

## RESTORING JUSTICE FOR ANIMAL VICTIMS

BRITTANY HILL\*

*“[W]hen a crime is committed, our principal question should not be:  
what should be done with the offender?  
Rather, it should be: what should be done for the victim?”*<sup>1</sup>

### INTRODUCTION

The way the United States’ criminal legal system responds to animal cruelty has not been seriously evaluated. Intervention largely takes the form of an adversarial process, where the goal is to punish those who commit animal cruelty.<sup>2</sup> Currently, the most widely used intervention for animal cruelty is prosecution. However, prosecution alone may be unable to target root causes of animal cruelty, teach empathy towards animals, or provide meaningful opportunities for animals to be recognized and treated as victims. With pushes to alleviate the criminal justice system’s reliance on the carceral state, reform advocates are seeking alternative interventions that hold perpetrators of animal cruelty accountable that do not rely on punishment or vengeance. Restorative justice is one such intervention. There are several reasons why intervention is necessary in cruelty cases. First, animal cruelty often involves violence. Second, animal cruelty is frequently a sign of deviant behavior<sup>3</sup> that is likely not occurring in a vacuum. Third, animal

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\* Brittany Hill is a Criminal Justice Program Fellow at the Animal Legal Defense Fund. There, Brittany largely focuses on exploring innovative ways to incorporate criminal justice reform into animal law. Brittany received her JD from Lewis & Clark Law School and her BA from Santa Clara University. Thank you to Conor Lamkin (Lewis & Clark Law School JD ‘21) for her terrific assistance, especially in the early stages of this article. And thank you Adam, Teddy, and Lucy for your unwavering support and love. All opinions expressed in this article are personal and do not necessarily reflect opinions of the Animal Legal Defense Fund.

<sup>1</sup> GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES* 11 (Taylor & Francis 2d ed. 2011).

<sup>2</sup> See *Animals and Society Institute*, ANIMAL WELFARE COURTS, <https://www.animalsandsociety.org/helping-animals-and-people/animal-welfare-courts> (last visited May 28, 2021) (discussing jurisdictions that utilize specialty courts, such as the Animal Welfare Court in Pima County, Arizona and the Pre-Adjudication Animal Welfare Court (PAW) in Bernalillo County, New Mexico that are adversarial in nature, but also encourage treatment and diversion for offenders).

<sup>3</sup> See Robert F. Meier, *Deviance*, WILEY (2014), <https://doi.org/10.1002/9781118517390.wbetc174> (“Deviance is defined as behavior that violates a norm beyond the tolerance of a group such that a sanction could be applied to the violator.”).

victims deserve recognition. Because animal cruelty cases are complex, utilizing restorative justice is likely to have positive benefits for people who commit animal cruelty, communities, and most importantly animal victims.

Opponents of restorative justice may cite animals' lack of ability to speak as a reason to not utilize restorative justice. However, access to restorative justice should not be conditioned upon the ability to advocate for oneself. There is significant data that shows animals—especially those who rely on humans, such as companion animals—expect to be treated fairly.<sup>4</sup> This is not to say that the onus of forgiving is placed on animal victims; rather, this data reflects the intricate emotional and cognitive abilities of animals and their expectation that they are treated fairly by humans. Further, this data shows that animals are likely to understand parts of the restorative justice process, particularly how the harm they experienced is repaired.<sup>5</sup> This research, coupled with the fact that we can—and do—advocate on animals' behalf, leads one to conclude that there is space for restorative justice in animal cruelty cases.

Currently, prosecution plays an integral role in intervention, as the most common way to adjudicate a case in the criminal justice system is for a prosecutor to bring charges, although a small minority of states allow private citizens to commence a suit as well.<sup>6</sup> Some of the goals of prosecution, including promoting justice and ensuring safe communities, have become synonymous with punitive sentences.<sup>7</sup> Punitive sentences are meant to punish people for the crimes they commit and often take a retributive tone.<sup>8</sup> Anything less than punishment is often seen as “condoning the transgression.”<sup>9</sup> Criminal justice reformists are

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<sup>4</sup> Julia Mosquera, *Are Nonhuman Animals Owed Compensation for the Wrongs Committed to Them?* in INTERVENTION OR PROTEST: ACTING FOR NONHUMAN ANIMALS, 213, 224 (Gabriel Garmendia da Trindade & Andrew Woodhall eds., 2016) (citing recent research on animal cognition and behavior that shows “that non-human animals are expected to be treated fairly.”).

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

<sup>6</sup> See, e.g., Wash. Dist. Ct. R. CrRLJ 2.1(c).

<sup>7</sup> American Prosecutors Research Inst., PROSECUTION IN THE 21<sup>ST</sup> CENTURY: GOALS, OBJECTIVES, AND PERFORMANCE MEASURES, 5 (Feb. 2004), [https://nacrj.org/index.php?option=com\\_easyfolderlistingpro&view=download&format=raw&data=eNpNj8FOWzAMhl8l8glOS0c1wD2hneA08QJTlrqrpSapEmdsQrw7absKTrb\\_5Pv922BV4XfCHUIXhpZclJQJ6wqBnTIT2kRKIUdbujGfBrabfXAue5ab-shJ2NIEFA\\_IieJikWYJQa9P50xJ\\_uyfEY7HWZumlwX1xs1WGmEqu0XlFhpGvUCRhtFI\\_-9XYTseaGXrGuEQQ1wim4WDV12ISnpS2yqJ2pOXHG\\_q4e3w-a62WtePE\\_OEQFe5d2Pb3QPSdeRy-7q9KguNiLG9KzbQnGb1tRCRLkxfy2EltDfClxLm5xeiRG5G](https://nacrj.org/index.php?option=com_easyfolderlistingpro&view=download&format=raw&data=eNpNj8FOWzAMhl8l8glOS0c1wD2hneA08QJTlrqrpSapEmdsQrw7absKTrb_5Pv922BV4XfCHUIXhpZclJQJ6wqBnTIT2kRKIUdbujGfBrabfXAue5ab-shJ2NIEFA_IieJikWYJQa9P50xJ_uyfEY7HWZumlwX1xs1WGmEqu0XlFhpGvUCRhtFI_-9XYTseaGXrGuEQQ1wim4WDV12ISnpS2yqJ2pOXHG_q4e3w-a62WtePE_OEQFe5d2Pb3QPSdeRy-7q9KguNiLG9KzbQnGb1tRCRLkxfy2EltDfClxLm5xeiRG5G).

<sup>8</sup> Marty Price, *Crime and Punishment*, MEDIATE.COM, <https://www.mediate.com/articles/crimea.cfm> (last visited May 28, 2021) (“Our criminal justice system is a system of retributive justice.”).

<sup>9</sup> Joseph Heffner & Oriel Feldman Hall, *Why We Don't Always Punish:*

re-thinking punitive sentences and whether there are alternative ways to hold people accountable that focus less on retribution and more on rehabilitation. Effective interventions do not have to equate to punitive sentences and restorative justice is proof of that.

However, restorative justice may not be appropriate in every animal cruelty case or for every person who commits animal cruelty. While restorative justice can have positive impacts on both victims and offenders,<sup>10</sup> not every offender will be willing to participate in the process. Clearly, in those cases, restorative justice would not be a fruitful endeavor. In addition, no two animal cruelty cases are the same, and what may have worked in one case might not work in another case. Because of this, it is wise to seek—and explore the use of—different interventions. Further, restorative justice does not always eliminate the need for incarceration; sometimes it is used “in conjunction with, or parallel to, prison sentences.”<sup>11</sup> Nevertheless, restorative justice is not typically associated with incarceration; in fact, it is viewed as a way to alleviate incarceration.<sup>12</sup> This article will not focus on the validity of incarceration in existing animal cruelty cases; rather, the focus will remain on the core elements of restorative justice—victim recognition, accountability, and healing—and their potential role in animal cruelty cases.

## I. WHAT IS RESTORATIVE JUSTICE?

### *a. Definition of Restorative Justice*

Defining restorative justice can be difficult because often the context in which it is used dictates the nuances of the various existing definitions. However, no matter how the concept is defined, three common elements of restorative justice remain constant:

- 1) an emphasis on the role and experience of victims in the criminal justice process;
- 2) involvement of all relevant parties, including the victim, offender,<sup>13</sup> and their supporters, to discuss

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*Preferences for Non-punitive Responses to Moral Violations*, SCI. REP., 2 (2019) <https://www.nature.com/articles/s41598-019-49680-2.pdf>.

<sup>10</sup> The benefits of restorative justice for both offenders and victims include greater satisfaction than a traditional proceeding in the criminal justice system and a reduction in repeat offending. *See generally* Adriann Lanni, *Taking Restorative Justice Seriously*, BUFFALO L. REV., (forthcoming 2021) (manuscript at 1, on file with author).

<sup>11</sup> HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE REVISED AND UPDATED* (JUSTICE AND PEACEBUILDING) 20 (2015).

<sup>12</sup> Lanni, *supra* note 10.

<sup>13</sup> *See* Lynn Branham, *Eradicating the Label “Offender” from the Lexicon of*

- the offense, its impact, and what should be done to “repair the harm;”<sup>14</sup> and
- 3) decision making carried out by both lay and legal actors.<sup>15</sup>

In writing this article, the following definition of restorative justice was used: “Restorative justice is a process where offenders take responsibility for their actions, understand the harm they have caused, and, as much as possible, restore the well-being of the victim. This is all done while centering the victim’s experiences and pain.”<sup>16</sup> This definition is sufficiently specific to convey the important aspects of restorative justice yet remains general enough so that it can be adapted to different situations.

Restorative justice is a flexible process that is typically designed to meet the needs of all involved parties.<sup>17</sup> It assumes that most people who have hurt others have the capacity to address what they and others may need to heal.<sup>18</sup> A truly restorative approach starts with acknowledging that there are two parties: an offender, who caused harm, and a victim, who has been harmed and is seeking restoration or healing.<sup>19</sup> While

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*Restorative Practices and Criminal Justice*, 9 WAKE FOREST L. REV. ONLINE 53, (2019) (discussing the Washington Department of Corrections’ policy to discard terms such as “offender” and “felon” in describing formerly incarcerated people). In spite of the growing scholarship that suggests the term “offender” may be harmful to those labeled “offenders,” this article uses the terms “victim” and “offender” to remain consistent with contemporary restorative justice scholarship. However, this article acknowledges that the term is reductive, has negative impacts, and strays from person-centered language, which is much-needed when discussing the intricacies of the criminal legal system. Restorative justice advocates suggest the use of the phrase “the person who caused the harm” instead of “offender.”

<sup>14</sup> Kathleen Daly, *Restorative Justice: The Real Story*, 4 PUNISHMENT & SOC’Y 55, 58 (2002).

<sup>15</sup> *Id.*

<sup>16</sup> ZEHR, *supra* note 11 at 48, 102 (inspiring this article’s definition of restorative justice with the following two definitions: “[r]estorative justice is a process whereby all parties with a stake in a specific offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future” and “[r]estorative justice is an approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”).

<sup>17</sup> Tanya Rugge, *The Impact of Restorative Justice Practices on Participants 2* (July 2006) (unpublished Ph.D dissertation, Carleton University) (on file with Library and Archives Canada).

<sup>18</sup> Lorenn Walker & Leslie Hayashi, *Pono Kaulike: Reducing Violence with Restorative Justice and Solution-Focused Approaches*, 73 FED. PROB., 3 (2009).

<sup>19</sup> Mark Obbie, *They Knew It Was The Right Thing to Do*, SLATE (Dec. 29, 2015), <https://slate.com/news-and-politics/2015/12/restorative-justice-its-rise-and-fall->

the focus is not on punishment, there may be some instances where punishment is part of restorative justice.<sup>20</sup>

*b. Why Restorative Justice?*

Rehabilitation is often an after-thought of the criminal justice system, which typically seeks to ensure that offenders get what they *deserve*, not what they *need*.<sup>21</sup> In addition, the criminal justice system does not truly hold people accountable because “accountability” takes the form of retribution, incarceration, and/or labeling people with criminal convictions, often for the rest of their lives.<sup>22</sup> True accountability cannot occur in a system that does not encourage offenders to apologize or actively participate.<sup>23</sup>

Punishment and accountability cannot live in the same space; while punishment is passive, taking accountability is not. Accountability requires an offender to take responsibility for his actions, reckon with the harm he has caused, and put in effort to rectify that harm.<sup>24</sup> When

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in-rural-upstate-new-york-county.html.

<sup>20</sup> U.N. OFF. OF DRUGS & CRIME, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES, at 11, U.N. Sales No. E.06.V.15 (2006).

<sup>21</sup> ZEHR, *supra* note 11, at 27.

<sup>22</sup> Emily Cureton, Former Prosecutor Brings Message Of DA Changes To Bend, OPB (Apr. 25, 2019, 8:00 AM), <https://www.opb.org/news/article/adam-foss-bend-deschutes-county-mass-incarceration-prosecution/>. While it is possible for people to expunge convictions from their criminal records, there are often impediments—including costs, such as filing fees and waiting periods—that can make it difficult. Moreover, every state’s expungement eligibilities differ, and some crimes are not eligible to be expunged. *See generally* Barbara Brosher, *Scrubbing The Past To Give Those With A Criminal Record A Second Chance*, NPR (Feb. 19, 2019, 4:58 AM), <https://www.npr.org/2019/02/19/692322738/scrubbing-the-past-to-give-those-with-a-criminal-record-a-second-chance>.

<sup>23</sup> *See* Rugge, *supra* note 17, at 24 (“[T]he traditional criminal justice system emphasizes that the offender remain quiet where the focus is not on the discovery of truth but whether there is enough evidence to convict.”); *see* Josie Duffy Rice et al., *What Does Accountability Look Like Without Punishment?*, YES! (May 25, 2021), <https://www.yesmagazine.org/opinion/2021/05/25/abolition-accountability-without-punishment> (“Accountability is an active process through which people have to make a decision that they recognize the harms that are occurring, they want to try to redress them, and they’re thinking about the harms through the lens of what’s been done to others but also what’s been done to them. That’s really challenging because everything in our culture is about coercion; dangling the idea of punishment is meant to keep you on the ‘right path.’ Within the culture we have, there’s very little incentive to take accountability for anything.”).

<sup>24</sup> HOWARD ZEHR, CHANGING LENSES: RESTORATIVE JUSTICE FOR OUR TIMES 47 (25th Anniversary ed. 2015) (“Accountability also involves taking responsibility for the results of one’s behavior. Offenders must be allowed and encouraged to help decide what will happen to make things right, then to take steps to repair the damage.”).



a person is punished, he is not required to take responsibility, because the punishment is simply something that is happening to him.<sup>25</sup> With the exception of paying restitution, punishment does not require an offender to participate in rectifying the harm he caused.<sup>26</sup> In short, very little work is associated with punishment.<sup>27</sup> Moreover, when one is punished, he is not required to apologize for the harm he committed.<sup>28</sup> In fact, apologies—and admitting guilt—in the criminal justice system come with legal consequences.<sup>29</sup> Howard Zehr sums up the difference between accountability and punishment quite strikingly, “[P]unishment is not real accountability. ...[A]ccountability involves facing up to what one has done. It means encouraging those who have caused harm to understand the impact of their behavior—the harms they have done—and urging them to take steps to put things as right as possible.”<sup>30</sup>

The carceral system is not known for its rehabilitative efforts. In fact, the “tough on crime” practices of the 1970s and 1980s have made prisons—and the criminal justice system—the antithesis of rehabilitation.<sup>31</sup> However, rehabilitation is extremely important in

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<sup>25</sup> Legally, someone may plea, but that rarely has anything to do with taking responsibility (often it is to receive a reduction in sentence).

<sup>26</sup> See ZEHR, *supra* note 24, at 48 (discussing restitution as a method courts use to make a victim whole again, while also acknowledging its limitations: “[restitution] is usually an imposed sanction and thus does not encourage offenders’ ownership in the outcome. Usually the offender does not participate in the restitution decision and has little or no understanding of the victim’s losses.”).

<sup>27</sup> DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 91 (The New Press 2019) (illustrating the passive nature of punishments: “[punishment] is passive. All one has to do to be punished is not to escape. It requires neither agency nor dignity, nor does it require work.” This is not meant to minimize punishment and the sentences people receive. People are still required to complete those sentences, which often include paying money, serving incarceration, and being on parole and this is not always easy, especially if people lack resources and support).

<sup>28</sup> See ZEHR, *supra* note 11, at 24. “The criminal justice system is concerned about holding offenders accountable, but accountability in that system means making sure those who cause harm get the punishment they deserve. Little in the process encourages them to understand the consequences of their actions or to empathize with those they have harmed. On the contrary, the adversarial game requires them to look out for themselves. Those who have offended are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways.”

<sup>29</sup> See Scot Dignan, *Apology As A Function of Criminal Justice*, 3 STRATHCLYDE L. REV. 118, 127 (2017) (“[W]e must create a greater (and safer) space for apology within the traditional criminal justice system.”).

<sup>30</sup> ZEHR, *supra* note 11, at 24.

<sup>31</sup> See Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs*, 45 L. & SOC’Y REV. 33 (2011) (“In place of rehabilitation, deterrence and incapacitation became the explicit goals

restorative justice. The focus throughout restorative justice is on identifying and addressing the needs of all involved parties, including victims *and* offenders.<sup>32</sup> Restorative justice relies on an open dialogue rather than an adversarial process and requires offenders to engage with the process, the victim, and their communities. Rehabilitation requires offenders to commit to being mindful and intentional, and in restorative justice, that becomes much more likely to occur.

### c. *Current Uses of Restorative Justice*

Although the concept of restorative justice has existed for many years, it has not been meaningfully implemented in the U.S. criminal justice system.<sup>33</sup> Most often, restorative justice is used in the juvenile justice system<sup>34</sup> or as an alternative to incarceration and prosecution.<sup>35</sup> In cases where restorative justice is utilized as an alternative to incarceration or prosecution, the case is diverted from entering or progressing through the criminal justice system—instead, the case is settled outside of the criminal justice system entirely. When used like this, restorative justice aims to hold offenders accountable and attempts to break the cycle of mass incarceration.<sup>36</sup> While restorative justice is

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of prison in political discourse. This shift has alternatively been called the ‘new punitiveness,’ ‘culture of control,’ or ‘new penology,’ but in all of its many forms, scholars have argued that the contemporary criminal justice system has become more punitive and less oriented towards rehabilitation.”).

<sup>32</sup> ZEHR, *supra* note 11, at 25.

<sup>33</sup> Steve Mulligan, *From Retribution to Repair: Juvenile Justice and The History of Restorative Justice*, 31 U. LA VERNE L. REV. 139, 142-43 (2009) (“[E]arly [] nomadic tribes responded to inter-clan transgressions through a form of restorative justice called ‘restitution negotiations.’...Still, in many cultures such as “Australian aboriginals, Egyptian Bedouin, and many Native American societies, restorative justice continues to be the dominant form of conflict resolution.”).

<sup>34</sup> U.S. Dep’t of Just., Office of Juv. Just. & Delinq. Prevention, *Balanced and Restorative Justice: Program Summary* 1, (1994) (discussing how the criminal justice system currently uses balanced and restorative justice principles in the juvenile justice system, which focus on fostering offender accountability, competency development, and community safety).

<sup>35</sup> See Rebecca Beitsch, *States Consider Restorative Justice as Alternative to Mass Incarceration*, PBS (July 20, 2016), <https://www.pbs.org/newshour/nation/states-consider-restorative-justice-alternative-mass-incarceration> [hereinafter *States*] (detailing different paths—through the current criminal justice system and through restorative justice—for two defendants facing similar charges); Vanessa Hernandez, *Restorative Justice Offers A Powerful Alternative to Prisons and Jails*, ACLU-WA (Oct. 24, 2016), <https://www.aclu-wa.org/story/restorative-justice-offers-powerful-alternative-prisons-and-jails>; See ZEHR, *supra* note 11, at 66.

<sup>36</sup> Hernandez, *supra* note 35 (“Restorative justice provides an alternative that can help break the cycle of over-incarceration for many offenses. Restorative practices focus on repairing the harm that has been done, rather than simply punishing someone

often cited as an *alternative* to the criminal justice system, it can and should be used *in conjunction* with the criminal justice system. This is most often seen in prisons when restorative justice is used after a case has been adjudicated.<sup>37</sup> Restorative justice programs available to offenders while they are in prison usually do not have any bearing on their sentence; rather, such programs are designed to heal participants and provide closure.<sup>38</sup>

Typically, the offenders who choose to participate in restorative justice programs while in prison do so for personal reasons, including finding ways to atone for their actions.<sup>39</sup> Not all of these programs involve direct encounters between victims and offenders from the same incident.<sup>40</sup> For example, when either the victim or offender is not ready to participate, surrogate parties are used; victims meet with offenders who have caused similar harm and offenders meet with victims who have experienced similar harm.<sup>41</sup> Some restorative justice programs aim to provide incarcerated offenders with transitional resources that they can use after their release from prison.<sup>42</sup> Such programs are designed around victim harm and offender accountability and are intended to assist both victims and offenders, especially offenders who plan to return to their communities.<sup>43</sup>

#### *d. Restorative Justice Models*

Although similar in basic outline, the models of restorative justice can differ in the number, category of participants, and facilitation styles.<sup>44</sup> Regardless of the model used, nearly all develop a plan that

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who has committed an offense by locking them up.”).

<sup>37</sup> *States, supra* note 35 (“In Colorado, for instance, judges in some jurisdictions can order that adults be considered for restorative justice if they are sentenced to probation rather than prison.”); INSIGHT PRISON PROJECT, <http://www.insightprisonproject.org/> (last visited May 26, 2021) (“Restorative justice attempts to draw on the strengths of both prisoners and victims, rather than dwelling on their deficits.”).

<sup>38</sup> *See ZEHR, supra* note 11, at 67.

<sup>39</sup> Daniel W. Van Ness, *Prisons and Restorative Justice*, in *HANDBOOK OF RESTORATIVE JUSTICE* 314 (Gerry Johnstone & Daniel Van Ness eds., 2011) (“Finally, some prisons offer restorative interventions as an opportunity for personal transformation of their prisoner participants.”).

<sup>40</sup> *ZEHR, supra* note 11, at 67.

<sup>41</sup> U.N. OFF. OF DRUGS & CRIME, *supra* note 20, at 61. There are often many concerns about whether or not a victim is ready to participate in the process, so surrogate victims have become commonplace in those instances. It is especially imperative that a victim, who has been harmed, is not re-victimized. Surrogate victims participate instead of the actual victim.

<sup>42</sup> *See ZEHR, supra* note 11, at 68.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 60.



include methods of repairing harm and focus on rehabilitation while seeking to prevent recidivism.<sup>45</sup> The three models that are frequently used and will be discussed below are:

- 1) victim offender conferences;
- 2) family group conferences; and
- 3) talking circles.<sup>46</sup>

Some restorative justice programs use only one type of model, whereas other programs combine aspects from several different models, depending on the case and the needs of the participants.<sup>47</sup> The beauty of restorative justice is that it is flexible and can be adapted to “meet the needs of participants.”<sup>48</sup> While there is no prescribed model for specific crimes, the seriousness of the crime usually mandates a lengthier restorative justice process.<sup>49</sup>

Restorative justice practitioners often describe victim-offender conferences as a “direct form of restorative justice.”<sup>50</sup> Such conferences typically involve three parties: the victim, the offender, and a restorative justice facilitator.<sup>51</sup> According to restorative justice practitioners, “[t]he [restorative justice] facilitator is not expected to participate or lead the substance of the discussion,” but rather is present to ensure that

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<sup>45</sup> See Rugge, *supra* note 17, at 24.

<sup>46</sup> ZEHR, *supra* note 11, at 60-66.

<sup>47</sup> Rugge, *supra* note 17, at 6.

<sup>48</sup> *Id.* at 7 (“Models continue to adapt, in an attempt to meet the needs of participants. Research in the area of restorative justice is still in its infancy, so an exploration of what methods best meet the needs of the offenders, the victims, and the community, is essential.”).

<sup>49</sup> *Id.* at 20 (“Typically, more serious crimes, with more damaging consequences, take a longer period of time to go through a restorative justice process (suggesting a higher level of intervention). The seriousness of the crime is usually an indication of a lengthy restorative justice process, but not always.”).

<sup>50</sup> LAWRENCE W. SHERMAN & HEATHER STRANG, SMITH INST., RESTORATIVE JUSTICE: THE EVIDENCE, 13 (2007).

<sup>51</sup> ZEHR, *supra* note 11, at 60 (acknowledging that on occasion family or community members participate or take on a supporting role); SHERMAN & STRANG, *supra* note 50, at 33 (discussing the state criteria that must be met in order to become a restorative justice facilitator. For example, in Colorado, “all facilitators shall receive restorative justice training in order to declare themselves a restorative justice facilitator.”); COLO. COALITION OF RESTORATIVE JUST. DIRECTORS, RESTORATIVE JUST. FACILITATOR CODE OF CONDUCT & STANDARDS OF TRAINING & PRAC., 5-6 (rev. Aug. 2015) (providing that training includes, but is not limited to: a working knowledge of restorative justice principles and values; an understanding of the three key stakeholders of restorative justice practices (victim, offender, and community); an understanding that all restorative justice practices must be voluntary and why; and cultural awareness.).

the victim and offender “stay focused on the process.”<sup>52</sup> During victim-offender dialogues, parties discuss in detail the harm that the offender caused, the pain the victim experienced and may continue to experience, what motivated the offender to commit the crime, what the victim needs in order to heal, and identify the offender’s obligations in making sure that the victim is healed.<sup>53</sup> The process relies on commitment, honesty, and engagement from both offenders and victims.

Family group conferences expand the circle of primary participants to include family members and/or other individuals significant to the victim and offender.<sup>54</sup> Family group conferences are most often utilized in juvenile cases.<sup>55</sup> Usually, the families meet with the facilitator to share information regarding the incident and the problem(s) surrounding the violence.<sup>56</sup> Then, the families confer with one another to develop a plan, which frequently includes rehabilitation.<sup>57</sup> The intention behind such a rehabilitation plan is that everyone is in agreement; however, the victim and offender must be satisfied with the plan before it can be adopted.<sup>58</sup>

Talking circles are exactly what they sound like: participants arrange themselves in a circle and pass a talking piece around the circle, ensuring that each person speaks.<sup>59</sup> One or two people serve as facilitators.<sup>60</sup> The circle is composed of the offender, the victim, their family members, community members, and sometimes members of the criminal justice system.<sup>61</sup> Because community members are involved, discussions within the circle are often more far-reaching than in other restorative justice models.<sup>62</sup> In these circles, victims and offenders have the chance, again, to address the harm caused and experienced, the reason(s) for committing the crime, what the victim needs in order to heal, and the offender’s obligations in making sure that the victim is healed.<sup>63</sup> However, with community members present, there is an opportunity to address systemic issues that may be prevalent in communities, such as a lack of resources. In addition, community members involved in the talking circle may act as a support network for offenders and victims during the talk and certainly afterwards.

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<sup>52</sup> SHERMAN & STRANG, *supra* note 50, at 33.

<sup>53</sup> See ZEHR, *supra* note 11, at 33-34.

<sup>54</sup> *Id.* at 60.

<sup>55</sup> See *id.*

<sup>56</sup> SHERMAN & STRANG, *supra* note 50, at 52.

<sup>57</sup> ZEHR, *supra* note 11, at 63.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 64.

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

<sup>61</sup> *Id.* at 64-65.

<sup>62</sup> *Id.* at 65.

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

## II. DOES RESTORATIVE JUSTICE WORK?

Research shows that restorative justice not only has the potential to work, but that it *does* work. Interestingly, evidence suggests that restorative justice may be most effective when crimes are more serious, especially for crimes involving victims rather than property crimes.<sup>64</sup> There seems to be power in putting a “face” to a crime. Further, the process of engaging with a crime victim, having a dialogue, and making amends to that victim has far-reaching, beneficial effects. For minor crimes, research shows that restorative justice is not much better than the criminal justice system in reducing repeat offending.<sup>65</sup> When it comes to major crimes, restorative justice has succeeded better than the criminal justice system in reducing repeat offending among defendants in New York City.<sup>66</sup> Further, there is more satisfaction overall among participants with a restorative justice process.

### *a. Victims*

Crime victims and advocates have fought hard to secure rights to participate in criminal justice proceedings. Rights afforded to victims include “the right to information; to notice of an opportunity to be heard at important criminal justice proceedings; to compensation; to protection, and privacy.”<sup>67</sup> While these rights are meaningful, they do not provide the victim with a chance to have a dialogue with the offender,<sup>68</sup> to discover why the offender committed a crime against them, or to receive an apology.

While not all victims want to interact with the offender, some do. Some victims want to hear directly from the offender, have a meaningful opportunity to respond and receive an apology. Core to restorative justice principles is the understanding that it is a victim-centered process. Restorative justice has the potential to “empower victims by providing them with the opportunity to actively participate in the resolution of their case.”<sup>69</sup> Even in restorative justice programs, victims may not be totally satisfied; in fact, victims still may report dissatisfaction in the cases when offenders refuse to accept responsibility, if offenders fail

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<sup>64</sup> SHERMAN & STRANG, *supra* note 50, at 21.

<sup>65</sup> *Id.* (This study showed there was no significant recidivism among shoplifters, drunk drivers, and teenage property offenders).

<sup>66</sup> *Id.*

<sup>67</sup> NAT’L CRIME VICTIM LAW INST., *History of Victim’s Rights* (2011) [https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/about\\_ncvli/history\\_of\\_victims\\_rights/](https://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victims_rights/).

<sup>68</sup> Meredith Rossner, *Restorative Justice, Anger, and the Transformative Energy of Forgiveness*, INT’L J. RESTORATIVE JUST., Vol. 2(3), 382 (2019).

<sup>69</sup> Rugge, *supra* note 17, at 28.

to appear at a conference as agreed, or when offenders fail to complete outcome agreements.<sup>70</sup> However, many victims who attend restorative justice programs, overall, report that they are glad they participated and the benefits they describe include “less fear of the offender, less anger at the offender, and greater ability to move on with their lives.”<sup>71</sup> In fact, studies indicate that “victims’ satisfaction rates vary between seventy-five to ninety-eight percent.”<sup>72</sup> Restorative justice has also been shown to help victims recover from traumatic experiences, “providing much needed opportunities for validation, connection, and enhanced feelings of safety.”<sup>73</sup>

*b. Offenders*

One concern of the criminal justice system is that there is a lack of trauma informed care. While often not a popular opinion, offenders need healing too. Studies show that many offenders have been victimized or traumatized in significant ways.<sup>74</sup> Even when they have not been directly victimized, many offenders view themselves as victims.<sup>75</sup> These actual harms, and perceptions of harms, can be important contributing causes of crime.<sup>76</sup> The perception of being victimized does not absolve one from responsibility and may not even be valid, but it is important to address, particularly to break cycles of recidivism.<sup>77</sup> If people continue to view themselves as victims, they may believe they are owed something or that their actions were “right.” This can prevent them from taking accountability and responsibility for their actions and, in turn, hinder any chances of rehabilitation. Restorative justice provides offenders a space to reconcile their status as victims and work through trauma while still holding them accountable for the harm they caused. Accountability in and of itself can be a step toward change and healing.<sup>78</sup>

One goal of every restorative justice intervention is to reduce recidivism among offenders. Studies have shown that rates of recidivism are lower in both juvenile and adult offenders who have participated in

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<sup>70</sup> SHERMAN & STRANG, *supra* note 50, at 22.

<sup>71</sup> *Id.* at 23.

<sup>72</sup> Lode Walgrave, *Investigating the Potentials of Restorative Justice Practice*, WASH. U. J. L. & POL’Y 91, 107 (2011).

<sup>73</sup> Catherine Barga et al., *Crime Victims’ Experiences of Restorative Justice: A Listening Project*, DEP’T. JUST. CAN. 8 (May, 2019), <https://www.justice.gc.ca/eng/rp-pr/jr/cverj-vvpcj/cverj-vvpcj.pdf>.

<sup>74</sup> ZEHR, *supra* note 11, at 41.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

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

<sup>78</sup> ZEHR, *supra* note 24, at 190.

restorative justice compared with other justice interventions.<sup>79</sup> Further, it is suggested that “through engaging in restorative activities,” offenders can come to “re-define themselves as a law-abider and subsequently no longer engage in criminal activity.”<sup>80</sup>

*c. Communities*

Communities play a pivotal role in crimes—they are affected by crimes, but rarely have the chance to participate in meaningful and productive conversations about crime. With the surge of media attention on criminal activity, crimes are often portrayed in ways that incite reactions from the public.<sup>81</sup> When a crime is committed, communities typically do one of two things: “draw together defensively, against the perpetrator or ‘the enemy,’” or draw away from one another, “becoming distrustful of others.”<sup>82</sup> This can also be exacerbated by the criminal justice system, which tends to “otherize” defendants by labeling them and reducing them to the worst acts they have committed. However, restorative justice can chip away at this paradigm by acknowledging that community members may want a say in how *their* community responds to crime and recognizing that most offenders—and victims—return to their communities. Thus, it can be incredibly beneficial for community members to challenge, discuss, and engage in—often difficult—conversations about how offenders are generally viewed, what resources offenders may need in order to be successful upon re-entry, and what role they can play in the offender’s rehabilitation.

*d. Bringing More Crimes to Justice*

Restorative justice has the potential to bring more crimes to justice. “The concept of diversion from prosecution is often misunderstood to imply that prosecution would otherwise occur in 100% of cases.”<sup>83</sup> However, this is not true. Prosecutorial discretion allows prosecutors to choose whether to charge a case and they do not have to provide

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<sup>79</sup> Alex Lloyd & Jo Borrill, *Examining the Effectiveness of Restorative Justice in Reducing Victims’ Post-Traumatic Stress*, 13 PSYCH. INJ. & L. 77, 77-78 (2020) (“The effectiveness of [restorative justice] has been demonstrated in a meta-analysis, which found reoffending rates to be lower in [restorative justice] compared with other justice interventions. Further, [restorative justice] is effective at reducing recidivism in both adult and adolescent offenders.”).

<sup>80</sup> *Id.* at 77.

<sup>81</sup> See ANGELA DAVIS, ARE PRISONS OBSOLETE? 6, 39 (2003).

<sup>82</sup> ZEHR, *supra* note 24, at 64.

<sup>83</sup> SHERMAN & STRANG, *supra* note 50, at 82.



their reasons for not pursuing charges.<sup>84</sup> Thus, prosecutorial discretion is an incredibly powerful tool. However, if only one type of intervention is available—and not utilized—then there may not be a significant conclusion to that case. This is true especially if the parties involved could benefit from a meaningful intervention other than prosecution.

Many people fear the criminal justice system. Victims and witnesses are often reluctant to be involved in many—if not all facets—of the criminal justice system out of fear of retaliation or a general distrust of the system.<sup>85</sup> This aversion is especially prevalent in communities of color.<sup>86</sup> As a result, many may not feel comfortable seeking assistance from police, investigators, or prosecutors; all of whom are big players in the adversarial justice system that victims *must* interact with. On the other hand, victims are at the helm of restorative justice. They have incredible say over whether they participate, how they participate, and who participates with them. Because of this, victims may be more comfortable with the process and, in turn, the process and outcome is likely to be more successful.<sup>87</sup> With that, more people would be encouraged to come forward and participate.<sup>88</sup> Undoubtedly, this change in perception of the criminal justice system would be significant.

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<sup>84</sup> District Attorneys may have policies that require them to issue a memorandum when they decline to charge which may include their reasons. This may be shared with investigators and animal cruelty officers, in cases involving animal cruelty. However, District Attorneys are not required to issue statements to the public and/or their constituents on why they declined to pursue criminal charges in a case.

<sup>85</sup> SHERMAN & STRANG, *supra* note 50, at 78 (“The major barrier to bringing offences to justice is victim and witness reluctance to risk retaliation or—more important—their time, from involvement with legal formalities. They may also distrust or fear the system itself, in terms of imposing excessive or inappropriate punishments on their loved ones.”).

<sup>86</sup> See THE SENTENCING PROJECT, *Reducing Racial Disparity in the Criminal Justice System A Manual for Practitioners and Policymakers*, 1, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf> (2d ed. 2008).

<sup>87</sup> SHERMAN & STRANG, *supra* note 50, at 63 (“When victims were asked whether they were satisfied with the way their case was dealt with by the justice system, there was a statistically significant difference between the court-assigned and the RJ-assigned victims (46% vs 60%). Significantly more of those who actually experienced an RJ conference were satisfied, compared with those whose cases were dealt with in court (70% vs 42%). There was no different here between property and violence victims.”).

<sup>88</sup> *Id.* at 78 (“[Restorative justice] could change all of that. If it worked widely and well, it would logically encourage more people to come forward to participate in a process that would be more predictable and convenient than going to court.”).

### III. RESTORATIVE JUSTICE AND CRIMES AGAINST ANIMALS

Applying the principals of restorative justice to animal cruelty will not be without its challenges, though, it is not impossible. Currently, prosecution plays a role in getting animal cruelty cases “into a system where intervention is mandated and results are tracked,”<sup>89</sup> which are both important in protecting animal victims. However, creative sentencing and alternative interventions are still valuable in complex cases, such as animal cruelty,<sup>90</sup> particularly in cases where offenders have underlying trauma and mental health disorders that lead to animal cruelty.<sup>91</sup> Designing, evaluating, and borrowing from appropriate diversion programs, counseling models, and restorative justice models can be invaluable; especially when it comes to building empathy and teaching that “power gained at the expense of the pain and suffering of others,” including animals, “will have consequences.”<sup>92</sup>

This article suggests that restorative justice can be beneficial in animal cruelty cases for three reasons. First, restorative justice positions animals as victims because their harm is at the center of the process; it is the animal’s harm that needs to be addressed, atoned for, and healed.<sup>93</sup> Second, restorative justice targets and addresses underlying reasons for animal maltreatment more effectively.<sup>94</sup> Third, restorative justice engages communities, which is imperative for animal cruelty offenders, who are all inevitably released back into their communities after their cases have been adjudicated.<sup>95</sup>

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<sup>89</sup> Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 81, 86 (1999).

<sup>90</sup> *Id.*

<sup>91</sup> See Ashley Kunz, *Skinning the Cat: How Mandatory Psychiatric Evaluations for Animal Cruelty Offenders Can Prevent Future Violence*, 21 SCHOLAR 167, 170 nn.18-20, 172 n.26 (2019).

<sup>92</sup> Lockwood, *supra* note 89, at 87.

<sup>93</sup> ZEHR, *supra* note 11, at 21.

<sup>94</sup> See Melanie Randall & Lori Haskell, *Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping*, DALHOUSIE L. J. 531 (Jan., 2013) (“Given restorative justice’s insistence on involvement of all parties affected by wrongdoing, victims, offenders, and their immediate and broader communities, it is an approach to constructing richer, more complete, and expansive narratives about the creation, causes and impacts of wrongdoing and the associated harms, as well as about the possibilities for repair and resolution. A deeper recognition of trauma responses, and insights from the now significantly expanded and refined knowledge in this area, can only assist in the construction of richer narratives about traumatic events, their effects and their resolution.”).

<sup>95</sup> ZEHR, *supra* note 11, at 26; See generally Jennifer Kabbany, *Probation Typical in Animal Cruelty Convictions*, SAN DIEGO UNION-TRIB. (Feb. 21, 2009), <https://www.sandiegouniontribune.com/sdut-region-probation-typical-in-animal-cruelty-2009feb21-story.html>.

*a. Treating Animals as Victims*

Unfortunately, animals are considered property under the law.<sup>96</sup> All fifty states have cruelty laws, but, unfortunately, usually animal owners<sup>97</sup> are considered victims as opposed to the animals themselves.<sup>98</sup> This is problematic because owners are capable of perpetrating animal cruelty. Moreover, animals directly suffer from cruel acts and this pain deserves to be recognized. Legal and societal efforts are being made to shift the paradigm and treat animals as crime victims,<sup>99</sup> but there is still a lot of work to be done.

Evidence shows that restorative justice is more successful with victims of crimes than with property crimes.<sup>100</sup> This is promising for animal cruelty cases because animals *are* victims. While the context has largely been on *human* victims, there is nothing preventing restorative justice from being used for animal victims. Restorative justice views victims as the one who has experienced harm.<sup>101</sup> Undoubtedly, an animal experiences harm when she is abused, neglected, or otherwise maltreated. Therefore, animals are victims within restorative justice and offenders would be required to recognize them as such. In turn, this will provide them with an opportunity to learn about animal sentience and recognize how their cruel actions negatively impact animals and other community members.

*b. Targeting Underlying Reasons for Animal Cruelty*

There are many underlying motivations for animal cruelty.<sup>102</sup>

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<sup>96</sup> *Animals' Legal Status*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/animals-legal-status/> (last visited May 28, 2021).

<sup>97</sup> The term “owner” will be used because this article discusses animals’ legal status as property and why that status affords certain rights to whomever has a property interest in that animal.

<sup>98</sup> *How Animals Differ from Other Types of “Property” Under the Law*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/how-animals-are-treated-differently-from-other-types-of-property-under-the-law/> (last visited May 28, 2021). However, there is a push for recognizing animals as crime victims. In fact, two states, Oregon and Colorado, have held that animals are victims for sentencing purposes. *See State v. Nix*, 355 Or. 777, 334 P.3d 437 (2014), *vacated on procedural grounds*, 356 Or. 768, 345 P.3d 416 (2015); *reasoning adopted in State v. Hess*, 237 Or. App. 26, 359 P.3d 288 (2015), *review denied*, 358 Or. 529, 367 P.3d 529 (2016); *See People v. Harris*, 405 P.3d 361 (Colo. App. 2016).

<sup>99</sup> *Animals' Legal Status*, *supra* note 96.

<sup>100</sup> SHERMAN & STRANG, *supra* note 50, at 8. (“[Restorative justice] works better with crimes involving personal victims than for crimes without them.”). Property crimes mean crimes without a victim.

<sup>101</sup> Obbie, *supra* note 19.

<sup>102</sup> Eleonara Gullone, *Conceptualizing Animal Abuse with an Antisocial*

Numerous studies show that animal abuse may be a strong “indicator of concurrent interpersonal violence,” especially within families, encompassing links to child, elder, and intimate partner abuse.<sup>103</sup> Decades of research shows that the likelihood of engaging in animal cruelty increases when one is exposed to other trauma, particularly for children.<sup>104</sup> Animal abuse is prevalent in families with substantiated child physical abuse.<sup>105</sup> Additionally, children who commit animal cruelty may have witnessed a parental figure perpetrating animal cruelty.<sup>106</sup>

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*Behaviour Framework*, ANIMALS 144, 146-47 (Jan. 16 2011), <https://aldf.org/wp-content/uploads/2020/07/Conceptualising-Animal-Abuse-with-an-Antisocial-Behaviour-Framework.pdf> (aldf.org) ([Researchers] have proposed nine categories of motivations for animal cruelty, including: 1) attempts to control an animal (e.g., hitting a dog to stop [him] from barking); 2) retaliation (e.g., use of extreme punishment for a perceived transgression on the part of the animal such as throwing a cat against a wall for vomiting in the house); 3) acting out of prejudice against a particular species or breed; 4) the expression of aggression through an animal (e.g., organi[z]ing dog fights); 5) acting out of the motivation to enhance one’s own aggression (e.g., using animals for target practice or to impress others); 6) to shock people for amusement; 7) to retaliate against another person or as revenge (e.g., killing or maiming the companion animal of a disliked neighbor); 8) displacement of aggression from a person to an animal; and 9) non-specific sadism which refers to the desire to inflict suffering, injury or death in the absence of any particular or hostile feelings towards an animal).

<sup>103</sup> Sharon Nelson, *The Connection Between Animal Abuse and Family Violence: A Selected Annotated Bibliography*, 17 ANIMAL L. 369, 370 (2011).

<sup>104</sup> See *Animal Cruelty’s Link to Other Forms of Violence*, ANIMAL LEGAL DEF. FUND (July 30, 2018), <https://aldf.org/wp-content/uploads/2018/07/The-Link-2018.pdf> (Collectively, this research refers to and builds upon The Link, a well-documented body of research that shows that animal abuse often coincides with interpersonal violence.); Lacey Levitt, *Animal Maltreatment: Implications for Behavioral Science Professionals*, 36 BEHAV. SCI. & L. 766, 774 (2018) (One study showed that approximately 60% of individuals who witnessed or perpetuated animal abuse also experienced family violence. In another study, “the likelihood of engaging in animal cruelty was more than three to five times higher for youth who experienced physical abuse or neglect, sexual abuse, household violence, or lived with someone who was mentally ill.”).

<sup>105</sup> Levitt, *supra* note 104, at 174 (“Existing records of animal abuse were found in 88% of families with substantiated child physical abuse, compared with 34% of families with either child sexual abuse or neglect.”).

<sup>106</sup> Fiona S. McEwen, Terrie E. Moffitt & Louise Arseneault, *Is Childhood Cruelty to Animals a Marker for Physical Maltreatment in a Prospective Cohort Study of Children?*, 38 CHILD ABUSE & NEGLECT 3, 533 (2014) (finding that children who exhibit cruelty toward animals are more than twice as likely to have suffered abuse themselves); see also Sarah DeGue & David DiLillo, *Is Animal Cruelty a “Red Flag” for Family Violence?: Investigating Co-Occurring Violence Toward Children, Partners, and Pets*, 24 J. INTERPERSONAL VIOLENCE 1036, 1040 (2008) (citing a study that found youth who abused animals were more likely to have witnessed animal cruelty committed by their peers or parents and reported more exposure to parental violence).

An adult might harm an animal in front of a child—or even force the child to partake in the animal abuse—in order to terrorize or control the child.<sup>107</sup> In such cases, the animal cruelty serves as a threat or warning, that unless the child complies, the adult will perpetrate the same harm to the child. Animal abuse performed in front of a child is also a form of psychological and emotional abuse; children in homes where domestic violence occurs can form strong bonds with their companion animals who provide comfort.<sup>108</sup>

Addressing underlying trauma is not a strength of the criminal justice system, especially transgenerational trauma,<sup>109</sup> which many juvenile animal cruelty offenders experience.<sup>110</sup> There has been a push to infuse trauma-informed care throughout the criminal justice system, especially in courts.<sup>111</sup> While organizations have provided resources to criminal courts that encourage trauma-informed care,<sup>112</sup> proper, trauma-informed procedures are still lacking in the criminal justice system.<sup>113</sup> Restorative justice can help with this.<sup>114</sup> At its core, restorative justice requires offenders to reflect, address the harm they caused, and take accountability all while addressing any underlying issues they may have.<sup>115</sup> Cruelty offenders may have a difficult time with this process,

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<sup>107</sup> Shelby Elaine McDonald et al., *Children's Experiences of Companion Animal Maltreatment in Households Characterized by Intimate Partner Violence*, 50 CHILD ABUSE & NEGLECT 116, 123 (2015) (“Children’s reports of threats to and harm of animals as a tactic of coercion in response to their own actions may reflect a generalized use of coercive control by their mother’s partners. Thus, animal-directed violence may function as a concurrent form of emotional abuse in the home where it is used by abusive partners to control, intimidate, and/or distress children.”).

<sup>108</sup> Betty Jo Barrett et al., *Animal Maltreatment as a Risk Marker of More Frequent and Severe Forms of Intimate Partner Violence*, 26-1 J. INTERPERSONAL VIOLENCE, 1 (2017).

<sup>109</sup> Leah Sottile, *Abuser and Survivor, Face to Face*, ATLANTIC (Oct. 5, 2015), <https://www.theatlantic.com/health/archive/2015/10/domestic-violence-restorative-justice/408820/> (“Transgenerational trauma isn’t fixed by jail time.”).

<sup>110</sup> Kunz, *supra* note 91, at 185 nn.107-9.

<sup>111</sup> See Nicole C. McKenna & Kristy Holtfreter, *Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness*, J. AGGRESSION, MALTREATMENT & TRAUMA (2020).

<sup>112</sup> See generally *Trauma Training for Criminal Justice Professionals*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals> (last visited May 17, 2021).

<sup>113</sup> See generally *Creating a Trauma-Informed Criminal Justice System for Women: Why and How*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., [https://www.nasmhpd.org/sites/default/files/Women%20in%20Corrections%20TIC%20SR\(2\).pdf](https://www.nasmhpd.org/sites/default/files/Women%20in%20Corrections%20TIC%20SR(2).pdf) (last visited May 17, 2021) (examining the need for a trauma-informed criminal justice system for women).

<sup>114</sup> See Randall & Haskell, *supra* note 94.

<sup>115</sup> See *id.* at 526 (Discussing how a trauma-informed model of restorative justice can identify underlying issues offenders may have and assist in providing a



especially if they have experienced trauma themselves.<sup>116</sup> But, providing cruelty offenders with the opportunity to heal themselves while acknowledging that they have caused pain to others and holding them accountable in a non-adversarial setting can be impactful.<sup>117</sup> Having the proper coalition in place to provide the offender with resources, tools, and knowledge to reflect and work through their underlying issues needs to be developed further.<sup>118</sup> Currently, there is a lack of treatment options available to animal cruelty offenders.<sup>119</sup> However, the hope is that additional programming and resources for cruelty offenders will become available as more people acknowledge that cruelty offenders are often saddled with underlying and co-existing issues that can be the impetus for animal cruelty.<sup>120</sup>

### c. Engaging Communities

When most animal cruelty offenders are convicted, they are not serving long sentences.<sup>121</sup> The majority are given probation and

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tailored, nuanced response to what offenders need in order to take responsibility for their actions).

<sup>116</sup> See generally ZEHR, *supra* note 11, at 42 (“Studies show that many of those who offend have indeed been victimized or traumatized in significant ways.”); Levitt, *supra* note 104.

<sup>117</sup> See Randall & Haskell, *supra* note 94, at 525 (“Without threat of traditional criminal punishment and loss of connection to others, perpetrators of crime have a better chance of developing empathy...”).

<sup>118</sup> See generally *Building a Safe and Humane Community*, CAN. VETERINARY MED. ASS’N., <https://www.canadianveterinarians.net/policy-advocacy/abuse-building-safe-community> (last visited May 17, 2021).

<sup>119</sup> *Intervention Programs*, ANIMALS & SOC’Y INST. (Aug., 2016), <https://www.animalsandsociety.org/wp-content/uploads/2016/08/Jail-Diversion-Programs-for-Animal-Abuse.pdf> (“There are few alternatives to hold perpetrators accountable and reduce the likelihood that they will repeat the behavior. Most people who have abused/neglected animals receive nothing more than a small fine. The result is a gap in meaningful alternatives for animal cruelty cases.”) (emphasis omitted).

<sup>120</sup> See Maya Gupta et al., *Interventions with Animal Abuse Offenders in* PALGRAVE INTERNATIONAL HANDBOOK OF ANIMAL ABUSE STUDIES 15 (Palgrave Macmillan UK 2017) (“[I]ncreasing justice system awareness of animal abuse interventions may be the appropriate next step—though hopefully in concurrence with greater progress in developing more empirically supported interventions to which the justice system may refer offenders and in increasing the number of practitioners willing to provide them.”).

<sup>121</sup> Debra L. Muller-Harris, *Animal Violence Court: A Therapeutic Jurisprudence-Based Problem-Solving Court for the Adjudication of Animal Cruelty Cases Involving Juvenile Offenders and Animal Hoarders*, 17 ANIMAL L. 313, 315 (2011) (“The criminal justice system’s current method of dealing with cases involving acts of violence against animals is to use the traditional criminal court proceedings. These proceedings make use of existing state animal cruelty laws, for which the

immediately returned to their communities with little to no other opportunities for meaningful programming.<sup>122</sup> Accordingly, many cruelty offenders are not receiving resources, tools, or skills that allow them to address the reasons for their cruelty before returning to their communities.<sup>123</sup> Through engaging communities, restorative justice can help target societal issues related to animal cruelty, including providing education and resources.<sup>124</sup> Moreover, restorative justice can help with re-acclimating offenders back into their communities, particularly with a support network which could be extremely beneficial in reducing recidivism.<sup>125</sup> In addition, during the restorative justice process, animal cruelty offenders will learn how their cruel treatment of animals affects the community as a whole.<sup>126</sup> Certainly, the animal victim's experiences are of utmost importance, but offenders must learn that animal cruelty has societal implications, such as links with other forms of interpersonal violence and affecting the mental health of witnesses of animal abuse, especially children.<sup>127</sup>

#### IV. WHAT COULD RESTORATIVE JUSTICE LOOK LIKE IN ANIMAL CRUELTY CASES?

This article will apply three existing models to animal cruelty and adapt them accordingly. It is worth reiterating that restorative justice will not be applicable to all cruelty cases or offenders. However, exploring the possibilities can still be incredibly valuable.

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resulting punishments are often very short jail sentences, usually with time served, or nominal fines.”).

<sup>122</sup> See *id.*; See generally Kabbany, *supra* note 95.

<sup>123</sup> See *Intervention Programs*, *supra* note 119.

<sup>124</sup> See Leena Kurki, *Incorporating Restorative and Community Justice Into American Sentencing and Corrections*, U.S. DEP'T JUST.: SENTENCING & CORRECTIONS 2 (Sept., 1999), <https://www.ojp.gov/pdffiles1/nij/175723.pdf> (“Most advocates of restorative justice agree that it involves five basic principles [which includes]: case disposition should be based primarily on the victim's and the community's needs....”).

<sup>125</sup> Rebecca Beitsch, *Can Restorative Justice Help Offenders Reintegrate Into Society?*, PBS (July 22, 2016), <https://www.pbs.org/newshour/nation/can-restorative-justice-help-offenders-reintegrate-society> (discussing how restorative justice practices have helped offenders re-enter society by not only holding them accountable, but also providing opportunities for offenders to connect with community members and create a new support system).

<sup>126</sup> See Allie Phillips & Randall Lockwood, *Investigating & Prosecuting Animal Abuse*, NAT'L DIST. ATT'YS ASS'N 27 (2013), <https://www.sheriffs.org/publications/NDAA-Link-Monograph.pdf> (discussing the impact hoarding has on communities, such as costs and the amount of assistance from many organizations that is required).

<sup>127</sup> See McDonald, *supra* note 107.

### a. Victim-Offender Dialogues

Victim-offender dialogues can be used in animal cruelty cases, even if animals communicate in ways we cannot understand.<sup>128</sup> In cases involving animal victims, surrogate victims will participate in the process.<sup>129</sup> This is not unique to animal cruelty crimes; in fact, surrogate victims have been used in other types of cases, including “homicide or crimes against legal persons like a company or a school.”<sup>130</sup> “[T]he flexibility that the restorative justice approach offers” allows for it to be adapted to many situations.<sup>131</sup> Likely, the surrogate victim will be an animal’s owner, if the owner was not the offender. Otherwise, veterinarians will likely represent the animal victim.<sup>132</sup> Veterinarians are in an ideal position to represent animal victims because they can speak to animal physiology, impacts of violence and neglect on an animal, and best care practices for animals.

Arguably, animal victims may not gain what human victims gain from restorative justice due to the nature of the process, but it can still be valuable, particularly for offenders because they can learn a great deal and, in turn, this can protect future animal victims.<sup>133</sup> Animals may

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<sup>128</sup> Carrie Packwood Freeman et al., *Giving Voice to the “Voiceless:” Incorporating Nonhuman Animal Perspectives as Journalistic Sources*, 12 JOURNALISM STUDIES, 2 (2011) (“Empirical research has clearly shown that other animals have interests, desires, and cognitive, emotional, and moral intelligences.”).

<sup>129</sup> Surrogate victims are used when crimes do not have victims who have a voice in the “traditional” sense. While this has not been applied to crimes against animals, nothing is preventing it. See Hon. Brian J. Preston, *The Use of Restorative Justice for Environmental Crime*, 35 CRIM. L.J., 14-15 (2011) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1831822](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1831822). (“In practice, natural objects, such as rivers and trees, have been represented successfully by a surrogate victim in restorative justice conferences.”).

<sup>130</sup> U.N. OFF. OF DRUGS & CRIME, *supra* note 20 at 61.

<sup>131</sup> Chaitanya Motupalli, *Intergenerational Justice, Environmental Law, and Restorative Justice*, 8 WASH. J. OF ENTL. L. & POL’Y, 333, 343 (2018).

<sup>132</sup> Typically, a surrogate victim is someone who can convey and represent the victim’s interests. U.N. OFF. OF DRUGS & CRIME, *supra* note 20 at 61.

<sup>133</sup> See generally Jeff Bouffard, et al., *The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders*, 15 YOUTH VIOLENCE & JUV. JUST., 465 (2016) (discussing the effectiveness of a number of restorative justice programs in youth offenders); see SHERMAN & STRANG, *supra* note 50, at 70 (discussing the results of several experiments comparing offenders who completed restorative justice programming with those who did not, which showed that restorative justice worked most consistently to reduce repeat offending with violent crime.). There is no research supporting the effectiveness of restorative justice programs specifically for animal cruelty offenders. However, using available research examining the effectiveness of restorative justice programs on recidivism generally, an argument can be made that a restorative justice program for animal cruelty offenders could reduce recidivism and curtail future animal cruelty.

still gain something from this process, such as being the beneficiary of a trust that is set up for the animal's ongoing care, or being removed from harmful environments.

Animal victims should not be placed in physical, emotional, or mental danger, so animal victims—or any animal—should not be forced to interact with the people who committed violence against them.<sup>134</sup> Using surrogate victims in animal cruelty cases allows cruelty offenders to hear, firsthand, the pain, harm, and suffering they caused to the animal victim.<sup>135</sup> Surrogate victims can articulate the physiological pain animals experience and the post-traumatic stress disorder they suffer after being harmed.<sup>136</sup> It is important to note that animal pain physiology, though differing in certain ways from that of humans, operates in largely the same way as human pain physiology.<sup>137</sup> While this may be obvious to some, for others, it is not.<sup>138</sup> Teaching offenders—particularly those who have committed offenses like neglect because of a lack of understanding what animals need—can be incredibly powerful and make a difference.<sup>139</sup>

Research on animal behavior and cognition shows that animals

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<sup>134</sup> Gupta et al., *supra* note 120, at 28 (noting the ethical and safety reasons interventions for animal cruelty offenders usually do not recommend contact with the animal victim). It is imperative that animal victims are not re-victimized. However, there may be instances where an intervention using an animal is “carefully structured [in a] supervised setting” that poses little risk to the animal and this may be valuable for both the animal victim, who can view the offender making amends, and the offender, who can potentially develop a positive relationship and view of animals. *Id.*

<sup>135</sup> See U.N. OFF. OF DRUGS & CRIME, *supra* note 20, at 61 (The surrogate victim will communicate the animal victim's physical, emotional, and mental pain to the offender).

<sup>136</sup> See Levitt, *supra* note 104, at 769 (“PTSD-like symptoms have been found in a variety of species including chimpanzees, elephants, parrots, mice, and dogs.”).

<sup>137</sup> See Bernard E. Rollin, *The Unheeded Cry: Animal Consciousness*, ANIMAL PAIN & SCI., 107-201 (1989); see also Andrew Rowan, *Of Mice, Models and Men: A Critical Evaluation of Animal Research*, 77-79 (1984).

<sup>138</sup> See Dustin A. Richardson, *Veterinarians and Their Perception of the Treatment of Animal Abuse Cases in the Criminal Justice System*, 41 (2017) available at <https://ir.library.illinoisstate.edu/cgi/viewcontent.cgi?article=1705&context=etd> (“[Dr. Faulk] stated that some people believe animals do not feel pain or they believe animals possess an extremely high tolerance for pain and, as such, fail to provide proper care for their pets, thus neglecting them.”).

<sup>139</sup> See *Benchmark Animal Rehabilitative Curriculum, Endorsements & Testimonials*, B.A.R.C. <http://barceducation.org/referring-agencies/endorsements-testimonials> (last visited June 23, 2021) (providing testimonials from law enforcement and prosecutors who discuss the importance of providing resources and education to animal cruelty offenders. “During my 30-plus years as a prosecutor, I reviewed and prosecuted thousands of animal cruelty cases. The majority of defendants in those cases would have greatly benefitted from a program...Educating people about the humane treatment of animals can often be much more effective, and have longer-lasting effects, than incarceration, fines, or community service.”)

expect to be treated fairly.<sup>140</sup> Certain animal species “possess some sort of proto-morality” and “develop something similar to our sense of justice through prolonged relations with humans.”<sup>141</sup> Arguably, this shows that animals not only suffer physically, but suffer emotionally when “their needs and desires are unjustly not met.”<sup>142</sup> “Furthermore, a considerable number of non-human animals can rebuild trust from a compensatory arrangement.”<sup>143</sup> This is especially true for companion animals who interact frequently with humans.<sup>144</sup> Data also indicates that animals with higher cognitive abilities are able to rebuild “trust after a wrong is committed against them if the wrongdoer modifies his attitude enough to convince the animal that he will not commit another wrong against the animal.”<sup>145</sup> As previously mentioned, this is not to say that the responsibility to forgive is on the animal victim, rather that not only do animals deserve to be treated fairly, but that they expect it. When this expectation is broken, the harm that results must be repaired.

### b. *Talking Circles*

Talking circles can be an important tool in animal cruelty cases for two reasons. First, underlying reasons for animal cruelty are often systemic since some communities may not have the knowledge or resources to adequately care for animals.<sup>146</sup> Cruelty is often a learned behavior that starts at an early age.<sup>147</sup> Juveniles who harm animals may not face intervention and this can have ripple effects for how they treat, and view, animals in the future.<sup>148</sup>

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<sup>140</sup> Mosquera, *supra* note 4.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* (“[Animals with higher cognitive abilities] are able to experience a rebuilding of trust after a wrong is committed to them if the wrongdoer modifies her attitude in the right way so that the animal [who] was wronged in the past can abandon the expectation that a similar wrong will be committed again in the future by the old offender—or by any other human similar to the offender, or who fulfills a similar role as the offender used to have with this animal.”).

<sup>146</sup> See Reese et al., *Animal Cruelty and Neighborhood Conditions*, ANIMALS, 4 (Nov., 2020) (citing research that showed “general ‘community hardship’ such as crowded housing, poverty, low income, percent of residents without a high school diploma, crime, and dependent children and seniors” was associated with a prevalence of animal cruelty).

<sup>147</sup> Roshni Trehan Ladny & Laura Meyer, *Traumatized Witnesses: Review of Childhood Exposure to Animal Cruelty*, J. CHILD & ADOLESCENT TRAUMA 6 (July 30, 2019).

<sup>148</sup> Melissa Bright et al., *Animal Cruelty As An Indicator of Family Trauma: Using Adverse Childhood Experiences To Look Beyond Child Abuse And Domestic*



Second, talking circles expand the involvement of key players,<sup>149</sup> which can assist in rehabilitating animal cruelty offenders since social service providers and mental health practitioners can participate in ways they may be unable to in traditional court proceedings, by proactively creating a dialogue with the offender and his community.<sup>150</sup> They can educate the offender and his community on available resources, underlying traumas they have experienced, and, most importantly, the humane treatment of animals.<sup>151</sup> Talking circles can bridge a current gap since cruelty offenders are often released back into their communities without resources or knowledge on how to treat their underlying causes of cruelty.<sup>152</sup> “Discussions around animal welfare and safety can benefit both offenders and their communities at large;”<sup>153</sup> particularly if there are systemic issues prevalent in communities that can be addressed, like a lack of resources or how animals are viewed and used.<sup>154</sup> If resources are lacking in communities, talking circles can provide opportunities to brainstorm much-needed resources, such as low-cost veterinary services, and forge connections with those who can implement them.<sup>155</sup>

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*Violence*, 76 *CHILD ABUSE & NEGLECT* 288, 294 (2018) (“Children would benefit from intervention to prevent them becoming perpetrators of cruelty or violence.”).

<sup>149</sup> ZEHR, *supra* note 11, at 65.

<sup>150</sup> See generally Kurki, *supra* note 124, at 7 (noting Texas’s Community Justice Task Force includes “representatives of criminal justice agencies, social and health services, and community organizations” and assists in “prepar[ing] a Community Justice Plan.”). With Texas as an example, talking circles can incorporate mental health clinicians and social service workers to engage with offenders in a more meaningful, impactful way. Further this dialogue can help tailor plans that address and meet the needs of the offender.

<sup>151</sup> See Gupta et al., *supra* note 120, at 6 (“If responding to [animal cruelty] with an intervention focus (e.g., instilling better knowledge of animal care) eliminates the reasons for the harmful behavior, it may be an effective and welcome alternative for a significant subset of offenders...”).

<sup>152</sup> See *id.* at 1 (“[I]ncarceration may not be a complete solution for protecting animals from future harm...the principles of balanced and restorative justice emphasize not only offender accountability and community safety, but also the improvement of offender functioning.”).

<sup>153</sup> Dawna Komorosky & Keri K. O’Neal, *The Development of Empathy and Pro-Social Behavior Through Humane Education, Restorative Justice, and Animal-Assisted Programs*, 18(4) *CONTEMP. JUST. REV.* 395, 400 (2015).

<sup>154</sup> Reese et al., *supra* note 146; see generally ZEHR *supra* note 11, at 65 (“Participants may address situations in the community that are giving rise to the offense...the obligations that the community might have, community norms, or other related community issues.”).

<sup>155</sup> See Paul McCold, Dep’t. of Soc. & Crim. Just., Old Dominion University, *Restorative Justice: The Role of the Community*, Paper presented to the Acad. of Crim. Just. Sci. Ann. Conf. (March 1995) (“Strong [r]estorative [j]ustice programs are characterized by an environment that includes local community control. Victim-offender reconciliation programs which have been most likely to succeed respond to community needs and local culture; where planning and implementation remain local

### c. Community Restorative Boards

Animal cruelty cases are notorious for not being prosecuted, although there is a lack of data on exact numbers of cases prosecuted versus cases not prosecuted.<sup>156</sup> One often-cited reason for cruelty cases not being prosecuted is that many prosecutors' offices are under-staffed and/or under-funded.<sup>157</sup> With resources already stretched thin in some offices, prosecutors often find themselves lacking the knowledge and resources to successfully prosecute animal cruelty cases.<sup>158</sup> Because many cruelty cases are not prosecuted, it is wise to consider alternatives to, or in conjunction with, prosecution.

A hybrid model of restorative justice could look like a Community Restorative Board (CRB) where offenders start in the criminal justice system by being formally charged, but then are diverted out.<sup>159</sup> CRBs would comprise of a small group of community members who have completed training and conduct public, in-person meetings with offenders.<sup>160</sup> During the meeting, board members would discuss the nature of the offense and negative consequences with the offender.<sup>161</sup> Then, board members would propose sanctions, which they discuss with the offender with input from the surrogate animal victim, to develop a timeline for completion.<sup>162</sup>

In animal cruelty cases, offenders would participate in CBRs with the goal of rehabilitation. CBRs would reach out to mental health experts, veterinarians, and social service providers to propose appropriate sanctions for cruelty offenders that hold cruelty offenders accountable

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initiatives; where services make use of, or work closely with, local resources.”).

<sup>156</sup> See ANIMAL LEGAL DEF. FUND, *Why Prosecutors Don't Prosecute*, <https://aldf.org/article/why-prosecutors-dont-prosecute/> (last visited Mar. 29, 2021) (suggesting reasons why prosecutors do not always charge animal cruelty cases).

<sup>157</sup> See *id.*

<sup>158</sup> *Id.*

<sup>159</sup> See Kurki, *supra* note 124, at 6 (discussing Vermont's reparative probation program that begins with a judge sentencing a defendant to complete a reparative program after a finding of guilt).

<sup>160</sup> *Community Restorative Boards*, NACRJ, [https://nacrj.org/index.php?option=com\\_easyfolderlistingpro&view=download&format=raw&data=eNpNkE9PwzAMxb9K5BNiOLX8GcO9AUJihx1AnKcsdddITVslzhCfHfcZBU7xXnx7\\_k5GssSfwIuEZqhQ8lDFfDuFsE6vaew8BSG6I1UY9x11izeKfDgNdsDqXUMbA1NiLhADOSzSUgSQjE\\_7aNg\\_wMeELbbpE23VUZ77ZJVgTAdy6zaGiqLRYy8daPm9qxL2MZ2NLP3NwjPg3Oxt\\_ytzm-M-DdrXQV2rV21YfbRErC4-Ny9XavO2vpxYWZqOfKrGujkFpeNo5RfmFKUM1szatI566d4l9VEITwdLX3lBCd-nuVD9\\_gGRv3JB](https://nacrj.org/index.php?option=com_easyfolderlistingpro&view=download&format=raw&data=eNpNkE9PwzAMxb9K5BNiOLX8GcO9AUJihx1AnKcsdddITVslzhCfHfcZBU7xXnx7_k5GssSfwIuEZqhQ8lDFfDuFsE6vaew8BSG6I1UY9x11izeKfDgNdsDqXUMbA1NiLhADOSzSUgSQjE_7aNg_wMeELbbpE23VUZ77ZJVgTAdy6zaGiqLRYy8daPm9qxL2MZ2NLP3NwjPg3Oxt_ytzm-M-DdrXQV2rV21YfbRErC4-Ny9XavO2vpxYWZqOfKrGujkFpeNo5RfmFKUM1szatI566d4l9VEITwdLX3lBCd-nuVD9_gGRv3JB) (last visited Mar. 29, 2021) (“A community restorative board typically is composed of a small group of citizens, prepared for this function by intensive training, who conduct public, face-to-face meetings with offenders sentenced by the court to participate in the process.”).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

and build a coalition that focuses on treatment, rehabilitation, and education by providing cruelty offenders with resources, knowledge, and tools.<sup>163</sup> Currently, the criminal justice system employs a host of these experts to build cases against cruelty offenders.<sup>164</sup> CBRs would also use status conferences to ensure that offenders are adhering to their timelines, acting as a modified form of probation.<sup>165</sup>

#### IV. CONSIDERATIONS IN USING RESTORATIVE JUSTICE

While there are valid reasons for using restorative justice, there are considerations that must be addressed before applying restorative justice. First, there is not a tremendous amount of data on the effectiveness of restorative justice.<sup>166</sup> In part, this is because restorative justice is not used very often in the U.S. criminal justice system, outside of the juvenile justice system.<sup>167</sup> This, alone, should not dissuade the use of restorative justice. Measures of success may differ based on who is collecting data and how success is defined.<sup>168</sup> The data that is available

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<sup>163</sup> See generally Kurki, *supra* note 124, at 7 (noting Texas's Community Justice Task Force includes "representatives of criminal justice agencies, social and health services, and community organizations" and assists in "prepar[ing] a Community Justice Plan."). Extrapolating on Texas's Community Justice Task Force, a similar task force that brings together mental health experts, veterinarians, and social service providers can be convened for CBRs.

<sup>164</sup> See *Criminal Justice*, ANIMAL LEGAL DEF. FUND, [https://aldf.org/how\\_we\\_work/criminal-justice/](https://aldf.org/how_we_work/criminal-justice/) (last visited May 27, 2021) (detailing various criminal justice stakeholders who are integral in animal cruelty cases, including "prosecutors, law enforcement, and veterinarians....").

<sup>165</sup> See Kurki, *supra* note 124, at 6 (discussing Vermont's reparative probation program that utilizes restorative justice principles, including board members meeting with the victim and offender, discussing the impacts of the crime on the victim and community, creating a contract—or a sentence—that the offender must complete, and follow-up meetings the offender must attend with the board).

<sup>166</sup> Rugge, *supra* note 17, at 26 ("[T]he main limitation of restorative justice is that the body of research that currently exists is still in its infancy.").

<sup>167</sup> See Mark S. Umbriet & Jean Greenwood, *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue*, U.S. DEP'T. OF JUST.: OFFICE OF JUST. PROGRAMS 4 (Apr. 2000) (citing research that showed 289 victim-offender mediation programs existed in the U.S. in 1998); see also Marilyn Armour, *Restorative Justice: Some Facts and History*, CHARTER FOR COMPASSION, <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history> (last visited May 28) (Citing research that showed thirty states "either [had] restorative justice principles in their mission statements and policy plans or legislation promoting a more balanced and restorative juvenile justice system.").

<sup>168</sup> Kurki, *supra* note 124, at 3 ("Little evaluation research is available, and there is no consensus on how to measure "success." Most advocates contend that recidivism is not the correct or only measure. Evaluations might also consider such measures as victim and offender satisfaction, amounts of restitution or community

tends to show that victims are generally satisfied with restorative justice, in large part due to having deliberative and meaningful opportunities to heal<sup>169</sup> and restorative justice can, in fact, reduce reoffending.<sup>170</sup>

Second, it is imperative that victims are not re-victimized during the process. For a truly restorative approach, victims *must* be engaged and prepared to participate.<sup>171</sup> Even if victims are willing to participate, they may still experience some post-traumatic stress or other after effects from victimization.<sup>172</sup> It is vital that this is recognized by all participants prior to engaging in the restorative justice process and if at any time a victim feels overwhelmed or wishes not to pursue restorative justice at any point, then they can end their participation.<sup>173</sup> Facilitators and criminal justice system stakeholders should be cognizant of this and employ alternatives, such as surrogate victims, in cases where victims are not ready, willing, or able to participate.<sup>174</sup>

Third, restorative justice is not appropriate for all crimes.<sup>175</sup> For example, Colorado precludes restorative justice from being used in domestic violence cases.<sup>176</sup> There are worries that certain types of crimes, particularly ones involving interpersonal violence, may not be ideal because there may be inherent power imbalances.<sup>177</sup> While traditional restorative justice models may not be suitable for all crimes,

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service, rates at which reparative agreements are fulfilled, levels of volunteer participation and community action, and victims' and offenders' quality of life.").

<sup>169</sup> SHERMAN & STRANG, *supra* note 50, at 22; Cara Tabachinick, *When Criminals and Victims Meet, Both Parties Can Benefit*, SCI. AM. MIND (Sept. 14, 2014), <https://www.scientificamerican.com/article/when-criminals-and-victims-meet-both-parties-can-benefit/> (discussing a study that examined the effects of restorative justice on burglary victims. "About a quarter of the victims who went through the criminal justice system showed clinical symptoms of post-traumatic stress, but only 12 percent of the group who also had restorative justice conferences had symptoms.").

<sup>170</sup> Lloyd & Borrill, *supra* note 79.

<sup>171</sup> See ZEHR, *supra* note 11, at 48 ("Achieving [the goals of restorative justice] requires that victims are involved in the process and come out of it satisfied.").

<sup>172</sup> Dean Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. TRAUMATIC STRESS, 1612 (2003) (citing research indicating 25 percent of crime victims experienced lifetime post-traumatic stress disorder).

<sup>173</sup> Umbriet & Greenwood, *supra* note 168, at 8.

<sup>174</sup> ZEHR, *supra* note 11, at 67.

<sup>175</sup> See Rugge, *supra* note 17, at 26 ("Research continues to explore when restorative justice works and for whom, and in what circumstances.").

<sup>176</sup> See ERIE COLORADO, *Restorative Justice Program*, <https://www.erieco.gov/251/Restorative-Justice-Program> (last visited May 28, 2021) (stating that sexual assault and domestic violence cases are excluded from Colorado's Restorative Justice Program).

<sup>177</sup> See AUSTRALIAN INST. OF CRIMINOLOGY, *Challenges Faced in the Implementation and Application of Restorative Justice*, <https://aic.gov.au/publications/rpp/rpp127/challenges-faced-implementation-and-application-restorative-justice>.

elements of restorative justice (including victim recognition, healing, and accountability) can be infused throughout various points in the criminal justice system.<sup>178</sup> Restorative justice is still fairly new, so there may be opportunities to continue to explore where, and to what degree, restorative justice options make sense.

Fourth, some may be uncomfortable utilizing restorative justice in animal cruelty cases because it feels like someone is speaking *for* animal victims, especially because animals are considered “voiceless,”<sup>179</sup> but animals have their own language and ways of communicating amongst each other and with humans, even if humans do not recognize this.<sup>180</sup> Even if there are “language gaps,” restorative justice can still be employed through the use of surrogate victims. Restorative justice has been used in cases where victims are deceased, in “crimes against legal persons like a company or a school,”<sup>181</sup> and in environmental crimes.<sup>182</sup> Justice is available to all, not to just those who communicate in obvious ways. We know that animals do not want to be harmed and feel pain when they are harmed.<sup>183</sup> The fact that animals are sentient, coupled with research that animals (especially companion animals) expect to be treated fairly,<sup>184</sup> shows that we can advocate on their behalf.<sup>185</sup> Further, to alleviate concerns that the surrogate victim is speaking for the animal victim, parameters can be put in place so the surrogate victim is not bringing an “anthropocentric perspective.”<sup>186</sup> Rather, the focal point should remain on healing and restoring the animal victim as much as possible.

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<sup>178</sup> See generally Kurki, *supra* note 124 (highlighting how four states—Minnesota, Texas, Vermont, and Oregon—incorporated restorative justice principles into various stages of the criminal justice system).

<sup>179</sup> See Justin Marceau on *Animal Law and Criminal Punishment*, ANIMAL L. PODCAST (July 24, 2019), <https://www.ourhenhouse.org/2019/07/animal-law-podcast-50-justin-marceau-on-animal-law-and-criminal-punishment/>.

<sup>180</sup> Freeman et al., *supra* note 128.

<sup>181</sup> U.N. OFF. OF DRUGS & CRIME, *supra* note 20, at 61.

<sup>182</sup> Preston, *supra* note 129, at 14.

<sup>183</sup> German Lopez, *Animals Can Feel Pain. A Biologist Explains How We Know*, VOX (Jan. 23, 2017) <https://www.vox.com/science-and-health/2017/1/23/14325172/animals-feel-pain-biologist> (last visited on May 27, 2021) (citing research that shows wild animals “nurse their wounds, make noises to show distress, and even become reclusive” and animals in laboratories, including “chickens and rats, self-administer pain relievers when they’re hurting.”).

<sup>184</sup> Mosquera, *supra* note 4.

<sup>185</sup> Advocates consistently rely on animal sentience to champion protections on behalf of animals. For example, legislation often ensures that animals’ basic needs are met because if they are not, animals will suffer.

<sup>186</sup> Preston, *supra* note 129, at 14.



## CONCLUSION

Intervening in animal cruelty cases is extremely important. Society and communities must acknowledge the severity of crimes against animals with an eye towards holding offenders effectively accountable. Responses of the criminal justice system are not always tailored to address an offender's underlying reasons for committing animal cruelty or provide meaningful opportunities for an offender to recognize animals as victims. However, utilizing restorative justice can be a compelling way to hold animal cruelty offenders accountable, address their needs, as well as the needs of animal victims, and, most importantly, recognize that animals are victims and their experiences—including of pain and suffering—must be acknowledged and repaired.

## APPENDIX

### Example of Restorative Justice Model for Animal Neglect<sup>187</sup>

Jim lives in South Dakota and owns a pit bull named Charlie, who is eight years old and weighs sixty pounds. Jim adopted Charlie from the local humane society when Charlie was two. Jim has kept Charlie in his backyard year-round for the past three years. Unfortunately, South Dakota winters are brutal, and Charlie has endured extreme weather including freezing temperatures, snowfall, and icy winds. Charlie has a doghouse in the backyard, but the weather has worn it down and Jim has not replaced the house or any parts of the house. However, Jim provides Charlie old blankets to curl up on, thinking this should be enough for Charlie's size and breed. Unfortunately, the blankets and shelter are not enough to protect Charlie from suffering during the winter.

In South Dakota, neglect is a "fail[ure] to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for the animal's health and well-being consistent with the species, breed, physical condition, and type of animal."<sup>188</sup> Here, Jim has committed animal neglect because he has failed to provide Charlie adequate protection from the severe weather; this is not at issue. Charlie has suffered hypothermia and needs to be hospitalized for medical issues, including getting his internal temperature up. Below, we will explore what restorative justice could look like in this case.

#### Victim-Offender Dialogue

In a victim-offender dialogue, a surrogate victim would be used, likely the veterinarian who is treating Charlie for his medical needs, Dr. V. Dr. V and Jim meet with a facilitator to have an in-depth conversation that focuses on several things including: requirements of pet ownership, animal physiology and sentience, and ways Jim will make amends to Charlie including setting up a trust to pay for Charlie's ongoing medical care. Charlie is removed from Jim's care and Jim is forbidden from owning animals for one year. Jim will also be required to take courses on basic dog care needs and responsible pet ownership.

Through this process, Jim admits guilt without legal consequences and fully engages in the process. He is educated about Charlie's needs and learns that because of his actions, Charlie suffered. He must reckon with the harm *he* caused Charlie. This process has allowed Jim the opportunity to reflect, atone, and be held accountable for his actions without introducing him to the criminal justice system.

#### Talking Circle

Here, the process is expanded to include Jim's neighbors, community members and other service providers, including social workers and mental health clinicians. The conversation still centers around the harm Charlie has suffered and the medical attention he must receive. Jim and Dr. V. converse about the requirements of responsible pet ownership and how Jim has failed to adequately provide for Charlie, in addition to animal physiology and sentience. Because community members are present, they also become educated in responsible pet ownership and animal sentience. In addition, community members can reflect on programs and resources available to Jim and themselves to assist in providing for their animals, such as low-cost veterinary clinics. Further, they can brainstorm additional resources their community could benefit from, like a non-profit group that provides stipends to build dog houses.

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<sup>187</sup> This is not based on an actual case. Any resemblance to actual events and/or legal proceedings is purely coincidental.

<sup>188</sup> S.D. CODIFIED LAWS § 40-1-1 (2021).

Through their discussions, Jim reveals he has been hoarding things for many years, but it has gotten considerably worse in the past three years, which is the amount of time he has kept Charlie outside. Jim admits that he barely has room in his home for himself, let alone Charlie. He honestly believed that keeping Charlie outside would be better for him. Because the circle includes a mental health care clinician and social worker, a plan is put in place to get Jim the help he needs to address his hoarding. Jim undergoes a thorough mental health evaluation and subsequent treatment plan is put in place that includes mental health care treatment specific to hoarding, humane education, and a course on responsible pet ownership. Meanwhile, Jim is also required to set up a trust for Charlie's ongoing care. Charlie is taken out of Jim's care and Jim is forbidden from owning animals until he completes his treatment plan.

Here, Jim received the assistance to address his mental health needs that he was unable to obtain on his own. Further, he now sees how his hoarding disorder contributed to his actions that ultimately caused Charlie's suffering. Jim's hoarding disorder does not absolve his responsibilities towards Charlie; rather, it helped provide clarity on *why* he failed to provide Charlie with adequate shelter. There is a targeted plan and intervention moving forward that potentially rehabilitates Jim and decreases the chance of him harming another animal. Through restorative justice, Jim takes responsibility for the harm he caused Charlie, understands the importance of recognizing that harm, and participates in a plan to make it right. Jim also can heal himself and receive treatment.

### **Community Restorative Board**

Jim would be charged criminally for animal neglect but would be diverted outside the criminal justice system into a Community Restorative Board (CBR). Here, the CBR is composed of Dr. V., a restorative justice facilitator, and mental health care provider. Together, they discuss, in-depth, how Jim's failure to provide Charlie adequate shelter not only breaks the law, but why adequate shelter is required. They discuss animal physiology and sentience and Jim learns that Charlie feels pain just like humans do. Unlike the criminal justice system, there is dialogue and an opportunity for Jim to ask questions to better understand animal sentience. The board requires Jim to set up a trust for Charlie's continued care and complete an online animal care class. The board also sets up periodic status conferences for Jim to check-in and provide updates on the progress of his class, what he has learned, and how he will apply this to his future interactions with animals. Jim is forbidden from owning another animal for one year and must appear at all status conferences. Once Jim completes all that is required of him, the charge of animal neglect is removed from his record.