



6-2019

Skinning the Cat: How Mandatory Psychiatric Evaluations for Animal Cruelty Offenders Can Prevent Future Violence

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Recommended Citation

Ashley Kunz, *Skinning the Cat: How Mandatory Psychiatric Evaluations for Animal Cruelty Offenders Can Prevent Future Violence*, 21 THE SCHOLAR 167 (2019).

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**SKINNING THE CAT:
HOW MANDATORY PSYCHIATRIC EVALUATIONS
FOR ANIMAL CRUELTY OFFENDERS
CAN PREVENT FUTURE VIOLENCE**

ASHLEY KUNZ*

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INTRODUCTION

*Compassion for animals is intimately connected with
goodness of character, and it may be confidently asserted that he,
who is cruel to living creatures, cannot be a good man.*

—Arthur Schopenhauer¹

In 2012, an undercover cybercrimes investigator for People for the Ethical Treatment of Animals (PETA) discovered a Houston-based producer of crush videos.² Crush videos typically involve a seductively dressed female engaging in sexual acts while torturing small animals until their inevitable death.³ Ashley Richards, the woman featured in the Houston videos, would cut, maim, behead, and disembowel animals, including crustaceans, fish, chickens, rabbits, cats, and a puppy, before sometimes urinating on them for the camera.⁴ Clients requested custom videos from Richards, which producer Brent Justice filmed, promoted,

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1. ARTHUR SCHOPENHAUER, ON THE BASIS OF MORALITY 223 (Arthur Brodrick Bullock trans., Swan Sonnenschein & Co., Ltd. 1903) (1840).

2. State's Appellate Brief at 2-4, Justice v. State, 532 S.W.3d 862 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (No. 14-16-00153-CR), 2017 WL 2662531; *see also* Justice v. State, 532 S.W.3d 862, 864 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

3. Justice v. State, 532 S.W.3d 862, 863-64 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

4. *Id.* at 864.

and sold online.⁵ Justice even facilitated live sessions for some clients.⁶ Richards experienced sexual abuse from childhood to her teenage years which, according to psychiatric research, made her more likely to torture animals.⁷ The maximum punishment Richards and Justice could receive for their crimes if charged under the relevant animal cruelty laws at the time of sentencing without enhancing allegations, were a \$10,000 fine and two years in jail.⁸

In May of 2016, a three-month-old puppy adopted from an Austin no-kill animal shelter was found floating in a bathtub full of water after his owner, Joshua Fortier, force-fed him rubbing alcohol.⁹ Prior to the killing, Fortier ingested a myriad of psychoactive drugs.¹⁰ Fortier surrendered to police who committed him to a mental hospital for evaluation, prior to his arrest, pursuant to a Peace Officer Emergency Detention.¹¹ The mental hospital released Fortier ten days later after it determined he longer posed a risk to himself or others.¹² A Travis

5. *Id.*; see also Craig Malisow, *What We Learned from the Crush Video Trial*, HOUS. PRESS, (Feb. 15, 2016, 6:00 AM), <http://www.houstonpress.com/news/what-we-learned-from-the-crush-video-trial-updated-8158284> [<https://perma.cc/R7GN-9DYU>].

6. *Justice*, 532 S.W.3d at 864.

7. Compare Malisow, *supra* note 5 (reporting that Richards' mother was a sex worker with a substance abuse disorder, whose clients molested Richards, and after failing to receive support from social services, Richards fled home and became a sex worker, where she eventually met Justice), with Lacey Levitt, *Understanding Animal Cruelty and Sexual Abuse*, in *ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS* 97-98, 117, 122-23 (Lacey Levitt et al. eds., 2016) (analyzing the connection between childhood abuse and future violent behavior).

8. See TEX. PENAL CODE ANN. § 42.092(b)(1), (c-1) (West 2007) (explaining intentionally, knowingly, or recklessly torturing, killing, or causing serious bodily injury to an animal constitutes cruelty to nonlivestock animals, which is punishable as a state jail felony); see also TEX. PENAL CODE ANN. § 12.35 (West 2017) (listing the maximum punishments for conviction of a state jail felony). See Criminal Records for Brent Justice (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (showing convictions on two counts of "Cruelty to Non-Livestock Animals with Enhancements," both third degree felonies). See Criminal Records for Ashley Richards (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (showing convictions on two counts of "Cruelty to Animals," both state jail felonies).

9. *Warrant Issued for Austin Man Accused of Animal Cruelty*, FOX 7 AUSTIN, <http://www.fox7austin.com/news/local-news/warrant-issued-for-austin-man-accused-of-cruelty-to-animals#/> [<https://perma.cc/DHN7-4JYJ>] (last updated Aug. 2, 2016, 9:40 PM).

10. *Id.*

11. *Id.*

12. *Id.*

County District Court ultimately convicted Fortier of animal torture and sentenced him to four years' probation.¹³

The historically insignificant punishment considering the crime makes these sickening cases even more disturbing.¹⁴ A 2017 amendment to the Texas Penal Code elevated the offense of animal torture from a state jail felony to a third degree felony.¹⁵ While Texas animal cruelty laws are relatively progressive compared to about half of other states, they are still insufficient.¹⁶ The relationship between animal abuse and violence toward people necessitates greater punishment for animal cruelty crimes.¹⁷ But imprisonment alone does not always address the root of the issue.¹⁸ A person engaging in animal abuse—whether through

13. See TEX. PENAL CODE ANN. § 42.092(b)(1), (c-1) (West 2007) (defining an offense of cruelty to nonlivestock animals as a state jail felony); TEX. PENAL CODE ANN. § 12.35 (West 2017) (listing the punishment for conviction of a state jail felony). See Criminal Records for Joshua Fortier (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (showing a conviction on one count of “Cruelty to Non-Livestock Animals: Torture,” a state jail felony).

14. See, e.g., TEX. PENAL CODE ANN. § 12.21 (West 1985) (listing the maximum punishment of a Class A misdemeanor as a fine of up to \$4,000 and up to one year in jail); TEX. PENAL CODE ANN. § 42.11 (West 1974) (amended 2017) (classifying animal abuse as a Class A misdemeanor, regardless of the act's severity); see also, e.g., Randall Lockwood, *Animal Cruelty and Societal Violence: A Brief Look Back from the Front*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 3 (Frank R. Ascione et al. eds., 1999) (“Quite simply, animal abuse was not taken seriously as a significant problem in itself or as an indicator or predictor of the potential for other violence by the perpetrators of animal cruelty. [In the 1980s] serious animal cruelty cases were rarely being prosecuted, or were resulting in minimal punishment.”)

15. TEX. PENAL CODE ANN. §§ 42.092(b)(1), (c-1) (West 2017); see TEX. PENAL CODE ANN. § 12.34 (listing the maximum punishment of a third degree felony as being punishable by ten years imprisonment and a \$10,000 fine); see also S. Comm. on Crim. Juris., Bill Analysis, Tex. S.B. 762, 85th Leg., R.S. (2017) (establishing a simplified framework for existing penalty enhancement and stating that punishment before the bill was inadequate with overly complicated felony degree heightening mechanisms).

16. See 2017 U.S. Animal Protection Laws Rankings, ANIMAL LEGAL DEF. FUND 8-16 (2018), http://aldf.org/wp-content/uploads/2018/01/Rankings-Report-2017_FINAL.pdf [<https://perma.cc/L2XD-Q558>] (ranking Texas twenty-ninth out of the fifty-six states and territories, with the top five states—Illinois, Oregon, California, Maine, and Rhode Island—all requiring mental health evaluations and/or counseling to accompany animal cruelty convictions, among other things).

17. See Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963, 968-69, 973 (1999) (“People who commit a single known act of animal abuse . . . are more likely to commit other criminal offenses . . . including but not limited to violence . . .”).

18. See BRIAN D. SHANNON & DANIEL H. BENSON, TEXAS CRIMINAL PROCEDURE AND THE OFFENDER WITH MENTAL ILLNESS: AN ANALYSIS AND GUIDE 7-11 (5th ed. 2016) (showing an extraordinary number of inmates in Texas jails and prisons suffer from mental illness and rarely

physical torture, hoarding, or bestiality—is not conforming to societal norms of decency.¹⁹ Frequently, these offenders suffer from severe underlying mental illnesses.²⁰ Although potentially sufficient for people like Brent Justice who show no signs of mental illness, prison time can make people like Ashley Richards and Joshua Fortier even more dangerous.²¹ Jails and prisons, “asylums of the new millennium,” often lack the resources to beneficially deal with the conditions of such individuals.²² Further, treating mentally ill inmates costs considerably more than caring for other inmates.²³

receive adequate treatment while incarcerated, adding that incarceration often exacerbates mental illness, and, after completing their sentences, inmates are released still subject to the illnesses that led to their incarceration); *see also* Jennifer L. Skeem et al., *Correctional Policy for Offenders with Mental Illness: Creating a New Paradigm for Recidivism Reduction*, 35 LAW & HUM. BEHAV. 110, 110 (2010) (“Individuals with mental illness are not only disproportionately represented in the criminal justice system; they also are disproportionately likely to fail under correctional supervision.”).

19. *See* Gary Patronek, *Animal Maltreatment as a Social Problem*, in ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS 12-21 (Lacey Levitt et al. eds., 2016) (detailing the evolution of social attitudes towards animals, wherein formal animal protection activities were born of the idea that animals occupied an important place in society—as valuable property, as family members, or as sentient creatures).

20. *See, e.g.*, Catherine R. Ayers et al., *Social Responses to Animal Maltreatment Offenders: Neglect and Hoarding*, in ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS 239 (Lacey Levitt et al. eds., 2016) (“Those who fail to provide care to their animals may be impacted by a variety of psychiatric conditions,” including hoarding disorder, lack of empathetic capacity due to mental illness or neurodegenerative disease, substance abuse disorder, depression, compulsive behavior, and antisocial personality disorder.).

21. SHANNON & BENSON, *supra* note 18, at 16 (discussing the fact that some individuals with serious mental illness can become dangerous without proper treatment).

22. SHANNON & BENSON, *supra* note 18, at 8 (quoting the Honorable Steven Leifman who elaborates, “In 200 years, we have come full circle, and today our jails are once again psychiatric warehouses. To be fair, it’s not honest to call them psychiatric institutions because we do not provide treatment very well in these settings.”); *see, e.g.*, Marshall T. Bewley & Robert D. Morgan, *A National Survey of Mental Health Services Available to Offenders with Mental Illness: Who Is Doing What?*, 35 LAW & HUM. BEHAV. 351, 361 (2011) (noting that mental health professionals working at state correctional facilities were “dissatisfied with the funding they received for treatment programming for [offenders with mental illness]” and recommending a greater allocation of funding for specialized services); *see also* Robert J. Constantine et al., *The Impact of Mental Health Services on Arrests of Offenders with a Serious Mental Illness*, 36 LAW & HUM. BEHAV. 170, 170 (2012) (“inmates with [severe mental illnesses] generally receive inadequate mental health treatment while incarcerated and often cause significant management and financial problems for correctional facilities.”).

23. *See, e.g.*, HOGG FOUND. FOR MENTAL HEALTH, A GUIDE TO UNDERSTANDING MENTAL HEALTH SYSTEMS AND SERVICES IN TEXAS 272 (4th ed. 2018) http://hogg.utexas.edu/wp-content/uploads/2018/11/Mental-Health-Guide_4th-Edition.pdf

The goal of punishment for the mentally ill should be preventing recidivism.²⁴ Because of the relationship between animal cruelty and mental illness, and due to the likelihood that mentally ill inmates will not receive the care that they need because their illnesses may go unnoticed and untreated, the Texas legislature must require mandatory psychiatric evaluations for all individuals convicted of animal cruelty.²⁵ The evaluations will ensure that these individuals get the treatment that they need, which can prevent subsequent escalating acts of violence and recidivism.²⁶ Ultimately, subjecting animal abusers to mandatory psychiatric evaluations will better protect both people and animals from wanton acts of senseless brutality.²⁷

[<https://perma.cc/GQ5B-FDWV>] (“In FY 2016, the average cost of incarcerating an individual in a state facility was \$61.63 per day . . . the average daily cost in a psychiatric correctional facility is \$160 per person.”).

24. See Richard Rogers & Christopher D. Webster, *Assessing Treatability in Mentally Disordered Offenders*, 13 LAW & HUM. BEHAV. 19, 20-21, 23 (1989) (“[T]he preeminent goal of forensic clinicians is maintenance and possible reduction of recidivism[.]” further explaining that the public policy behind this goal is “community safety”); see also Brian Case et al., *Who Succeeds in Jail Diversion Programs for Persons with Mental Illness? A Multi-Site Study*, 27 BEHAV. SCI. & L. 661, 671 (2009) (“[A]s long as communities and public officials support jail diversion programs because of their public safety benefits and reduced criminal justice costs, it is important to recognize these as a discrete set of goals from improved mental health outcomes which require interventions that have empirical connections to them.”).

25. See generally Rogers & Webster, *supra* note 24, at 20 (advocating for psychologist involvement in the pretrial, presentence, and punishment phases).

26. See, e.g., John Robst, *Disposition of Charges, Out-of-Home Mental Health Treatment, and Juvenile Justice Recidivism*, 61 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 1195, 1205 (2017) (explaining that juvenile offenders who receive out-of-home mental illness treatment have the lowest recidivism rates, further noting those receiving any mental health treatment, rather than probation alone, were less likely to reoffend); see also, e.g., Björk Tabita et al., *Criminal Recidivism and Mortality Among Patients Discharged from a Forensic Medium Secure Hospital*, 66 NORDIC J. PSYCHIATRY 283, 283-84, 288 (2012) (finding a connection between recidivism rates among mentally ill offenders and substance abuse, concluding that psychiatric treatment leads to a decrease in the likelihood that a mentally ill offender will commit subsequent offenses).

27. See, e.g., Peggy Heil & Dominique Simons, *Multiple Paraphilias: Prevalence, Etiology, Assessment, and Treatment*, in SEXUAL DEVIANCE: THEORY, ASSESSMENT, AND TREATMENT 543 (D. Richard Laws & William T. O’Donohue eds., 2nd ed. 2008) (explaining that treatment targeting the root causes of sexually deviant behavior and structured to prevent termination prior to completion is effective in decreasing recidivism); see also, e.g., Tabita et al., *supra* note 26, at 288 (finding a reduced risk of recidivism after treatment); see also, e.g., Charles M. Borduin et al., *Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality & Violence*, 63 J. CONSULTING & CLINICAL PSYCHOL. 569, 576-77 (1995) (finding specialized therapy for juvenile offenders who showed antisocial personality traits effectively prevented violent recidivism).

I. PROGRESS AND PROBLEMS WITHIN TEXAS
ANIMAL CRUELTY LEGISLATION

A. *Pre-2001: Animal Cruelty Offenses are Misdemeanors at Most*

Texas first adopted an animal cruelty law in 1858 during the early days of its statehood.²⁸ The law went through multiple changes during the first seventy years of its existence, but in sum, cruelty towards “every living dumb creature” was punishable by no more than a maximum fine ranging from \$100 to \$250.²⁹ In 1973, the Texas legislature codified the existing statutory laws into the Penal Code.³⁰ The 1973 Penal Code narrowed the definition of “animal” to “domesticated living creatures and captured wild animals,” lessened the abandonment charge from “cruelly abandoned” to “abandons unreasonably,” changed “unnecessarily fails to provide . . . with food” to “fails unreasonably to provide necessary food, care, or shelter,” and increased the punishment from a \$200 fine to a Class A misdemeanor.³¹ Regardless of whether the offender starved or tortured the animal, or whether this was a first offense or a fourth offense, the maximum punishment did not exceed one year in jail and a fine of up to \$2,000.³² In 1997, the legislature amended the statute to increase the charge of cruelty to a state jail felony if the offender had at least two prior convictions for animal cruelty.³³

28. Act approved Feb. 12, 1858, 7th Leg., ch. 121, art. 713, 1858 Tex. Gen. Laws 156, 178, reprinted in 4 H.P.N. Gammel, *The Laws of Texas 1822-1897*, at 1028, 1050 (Austin, Gammel Book Co. 1898).

29. Jeremy Masten, Comment, *Don't Feed the Animals: Queso's Law and How the Texas Legislature Abandoned Stray Animals*, 60 BAYLOR L. REV. 964, 970 (2008).

30. Acts 1973, 63d Leg., R.S., ch. 399, § 1, 1973 Tex. Gen. Laws 883, 883 (amended 1994) (current version at TEX. PENAL CODE § 1.01).

31. Compare 1925 TEX. CRIM. STAT. 1374-76, repealed by An Act Reforming the Penal Law, 63d Leg., R.S., ch. 399, § 1, sec. 42.11, 1973 Tex. Gen. Laws 883, 957-58 (codifying “Cruelty to Animals,” “Cruelty to Impounded Animals,” and “Cruelty to Fowls and Poultry” separately), with An Act Reforming the Penal Law, 63d Leg., R.S., ch. 399, § 1, sec. 42.11, 1973 Tex. Gen. Laws 883, 957-58 (codified at TEX. PENAL CODE § 42.11) (current version at TEX. PENAL CODE ANN. § 42.092) (repealing the previous 1925 Penal Code animal cruelty statutes and creating a new cruelty statute for all animals).

32. TEX. PENAL CODE ANN. § 42.11 (West 1973) (amended 2017) (current version at TEX. PENAL CODE § 42.092); see TEX. PENAL CODE ANN. § 12.21 (West 1974) (amended 1994) (raising the fine from \$2,000 to \$3,000 in 1991 and to \$4,000 in 1994).

33. Act of June 20, 1997, 75th Leg., R.S., ch. 1283, § 2, sec. 1, 1997 Tex. Gen. Laws 4906 (codified at TEX. PENAL CODE § 42.092(d)) (current version at TEX. PENAL CODE § 42.092).

While the law lacked facial strength, courts still worked to convict abusers.³⁴ In one case of animal cruelty, a prosecutor pressed for felony theft charges instead of animal cruelty, as theft carried a harsher penalty.³⁵ Despite the law's advances, animal abusers still slipped through its cracks.³⁶ But in 2001, a tragic case of mutilation jumpstarted the reform of animal law in Texas.³⁷

B. The Plights of Loco and Queso Serve as Catalysts for Animal Law Reform in Texas

A small puppy named Loco disappeared from his Dallas home in 2001, only to return a few days later with his eyes gouged out.³⁸ Despite the brutal attack, little Loco survived and served as the inspiration for "Loco's Law."³⁹ This law classified certain acts of animal cruelty as state jail felony offenses and mandated counseling for juvenile offenders.⁴⁰

Although the provision of mandatory psychological evaluations for juveniles convicted of animal cruelty was relatively progressive for its

34. See, e.g., *Martinez v. State*, 48 S.W.3d 273, 276 (Tex. App.—San Antonio 2001, pet. ref'd) (finding sufficient evidence to infer a culpable mental state to support a charge of animal cruelty where the defendant failed to give a dog adequate medical treatment, necessitating euthanasia due to the severity of its infections); see also, e.g., *McDonald v. State*, 64 S.W.3d 86, 88-89 (Tex. App.—Austin 2001, no pet.) (finding the defendant exercised sufficient custody of an animal for an animal cruelty conviction when he found a puppy in his car and abandoned it on the side of the road instead of calling authorities or relinquishing it to a shelter).

35. House Comm. on Crim. Juris., Bill Analysis, Tex. H.B. 653, 77th Leg., R.S. (2001).

36. House Comm. on Crim. Juris., Bill Analysis, Tex. H.B. 2328, 80th Leg., R.S. (2007).

37. *Texas Animal Cruelty Laws*, SPCA TEX., <https://www.spcatexas.org/law> [<https://perma.cc/59YG-F7E4>].

38. See *Animal Cruelty—A Serious Criminal Offense in Texas*, HILL COUNTY PAW PALS, <http://www.hcpawpals.org/news61.aspx> [<https://perma.cc/3XEW-FM97>] (stating that after Loco's return, his owners "rushed him to their veterinarian and learned that someone had used a pen or pencil and gouged out both of its eyes resulting in permanent blindness").

39. SPCA TEX., *supra* note 37.

40. Act effective Sept. 1, 2001, 77th Leg., R.S., ch. 450, § 1, sec. 1, 2001 Tex. Gen. Laws 887, 887-88 (codified at TEX. PENAL CODE § 42.09) (amended 2017) (stating offenses involving animal torture, killing, poisoning, or seriously injuring an animal without legal authority, forcing animals to fight with each other, use of a live animal as a lure in a dog race, or tripping a horse are now considered state jail felonies, becoming a third degree felony if the offender has two prior convictions. Prior to Loco's Law, each of these offenses would be considered a Class A misdemeanor without prior convictions.); Act effective Sept. 1, 2001, 77th Leg., R.S., ch. 450, § 1, sec. 2, 2001 Tex. Gen. Laws 887, 887-88 (codified at TEX. FAM. CODE § 54.0407) (amended 2017) (requiring psychiatric counselling for juveniles convicted of cruelty to animals).

time, the exceedingly narrow scope of Loco's Law only covered certain animals and failed to include types of cruelty like the deprivation of water.⁴¹ As a result, these loopholes left some abusers completely untouched by the law; including one who drowned shelter dogs trapped in crates in sewers, another who left staked dogs to starve to death, and another who burned feral cats alive.⁴² Abusers escaped punishment for such abhorrent crimes because the law's protection did not include stray or feral domesticated animals (such as cats or dogs) in the definition of "animal."⁴³

A case involving a stray cat named "Queso" exemplified this flaw.⁴⁴ Two baseball players from Baylor University named Derek Brehm and Clint Bowers found Queso at a Taco Cabana and shot her with a pellet gun, which killed her.⁴⁵ Then, they bludgeoned her with a golf club, beheaded her, and skinned her head.⁴⁶ The court held that, while Taco Cabana employees saw Queso as a pet, she was not vaccinated against rabies (a Waco city requirement for pets), and the police report called her a stray, therefore Queso was not a pet protected under the law.⁴⁷

Texas House Bill H.B. 2328, also known as "Queso's Law," attempted to rectify some of the shortcomings of Loco's Law.⁴⁸ It reduced the requisite mental state to recklessness, changed the definition of "animal" to include stray cats and dogs, and listed water as a requirement for the

41. H.B. 653, 77th Leg., Reg. Sess. (Tex. 2001) (current version at TEX. PENAL CODE § 42.092) (excluding "uncaptured wild creature[s]" and "wild creature[s]" captured by the statute's enumerated criminal means, and requiring only the reasonable provision of food, care, and shelter for animals within a person's custody).

42. House Comm. on Crim. Juris., Bill Analysis, Tex. H.B. 2328, 80th Leg., R.S. (2007).

43. H.B. 653, 77th Leg., Reg. Sess. (Tex. 2001) (current version at TEX. PENAL CODE § 42.092). See, e.g., Stephen Dove, *Jury Finds Baseball Player 'Not Guilty' of Cruelty to Animals*, BAYLOR LARIAT (Mar. 20, 2002), <https://www.baylor.edu/lariatarchives/news.php?action=story&story=17759> [<https://perma.cc/5JLU-F7TH>] (reporting on the acquittal of a Baylor student who killed a feral cat and mutilated its corpse).

44. See Brandi Dean, *Opening Statements, First Witnesses Mark Start of Trial for Derek Brehm*, BAYLOR LARIAT (Mar. 19, 2002), <https://www.baylor.edu/lariatarchives/news.php?action=story&story=17753> [<https://perma.cc/X6DJ-BC8R>] (detailing the testimony of Theresa Jones, a Taco Cabana employee, who described the relationship she established with the cat, Queso, and the love she felt for the animal in the trial against one of the Baylor students accused of animal cruelty).

45. Dove, *supra* note 43.

46. *Id.*

47. Dean, *supra* note 44.

48. Masten, *supra* note 29, at 966.

necessary care of an animal.⁴⁹ Loco's Law required prosecutors to prove that Brehm and Bowers intentionally caused cruelty to Queso when they shot her in the face and beat her to make sure she was dead.⁵⁰ Under Queso's Law, merely intending to shoot the cat could secure a cruelty conviction because shooting the cat would create a substantial, unjustifiable risk of killing the cat.⁵¹

C. The 2017 Amendments to the Animal Cruelty Statute in the Texas Penal Code

The 2017 amendments to the animal cruelty statute increased the minimum punishment for certain acts and distinguished between extreme and less severe acts of cruelty.⁵² The law's current incarnation makes torturing, killing, or seriously injuring an animal a third degree felony, punishable by two to ten years imprisonment and a possible maximum fine of \$10,000.⁵³ Forcing animals, other than dogs, to fight with each other or using a live animal as a lure on a dog racing track is a state jail felony, punishable by 180-days to two years in jail with a potential maximum \$10,000 fine.⁵⁴ All other listed offenses still carry a Class A misdemeanor charge, punishable up to one year in jail, a maximum fine of \$4,000, or both.⁵⁵

The Texas legislature also expanded the scope of sexual offenses upon animals covered by the animal cruelty statute.⁵⁶ Prior to the 2017

49. Act of June 15, 2007, 80th Leg., R.S., ch. 886 § 2, sec. 42.092, 2007 Tex. Gen. Laws 2163, 2165-66 (amended 2017) (current version at TEX. PENAL CODE § 42.092).

50. TEX. PENAL CODE ANN. § 42.092(a) (West 2001) (amended 2017); Dove, *supra* note 43.

51. Act of June 15, 2007, 80th Leg., R.S., ch. 886 § 2, sec. 42.092, 2007 Tex. Gen. Laws 2163, 2165-66 (amended 2017) (current version at TEX. PENAL CODE § 42.092) (stating a person commits an offense of animal cruelty if they intentionally, knowingly, or recklessly act in contravention of the statute).

52. S. Comm. on Crim. Just., Bill Analysis, Tex. S.B. 1232, 85th Leg., R.S. (2017) (indicating the punishment section of § 42.092 should include more specific punishments for different instances of violation of the law).

53. TEX. PENAL CODE ANN. §§ 12.34, 42.092 (West 2017).

54. TEX. PENAL CODE ANN. §§ 12.35, 42.092 (West 2017).

55. TEX. PENAL CODE ANN. §§ 12.21, 42.092 (West 2017) (continuing to include failure to provide necessary care while in custody, abandonment, transportation or confinement of an animal in a cruel manner, non-severe bodily injury, or serious overworking as a Class A misdemeanor with the maximum of such an offense set at one year in jail and a fine of \$4,000).

56. Act of June 12, 2017, 85th Leg., R.S., ch. 739, § 2, sec. 21.09, 2017 Tex. Gen. Laws 3157 (codified at TEX. PENAL CODE § 21.09) (adding a separate offense for bestiality).

amendment, bestiality lacked a technical definition and fell under public lewdness as a Class A misdemeanor.⁵⁷ Prosecuting sexual contact between a person and an animal required the offender to knowingly commit the act in public or do so with reckless disregard for the presence of another person.⁵⁸ The amendment adds a stand-alone bestiality provision which subjects a wider range of conduct to its purview, and it punishes bestiality at maximum as a state jail felony.⁵⁹ Notably, if the animal experienced “serious bodily injury or death” during the commission of the act, the perpetrator is charged with a second degree felony.⁶⁰

Additionally, judges in Texas have discretion to grant community supervision or require attendance in a responsible pet owner course for a person convicted of cruelty to animals, dog fighting, or attack on an assistant animal.⁶¹ It is unfortunate that so many animals need to suffer for Texas to change its laws, but when prompted, the legislature consistently acts to bring more animal abusers to justice. While Texas is making significant progress toward ending animal cruelty, it still lags behind some states in this pursuit.⁶²

D. Other States' Efforts to End Animal Cruelty

1. Illinois

Illinois’s “Humane Care for Animals Act” provides judges with discretionary authority to order psychological or psychiatric evaluations and treatment for individuals convicted of violations of statutorily defined owner’s duties, cruel treatment, and aggravated cruelty.⁶³ Judges in Illinois must order psychological or psychiatric evaluations and treatment for juveniles and companion animal hoarders convicted of

57. S. Comm. on Crim. Just., Bill Analysis, Tex. S.B. 1232, 85th Leg., R.S. (2017).

58. TEX. PENAL CODE ANN. § 21.07 (West 1994) (amended 2017) (current version at TEX. PENAL CODE § 21.09).

59. TEX. PENAL CODE ANN. § 21.09 (West 2017) (including as offenses, along with sexual contact with animals, the promotion and observation of bestiality, the knowing possession or transfer of an animal with the intent to engage in sexual contact with the animal).

60. TEX. PENAL CODE ANN. § 21.09(b) (West 2017).

61. TEX. CODE CRIM. PROC. ANN. art. 42A.511 (West 2017).

62. ANIMAL LEGAL DEF. FUND *supra* note 16.

63. 510 ILL. COMP. STAT. ANN. 70/3-3.02 (West 2018).

these crimes.⁶⁴ They also must order psychological or psychiatric evaluations and treatment for all individuals convicted of animal torture.⁶⁵ They may order evaluation and treatment for individuals convicted under the “Depiction of Animal Cruelty” statute, but judges must order evaluation and treatment in juvenile cases under this statute.⁶⁶ The cost of treatment is at the convicted individual’s expense.⁶⁷

2. *Oregon*

Judges in Oregon may order individuals convicted of intentionally, knowingly, or recklessly causing physical injury to an animal, sexual assault of an animal, abandonment of an animal, or involvement in animal fighting to participate in animal cruelty prevention programs and/or education programs, or undergo “psychological counseling for treatment of mental health disorders that, in the court’s judgment, contributed to the commission of the crime.”⁶⁸ All of these sentencing options are at the expense of the convicted individual.⁶⁹ Additionally, Oregon judges have the discretion to require individuals convicted of these crimes to forfeit any rights in each animal victim and to pay the costs of care and treatment upon seizure by the state or a humane investigation agency.⁷⁰

3. *California*

In California, judges must order counseling “designed to evaluate and treat behavior or conduct disorders” that led to an individual’s conviction of the state’s “Cruelty to Animals” statute.⁷¹ The convicted individual undergoes the mandatory counseling during probation after imprisonment.⁷² The mandatory counseling is at the convicted individual’s expense unless they can prove a financial inability to pay.⁷³ Upon meeting this burden, the convicted individual either pays based on

64. *Id.*

65. 510 ILL. COMP. STAT. ANN. 70/3.03(West 2018).

66. 510 ILL. COMP. STAT. ANN. 70/3.03-1 (West 2018).

67. 510 ILL. COMP. STAT. ANN. 70/3-3.03-1 (West 2018).

68. OR. REV. STAT. ANN. § 167.350 (West 2017).

69. *Id.*

70. *Id.*

71. CAL. PENAL CODE § 597 (West 2018).

72. *Id.*

73. *Id.*

a sliding fee schedule, a deferred payment, or, at the very least, a nominal fee.⁷⁴

4. *The Animal Legal Defense Fund Prompts Kansas to Progress*

The Animal Legal Defense Fund (ALDF) once considered Kansas and Texas to be among the best states in which to abuse an animal, due to the states' weak animal protection laws.⁷⁵ After receiving the unsavory title, the Kansas legislature worked directly with ALDF⁷⁶ to overhaul their cruelty laws to include mandatory minimum sentences, mandatory psychological evaluations to assist the court in determining probation conditions which may include anger management programs, and discretionary confiscation of the animal victim.⁷⁷ ALDF now ranks Kansas nineteenth, positioning it in the top tier of states most protective of animals.⁷⁸

II. HALTING THE INTERSTATE TRADE OF ANIMAL TORTURE PORNOGRAPHY

A. *The United States has a Compelling Interest in Preventing the Creation, Distribution, and Possession of Animal Torture Films*

The U.S. has a “long history” of stopping the interstate sale of obscene material “integral to criminal conduct.”⁷⁹ In 1999, Congress amended

74. *Id.*

75. *See Best States to Abuse an Animal?*, THE ANIMALS' ADVOCATE, Summer 2006, at 1, <https://aldf.org/wp-content/uploads/2018/06/Animals-Advocate-Summer-2006.pdf> [<https://perma.cc/K864-9ZCX>] (indicating Texas, New Mexico, Oklahoma, Kansas, and four other states as having the worst animal cruelty laws, listing Hawaii as the “best state” in which to abuse an animal).

76. *See generally* Stephan K. Otto, *Model Animal Protection Laws*, ANIMAL LEGAL DEF. FUND (15th ed. 2010), http://aldf.org/downloads/ALDF_Model_Laws_v15_0.pdf [<https://perma.cc/FR3K-37HP>] (detailing the ALDF's model animal cruelty statute that provides a comprehensive list of suggested definitions, defenses, pre- and post- conviction provisions (including community service, psychological evaluation, and forfeiture of animal victims), and other material to assist state legislators).

77. KAN. STAT. ANN. § 21-6412 (West 2018); THE ANIMALS' ADVOCATE, *supra* note 75.

78. ANIMAL LEGAL DEF. FUND, *supra* note 16, at 8.

79. Animal Crush Video Prohibition Act of 2010, Pub. L. 111-294, § 2, 124 Stat. 3177 (2010) (codified at 18 U.S.C. § 48 (2018)); *see, e.g.*, U.S. SENTENCING COMM'N., THE HISTORY OF THE CHILD PORNOGRAPHY GUIDELINES 8-9 (2009), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/sex-offenses/2009_1030_History_Child_Pornography_Guidelines.pdf [<https://perma.cc/5QER-RVPT>] (explaining

the United States Code to criminalize the knowing creation, sale, and possession of depictions of animal cruelty.⁸⁰ Violators of the amendment faced a maximum punishment of five years in federal prison, a fine, or both.⁸¹ The law successfully reduced the market for crush videos.⁸² However, in *United States v. Stevens*, the Supreme Court held the amendment criminalizing depictions of animal cruelty unconstitutionally overbroad.⁸³ While originally designed to attack the interstate market for animal crush videos, the statute ultimately applied to more than just crush videos, such as videos showing the use of dogs to hunt wild boar and legal Japanese dog fights.⁸⁴

In 2010, Congress again amended the United States Code to fix the problems of overbreadth.⁸⁵ Congress acknowledged both a compelling interest in the prevention of extreme acts of animal cruelty, and that the creation and sale of crush videos perpetuated the demand for such acts.⁸⁶

that legislators criminalized child pornography in 1977, and the laws evolved to increase penalties, expand definitions of what constitutes child pornography, and allow prosecution of those who trade illegal images, regardless of whether the offender was doing so for monetary gain).

80. Act of Dec. 9, 1999, Pub. L. 106-152, § 1(a), 113 Stat. 1732 (1999) (codified at 18 U.S.C. § 48 (2006)), *invalidated by* *United States v. Stevens*, 559 U.S. 460 (2010) (defining “depiction of animal cruelty” as “any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State[.]”).

81. 18 U.S.C. § 48 (2006), *invalidated by* *United States v. Stevens*, 559 U.S. 460 (2010).

82. See ABIGAIL PERDUE & RANDALL LOCKWOOD, ANIMAL CRUELTY AND FREEDOM OF SPEECH: WHEN WORLDS COLLIDE 188-89 (2014) (“According to the [Humane Society of the United States], at least some evidence indicates that Section 48 eliminated the financial incentive driving crush videos...[a] crush filmmaker recently admitted that publicity about crush videos forced him out of the business of selling films via adult magazines.”).

83. *United States v. Stevens*, 559 U.S. 460, 482 (2010).

84. *Id.* at 462, 465-6 (stating the exceptions clause in 18 U.S.C. § 48 “simply has no adequate reading” that bans only the depictions intended).

85. Animal Crush Video Prohibition Act of 2010, Pub. L. 111-294, § 2(5), 124 Stat. 3177 (2010) (codified at 18 U.S.C. § 48).

86. Animal Crush Video Prohibition Act of 2010, Pub. L. 111-294, § 2(2), (8) 124 Stat. 3177 (2010) (codified at 18 U.S.C. § 48 (2018)); see Brief for The American Society for the Prevention of Cruelty to Animals as Amicus Curiae Supporting Petitioner at 9 n.14, *United States v. Stevens*, 559 U.S. 460 (2010) (No. 08-769) (explaining the demand creates a lucrative business because a single video can sell from \$40 to \$300, recalling an incident where one distributor had \$3,349 in pending orders at the time of arrest) [hereinafter ASPCA Amicus Brief]; see also *Houston “Crush” Cases Were First Under Federal Statute*, FBI (Sept. 29, 2016), <https://www.fbi.gov>.

Crush videos generate an estimated annual revenue of \$1 million.⁸⁷ Congress's strategy to eliminate animal crush videos by criminalizing their commerce is similar to its strategy to eliminate child pornography,⁸⁸ however, the current "animal crush videos" statute fails to criminalize the mere possession of animal crush pornography.⁸⁹ Following the logic of *Osborne v. Ohio*, if we truly wish "to stamp out this vice at all levels in the distribution chain," Congress should add a prohibition to criminalize the possession of animal crush pornography.⁹⁰

gov/news/stories/houston-animal-crush-cases-were-first-under-federal-statute [https://perma.cc/FGY8-48A9] (revealing e-mail correspondence between Ashley Richards and a customer negotiating the production of a "kitten slaughter video" stating Richards would charge between \$200 and \$350 for such a video).

87. ASPCA Amicus Brief, *supra* note 86.

88. *Compare* *New York v. Ferber*, 458 U.S. 747, 759 (1982) ("The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children . . . the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled."), *with* Animal Crush Video Prohibition Act of 2010, Pub. L. 111-294, § 2(7)-(8), 124 Stat. 3177 (2010) (codified at 18 U.S.C. § 48 (2018)) ("Serious criminal acts of extreme animal cruelty are integral to the creation, sale, distribution, advertising, marketing, and exchange of animal crush videos . . . [t]he creation, sale, distribution, advertising, marketing, and exchange of animal crush videos is intrinsically related and integral to creating an incentive for, directly causing, and perpetuating demand for the serious acts of extreme animal cruelty the videos depict. The primary reason for those criminal acts is the creation, sale, distribution, advertising, marketing, and exchange of the animal crush video image.").

89. *See* 18 U.S.C. § 48 (2018) (prohibiting only "knowingly creat[ing] an animal crush video" and "knowingly sell[ing], market[ing], advertis[ing], exchang[ing], or distribut[ing] an animal crush video"); *see also* Preventing Animal Cruelty and Torture Act, S. 654, 115th Cong. § 2(a) (1st Sess. 2017) (attempting to add an offense of "[c]rushing" separate from the "[c]reation of animal crush videos," but not an offense for the possession of an animal crush video).

90. *See* *Osborne v. Ohio*, 495 U.S. 103, 110 (1990) (upholding the constitutionality of an Ohio statute criminalizing possession of child pornography, stating that since *Ferber* "much of the child pornography market has been driven underground; as a result, it is difficult, if not impossible, to solve the child pornography problem by only attacking production and distribution."). *But see* Carissa Byrne Hessick, *Disentangling Child Pornography from Child Sex Abuse*, 88 WASH. U. L. REV. 853, 860, 864-65, 886-87 (2011) (warning that sentencing practices that equate the "purely derivative" harm of child pornography possession with the physical harm of "child sex abuse 'contact offenses'" in an overall effort to "combat[] child sex abuse may promote misperceptions about who commits child sex abuse and misperceptions about the effectiveness of current policing and prosecution efforts directed at that abuse. These misperceptions may, in turn, negatively affect society's ability to prevent and punish child sex abuse.").

B. Non-Governmental Organizations and Law Enforcement Agencies Should Use Non-Distributive Techniques to Catch Producers and Possessors of Animal Torture Videos

While few will argue against pursuing those profiting from the violent sexual exploitation of the most helpless living beings, there are still major debates regarding the lawful capture of those who sustain this cycle of violence.⁹¹ Increasingly, law enforcement agencies and non-governmental organizations use techniques such as artificial intelligence programs and “honeypots” to lure in pedophiles in the growing anonymity of the “Dark Web”.⁹² The techniques raise various legal

91. See Zoe Russell, Comment, *First They Came for the Child Pornographers*, 49 ST. MARY'S L.J. 269, 302-05, 312-15 (2017) (documenting legal challenges to the federal government's use of extraterritorial search warrants in the “Playpen takeover,” highlighting attempts to balance individual privacy and the need to deter police misconduct with the government's need to prosecute purveyors and possessors of child pornography in an increasingly anonymous and seemingly “warrant-proof” space, ultimately concluding courts' deference to prosecutorial pursuits to eliminate child pornography and a corresponding change in the Federal Rules of Criminal Procedure “watered down the need for probable cause” in *all* federal criminal investigations); see also BART W. SCHERMER ET AL., LEGAL ASPECTS OF SWEETIE 2.0, at 10, 83-84 (2016), https://pure.uvt.nl/portal/files/13318907/Sweetie20_report_final_20161003.pdf [<https://perma.cc/QL35-QSNG>] (analyzing the legality in twenty countries (including the United States) of the use of a “fully autonomous artificial[ly] intelligen[t]” “chatbot” with an accompanying non-pornographic virtual visual representation simulating a child as an investigative tool in combating “webcam sex tourism,” noting a variance among countries in prosecuting cases based on evidence from a “chatbot;” some (including the United States) basing criminal prosecution on the suspect's subjective intent, others (the Netherlands) only prosecuting cases based on interactions with a real person).

92. See SCHERMER ET AL., *supra* note 91, at 10 (artificial intelligence programs); see Margaret Rouse, *Definition: Honeypot*, SEARCHSECURITY, <http://searchsecurity.techtarget.com/definition/honey-pot> [<https://perma.cc/ZX2A-WGE3>] (last updated June 2016) (“A honeypot is a computer system [used] as a decoy to lure cyberattackers, and to detect . . . attempts to gain unauthorized access to information systems. . . . [I]t . . . simulate[s] the behavior of a real system that appears to be part of a network but is actually isolated and closely monitored.”); see also Nate Anderson, “*The Hidden Side of Your Soul*”: *How the FBI Uses the Web as a Child Porn Honeypot*, ARS TECHNICA (Apr. 23, 2012, 8:00 PM), <https://arstechnica.com/tech-policy/2012/04/the-hidden-side-of-your-soul-how-the-fbi-uses-the-web-as-a-child-porn-honeypot/> [<https://perma.cc/A3QN-TFZR>] (reporting on the use of a honeypot in the apprehension of an individual who frequented child pornography websites, “[T]housands of miles away, deep in the belly of a data center, his online visit had tripped a silent alarm. That click on the ‘download’ button had logged his IP address, the video file he attempted to view, and the number of times he tried to watch site videos. . . . [T]he FBI ran the site.”); see Andy Greenberg, *Hacker Lexicon: What is the Dark Web?*, WIRED (Nov. 19, 2014, 7:15 AM), <https://www.wired.com/2014/11/hacker-lexicon-whats-dark-web/> [<https://perma.cc/A2EP-MXNC>] (“[T]he Dark Web is a collection of websites that are publicly visible, yet hide the IP addresses of the servers that run them.”).

issues.⁹³ A 2015 investigation by the Federal Bureau of Investigation (FBI) typifies these issues.

“Operation Pacifier” shut down a popular child pornography distributing website, copied its data, and restarted the site under the name “Playpen” from a government-controlled server.⁹⁴ As a result of their attempt to catch pedophiles, the FBI became one of the largest distributors of child pornography on the internet.⁹⁵ While the campaign succeeded,⁹⁶ critics argued the FBI furthered the propagation of child pornography by optimizing access to the Playpen website.⁹⁷ Prior to this

93. See, e.g., *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 239-40, 249-50 (2002) (distinguishing *New York v. Ferber* “[w]here the images are themselves the product of child sexual abuse,” from the virtual child pornography at issue in *Ashcroft v. Free Speech Coalition*, “[T]he [Child Pornography Prevention Act of 1996] prohibits speech that records no crime and creates no victims by its production. Virtual child pornography is not ‘intrinsically related’ to the sexual abuse of children[.]”); compare *Jacobson v. United States*, 503 U.S. 540, 548-49 (1992) (“[T]he fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises.’ . . . In their zeal to enforce the law, however, Government agents may not originate a criminal design, implant in an innocent person’s mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. . . . Where the Government has induced an individual to break the law and the defense of entrapment is at issue . . . the prosecution must prove beyond a reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents[.]” quoting partially from *Sorrells v. United States*, 287 U.S. 435, 441 (1932)), with *Anderson*, *supra* note 92 (detailing an FBI/ICE investigation that traced users of Yahoo and PayPal to a child pornography website, the FBI then sent an unsolicited e-mail to these individuals providing a password to a website advertising child pornography, when individuals tried to access the website, the FBI traced their IP addresses to their homes where they were arrested).

94. Application for a Search Warrant at 13, 18, *In re Search of Computers that Access upf45jv3bziuctml.onion*, No. 1:15-SW-89 (E.D. Va. Feb. 20, 2015), https://www.eff.org/files/2016/08/25/nit_warrant.pdf [<https://perma.cc/JH5Q-6J9F>] (granting warrant authorizing the use of a network investigation technique on the computer server operating a Tor network child pornography website); see also Order Denying Defendant’s Motions to Suppress Evidence, *United States v. Michaud*, No. 3:15-cr-05351-RJB, 2016 WL 337263, at *1, *2 (W.D. Wash. Jan. 28, 2016) (describing the takeover) [hereinafter *Michaud Order*].

95. *Michaud Order*, *supra* note 94 at *1 (finding the FBI’s website “had over 200,000 registered member accounts and 1,500 daily visitors[.]”).

96. “*Playpen*” Creator Sentenced to 30 Years, FBI (May 5, 2017), <https://www.fbi.gov/news/stories/playpen-creator-sentenced-to-30-years> [<https://perma.cc/NM3A-XPk7>] (reporting over 350 arrests were made in the United States following Operation Pacifier).

97. Mike Carter, *FBI’s Massive Porn Sting Puts Internet Privacy in Crossfire*, SEATTLE TIMES (Nov. 15, 2016, 10:36 PM), <https://www.seattletimes.com/seattle-news/crime/fbis-massive-porn-sting-puts-internet-privacy-in-crossfire/> [<https://perma.cc/6V7B-G32N>] (quoting Mark Rumold, a senior staff attorney at the Electronic Frontier Foundation; Chris Soghoian, the principal technologist and a senior policy analyst with the American Civil Liberty Union’s Speech, Privacy,

operation, the FBI successfully caught pedophiles with honeypots that did not utilize pornographic materials.⁹⁸ Therefore, law enforcement agencies and non-governmental organizations should implement techniques that avoid the further distribution of illegal pornography to prevent the further exploitation of its victims.

III. THE IMPACT OF ANIMAL ABUSE ON SOCIETY

A. Addressing Animal Abuse by Juveniles

Intervention at an early stage in childhood development may prevent children from committing crimes against humans later in life.⁹⁹ Therefore, mandatory psychological evaluations for juveniles convicted of animal cruelty are crucial.¹⁰⁰ For instance, a 1999 South African study of 117 males convicted of violent and non-violent crimes found that 63.3% of the violent offenders had abused animals, compared to just 10.5% of non-violent inmates.¹⁰¹ Similarly, a 1977 study found that 36% of “assaultive females” engaged in cruelty to animals, versus 0% of

and Technology Project; and Colin Fieman, a federal public defender working the Operation Pacifier cases).

98. Anderson, *supra* note 92 (describing the FBI’s use of a fake website that did not contain child pornography to lure pedophiles and collect their information).

99. See generally BORIS CYRULNIK, *THE WHISPERING OF GHOSTS: TRAUMA AND RESILIENCE* 26 (Susan Fairfield trans., 2003) (“[W]e can’t say that a trauma gives rise to a characteristic form of damage, such as incest supposedly leading to prostitution or abuse leading to abuse. These tendencies appear only when nothing is done to help the injured person.”); see also PERDUE & LOCKWOOD, *supra* note 82, at 180 (“Famed anthropologist Margaret Mead once remarked, ‘one of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it.’ Animal cruelty may be the first serious offense for which a juvenile can be prosecuted, providing an opportunity to intervene at a pivotal stage in development that may prevent subsequent crimes against humans. Perhaps not surprisingly, because animal cruelty may be symptomatic of psychological disturbance or conduct disorders that could lead to other crimes, several states mandate psychological assessments of juveniles convicted of animal cruelty.”).

100. See, e.g., *State Animal Cruelty Chart*, HUMANE SOC’Y U.S. (2013), http://www.humanesociety.org/assets/pdfs/abuse/state_animal_cruelty_laws_13.pdf [https://perma.cc/H4BK-REGM] (showing that thirteen states and one territory require some form of mandatory evaluation or counseling, some of which is tailored to specific crimes or reserved for repeat offenders or juveniles).

101. Frank R. Ascione, Off. of Juv. Just. & Delinq. Prevention, *Animal Abuse and Youth Violence*, JUV. JUST. BULL., Sept. 2001, at 4, <https://permanent.access.gpo.gov/lps19782/www.ncjrs.org/pdffiles1/ojjdp/188677.pdf> [https://perma.cc/VW29-E56K].

“non-assaultive females.”¹⁰² Moreover, a juvenile animal abuser’s crimes may escalate in severity as they age.¹⁰³ As an example, a 1986 study of sixty-four convicted male sex offenders found that 47.6% of rapists and 27.9% of child molesters engaged in juvenile animal cruelty.¹⁰⁴ Another study from 2000 examined common risk factors demonstrated by students prior to engaging in school shootings, and found histories of animal cruelty in nearly half of the perpetrators.¹⁰⁵ The Texas legislature itself confirmed the correlation between violence against animals and violence against humans when they reduced the necessary mental state before enacting Loco’s Law.¹⁰⁶

Psychological and psychiatric counseling of children committing animal abuse may also help them heal from their own abuse.¹⁰⁷ Research suggests that, while females are less likely to engage in animal abuse, the likelihood increases if they experience domestic abuse or bullying.¹⁰⁸ A 1992 study found that children who were victims of sexual abuse were far more likely to act cruelly to animals.¹⁰⁹ Therefore, by requiring

102. Alan R. Felthous & Bernard Yudowitz, *Approaching a Comparative Typology of Assaultive Female Offenders*, in *CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE: READINGS IN RESEARCH AND APPLICATION* 278, 281 (Randall Lockwood & Frank R. Ascione eds., 2007).

103. See Levitt, *supra* note 7 (citing several studies indicating a probable link between juvenile animal abuse, particularly sexual animal abuse, and adult interpersonal violence and sexual abuse, particularly of children); see also PERDUE & LOCKWOOD, *supra* note 82, at 179 (noting that “many serial killers, rapists, and other violent criminals committed acts of cruelty during childhood”).

104. David Tingle et al., *Childhood and Adolescent Characteristics of Pedophiles and Rapists*, 9 *INT’L J.L. & PSYCHIATRY* 103, 113 (1986).

105. Stephanie Verlinden et al., *Risk Factors in School Shootings*, 20 *CLINICAL PSYCHOL. REV.* 3, 44 (2000) (synthesizing analyses of school shooters and behavioral indicators of propensities for violence); see also Ascione, *supra* note 101, at 1 (“The most well-documented example was the case of Luke Woodham who, in the April before his October 1997 murder of his mother and two schoolmates, tortured and killed his own pet dog[.]”).

106. House Comm. on Crim Juris., Bill Analysis, Tex. H.B. 653, 77th Leg., R.S. (2001) (stating the correlation justified a reduction in the necessary mens rea for convictions of animal cruelty from intentional or knowing conduct to criminal negligence).

107. See PERDUE & LOCKWOOD, *supra* note 82, at 178 (explaining that there is a strong causal link between childhood exposure to violence and aggressive behavior in minors).

108. See Rebecca L. Schwartz et al., *Psychological Profile of Male and Female Animal Abusers*, 27 *J. INTERPERSONAL VIOLENCE* 846, 847, 849-50, 855-57 (2012) (finding that 1.4% of female participants and 6% of male participants admitted to committing animal abuse and identifying a significantly higher frequency of “experiences with bullying behaviors” among female animal abusers).

109. Ascione, *supra* note 101, at 8-9.

mandatory psychological evaluations for those who subject animals to cruelty, the law is protecting both animals and humans by putting abusers on the path to recovery.¹¹⁰ For these provisions to be effective, however, the law must be contemplative of the causes of criminal acts in order to prevent those acts from occurring in the first place.

B. The Necessity of Mandatory Animal Abuse Reporting Requirements for Veterinarians

Veterinarians in nineteen states must report suspected animal abuse to the appropriate authorities.¹¹¹ Texas grants immunity from liability to veterinarians who report suspected cases of animal cruelty, but its statute lacks a mandatory reporting requirement.¹¹² By reporting suspected cases of animal cruelty, veterinarians risk alienating their clients.¹¹³ A mandatory reporting requirement may reduce this risk and may lead to the discovery of other related crimes.¹¹⁴

110. See PERDUE & LOCKWOOD, *supra* note 82, at 178-79 (citing several studies indicating that histories of animal cruelty and abuse are often predictors of future crimes and result in high rates of recidivism for violent offenses).

111. ALA. ADMIN. CODE r. 930-X-1-.10 (2018) (Rules of Professional Conduct for Veterinarians); ARIZ. REV. STAT. ANN. § 32-2239 (2018); CAL. BUS. & PROF. CODE § 4830.5 (West 2018) (dog-fighting); CAL. BUS. & PROF. CODE § 4830.7 (West 2018) (abuse or cruelty); COLO. REV. STAT. ANN. § 12-64-121 (West 2018); 510 ILL. COMP. STAT. ANN. 70/3.07 (West 2018) (aggravated cruelty); KAN. ADMIN. REGS. § 70-8-1 (2018) (Rules of Professional Conduct for Veterinarians) (subjecting a veterinarian to a disciplinary action for failure to report “cruel and inhumane treatment”); ME. REV. STAT. ANN. tit. 7, § 4018 (2018) (aggravated cruelty); MD. CODE ANN., AGRIC. § 2-313.1 (West 2018); MASS. GEN. LAWS ANN. ch. 112 § 58B (West 2018); MINN. STAT. ANN. § 346.37 (West 2018); MO. CODE REGS. ANN. tit. 20, § 2270-6.011 (Rules of Professional Conduct for Veterinarians) (mandating reporting when the abuse or neglect “cannot be resolved through education”); NEB. REV. STAT. ANN. § 28-1020 (West 2018); N.D. CENT. CODE ANN. § 36-21.2-10 (West 2018); OKLA. STAT. ANN. tit. 21 § 1680.3 (West 2018); OR. REV. STAT. ANN. § 686.442 (West 2018) (aggravated abuse); 49 PA. CODE § 31.21 (West 2018) (Rules of Professional Conduct for Veterinarians) (requiring veterinarians to report other veterinarians who abuse or neglect animals); 4 R.I. GEN. LAWS ANN. § 4-1-26.1 (West 2018); W. VA. CODE ANN. § 7-10-4a (West 2018); WIS. STAT. ANN. § 173.12 (West 2018) (animal fighting).

112. TEX. OCC. CODE ANN. § 801.3585 (West 2017) (providing immunity from civil and criminal liability for veterinarians who choose to report suspected cases of animal cruelty “in good faith and in the normal course of business”).

113. See Stefanie Marsh, *The Link Between Animal Abuse and Murder*, HUFFINGTON POST (Sept. 8, 2017, 2:44 PM), https://www.huffingtonpost.com/entry/the-link-between-animal-abuse-and-murder_us_59b02a0ae4b0bef3378cdcfcd [<https://perma.cc/W4UL-RTSB>] (interviewing Dr. Melinda Merck, veterinarian and animal forensics expert).

114. See Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 IOWA L. REV. 1, 62-63 (2001) (“Animal abuse, like other types of family abuse, is

C. *Acts of Animal Cruelty Grant Significant Power to Domestic Abusers*

Domestic abusers often use cruel treatment of animals to control their victims.¹¹⁵ Animal abuse can deter these victims from leaving the abuser partly due to a fear of retaliation against their pets.¹¹⁶ Unfortunately, children are sometimes present to witness the abuser's violent acts against the pets.¹¹⁷ Studies conclude that exposure to domestic violence makes a child about three times more likely to engage in animal cruelty.¹¹⁸

often a hidden crime. A pet confined to its owner's house and yard may never be seen by anyone outside the owner's family. . . . Increasing the chances that animal abuse will be discovered is an important facet of any criminal justice system focused on eradicating all forms of family violence, including animal cruelty. . . . [Requiring veterinarians to report suspected instances of animal cruelty] would interject an outside observer into the abusive situation and impose on that observer the duty to report cases of suspected animal cruelty and neglect. . . . Although mandated reporting requirements have been criticized as ill-defined and unduly burdensome, such requirements may be the only avenue in some cases for uncovering animal cruelty or neglect.”; *see also* Marsh, *supra* note 113 (describing the work of Dr. Merck who, as an animal forensics expert, traces instances of violence on animals to larger crimes).

115. *See, e.g.*, Lisa Lunghofer, *Social Responses to Animal Maltreatment Offenders*, in ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS 258 (Lacey Levitt et al. eds., 2016) (citing two studies comparing women in a domestic violence shelter with a control group, both finding over 50% of the women in the shelter had partners threaten to hurt or kill pets); *see also, e.g.*, Frank R. Ascione et al., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women who are Battered*, 5 SOC'Y & ANIMALS 205, 212-13 (1997) (finding an “overwhelming majority” of the women at the largest domestic violence shelters in each state mentioned companion animal abuse); *see also, e.g.*, Frank R. Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals*, in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE: READINGS IN RESEARCH AND APPLICATION (Randall Lockwood & Frank R. Ascione eds., 2007) (estimating 74% of battered women staying in a shelter were pet owners and nearly 57% reported that their partners harmed or killed their pets); *see also, e.g.*, Frank R. Ascione et al., *Domestic Violence and Cruelty to Animals*, 17 LATHAM LETTER 1, 15 (1996) (citing a Utah study finding 71% of victims in a domestic violence shelter who owned pets reported their abuser had threatened or actually harmed an animal in some way); *see also, e.g.*, ASPCA Amicus Brief, *supra* note 86 (citing a Wisconsin study finding 80% of pet-owning victims stated their abusers exhibited violence toward their pets).

116. *See, e.g.*, Lunghofer, *supra* note 115 (citing studies that finding 20-30% of women in domestic violence shelters reported fearing for the safety of their pets); *see also, e.g.*, Pamela Carlisle-Frank et al., *Selective Battering of the Family Pet*, 17 ANTHROZOÖS 26, 39 (2004) (estimating 48% of battered women reported having delayed leaving because they feared for the safety of their pets, increasing to 65% when the women saw their abuser previously batter a pet).

117. *See, e.g.*, Pamela Carlisle-Frank et al., *supra* note 116, at 40 (finding that the 61% of women who experienced domestic abuse stated their children witnessed the violent acts against the pets).

118. Ana C. Baldry, *Animal Abuse Among Preadolescents Directly and Indirectly Victimized at School and at Home*, 15 CRIM. BEHAV. & MENTAL HEALTH 97, 103 (2005); Cheryl

Cases of animal abuse as a method to control women and children can be extremely gruesome.¹¹⁹ A Texas child custody case described how a father often choked the mother in front of her children and also killed a horse in front of them.¹²⁰ In New Hampshire, a victim's ex-husband told his son to go to her home and roast her parakeets in the oven, then he had her home's windows shot out, her tires slashed, and her life threatened; all in response to a child custody dispute.¹²¹ The ex-husband shot her to death eight months after the brutal killing of her pets.¹²² In another case, a man who raped his daughter and his sixteen-year-old half-sister threatened to kill them if they spoke out about what happened.¹²³ He "reinforced the threats" by compelling the daughter and her sister to watch him kill animals.¹²⁴

It is difficult to rehabilitate domestic abusers, as "traditional" psychological treatment methods may be inadequate to prevent recidivism.¹²⁵ Court-ordered attendance to a Batterer's Intervention Program is typical, but this method is not without its own problems.¹²⁶

L. Currie, *Animal Cruelty by Children Exposed to Domestic Violence*, 30 CHILD ABUSE & NEGLECT 425, 429 (2006).

119. See, e.g., Susan Crowell, Note and Comment, *Animal Cruelty as It Relates to Child Abuse: Shedding Light on a "Hidden" Problem*, 20 J. JUV. L. 38, 42 (1999) (citing a battered wife's testimony while on trial for the murder of her husband in Utah, that after brutally beating his wife and children, the husband took the family's pet rabbit, hung it in the garage, and skinned it alive in front of his wife and baby while saying "See how easy it would be?" The wife was acquitted.).

120. *In re A.G.F.*, No. 09-13-00452-CV, 2014 Tex. App. WL 580736 at *2 (Tex. App.—Beaumont Feb. 13, 2014, no pet.).

121. *Stewart v. Bader*, 907 A.2d 931, 935 (N.H. 2006).

122. *Id.*; see also PERDUE & LOCKWOOD, *supra* note 82, at 180 (noting the victim was murdered despite reporting the harassment to police).

123. *State v. Pugsley*, 911 P.2d 761, 765 (Idaho Ct. App. 1995).

124. *Id.*

125. See Edward W. Gondolf & David Russell, *The Case Against Anger Control for Batterers*, 9 RESPONSE 1, 2 (1986) (finding that domestic abuse is driven by a need for control and that batterers tend to "reduce anger control to a set of gimmicks" enabling them to get what they want in a less violent, yet still abusive manner); see also *Why We Don't Recommend Couples Counseling for Abusive Relationships*, NAT'L DOMESTIC VIOLENCE HOTLINE (Aug. 1, 2014), <http://www.thehotline.org/2014/08/01/why-we-dont-recommend-couples-counseling-for-abusive-relationships/> [<https://perma.cc/6543-ZGAF>] (noting that abusers tend to retaliate against their partners following couples counseling sessions).

126. See Ashleigh Owens, *Confronting the Challenges of Domestic Violence Sentencing Policy: A Review of the Increasingly Global Use of Batterer Intervention Programs*, 35 FORDHAM INT'L L.J. 565, 568 (2012) (discussing the fact that in 22% of deaths related to domestic violence, the abuser previously attended a batterer intervention program); see also PATRICIA CLUSS & ALINA BODEA, *THE EFFECTIVENESS OF BATTERER INTERVENTION PROGRAMS* 18 (2011),

An ideal solution incorporates both incarceration for the safety of the victims, and behavior modification programs to prevent recidivism by the perpetrator.¹²⁷ Behavior programs addressing the unique cultural and psychological background of the perpetrator, in combination with incarceration, can prevent recurrent violence against families and their pets.¹²⁸

D. Animal Hoarding

Hoarders compulsively collect possessions they are unwilling to part with because they perceive a future need for the possessions, or they fear emotional distress upon losing the possessions.¹²⁹ Animal hoarders compulsively collect an unhealthy number of animals.¹³⁰ Hoarding animals creates a severely cluttered, unsanitary, and even uninhabitable environment.¹³¹ Hoarders typically possess a median of thirty-nine animals,¹³² however, it's not uncommon to find hundreds of animals in

<http://fisafoundation.org/wp-content/uploads/2011/10/BIPsEffectiveness.pdf> [<https://perma.cc/2ACK-YGKT>] (finding that batterer intervention programs require a strong legal system to ensure compliance with sentencing, and that programs addressing the specific psychology of a batterer are necessary due to the diversity of causes of domestic abuse).

127. CLUSS & BODEA, *supra* note 126.

128. CLUSS & BODEA, *supra* note 126; *see* Owens, *supra* note 126, at 609-610 (noting that behavior modification programs will fail to be effective without funding and legal enforcement).

129. DONALD W. BLACK & JON E. GRANT, DSM-5 GUIDEBOOK: THE ESSENTIAL COMPANION TO THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 156 (5th ed. 2013); Ayers et al., *supra* note 20, at 236; *see* ANIMAL HOARDING: STRUCTURING INTERDISCIPLINARY RESPONSES TO HELP PEOPLE, ANIMALS AND COMMUNITIES AT RISK 23 (Gary J. Patronek et al. eds., 2006) (listing the “variety of mental disorders and organic brain syndromes” typical of hoarders, “obsessive compulsive disorder, schizoaffective disorder/schizophrenia, attention deficit disorder, anxiety, post-traumatic stress disorder, generalized social phobia, and major depressive disorder. . . . [D]isorders associated with lack of essential early childhood bonding and attachment to parents or primary caregivers (e.g., borderline, narcissistic, anti-social personality disorders and paranoia) . . . cognitive impairments including poor insight, abstract reasoning, problem solving, and executive functioning skills, and, to a lesser extent, social fears, agoraphobia, and depression.”).

130. Ayers et al., *supra* note 20, at 237.

131. BLACK & GRANT, *supra* note 129, at 157.

132. Ayers et al., *supra* note 20, at 235.

a hoarder's residence.¹³³ Neglect is a consequence of animal hoarding due to the overwhelming demand of caring for so many animals.¹³⁴

In Texas, animal hoarders are typically charged under the animal cruelty statute's "intentional[], knowing[], or reckless[] . . . [unreasonable failure] to provide necessary food, water, care, or shelter" provision.¹³⁵ But in 2014, the First Court of Appeals in Houston, Texas upheld the conviction of the owner of a cat sanctuary, known as "Whiskerville," for killing "in a cruel manner" and "caus[ing] serious bodily injury to an animal" after the emergency seizure of 195 cats (twenty-seven dead) from the sanctuary.¹³⁶ The owner received a two-year suspended sentence, and was to be placed under community supervision for five years.¹³⁷

Animal hoarding is a complex issue, and the law's struggle to address the underlying causes results in a recidivism rate of nearly 100%.¹³⁸ Criminal punishment alone may not be sufficient, and may not even be necessary.¹³⁹ Mandatory psychiatric evaluations for all offenders will

133. See, e.g., Robbie Owens, *Animals Seized in Keller Hits Close to Fort Worth Neighbors' Fight*, CBS DFW (Jul. 26, 2017, 5:58PM), <http://dfw.cbslocal.com/2017/07/26/animals-seized-keller-fort-worth-neighbors/> [<https://perma.cc/CCM2-Z6JD>] (reporting that 111 dogs and cats were found in a hoarder's home in Keller, Texas); see also, e.g., Claire Ricke, *More Than 400 Animals Seized from Caldwell Co. Home*, KXAN, <http://kxan.com/2017/02/21/more-than-400-live-animals-seized-from-texas-residence/> [<https://perma.cc/SWF6-M56X>] (last updated Feb. 21, 2017, 6:52 AM) (reporting a finding of over 400 animals by the SPCA that included 150 feeder mice, 86 snakes, 56 guinea pigs, 28 dogs, 7 pigs, and 3 bearded dragons).

134. Ayers et al., *supra* note 20, at 235.

135. TEX. PENAL CODE ANN. § 42.092(b)(3) (West 2017) (Class A misdemeanor for first offense); see also *McCall v. State*, 540 S.W.2d 717, 718-19, 721 (Tex. Crim. App. 1976) (affirming the conviction for "intentionally and knowingly failing unreasonably to provide" for twelve dogs under the predecessor statute with similar language).

136. *Dixon v. State*, 455 S.W.3d 669, 672-674, 676 (Tex. App.—Houston [1st] 2014, no pet.) ("[The] failure to provide food, water, or care is the manner and means by which appellant killed the cats, causing them unjustified pain or suffering. It is the killing in a cruel manner that elevates the simple failure to provide food, water, or care from a misdemeanor to a state jail felony in much the same way that a victim's death elevates an assault to a murder."); TEX. PENAL CODE ANN. § 42.092(b)(1) (West 2017) (Third degree felony for first offense).

137. *Dixon*, 455 S.W.3d at 672.

138. ANIMAL HOARDING, *supra* note 129, at 24 ("[A]nimal hoarding behavior has evidently not been mitigated by the customary sentencing that is limited to fines, forfeiture of some or all of the animals, prohibitions on future ownership, and (rarely) incarceration. . . . [T]he motivation and perpetuation of animal hoarding has psychological underpinnings which are not lessened in their intensity by these sanctions alone.").

139. *Id.* at 21 (distinguishing animal hoarding from other types of animal cruelty, "[M]ost of the suffering arises from chronic neglect [and] the perpetrator generally does not intend to harm

aid courts in determining the best course of action for each offender, thus better ensuring the hoarder does not re-offend and cause further harm to animals.¹⁴⁰

E. Sexual Abuse of Animals in the Internet Age

The internet makes animal sexual abuse more accessible.¹⁴¹ Craigslist serves perpetrators with a platform to sell animals for rape.¹⁴² Bestiality deserves attention from courts and legislators because it may be a significant predictor of future interpersonal violence, particularly in childhood bestiality cases.¹⁴³

the animals. . . . Because some animal cruelty laws tend to focus on deliberate abuse with intent to harm, criminal interventions may be less effective for hoarding cases in those jurisdictions. Although recent changes in many state animal cruelty statutes have increased penalties for certain types of animal cruelty, these changes address deliberate abuse and torture, usually purposeful actions inflicted on comparatively small numbers of animals in a short time frame. Most animal hoarding cases are not characterized by deliberate intent to harm or by direct abuse. . . . [T]he sins in a hoarding case are often of omission, not commission.”)

140. *Id.* at 21-27; *see also* Ayers et al., *supra* note 20, at 234, 239 (noting general descriptions of animal hoarders are unavailable because there are multiple psychiatric comorbidities in hoarders).

141. Julie Carr Smyth, *Bestiality Crimes Targeted by New State Laws*, *FBI Reporting*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-states/ohio/articles/2017-04-01/bestiality-crimes-targeted-by-new-state-laws-fbi-reporting> (last updated Apr. 1, 2017, 8:33 PM) (featuring an interview with a criminologist who argues that the internet increased the ability of sexual deviants to meet with each other and share their animals for sexual purposes).

142. *See, e.g.*, Phyllis DeGioia, *Recognizing Sexual Abuse in Animals*, VETERINARY INFO. NETWORK NEWS SERV. (Mar. 5, 2015), <http://news.vin.com/vinnews.aspx?articleId=35718> [<https://perma.cc/C4EW-U5BD>] (noting farms dedicated to facilitating bestiality exist throughout the United States and other developed nations); *see, e.g.*, Seth A. Richardson, *Bill Would Criminalize Sex with Animals in Nevada*, RENO GAZETTE J., <http://www.rgj.com/story/news/politics/2017/04/06/bill-would-criminalize-sex-animals-nevada/100139706/> [<https://perma.cc/GG83-822W>] (last updated Apr. 6, 2017, 2:32 PM) (noting Nevada’s current failure to punish by law animal sex trafficking—a major problem within the state—which generally begins with posting on Craigslist or bestiality-based websites to trade, rent, or sell animals for sex); *see, e.g.*, *Ex-O.C. Police Officer Surrenders in Bestiality, Fraud Case*, L.A. TIMES (June 29, 2010, 5:21 PM), <https://latimesblogs.latimes.com/lanow/2010/06/former-oc-police-officer-bestiality-case.html> [<https://perma.cc/XAL3-49B2>] (reporting on a California police officer using Craigslist to find women that would engage in sexual acts with his dog).

143. *See* Brian J. Holoyda & William J. Newman, *Childhood Animal Cruelty, Bestiality, and the Link to Adult Interpersonal Violence*, 49 INT’L J.L. & PSYCHIATRY 129, 132 (2016) (“In a study of twenty-four juvenile offenders who reported having engaged in sexual acts with animals, twenty-three reported having engaged in sexual offenses against humans[,]” and quoting a study dividing inmates between a bestiality group and non-bestiality group, and finding 31.4% of the inmates in the bestiality group committed three or more personal crimes compared to just 5.4% of the non-bestiality group); *see also* Heil & Simons, *supra* note 27, at 533-34 (quoting a study of

The response of animals to sexual abuse is similar to the response of humans to sexual abuse.¹⁴⁴ Animals sexually abused by humans commonly show signs of depression, anxiety, and aggression.¹⁴⁵ Between the physical pain and psychological abuse suffered by animal victims and the potential for future harm against human victims, bestiality is far from a victimless crime.¹⁴⁶

In addition to criminalizing the act itself, the Texas bestiality statute also criminalizes the commerce of bestiality.¹⁴⁷ The punishment under the bestiality statute is a state jail felony, that elevates to second degree felony when the offense takes place in front of a minor or results in a serious injury to or the death of the animal victim.¹⁴⁸ While its structure is similar to the statute criminalizing human trafficking, the punishments in the bestiality statute are a degree less.¹⁴⁹

People who engage in bestiality often engage in other sexually deviant behaviors and commonly struggle with mental illness.¹⁵⁰ Because of these undercurrents, mandating psychiatric evaluations for offenders of the bestiality statute would help this population get the treatment that confinement does not provide.

eighty-one child sexual abusers, sixty rapists (adult victims), and seventy-four indiscriminant [sic] offenders (both adult and child victims) finding forty-eight child sexual abusers engaged in bestiality, eighteen rapists engaged in bestiality, and sixty indiscriminant [sic] offenders engaged in bestiality).

144. Lila Miller & Gary Patronek, *Understanding the Effects of Maltreatment on Animal Welfare*, in ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS 197, 204, 209 (Lacey Levitt et al. eds., 2016); Lacey Levitt & Thomas Grisso, *Conceptualizing Forensic Animal Maltreatment Evaluations*, in ANIMAL MALTREATMENT: FORENSIC MENTAL HEALTH ISSUES AND EVALUATIONS 295 (Lacey Levitt et al. eds., 2016).

145. Miller & Patronek, *supra* note 144, at 206-12, 217-18.

146. Levitt & Grisso, *supra* note 144; Holoyda & Newman, *supra* note 143.

147. TEX. PENAL CODE ANN. § 21.09(a)(5)-(10) (West 2017).

148. TEX. PENAL CODE ANN. § 21.09(b) (West 2017).

149. *Compare id.*, with TEX. PENAL CODE ANN. § 20A.02 (West 2017) (punishing offenders of the human trafficking statute with a second degree felony, elevating to a first degree felony if the trafficking involves a minor or results in a death).

150. See Joel S. Milner et al., *Paraphilia Not Otherwise Specified: Psychopathology and Theory*, in SEXUAL DEVIANCE: THEORY, ASSESSMENT, AND TREATMENT 391-92 (D. Richard Law & William T. O'Donohue eds., 2nd ed. 2008) (stating, also, that some studies refute these claims).

CONCLUSION

The recently heightened punishments for animal cruelty convictions moves Texas closer to the forefront of animal rights legislation in the United States, but it must go further.¹⁵¹ The source of many violent crimes against animals is underlying mental illness.¹⁵² The Texas legislature mandated psychiatric evaluation for juvenile animal abusers more than fifteen years ago.¹⁵³ However, many adult animal abusers are suffering from psychological disorders similar to their juvenile counterparts.¹⁵⁴ Mandating psychiatric evaluations for all people convicted of animal cruelty and bestiality would provide judges with more complete information about the offenders, thus allowing judges to make better informed sentencing decisions that incorporate aspects of treatment and monitoring that can help reduce the offenders' risk of recidivism and limit the likelihood of escalating violent acts.¹⁵⁵

Animal abuse is a difficult issue to discuss.¹⁵⁶ And while it is impossible to halt all acts of animal cruelty, increasing awareness of the significance of mental illness in animal abusers can result in punishments that are more effective in reducing animal abuse.¹⁵⁷ Additionally, the detection of a possible mental illness and treatment could help animal abusers before they begin behaving cruelly against people.¹⁵⁸ Ideally, openly discussing animal abuse will develop a list of warning signs the

151. TEX. PENAL CODE ANN. § 42.092 (West 2017).

152. See, e.g., Ascione, *supra* note 101, at 8 (surveying 276 abused children and 880 non-abused children aged 2-12, and finding that boys who were sexually abused were 35% more likely to engage in acts of animal cruelty); ANIMAL HOARDING, *supra* note 129 (listing the "variety of mental disorders and organic brain syndromes" typical of hoarders).

153. Act effective Sept. 1, 2001, 77th Leg., R.S., ch. 450, § 1, sec. 2, 2001 Tex. Gen. Laws 887, 887-88 (codified at TEX. FAM. CODE § 54.0407) (amended 2017) (requiring psychiatric counselling for juveniles convicted of cruelty to animals).

154. Tingle et al., *supra* note 104, at 112-14 (noting rapists and pedophiles were more likely to have experienced childhood abuse and family violence, finding 42.9% of rapists and 39.5% of child molesters surveyed reported experiencing physical abuse by their parents, which then probably led to aggression manifesting itself as acts of juvenile violence such as animal cruelty, fist fights, arson, etc., and eventually, sexual crimes perpetrated as adults).

155. SHANNON & BENSON, *supra* note 18, at 16.

156. See DeGioia, *supra* note 142 (commenting on the taboo nature associated with sexual abuse of animals).

157. Ascione, *supra* note 101.

158. SHANNON & BENSON, *supra* note 18, at 16.

general population can use to identify acts of animal abuse before they even occur.¹⁵⁹

Animals are an integral part of the lives of millions of Americans. How we treat them matters, both for their sake and ours. We must all consider animal cruelty a serious issue if we want to improve the quality of life for all living beings. After all, he who is cruel to animals cannot be a good man.¹⁶⁰

159. See, e.g., DeGioia, *supra* note 142 (calling for an open discussion of the topic of sexual abuse against animals, and compiling a list of signs that would alert veterinarians when owners are sexually abusing their animals).

160. SCHOPENHAUER, *supra* note 1.