

# DEFINING ANIMALS AS CRIME VICTIMS

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*Looking down at his complaint form, the humane investigator reviews the notes given to him by the complaining witness. The complaint reads “Defendant (Female) has many cats that appear thin, unhealthy, and have fleas. Can see bald spots on cats. House smells of urine and feces.” Knowing this could be an unusual call, he exits his vehicle and approaches the door of the woman’s house. Even before reaching the door, he can smell the strong scent of ammonia and see the flies that have gathered to feast on the excess feces that accompany a house full of cats. Upon gaining entry to the house, choking back a reflexive gag as the horrible smell wafts outwards, the investigator begins counting cats- 3, 5, 6, 10, 15, 25, 40. He notices they are lethargic, sneezing, and have mucus all over their faces. Moments later, one of the cats throws up a worm at his feet. He knows these cats need help. He advises the woman that she needs to remedy the situation. She has no idea what he is talking about and states that all the cats are healthy and she takes good care of them here at her rescue facility. The investigator returns to the Humane Society and begins making preparations to cite the woman for animal neglect and to seize the cats. Following the citation, and search and seizure, the investigator sends his report and evidence to the D.A.’s Office. The woman is arraigned and a trial is to occur. Months go by and trials are scheduled and rescheduled. Meanwhile, all 65 of the cats are still sitting in the Humane Society’s protective custody complex running up large tabs and they are unable to be adopted. Finally, the D.A.’s Office is able to obtain a plea bargain with the woman. She does not have to serve any jail time and is made to do 15 hours of community service. The plea does not prevent her from owning any cats. Instead it allows her to own a few cats but she does have to give up ownership of the rest at the Humane Society. No one represented the cats’ interests from the point of seizure. No one was able to influence how the D.A.’s office dealt with the resolution of the case. No one was able to argue about which cats had to endure living with her again.*

## I. INTRODUCTION

Acts of animal cruelty cause a great degree of harm to animals. As a result, animals should be afforded protections similar to those granted to other crime victims. In addition the harm that animals incur as a result of animal cruelty, animals also suffer from unfair treatment in the criminal justice process. For example, animals who have been abused do not have their interests represented in court. Instead, the state alone is able to prosecute crimes against animals. Although the crime of animal cruelty is a crime against the state, it is also a crime against the animal who has interests independent of the state’s interests. Including animals as “crime victims” will provide animals the additional protections in the criminal justice system that they deserve.

In the process of prosecuting a case of animal cruelty, the State does not fully represent the interests of the animal involved. The District Attorney does not represent animals, or people for that matter, who are victims of crime; instead the D.A. represents the interests of society as a whole. Fortunately for human victims of crime, there are ways to influence the path that the criminal justice system takes in their case through crime victim legislation or crime victim amendments to state constitutions. However, animals do not have those options because they are not included in the definition of “crime victims.” Like those already included in the definition,

animals who suffer harm from a crime, deserve special consideration in the criminal justice process and thus should be included in the definition of a crime victim.

This paper seeks to provide a basis for including animals in crime victim legislation. First, the paper will discuss the history of the crime victim movement. Second, it will give a brief history of how animals have been involved with the legal system and how their interests have been represented. Third, the paper will look at the roots of modern anti-cruelty legislation and its purpose. Then using, current crime victim protections, the paper will discuss which crime victim benefits should be extended to animals.

## II. HISTORY OF CRIME VICTIMS' TREATMENT IN THE LEGAL SYSTEM<sup>1</sup>

Historically, crime victims played a very active role in criminal prosecutions.<sup>2</sup> During the eighteenth century, the victim of a crime could report a crime against him as well as aid in obtaining warrants and in making arrests.<sup>3</sup> The victim could also investigate the crime and, after an arrest was made, would provide for the prosecution of the accused.<sup>4</sup> Eventually, this system eroded and was replaced with a system in which the victim took a much less active role.

The new system was based on the idea that since the criminal justice system is based on a social contract--it was best to serve the interests of society rather than individual victims.<sup>5</sup> Punishments in the criminal system are meant to deter the actual perpetrator from committing the crime again, to make the criminal repay his debt, and to deter others from committing criminal acts as well.<sup>6</sup> Public prosecutors and professional police took over several of the victim's roles while the victim only remained in the system as a complainant and a witness.<sup>7</sup>

The public prosecutors we see in U.S. courts today are not products of English common law.<sup>8</sup> The English public prosecutor held reviewing power over cases brought by private parties.<sup>9</sup> The reviewing power was only such that he could enter a writ of *nolle prosequi* but the prosecutor's decision was not challengeable.<sup>10</sup> In early U.S. history, most statutes authorized the district attorney to prosecute criminal cases but did not address whether a victim, or anyone else, could prosecute cases on her own.<sup>11</sup> However, U.S. courts inferred from the English system that prosecutorial discretion was not reviewable.<sup>12</sup> Thus, "[t]he American historical error confused the power to intervene and dismiss cases already initiated by private parties with the exclusive

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<sup>1</sup> Attempting to explain in detail exactly what the crime victims' movement has gone through goes beyond the scope of this paper. See generally DOUGLAS E. BELOOF, VICTIMS IN CRIMINAL PROCEDURE (1999) (for a detailed account of crime victim procedures used in the criminal justice system).

<sup>2</sup> A crime victim is one against whom a crime is committed. See e.g. GA. CODE ANN. §17-17-3(11) (2004).

<sup>3</sup> William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AM. CRIM. L. REV. 649 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Abraham Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 MISS. L.J. 1 (1982).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

power to decide whether they should be initiated at all.”<sup>13</sup> As a result, our public prosecutors, the district attorneys, had a monopoly in deciding what actions are worthy of being pursued. Further, victims of crime were alienated and became victims of the criminal justice system as well.<sup>14</sup> For example, victims are no longer able to ultimately decide whether or not they wish to press charges. That decision, and those like it, are left up to the state’s prosecutor and may end up leaving crime victims feeling disempowered.

The crime victims’ movement has evolved in an effort to remedy the problems that are inherent in a system in which crime victims are not a party. Crime victims are not represented by the state or the defendant. This leaves crime victims in a precarious situation in which their interests are left unaccounted. Crime victims may resort to civil litigation to represent their interests. Despite civil remedies, crime victims still deserve consideration and fair treatment in the criminal justice process.

Crime victims have been successful in obtaining laws providing for consideration and fair treatment in every state. Thirty-one states have crime victim amendments written into their constitutions and the rest at least have crime victim statutes.<sup>15</sup> The protections included in these amendments and statutes include rape shield laws, the ability to make statements about the harm that the victim incurred at sentencing, and the right to consult with prosecutors regarding decisions in their cases.

### III. HISTORY OF ANTI-CRUELTY LEGISLATION

The first legislation to protect animals from acts of cruelty by humans was enacted in 1641 by the Massachusetts Bay Colony.<sup>16</sup> In the Colony’s Body of Liberties, section 92 states, “No man shall exercise any Tirrany or Crueltie towards any brute Creature which are usuallie kept for man’s use.”<sup>17</sup> Although there is documentation of a successful prosecution, it may be more helpful to look at more current historical roots of anti-cruelty legislation to discover their purpose.<sup>18</sup>

In 1821, Maine enacted the first animal anti-cruelty statute in the United States.<sup>19</sup> In 1824, New York also enacted anti-cruelty legislation.<sup>20</sup> The statute followed the lead of a law authored by Richard Martin in England, commonly called “Dick Martin’s Act.” The act

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Douglas E. Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 UTAH L. REV. 289, 328-29 (1999).

<sup>16</sup> THE EVOLUTION OF ANTI-CRUELTY LAWS IN THE UNITED STATES, ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAW FROM 1641 TO 1990 1-2 (Emily Steward Leavitt & Diane Halverson eds., 1990).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800’s*, DET. C.L. REV. 1, 6 (1993). The law states: “*Be it further enacted*, That if any person shall cruelly beat any horse or cattle, and be thereof convicted,...he shall be punished by fine not less than two dollars nor more than five dollars, or by imprisonment in the common gaol [sic] for a term not exceeding thirty days, according to the aggravation of the offence.” *Id.*

<sup>20</sup> Leavitt, *supra* note 16, at 2. The law states, “Every person who shall maliciously kill, maim, or wound any horse, ox, or other cattle, or sheep, belonging to another, or shall maliciously and cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.” *Id.*

prevented cruel treatment of horses, mules, donkeys, oxen, cows, and sheep.<sup>21</sup> It was later extended to protect companion animals and the protections it afforded increased as well.<sup>22</sup> For example, the act now prevents fighting animals and keeping animals used for food to be held in slaughter yards for more than three days.<sup>23</sup> Martin followed the passage of his law with the creation of the Society for the Prevention of Cruelty to Animals (SPCA).<sup>24</sup> The purpose of the SPCA was to pursue more aggressively the prosecution of animal cruelty and it was soon endorsed by the Queen of England.<sup>25</sup> As a result, the SPCA became the Royal Society for the Prevention of Cruelty to Animals.<sup>26</sup>

In addition to Maine's law enacted in 1821, other states in the U.S. also began to enact anti-cruelty legislation.<sup>27</sup> Massachusetts enacted the next law in 1835, followed by Wisconsin and Connecticut in 1838<sup>28</sup> with language similar to the New York law and protections for the same types of animals. States continued to follow suit so that each state had anti-cruelty legislation on its books.<sup>29</sup>

Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals (ASPCA), played an important role in the history of anti-cruelty legislation.<sup>30</sup> The ASPCA's charter also created special humane agents who were used to investigate and enforce the anti-cruelty statutes and it also allowed for their own attorneys to prosecute cases of animal cruelty.<sup>31</sup> Bergh himself was given power by the state's attorney general and the city's district attorney to prosecute cases of animal cruelty.<sup>32</sup> The ASPCA's success rate is remarkable, with convictions in over ninety percent of the cases they pursued in court.<sup>33</sup> To give context to this number, the Massachusetts SPCA (MSPCA) received 80,000 complaints of animal cruelty to be investigated over a twenty-one year period.<sup>34</sup> Out of these 80,000, only 268 were prosecuted by the state and only half of those were successful.<sup>35</sup>

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<sup>21</sup> LAWRENCE FINSEN & SUSAN FINSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 31 (1994).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Leavitt, *supra* note 16, at 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* New Hampshire (1842), Missouri (1845), Virginia (1848), Iowa (1851), Minnesota (1851), Kentucky (1852), Vermont (1854), Texas (1856), Rhode Island (1857), Tennessee (1858), Kansas (1859), Washington (1859), Pennsylvania (1860), Nevada (1861), Idaho (1864), Oregon (1864), New Jersey (1867), California (1868), West Virginia (1868), Illinois (1869), District of Columbia (1871), Michigan (1871), Montana (1871), Colorado (1872), Delaware (1873), Indiana (1873), Nebraska (1873), Georgia (1875), Arkansas (1879), Louisiana (1879), Mississippi (1880), Ohio (1880), North Carolina (1881), South Carolina (1881), Alabama (1883), Maine (1883), Hawaii (1884), New Mexico (1887), South Dakota (1887), Florida (1889), Maryland (1890), North Dakota (1891), Oklahoma (1893), Wyoming (1895), Utah (1898), Alaska (1913), Arizona (1913), Virgin Islands (1921). *Id.*

<sup>30</sup> The ASPCA was established in 1866. FINSEN, *supra* note 21, at 44.

<sup>31</sup> *Id.*

<sup>32</sup> Gerald Carson, *The Great Meddler*, AMERICAN HERITAGE, Dec. 1967, at 31.

<sup>33</sup> *Id.*

<sup>34</sup> Jennifer H. Rackstraw, *Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Cases*, 9 ANIMAL L. 243, 246 (2003).

<sup>35</sup> *Id.*

Bergh drafted, and the New York legislature enacted, an anti-cruelty law in 1867 because of the previous law's ineffectiveness.<sup>36</sup> The state laws that were enacted before his in 1867 "were narrowly drawn, usually for the purpose of protecting some property interest."<sup>37</sup> Bergh's law, on the other hand, was structured to protect animals for their own sake. As one judge for the Supreme Court of New York interpreted the legislation:

at common law, cruelty to an animal merely upon the ground that it gave pain to the animal and for the protection or for the sake of the animal was not indictable...under certain circumstances, acts of cruelty when publicly committed to the annoyance of the public, or when committed with a malicious intent to injure the owner of the animal, might have been indictable at common law. I suppose this modern legislation, for the purpose of preventing unjustifiable cruelty to animals, is the result of modern civilization . . . It is impossible for a right minded man, it appears to me, to say that unjustifiable cruelty is not a wrong, a moral wrong at all events, and why should not the law make it a legal wrong? Have not they [animals] a right to appeal to the legislature for protection?<sup>38</sup>

It appears that the sentiment behind this law was created with the purpose of preventing cruelty to animals for their own sake rather than preventing cruelty to animals for their owner's sake or for the state's sake. Forty-one states and the District of Columbia have drafted their anti-cruelty legislation based on the language of Bergh's law.<sup>39</sup>

Oregon's anti-cruelty statute also demonstrates the purpose behind this type of legislation. In its passage, legislators placed the statute in Chapter 167 of the Penal Code, "Offenses Against Public Health, Decency, and Animals" rather than in Chapter 164, "Offenses Against Property." Chapter 167 also includes offenses such as prostitution, gambling, use of controlled substances, and obscenity. These crimes are typical crimes against public health and decency. A separate section for crimes against animals shows that such crimes are not just crimes against the public health. In addition, the state is not listing them as mere property since the code already has a separate property section. If the state thought that animal cruelty was a crime against property, it would be reasonable to assume that the statute would be listed under that section. They are instead crimes against animals, indicating the crime represents a harm upon the interests of the animal for the animal's sake. This is not to say that the state is not making it a crime against the state to harm an animal. However, it is an indication that there is additional harm to the animal above the harm that the state suffers.

It can be argued that animal anti-cruelty legislation has been enacted to protect animals for their own sake rather than merely for the sake of the state or the sake of the animal's owner. Although it is equally important for states to legislate against animal cruelty for the state's sake, it should be recognized that anti-cruelty legislation implies more than that. Just as it is egregious to commit crimes against persons, it is egregious to commit crimes against animals. Similarly, although the state is in part representing interests of both animals and persons when the state prosecutes a crime of animal abuse, just as in offenses against persons, the state is not always able to represent the animal's full spectrum of interests. Because crime victims are the recipients

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<sup>36</sup> Leavitt, *supra* note 16, at 5.

<sup>37</sup> Carson, *supra* note 32, at 29.

<sup>38</sup> *People v. Brunell*, 48 How. Pr. 435 (N.Y. S.Ct. 1874).

<sup>39</sup> Leavitt, *supra* note 16, at 5.

of the harm as a result of a crime, and because they incurred secondary victimization from a lack of representation in the criminal justice process, the crime victims' movement began; it is the same reason that the argument that animals should be included as crime victims should be taken seriously as well.

The following section will look at the current legislation defining crime victims in the United States, which states extend crime victim protections, as well as participatory rights of victims in the criminal justice process. It is important to note that an underlying notion behind crime victim legislation is a result of the state's recognition that it is not able to fully represent a victim's interests--otherwise, the legislation would not be needed. Therefore, those who disagree that a victim's interests are not fully represented by the state can see that the state is implicitly admitting its criminal justice system's fault. This paper is merely seeking to extend this underlying notion to the fact that if the state cannot represent people's interests fully throughout the legal process, it is not able to represent an animal's best interests either.

#### IV. CURRENT CRIME VICTIM LEGISLATION AND PROTECTIONS

##### *A. Definitions of "Crime Victims"*

Current definitions of "crime victim" include the terms persons, individuals, estates, government agencies, corporations, family members, guardians, and legal representatives. However, the definition of a crime victim in a majority of states requires the victim to be a person. Most definitions also exclude the accused perpetrator of the crime. For example, a typical definition is: "a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the spouse, sibling, parent, child, or guardian of the person, except if the person is in custody for an offense or is the accused."<sup>40</sup>

However, other states include other entities in their definition of a crime victim. For example, an extensive definition of a crime victim can be found in Delaware law:

the person, organization, partnership, business, corporation, agency or governmental entity identified as the victim of a crime in a police report, a criminal complaint or warrant, an indictment or information, or other charging instrument. "Victim" includes a parent, guardian or custodian of a victim who is unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment. "Victim" includes the following relations of a deceased victim if the relation is not the defendant, codefendant or conspirator: a. The spouse; b. An adult child or stepchild; c. A parent; or d. A sibling. e. "Victim" includes qualifying neighborhood or homeowners associations as defined by §9419 of this title.<sup>41</sup>

Delaware has one of the most thorough definitions of a crime victim in the U.S., even including homeowners associations. However, Delaware is not alone in including governmental agencies, corporations, guardians, or family members. Generally, states are in between Alabama's definition and Delaware's definition using various combinations of the types of victims included.

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<sup>40</sup> ALA. CODE §15-23-60 (19) (1975).

<sup>41</sup> DEL. CODE ANN. Tit 11, §9401 (2005).

Looking at the language of Delaware's statute, one can argue that an animal's owner may already be included in the language of Delaware's crime victim definition as a "guardian or custodian of a victim who is unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment."<sup>42</sup> If Delaware can include inanimate objects or beings with arguably less intelligence than an animal (for example, a severely mentally handicapped person or an infant<sup>43</sup>), then it is reasonable to also include animals. In the case of animal cruelty, it seems that the animal could plausibly be listed as the victim of the crime in a police report or charging instrument because animals are directly protected by the anti-cruelty statute.

Case law has upheld the use of non-human entities in the definition of crime victims. For example, in Nevada, both the state's Social Services and Welfare Department are considered victims within the meaning of Nevada's crime victim definition.<sup>44</sup> In California, a government agency was held to be a victim even though the agency did not plainly fit in the definition of victim since it could not be considered a natural person nor was the agency "a resident of California."<sup>45</sup>

In sum, the definition of a crime victim varies and is not solely limited to human beings. There is precedent for entities, other than natural persons, to be considered victims. This flexible approach leaves room for animals to be considered crime victims as well. For the purpose of this section, it is enough to know that each state's definition of a crime victim varies as to who and what it includes and is not limited to only persons or even living beings.

### *B. Legal Protections for Victims*

Victims have been able to obtain a number of additional protections in the criminal justice system.<sup>46</sup> The paper will first discuss protections for victims of domestic and family violence as examples of protections which may be beneficial for animals. Next, the paper will look at pretrial, trial, and post-trial crime victim protections that can also be extended to animals.

#### *(1) Police Protections for Victims*

Animals and family violence victims have similarities that make it useful to discuss innovations used in family violence as an example of tools that can be used for animals. Also, a familiarity with family violence may be more common than some of the other shields that have been used for crime victims. Similarities between animal and family violence victims include the proximity of living conditions in which the victims reside, power relationships between the

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<sup>42</sup> *Id.*

<sup>43</sup> See STEVEN WISE, DRAWING THE LINE (2002).

<sup>44</sup> *Roe v. State of Nevada*, 917 P.2d 959 (Nev. 1996).

<sup>45</sup> *People v. Crow*, 864 P.2d 80 (Cal. 1993); see also *Commonwealth of Pennsylvania v. Mourar*, 504 A.2d 197 (Pa. 1986) (holding a drug enforcement agency could be considered a victim within meaning of crime victim restitution statute).

<sup>46</sup> Each protection that crime victims have gained will not be discussed here. Instead, a sampling of ideas will be included in order to illustrate the overall importance of obtaining an education in crime victim procedure and applying it towards animals.

perpetrator and the victim, the privacy in which the offenses are committed, and problems with repeat or cyclical offenses. Victim advocates have been able to achieve significant protections for victims of family violence including “no drop” policies in District Attorney’s Offices, mandatory arrest laws, protection from defendants during the proceedings, duty to report laws, and offender registration.<sup>47</sup>

Some states have adopted language into their respective constitutions providing victims the benefit of reasonable protection from the defendant in criminal proceedings. For example, Arizona’s constitution provides: “a victim of a crime has a right: . . .to be free from intimidation, harassment, or abuse, throughout the criminal justice process.”<sup>48</sup> Furthermore, the state constitution of Illinois states: “Crime victims, shall have the following rights as protected by law: . . . the right to be reasonably protected from the accused throughout the criminal justice process.”<sup>49</sup> The practical meaning of these provisions is not entirely clear, but they do indicate that a crime victim should be able to be protected from the accused throughout the criminal trial.

The purpose of such provisions is to provide a safe environment for victims going through the daunting experience of a criminal trial. Especially when family or domestic violence is an issue, the right to be protected from the defendant is important because of the relationship between the victim and the perpetrator of the crime. The defendant may know where the victim will go (where family and friends live) and also often intimately knows what will scare or hurt the victim the most.

Animals who have been victims of abuse should be afforded the same protection for similar reasons. Animals can be faced with a terrible situation if their owner is charged with animal abuse. Although animals will often be seized as evidence and kept in protective custody, if they are not, the offender may kill them or continue to take out their anger on them.<sup>50</sup>

More concrete tools used to help family and domestic abuse crime victims that would be helpful for animals are mandatory arrest schemes, duties to report, and offender registration. Mandatory arrest schemes take a lot of the discretion from police. In the past, when police were called out to domestic violence scenes, they often left without taking any action believing it was private or family matter. Legislatures began adopting mandatory arrest laws to bring this problem to a halt.

Animals also face problems with law enforcements’ attitudes towards animal abuse, with them either believing it is a problem for animal control to handle or that it is not important. Animals would be better protected if states passed (and law enforcement used) mandatory arrest laws for animal cruelty.<sup>51</sup> Imposing a duty to report animal abuse would also be beneficial.<sup>52</sup>

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<sup>47</sup> See BELOOF, *supra* note 1.

<sup>48</sup> ARIZ. CONST. art. 2, §2.1(A)(1).

<sup>49</sup> ILL. CONST art. 1 §8.1(7).

<sup>50</sup> This is certainly a benefit that animals have as being regarded as property. Otherwise they humane agents and police officers could not easily seize them from abusive owners. It may be that if the law regards them differently in the future, an agency with power like child services will be required to take them out of abusive situations. Interestingly, the ability of child protective services to take children out of homes was derived from Henry Bergh’s ASPCA.

<sup>51</sup>For example, Oregon has a mandatory arrest law. OR. REV. STAT. § 133.379(1) (2002) (“It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.333 or 167.340 [the animal cruelty laws] for any violation which comes to the knowledge or notice of the officer.”). However, the provision is often ignored and rarely, if ever, enforced. Other states should adopt such laws, and animal advocates, especially animal lawyers, should be aware of them and put pressure on appropriate agencies to enforce them.



Mandatory reporting schemes generally require bystanders or neighbors to contact law enforcement if they are a witness to animal abuse. Since animal cruelty often takes place in people's homes away from public scrutiny, and animals are often out of the public view for most of their lives, abuse and neglect can be difficult for law enforcement to detect. Requiring neighbors to report cruelty may give law enforcement a better tool to discover acts of animal abuse. In addition to the previous safeguards for crime victims, the following sections examine protections for victims that would be useful and practical for animals during pretrial, trial, and post-trial stages of an animal cruelty case.

### (2) *Prosecutorial Decision-Making*

A significant area in which it would be extremely helpful for animals to be considered victims is during the period when the decision whether to charge or not is made. Human crime victims have made great progress by influencing a prosecutor's charging decision both through formal and informal methods. The extensive piece of this discussion will center on formal methods of challenging the prosecutor's decision not to charge. However, informal influences on charging decisions should not be overlooked as an effective tool.

The prosecutor's decision not to charge is subject to judicial review in some jurisdictions. For example, in Pennsylvania citizens are able to file private criminal complaints to the public prosecutor and petition a court for review if the prosecutor denies the complaint.<sup>53</sup> In *Commonwealth v. Benz*, 565 A.2d 764 (Pa. 1989) the district attorney refused to charge on a case involving a homicide with a possible defense of excuse or justification. After the complaint was denied by the District Attorney for lack of evidence and upheld by the court of common pleas, the Superior Court reversed, stating that there was enough evidence to establish a *prima facie* case.<sup>54</sup> The Commonwealth appealed the decision but the Supreme Court found that although public prosecutors have *discretion* not to bring a case even when a *prima facie* case can be established, the public prosecutor cannot just say that a *prima facie* case is not established when there may be a good justification or excuse defense available.<sup>55</sup> Since it was found that there was enough evidence to establish a *prima facie* case, the court overturned the District Attorney's

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<sup>52</sup> See Jack Wenik, *Forcing Bystander to Get Involved: Case for Statute Requiring Witnesses to Report Crime*, 94 YALE L.J. 1787 (1985).

<sup>53</sup> PA.R.CRIM.P. 133 (2005). The rule states:

(a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay. (b) If the attorney for the Commonwealth (1) Approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority; (2) Disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval; (3) Does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before an attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

<sup>54</sup> *Id.* at 765-66.

<sup>55</sup> *Id.* at 767-68.

decision not to prosecute for that reason. The court was careful not to impose on a prosecutor's decision not to prosecute as it would have been a violation of the separation of powers. A complaint that is based on the sufficiency of the evidence, however, is reviewable.

The statute does not appear to be limited to crime victims--the language of the Pennsylvania statute merely requires an affiant. However, the use of the technique may be valuable for animal advocates in jurisdictions which allow the filing of private complaints. If animal abuse cases are being turned down by the public prosecutor, a citizen or animal advocate can file a private complaint with the District Attorney. Not only that, the advocate has access to higher courts reviewing the decision. At the very least, the issue may get media attention. Note, though, that all a prosecutor has to do is base their decision on prosecutorial discretion. Since the public prosecutor is a member of the executive branch, a court cannot violate the separation of powers clause and overrule the decision based on discretionary matters.<sup>56</sup>

Similar to judicial challenges to a prosecutor's decision to charge, an animal advocate should also be aware of the possibility to access the grand jury for review of a prosecutor's decision not to charge.<sup>57</sup> At common law, a citizen has a right to access the grand jury.<sup>58</sup> When public prosecutors were established, such access appears to have been limited. However, this sentiment may be combated by arguing that unless a statute explicitly revokes a citizen's access to the grand jury, the common law right to such access still exists.<sup>59</sup> Another way that a citizen may gain access to the grand jury is if the state constitution provides the right.<sup>60</sup> Finally, it may be that one is unable to gain access to the grand jury unless the prosecutor or a judge approves.<sup>61</sup>

The right of a citizen to access the grand jury by common law unless a statute expressly denies such access is discussed in *Brack v. Wells*, 40 A.2d 319 (1944).<sup>62</sup> The grand jury is free to investigate a case which the public prosecutor has decided through his discretion not to prosecute.<sup>63</sup>

Some states have decided that citizen access to the grand jury is such a fundamental right that it cannot even be taken away by statute.<sup>64</sup> The West Virginia Supreme Court found in *State Ex Rel. Miller v. Smith*, 285 S.E.500 (W.Va. 1981) that the grand jury "is intended to operate both as a sword, investigating cases to bring to trial persons accused on just grounds, and as a shield" to protect citizens from having cases brought against them that are unfounded.<sup>65</sup> The court notes that although the federal grand jury has retreated from allowing such access to

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<sup>56</sup> See generally Beth A. Brown, Note, *The Constitutional Validity of Pennsylvania Rule of Criminal Procedure 133(b)(2) and the Traditional Role of the Pennsylvania Courts in the Prosecutorial Function*, 52 U. PITT. L. REV. 269 (1990).

<sup>57</sup> See Peter L. Davis, *Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Brutality when the Prosecutor Declines to Prosecute*, 53 MD. L. REV. 271 (1994) (giving a detailed account of the history of grand juries, a victim's ability to gain access to the grand jury, and the power that accompanies access to the grand jury).

<sup>58</sup> BELOOF, *supra* note 1, at 312.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Brack v. Wells*, 40 A.2d 319, 321 (1944) ("The inquisitorial powers of the grand jury are not limited to cases in which there has been a preliminary proceeding before a magistrate nor to cases laid before them by the Court or State's Attorney.").

<sup>63</sup> *Id.* at 322.

<sup>64</sup> BELOOF, *supra* note 1, at 316.

<sup>65</sup> *State Ex Rel. Miller v. Smith*, 285 S.E.500, 504 (W.Va. 1981).

citizens, the West Virginia Constitution guarantees that all persons shall have access for injuries upon them.<sup>66</sup> The case centered around a public prosecutor's actions to attempt to deny a citizen access to the grand jury. The court found that this went beyond the prosecutor's official abilities and held that a citizen has a constitutional right under the state constitution to present their case to the grand jury.<sup>67</sup>

Access to the grand jury by an attorney advocating on behalf of an animal may prove to be less successful if access is based on a constitutional right. Since access may be limited to citizens against whom a wrong has been committed, the animal advocate may lack standing to argue on behalf of the animal. However, this idea is included here for the proposition that if a state constitution provides for access to the grand jury by crime victims, and a crime victim includes an animal, then it may be a successful tool. Furthermore, if the argument that animals are considered victims fails (and are then simply considered to be property), this may prove to be a fruitful avenue as well, for if a person's property has been harmed, that person may have a right to access the grand jury.

The final approach towards gaining citizen access to the grand jury is through prosecutorial or judicial discretion. In this jurisdiction type, a citizen may appear before the grand jury if the prosecutor allows it.<sup>68</sup> This approach deals mainly with federal law.<sup>69</sup> Since animal cruelty statutes are a product of state law, it will not be discussed any further here. However, it is worth being aware of in the event that a situation arises in which the animal advocate does wish to appear before the federal grand jury.<sup>70</sup>

On the other hand, some states do provide for judicial approval of victim access to the grand jury. For example in Maine, evidence may be offered to the grand jury by the public prosecutor or "other persons as said presiding justice may permit."<sup>71</sup> However, in *In re Petition of Thomas*, 434 A.2d 503 (Me. 1981) the Supreme Court of Maine significantly reduced the practical ability of a victim to access the grand jury. The court held that not only must the petition to access the grand jury be persuasive, it must also be in the public interest.<sup>72</sup> Furthermore, since the attorney general and the district attorney in the case decided not to present to the grand jury, and there was no prejudice found in the decision, the court decided against the petitioner.<sup>73</sup> The result of this case demonstrates the difficult burden that exists when attempting to obtain judicial approval of presenting to the grand jury. Nonetheless, it is an avenue that may be explored in cases of animal abuse that are in the hands of a persuasive legal advocate.

Finally, an interesting scheme exists in Nebraska where upon petition for a case to be heard from at least ten percent of the registered voters in a county, it is mandatory for the district court in that county to call a grand jury to review the case.<sup>74</sup> This statute puts access to the grand

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<sup>66</sup> The court states that the West Virginia Constitution "guarantees that '[t]he courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law.'" *Id.*

<sup>67</sup> *Id.* at 507.

<sup>68</sup> BELOOF, *supra* note 1, at 322.

<sup>69</sup> *Id.*

<sup>70</sup> See *In re New Haven Grand Jury*, 604 F.Supp. 453 (D. Conn. 1985) and *In re Application of Larry A. Wood to Appear Before the Grand Jury Appeal of United States*, 833 F.2d 113 (8th Cir. 1987).

<sup>71</sup> *Me. Leg. Doc. No. 1112* (1953).

<sup>72</sup> *In re Petition of Thomas*, 434 A.2d 503, 508 (Me. 1981).

<sup>73</sup> *Id.* at 509.

<sup>74</sup> NEB. REV. STAT. §29-1401 (2004).

jury entirely in the hands of the citizenry. Importantly, the strength of one's ability to persuade the voters of the county to petition most likely rests in one's ability to use the tools of informal methods of influence on the prosecutor, including use of the media.

In Nebraska, it is mandatory that a grand jury be called if the state's citizens petition for one. Even in states without the petition system, as elected officials, prosecutors may be influenced through other means. For example, the public prosecutor may be voted out of office if the citizenry is unhappy with her charging decisions. In that end, use of the media can be extremely helpful. If an animal advocate has a persuading story that appeals to the community, this can be a great avenue to explore.

It is not necessary that an animal be defined as a crime victim to take advantage of the preceding opportunities, although it would be beneficial. Defining an animal as a victim would give more credibility to those who seek access to the grand jury on behalf of the animal victim. Rather than the crime of animal abuse being a crime solely against the state, defining an animal as a victim would indicate the gravity of the harm to the animal as well as the state's recognition of that harm. Furthermore, because of the indication of harm to the animal beyond that of the state, it would also demonstrate the stake that the animal has in obtaining an indictment.

### *(3) Pre-Trial Protections for Victims*

Animals, defined as crime victims, would also benefit from victims' rights to a speedy trial, the ability to participate in plea bargains, and obtaining representation at trial.

#### *a. right to a speedy trial*

The right to a speedy trial may be contained in either state constitutions or statutes. For example, in Illinois, the State Constitution states, "crime victims, . . . shall have the following rights as provided by law: . . . The right to timely disposition of the case following the arrest of the accused."<sup>75</sup> This may be extremely important to animals especially if they are still living with the defendant or even if they are being held in protective custody by a law enforcement or humane agency.

It is important if they are living with the defendant in order to protect them from further and extended abuse and it is equally important if they are in an animal shelter so as to reduce the amount of time that they must spend there which will both reduce the stress to the animal and the drain on the shelter's resources. In cases where a large number of animals are seized, shelters are burdened with the cost of providing sustenance and care to the animal, and with the reduced ability to take animals from the general public.

#### *b. plea bargains*

If animals are considered crime victims, animal advocates may pursue participation in plea bargains between the state and defendant. Crime victims were generally kept out of the plea

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<sup>75</sup> ILL. CONST. §8.1(a)(6).

bargaining process until recent times. In Sarah Welling's article, *Victim Participation in Plea Bargains*,<sup>76</sup> she notes that prosecutors have different interests than victims in the plea bargain situation. For example, the prosecutor, besides having the interests of society in mind, must also balance the sheer number of cases and resources that go to cases as well. She goes on to state, "First prosecutors may fear that victim participation would disrupt the plea bargain hearing and render it confrontational. . . . Second, prosecutors might argue that victim participation will impair quick summary disposition."<sup>77</sup> Despite these feelings, by the end of 1996 thirty-six states had provided either statutory or constitutional methods of access for victims to be heard during plea bargaining.<sup>78</sup>

However, the scope of a victim's involvement is limited. The crime victim may not have the ultimate say in whether or not a plea bargain is acceptable. The ability of crime victims to share their feelings about the plea bargain with the public prosecutor is certainly permissible. Furthermore, the public prosecutor may take those views into account when making his decisions regarding the plea bargain. However, the crime victim does not have the authority to veto a plea bargain on his own once it has been offered to a defendant.<sup>79</sup>

The victim's role appears to be to have the opportunity to oppose the plea bargain in front of the judge. The victim's ability to express her satisfaction or dissatisfaction may ultimately sway the judge's decision on whether to accept or reject a plea bargain. This ability can be an extremely powerful tool for the victim as demonstrated in the case of *People v. Stringham*, 206 Cal. App. 3d 184 (Cal. Ct. App. 1988). In *Stringham*, after listening to an impact statement from a murder victim's father, the court rejected a plea arrangement between the defendant and the prosecution.<sup>80</sup> The court found that the circumstances within the victim's statement should be considered by the judge while deciding whether to accept a plea bargain, and to do otherwise would completely divest the victim of her statutory right to speak.<sup>81</sup>

For animal victims, the ability to confer with the public prosecutor when making a plea bargaining decision can be very important. Since animals are not able to speak with the prosecutor or to the court, it is important for an animal's legal advocate to be able to express the special needs of that animal.<sup>82</sup> For example, in a case of abuse by the animal's owner, it is not in the animal's best interest to go back to the defendant after he has spent thirty days doing community service and paying a \$200 fine. The animal in reality should not be returned to a person who abused the animal. Therefore, in plea bargaining, it would be beneficial for the animal to have an advocate requesting that the plea bargain also include creative solutions such as requiring the defendant to allow the local humane organization to adopt out his animal. Another example would be to request restitution for the humane shelter that took care of the animal or to an animal advocacy organization. It is not to say that all public prosecutors do not have animal interests in mind. However, creative solutions or even insight into what an animal's

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<sup>76</sup> Sarah Welling, *Victim Participation in Plea Bargains*, 65 WASH. U.L.Q. 301 (1987).

<sup>77</sup> *Id.*

<sup>78</sup> BELOOF, *supra* note 1, at 462.

<sup>79</sup> *Id.* at 466. See also *McKenzie v. Risley*, 842 F.2d 1525 (9th Cir. 1998); and *State of Oregon v. McDonnell*, 794 P.2d 780 (Or. 1990).

<sup>80</sup> *People v. Stringham*, 206 Cal. App. 3d 184, 190-91 (Cal. Ct. App. 1988).

<sup>81</sup> *Id.* at 196-97 ("To accept defendant's argument that the court is at that point divested of its power to reject the plea bargain would consign the statement to utter ineffectuality: the court would have to listen to the statement and then ignore it, powerless to do anything based upon the statement protesting such a *fait accompli*.").

<sup>82</sup> *Id.* at 196.

needs are can most easily come from those that are experienced with dealing with animal issues on a regular basis.

#### (4) *Victim Representation at Trial*

There are two approaches for an animal advocate to keep in mind regarding the prosecution of animal abuse. The most typical method by which animal abuse is prosecuted is through the public prosecutor. The other avenue is through private prosecution in which a private attorney in effect steps into the typical role of the public prosecutor.

##### *a. public prosecution*

The public prosecution model is one in which the victim's attorney participates in the trial alongside the public prosecutor.<sup>83</sup> A victim's attorney may participate at trial upon approval of the public prosecutor, and the limit of the victim's attorney's participation in the trial is determined by the public prosecutor. The victim's advocate may conduct all aspects of the prosecution such as direct or cross examination, calling witnesses, and giving opening and closing statements as long as the public prosecutor retains control of crucial decision-making during the course of trial. In the case of *East v. Scott*, 55 F.3d 996 (5th Cir. 1995) the court describes crucial decision-making as retaining control over strategic decisions at trial and the victim's attorney acting under the supervision of the public prosecutor.<sup>84</sup>

In cases of animal abuse, an animal attorney should approach the public prosecutor and seek to participate in the prosecution of the case. The animal attorney should emphasize the benefits that he may provide to the public prosecutor. An animal attorney may have more experience dealing with the intricacies of animal cases and any special circumstances that accompany them than the state's prosecutor. For instance, an animal attorney may be able to speak to any specialized physical or mental trauma that the animal may have suffered as a result of abuse and to any additional care requirements that the animal needs as a result.

Although defining an animal legally as a victim is probably not required to allow an animal attorney to assist the public prosecutor, it would be beneficial. By defining an animal legally as a victim it may legitimize requests by animal attorneys to participate in prosecutions by recognizing the special harms that accompany an animal who has suffered harm as a result of animal abuse. Furthermore, it may help quell any misconceptions that animals do not deserve additional representation. Finally, by defining an animal as a victim, the legal basis on which human victims have been allowed to have their attorneys assist public prosecutors can readily be extended to animal victims.

Since the state will not always represent the animal's interests completely, both because of inherent conflicts with their public position and at times for a lack of specialized knowledge in animal cruelty cases, it is important for the animal's legal advocate to be able to speak for the

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<sup>83</sup> The victim's attorney may also be referred to as a "privately-funded prosecutor." See Robert M. Ireland, *Privately Funded Prosecution of Crime in the Nineteenth-Century United States*, 39 AM. J. LEGAL HIST. 43 (1995) (describing the history of privately funded prosecutions).

<sup>84</sup> See also *Cantrell v. Commonwealth*, 329 S.E.2d 22 (Va. 1985) (allowing role of victim's attorney to include opening and closing statements as well as to only limit inasmuch as public prosecutors are limited).

animal's interests. Not only should the advocate attempt to advise the state about routes to take that would be helpful for the animal, but if the animal is defined as a victim, there may also be other rights or issues that the state and the defense will not speak to during the course of a trial. In this capacity, the animal advocate must be well versed in crime victim law to adequately represent the animal's interests before they are overlooked. For example, if a law gives a victim the right to speak regarding the suitability of a plea bargain that the state and the defense have agreed to, the animal advocate must be able to articulate the animal's position as well as the right to speak as provided by law.

*b. private prosecution*

Common law allows for the prosecution of animal abuse and neglect by private prosecutors if the defendant is charged with a misdemeanor.<sup>85</sup> In those situations, the private animal attorney simply takes the place of the public prosecutor and continues to represent the state.<sup>86</sup> However, the state still retains a significant amount of control in the case. For instance, the state may dismiss the case at any time whether the private prosecutor wants to continue or not.<sup>87</sup> Furthermore, if the state decides to prosecute the case, the state has priority and can then take the case out of the hands of the private attorney.<sup>88</sup>

Nevertheless, since the majority of animal anti-cruelty violations are misdemeanors, private prosecution by animal attorneys is a powerful tool. Even if the public prosecutor steps in to take control of the case and the animal attorney does not ultimately prosecute the case, the animal attorney has still been successful in obtaining prosecution by the state. Thus, it may be that the animal attorney can either prosecute the case himself or cause the state to prosecute the case. In both instances, the crime is receiving the proper attention it deserves.

*c. current legislation allowing private participation*

Currently, some states explicitly allow for private enforcement of animal-cruelty statutes.<sup>89</sup> The state statutes provide for humane societies or private citizens to request and assist in the enforcement of animal cruelty crimes.<sup>90</sup> For instance, Wisconsin law provides for a

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<sup>85</sup> Cronan v. Cronan, 774 A.2d 866, 871 (R.I. 2001).

<sup>86</sup> *Id.* at 873.

<sup>87</sup> *Id.* at 874-75.

<sup>88</sup> *Id.* at 877.

<sup>89</sup> Rackstraw, *supra* note 34.

<sup>90</sup> *Id.* at 260-62. Minnesota legislation provides:

Any person who has reason to believe that a violation of this chapter has taken place or is taking place may apply to any court having jurisdiction over actions alleging violation of that section for a warrant and for investigation...If the court is satisfied of the existence of the grounds of the application, or that there is probable cause to believe that a violation exists, it shall issue a signed search warrant and order for investigation to a peace officer in the county.

MINN. STAT. §343.22(1) (2000).

Pennsylvania law states:

An agent of any society of association for the prevention of cruelty to animals,

humane officer to “request law enforcement officers and district attorneys to enforce and prosecute violations of state law and may cooperate in those prosecutions.”<sup>91</sup> As noted above, it is not necessary for a law to affirmatively allow for the prosecution of animal abuse misdemeanors. However, a law such as this does illustrate that legislatures do recognize the importance of allowing those with specialized knowledge of animal abuse cases to have the ability to assist in their prosecution.

However, a law like Wisconsin’s does pose potential problems for animal advocates. Providing such legislation may consequently preclude citizens that are not part of a humane society from pursuing private prosecutions. The argument may be made that the law implicitly revokes the common law ability of citizens to prosecute animal abuse misdemeanors and replaces it with statutory law only allowing humane society employees to prosecute animal crimes. This may not only overburden humane societies but also lessens the ability of other qualified individuals to seek prosecutions.<sup>92</sup>

While a legislature need not provide a statutory right for private prosecutions, unless a statute has overruled the common law right of prosecution, it is still beneficial. First, it legitimizes and provides a legal basis for claims by those seeking private prosecution. Second, it allows for private prosecutions of felony animal abuse statutes. Since the common law only allows for prosecution of misdemeanors by private parties, providing a statutory means to prosecute all animal crimes erases that limitation.

#### *d. appropriate representation of animals*

An important consideration to the success of animals as victims is the issue of appropriate representation. In order to take advantage of gains made through redefining animals as crime victims, the best representatives would be those from a humane society, a lawyer from an organization that is devoted to animals’ interests, or a victims’ assistance program’s lawyer appointed by an impartial court to represent the animal as a crime victim.

Courts should be required to take notice of who is attempting to represent the animal and consider whether that person is appropriate. If the defendant is the owner of the animal, a lawyer retained by him should not be allowed to represent the animal victim. If not, the owner should be able to decide or hire a lawyer to represent her animal’s needs. If the defendant is the animal’s owner, the court should be able to take into consideration the relationship of the attorney or attorney’s organization to the particular animal and animals in general. If the attorney is from an organization, looking at the group’s mission statement would give relevant information as to the suitability of the lawyer. In any event, it is a topic to consider in order to avoid further abuse and victimization of the animal.

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incorporated under the laws of the Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request any court of competent jurisdiction to enjoin any violation of this section.

18 PA. CONS. STAT. ANN. §5511(i) (West 2000).

<sup>91</sup> WIS. STAT. §173.07(4)(m) (2005).

<sup>92</sup> See Rackstraw, *supra* note 34, at 262 (discussing implications of such laws overburdening humane societies).



(5) *Post Trial Protections for Crime Victims*

During the sentencing of a defendant, crime victims may be given the opportunity to present victim impact statements.<sup>93</sup> Such statements provide the crime victim an opportunity to be heard by the court when considering the sentence so that the court may take the statement into account, to be heard by the defendant so as to understand the harm that he has caused to the victim, and to give the victim some sense of empowerment of using the legal system. If the ability to give an impact statement is given to crime victims in one's jurisdiction and animals are considered crime victims, it may be an extremely valuable accommodation for their plight.

Again, the specialized knowledge that accompanies an animal legal advocate who deals with animal cases and issues on a regular basis can provide some valuable insight to the court on the damage that was done to the animal as a result of animal cruelty. This may sway the judge to increase a defendant's sentence after hearing a more detailed and expanded account of the pain that the animal suffered that may not have been allowed to be entered into evidence due to the more strict evidentiary rules that are in place during trial. Furthermore, it may give the defendant more insight into the pain that the animal suffered to give a deterring effect on them in their future dealings with animals.

Animal abusers might also be tracked in a parallel system such as ones in which sexual offenders are registered. It is not one that animals must be defined as crime victims for, but, nonetheless, it is an interesting proposition to include and consider the creation of animal cruelty offender registrations. Sex offender registrations were devised to combat the problems that accompany an atypical criminal offense where the offender may not be able to stop committing the acts.<sup>94</sup> It gives the community where the offender lives an opportunity to educate themselves and their children about the possibility of harm that exists when a serious sex offender is released into their neighborhood. This is especially important when offenders move into a new area.

The offender registration would be useful for both law enforcement and citizens that are neighbors. The registration would provide citizen neighbors a basis to not only watch out for their own animals being abducted or abused by the offender, but it would also warn them to watch out for animals in the offender's possession. The citizens could then notify law enforcement if the offender is not allowed to have animals or if they see or hear something that appears to be a violation of law. Because of the difficulty in recognizing animal cruelty, knowing that a person is a habitual offender may provide the confirmation a citizen needs to contact law enforcement.

## V. CONCLUSION

The animal advocacy movement can benefit greatly from the lessons and the progress that the crime victims movement has experienced. Using historical notions of how victims and animals have been treated formulates a basis for their present day inclusion into the criminal justice system. While crime victims lost their ability to meaningfully participate in a system

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<sup>93</sup> BELOOF, *supra* note 1, at 621-22.

<sup>94</sup> E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997).

which was supposed to protect their interests, they have regained it, and in the process have shed light on how an individual's interests are not completely met through public prosecution. Using these lessons, animal advocates may gain significantly more protection from anti-cruelty laws that are in place today as a result of increased and proper enforcement.

It is not a novel idea that entities other than humans can be considered crime victims. Businesses, corporations, neighborhood associations, and government entities have been defined as crime victims in state statutes. Including protections for animals as crime victims is a natural progression in the development of the law. As the victims of anticruelty statutes, and as beings who are voiceless without legal advocates, the protections of crime victim laws and the methods used by law enforcement and court systems to protect victims are necessary. The expansion of these systems is critical to the proper enforcement of current laws and the adequate representation and protection of animals.