

Justice for Dusty: Implementing Mandatory Minimum Sentences for Animal Abusers

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Table of Contents

I.	DUSTY’S STORY: INTRODUCTION TO ANIMAL CRUELTY.....	650
II.	BACKGROUND OF ANIMAL ABUSE AND MANDATORY MINIMUM SENTENCING.....	651
	A. <i>Animal Abusers</i>	651
	1. Psychological Problems Related to Animal Abuse.....	651
	2. The Link Between Animal Abuse and Crimes Against Humans	652
	B. <i>Mandatory Minimum Sentencing</i>	656
	1. Legal and Academic Reasoning for the Implementation of Mandatory Minimums	656
	2. Deterrence and Public Protection through Mandatory Minimum Sentencing	657
	3. Mandatory Minimums as Retribution	658
	C. <i>Mandatory Minimums as Punishment in the Commission of Violent Crimes</i>	660
	1. Benefits of Mandatory Minimums	660
	2. Arguments Against Mandatory Minimums	661
III.	ANIMAL ABUSE LEGISLATION	662
	A. <i>Current Statutes</i>	662
	B. <i>Lack of Enforcement of Abuse Legislation</i>	664
IV.	MANDATORY MINIMUMS AND ANIMAL ABUSE VIOLATIONS ...	665
V.	CONCLUSION.....	669

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I. DUSTY'S STORY: INTRODUCTION TO ANIMAL CRUELTY

In July 2001, Michael Welch beat Dusty to death over a period of two hours.¹ Taking breaks only to consume more alcohol, Welch continued to bludgeon his victim with a sledgehammer and a baseball bat until his neighbor, hearing cries of pain, called the police.² Although Welch was charged and the case went to trial, he received a mere three years of probation.³

Michael Welch received a light sentence because his victim was a Dalmatian.⁴ Despite the conviction, Welch would again be allowed to own a pet following his three-year probationary period.⁵

Numerous cases of animal cruelty arise each year in every state.⁶ For example, three men in Arizona killed a pet cat by dragging it with a rope behind a car traveling at 80 miles per hour, and later explained they viewed the act as funny.⁷ A woman in California became angry at her pet dog and continually smashed its head into the pavement until it died.⁸ Witnesses saw a man in Connecticut purposefully run over a family of geese, killing seven of the nine goslings.⁹ In Massachusetts, a man murdered a kitten by throwing it through a fourth story window.¹⁰

Although these crimes are heinous acts of violence, all charges against the offenders were dismissed.¹¹ Even when the abusers do face

1. *See Animal Abuse Cases in St. Louis Area are Raising Concern among Pet Advocates*, ST. LOUIS POST DISPATCH, July 16, 2001, at C4.

2. *See id.* Police reports noted that Dusty's body was so mangled that by the time they arrived it was extremely difficult to identify.

3. *See Probation for Dog Death*, ADVERTISER (Australia), Jan. 17, 2003, at 28.

4. *See Lillian Goldsmith, Animal Abusers Must Face Harsher Penalties*, ROCKY MTN. NEWS (Colorado), Dec. 30, 2004, at 48A.

5. *See id.*

6. *See, e.g.*, Humane Society of the United States, http://www.hsus.org/in_the_courts/ (last visited October 24, 2008); Pet-Abuse.com, http://www.pet-abuse.com/pages/cruelty_database/statistics.php (last visited October 24, 2008) [hereinafter *Pet-Abuse Statistics*].

7. *See* Pet-Abuse.com, *Animal Abuse Case Details: Cat Dragged to Death Behind Car*, <http://www.pet-abuse.com/cases/4590/AZ/US/> (last visited October 24, 2008).

8. *See* Henry K. Lee, *Woman charged in death of puppy*, S.F. CHRON., July 26, 2006, available at <http://www.pet-abuse.com/cases/9402/CA/US/>.

9. *See* Tim Giordano, *A Hamden youth who distinguished himself while serving with the U.S. Marines in Iraq had 11 charges of animal cruelty dismissed by a Meriden Superior Court Judge last Thursday*, HAMDEN J. (Connecticut), Dec. 14, 2006, available at <http://www.pet-abuse.com/cases/5033/CT/US/>.

10. Two years later, the man murdered a nineteen-year-old woman. *See* Pet-Abuse.com, *Animal Abuse Case Details: Threw kitten out 4th story window*, <http://www.pet-abuse.com/cases/1319/MA/US/> (last visited October 24, 2008).

11. *See* Pet-Abuse.com, *Database of Criminal Animal Cruelty Cases*, http://www.pet-abuse.com/pages/cruelty_database.php (last visited October 24, 2008) (follow "Dismissed" hyperlink under "Status").

trial, many offenders are given “slap-on-the-wrist” punishments¹² similar to that of Michael Welch. Unfortunately, the “infrequent enforcement of animal cruelty laws and relatively light penalties for animal abuse create the social message that injuring animals through neglect or deliberate cruelty is marginally acceptable or a minor criminal infraction.”¹³ In order to convey the message that the commission of animal brutality is morally and legally reprehensible, courts must give stricter punishments to show abusers that their crimes are socially unacceptable.¹⁴

This Comment discusses the problem with the current punishments for animal abuse violations and analyzes why states should adopt statutes¹⁵ that require mandatory minimums in animal brutality convictions. Part II focuses on the psychological problems associated with animal cruelty, including the relationship between animal cruelty and violence toward humans. Part II also discusses mandatory minimum sentencing, focusing on the general theories behind mandatory minimum sentences, their benefits and potential problems, as well as their attachment to violent crime. Part III examines the structure of current animal abuse legislation. The flaws associated with the state statutes will also be discussed. Part IV concentrates on the advantages of applying mandatory minimum sentences to the anticruelty provisions of animal abuse statutes.

II. BACKGROUND OF ANIMAL ABUSE AND MANDATORY MINIMUM SENTENCING

A. *Animal Abusers*

1. Psychological Problems Related to Animal Abuse

Psychologists and legal experts agree that animal abuse is an indicator of potentially deeper psychological problems.¹⁶ The American Psychiatric Association’s DSM-IV¹⁷ includes physical cruelty to animals

12. See Clifton P. Flynn, *Why Family Professionals Can No Longer Ignore Violence Toward Animals*, 49 FAM. REL. 87, 87 (2000) [hereinafter Flynn, *Family Professionals*].

13. Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1, 61 (2001).

14. See *id.*

15. Many states have adopted statutes that treat animal abuse as a felony. See *infra* Part III.A. However, these statutes are rarely, if ever, enforced to the appropriate extent. See *infra* Part III.B.

16. See Flynn, *Family Professionals*, *supra* note 12, at 87.

17. See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 1994) [hereinafter DSM-IV]. The Diagnostic

as one of the symptoms of conduct disorder,¹⁸ stressing that “the presence of cruel or abusive behavior toward animals may be a serious indicator of child psychopathology.”¹⁹ Especially where the animal abuser is a child, violence toward animals may signify antisocial behavior²⁰ and/or a dysfunctional family.²¹ “Aggressive acts against animals are an early diagnostic indicator of future psychopathy, which, if unrecognized and untreated, may escalate in range and severity against other victims.”²² Thus, all violent behaviors, regardless of the outlet, pose negative consequences to all members of society.²³

Not only are crimes of animal brutality an indicator of deeper psychological problems, the commission of such acts may lead to extremely negative social and psychological situations.²⁴ Psychologists have found that one negative developmental outcome includes the “potential inhibition or distortion of empathy.”²⁵ The infliction of pain “against a smaller, weaker, less powerful creature may make it easier to disregard the feelings of other living beings, humans, or animals.”²⁶ The inability to empathize with other humans or animals “may lead to treating others in a manner of callous disregard, and without feelings of regret or remorse.”²⁷ Reducing or preventing interpersonal violence may depend on society’s ability to “teach and reinforce respectful and compassionate treatment of all living beings, human and animal.”²⁸

2. The Link Between Animal Abuse and Crimes Against Humans

In the past, crimes against animals have mistakenly been viewed as isolated acts of violence, rather than incidents connected to other violent acts.²⁹ Numerous studies, however, have proven that animal cruelty can

and Statistical Manual of Mental Disorders is the standard classification of mental disorders used by mental health professionals in the United States. *See id.*

18. *See* Flynn, *Family Professionals*, *supra* note 12, at 89. Conduct disorder is a psychiatric syndrome occurring in children and adolescents. *See* DSM-IV, *supra* note 17, at 78-85. It is often characterized by prolonged periods (at least six months) of aggression, theft, vandalism, violations of rules and/or lying. *See id.*

19. Flynn, *Family Professionals*, *supra* note 12 at 89.

20. *See id.* at 88.

21. *See id.* at 87.

22. FRANK R. ASCIONE & PHIL ARKOW, CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE: LINKING THE CIRCLES OF COMPASSION FOR PREVENTION AND INTERVENTION 21 (1999).

23. *See* Flynn, *Family Professionals*, *supra* note 12, at 88.

24. *See id.* at 90.

25. *Id.* (citing Frank R. Ascione, *Children who are Cruel to Animals: A Review of Research and Implications for Developmental Psychology*, 6 ANTHROZOÏS 226 (1993)).

26. *Id.*

27. *Id.* at 89.

28. *Id.* at 92.

29. *See id.* at 87.

easily lead to violence against humans.³⁰ Even early philosophers recognized the link between animal cruelty and violence toward humans.³¹ Immanuel Kant explained, “[h]e who is cruel to animals becomes hard also in his dealings with men.”³² Psychological studies have shown that cruelty toward animals has been shown to lead to violent acts against humans, including spousal abuse and sexually aggressive crimes.³³ Additionally, courts have begun to recognize the connection.³⁴

Empirical research has shown that children who are particularly cruel to animals are far more likely to engage in violent behavior toward other children.³⁵ Because cruelty to animals can result interfere with the development of empathy,³⁶ “interactions with other[] [humans] may not only be unkind or unpleasant, but violent as well.”³⁷ Male children tend to be more violent toward animals than female children.³⁸ Psychologists believe the inclination for male children to act violently toward animals may be because “the socialization experience for male children emphasizes dominance and aggression. Cruelty to animals may provide some males the opportunity to rehearse their skills.”³⁹ Unfortunately, if the act of brutality against an animal is rewarded by peers⁴⁰ and remains

30. See, e.g., Kara Gerwin, *There's (Almost) No Place Like Home: Kansas Remains in the Minority on Protecting Animals from Cruelty*, 15 KAN. J.L. & PUB. POL'Y 125 (2005) (discussing the need for harsher penalties in animal abuse cases, specifically in Kansas); Janet Mickish & Kathleen Schoen, *Protection Orders and Animal Abuse in Family Violence*, 35 COLO. LAW. 105 (2006) (discussing the link between family violence and animal cruelty and the need to provide protection for animals in potentially violent situations); Jennifer Robbins, *Recognizing the Relationship Between Domestic Violence and Animal Abuse: Recommendation for Change to the Texas Legislature*, 16 TEX. J. WOMEN & L. 129 (2006) (discussing the use of violence towards animals as a method of domestic violence and the need to strengthen animal cruelty punishments in Texas); Daniel M. Warner, *Environmental Endgame: Destruction for Amusement and a Sustainable Civilization*, 9 S.C. ENVTL. L.J. 1 (2000) (discussing the need for society to adopt a more respectful attitude toward animals).

31. See Cass R. Sunstein, *The Rights of Animals*, 70 U. CHI. L. REV. 387, 387 (2003).

32. IMMANUEL KANT, LECTURES ON ETHICS 240 (Louis Infield trans., Hackett 1963) (1775-1780).

33. See *infra* notes 43-49 and accompanying text.

34. See *infra* text accompanying notes 50-66.

35. See Flynn, *Family Professionals*, *supra* note 12, at 87.

36. See *id.* at 90.

37. *Id.*

38. See Clifton P. Flynn, *Exploring the Link Between Corporal Punishment and Children's Cruelty to Animals*, 61 J. MARRIAGE & FAM. 971, 978 (1999) [hereinafter Flynn, *Exploring the Link*].

39. *Id.*

40. See *id.*

unpunished by parents or others,⁴¹ the male tendencies toward violence may be additionally reinforced.⁴²

In situations where the abuser is an adult, the violence toward animals can often be linked to domestic violence.⁴³ A study of New Jersey families found that eighty-eight percent of families with physical abuse also had animal abuse.⁴⁴ In a cross-cultural study on family violence, it was found that “women are more likely to be permanently injured, scarred, or even killed by their husbands in societies where animals are treated cruelly.”⁴⁵ The abusers tend to threaten or abuse animals belonging to their spouses or partners as a scare tactic or method of power.⁴⁶ These abusers have “threatened to harm, or actually [have] harmed animals as a way to control, intimidate, and silence their victims.”⁴⁷

Additionally, studies of criminals that have committed sexually aggressive crimes have uncovered a link between these crimes and animal abuse.⁴⁸ One study showed that nearly one-half of rapists and one-fourth of pedophiles engaged in the abuse of animals when they were children.⁴⁹

Courts have recognized the link between animal abuse and violence against humans⁵⁰ and have noted that states commonly establish laws with the underlying purpose of protecting society from individuals who exhibit violent behavior.⁵¹ “It does not take a leap in logic to conclude that an individual who violently or forcefully injures an animal might be dangerous to people.”⁵² In fact, the legislative history of animal cruelty

41. *See id.*

42. *See id.*

43. *See* Robbins, *supra* note 30, at 133.

44. *See* Flynn, *Exploring the Link*, *supra* note 38, at 972.

45. D. LEVINSON, FAMILY VIOLENCE IN CROSS CULTURAL PERSPECTIVE 45 (1989).

46. *See* Robbins, *supra* note 30, at 133.

47. Flynn, *Family Professionals*, *supra* note 12, at 87.

48. *See id.* at 91.

49. *See id.* at 87 (citing D. Tingle et al, *Childhood and Adolescent Characteristics of Pedophiles and Rapists*, 9 INT’L J.L. & PSYCHIATRY 103 (1986)).

50. *See, e.g.*, *People v. Garcia*, 777 N.Y.S.2d 846, 849 (N.Y. 2004); *People v. Dyer*, 115 Cal. Rptr. 2d 527, 532 (Cal. Ct. App. 2002).

51. *See Dyer*, 115 Cal. Rptr. 2d at 532.

52. *Id.* Some of the most high-profile animal abuse cases that escalate to violence toward humans include: Patrick Sherrill, who “killed 14 coworkers at a post office and then shot himself,” had previously stolen “local pets and allowed his own dog to attack and mutilate them.” Pet-Abuse.com, Abuse Connection, http://www.pet-abuse.com/pages/abuse_connection.php (last visited October 24, 2008). Earl Kenneth Shriner, who “raped, stabbed, and mutilated a 7-year-old boy,” previously had “put firecrackers in dogs’ rectums and strung up cats.” *Id.* Brenda Spencer, who killed two children and wounded nine when she opened fire at a school, had “repeatedly abused cats and dogs, often by setting their tails on fire.” *Id.* Albert DeSalvo, the “Boston Strangler,” who killed thirteen women, “trapped dogs and cats in orange crates and shot arrows through

statutes has been reflected in court decisions to account for the possibility of violent behavior to escalate into even more extreme acts of brutality.⁵³ Courts have warned against light punishments for animal abuse and suggest more significant penalties for abusers.⁵⁴

Court decisions have noted that a strong connection between violence towards animals and humans has been well documented.⁵⁵ Nearly every serial killer is said to have a history of brutalizing animals before turning violent toward people.⁵⁶ A California court of appeals stated that

[T]he link between animal abuse and future human abuse has been, and continues to be, documented. Demonstrating the seriousness of acts of aggression toward animals, the Federal Bureau of Investigation includes it in their serial killer triad which is used to profile suspects. . . . The tragic examples are evident: 1. Mass murderer and cannibal Jeffrey Dahmer killed neighborhood pets and impaled a dog's head before he moved on to gruesome acts against people. . . . 3. Carroll Edward Cole, convicted of 35 murders, admitted his first act of violence was as a young child when he strangled a puppy. . . . If someone commits acts of violence against creatures that cannot defend themselves, it is possible that those actions are a precursor to abuse of children or elders. . . .⁵⁷

The court in *In re Brandon L.*⁵⁸ also noted the escalation of violence beginning with animal abuse.⁵⁹ “The minor admitted to Dr. Doty that he had ‘set many fires as a young boy’ and that he had ‘a history of animal abuse[,] including killing a cat by stoning it and setting fire to his girlfriend’s dog.’”⁶⁰

the boxes” as a child. *Id.* Three high school students from Missouri, charged with the beating death of a classmate, had “histories of repeated acts of animal mutilation starting several years earlier.” *Id.*

53. *See Dyer*, 115 Cal. Rptr. 2d at 532.

54. *See id.*

55. *See Garcia*, 777 N.Y.S.2d at 849 (citing McKinney’s Session Laws of New York, *N.Y. Assembly Memo in Support of L.*, ch. 118 at 1585 (1999) [hereinafter *N.Y. Assembly Memo*]).

56. *Id.* (citing *N.Y. Assembly Memo*, *supra* note 55, at 1585).

57. *Dyer*, 115 Cal. Rptr. 2d at 532-33. In *Dyer*, the appellant’s brutal act against a dog was a sign of his escalating violent behavior. *See id.* at 533. He later attacked a family member. *See id.*

58. *See In re Brandon L.*, No. C048464, 2006 WL 2671968, at 2 (Cal. Ct. App. Sept. 19, 2006).

59. *See id.*

60. *Id.*

Furthermore, although animals are recognized as personal property for some purposes,⁶¹ they are different from other types of property,⁶² because animals are living, sentient⁶³ beings. As such, malicious acts against animals are acts of violence towards living creatures.⁶⁴ Even though the abused animal was considered the property of the abuser, the court in *Dyer* agreed that the perpetrator remained a threat to society.⁶⁵ The court therefore acknowledged that the holding “may support the conclusion that a crime against an inanimate object or property can qualify as a crime of force or violence.”⁶⁶

B. *Mandatory Minimum Sentencing*

1. Legal and Academic Reasoning for the Implementation of Mandatory Minimums

Three principle rationales exist for the utilization of mandatory minimum sentences in violent crimes.⁶⁷ First, they are designed to deter future offenders from committing similar crimes by sending a clear and harsh message.⁶⁸ Secondly, the sentences provide a longer period of detachment between the offender and the community, thereby protecting the public from the possibility of a repeat offense.⁶⁹ The first and second incentives for implementing mandatory minimum sentences are undoubtedly related.⁷⁰ If a crime constitutes a greater harm to the public, the need for deterrence becomes more essential.⁷¹ Finally, mandatory minimums remove discretion from the sentencing process so that similar crimes are punishable by a declared minimum sentence.⁷²

61. See *Dyer*, 115 Cal. Rptr. 2d at 533; see also *Pierson v. Post*, 3 Cai. 175, 177 (N.Y. Sup. Ct. 1805) (viewing animals as property to reach decision). Further discussion of animals as property is beyond the scope of this Comment.

62. See *Dyer*, 115 Cal. Rptr. 2d at 533.

63. See BERNARD E. ROLLIN, *THE UNHEEDED CRY: ANIMAL CONSCIOUSNESS, ANIMAL PAIN, AND SCIENCE* 114-118 (1998) (discussing the fact that animals can feel pain and experience emotion similar to human pain and emotion).

64. See *Dyer*, 115 Cal. Rptr. 2d at 533.

65. See *id.*

66. *Id.*

67. See Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CAL. L. REV. 61, 67 (1993).

68. See *id.*

69. See *id.*

70. See *id.*

71. See *United States v. Savinovich*, 845 F.2d 834, 840 (9th Cir. 1988).

72. See, e.g., *United States v. Jones*, 145 F.3d 959, 970 (8th Cir. 1998) (Bright, J. concurring in part, dissenting in part); *Richmond v. State*, 446 A.2d 1091, 1095 (Del. 1982).

Empirical studies and court opinions have failed to recognize a fourth possible theory of mandatory minimums: their use as a rehabilitative method, particularly in the case of juvenile offenders. In general, mandatory minimum sentencing consists of a period of incarceration in a prison facility,⁷³ but “imprisonment is not an appropriate means of promoting correction and rehabilitation,”⁷⁴ especially in the case of child-animal abusers.⁷⁵ However, mandatory minimum sentences do not necessarily have to involve a prison sentence.⁷⁶

2. Deterrence and Public Protection through Mandatory Minimum Sentencing

Mandatory minimums not only reflect the seriousness of the crime and the need to protect the public from certain offenders, they also have a deterrent effect.⁷⁷ Mandatory minimums create “uniform and predictable sentences,”⁷⁸ and “in turn, deter criminal behavior by forewarning the potential offender with certainty that, if apprehended and convicted, he will serve hard time.”⁷⁹ The Supreme Court has accepted that mandatory minimum sentences serve a rational deterrent purpose by creating disincentives to commit violent crimes.⁸⁰ Because the purpose of mandatory minimum sentences is often deterrence, the penalties may be harsh, but they are nonetheless clear.⁸¹ Mandatory minimum sentencing schemes that provide clear notice of the severe consequences of certain criminal actions are fair and add to the deterrent objective of the law.⁸²

73. See Deborah Young, *Fact-Finding at Federal Sentencing: Why the Guidelines Should Meet the Rules*, 79 CORNELL L. REV. 299, 319 (1994).

74. Imposition of a Sentence of Imprisonment, 18 U.S.C.A. § 3582(a) (2008). The United States Code emphasizes that sentences involving incarceration in a prison facility should not be imposed with the goal of rehabilitation or correction of behavior. See *id.*

75. See Livingston, *supra* note 13, at 61.

76. BLACK'S LAW DICTIONARY 1394 (8th ed. 2004) (“[M]andatory sentence is a sentence set by law with no discretion for the judge to individualize punishment.”).

77. See *United States v. Campbell*, No. 06-13810, 2007 WL 2792152 (11th Cir. September 27, 2007).

78. Richard B. Roper, *Statement Before House Judiciary Committee on Crime, Terrorism, and Homeland Security*, 19 FED. SENT'G REP. 352, at 2 (2007) (Westlaw).

79. *Id.*

80. See *Chapman v. United States*, 500 U.S. 453, 464-68 (1991). In *Chapman*, the petitioners argued that the sentencing scheme threatened to produce arbitrary sentences. See *id.* at 466. However, the Court stressed that the mandatory minimum did exactly what it set out to do—namely, punish more heavily drug dealers who deal in larger quantities of drugs. See *id.* Congress had a rational sentencing scheme in the Anti-Drug Abuse Act of 1986 when opting to adopt minimum sentences based on the amount of drugs possessed by the violator. See *id.* at 465.

81. See *Commonwealth v. Cowan*, 664 N.E.2d 425, 428 (Mass. 1996).

82. See *Harmelin v. Michigan*, 501 U.S. 957, 1007 (1991).

As previously noted, these sentences also remove dangerous individuals from society for at least a set period of time.⁸³

The purpose of requiring a mandatory minimum sentence of ten years when a firearm is used is an effort by the legislature to protect the public from physical injury and death at the hands of violent criminals. . . . It is a warning to potential criminals that they face a severe and fixed sentence. . . . It is also intended to remove dangerous criminals from society during a substantial period for the protection of society.⁸⁴

Indeed, mandatory minimums are necessary to provide deterrence and respect for the law and to protect the public from danger.⁸⁵

Legislatures tend to impose mandatory minimums when the crime has the potential to create so grave a harm to society that a harsh deterrent is required.⁸⁶ “[I]t seems appropriate to consider the deterrence factor in light of the seriousness of the offense: that is, the deterrent effect of a harsh sentence should be reserved for those serious crimes where society’s need for protection is the greatest.”⁸⁷ These facts illustrate the need for courts and legislatures to identify crimes that are extremely reprehensible and punish them accordingly, namely by imposing mandatory minimum sentences. The cited materials suggest that mandatory minimums are especially necessary in the case of violent crimes.

3. Mandatory Minimums as Retribution

One motive of the criminal justice system has been to punish offenders simply because they deserve to be punished.⁸⁸ It is argued that punishment in itself will effectively reduce crime.⁸⁹ This retributive theory of punishment, also known as “just deserts,”⁹⁰ has been another focus of mandatory minimum sentencing.⁹¹ Society believes that those

83. See Lowenthal, *supra* note 67, at 67. Lowenthal explains that one of the theories for mandatory minimum sentencing rests on the idea that dangerous individuals will be removed from society for a longer period of time. See *id.*

84. *Rocker v. State*, 443 So.2d 1316, 1321-22 (Ala. Crim. App. 1983).

85. See *id.* at 1321.

86. See *Savinovich*, 845 F.2d at 840.

87. *United States v. Williams*, 481 F.Supp.2d 1298, 1304 (11th Cir. 2007).

88. See Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 454 (1997).

89. See *id.*

90. *Id.*

91. See R. Barry Ruback & Jonathon Wroblewski, *The Federal Sentencing Guidelines*, 7 PSYCHOL. PUB. POL’Y & L. 739, 745 (2001).

who commit crimes deserve punishment for their actions, and “society does and should detain people who are shown to be dangerous.”⁹²

Mandatory minimums attached to laws are often retributive in the sense that they reinforce the importance of the law.⁹³ In addition, mandatory minimums help to establish the principle of the law as a “moral necessity.”⁹⁴ Because people “naturally think in retributive terms,”⁹⁵ citizens will be “less law-abiding if the law does not recognize that offenders should receive the punishment they deserve.”⁹⁶ To prove the moral significance of a law, it must:

[M]ake clear to the public that its overriding concern is doing justice. Therefore, the most important reforms for establishing the criminal law’s moral credibility may be those that concern the rules by which criminal liability and punishment are distributed. The criminal law must earn a reputation for (1) punishing those who deserve it under rules perceived as just, (2) protecting from punishment those who do not deserve it, and (3) where punishment is deserved, imposing the amount of punishment deserved, no more, no less.⁹⁷

The retributive theory reinforces the necessity for the criminal sentence to be directly related to the culpability of the criminal offender.⁹⁸ Mandatory minimums take culpability into account by linking the severity of the crime to a mandated sentence.⁹⁹

In the cases involving juveniles, mandatory minimum sentences are likely to achieve the goal of retribution because they will be proportional to the offense.¹⁰⁰ In fact, statutes allowing for stricter sentences, or even the placement of juveniles in adult prison facilities, will accomplish the goal of retribution.¹⁰¹ Some of the “get tough statutes” emphasize “mandatory or extended sentences in secure facilities.”¹⁰² The retributive aspect in crimes committed by juveniles is necessary to show that regardless of the age of the offender, the act was reprehensible to society.¹⁰³

92. Robinson & Darley, *supra* note 88, at 493.

93. See Rucker, 443 So.2d at 1321-22.

94. Robinson & Darley, *supra* note 88, at 476.

95. Kent Greenawalt, *Punishment*, 74 J. CRIM. L. & CRIMINOLOGY 343, 359 (1983).

96. *Id.*

97. *Id.* at 477.

98. See *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

99. See Lowenthal, *supra* note 67, at 67.

100. See Julianne P. Sheffer, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation within the Juvenile Justice System*, 48 VAND. L. REV. 479, 500 (1995).

101. See *id.*

102. *Id.*

103. See *id.*

C. *Mandatory Minimums as Punishment in the Commission of Violent Crimes*

1. Benefits of Mandatory Minimums

Mandatory minimums generally target violent crimes because these serious offenses have a strong negative impact on society.¹⁰⁴ A shocking statistic from the National Center for Health Statistics noted that “an American teenager is more likely to die from a gunshot than from all natural causes of death combined.”¹⁰⁵ Violent crimes must be prosecuted vigorously.¹⁰⁶ Mandatory minimum statutes encourage strong prosecution because they “advanc[e] several important law enforcement interests, while also serving the greater purposes of sentencing by effectively deterring unwanted serious criminal behavior, incapacitating offenders, providing just punishment, and increasing public safety.”¹⁰⁷ Furthermore, when “violent criminals face serious and uncompromising mandatory penalties,”¹⁰⁸ the “punishment reflects the exact message we want to send to [offenders who] . . . continually compromise the safety of our cities and neighborhoods.”¹⁰⁹

Mandatory minimums are usually applied to violent crimes that include the use of a firearm,¹¹⁰ and they increase the sentence for repeat offenders.¹¹¹ Legislatures see mandatory minimums as crucial to eliminating gun violence.¹¹² The sentencing provisions “reflect the seriousness of using guns to commit crimes of violence . . . and as designed, hopefully dissuade offenders from using firearms in furtherance of their criminal activity.”¹¹³

In the prevention of violent crimes, mandatory minimums have been considered a necessity for public safety.¹¹⁴ They have led to increased crime control¹¹⁵ and “enabled law enforcement to make great strides in successfully controlling . . . societal harms.”¹¹⁶ The use of mandatory

104. See Roper, *supra* note 78, at 2.

105. *Id.*

106. *See id.*

107. *Id.*

108. *Id.* at 4.

109. *Id.*

110. See Roper, *supra* note 78, at 3.

111. *See id.*

112. *See id.* at 4.

113. *Id.*

114. See James Turner, ‘It can’t be tolerated’: Chief Officers Target of Shooting, WINNIPEG FREE PRESS (Manitoba, CA), Jan. 29, 2008, at A3.

115. See Roper, *supra* note 78, at 4.

116. *Id.*

minimum sentencing by Congress has supported the commitment to eliminate crimes the involve gun violence.¹¹⁷ Studies have proven that some of the recent reduction in criminal activity can be attributed to mandatory minimums and harsher sentencing policies.¹¹⁸ One argument explains that “a mandatory sentencing system, complete with mandatory minimum sentences for certain serious offenses, best serves this nation’s interests in reducing crime.”¹¹⁹

By using mandatory minimum sentencing for crimes that includes violent acts, Congress can adequately punish offenders, deter future violations, and reduce crime.¹²⁰

2. Arguments Against Mandatory Minimums

While there are benefits to mandatory minimum sentences, mandatory minimums negatively impact notice and deterrence.¹²¹

Although one of the goals of mandatory minimum sentencing is to create comparable sentences for like crimes,¹²² critics of mandatory minimum sentences have argued that they result in “disparate sentences for similarly situated offenders and do not yield greater deterrence.”¹²³ For example, lawyers who consistently work closely with prosecutors,¹²⁴ those who know the sentencing schemes better than others,¹²⁵ or those who are particularly good at negotiating¹²⁶ may be able to convince the prosecutor not to impose the mandatory minimum sentence.¹²⁷ Criminals who avoid the mandatory minimums are often exponentially better off than those who do not¹²⁸ because they will generally receive a lesser sentence.¹²⁹ Therefore, mandatory minimums do have the potential to

117. *See id.*

118. *See id.* at 1.

119. *Id.* at 4.

120. *See id.* at 2.

121. *See, e.g.,* Rachel E. Barkow, *Our Federal System of Sentencing*, 58 STAN. L. REV. 119 (2005); William W. Schwarzer, *Sentencing Guidelines and Mandatory Minimums: Mixing Apples and Oranges*, 66 S. CAL. L. REV. 405 (1992); Henry S. Wallace, *Mandatory Minimum Penalties in the Federal Criminal Justice System: A Legislative Dr. Jekyll and Mr. Hyde*, 40 FED. B. NEWS & J. 158 (1993).

122. *See, e.g.,* United States v. Jones, 145 F.3d 959, 970 (8th Cir. 1998) (Bright, J. concurring in part, dissenting in part); Richmond v. State, 446 A.2d 1091, 1095 (Del. 1982).

123. *See* Barkow, *supra* note 121, at 120.

124. Margareth Etienne, *Parity, Diparity, and Adversariality: First Principles of Sentencing*, 58 STAN. L. REV. 309, 321 (2005).

125. *See id.*

126. *See id.*

127. *See id.*

128. *Id.*

129. *See id.*

result in disparate sentences.¹³⁰ The Sentencing Commission agreed, explaining that “[d]eterrence . . . is dependent on certainty and appropriate severity. While mandatory minimum sentences may increase severity, the data suggest that uneven application may dramatically reduce certainty. The consequence . . . is likely to thwart the deterrent value of mandatory minimums.”¹³¹

Furthermore, mandatory minimums result in longer and more frequent prison sentences, which is costly to the government.¹³² Due to these problems, “almost every expert in sentencing policy . . . has recommended the disuse of mandatory minimums.”¹³³

Regardless of the noted disadvantages, the benefits of mandatory minimum sentencing are clear.¹³⁴ Mandatory minimum sentences remain the best way to deter criminals, strengthen legislation, and protect the public from acts of violence.¹³⁵

III. ANIMAL ABUSE LEGISLATION

A. *Current Statutes*

Laws and penalties for those who engage in animal brutality need to be strengthened and taken seriously.¹³⁶ Currently, forty-five states¹³⁷ and

130. *See id.*

131. Wallace, *supra* note 121, at 159 (citing U.S. SENT’G COMM’N, SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM ii-iii (Aug. 1991)).

132. *See* Barkow, *supra* note 121, at 134.

133. *Id.*

134. *See supra* Part II.C.1.

135. *See id.*

136. *See* Flynn, *Family Professionals*, *supra* note 12, at 93.

137. The states allowing for the felony prosecution of certain types of animal cruelty are: Alabama, *see* ALA. CODE § 13A-11-241(a) (2008); Arizona, *see* ARIZ. REV. STAT. § 13-2910(G) (2008); California, *see* CAL. PENAL. CODE § 597(b) (West 2008); Colorado, *see* COLO. REV. STAT. ANN. § 18-9-202(2)(b)(I) (2008); Connecticut, *see* CONN. GEN. STAT. § 53-247(b) (2008); Delaware, *see* DEL. CODE ANN. tit. 11, § 1325(b)(5) (2008); Florida, *see* FLA. STAT. ANN. § 828.12(2) (West 2008); Georgia, *see* GA. CODE ANN. § 16-12-4(c) (2008); Hawaii, *see* HAW. REV. STAT. § 711-1109.3(3) (2008); Illinois, *see* 510 ILL. COMP. STAT. 70/3.02 (2008); Indiana, *see* IND. CODE ANN. § 35-46-3-12(b) (West 2008); Iowa, *see* IOWA CODE § 717B.3A(3)(a)(2) (2008); Kansas, *see* KAN. STAT. ANN. § 21-4310 (2008); Kentucky, *see* KY. REV. STAT. ANN. § 525.125(3) (West 2008); Louisiana, *see* LA. REV. STAT. ANN. § 14:102.1(B)(4) (West 2008); Maine, *see* ME. REV. STAT. ANN. tit. 17, § 1031 (West 2008); Maryland, *see* MD. CODE ANN., CRIM. LAW § 10-606(b)(1) (2008); Massachusetts, *see* MASS. GEN. LAWS ANN. ch. 272, § 77 (West 2008); Michigan, *see* MICH. COMP. LAWS ANN. § 750.50(4) (West 2008); Minnesota, *see* MINN. STAT. § 343.21 (2008); Missouri, *see* MO. REV. STAT. § 578.012.2 (2008); Montana, *see* MONT. CODE ANN. § 45-8-210(2) (2007); Nebraska, *see* NEB. REV. STAT. § 28-1009(2)(b) (2008); Nevada, *see* NEV. REV. STAT. 574.100.2(c) (2008); New Hampshire, *see* N.H. REV. STAT. ANN. § 644:8.III-a (2008); New Jersey, *see* N.J. STAT. ANN. § 4:22-17(b)

the District of Columbia¹³⁸ regard certain acts of animal cruelty as felonies and treat others as misdemeanors.¹³⁹ Some statutes even find that it is an affirmative duty to provide adequate food and water for animals within human care.¹⁴⁰ The five remaining states treat animal abuse violations as misdemeanors.¹⁴¹

(West 2008); New Mexico, *see* N.M. STAT. ANN. § 30-18-1(D) (2008); New York, *see* N.Y. ACRIC. & MKTS. LAW § 353-a(3) (Gould 2008); North Carolina, *see* N.C. GEN. STAT. § 14-360(b) (2008); Ohio, *see* OH. REV. CODE ANN. § 959.99(E)(1) (West 2008); Oklahoma, *see* OKLA. STAT. tit. 21, § 1685 (2008); Oregon, *see* OR. REV. STAT. § 167.322(2) (2008); Pennsylvania, *see* 18 PA. CONS. STAT. § 5511(a)(2) (2008); Rhode Island, *see* R.I. GEN. LAWS § 4-1-5 (2008); South Carolina, *see* S.C. CODE ANN. § 47-1-40(B) (2008) (amended by 2008 S.C. Laws Act 259); South Dakota, *see* S.D. CODIFIED LAWS § 40-1-10.1 (2008); Tennessee, *see* TENN. CODE ANN. § 39-14-202(g)(2) (2008); Texas, *see* TEX. PENAL CODE ANN. § 42.09(c) (Vernon 2007); Utah, *see* UTAH CODE ANN. § 76-9-301.1(3) (2008); Vermont, *see* VT. STAT. ANN. tit. 13, § 353(a)(2) (2008); Virginia, *see* VA. CODE ANN. § 3.1-796.122(B) (2008); Washington, *see* WASH. REV. CODE § 16.52.205(2) (2008); West Virginia, *see* W. VA. CODE § 61-8-19(b) (2008); Wisconsin, *see* WIS. STAT. § 951.18(1) (2007); and Wyoming, *see* WYO. STAT. ANN. § 6-3-203(n) (2008).

138. *See* D.C. CODE ANN. § 22-1001(d) (2008).

139. Alabama only allows for cruelty to a dog or cat to be regarded as a felony; for all other animals it is a Class B misdemeanor. *See* ALA. CODE § 13A-11-14 (2008). The District of Columbia provision does not apply to “undomesticated and dangerous animals,” such as rats, bats, or snakes. *See* D.C. CODE ANN. § 22-1001(d) (2008). The Hawaii statute only applies to domestic animals such as dogs, cats, rabbits not bred for consumption, guinea pigs, domestics rats and mice, and caged birds. *See* HAW. REV. STAT. § 711-1109.3(3) (2008). Kentucky applies its felony provision to torture of a dog or cat only. *See* KY. REV. STAT. ANN. § 525.125(1) (West 2008). The Louisiana statute applies to all animals except chickens in traditional Mardi Gras processions. *See* LA. REV. STAT. ANN. § 14:102.1(C)(5) (West 2008). The New York statute only applies to companion animals. *See* N.Y. ACRIC. & MKTS. LAW § 353-a(1) (Gould 2008). Ohio’s felony provision only applies to companion animals on the second offense. *See* OH. REV. CODE ANN. § 959.99(E)(1) (West 2008). Pennsylvania’s felony provision only applies to zoo animals (on the first offense) and dogs and cats (on the second offense). *See* 18 PA. CONS. STAT. § 5511(a)(2.1)(ii) (2008). South Dakota’s felony provision only applies to instances where the abuser has possessed dogs for fighting and/or engaged in dog fighting. *See* S.D. CODIFIED LAWS § 40-1-10.1 (2008). Tennessee’s felony provision only applies if the abuser has been previously convicted. *See* TENN. CODE ANN. § 39-14-202(g)(2) (2008). Texas requires that the abuser be convicted two times prior to the offense for the felony provision to apply. *See* TEX. PENAL CODE ANN. § 42.09(c) (Vernon 2008). Utah’s felony provision only applies to cases of dog fighting and possessing dogs for fighting. *See* UTAH CODE ANN. § 76-9-301.1(3) (2008). In Virginia, cruelty to a dog or cat is a felony on the first offense; for all other animals it applies on the second offense. *See* VA. CODE ANN. § 3.1-796.122(H) (2008). Furthermore, the animal must die as a result of the abuse for the felony provision to apply. *See id.*

140. *See* Sunstein, *supra* note 31, at 389.

141. In Alaska, cruelty to animals is a class A misdemeanor. *See* ALASKA STAT. § 11.61.140(f) (2008). Arkansas also treats cruelty to animals as a class A misdemeanor. *See* ARK. CODE ANN. § 5-62-101(b) (2008). Idaho classifies cruelty to animals as a misdemeanor. *See* IDAHO CODE ANN. § 25-3504 (2008). Mississippi also classifies cruelty to animals as a misdemeanor. *See* MISS. CODE ANN. § 97-41-16 (2008). The North Dakota statute only deals with the treatment of livestock and treats the

A typical animal abuse statute does not treat every act of cruelty as a felony.¹⁴² In Delaware, for example, the felony provision applies when a person “intentionally kills or causes serious injury to any animal. . . .”¹⁴³ If an abuser is convicted of a felony under the statute, he or she will be prohibited from owning or possessing any animal for fifteen years with certain exceptions.¹⁴⁴ Additionally, he or she will be subject to a \$5,000 fine.¹⁴⁵ However, statutes generally do not mandate counseling or incarceration for animal abuse.¹⁴⁶

B. Lack of Enforcement of Abuse Legislation

The biggest problem with the effectiveness of animal abuse statutes involves their enforcement; the majority of animal cruelty cases are never prosecuted.¹⁴⁷ If regularly enforced and taken seriously, these statutes “would do a great deal to protect animals from suffering, injury, and premature death.”¹⁴⁸ Unfortunately, the enforcement of statutes barring animal cruelty can only occur through public prosecution.¹⁴⁹ Protection for animals, therefore, will only result if a prosecutor decides to provide it by prosecuting cases of animal cruelty.¹⁵⁰ However, crimes of animal abuse are rarely high priority cases.¹⁵¹

In a study of the prosecution of animal cruelty cases in Massachusetts from 1975-1990, “less than half of the cases resulted in a conviction, only one-third of those found guilty were fined, only ten percent received jail time, and counseling or community service was ordered even less frequently.”¹⁵² Part of the enforcement problem may be because the police do not investigate an overwhelming majority of the reported crimes of animal abuse.¹⁵³ Another problem is that many of the anticruelty provisions within the statutes contain exceptions and

mistreatment of animals as a class A misdemeanor. *See* N.D. CENT. CODE § 36-21.1-02 (2008).

142. *See, e.g.*, DEL. CODE ANN. tit. 11, § 1325(b) (2008).

143. *Id.*

144. *See* DEL. CODE ANN. tit. 11, § 1325(d) (2008).

145. *See id.*

146. *See* Sunstein, *supra* note 31, at 391.

147. *See* Jennifer H. Rackstraw, Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Crimes, 9 ANIMAL L. 243, 244 (2003).

148. Sunstein, *supra* note 31, at 390.

149. *See id.*

150. *See id.*

151. *See id.*

152. Flynn, *Family Professionals*, *supra* note 12, at 87 (citing Arnold Arluke & C. Luke, *Physical Cruelty toward Animals in Massachusetts, 1975-1990*, 5 SOC'Y AND ANIMALS 183 (1997)).

153. *See* David Favre, Remarks: The Legal Status of Nonhuman Animals, 8 ANIMAL L. 1, 4 (2002).

loopholes.¹⁵⁴ Therein lies a vicious cycle: Police do not investigate crimes of animal cruelty, so abusers are not charged, so prosecutors infrequently prosecute abusers. Because the investigations hardly ever lead to convictions, police then continue to refrain from investigating reports of animal cruelty.

IV. MANDATORY MINIMUMS AND ANIMAL ABUSE VIOLATIONS

The best way to achieve stricter enforcement of the provisions in the animal cruelty statutes is to attach mandatory minimum sentences. Because many of the violent acts against animals involve the use of a dangerous weapon by the abuser,¹⁵⁵ the attachment of a mandatory minimum sentence is particularly appropriate.

Mandatory minimums “have created an overwhelming incentive for a defendant to cooperate with the prosecutor.”¹⁵⁶ Overall, mandatory minimums prove extremely useful to prosecutors and coercive to defendants.¹⁵⁷ “[I]f [defendants] ‘roll the dice,’ opting for trial rather than the prosecutor’s plea offer of a lesser (but not necessarily insignificant) penalty, [mandatory minimums] play a powerful, often decisive, role in determining defendants’ realistic options.”¹⁵⁸ While mandatory minimums are not guaranteed to solve all of the many problems with prosecuting animal abusers, they will give the prosecution a significant bargaining chip. Instead of serving the mandatory minimum, prosecutors may opt to allow abusers in these cases to take a plea bargain involving time in a facility that is likely to include psychological evaluations and counseling. Regardless of the prosecutor’s decision, the ability to attach a mandatory minimum will force potential abusers to consider the seriousness of their crimes.¹⁵⁹

Mandatory minimum sentences are often applied to felonies involving the potential for severe violence, including crimes of “drugs, gangs, gun crimes, and violence”¹⁶⁰ that threaten national safety and security.¹⁶¹ Laws with mandatory minimums were intended to assist in

154. See Sunstein, *supra* note 31, at 391.

155. See Flynn, *Family Professionals*, *supra* note 12, at 90. Among other methods, documented forms of abuse include: burning, hanging, poisoning, shooting, and stabbing. See *Pet-Abuse Statistics*, *supra* note 6. In these cases especially, the felony animal abuse is committed with violent weapons, much like other felonies that attach mandatory minimum sentences. See *supra* Part II.C.i.

156. D. Brock Hornby, *Stepping Down*, 8 J. APP. PRAC. & PROCESS 265, 267 (2006).

157. See Robert J. Levy, *The Dynamics of Child Sexual Abuse Prosecution: Two Florida Case Studies*, 7 J. L. & FAM. STUD. 57, 60 (2005).

158. *Id.*

159. See Hornby, *supra* note 156, at 267.

160. Roper, *supra* note 78, at 2.

161. See *id.*

prosecuting crimes involving gun violence used to further criminal activity.¹⁶² In a study of animal abusers, half of the interviewed subjects admitted using a gun to kill a stray animal.¹⁶³ It is clear from this statistic that animal abuse violations carry a high possibility for additional harm.¹⁶⁴ While not all animal brutality crimes are committed using firearms, many of them still involve other dangerous weapons.¹⁶⁵ In the hands of animal abusers, weapons used to mutilate and torture animals are just as dangerous as firearms.¹⁶⁶ Given the link between human and animal abuse, it becomes necessary for these violent acts of animal brutality, especially those involving weapons dangerous to both humans and nonhuman animals, to impose a mandatory minimum sentence on the abuser.

Commentators suggest that children who abuse animals will not benefit from incarceration.¹⁶⁷ However, the statutes in many states already recommend psychological evaluations and therapy for first time animal abusers of all ages.¹⁶⁸ If these statutes applied to juvenile offenders and mandated the diagnosis and treatment of any psychological problems, as well as a specified amount of counseling for the abuser, the future repercussions¹⁶⁹ associated with animal brutality would potentially be avoided. Furthermore, attaching a mandatory penalty, regardless of whether it involves time in a prison facility, will create respect for the law¹⁷⁰ and, in turn, respect for the lives of nonhuman animals.¹⁷¹

162. *See id.* at 3.

163. *See* Flynn, *Family Professionals*, *supra* note 12, at 90.

164. *See id.*

165. *See id.*

166. *See id.* at 89.

167. *See* Livingston, *supra* note 13, at 61.

168. *See* Randall Lockwood, *Animal Cruelty Prosecution: Opportunities for Early Response to Crime and Interpersonal Violence*, AM. PROS. RES. INST., July 2006, at 44, available at www.ndaa.org/pdf/animal_cruelty_06.pdf. These states include Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia. *See id.*

169. *See supra* Part II.A.

170. *See* Rucker, 443 So.2d at 1321-22.

171. *See* Sunstein, *supra* note 31, at 390.

Notably, animal abusers are frequently adults.¹⁷² The studies linking animal abuse to crimes of domestic violence have generally focused on these adult abusers.¹⁷³ Furthermore, many of the abusers have previously committed crimes of animal brutality.¹⁷⁴ Whether or not the first episode of abuse occurred when the abuser was a juvenile, by the age of adulthood, he or she should be held to a higher level of responsibility for his or her crimes.¹⁷⁵

One of the most recent and publicized cases of animal abuse involved Atlanta Falcons quarterback Michael Vick, who played a major role in a six-year dog fighting operation in Virginia.¹⁷⁶ Some of the methods of killing the animals, involving six to eight dogs that did not perform to expectations,¹⁷⁷ included drownings and hangings.¹⁷⁸ Although animal rights groups applauded the judge's decision to sentence Vick to twenty-three months in prison,¹⁷⁹ his co-conspirators were given lesser sentences,¹⁸⁰ even though they too played a role in the acts of brutality against the animals.¹⁸¹ Furthermore, neither Vick nor his co-conspirators received mandated counseling for their actions. As leading authority has suggested, counseling is needed in cases of animal abuse because the abuse can usually be attributed to deeper psychological concerns.¹⁸²

172. See *Pet-Abuse Statistics*, *supra* note 6. The website documents statistics of animal abusers and updates these statistics daily. *Id.* As of October 24, 2008, 9,996 cases of animal abuse were documented in the system. See *Pet-Abuse.com, Animal Abuse Statistics*, http://www.pet-abuse.com/pages/cruelty_database/statistics/ages.php (last visited October 24, 2008). Of these, only 758 abusers in the system were age 17 or younger. *Id.* The majority (1946) of abusers in the system were between the ages of 31 and 40. *Id.* In the second largest group (1946), the abusers were between the ages of 41 and 50. *Id.*

173. See Robbins, *supra* note 30, at 133.

174. See Flynn, *Family Professionals*, *supra* note 12, at 93.

175. The Comment does not suggest that therapy or other means of counseling would not be beneficial for adults. Rather, the Comment emphasizes that, like other areas of the legal system, child offenders are punished less severely and by different means than adults. See generally *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (holding that the execution of offenders who were under 18 at the time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments).

176. See Juliet Macur, *Vick Receives 23 Months and a Lecture*, N.Y. TIMES, Dec. 11, 2007, at D1.

177. See *id.*

178. See *id.*

179. See *id.*

180. See *id.*

181. See *id.*

182. See Flynn, *Family Professionals*, *supra* note 12, at 87.

The publicity of the Vick case, however, did rouse legislative awareness about the need for stricter animal cruelty laws.¹⁸³ Currently, proposals for tougher penalties for crimes involving animals are pending in dozens of states.¹⁸⁴ Animal cruelty experts have testified in favor of one of Maryland's bills, which would require "counseling for people convicted of some types of animal cruelty."¹⁸⁵ Even Congress is "considering a few animal cruelty bills, including a measure to require federal tracking of animal cruelty cases."¹⁸⁶ However optimistic proposed legislation may be, lawmakers must remember that stronger laws alone have not prevented animal brutality.¹⁸⁷ Indeed, harsher sentences must be imposed for the violators of animal abuse statutes.

Regardless of whether the victim is a human or an animal, a violent and brutal crime is a violent and brutal crime and must be taken seriously. Although commentators have argued that mandatory minimums are costly to the government,¹⁸⁸ they are adopted because the government is concerned with the well-being and safety of its citizens. Public health and safety concerns are extremely important considerations, and thus mandatory minimum sentences should be used in connection with these crimes.

Mandatory minimum sentences for animal abusers are likely to avoid the major downfalls associated with mandatory minimums in general. Disparate sentences are highly unlikely because most often, the mandated punishment will focus on mandatory counseling as opposed to prolonged incarceration. Additionally, when animal abusers are currently sentenced to psychological evaluations and counseling, many states require the expenses to be paid by the abusers themselves.¹⁸⁹ Currently, the biggest problem with convicting violent animal abusers is the fact that prosecutors are seldom willing to prosecute cases of animal abuse.¹⁹⁰ Crimes against animals are simply not seen as important enough to investigate. However, by imposing mandatory minimums,

183. See Kristen Wyatt, *Disgusted By Vick Case, States Consider Animal Cruelty Laws*, ASSOCIATED PRESS ALERT, Feb. 1, 2008, available at <http://www.wtopnews.com/index.php?nid=598&sid=1337564>.

184. See *id.*

185. *Id.*

186. *Id.*

187. See Sunstein, *supra* note 31, at 390.

188. See Barkow, *supra* note 121, at 125.

189. See Lockwood, *supra* note 168 at 44. Twenty-six states provide provisions for psychological evaluation and treatment at the offender's expense. See *id.* at 17. They are Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia. See *id.*

190. See Flynn, *Family Professionals*, *supra* note 12, at 93.

courts have suggested that laws become more respected and are taken more seriously.¹⁹¹ If mandatory minimums become attached to animal brutality statutes, these statutes may be given a higher priority and much more respect.¹⁹²

V. CONCLUSION

“Animal abuse should be taken seriously not just because of our concern for humans. Lax enforcement of animal cruelty law leads to untold suffering by nonhuman animals, and those who perpetrate such horrible acts should be punished.”¹⁹³

As this Comment has explored, one way to ensure violent criminals are prevented from committing further crimes is by implementing mandatory minimum sentences, as both a rehabilitative and deterrent measure. If anticruelty provisions direct judges to sentence child- animal abusers to attend counseling, there may be a chance for rehabilitation that could prevent further acts of violence. If adult abusers face the possibility of real jail time, they may be deterred from committing acts of animal abuse.

While the inclusion of felony provisions within animal cruelty laws and the understanding of the considerable problems associated with animal abuse is a step in the right direction, states must address other defects in the application of these laws. Unfortunately, the anticruelty statutes are not enforced to the extent possible. Prosecutors rarely seek harsh penalties for animal abusers and often dismiss the charges altogether. Mandatory minimum sentences will help prosecutors gain a significant “bargaining chip,” encouraging animal abusers to plead guilty and avoid the possibility of the mandatory minimum sentence. By encouraging pleas, mandatory minimum sentencing may reduce the costs and time constraints of a trial. Prosecutors could then recommend an appropriate amount of jail time as well as mandated counseling. In cases where the abuser is a juvenile, a psychological evaluation should accompany the counseling.

Finally, if mandatory minimum sentences are linked to the anticruelty provisions of animal statutes, the laws will be take much more seriously. Violent crimes against any living beings in society are serious crimes and thus should contain real and severe penalties. Attaching mandatory minimums demonstrates societal recognition of the crime’s severity.

191. See *supra* Part II.B.

192. See Sunstein, *supra* note 31, at 390.

193. Flynn, *Family Professionals*, *supra* note 12, at 94.

Animal brutality is clearly a significant problem. Heinous crimes like the brutal beating of Dusty have gone virtually unpunished, and it is time for anticruelty statutes to be taken seriously. Once the penalties for animal brutality are increased, the potential victims of these acts of abuse will be better protected against future harms.