most state penal codes were previous to the publication of the MPC—chaos and

\begin{itemize}
  \item \textsuperscript{130} Iannacone, \textit{supra} note 65 at 768.
  \item \textsuperscript{131} N.Y. AGRIC. & MKTS. LAW § 353–a(3) (2011).
  \item \textsuperscript{132} KY. REV. STAT. ANN. § 525.125 (2011).
  \item \textsuperscript{133} N.C. GEN. STAT. § 14-360 (2011).
  \item \textsuperscript{134} Iannacone, \textit{supra} note 65, at 769.
  \item \textsuperscript{136} In recent years, many academics have begun discussing the possibility of a Model Penal Code Second or smaller more manageable projects revising specific sections of the current MPC. Joshua Dressler, \textit{The Model Penal Code: Is it Like a Classic Movie in Need of a Remake?}, 1 OHIO ST. J. CRIM. L. 157, 158–59 (2003).
  \item \textsuperscript{137} Lynch, \textit{supra} 26, at 219.
  \item \textsuperscript{138} Robinson, \textit{supra} note 8, at 312; \textit{see also} Kent Greenawalt, \textit{A Few Reflections on The Model Penal Code Commentaries}, 1 OHIO ST. J. CRIM. L. 241, 243 (explaining that the commentaries attempted to give “reasoned support for choices made two decades earlier”).
\end{itemize}
disarray. A revised MPC provision in line with today’s views on animal-abuse could narrow the disparity in animal-cruelty provisions across the country.

A. What the Revision Should Look Like

The starting point for revision is the location of the animal-cruelty section. The most logical placement of the animal-cruelty provisions under the MPC would be to place these offenses in their own section. For example, prosecutors, law enforcement, humane officers, and lay people can easily identify where the animal-cruelty provisions are located in the Oregon Penal Code, as the legislature clearly placed it in its own chapter under “Offenses Against Animals.” The MPC should follow the Oregon legislature and move its animal-cruelty provision to a newly created section entitled “Offenses Against Animals” under Part II. “Definitions of Specific Crimes.” Removing the animal-cruelty provision from “Offenses Against Public Order and Decency” would demonstrate that the ALI no longer views animal abuse parallel with minor social misbehaviors but rather recognizes its position in a multidimensional legal spectrum. Further, this type of revision “avoid[s] the temptation to rethink the [MPC’s] basic organization and approach.” Rather, this revised placement perpetuates the drafters attempt to organize offenses conceptually, making it easy for a code user to find the relevant offense, while ensuring that related offenses are nearby and “not hidden in a dark corner somewhere else in the code.”

Second, the substance of the animal-cruelty provision also needs revision. The current anti-cruelty section under the MPC fails to recognize the many facets that animal abuse

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139 Robinson, supra note 8, at 323.
141 See generally MODEL PENAL CODE (1962) (looking at the layout of the different parts); see also MICH. COMP. LAWS. ANN. § 750 (2011). (listing animal-cruelty under “Animals”); Infra Appendix.
142 Lynch, supra note 26, at 237.
143 Robinson, supra note 8, at 333.
encompasses. Fortunately, the ALI drafters have a handful of progressive well-written state statutes to use as a guide in redrafting a successful, comprehensive model law.\textsuperscript{144} A successful redraft of the MPC’s “Cruelty to Animals” section should provide a basic guide, which covers all recognized types of animal abuse and includes adequate definitions, enforcement techniques, and penalties that are easily accessible to law enforcement, prosecutors, and advocates. State legislatures could then adopt or amend this revised MPC section to their respective animal-cruelty statutes across the country.

B. Why the Revision is Important Now

The desperate need for penal code reform in some areas of state law is no different than it was before the MPC was published in 1962. However, it is no longer expected that states will radically change their state penal codes today based on the 1962 MPC.\textsuperscript{145} Many states that have attempted penal reform on their own since 1962 had little success in both the legislature and public arena.\textsuperscript{146} This can be attributed to the “dynamics of local criminal law politics [which] make it very difficult, if not impossible, to achieve general criminal law recodification without the kind of outside help provided by the Model Penal Code in the 1960s and 70s.”\textsuperscript{147} Legislatures have attempted to respond to public pressure by addressing new and previously “unimportant” criminal offenses with non-MPC terminology “undermin[ing] the coherence and clarity of many MPC-inspired codes.”\textsuperscript{148} “A new MPC, if it focused on the areas in which there is a real need

\textsuperscript{144} See supra Part IV.A.
\textsuperscript{145} Lynch, supra note 26, at 224.
\textsuperscript{146} Id.
\textsuperscript{148} Dressler, supra note 164, at 159.
and demand for reform . . . could be of great value to those seeking to reform [their] criminal codes"\footnote{149} in the same way the original MPC was in 1962.

As a revised draft of the MPC’s sentencing provisions is due to be submitted in 2012, many scholars have begun to discuss whether a second coming of the MPC is or should be on the horizon.\footnote{150} Judge Lynch\footnote{151} suggests that the biggest weaknesses of the MPC are those where the criminal-law theorists have been the least active, and the need for reform is the greatest.\footnote{152} Some of these areas of the MPC include definitions of particular crimes, areas of criminal law that were neglected by the original drafters, and those areas which did not exist when the MPC was created in 1962.\footnote{153} Three of these areas are rape, narcotics, and domestic violence and bias crimes.\footnote{154}

Similar to animal abuse, the social change of the last fifty years has drastically changed the principles and practices of defining the crime of rape.\footnote{155} The MPC arrived just before the feminist movement, which changed the way society viewed family, reproduction, and sexual

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\footnote{149} Lynch, supra note 26, at 225. 
\footnote{151} E.g., Debra W. Denno, \textit{Why the Model Penal Code’s Sexual Offense Provisions Should Be Pulled and Replaced}, 1 OHIO ST. J. CRIM. L. 207 (2003); Dresser, supra note 164; Lynch, supra note 26; Robinson, supra note 176.
\footnote{152} Gerard E. Lynch is a U.S. Federal judge for the United States Court of Appeals for the Second Circuit appointed by the Obama administration in 2009. Previous to this position, he was appointed by the Clinton administration and served as a Federal judge for the District of Southern New York. \textit{Full Time Faculty}, COLUMBIA LAW SCHOOL (Dec. 5, 2010, 12:12 PM), http://www.law.columbia.edu/fac/Gerard_Lynch. Judge Lynch as taught at Columbia law school since 1977 and is an expert in criminal law and procedure, sentencing, and professional responsibility. \textit{Id.}
\footnote{153} Among other accolades, he is also a member of the council of the American Law Institute. \textit{Id.}
\footnote{154} \textit{Id.}
\footnote{155} \textit{Id.} at 230–235. Judge Lynch also suggests reform for sentencing, conspiracy, money laundering, and terrorism. \textit{Id.} at 229, 235; \textit{see also} Dressler, supra note 164, at 158–159 (agreeing with Judge Lynch on the need for MPC reform in rape law, new statutory crimes, and the “war on drugs”).
\footnote{156} Lynch, supra note 26, at 230.
relations. The MPC treats the crime of rape as gender-specific and adheres to an old notion that a husband cannot sexually assault his wife. Although a number of legislative and judicial reforms have essentially rendered the rape provisions of the MPC irrelevant today, the variety of different statutes adopted across the state-penal system have inconsistently addressed a number of these issues “causing a host of interpretive questions, penatproblems and social questions.”

Only twenty-four states have completely abolished the marital-immunity rule despite drastic changes in the way society views rape. Similarly, although society once viewed animal abuse as a social misbehavior equivalent to acts of vagrancy, 67% percent of Americans today believe that protecting animals from cruelty and abuse is “very important.”

The modern “war on drugs” had also yet to be declared at the time the ALI drafted the MPC, therefore failing to include drug offenses in the original publication. This can be attributed to the fact that the possession and sale of narcotics was much less prevalent in the 1950s—or just regarded as a less serious problem. Judge Lynch recognizes that ignoring the dangerous consumption of drugs cannot be part of a modern model criminal code, when law officials and prosecutors devote a large portion of their resources on narcotics enforcement. He also points out that deliberate omission by the 1962 drafters cannot mean that some form of criminal regulation is not now necessary to attack the modern narcotics problem. He suggests

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157 Id.
158 JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 605 (5th ed. 2009).
159 Lynch, supra note 26, at 231.
160 DRESSLER, supra note 187, at 599.
161 See id. (discussing how the marital immunity rule still exists in some states for intercourse with a physically or mentally helpless spouse, and lesser forms of nonconsensual sexual conduct, while some states have abolished the immunity for the specific offense of forcible rape).
162 Opportunities for Early Response, supra note 150, at 9.
163 Lynch, supra note 26, at 231.
164 Id. at 232.
165 Id.
166 Id.
that some type of “Model Controlled Substances Act” could stand a significant chance of adoption in many state jurisdictions because of the current diverse system of state-penal codes relating to narcotics offenses.\textsuperscript{167} While animal abuse was regarded as a much less serious and absent problem in the 1950s—equated to minor social deviances—the link between animal cruelty and drug abuse\textsuperscript{168} suggests that a modern MPC could not continue to regard animal cruelty through a 1962 lens.

A third reform that Judge Lynch suggests is that in the area of domestic violence and bias crimes, which have also been spearheaded by the feminist movement since the promulgation of the MPC in 1962.\textsuperscript{169} Similar to how animal welfare was not on the “criminal agenda” of the MPC drafters in the 1950s, neither was the concern of “disempowered groups and minorities.”\textsuperscript{170} Judge Lynch suggests that these topics should concern MPC reformers not only because the MPC treated them either with silence or inadequacy in 1962, but also because they represent a “broader criminal law trend that requires reconsideration” in today’s society.\textsuperscript{171} Cruelty to animals must fit within this broad trend, as domestic abuse and animal abuse are “commonly intertwined.”\textsuperscript{172}

The aforementioned areas, among others, are in the same “chaotic and irrational”\textsuperscript{173} disarray among state-penal codes as the originally targeted areas of reform were prior to 1962.\textsuperscript{174} These are the areas that legal scholars have focused on when discussing the possibility of a revised MPC. However, animal-cruelty statutes among state-penal systems are in the same

\textsuperscript{167} Id. at 233.
\textsuperscript{168} Brief for Law Professors, supra note 118, at 31; Sauder, supra note 65, at 13.
\textsuperscript{169} Lynch, supra note 26, at 223.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Sauder, supra note 65, at 12.
\textsuperscript{173} Robinson, supra note 8, at 323.
\textsuperscript{174} Lynch, supra note 26, at 223–24; see also Dressler, supra note 164, at 158 (discussing the dramatic improvement in culpability requirements in state penal codes after the MPC).
“archaic, inconsistent, unfair, and unprincipled”\textsuperscript{175} state as the popularly analyzed areas for reform. It only seems logical that because animal abuse acts as a precursor to all of the above areas proffered for reform by Judge Lynch, a revision of § 250.11 of the MPC is not only relevant but also necessary. Further, if the ALI is going to remain true to the MPC’s mission of “assist [ing] legislatures in making a major effort to appraise the content of the penal law by a \textit{contemporary} reasoned judgment,”\textsuperscript{176} then it needs to update the animal-cruelty section of the MPC. This revision could “stimulate state criminal code reform [to] help states crawl out from under the decades of ad hoc amendments”\textsuperscript{177} that are continuing to widen the gap from state to state.

\textbf{Conclusion}

A modern revision of the MPC’s “Cruelty to Animals” section would provide a progressive guide for statewide legislative change. As the saying goes, history repeats itself. In the 1960s and 1970s, the drafting of the MPC sparked “a wave of state code reform[]” across the country.\textsuperscript{178} Just recently, the ALI set to embark on a wholesale revision of the sentencing guidelines in the MPC “in light of the many changes in sentencing philosophy and practice that have taken place in the more than 40 years since the Code was first developed.”\textsuperscript{179} Given the purpose of the MPC, this undertaking suggests that the ALI intends states to reform their sentencing guidelines in light of the new model once published.\textsuperscript{180} Today, although society’s views on animal cruelty have drastically evolved, the only guide for state legislatures is tainted with a 1950’s view on animal abuse that is far attenuated from reality. A revision of the MPC’s

\textsuperscript{175} Dressler, \textit{supra} note 164, at 157.
\textsuperscript{176} \textit{Publications Catalog}, \textit{supra} note 163 (emphasis added).
\textsuperscript{177} Dressler, \textit{supra} note 164, at 159.
\textsuperscript{178} Robinson, \textit{supra} note 8, at 320.
\textsuperscript{179} \textit{Current Projects}, \textit{supra} note 179.
\textsuperscript{180} Lynch, \textit{supra} note 26, at 219.
treatment of animal cruelty has the potential to provide courts, legislators, and prosecutors a
progressive model to fill in statutory, legislative, and judicial gaps that can act as good precedent
for the rising trend in promoting the welfare of our companion animals. The ALI has an
obligation to undertake this challenge.