



# When Rights Collide

Weighing an Animal Victim's Rights Against  
a Criminal Client's Rights in Animal Cruelty Cases

BY HEIDI METROZ

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**W**hile animal cruelty cases are still considered low priority in all prosecutorial jurisdictions, they are receiving more attention and being brought before a criminal court more frequently. In fact, some jurisdictions have specialized prosecutorial units that exclusively prosecute animal cases.<sup>1</sup> In this emerging area of criminal law, it is important to consider how these unique cases should be handled. Specific areas to examine include (1) what rights the criminal clients do and should have, (2) what rights the animal victims do and should have, (3) and how to balance those rights. This article discusses each of these areas, with a specific focus on expanding protections for animal victims within the criminal legal system. Animals, like humans, deserve rights that protect them from the harm of criminal conduct.

### **Rights Versus Rights**

Throughout history, legal rights have been bestowed to specified individuals to provide them with certain freedoms and protections. These rights have been granted, removed, modified, fought for, and unequally applied. Commonly, one individual's rights conflict with another's, in which case, courts analyze the facts of the matter to determine how to resolve the conflict in the most just way. In instances of animal cruelty that result in criminal charges, the conflicting rights are those of the criminal client who allegedly committed the act of cruelty versus those of the animal victim who was harmed by the act. Before discussing how courts currently consider and balance these conflicting rights, it is important to understand each party's rights.

### ***Criminal Client's Rights***

Any person who faces criminal charges faces the possibility of having their right to freedom and liberty infringed upon. Because many societies highly value freedom and liberty, there are often stringent safeguards in place to protect those rights. The US Supreme Court has discussed the importance of such rights, stating that "the historical foundation for our recognition of these principles extends down centuries into the common law" and that a

trial by jury is necessary "to guard against a spirit of oppression and tyranny on the part of rulers,' and 'as the great bulwark of [our] civil and political liberties[.]'"<sup>2</sup> In the United States, several constitutional amendments serve to protect individuals when the state brings criminal charges against them.

## **While a sentence of probation or a short jail term for animal cruelty may not be excessive by Eighth Amendment standards, such sentences are ineffective and do nothing to prevent the criminal client from engaging in cruel behavior in the future.**

First, the Fourth Amendment protects individuals from unreasonable searches and seizures and sets requirements for issuing warrants. This includes having their person, homes, and items within their homes searched and taken by police. Significantly, animals hold the status of property and can therefore be owned and possessed by a human. Therefore, an animal victim cannot be seized or removed from the criminal client's possession without a warrant or probable cause that animal cruelty has occurred.

Second, the Fifth Amendment provides several protections for individuals who have been charged with a crime, including the guarantee of due process. Specifically, it ensures that no one can be deprived of "life, liberty, or

property" without fair legal procedures and just compensation for property taken for public use. Again, the use of the word "property" has important implications in animal cruelty cases.

Third, the Sixth Amendment gives individuals a series of rights related to criminal prosecutions, including the right to a trial before an impartial jury, the right to know the nature of the charges, the right to counsel, and the right to confront witnesses. In animal cruelty cases, just like in any other criminal case, a criminal client is entitled to a speedy trial, which generally means that a criminal trial is expected to begin within a reasonable amount of time.

Finally, the Eighth Amendment protects individuals who have been convicted of a crime from excessive bail, excessive fines, and cruel and unusual punishment. The Eighth Amendment has important implications for criminal clients in animal cruelty cases. Under the current legal system, animal cruelty cases are considered a low priority due to animal victims holding status as property; therefore, such cases are not frequently prosecuted. However, when animal cruelty cases are prosecuted and a criminal client is convicted, the courts typically sentence the criminal client to probation or a short jail sentence, depending on factors such as the jurisdiction, the criminal client's criminal history, the severity of the conduct in the case, and whether the case also involved a human victim. It is exceptionally rare for a criminal client to receive any sort of evaluation to determine the underlying cause of the misconduct, nor any sort of treatment to address the causes of their behavior. While a sentence of probation or a short jail term for animal cruelty may not be excessive by Eighth Amendment standards, such sentences are ineffective and do nothing to prevent the criminal client from engaging in cruel behavior in the future.

The aforementioned amendments are intended to protect individuals from being denied their right to freedom and liberty, and prohibit the state from improperly prosecuting them. Even when an individual has committed a crime and caused harm, they are still entitled to these rights and protections. The Supreme Court has considered the importance of these rights and provided guidance as to how to balance

these rights with the rights of the victim. In cases such as *Apprendi v. New Jersey* and *In re Winship*, the Court emphasized the importance of the burden of proof (guilt of each element of a crime must be proven beyond a reasonable doubt), and the reason it is so high is to protect a criminal client’s right to freedom and liberty.<sup>3</sup> In *Winship*, the Court stated,

It is the duty of the Government to establish . . . guilt beyond a reasonable doubt. This notion—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of “due process.”<sup>4</sup>

**Human Victim’s Rights  
Versus Animal Victim’s Rights**

Any human or animal who is harmed by an individual’s criminal conduct is a victim of a

crime. But only human victims are afforded rights under our current legal system. These rights are granted primarily through the Victim Rights Act (VRA), which was passed in Colorado in 1992<sup>5</sup> and federally (under the Crime Victims’ Rights Act) in 2004.<sup>6</sup> The VRA provides human victims with specific rights, especially in domestic violence cases. It contains at least 32 provisions, including:

- the right to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse;
- the right to be informed of all “critical stages” of the criminal justice process (victims of crime must request notification, in writing, for probation critical stages);
- the right to be present at specified critical stages in the criminal justice process;
- the right to be informed about what steps can be taken, including information

about protection services, if there is any intimidation or harassment by a person accused or convicted of a crime or anyone acting on that person’s behalf; and

- the right to be present and heard regarding bond reduction or modification, a subpoena for the victim’s records, acceptance of a plea agreement, sentencing or modification of a sentence, or any request modification to the “no contact” provision or criminal protection order or the petition for expungement.<sup>7</sup>

As noted above, there are no comparable rights for animal victims of abuse. When an animal is a victim of a crime, they are typically removed from the possession of the individual who committed the crime. The move is sometimes permanent, and other times temporary—usually for the pendency of the case. When the animal victim is removed, they are often placed in an animal shelter, and their fate varies drastically. If a court decides that the criminal client should not be able to reclaim the animal victim, the animal may be adopted by a new guardian; however, the animal must be deemed adoptable by the animal shelter (i.e., not too aggressive), and they must await a home. Other times, unfortunately, the animal victim is euthanized. On the other hand, if a court allows the criminal client to reclaim the animal victim at any point, usually upon completion of their sentence, there is a high likelihood that the animal will be revictimized because the court did nothing to address the criminal client’s behavior, nor gave them any coping strategies to refrain from engaging in the cruel behavior.

As such, the current criminal legal system leaves animals largely unprotected from abuse at the hands of humans.

**When Rights Conflict**

In the US criminal legal system, conflicts between two party’s rights are usually resolved through a proportionality test.<sup>8</sup> Such a test is used because most human rights are not absolute, but relative and qualified, which would likely be the same for animal rights.<sup>9</sup> The proportionality test typically consists of three prongs that are considered by judges.<sup>10</sup> The first

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prong is whether the right is a suitable means to promote a legitimate aim.<sup>11</sup> The second prong is whether the right exceeds what is necessary to achieve that aim.<sup>12</sup> The third and final prong is whether the right is more important than the interest it is limiting—essentially where the balancing portion comes into play.<sup>13</sup>

Balancing, in the legal sense, is the process of weighing the competing interests in a rights conflict.<sup>14</sup> When weighing the conflicting interests, courts must consider the social importance of the rights in question, meaning they must consider the societal benefit of protecting one right compared to avoiding the limitation of a countervailing right.<sup>15</sup> This is determined by the social and cultural history and how those impact the role a certain right plays among other rights.<sup>16</sup> Additionally, when weighing conflicting rights, courts must take into account the severity of the limitation that may be imposed on a right, meaning that the court must determine whether a right is merely marginally affected or whether the right is substantially impacted.<sup>17</sup>

In animal cruelty cases, a court would be balancing the weight of the animal victim's right to be free from harm against the criminal client's right to be free from state-imposed punishment. As it currently stands, criminal clients hold more rights than animal victims due to the constitutional amendments that protect individuals from having their liberties impeded upon by the government (despite the fact that those who face animal cruelty charges are viewed unfavorably in society). The unfortunate reality is that animal victims do not have any notable legal protections since animals are considered property under the law.

### **Why Animals Deserve Protections**

This must change for several reasons. First, animals are sentient beings who are capable of experiencing pain, suffering, fear, joy, and love. For example, “dogs have a level of sentience comparable to that of a human child” and “[d]ogs, and probably many other animals (especially our closest primate relatives), seem to have emotions just like us.”<sup>18</sup> As humans' understanding of animal intelligence and sentience continues to increase and improve, the need for moral considerations to be granted to animals

continues to increase. One cannot reasonably argue that a just society exists as long as there are sentient beings who are not afforded legal protections to be free from harm.

Second, animals bring tremendous value to their human caretakers.<sup>19</sup> In 2015, a Harris Poll found that 95% of participants considered their companion animals to be a member of the family.<sup>20</sup> And a 2014 study found that when dogs and humans look into each other's eyes, both release the oxytocin hormone, which also occurs when humans look into another human's eyes.<sup>21</sup> The same study found that dogs experience positive emotions when they interact with their companion human, even more so than when

## **The unfortunate reality is that animal victims do not have any notable legal protections since animals are considered property under the law.**

they interact with other familiar dogs.<sup>22</sup> Extending victim's rights to animals protects not only the animal, but also their human companions who love and care for them.

And finally, a plethora of research has shown that there is an irrefutable link between cruelty to animals and abuse toward humans.<sup>23</sup> While one does not cause the other, there is a strong correlation between the behaviors; therefore, to protect humans and animals alike, the criminal legal system has a duty to treat animal cruelty cases with the same level of scrutiny and care as human abuse cases.

### **Theories of Justice**

Before discussing solutions, it's important to consider the various theories of justice and assess

which offers the best balance between human rights and animal rights in animal cruelty cases. There are four theories of justice that explain how and why the current legal system addresses criminal behavior: deterrence, incapacitation, punishment, and rehabilitation. The two theories that are most applicable to animal cruelty cases—punishment and rehabilitation—are discussed below.

### **Punitive Justice (Punishment)**

The punitive justice theory focuses on using punishment as a response to criminal behavior. The idea behind this theory is that if one individual harms another, they should be forced to offer penance and retribution for their actions, essentially adhering to the “eye for an eye” mentality. In modern times, the criminal legal system has primarily used the punitive approach to correct criminal behavior by incarcerating individuals, or by placing them on supervised community release such as probation or parole.

Despite its prevalence, however, this approach is ineffective. First, the punitive approach fails to actually provide any sort of retribution.<sup>24</sup> Punishment does not restore relationships, nor does it undo the harm that was done; in fact, punishment merely creates more harm.<sup>25</sup> Second, punitive justice does not decrease criminal behavior.<sup>26</sup> In fact, evidence shows that punishment increases criminal behavior and crime because it cultivates antisocial attitudes, thinking, beliefs, values, and behaviors.<sup>27</sup> As stated previously, the US criminal legal system relies primarily on punitive justice, and the United States has the highest rates of incarceration in the world.<sup>28</sup> For the past several decades, incarceration rates have increased 400%, yet crime rates have not seen a significant drop, and reincarceration rates are as high as 80%.<sup>29</sup> This is because incarceration causes harm to the incarcerated individual, as well as their loved ones, by perpetuating cycles of violence and harm and creating social destitution upon release.<sup>30</sup>

Given the bleak evidence as to the efficacy of punitive justice in the criminal legal system, it stands to reason that a different approach should be considered for animal cruelty cases.

**Restorative Justice (Rehabilitation)**

A compelling alternative to punitive justice is restorative justice, which focuses on rehabilitating the person who committed the crime and restoring the victim—to the extent possible. At its core, restorative justice seeks to address the harm caused by the offense, instead of doling out punishment.<sup>31</sup> Restorative justice began in the 1970s and sought more holistic remedies to address crime and to hold the person who committed the crime accountable without using traditional punitive punishments.<sup>32</sup> This approach also shifts the focus from a conflict between the person who committed a crime and the state, to a conflict between individuals—specifically, the victim and the perpetrator.<sup>33</sup>

Since its inception, the use of restorative justice has spread to almost all 50 states, and various restorative justice approaches have been applied in community-based settings, conferences and dialogues, reparative sentencing, victim-offender mediation, and truth and reconciliation commissions.<sup>34</sup> And, most important, these efforts have been empirically shown to be effective. In fact, research shows that restorative justice approaches result in a 10% to 40% reduction in reoffending.<sup>35</sup>

Consequently, when deciding which theory to apply in animal abuse cases, the clear winner is restorative justice, despite punitive justice

being the primary approach in use today. One might presume that restorative justice is impractical in animal abuse cases, because animals cannot verbally express the harm they experienced, how their lives were impacted by the offense, or what they need or desire to have happen to restore them to their pre-offense condition. However, there are unique ways to apply restorative justice to animal cruelty cases, as will be discussed later in the article.

**Possible Solutions**

When examining possible solutions, it's important to view animal cruelty cases not solely as the conflict between rights of animal victims and criminal clients, but also as an opportunity to protect animals from harm, provide criminal clients with effective treatment, and use restorative justice to prevent future harm. The three proposed solutions below achieve these important goals.

**Enacting an Animal Victim Rights Act**

As an initial measure, legislators should enact an Animal Victim Rights Act (AVRA) to be applied in animal cruelty cases. When creating the AVRA, lawmakers could model it after the VRA and modify it to meet the specific needs of animal victims. The framework already exists in the VRA, which could easily be modified and expanded to an AVRA, because “[t]he animal rights and the victims’ rights movements share the common goal of protecting the dignity of living things from criminal violence.”<sup>36</sup>

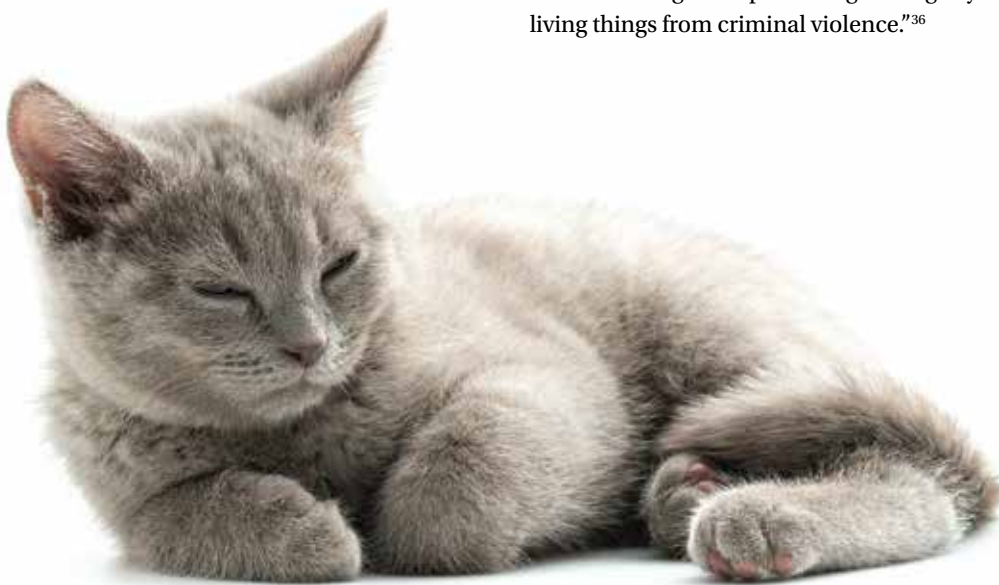
Victim rights scholar Douglas E. Beloof provides a three-step approach to translating the VRA into an AVRA. First, law enforcement officials and prosecutors must take a more proactive role in addressing the problem of animal cruelty.<sup>37</sup> There is ample motivation for these professionals to look at animal cruelty more seriously because of the commonly known link between violence against human victims and violence against animal victims.<sup>38</sup> Second, an AVRA should provide compensation for animal victims in order to address “medical, psychological, and funeral expenses resulting from the crime.”<sup>39</sup> And finally, animal rights advocates must better educate themselves in human crime victim law.<sup>40</sup> By doing so, these advocates can understand what components of victims’ rights are necessary to provide animals with adequate protection, what components need to be modified to be made specific to animals, and what pitfalls to avoid.

Moreover, some animal rights activists argue that animals should be granted legal personhood, similar to that of corporations or some bodies of water. Legal theorist Tomasz Pietrzykowski argues that animals should be considered “non-person subjects of law,” meaning that they would hold a status that would allow their rights to be taken into consideration and have their own needs considered in all relevant decisions that may affect their interests.<sup>41</sup> Pietrzykowski goes on to explain that at the very least, the animal’s “most vital interest” should be considered, which would enable the animal’s interests to be balanced with a human’s interests.<sup>42</sup>

**Incorporating Tools for Animal Cruelty Cases**

Even without new legislation, there are ways to improve the outcomes of animal cruelty cases. This article looks at two existing tools that could easily be adopted for use in the current criminal legal system.

**Courtroom Animal Advocate Program.** The Courtroom Animal Advocate Program (CAAP) provides a trained advocate to animal victims in cruelty cases, much like a guardian ad litem in cases in which human clients require a representative. CAAP was established in Connecticut in 2016 as the result of “Desmond’s Law,” a law



enacted after a dog, Desmond, was severely abused and strangled to death.<sup>43</sup> As a result of Desmond's Law and the implementation of CAAP, animal cruelty investigations and prosecutions have increased in Connecticut.<sup>44</sup>

Presently, CAAP representatives serve on a voluntary basis. They appear in court and assist judges by drafting briefs; conducting research; gathering information and reports from veterinarians, animal control officers, law enforcement officers, and other pertinent professionals; and making recommendations that are in the interest of the animal victim.<sup>45</sup> CAAP representatives serve the animal victim in a way that prosecutors do not because the representatives receive specialized training to ensure they advocate for the unique interests of the animal victim.<sup>46</sup> While animal victims are like human victims in that they require food, care, and shelter, and their conditions can change, they are unique in that they cannot advocate for themselves and their own best interests.

Importantly, CAAP representatives are a neutral party; they do not work with or aid either the prosecution or the defense.<sup>47</sup> Therefore, neither the prosecution nor the defense should be opposed to the representative fulfilling their role. Also, because CAAP representatives serve on a voluntary basis, the court would not be overburdened by the costs of securing their services.

**Forensic Animal Mistreatment Evaluation Tool.** The Forensic Animal Maltreatment Evaluation (FAME) tool is an animal cruelty assessment tool that's being developed to offer a clinical approach to animal maltreatment evaluation and treatment. The FAME tool will be available for use by mental health practitioners, students, and educators,<sup>48</sup> and will seek to identify the protective factors present in a criminal client who has been charged with animal cruelty. It will then use these factors (familial relationships, employment, economic security, etc.) to identify the best treatment options for the criminal client.<sup>49</sup>

This is a crucial component because generic anger management courses and court-imposed community service requirements (such as completing useful public service hours at animal shelters or sanctuaries) do not address the

underlying dynamics and causes of the animal cruelty behavior.<sup>50</sup> Nontailored approaches to treatment may lead to counterproductive results, or potentially cause further harm.<sup>51</sup> To avoid this, people who commit animal cruelty should undergo an evaluation (like the FAME tool) to determine the underlying causative factors and be matched with appropriate treatment.<sup>52</sup>

Similar to CAAP, the FAME tool is currently being used on a voluntary basis by psychology professionals and students who recognize the importance of identifying and addressing the underlying cause of animal cruelty behavior in order to prevent it in the future.

### *Applying Restorative Justice to Animal Cruelty Cases*

As detailed above, in animal cruelty cases, there is a conflict of rights between the animal victim (to be free from harm) and the criminal

client (the right to liberty). Implementing a restorative justice model in animal cruelty cases is the most effective way to balance those rights and make a positive difference to reduce such cases.

Restorative justice seeks to make the victim whole, to the extent possible. The same would apply in animal cruelty cases—to the extent that a court is able, the animal victim's rights would be protected and restored. This would be accomplished via the use of CAAP representatives who would advocate for the animals' interests.

The restorative justice model, however, is not complete without addressing the rights of the criminal client. The criminal client's rights must continue to be protected in animal cruelty cases. This is achieved by upholding the criminal client's constitutional rights, particularly the right to due process and protection against an

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## FACTS ABOUT ANIMAL ABUSE

**1** Intentional cruelty to animals is strongly correlated with other crimes, including violence against people.

**2** Roughly 85% of people arrested for animal abuse or cruelty have had multiple past arrests, with 70% having prior felonies.

**3** Around 70% of people who committed domestic violence were also found to be animal abusers.

**4** Neglect is a common form of animal abuse. This is when an owner doesn't provide necessary shelter, food, water, and veterinary care for the animal or pet.

**5** Hoarding is a common source of animal neglect. While those with a hoarding disorder rarely, if ever, intend to harm animals, they often house far more animals than they're able to adequately care for.

**6** Surveys suggest that those who intentionally abuse animals are predominantly men under 30, while those involved in animal hoarding are more likely to be women over 60.

**7** The animals whose abuse is most often reported are dogs, cats, horses, and livestock.

Source: Humane World for Animals, Animal Cruelty Facts and Stats, [bit.ly/3Faio6x](https://bit.ly/3Faio6x); Sleight et al., "Animal Abuse Statistics 2025," Blueprint (2024), [bit.ly/3Xz6FVr](https://bit.ly/3Xz6FVr).

Eighth Amendment violation by granting rights to appropriate sentencing for a cruelty case. The most effective way to ensure that an appropriate sentence is imposed is to conduct a proper evaluation and assign a proper treatment plan, by using such instruments as the FAME tool.

The means by which the current criminal legal system handles animal cruelty cases is insufficient to adequately implement a restorative justice approach. Thus, to best address the unique aspects of an animal cruelty case through a restorative justice lens, an Animal Cruelty Specialty Court should be established. Specialty courts were established in the late 1980s to address the root causes of criminal behavior, with the hope of reducing recidivism and rehabilitating the people facing criminal charges.<sup>53</sup> Over time, new specialty courts have been created to tackle issues such as substance use, mental health issues, domestic violence, family issues, juvenile matters, DUIs, sex trafficking, homelessness, veterans' issues, and more.<sup>54</sup> An evaluation of specialty courts found that, while there are some disadvantages to specialty courts, they are largely successful and advantageous.<sup>55</sup>

The Animal Cruelty Specialty Court should be modeled after other types of specialty courts, meaning that it should solely hear animal cruelty cases, and the parties involved should have specialized knowledge around animal cruelty cases. Ideally, such a court should have a judge, prosecutor, defense attorney, investigator, case manager/probation officer, and treatment provider working the cases who have specialized knowledge and understanding of the uniqueness of animal cruelty cases.<sup>56</sup> (Some proponents argue, however, that only one participant with expertise in animal cruelty is needed to guide and educate the others.<sup>57</sup>) In addition, the Animal Cruelty Specialty Court should incorporate the use of CAAP representatives to educate and make recommendations to attorneys and judges in these distinctive cases.<sup>58</sup>

### Opposing Views and Counterarguments

The proposal to expand rights for animal victims and take a restorative justice approach to animal

cruelty cases is unorthodox, and has and will face opposition. Below are counterarguments to some of the most common opposing views.

### *Animal Cruelty Cases Should Receive Harsher Sentences*

Animal cruelty cases evoke a visceral response, and the general public typically cries for harsher sentences for those criminal clients who are accused of committing cruelty toward an animal. While the general public can certainly influence how legal matters are handled, relying on the court of public opinion to alter an individual's behavior is ineffective. For instance, sex offender registries are legal tools that carry significant shame and stigma, sometimes resulting in members of the general public taking matters of justice into their own hands. However, the implementation of sex offender registries has not been helpful in reducing sex offenses.<sup>59</sup> It therefore stands to reason that the general public's opinion on animal cruelty matters and how they are handled will not result in fewer animal cruelty cases.

Moreover, those who advocate for harsher sentences claim that these severe punishments will have a deterrent effect and send a message to would-be animal abusers. As discussed above, punitive justice and harsh sentencing have not been shown to have a deterrent effect in any other type of case—in fact, quite the opposite; therefore, it is unlikely that it would be any different in animal cruelty cases. Conversely, by using a restorative justice approach and providing appropriate sentencing and treatment, the court can send the message that it is invested in handling animal cruelty cases properly and in a way that will prevent future harm.

### *Human Victims' Rights Should Be Strengthened and Expanded First*

Some human victims' rights advocates argue that the VRA should be strengthened and better enforced for human victims before it can be modified and expanded to animal victims. As discussed above, there is a strong correlation between human and animal victimization; therefore, addressing one issue will impact the other. Furthermore, the rights theory of moral

expansiveness states that if an individual's moral boundaries are enlarged, they are more likely to extend moral concern to a wider range of entities, rather than fewer.<sup>60</sup> In other words, if humans expand whom they grant rights to, it is more likely that they would be willing to recognize and protect the rights of more groups, rather than fewer.

### *Animal Cruelty Cases Would Cause a Strain on Court Funds and Resources*

Some opponents of expanding rights for animals fear that it will drain the court of finances and resources. To invalidate this concern, one may look at how the courts successfully adapted to the VRA's passing in Colorado in 1992 and federally in 2004. At those respective points in time, the courts were willing to open up their dockets and hear cases that were complex and had a unique nature, and

the courts have since adapted to be able to handle such cases. Further, even if taking on a nuanced approach to animal cruelty cases does require courts to expend more in time and resources, appropriately addressing these cases will ultimately benefit society by preventing future harm to human and animal victims alike.

### *Some People Are Inherently Cruel and Incapable of Rehabilitation*

Another expressed concern is that some criminal clients are inherently cruel toward humans and animals, and rehabilitation will be ineffective on them. However, most people are not immune to rehabilitation, as only a small percentage of people have a type of mental health condition that causes resistance to treatment for animal abuse.<sup>61</sup> Moreover, rehabilitation programs that have been at-

tempted previously may have been ineffective because they were not appropriately tailored to the criminal client's specific needs and underlying issues. Again, proper evaluation is essential. Finally, the use of evaluation and treatment programs within a restorative justice model is not a proposal to allow the criminal client to not take accountability. In fact, a major component of restorative justice is the criminal client acknowledging the harm they caused, learning from it to modify future behavior, and working to restore the animal victim to the extent possible.

### **Conclusion**

Animal cruelty cases are complex legal matters that require courts to weigh the interests of the right of the animal victim to be free from harm against the right of the criminal client to have their constitutional rights protected.

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This is no easy task, but it is essential. As it currently stands, animal victims do not have adequate rights to protect their interests, and the criminal legal system is ill equipped to appropriately and effectively handle animal cruelty cases. To remedy this, the VRA must be modified and expanded to grant rights to animal victims, and a restorative justice approach must be implemented to help the criminal client receive appropriate evaluation and treatment and avoid future criminal behavior. **CL**



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48. Symposium, "Forensic Animal Maltreatment Evaluations (FAME) Basics for the Legal Community: What Attorneys, Judges, Students, and Mental Health Professionals Need to Know," American Psychology-Law Society Conference (2024).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Wood et al., "Specialty Courts: Time for a Thorough Assessment," 36 *Miss. Coll. L. Rev.* 332, 332 (2018).

54. *Id.* at 334.

55. *Id.* at 335-42, 346 (explaining that the disadvantages to specialty courts are that (1) they may violate a person's rights because suggesting they enter into a specialty court may be coercive in the same way that entering a plea deal can be coercive; (2) specialty court judges may be subjected to burnout and vicarious trauma; and (3) specialty courts have additional and unique costs that traditional courts do not. Conversely, the advantages of specialty courts include more consistent and higher quality outcomes to cases, a reduction in overcrowding and caseloads, increased job satisfaction for those who work in specialty courts, and a long-term decrease in costs. Moreover, specialty courts allow participants to remain with their families and to obtain or maintain employment.).

56. Telephone interview with Justie Nicol, attorney, Colorado Lawyer Team, P.C., Greenwood Village (Nov. 10, 2022).

57. *Id.*

58. Rubin, "Desmond's Law: Early Impressions of Connecticut's Court Advocate Program for Animal Cruelty Cases," 134 *Harv. L. Rev.* 263, 263-64 (2021).

59. See generally Jeglic, "Sex Offender Registries: Are They Keeping Our Children Safe?," *Psych. Today* (Aug. 9, 2019), <https://www.psychologytoday.com/us/blog/protecting-children-sexual-abuse/201908/sex-offender-registries> (stating that research shows that sex offender registries do not prevent sex abuse); "Do Sex Offender Registries Actually Work?," Carey L. Office, <https://www.careylawoffice.com/2021/05/18/do-sex-offender-registries-actually-work> (explaining why state registries do not work at preventing sex offenses).

60. Faslser and Butler, *supra* note 8 at 110.

61. Skodol et al., eds, *Diagnostic and Statistical Manual of Mental Disorders* 659-61 (5th ed. American Psychiatric Ass'n 2013) (indicating that aggression toward people and animals is a specific behavior characteristic of antisocial personality disorder (ASPD), but the prevalence of ASPD is only 0.2% to 3.3% of the population, which does not account for the number of individuals who face animal cruelty charges).

"As I See It" is a forum for expression of ideas on the law, the legal profession, and the administration of justice. The statements and opinions expressed are those of the authors, and no endorsement of these views by the CBA should be inferred.

## NOTES

1. "Animal Law Podcast 107: Prosecuting Cruelty," *Animal Law Podcast* (Apr. 24, 2024), <https://www.ourhenhouse.org/alp107> (Prosecutor Jake Kamins discussing his work as the animal cruelty resource prosecutor in the Oregon Department of Justice).

2. *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000).

3. *Id.* at 466; *In re Winship*, 397 U.S. 358, 362 (1970).

4. *In re Winship*, 397 U.S. at 382 (quoting *Leland v. Oregon*, 343 U.S. 790, 802-03 (1952) (Frankfurter and Black, JJ. dissenting)).

5. Victim Rights Act, CRS §§ 24-4.1-300.1 et seq.

6. 18 USC § 3771.

7. Victim Rights Act, *supra* note 5.

8. Faslser and Butler, *Animal Rights Law* 112 (Hart Publishing 2023).

9. *Id.* at 112-13.

10. *Id.* at 113.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Ferri, "In a Dog-Eat-Dog World, What Does a Man Have to do to Protect His Best Friend?," 24 *Crim. L.J.* 1, 16 (2024).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. See generally "The Link Between Cruelty to Animals and Violence Toward Humans," Animal

Legal Defense Fund, <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2>.

24. McGee, "Why Punishment Doesn't Work to Produce Lasting Change," Nevada Specialty Court Conference (Oct. 18, 2024).

25. See generally *id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Lanni, "Taking Restorative Justice Seriously," 69 *Buff. L. Rev.* 635, 635 (2021).

32. Gonzalez, "The Legalization of Restorative Justice: A Fifty-State Empirical Analysis," 2019 *Utah L. Rev.* 1027, 1028 (2019).

33. *Id.*

34. *Id.* at 1030-31.

35. McGee, *supra* note 24.

36. Beloof, "Crime Victims' Rights: Critical Concepts for Animal Rights," 7 *Animal L.* 19, 19 (2001)

37. *Id.* at 29.

38. *Id.*

39. *Id.* at 32.

40. *Id.*

41. Faslser and Butler, *supra* note 8 at 163.

42. *Id.*

43. "Courtroom Animal Advocate Programs (CAAP)," Animal Legal Defense Fund, <https://aldf.org/article/courtroom-animal-advocate-programs-caap>.

44. *Id.*

45. *Id.*

46. *Id.*

47. See generally *id.*