Justice for Chance: A Case for Strengthening Animal Cruelty Penalties

Rebecca A Magee

Available at: https://works.bepress.com/rebecca_magee/1/
JUSTICE FOR CHANCE: A CASE FOR STRENGTHENING ANIMAL CRUELTY PENALTIES

Abstract

Mahatma Gandhi once said, "the greatness of a nation and its moral progress can be judged by the way its animals are treated." Current animal cruelty laws, however, fail to protect this nation’s most vulnerable members. This article analyzes the animal cruelty statutory scheme pertaining to companion animals and discusses various deficiencies. The article then explores several reasons why society needs to increase penalties from both a retributive and deterrence perspective including: the link between animal cruelty and interpersonal violence, the danger neglecting animals creates to society, the concept that pet owners are crime victims, and the moral need to ensure that property based crimes like theft do not render higher penalties than violent crimes against animals. Furthermore, the article proposes amending the laws by making animal cruelty a strike under a state’s repeat offender act, ensuring sentences are commiserate with mens rea, prohibiting an offender from owning animals, and requiring offenders to undergo psychological counseling. Finally, the article discusses obstacles that inhibit effectively sentencing offenders including prosecutorial and judicial apathy.
Table of Contents

I. Introduction. ................................................................. 1

II. Current Animal Cruelty Statutes. ......................................... 3

III. Rationale for Change. ....................................................... 6
    A. Deterrence. ................................................................. 7
        1. Recognizing the link between animal cruelty and violence against humans. .............................................. 7
            a. Domestic Violence and Animal Cruelty. .................... 7
            b. Animal Cruelty as a Red Flag in Juveniles. ............... 9
            c. Neglect alone of animals creates a danger for society.... 10
    B. Retribution. ............................................................... 11
        1. Animal Owners as Crime Victims. .................................. 11
        2. Justice for Chance. ................................................... 14

IV. Suggestions for Changing the Laws. ..................................... 16
    a. Animal Cruelty as a Strike. .......................................... 16
    b. Making Sentences Commensurate With Mens Rea. ................. 18
    c. Banning an Offender from Owning Animals. ....................... 19
    d. Rehabilitation: Mandatory Psychological Counseling .............. 21

V. Overcoming Obstacles for Change: The Need to Properly Enforce Anti-Cruelty Statutes. ...................................................... 22
JUSTICE FOR CHANCE: A CASE FOR STRENGTHENING ANIMAL CRUELTY PENALTIES

Introduction

I walked down the street, hungry and tired. It was a hot summer day and I found myself daydreaming again of a place to call home. Nothing fancy. Just a place to curl up and sleep. A place with a little food and water. Perhaps even a place with a child to love and protect. As I rounded the corner, I saw her. She waived her chubby little hand and smiled at me from her porch. I smiled back, wagged my long black tail, and slowly, ever so slowly rested my paws on her lawn. Suddenly, a man walked out of the house, carrying a big stick. I wagged my tail even harder, made my smile a bit wider. He stretched his arm back. As a readied myself for a game of fetch, I heard a loud popping noise in the distance. A sticky liquid oozed down my face. I closed my eyes hoping the pain would disappear. Minutes or maybe hours later, I awakened to find myself lying in the hospital with several people hovering over. I didn’t want them to worry so I thumped my tail a bit. I tried to smile but couldn’t.

This is the story of Chance, a black Labrador Retriever who was shot in the face by Raymond Wilson of Maryland for no other reason except that he was a stray. Chance endured four surgeries where doctors removed more than 100 shotgun pellets from his face. The shotgun blast took teeth and chunks of flesh from Chance’s upper and lower lips, leaving a hole on the right side of his mouth. What was the fate of the man who viciously shot and left young Chance for dead? Five-hundred dollars of restitution and 100 hours of community service.\(^1\) Although

---


1
Maryland has a felony aggravated cruelty statute which provides for a maximum sentence of three years imprisonment\(^2\), Chance’s abuser did not spend one day in jail.

a. Retribution

There are two main justifications behind criminal penalties: retribution and deterrence. Retribution has two components. First, retribution is justified in order to prevent victims from engaging in acts of self help. If society fails to adequately sentence animal abusers, aggrieved owners are more likely to seek revenge on their own. Second, punishment is justified based on the moral culpability of the offender.\(^3\) Animal cruelty laws, however, fail to serve either of the above justifications. Furthermore, although criminal statutes endeavor to “differentiate on reasonable grounds between serious and minor offenses,”\(^4\) animal cruelty sentences are rarely if ever proportional to the crime. The relatively light penalties most perpetrators of animal cruelty receive “create[s] the social message that injuring animals through neglect or deliberate cruelty is marginally acceptable or [at most] a minor criminal infraction.”\(^5\) As Mahatma Gandhi once said, "the greatness of a nation and its moral progress can be judged by the way its animals are treated." Current animal cruelty statutes, however, do not adequately protect this nation’s animals.

---

\(^2\) MD. CODE ANN. § 10-606 (West, Westlaw through 2009 Sess.).


\(^4\) Model Penal Code § 1.02

b. Deterrence

There are two types of deterrence: general deterrence and specific deterrence. General deterrence seeks to impose criminal sanctions on an offender to prevent others from committing the same crime. Society should punish animal abusers to deter other people from committing the same or substantially similar acts of cruelty. Specific deterrence seeks to prevent the same individuals from re-committing the same or substantially similar crime. Thus, society should punish specific perpetrators of animal cruelty to prevent them from re-offending.

This article seeks to educate the public on the seriousness of animal cruelty, the need to enact stricter animal cruelty laws, and the importance of prosecuting such cases to the full extent of the law. Part I provides background on the current animal cruelty statutory scheme pertaining to companion animals. Part II discusses reasons for enacting stricter animal cruelty laws. Part III contains suggestions for improving animal cruelty statutes. Finally, part IV discusses obstacles that inhibit effectively sentencing such offenders.

I. CURRENT ANIMAL CRUELTY STATUTES

Every state but four, Idaho\(^6\), Mississippi\(^7\), North Dakota\(^8\), and South Dakota\(^9\), has enacted felony animal cruelty statutes\(^{10}\). This is a dramatic shift since over a decade ago only seven

---

\(^6\) IDAHO CODE ANN. §25-3504 (LEXIS through 2009 Sess.).

\(^7\) MISS. CODE ANN. § 97-41-16 (West, Westlaw through 2008 Sess.); MISS. CODE ANN. § 97-41-13 (West, Westlaw through 2008 Sess.).


The passage of these felony provisions, however, is still an incomplete victory for the animal law community. Even where felony animal cruelty charges are available, many people like Chance’s abuser simply receive a slap on the wrist for horrific acts of cruelty. Maryland, like New Hampshire\textsuperscript{12}, North Carolina\textsuperscript{13}, and Missouri\textsuperscript{14}, makes animal cruelty a felony only if the prosecution can meet the high burden of proving an \textit{aggravated} act of animal cruelty such as torture, mutilation, or a severe beating. Hence perpetrators like Raymond Wilson are charged with mere misdemeanors, resulting in little or no jail time.\textsuperscript{15} Even where an offender possesses a relatively high mens rea, since animal cruelty only constitutes a low grade felony in many states, the maximum penalty many offenders face for even the most egregious cases is often less than two years imprisonment.\textsuperscript{16} Those states

\textsuperscript{10} Arkansas became the newest state to add a felony provision to its animal cruelty statute. See AR ST § 5-62-104(b)(1) as amended by 2009 Arkansas Laws Act 33 (S.B. 77) (approved 2/4/2009).


\textsuperscript{12} N.H. REV. STAT. ANN. § 644:8 (West, Westlaw through Chapter 327 of the 2009 Reg. Sess.).

\textsuperscript{13} N.C. GEN. STAT ANN. § 14-360 (West, Westlaw through 2009 Sess.).

\textsuperscript{14} MO. ANN. STAT. § 578.012 (West, Westlaw through 2009 Sess.).

\textsuperscript{15} See, e.g., Louisiana SPICA (2009), http://www.la-spc.org/archive/cruelty010909.htm (where a New Orleans man received a three-year suspended sentence and three years probation in the 2007 ax killing of his dog); Gary Klien, \textit{Penalty for beating San Rafael puppy: 44 days max}, The Marin Independent Journal, January 23, 2009, 2009 WLNR 1377879 (where prosecutors charged a man with felony animal cruelty in the beating of a six month old puppy but the judge reduced his charge to a misdemeanor, limiting his sentence to 44 days in jail); Stephen Hunt, \textit{Guilty pleas by man who abandoned puppies to their deaths}, The Salt Lake Tribune, June 3, 2008, 2008 WLNR 10491540 (where a man pled guilty to two counts of misdemeanor animal cruelty for the deaths of several puppies found suffocated in a garbage bag).

\textsuperscript{16} See, e.g., KAN. STAT. ANN. §21-4310(d)(1) (West, Westlaw through 2008 Sess.)(providing cruelty to animals consisting of “Intentionally and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal” is a non-person felony subject to not less than 30 days in jail or more than one year’s imprisonment); N.C. GEN. STAT. § 14-360(b) (West, Westlaw through 2009 Sess.)(providing “If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a Class I
with the strictest penalties only provide for a five year maximum sentence. Other states such as Alaska, Iowa, Nevada, New Mexico and Pennsylvania make animal cruelty a felony only if the perpetrator has been previously convicted of such acts on one, two, or even sometimes four separate occasions. Thus, a violent offender can torture and/or kill an animal in these jurisdictions and still only be convicted of a misdemeanor, provided it is his first offense.

Most states prohibit a person from causing a pet unnecessary suffering by failing to provide food, water, and shelter. Failing to adequately care for an animal, however, constitutes a mere misdemeanor in many states punishable by a maximum penalty of a year in prison or a fine, even if such act is done intentionally. Many offenders simply pay a fine, even though their actions result in pain, suffering, and often a slow death for their victims. Furthermore,

---

17 See e.g., WASH. REV. CODE § 16.52.205 (West, Westlaw through 2009 legislation) which provides animal cruelty in the first degree is a class C felony subject under WASH. REV. CODE § 9A.20.021(c) (West, Westlaw through 2009 legislation) to a maximum sentence of five years imprisonment; OR. REV. STAT. ANN. § 167.322 (West, Westlaw through 2009 Sess.) aggravated animal cruelty in the first degree is a class C felony punishable with up to five years in prison per OR. REV. STAT. ANN. § 161.605(3) (West, Westlaw through 2009 Sess.).

18 ALASKA STAT. § 11.61.140 (LEXIS through 2008 Sess.).

19 IOWA CODE ANN. § 717B.3A (West, Westlaw through 2008 legislation).


21 N. M. STAT. ANN. § 30-18-1(West, Westlaw through 2009 Sess.) (providing a fourth conviction for animal cruelty constitutes a fourth degree felony subject to a maximum sentence of 18 months of imprisonment per N. M. STAT. ANN. § 31-18-15(West, Westlaw through 2009)).

22 18 PA. CONS. STAT. ANN. § 5511 (West, Westlaw through 2008 legislation).

23 See, e.g., IOWA CODE ANN. § 717B.3 (West, Westlaw through 2009 Sess.); GA. CODE ANN. § 16-12-4 (West, Westlaw through 2009 Sess.); FLA. STAT. ANN. § 828.12 (West, Westlaw through 2009 Sess.).

24 See, e.g., Elizabeth Evans, Woman fined $300 for letting dog starve to death, The York Dispatch, January 29, 2009, 2009 WLNR 1700248 (where a Pennsylvania woman was ordered to pay a fine of $428 in the starvation death
although several states like Idaho, Georgia, and Florida criminalize depriving an animal of necessary sustenance, such statutes fail to require owners to provide veterinary care.\textsuperscript{25} Thus, withholding medical treatment for life-threatening and often painful illnesses in those states does not constitute animal cruelty. Additionally, while most owners are required to provide shelter for their animals, only a few states regulate chaining a dog.\textsuperscript{26}

II. RATIONALE FOR CHANGE

Several reasons mandate stricter penalties for perpetrators of animal cruelty. First, evidence suggests animal cruelty is either a precursor or occurs simultaneously with violent crimes against humans. Second, neglecting animals places society, especially young children, in danger. Third, for those families who lose a beloved pet to acts of cruelty, that loss is often felt the same as the loss of a family member and should therefore be considered in sentencing the

\textsuperscript{25} See IOWA CODE ANN. § 717B.3 (West, Westlaw through 2009 Sess.); GA. CODE ANN. § 16-12-4 (West, Westlaw through 2009 Sess.); FLA. STAT. ANN. § 828.12 (West, Westlaw through 2009 Sess.).

\textsuperscript{26} See, e.g. ME. REV. STAT. ANN. tit. 7 § 4015(6) (West, Westlaw through 2009 Sess.) as amended by 2009 Me. Legis. Serv. Ch. 343 (H.P. 758) (L.D. 1103) (providing that where tethering is the primary means of confinement, the anchor must be attached using swivels or a similar device to prevent the chain or tether from becoming entangled or twisted); CONN. GEN. STAT. ANN. § 22-350a (West, Westlaw through 2009 Sess.) (providing: “Any person who confines or tethers a dog for an unreasonable period of time shall be fined not more than one hundred dollars for the first offense, not less than one hundred dollars or more than two hundred fifty dollars for a second offense, and not less than two hundred fifty dollars or more than five hundred dollars for any subsequent offense”); VA. CODE ANN. § 3.2-6581 (West, Westlaw through 2009 Sess.) (providing “tethering of a hybrid canine not under the direct supervision and control of the owner or custodian shall not be considered adequate confinement”); W. VA. CODE ANN. § 61-8-19(H) (West, Westlaw through 2009 Sess.) (providing cruelty to animals includes “Cruelly chain[ing] or tether[ing] an animal”); CAL. HEALTH & SAFETY CODE § 122335(4) (West, Westlaw through 2009 Sess.) (providing “no person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object” for longer than a “reasonable period.”).
perpetrator. Finally, victims of animal cruelty endure extreme unjustifiable pain and often death at the hands of their abusers, while perpetrators like Raymond Wilson receive relatively light sentences. Ensuring these offenders receive a sentence commensurate with their crimes will better provide justice for animals like Chance.

**Deterrence**

*Recognizing the link between animal cruelty and violence against humans*

Domestic Violence and Animal Cruelty

A man distraught over the recent break-up with his girlfriend took revenge by shooting at least three of her puppies.\(^{27}\) A husband skinned the family rabbit alive while taunting his wife about how easy it would be to do the same to their baby.\(^{28}\) A man forced his girlfriend’s daughter to watch as he punched both his and a friend’s dog. He promised the girl if she ever told anyone about the sexual abuse, he would do the same to her own beloved dog.\(^{29}\)

While “[i]t does not take a leap in logic to conclude that an individual who violently or forcefully injures an animal might be dangerous to people,”\(^{30}\) it was not until as late as 1998 that researchers examined the relationship between animal abuse and domestic violence. In a study of women at a battered women’s shelter in Utah, 71% of those with companion animals reported


\(^{28}\) Deborah Sharp, *Abuse will often cross species lines*, USA Today, April 28, 2000, 2000 WLNR 3507105.


\(^{30}\) Brimer, *supra* note 5 at 654.
a male partner had threatened, abused, or killed their pet.\textsuperscript{31} Abusing a woman’s beloved pet is just another means a batterer uses to control his human victim. When a batterer tortures a woman’s pet in front of her, “it emphasizes the idea that he has all the power in the relationship. She can do nothing to protect her pet…she [can] do nothing to protect herself should he decide to torture her as well.”\textsuperscript{32}

A woman may also decide not to leave her batterer out of fear of reprisal against the family pet. One study discovered about one-fifth of battered women delayed seeking shelter out of concern for the family pet.\textsuperscript{33} Some women leave only to end up returning home “in response to the legitimate fear that their abusers will torture or kill the animals that they have left behind.” Such is the case of a woman who left the shelter after receiving pictures of her husband cutting off her dog’s ears with gardening shears.\textsuperscript{34}

Companion animals and battered women are not the only victims of domestic violence. Children who witness domestic violence are at a higher risk for developing behavioral, emotional, and cognitive problems.\textsuperscript{35} Furthermore, children exposed to animal cruelty are prone


\textsuperscript{32} Robbins, \textit{supra} note 29 at 133-134.

\textsuperscript{33} Flynn, \textit{supra} note 31 at 117.

\textsuperscript{34} Robbins, \textit{supra} note 29 at 136.

to imitating the actions of the abuser, increasing their propensity to commit both animal cruelty and violence against people.  

Animal Cruelty as a Red Flag in Juveniles

Five months before killing his mother and embarking on a deadly shooting spree at his Mississippi high school, sixteen year old Luke Woodham got his first taste of what it felt like to kill. Woodham and a friend tied up his dog in a plastic bag, beat her, and lit the bag on fire. Woodham detailed in his diary, “I will never forget the sound of her breaking under my might…I will never forget the howl she made…It sounded almost human. We laughed and hit her some more.” According to acquaintances, the Columbine High School shooters spoke often of mutilating animals. As a child, Jeffery Dahmer killed dogs and impaled their skulls on sticks to display them in his yard. Caroll Edward Cole, a man suspected of murdering thirty-five people, admitted that strangling a puppy as a child was his very first act of violence.

In 1987, the American Psychiatric Association listed animal cruelty as a symptom of conduct disorder, emphasizing that “the presence of cruel or abusive behavior towards animals may be a serious indicator of child psychopathology.” When a child inflicts intentional harm against an animal, he may experience a decrease or distortion in empathy. This distortion of empathy “may lead to treating others in a manner of callous disregard and without feelings of

---

36 Robbins, supra note 29 at 135.
37 Marie Louise Peterson and David P. Farrington, Cruelty to Animals and Violence to People, Victims and Offenders, vol. 2, Iss. 1, 27 (2007).
39 Brimer supra note 5 at 651-52.
remorse,” potentially resulting in violence against humans. Indeed, the Federal Bureau of Investigation’s Behavioral Sciences Unit recognizes that “the investigation and prosecution of crimes against animals is an important tool for identifying people who are, or may become perpetrators of violent crimes against people.” Despite overwhelming evidence that juveniles who commit acts of animal cruelty are serious threats to society, many juvenile perpetrators are not adequately sentenced for the crimes they commit. Many officials simply fail to see the connection between violence against animals and violence against humans. Until society recognizes that “violence is violence whether it’s two legs or four,” important red flags in today’s youth will continue to be overlooked.

Neglect alone of animals creates a danger for society

A one year old girl died after being attacked by a chained up Rottweiler. Prosecutors alleged that the dog’s owners starved and mistreated it until it became "a vicious animal that

40 Id.


42 See, e.g., Boy, 14 Sentenced, Seattle Post-Intelligencer, May 5, 2006, 2004 WLNR 3201748 (a 14 year old boy who pled guilty to hanging a dog, resulting in serious injuries, received 30 days in detention and 24 hours of community service for the crime. Of the sentence, the boy spent 18 days at a youth detention and the other 12 days at home detention); Kate Hunger, Teen sentenced after animal torture; Other crimes land youth, 14, in boot camp, San Antonio Express-News, November 2, 2001, 2001 WLNR 11945046 (a 14 year old who stabbed, burned and hung a stray dog from an overpass received two years probation); Bill Varian, Teenage Girl Pleads Guilty to Animal Cruelty, St. Petersburg Times, September 13, 2000, 2000 WLNR 8781596 (a 15 year old girl who buried a neighbor’s dog alive received 75 hours of community service at an animal shelter and probation until completion of community service. She was also ordered to undergo counseling from which she was cleared).

43 See, e.g., Sarah Larimer, 20 Cats Mutilated, Killed in South Florida, Huffington Post, June 10, 2009 available at http://www.huffingtonpost.com/2009/06/10/20-cats-mutilated-killed_n_213660.html (where a police spokesperson replied in response to the cats’ gruesome deaths, there “hasn't given any indication that this is some sort of a threat where this person's going to commit these crimes against a human being”).

44 Squires, supra at 2.
attacked and killed an innocent child." A German shepherd mix chained to his doghouse every day attacked two people. While “dogs are known as man’s best friend . . . even a dog can turn vicious when not treated with respect.” According to the National Canine Research Council, 84 percent of dog attacks involved animals who were abused or neglected. Abuse or neglect fosters aggression in animals. In fact, chained dogs are 2.8 times more likely to attack compared to unchained dogs. After all, “[a]n otherwise friendly and docile dog, when kept continuously chained, becomes aggressive . . . Dogs feel naturally protective of their territory; when confronted with a perceived threat, they respond according to their fight-or-flight instinct. A chained dog, unable to take flight, often feels forced to fight.” Unfortunately, many of the victims of these attacks are children who happen to wander onto the dog’s property. Where a dog is neglected, physically abused, or chained, other lives, especially children, are at risk.

Retribution

*Animal owners as crime victims*


49 Roth, *supra* note 47 at 231.


51 *Id.*
On March 21, 2008, the Neubergers let their three year old beagle mix, Wally, outside to run around. Some time later Rhonda Neuberger heard a yelp at the back door. When the family went outside they found their dog Wally bloody with an arrow in his side. The arrow had punctured Wally’s lungs and broke his ribs. Wally died in his family’s arms that night before they could get him to a veterinarian. While recalling that tragic day, the Neubergers said that Wally was like family and they were “heartbroken” over his death.\textsuperscript{52} Another victim of animal cruelty said losing her pet was “almost like losing one of my children.”\textsuperscript{53} A United Kingdom man declared his three children devastated after discovering their six cats poisoned.\textsuperscript{54}

All of these pet owners described above experienced extreme grief over the death of their beloved pets. While the intensity of grief varies based on the strength of relationship shared with the pet, the age of the animal, and the circumstances of the death,\textsuperscript{55} “pet bereavement appears to mimic most of the behaviors, emotions, and phases associated with human death.”\textsuperscript{56} Many people, however, do not consider such an occasion worthy of mourning. In fact, many pet owners are said to experience disenfranchised grief because “they incur a loss that is not or


\textsuperscript{53} Paul Janczewski, \textit{Dogs’ killer gets jail, probation Judge also orders man to anger management program}, Flint Journal, June 24, 2006, 2006 WLNR 10948519.

\textsuperscript{54} \textit{Cats poisoned in ‘evil’ Flintshire attack}, The Evening Leader, February 17, 2009, 2009 WLNR 3111319.


cannot be openly acknowledged, publicly mourned or socially supported.”57 Regardless of society’s inability to comprehend a pet owner’s depth of grief, “any minimization of the severity of the loss in the light of the decedent being an animal vs. a human can be catastrophic and damaging.”58 Sentencing animal cruelty offenders to probation, a few days in jail, or simply ordering these perpetrators to pay a fine for barbaric actions that lead to the death or severe injury of a person’s beloved pet minimizes and even disparages a crime victim’s loss.

In 1982 Congress passed the Victim and Witness Protection Act, the first of several laws that triggered the Victims’ Right Movement. The purpose of the act was to expand a victim’s role in the criminal justice process. A central tenant behind the Movement is that victims are entitled to speak at sentencing: “The victim, no less than the defendant, comes to court seeking justice. When the court hears . . . from the defendant, his lawyer, his family and friends, his minister, and others, simple fairness dictates that the person who has borne the brunt of the defendant’s crime be allowed to speak.” A victim’s impact statement consists of the victim describing the effect of the crime suffered by them personally and sometimes includes the victim’s opinion on the sentence he thinks the defendant should receive.59 One judge


58 Clements, supra note 55 at51.

emphasized the role victim impact statements play in sentencing, declaring he read and re-read the statements causing him to break down in tears.  

Pet owners suffer extreme pain and anguish when their animals are harmed. As such, judges need to carefully consider a pet owner’s victim impact statements when sentencing an animal abuser. Unfortunately, based on the lenient penalties most offenders receive, even where the judge has discretion to administer a harsher punishment within the sentencing guidelines, it appears that many judges do not give these statements enough weight. Refusal to take a victim’s loss into account when sentencing an offender fails to satisfy the victim’s need for justice. Where courts repeatedly fail to administer justice, there is always the danger victims may pursue justice on their own.

*Justice for Chance*

In Maryland, a person who commits motor vehicle theft is subject to imprisonment not to exceed five years. A person who commits identity fraud where the benefit has a value of $500

---


61 See ie. Linda Wilson Fuoco, *Man Who Poisoned Dogs Gets Probation*, Pittsburgh Post-Gazette, March 29, 2005, 2005 WLNR 4873010 (Where the pet owner whose two dogs died of antifreeze poisoning declared in her victim impact statement that “Words cannot convey how much I loved my dogs” and “grief, sadness, loneliness, fear and anxiety are feelings that persist to this day.” The defendant faced a maximum penalty of four years for two counts of animal cruelty and yet, the judge sentenced him to four years of probation, $2,000 in fines, $1,282 in restitution and ordered him to pay the cost of prosecution); Marie Szaniszlo, *Cat’s Killer Gets One Year in Cage*, The Boston Herald, November 1, 2006, 2006 WLNR 18991762 (In another victim impact statement, a 73 year old man called his cat his “only companion” and that since her untimely death he had lost 25 pounds, had trouble sleeping and was taking medication for depression. The man who strangled the cat received a year in jail despite the fact that M.G.L.A. 272 § 77(2006) provides for a maximum penalty of five years imprisonment.).

62 MD CODE ANN., CRIM. LAW § 7-105(c)(1) (West, Westlaw through 2009 Sess.).
or greater is subject to imprisonment not exceeding 15 years. A person who commits arson in the second degree is subject to imprisonment not exceeding 20 years or a fine not exceeding $30,000 or both. All of these offenses are crimes against property and yet, they garner substantially more time than violence against animals. Abuse or neglect of an animal in Maryland is a misdemeanor with a penalty not to exceed 90 days in jail or a fine not to exceed $1,000 or both. Even if the prosecutor can meet the heavy burden of proving aggravated animal cruelty involving intentional mutilation, torture, cruelly beating, or cruelly killing an animal, a perpetrator is subject to imprisonment not exceeding three years or a fine not exceeding $5,000 or both, a penalty drastically less than the property based offenses described above. As mentioned above, Chance’s abuser, a man who intentionally shot an innocent animal, received a mere 500 dollars of restitution and 100 hours of community service.

The American legal system has traditionally treated companion animals like Chance as personal property. Animals, however, are living beings capable of feeling pain and suffering. As such, state legislatures must protect this nation’s animals from harm by distinguishing property based crimes from those which involve violence against any creature be it human or

63 MD CODE ANN., CRIM. LAW § 8-301(g)(1) (West, Westlaw through 2009 Sess.).
64 MD CODE ANN., CRIM. LAW § 6-103(b) (West, Westlaw through 2009 Sess.).
65 MD CODE ANN., CRIM. LAW § 10-604(b)(1) (West, Westlaw through 2009 Sess.).
66 MD CODE ANN., CRIM. LAW § 10-606 (West, Westlaw through 2009 Sess.).
67 Karty supra note 1.
animal. Criminal law is at least in part intended to reflect, teach, and reinforce morality. Failure to reform the current statutory scheme tells the world that crimes of theft are more morally reprehensible than crimes of violence or severe cases of neglect simply because of the status of the victim. There are many reasons to increase the penalties for animal cruelty but none as compelling as to protect and vindicate the interests of innocent animals like Chance. Animals injured or killed due to the malicious, reckless, or negligent actions of humans deserve justice.

III. SUGGESTIONS FOR CHANGING THE LAWS

Animal Cruelty as a Strike

Forty-seven states, the District of Columbia, and the federal government have enacted some type of repeat offender law. For example, California doubles the sentence of a defendant who has committed at least one prior serious or violent felony and imposes a sentence of twenty-five years to life on a defendant with at least two prior serious or violent felonies. In Texas, a second-time felony offender convicted of a subsequent violent felony receives a sentence of twenty-five years to life. Illinois imposes a life sentence for individuals convicted of three serious felonies within a twenty-year period. Similarly, Washington’s “Persistent Offender Accountability Act” requires that a third felony offender be sentenced to life without the possibility of parole. The purpose behind these anti-recidivist acts is two-fold: incapacitation

---

71 *Id.* at 10.
72 *Id.* at 2.
73 *Id.*
74 *Id.*
and deterrence. In other words, repeat offenders are unable to commit new crimes during their longer prison sentences, and possible offenders will be deterred from committing crimes because of the potential for harsher sentences under recidivist laws.\textsuperscript{75}

While the purpose of these statutes is to limit the number of repeat offenders, animal cruelty perpetrators are often not subject to these laws.\textsuperscript{76} Animal cruelty perpetrators inflict intentional undue suffering and often death upon an innocent animal. Furthermore, for the owner of a companion animal, the harm inflicted upon the animal is akin to extreme violence against a beloved family member. Finally, as mentioned above, animal abuse is both correlated and a precursor to interpersonal violence. Common sense dictates that such violent acts should be subject to every state’s repeat offender statute. Failure to do so while at the same time including property based crimes such as robbery\textsuperscript{77}, arson\textsuperscript{78}, and extortion\textsuperscript{79} within the purview of the statute sends a very disturbing message to society and all offenders: the law will condone violence, provided it is directed at animals.

\textsuperscript{75} Id., at 9; Naomi Harlin Goodno, \textit{Career Criminals Targeted: The Verdict is in, California’s Three Strikes Law Proves Effective}, 37 Golden Gate U. L. Rev. 461,466-67 (2007).

\textsuperscript{76} See, e.g., ALASKA STAT. § 13A-11-241 (West, Westlaw through 2009 Sess.) (stating that a felony animal cruelty conviction in the first degree “shall not be considered a felony for purposes of the Habitual Felony Offender Act”); MD Code, Criminal Law, § 14-101 (not including animal cruelty as a “crime of violence”); WASH. REV. CODE § 9.94A.030(29) (West, Westlaw through 2009 legislation) as amended by 2009 Wash. Legis. Serv. Ch. 28 (S.S.B. 5190) (WEST) (defining a “most serious offense” subject to the provisions of the Persistent Offender Accountability Act (WASH. REV. CODE § 9.94A.570 (West, Westlaw through 2009 legislation)) as a class A felony or various types of class B felonies; WASH. REV. CODE § 16.52.205 (West, Westlaw through 2009 legislation), however, classifies animal cruelty in the first degree (involving the intentional infliction of substantial pain causing injury or death) as a class C felony.


\textsuperscript{78} See, e.g., MD CODE ANN., CRIM. LAW § 14-101(a)(2) (West, Westlaw through 2007 legislation).

Making Sentences Commensurate With Mens Rea

To avoid paying boarding costs while he went on a cruise, Ohio firefighter David P. Santuomo led his two dogs into the basement, suspended them from a pipe near the ceiling, and fired at least 11 shots into their bodies. Santuomo then wrapped the dogs in plastic, dumped their bodies in the trash, and bragged about the incident to his coworkers. Santuomo was sentenced to 90 days in jail (to be served in 10 day increments over the next two years), and 200 hours of community service. He was also ordered to pay $4,500 in restitution, stay away from companion animals for five years, and write a letter of apology to be published in the International Association of Firefighters magazine. When asked about the case, Santuomo’s lawyer stated that his client was “sorry”, had “accepted responsibility” for the killings, and had “been punished appropriately.” 80

It is a well known principle in criminal law that for every crime charged there must be an actus reus accompanied by some level of mens rea.81 The higher the level of mens rea, the higher the sentence imposed. For example, a defendant might receive either the death penalty or life imprisonment for premeditated murder but a lighter sentence for negligent homicide.82 In the crime just described, Santuomo possessed the highest degree of mens rea: intent. Despite this high degree of mens rea and premeditation, Santuomo was sentenced as if he possessed the lowest level of mens rea, criminal negligence, in causing the dogs’ deaths. What accounts for


81 See Model Penal Code sections 2.01, 2.02

this glaring discrepancy in sentencing? The answer is simple. Animal cruelty statutes focus on the status of the victims as animals rather than the mens rea possessed by the offenders.

Criminal law exists to protect society from harm. The law seeks to punish the intentional actor much greater than the reckless or negligent actor because “acts can occur accidentally, but the state of mind that accompanies one's acts is entirely within the individual's control.” When people like Santuomo possess the requisite mental intent to kill or do substantial harm, basic principles of criminal law mandate they should be punished accordingly. Failure to adequately punish such offenders devalues the lives lost, allows a person with the intent to kill to remain inadequately punished, and places society in imminent danger. People who formulate the intent to kill and act accordingly should be sentenced appropriately regardless of whether the victim is human or animal. Santuomo’s lawyer was wrong. Ninety days in jail for intentional murder is not an “appropriate” punishment.

Banning an Offender from Owning Animals

According to the Adoption and Safe Families Act (ASFA), states should make reasonable efforts to preserve and reunify families whose children have been removed. When determining these “reasonable efforts”, “the child’s health and safety shall be the paramount concern.” Reunification shall not be required, however, where a parent commits, attempts, or is complicit in the murder or voluntary manslaughter of another child of the parent, where a parent commits a felony assault resulting in serious bodily injury to the child or another child of the parent, where the parent's rights to a sibling of the child had been terminated involuntarily, or where the parent

---

84 42 U.S.C. § 671(15)(A)
has subjected the child to “aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse”).

This statute suggests Congress believes a parent’s previous violent acts towards his children is indicative of further abuse. To prevent future abuse and ensure the child’s health and safety, states may forgo “reasonable efforts” towards reunification in these situations and terminate parental rights.

Similar to young children, animals cannot speak and are unable to protect and care for themselves. Thus, states must intervene as they do with children to protect animals from their abusers. To allow an abuser to retain custody completely disregards the health and safety of the victim, be the victim child or animal. Not only should animal abusers be forced to relinquish custody of their victims, but they should also be banned from owning any animal for a substantial period of time. As Congress suggested, abuse of one child indicates other children are in danger. Thus, where a person abuses one animal, other animals in that person’s custody are not safe. Studies have shown the recidivism rate for some animal cruelty cases is as high as 100%. Currently, however, only 13 states permit courts to ban abusers from owning an animal for a set period of time. “Having an animal in one’s life is a privilege, not a right – and with that privilege comes certain responsibilities, including the responsibility of providing adequate care and otherwise not abusing or neglecting the animal.” Animal cruelty perpetrators have proven themselves a danger to animals and statistics indicate there is a high rate of reoffending.

85 42 U.S.C. § 671(15)(D)


Allowing an animal abuser to own a pet immediately after conviction defies common sense. Federal law prohibits felons from possessing a firearm with a punishment of up to ten years for a violation. The purpose of this law is undoubtedly to prevent a specific class of people who have shown an inclination towards violence from possessing the means to further an end. Likewise, states should not provide animal abusers, people who have a propensity for violence, with the means, the victim, to further the abuse.

Rehabilitation: Mandatory Psychological Counseling

After serving their sentences, animal cruelty perpetrators will undoubtedly be released into society. As mentioned above, animal cruelty offenders exhibit high rates of recidivism and escalation. Without the proper treatment, offenders are simply released at the end of a short prison term to reoffend.

Currently, only twenty-eight states either mandate or permit psychological counseling for certain offenders convicted of animal cruelty. As mentioned previously, the American Psychiatric Association recognizes that animal cruelty is an indicator of psychopathology. The FBI acknowledges that most serial rapists and murderers share one very specific trait in common: cruelty to animals. The message is clear: those who abuse animals need treatment to

---

88 18 U.S.C. § 922(g).
89 Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia
91 Squires, supra note 38 at 4.
prevent future animal abuse and/or escalation to human victims. When states fail to intervene at an early stage by mandating psychological counseling for such mentally ill offenders, animals and society remain in danger.

IV. OVERCOMING OBSTACLES FOR CHANGE: THE NEED TO PROPERLY ENFORCE ANTI-CRUELTY STATUTES

Provided statutes are amended with stricter animal cruelty penalties, several obstacles exist before such offenders can be brought to justice. Evidence suggests that prosecutors are less likely to prosecute such cases compared to other violent crimes.\(^\text{92}\) As with every case, prosecutors have a choice. They can take the crime seriously, properly charge the offender, and ensure a thorough investigation, or they can “push the case aside,” refuse to charge the offender or take a drastically reduced plea.\(^\text{93}\) This unwillingness to prosecute is due to a variety of factors including “real or perceived limited resources, inexperienced staff, incomplete or botched investigations, pressure from the community to focus on other crimes, and personal or political bias against taking animal abuse seriously as a violent crime.”\(^\text{94}\) As one domestic violence prosecutor remarked when told the subject matter of this article, “Animals aren’t really my thing. I care more about people.” However, as illustrated above, advocating for people and animals is not mutually exclusive. In fact, “ensuring the safety of pets is a necessary part of realizing true safety for victims of domestic violence. As long as pets are publicly ignored, victims will


\(^{94}\) Otto, *supra* note 92 at 70-71.
continue to make the decision to stay, sacrificing their own physical and psychological health in an attempt to protect their animals.”

Even where prosecutors bring animal cruelty cases to trial, some experience apathy from the bench. One judge asked a prosecutor to keep certain cases quiet so that “the poor defendant would not be harassed by animal activists.” Another judge asked the prosecutor why such a case was on his docket wasting his time. In Chance’s case, the judge seemed to have little sympathy for the injuries Chance suffered, remarking during sentencing, “I understand labs are docile, but stray dogs can be annoying. They can be annoying.”

Stricter animal cruelty laws are undoubtedly needed. However, until prosecutors and judges recognize the seriousness of animal cruelty and the need to charge, prosecute, and sentence such offenders to the full extent of the law, we will never truly achieve justice for Chance.

---

95 Robbins, supra note 29 at 136-137.

96 Phillips, supra note 93 at 23.

97 Id.

98 Karty, supra note 1.