

# PROTECTING OUR PETS: COURTROOM ADVOCATE OR SPECIAL PROSECUTOR?

## A CRITICAL COMPARISON BETWEEN TWO APPROACHES TO PROVIDING ANIMALS BETTER PROTECTION IN THE COURTROOM

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*“The greatness of a nation and its moral progress can be judged by the  
way its animals are treated.”*

*–Mahatma Gandhi*

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## I. INTRODUCTION

Americans own over 390 million pets.<sup>1</sup> As much as one would like to believe that each and every animal is loved and cared for unconditionally, unfortunately animal abuse is a serious and pervasive issue. Abuse towards animals occurs every sixty seconds.<sup>2</sup> Abuse occurs in several forms, from neglect and hoarding, to intentional, gross, and malicious treatment.<sup>3</sup> In the United States, preventing and punishing animal abuse is largely the responsibility of individual states,<sup>4</sup> and the strength of animal protection laws varies greatly from state to state.<sup>5</sup> With Americans owning around

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1. See *Facts + Statistics: Pet statistics*, INSURANCE INFORMATION INSTITUTE, <https://www.iii.org/fact-statistic/facts-statistics-pet-statistics> (last visited Feb. 20, 2019). These statistics are based on the American Pet Products Association's 2017-2018 National Pet Owners Survey.

2. See *Cruelty Issues*, ASPCA, <https://www.aspc.org/animal-cruelty> (last visited Feb. 20, 2019).

3. See *The Seven Forms of Cruelty*, QUALITY DOG FENCE (Nov. 17, 2015), <http://www.qualitydogfence.com/the-seven-forms-of-animal-cruelty/>.

4. See *Federal Anti-Cruelty Laws*, NAT'L ANTI-VIVISECTION SOC'Y, [https://www.navs.org/what-we-do/keep-you-informed/legal-arena/companion-animal-issues/federal-anti-cruelty-laws/?gclid=EAlalQobChMiv7\\_9PTg2QIVREsNCh3DwQsAEAAAYiAAEgI2uPD\\_BwE#.WqNedWrwbIV](https://www.navs.org/what-we-do/keep-you-informed/legal-arena/companion-animal-issues/federal-anti-cruelty-laws/?gclid=EAlalQobChMiv7_9PTg2QIVREsNCh3DwQsAEAAAYiAAEgI2uPD_BwE#.WqNedWrwbIV) (last visited Feb. 20, 2019). On the federal level, Congress has passed two laws since 2010 through its Commerce Clause power to punish animal abusers.

5. See *Best and Worst States for Animal Protection Laws, 2017 Report Released*, ANIMAL LEGAL DEF. FUND (Jan. 18, 2018), <https://aldf.org/article/best-worst-states-animal-protection-laws-2017-report-released/>.

seventy-eight million dogs and eighty-five million cats, state legislation which protects companion animals is more important than ever before.<sup>6</sup> Analyzing the effectiveness of states' animal abuse laws is a necessary first step in determining the most effective means for protecting companion animals. Ohio and Connecticut provide two competing examples of states that have passed legislation with the goal of better protecting animals in a court of law.

Connecticut is one state whose legislatures have recently taken a more critical examination of its animal cruelty laws. Between the years 2006-2016, eighty percent of all animal abuse offenses in Connecticut were nullified or dismissed.<sup>7</sup> These statistics prompted the Connecticut legislature to pass into law House Bill 5344, "An Act Concerning Support for Cats and Dogs that are Neglected or Treated Cruelly."<sup>8</sup> Connecticut became the first state in the nation to pass such a law, informally known as "Desmond's Law," which allows for court-appointed advocates to represent the animals in abuse and cruelty cases.<sup>9</sup> As official parties to the case, the animal advocates can perform investigative work, such as interviewing veterinarians and other witnesses.<sup>10</sup> The advocates can also write briefs, present oral arguments, and provide recommendations to the judge.<sup>11</sup> A judge has discretion in appointing an animal advocate, but the advocate can also be requested by prosecutors or defense attorneys.<sup>12</sup>

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6. See Alicia Ault, *Ask Smithsonian: When Did People Start Keeping Pets?*, SMITHSONIAN.COM (Sept. 28, 2016), <https://www.smithsonianmag.com/smithsonian-institution/ask-smithsonian-when-did-people-start-keeping-pets-180960616/>; see also Sherry Ramsey et. al., *Protecting Domestic Violence Victims by Protecting Their Pets*, JUV. & FAM. JUST. TODAY (Spring 2010), <https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/DV-NCJFCJArticleSpring2010-040611-1302122112-document-38932.pdf>. This article focuses solely on the protection of cats and dogs. Although there are several laws and proposed legislation that focus on a wide-range of animals, including livestock and other animals kept for commercial purposes, this article focuses narrowly on cats and dogs that are kept as pets.

7. See Laurel Wamsley, *In a First, Connecticut's Animals Get Advocates in the Courtroom*, NPR (June 2, 2017, 5:46 PM), <https://www.npr.org/sections/thetwo-way/2017/06/02/531283235/in-a-first-connecticuts-animals-get-advocates-in-the-courtroom>; see also Pat Eaton-Robb, *In One State, Abused Animals Get a Legal Voice in Court*, U.S. NEWS & WORLD REP. (June 2, 2017, 9:11 AM), <https://www.usnews.com/news/best-states/connecticut/articles/2017-06-02/state-experiments-with-court-advocates-for-abused-animals>.

8. See 2016 Conn. Act 16-30 (Reg. Sess.)

9. See Wamsley, *supra* note 7.

10. See *id.*

11. See *id.*

12. See Eaton-Robb, *supra* note 7 (stating that in the first six months since the law's enactment, advocates have been appointed in five cases).

Ohio is another state which has taken critical steps to provide animals with better protection under the law. “Ohio permits the human society to appoint special prosecutors for animal cruelty cases.”<sup>13</sup> Ohio’s “Special Prosecutor Law”, or O.R.C. § 2931.18, has been in effect for over ninety-one years.<sup>14</sup> As official parties to the case, these specially-appointed prosecutors have successfully helped resolve cases in a very effective manner.

This Comment seeks to evaluate the current legal landscape surrounding animal cruelty laws, with a specific focus on Desmond’s Law and O.R.C. § 2931.18. Connecticut’s new law has placed a spotlight on an area of the law which has not been given the priority it so desperately needs. Animal cruelty is a type of interpersonal violence that does not occur in isolation, and placing more importance on animal cruelty laws can help prevent violence against humans. First, this Comment will provide a history of animal rights laws around the globe, followed by a detailed discussion of why animal abuse issues deserve more attention in our society than they currently receive. This Comment next provides a detailed analysis, followed by a critical comparison, of both Desmond’s Law and O.R.C. § 2931.18. Although both laws can serve as models for other states that wish to strengthen their animal cruelty laws, this Comment argues that Ohio’s O.R.C. § 2931.18 is a more effective law for the prosecution of animal abuse cases. This Comment concludes with suggestions on how states can better improve their entire body of animal cruelty laws, with the ultimate goal of preventing violence against both animals and humans alike.

## II. BACKGROUND

### A. ANIMAL RIGHTS AROUND THE WORLD

Many believe that “rights” are a concept unique to the human moral code.<sup>15</sup> Nevertheless, different countries around the world have afforded animals different levels of rights. France provides the earliest existent record of an animal trial from 1266, when a pig was executed in the city of

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13. Donna J. Miller, *Ohio Legislator Seeks to Remove Humane Societies’ Authority to Select Special Prosecutors: Animals in the News*, CLEVELAND (Apr. 30, 2015), [http://www.cleveland.com/metro/index.ssf/2015/04/ohio\\_legislator\\_seeks\\_to\\_remov.html](http://www.cleveland.com/metro/index.ssf/2015/04/ohio_legislator_seeks_to_remov.html).

14. *See id.*

15. Owen Bennett-Jones, *Should Animals Have the Same Rights as Humans?*, BBC NEWS (May 26, 2015), <http://www.bbc.com/news/world-32854504>.

Fontenay-aux Roses.<sup>16</sup> Switzerland, one of the most progressive countries in the field of animal rights, amended its constitution in 1992 to “recogni[z]e animals as beings and not things.”<sup>17</sup> In what is considered the greatest legal success in the history of animal rights, New Zealand granted basic rights in 1999 to five great ape species, banning their use in research, testing or teaching.<sup>18</sup> Germany became the first EU country to amend its constitution to guarantee rights for animals in 2002.<sup>19</sup> In 2015, the United States came close to recognizing chimps as legal persons when a New York judge granted two research chimps a writ of habeas corpus, effectively recognizing them as legal persons.<sup>20</sup>

Although several countries have afforded animals various levels of rights, the protection of animals need not rely on a rights argument. Regardless of whether one considers animals to have the same rights as humans, Professor Carl Cohen of the University of Michigan, Ann Arbor argues that humans have an obligation not to cause needless suffering to animals.<sup>21</sup> “Theory of utilitarian ethics has been viewed as providing support for a competing view of rights that has proved popular with many animal rights activists.”<sup>22</sup> “A utilitarian is someone who believes that our basic moral duty is to maximize happiness or the satisfaction of preferences and thus to minimize pain and disappointment.”<sup>23</sup> “If an animal is capable of experiencing pain or pleasure, a utilitarian may argue that the animal’s interests should be given equal consideration to the interests of a human in experiencing pleasure and avoiding pain.”<sup>24</sup>

## B. ANIMAL ABUSE CO-EXISTS WITH VIOLENCE AGAINST PEOPLE

Animal cruelty is too often viewed as a secondary offense.<sup>25</sup> Because prosecutors face a substantial caseload of murder, rape, battery, and other

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See* Krishnadev Calamur, *N.Y. Judge Amends Habeas Corpus Order for Chimps*, NPR (Apr. 22, 2015, 1:20 PM), <https://www.npr.org/sections/thetwo-way/2015/04/22/401519113/n-y-judge-amends-habeas-corpus-order-for-chimps>. The New York judge later rescinded and amended her ruling to strike out the term “writ of habeas corpus.”

21. *See* Bennett-Jones, *supra* note 15.

22. Richard L. Cupp, Jr., *Children, Chimps, and Rights: Arguments From “Marginal” Cases*, 45 ARIZ. ST. L. J. 1, 13 (2013).

23. *Id.*

24. *Id.* at 13–14.

25. *See First Strike: The Violence Connection*, THE HUMANE SOC’Y OF THE U. S. 1, 9

violent crimes involving human victims, they typically do not make animal cruelty cases a priority.<sup>26</sup> However, animal abuse is a type of interpersonal violence that co-exists along with child abuse, spousal abuse, and elder abuse.<sup>27</sup> Consequently, animal abuse cases can expose family violence—when an animal is being abused, a child or family member is likely being abused as well.<sup>28</sup> Therefore, making animal cruelty cases a priority can better protect human victims from serious acts of criminal violence.

According to the American Prosecutors Research Institute, there are several forms of animal cruelty.<sup>29</sup> The most common form of animal cruelty is simple neglect, which is the failure to provide adequate food, water, shelter, or veterinary care.<sup>30</sup> Animal hoarding is associated with the accumulation of large numbers of animals and the subsequent failure to provide minimal standards of nutrition, sanitation and veterinary care.<sup>31</sup> Gross, willful, cruel, or malicious neglect is the act of “intentionally or knowingly withholding food or water, causing dehydration or starvation.”<sup>32</sup> Organized abuse includes crimes such as dogfighting and cockfighting.<sup>33</sup> There are also crimes that fall under ritualistic abuse and animal sexual abuse, or bestiality.<sup>34</sup>

Animal abuse does not occur independently from other crimes. According to the Animal Legal Defense Fund, people with a history of harming animals are five times more likely to harm humans than people who do not have a history of abusing animals.<sup>35</sup> Additionally, a six-year

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(2008), [http://www.humanesociety.org/assets/pdfs/abuse/first\\_strike.pdf](http://www.humanesociety.org/assets/pdfs/abuse/first_strike.pdf).

26. *See id.*

27. *See* Mary Lou Randour and Howard Davidson, *A Common Bond: Maltreated Children and Animals in the Home Guidelines for Practice and Policy*, AMERICAN HUMANE and THE HUMANE SOC<sup>Y</sup> OF THE U. S. 1, 6 (2008), [http://www.humanesociety.org/assets/pdfs/abuse/common\\_bond\\_08.pdf](http://www.humanesociety.org/assets/pdfs/abuse/common_bond_08.pdf); *see also* *First Strike: The Violence Connection*, *supra* note 25, at 2; Mary Lou Randour, *Including Animal Cruelty as a Factor in Assessing Risk and Designing Interventions*, THE NAT’L CONF. OF THE HAMILTON FISH INST. ON SCH. AND COMMUNITY VIOLENCE, 108–09, <https://pdfs.semanticscholar.org/c101/5692a3f884979346cc8ae11fb68f485d88d4.pdf> (last visited Feb. 20, 2019). Acts of animal cruelty are also linked to crimes involving property and drugs.

28. *See First Strike: The Violence Connection*, *supra* note 25, at 2.

29. *See id.* at 5.

30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. *See First Strike: The Violence Connection*, *supra* note 25, at 5.

35. *See* Kristin Hugo, *Texas Church Shooter Devin Kelley was Charged with Animal Cruelty After Beating a Dog with his Fists*, NEWSWEEK (Nov. 7, 2017, 10:29 AM), <http://www.newsweek.com/texas-church-shooter-devin-kelley-was-charged-animal-cruelty-after-beating-dog-703960>; *see also* Wamsley, *supra* note 7. The Chicago Police Department found

“gold standard” study conducted in eleven metropolitan cities concluded that animal abuse is one of four predictors of domestic partner violence.<sup>36</sup> In a study of families under investigation for suspected child abuse, sixty percent of the families were documented for pet abuse.<sup>37</sup> Unfortunately, abusers often use companion animals as a tool to punish and control victims, thus causing many women to remain in abusive situations due to threats against their companion animals.<sup>38</sup> Almost half of all domestic violence victims have reportedly delayed leaving a dangerous situation out of fear for their pets’ safety.<sup>39</sup> Of those who do leave, around seventy one percent of women seeking shelter from domestic violence are fleeing partners who have injured or killed a family pet, or threatened to do so.<sup>40</sup>

At the extreme end of the spectrum, cruelty and abuse towards animals can be a red flag- precursor to extremely violent crimes. Serial killers almost habitually have histories of abusing animals.<sup>41</sup> Devin Patrick Kelley, the gunman who killed twenty six people at the First Baptist Church in Sutherland Springs, Texas, was cited for animal cruelty for beating, punching, throwing and dragging his dog.<sup>42</sup> Additionally, eighty percent of school shooters began their violent tendencies by mutilating and being cruel to animals.<sup>43</sup> Florida school shooter Nikolas Cruz, for example, had a history of animal abuse.<sup>44</sup> Reports of cruelty included shooting

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sixty five percent of those arrested for animal crimes had also been arrested for battery against another person.

36. *First Strike: The Violence Connection*, *supra* note 25, at 3 (internal citations omitted).

37. *See Id.* When only families under supervision for physical abuse of their children were examined, the percentage rose to eighty-eight percent.

38. *See Id.* at 5.

39. *See Ramsey et al.*, *supra* note 6.

40. *See Randour, Including Animal Cruelty as a Factor in Assessing Risk and Designing Interventions*, *supra* note 27. Based on a number of state and national surveys.

41. *See First Strike: The Violence Connection*, *supra* note 25, at 2. Ted Bundy, Jeffrey Dahmer, Albert DeSalvo (the confessed “Boston Strangler”), and many others committed heinous acts of animal cruelty. Out of thirty-six convicted multiple murderers questioned in an often cited study, forty-six percent admitted committing acts of animal torture as adolescents. *See also Tracking Animal Cruelty-FBI Collecting Data on Crimes Against Animals*, FBI (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty>.

42. *See Hugo*, *supra* note 35. The charges against Kelley were dismissed after he received a deferred probationary sentence and paid a fine of less than \$500.00.

43. *See CT House Republicans, Connecticut Legislators Animal Welfare Caucus Holds Press Conference*, YOUTUBE (Feb. 20, 2018), <https://www.youtube.com/watch?v=T6yh4cQdnS8>.

44. *See Jessica Scott-Reid, Nikolas Cruz May Have Never Killed if Society Took More Action on Link Between Animal Abuse and Mass Murderers*, DAILY NEWS (Feb. 17, 2018, 12:59 PM), <http://www.nydailynews.com/opinion/animal-abuse-scrutiny-stop-killers-nikolas-cruz-article-1.3826671>.

squirrels and chickens with a pellet gun, killing toads, and ramming sticks into rabbit holes.<sup>45</sup>

For all of these reasons, recognizing and stopping animal abuse is an important tool in protecting animals while simultaneously promoting the safety of all.<sup>46</sup> Early detection of animal cruelty allows for appropriate interventions, spares animals and domestic violence victims from further harm, and deters criminal activity.<sup>47</sup> Ultimately, encouraging the legislators and prosecutors to take crimes against animals seriously is crucial for creating safer communities.

### C. ANIMAL CRUELTY IS NOW INCLUDED IN THE FBI'S UNIFORM CRIME REPORTING PROGRAM

National law enforcement agencies are starting to take note of the seriousness of animal cruelty. As described by John Thompson of the National Sheriff's Association, animal cruelty is not just a crime against animals but a crime against society.<sup>48</sup> The Federal Bureau of Investigation (FBI) promulgated the importance of animal abuse by launching a national database on the crime of animal cruelty.<sup>49</sup> On December 11, 2017, the FBI released details through its Uniform Crime Reporting (UCR) Program on over 6.1 million criminal offenses committed in 2016.<sup>50</sup> The data was released via the National Incident-Based Reporting System (NIBRS), and for the first time in history, the NIBRS included animal cruelty offenses.<sup>51</sup> Of the reported 6,101,034 offenses, approximately fifteen percent were "crimes against society," which now include animal cruelty offenses.<sup>52</sup>

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45. *See id.* Cruz also allegedly posted photos of dead animals on social media.

46. *See* Randour and Davidson, *supra* note 27, at 2.

47. *See id.* at 9.

48. *See Tracking Animal Cruelty-FBI Collecting Data on Crimes Against Animals, supra* note 41.

49. *See* Uniform Crime Reporting Program, *FBI Releases 2016 NIBRS Crime Statistics in Report and CDE, Promotes Transition of Agencies*, U.S. DEPT. OF JUST. FBI 1 (Dec. 11, 2017), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2016-nibrs-crime-statistics-in-report-and-cde-promotes-transition-of-agencies>

50. *See id.*

51. *See id.*

52. *See id.*

#### D. ALDF RANKS ANIMAL CRUELTY LAWS OF ALL FIFTY STATES FROM BEST TO WORST

Currently, there are no federal laws pertaining to crimes of animal abuse.<sup>53</sup> Therefore, strengthening state laws is the singular most important way for ensuring that animals are best protected from abuse. The Animal Legal Defense Fund (ALDF) prints a comprehensive annual year-end report ranking the animal protection laws of all fifty states.<sup>54</sup> These reviews seek to shed light on the importance of animal protection, compare and contrast differences and similarities of each state's laws, and garner support for strengthening and enforcing animal protection laws throughout the nation.<sup>55</sup> In 2017, both Ohio and Connecticut ranked in the middle tier, with Ohio ranked twenty-seven and Connecticut ranked thirty-two.<sup>56</sup>

The ALDF Rankings make it clear that a state's commitment to protecting animals is not based on any one law, but rather the entire body of animal cruelty statutes. Ultimately, no one law has the ability to accomplish such a feat. Rather, the entire body of animal cruelty statutes reflect a state's commitment to protecting their animals. States that have consistently ranked high show strong commitments to: (1) strong felony penalties for cruelty, neglect and abandonment, (2) comprehensive definitions and standards of basic care, (3) full range of statutory protections, (4) increased penalties for repeat animal abusers and animal hoarders, (5) mental health evaluations prior to sentencing, (6) mandatory counseling and anger management for certain offenders, (7) protective orders that include animals, (8) mandatory cost-recovery measures and restitution for impounded animals, (9) restrictions on future ownership or possession of animals based upon conviction, and (10) mandatory cross-reporting of suspected animal and child abuse by veterinarians and select non-animal-related agencies.<sup>57</sup>

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53. See *The Case for Tougher Animal Cruelty Laws*, ANIMAL LEGAL DEF. FUND (Dec. 8, 2017), <http://aldf.org/blog/case-tougher-animal-cruelty-laws/>.

54. See *Best and Worst States for Animal Protection Laws*, *supra* note 5. These rankings are based on a thorough review of over 4,000 pages of animal protection statutes from each jurisdiction within the United States and its territories.

55. See *2017 U.S. Animal Protection Laws Rankings Comparing Overall Strength & Comprehensiveness*, ANIMAL LEGAL DEF. FUND 1, 5 (Jan. 2018), [http://aldf.org/wp-content/uploads/2018/01/Rankings-Report-2017\\_FINAL.pdf](http://aldf.org/wp-content/uploads/2018/01/Rankings-Report-2017_FINAL.pdf)

56. See *id.* at 9; see also *Best and Worst States for Animal Protection Laws*, *supra* note 5. Illinois was number one for the tenth year in a row, and on the other end of the spectrum, Kentucky was number fifty for the eleventh year in a row.

57. *2017 U.S. Animal Protection Laws Rankings Comparing Overall Strength & Comprehensiveness*, *supra* note 55, at 13–16, 19. In Kentucky, which is ranked last of all fifty

Many animal cruelty laws are discretionary, using words such as “may” to provide flexibility to the courts. For example, an Ohio court “*may* order those convicted of cruelty to a companion animal to undergo a psychological evaluation or counseling.”<sup>58</sup> In terms of restitution, a court *may* order a person charged with a violation of companion animal cruelty to post a bond for the costs of care for impounded animals.<sup>59</sup> Cross-reporting laws are discretionary as well. Agents of humane societies *may* arrest any person violating a law that protects animals or persons.<sup>60</sup> Agents can require other law enforcement officers “to arrest any person found violating the laws [that protect] persons or animals.”<sup>61</sup> On the other hand, humane society agents *must* report suspected child abuse or neglect in many states.<sup>62</sup> As of 2017, few states compel veterinarians to report abuse or provide them with immunity for reporting abuse.<sup>63</sup>

### III. TWO APPROACHES TO ANIMAL PROTECTION IN THE COURTROOM

Animal cruelty statutes differ amongst states, and Connecticut and Ohio provide two prime examples of different approaches to providing protection for abused animals in a court of law. This section seeks to compare and contrast Connecticut’s “Desmond’s Law” to Ohio’s “Special Prosecutor Law” in order to find the most effective method of ensuring justice in the courtroom for abused animals.

#### A. CONNECTICUT’S DESMOND’S LAW

House Bill 5344, “An Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelly,” informally known as Desmond’s Law, was passed by the Connecticut legislature and became effective on October 1, 2016.<sup>64</sup> The law was named in honor of a dog named Desmond

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states, there is no mandatory reporting of suspected cruelty by veterinarians and/or select non-animal-related agencies/professionals. In fact, veterinarians are actually prohibited from reporting suspected cruelty or fighting.

58. OHIO REV. CODE ANN. § 959.99(E)(7) (West 2017) (emphasis added). However, costs must be borne by the offender. This may prevent those who really need psychological evaluations or counseling from receiving the help they need.

59. See OHIO REV. CODE ANN. § 959.132(C)(E) (West 2017) (emphasis added).

60. See OHIO REV. CODE ANN. §§ 1717.04, 1717.06 (West 2017) (emphasis added).

61. See OHIO REV. CODE ANN. § 1717.09 (West 2018).

62. See OHIO REV. CODE ANN. § 1717.14, 2151.421 (West 2018).

63. See 2017 U.S. Animal Protection Laws Rankings *supra* note 57 at 3–4, 11–12, 19.

64. See 2016 Conn. Pub. Acts 16-30 § 1 (Reg. Sess.); see also *Desmond’s Law Information*, CONN. VOTES FOR ANIMALS, <http://www.ctvotesforanimals.org/desmondslaw> (last visited Feb.

whose owner was charged with beating and strangling her.<sup>65</sup> One impetus for Desmond's Law was the fact that the owner received accelerated rehabilitation (AR), a type of diversionary program that is available to defendants charged with certain first time offenses.<sup>66</sup> After successfully finishing the AR program, Desmond's owner ultimately walked free with his record expunged of the charges.<sup>67</sup> When a defendant's record is wiped clean, there is nothing preventing that individual from committing the same crimes they were previously accused of. Many individuals felt that justice for Desmond was not served, and supporters of the bill, including senators, professors, law students, and community members, felt that Connecticut needed laws that are harsher on animal abusers.

Desmond's Law provides that, "in any prosecution . . . or court proceeding . . . regarding the welfare or custody of a cat or dog, the court may order, upon its own discretion or upon request of a party[,] . . . a separate [volunteer] advocate to be appointed to represent the interests of justice."<sup>68</sup> A judge has full discretion in appointing an animal advocate.<sup>69</sup> Additionally, the Department of Agriculture maintains a list of attorneys with expertise in animal issues to serve as appointed advocates.<sup>70</sup>

#### i. Role of an Advocate Under Desmond's Law

Prior to the passage of Desmond's Law, animal cruelty cases in Connecticut were consistently being dismissed or dropped by prosecutors with an already overburdened caseload.<sup>71</sup> Desmond's Law was created with the intention of providing additional resources to courts and prosecutors to allow them to handle animal cruelty cases more thoroughly

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20, 2019); *see also* Eaton-Robb, *supra* note 7. The Act was named in honor of Desmond, a dog that was beaten, starved, strangled and ultimately killed by its owner. Ultimately, the owner received accelerated rehabilitation and the animal abuse charge was subsequently expunged from his record.

65. *See* Eaton-Robb, *supra* note 7.

66. *See* CONN. GEN. STAT. ANN. § 54-56e(a)-(b)(2) (West 2017); *see also id.*

67. *See Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelly: Hearing on H.B. 5344 Before the Joint Standing Comm. on Judiciary, 467-901, Pt. 2, at 41* (Conn. 2016) (statement of Susan Linker, CEO of Our Companions Animal Rescue).

68. *See* 2016 Conn. Pub. Acts 16-30 § 1, *supra* note 64.

69. *See* Eaton-Robb, *supra* note 7.

70. *See Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelly: Hearing on H.R. 5344 Before the Ct. Gen. Assembly S. 2058-2399, Pt. 7, at 2234* (2016) [hereinafter Hearings] (statement of Sen. Eric Coleman, 2nd Dist.).

71. *See* JESSICA RUBIN, DESMOND'S LAW: LEGISLATION AND IMPLEMENTATION MANUAL 1 (2016).

and vigorously.<sup>72</sup> The role of the animal advocate is very similar on the civil side and criminal side, and is meant to ensure that a proper amount of recognition is afforded to the actual abuse committed against the animal.<sup>73</sup> The advocate may interview veterinarians and other witnesses, write briefs, present oral arguments, and provide general recommendations to the judge.<sup>74</sup> As part of his informal investigative work, the advocate may also interview individuals competing for new ownership of the animal and suggest placement based on his assessment.<sup>75</sup> However, beyond this investigative work, the role of the animal's advocate is inherently limited. Nothing in the bill accords party status to the animal advocate, and the legislative history makes it clear that the animal advocate does not enjoy party status either in civil or criminal court.<sup>76</sup>

Unlike a prosecutor, an animal advocate does not have subpoena power.<sup>77</sup> Advocates are not entitled to depositions, cannot file motions, and are not able to call or cross examine witnesses.<sup>78</sup> The advocate does not have veto power over any proposed plea bargain between the state and the defendant in the criminal matter, and the bill does not suggest that the animal advocate would be present during settlement discussions in chambers.<sup>79</sup> In a criminal matter, the advocate does not have the opportunity to do any discovery on the owner of the animal with respect to the abuse allegations.<sup>80</sup>

Ultimately, the law is not intended in any way to limit the judge's discretion, but is intended to enrich the information that may be in the judge's possession when he is making his decision.<sup>81</sup> Currently in the United States, an animal does not have the right to be represented.<sup>82</sup>

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72. See RUBIN, *supra* note 71, at 3.

73. See *Hearings*, *supra* note 70, at 2238 (statement of Sen. Eric Coleman, 2nd Dist.).

74. See Wamsley, *supra* note 7.

75. See *Hearings*, *supra* note 70, at 2242 (statement of Sen. Eric Coleman, 2nd Dist.).

76. See *id.* at 2256 (statement of Sen. Eric Coleman). Even a practicing attorney, acting as a volunteer advocate, would not be an official representative or agency of the court of the judicial branch (more specifically, the bill is silent on what those powers would be).

77. See *id.* at 2240 (statements of Sen. Fasano and Sen. Coleman). For example, the advocate does not have the power to subpoena the owner of the animal or any other individual for a deposition.

78. See *id.* at 2244, 2256.

79. See *id.* at 2262–63 (statement of Sen. Coleman).

80. See *id.* at 2240–2241.

81. See *Hearings*, *supra* note 70, at 2271–72 (statement of Sen. Martin Looney, 11th Dist.).

82. See *Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelly: Hearing on H.R. 5344 Before the Joint Standing Comm. on Judiciary*, 2016 [hereinafter *H.R. 5344 Hearings*] (statement of Prof. Jessica Rubin).

Therefore, the law was written in such a way that the advocate is representing the “interest of justice” rather than the animal itself. Consequently, a judge’s decision to not appoint an advocate to the case is not appealable.<sup>83</sup>

## ii. Proponents of Desmond’s Law

Public testimony before the Judiciary was heard in regards to Desmond’s Law. Of the 159 public statements, only two opposed the bill and one showed some concern (but nevertheless supported the bill).<sup>84</sup> An overwhelming majority of the testimony shared the same positive sentiments.<sup>85</sup> An attorney, Mercedes Alonzo, meaningfully noted, “I think that the time has come for our legal system to provide a process that allows interested individuals such as myself with an opportunity to meaningfully participate in cases involving animal abuse and neglect.”<sup>86</sup> Recurring themes of support reflected a desire for harsher penalties and the need to teach humans to “behave with kindness and respect toward animals” to help build a more humane society.<sup>87</sup>

## iii. Opponents of Desmond’s Law

Although the Center for Youth Leadership at Brien McMahon High School in Norwalk, Connecticut, overall supported the bill, they also expressed some concerns.<sup>88</sup> They noted, “[w]hile we agree with HB5344, we are concerned with the ability and willingness of the advocates to challenge judges and state’s attorneys.”<sup>89</sup> The Connecticut Federation of Dog Clubs and Responsible Dog Owners, Inc. (CFD) expressed their concern as well.<sup>90</sup> Although they support harsher penalties for cruelty, they

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83. *See id.*

84. *See Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelly, Hearing on H.R. 5344 Before the J. Comm. on Judiciary, CONNECTICUT GENERAL ASSEMBLY (2016)*, [https://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05344&doc\\_year=2016](https://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05344&doc_year=2016).

85. *See id.*

86. E-mail from Mercedes G. Alonzo to Judiciary Comm. (Feb. 23, 2016, 9:50 PM), <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05344-R000224-Alonzo,%20Mercedes%20G.-TMY.PDF>.

87. *See id.*

88. *See Letter from Gabriella Duran and Bob Kocienda to Judiciary Comm. (Feb. 24, 2016)* <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05344-R000224-Dawn,%20Gabriella%20-%20Kocienda,%20Bob%20-%20Center%20for%20Youth%20Leadership-TMY.PDF>.

89. *Id.*

90. *See Letter from Laurie Maulucci, President, and Mabel M. Diamond, Chair, Legislative*

did not believe that an inclusion of additional parties or animal advocates would benefit criminal proceedings. They believed appropriate safeguards already exist which ensure animal cruelty is properly identified and punished.<sup>91</sup> In their testimony they stated, “The state and municipalities actively interpret the laws and adjudicate offenses, including animal cruelty offenses. The perceived need to appoint a separate animal advocate would imply that neither of these safeguards is adequate. We disagree with that premise. . . .”<sup>92</sup>

The Connecticut Veterinary Medical Association, which includes the majority of Connecticut-licensed veterinarians, voiced similar concerns.<sup>93</sup> They felt a possible unintended side-effect of allowing advocates in the courtroom would be a negative interference in the veterinary-client relationship in making medical decisions for animals.<sup>94</sup> In other words, the legal ramifications of allowing animal advocates to interfere with medical choices would create more harm than good.<sup>95</sup>

#### B. OHIO REVISED CODE § 2931.18

Although Ohio does not appoint animal advocates in animal cruelty cases, the state has a unique statute which allows for the appointment of special prosecutors.<sup>96</sup> Section 2931.18 of the Ohio Revised Code (O.R.C.) authorizes the humane society or its agents to employ attorneys and assistant attorneys for the prosecution of crimes relating to the cruelty of

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Committee, Connecticut Federation of Dog Clubs and Responsible Dog Owners, Inc., to the Connecticut Legislature Judiciary Committee (Oct. 18, 2018), <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05344-R000224-Diamond,%20Mabel%20M.%20-%20Chair,%20Legislative%20Committee,%20Connecticut%20Federation%20of%20Dog%20Clubs%20and%20Responsible%20Dog%20Owners,%20Inc.-TMY.PDF>.

91. *See id.*

92. *Id.*

93. *See* Letter from Melissa Shapiro, DVM, Ct. S. Rep. Humane Soc’y Veterinary Med. Ass’n, to the Connecticut Legislature Judiciary Committee (Mar. 16, 2016), [https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05344-R000224-Shapiro,%20Melissa,%20DVM%20-%20Humane%20Society%20Veterinary%20Medical%20Assiciation%20\(HSVMA\)-TMY.PDF](https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05344-R000224-Shapiro,%20Melissa,%20DVM%20-%20Humane%20Society%20Veterinary%20Medical%20Assiciation%20(HSVMA)-TMY.PDF).

94. *See* RUBIN, *supra* note 71, at 7.

95. *See id.*

96. *See* OHIO REV. CODE ANN. § 2931.18 (West 2018).

animals.<sup>97</sup> Ohio is the only state in the nation with a law that permits the humane society to appoint special prosecutors for these cases.<sup>98</sup>

i. Proponents of O.R.C. § 2931.18

Attorney Jeffrey Holland is one of the leading special prosecutors in Ohio, representing numerous humane societies throughout the state.<sup>99</sup> Under O.R.C. § 2931.18, Mr. Holland has prosecuted thousands of animal cruelty cases over a span of twenty-four years.<sup>100</sup> Mr. Holland believes that elected prosecutors often “fall short in handling animal cases, either from apathy or lack of experience.”<sup>101</sup> Animal cruelty cases are somewhat infrequent, and local prosecutors are often unfamiliar with the relevant statutes and case law.<sup>102</sup> Consequently, animal cruelty cases are often delayed or not prosecuted at all.<sup>103</sup>

The animal cruelty cases that do end up being prosecuted present unique challenges. An animal is the only form of personal property that requires daily care for an owner or keeper to remain in compliance with the law.<sup>104</sup> Holding animals as evidence is unique because they are living, breathing beings that cannot be stored in an evidence locker indefinitely.<sup>105</sup> Caring for these animals is costly, and requires proper shelter and daily care delivered by qualified caretakers and veterinarians.<sup>106</sup> Humane societies frequently bear these costs and burdens.<sup>107</sup>

Special prosecutors provide a valuable service to humane societies in several ways. Special prosecutors have the opportunity and incentive to become familiar with the unusual statutes and case law pertinent to animal

97. *See id.* § 2931.18(A) also permits humane societies to employ attorneys to prosecute violations of law relating to cruelty, abandonment and ill-treatment of children, employment of children under fourteen in certain circumstances, and neglect of destitute parents. However, § 2931.18(B) prevents the humane society from employing special prosecutors in cases involving felony violations of § 959.131 of the O.R.C. Section 959.131 of the O.R.C. prohibits animal cruelty against companion animals.

98. Miller, *supra* note 13.

99. *See id.*

100. *See* Jeffrey Holland, FACEBOOK (May 24, 2015), <https://www.facebook.com/OhioAllianceForAnimalCrueltyReform/posts/455719114610842>.

101. *See* Miller, *supra* note 13.

102. *See id.*

103. *See id.*

104. *See id.*

105. *See* Holland, *supra* note 100.

106. *See id.*

107. *See id.*

cruelty cases, which local prosecutors are often unfamiliar with.<sup>108</sup> Additionally, special prosecutors are knowledgeable about issues relating to veterinary records, proper standards of care, and techniques used for assessing an animal's well-being, and can assist local law enforcement in the care of animals under their supervision.<sup>109</sup> Because humane agencies have fewer resources than other law enforcement agencies, special prosecutors can help guide them during the course of an investigation and help establish standard procedures.<sup>110</sup> Most importantly, special prosecutors are able to prioritize animal cruelty cases so that custody of the animals can be established as swiftly as possible, which serves the animals' best interests and helps manage costs immensely.<sup>111</sup>

Humane societies overwhelmingly support O.R.C. § 2931.18 and view the option to appoint a prosecutor when needed is invaluable.<sup>112</sup> Portage County Animal Protective League Executive Director Chalan Lowry stated that, "Portage APL uses both an appointed prosecutor and our local prosecutor, depending on the nature of the case . . . [w]e strongly oppose efforts to remove this ability . . . [d]ivorce attorneys are hired for their specialty[,] [h]elping animals that are victims of abuse also requires specialty knowledge."<sup>113</sup>

Sharon Harvey, the Director of the Cleveland Animal Protective League, the largest humane society in Ohio, strongly supports O.R.C. § 2931.18 for several reasons as well.<sup>114</sup> Animal law attorneys DanaMarie Pannella and Jeff Holland emphasized how humane societies provide a valuable, free service to the community and the animals they support, and by appointing special prosecutors, animal cases are able to be prioritized and expedited, ultimately reducing costs incurred by both humane societies and the criminal justice system.<sup>115</sup> Shannon Miller, executive director of the Medina County Society for the Prevention of Cruelty to Animals, or SPCA, believes that O.R.C. § 2931.18 allows humane societies to save more abused and neglected animals.<sup>116</sup> Unlike criminal defendants, abused

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108. *See id.*

109. *See* Miller, *supra* note 13.

110. *See* Holland, *supra* note 100.

111. *See id.*

112. *See* Keith Arnold, *Greater public oversight sought in animal abuse cases*, AKRON LEGAL NEWS, Mar. 21, 2016, <http://www.akronlegalnews.com/editorial/14793>.

113. *Id.*

114. *See* Miller, *supra* note 13.

115. *See id.*

116. *See* Arnold, *supra* note 112.

animals are not entitled to a speedy trial.<sup>117</sup> Whereas local prosecutors must prioritize their caseload to accommodate defendants who do not waive their right to a speedy trial, specially appointed prosecutors can bring cases to trial as quickly as the docket allows.<sup>118</sup>

ii. Opponents of O.R.C. § 2931.18

Opponents of this statute include those concerned about lack of oversight and broad discretion afforded humane societies in appointing special prosecutors.<sup>119</sup> State Rep. Steve Hambley of Medina, Ohio introduced legislation in 2015 that would eliminate the nearly century-old statute.<sup>120</sup> The legislation proposed to move oversight of special prosecutors “from an agency without any accountability to either a county prosecutor or municipal law director.”<sup>121</sup> Opponents are concerned “that the humane society is both the appointing authority for these special prosecutors as well as the financial beneficiary of any financial agreements reached with a defendant seeking to avoid prosecution.”<sup>122</sup>

Proponents however deny that accountability and transparency are lacking.<sup>123</sup> Generally speaking, Ohio already has proper procedures in place for removing prosecutors charged with neglect or misconduct.<sup>124</sup> More specifically, the records comprising all of a humane society’s resolved criminal cases are obtainable upon request under the public records law.<sup>125</sup> Additionally, any money that the humane society receives from a defendant is restitution for costs of care for seized or surrendered animals.<sup>126</sup> None of the money is for profit.<sup>127</sup> Any non-prosecution, financial agreements made between the defendant and the humane society are beneficial and often made at the request of the defense attorney.<sup>128</sup>

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117. *See id.*

118. *See id.*

119. *See id.*

120. *See Miller, supra* note 13, at 2.

121. *Id.* at 3 (“The bill is supported by the County Commissioners Association of Ohio and the Ohio Prosecuting Attorneys Association.”).

122. *Id.* at 4.

123. *See id.*

124. *See OHIO REV. CODE* § 309.05 (2004) (stating that any taxpayer can file a petition to have a prosecutor removed for neglect or misconduct); *see also Holland, supra* note 100.

125. *See Miller, supra* note 13, at 4.

126. *See id.* at 4–5 (explaining that the only payments made to the humane society are costs incurred for the emergency care of the pets).

127. *See id.* at 5.

128. *Id.* at 3–4, 6 (stating that these non-prosecution agreements reduce both the costs to the community and the negative impact of a criminal complaint on the offender).

Additionally, O.R.C. § 2931.18 requires each county treasury to pay “just and reasonable” fees to special prosecutors.<sup>129</sup> In most counties, these fees equal that paid to court-appointed counsel, generally recognized as the lowest rate paid for contract legal work.<sup>130</sup> The county only pays for the time spent on the case itself, with travel time and other expenses typically paid directly by the humane counties themselves.<sup>131</sup> Ultimately, hiring special prosecutors is a small public investment that saves money in the long run and helps improve efficiency of the judicial system.

#### IV. A CRITICAL COMPARISON OF DESMOND’S LAW TO O.R.C. § 2931.18

The motivation and incentive behind Desmond’s Law and O.R.C. § 2931.18 are very similar. Both laws seek to give a voice to the voiceless and hold perpetrators of animal abuse accountable. The question then becomes, is providing animal advocates in the courtroom the best way to create more effective outcomes in animal cruelty cases? Or is appointing special prosecutors a more effective tool? This section begins by exploring some early signs of Desmond’s Law’s success, followed by a discussion on some of the law’s challenges. Next, this section discusses the expansive role of the prosecutor, contrasted with the more limited role of the advocate. Finally, this section concludes by arguing that states have a better chance of strengthening their animal abuse laws by adopting a version of O.R.C. § 2931.18 over Desmond’s Law. Because prosecutors have a more powerful, authoritative role, they are better equipped for this position, and adding advocates creates a layer of unnecessary complication. As the saying goes, “too many cooks in the kitchen spoil the broth.”

##### A. PROGRESS AND SUCCESS OF DESMOND’S LAW

Desmond’s Law is still in its early stages of existence. Therefore, it may be too early to tell the exact ramifications of the law in relation to animal cruelty cases. Nonetheless, there has been some positive activity occurring since the law’s passage. There are currently eight approved volunteer advocates across Connecticut— seven lawyers and a professor from the University of Connecticut (“UConn”).<sup>132</sup> Students at UConn

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129. See OHIO REV. CODE § 2931.18(A)(4).

130. See Holland, *supra* note 100, at 2.

131. See *id.*

132. See Associated Press, *This state is experimenting with legal advocates for animal abuse cases*, NEW YORK POST (June 2, 2017, 2:50 AM), <https://nypost.com/2017/06/02/this-state-is->

volunteer under the guidance of their professor.<sup>133</sup> As of February 20, 2018, animal advocates have been appointed to twenty three animal cruelty cases in Connecticut.<sup>134</sup> Seven cases have been resolved, and one case resulted in a guilty verdict for animal cruelty with a sentence of six months in jail.<sup>135</sup>

Following the passage of Desmond's Law, UConn law student Taylor Hansen was appointed as a volunteer advocate in a dogfighting case involving three pit bulls.<sup>136</sup> In court, Hansen described the abuse the dogs suffered, discussed the connection between animal abuse and human abuse, and explained why she believed the defendant accused of raising the dogs to fight should be prevented from participating in the same AR program that Desmond's owner participated in.<sup>137</sup> Although the judge agreed the charges were serious, he ultimately found the alleged crime did not automatically prevent the defendant from participating in AR.<sup>138</sup> The defendant received AR, although the judge did impose certain conditions, on Hansen's suggestion, that would prevent the defendant from owning, breeding, or having dogs in his home for at least two years.<sup>139</sup> The judge also ordered the defendant to perform 200 hours of community service that did not involve animals.<sup>140</sup> There is no evidence, however, to suggest whether or not the judge would have imposed these conditions even if the advocate was not present and did not testify. Ultimately, only time will tell how productive and persuasive the advocates are in effectuating change in Connecticut courts.

#### i. Desmond's Law Provides an Opportunity for Experiential Learning

There is no doubt that experiential learning for law students is critical to a law student's growth and education. In fact, law schools across the country have made it their priority to make experiential learning central to all three years of a law student's coursework.<sup>141</sup> Lab components,

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experimenting-with-legal-advocates-for-animal-abuse-cases/.

133. *See id.*

134. *See* CT House Republicans, *supra* note 43, at 4:23.

135. *See id.*; *see also* Laurel Wamsley, *In a First, Connecticut's Animals Get Advocates in the Courtroom*, NPR (Jun. 2, 2017, 5:46 PM), <https://www.npr.org/sections/thetwo-way/2017/06/02/531283235/in-a-first-connecticuts-animals-get-advocates-in-the-courtroom>.

136. *See* Associated Press, *supra* note 132.

137. *See id.*

138. *See id.*

139. *See id.*

140. *See id.*

141. *See* Margaret Loftus, *Law Schools Innovate With Hands-On Learning*, U.S. NEWS &

workshops, externships, and legal “residencies” are becoming the norm in schools across the nation.<sup>142</sup> Desmond’s Law provides an exceptional opportunity for law students to gain experience with the court system by serving as an animal advocate.<sup>143</sup> The more practical knowledge and experience a law student can receive under the supervision and guidance of an attorney, the better prepared he will be to serve in a legal capacity as a newly-minted lawyer.

The law has also garnered strong support from students at the University of Connecticut. Law students at UConn feel that Desmond’s Law provides an excellent opportunity for them to get hands-on experience in court, sharpen their lawyering skills, and simultaneously afford them the opportunity to advocate for something they are passionate about.<sup>144</sup>

#### ii. Desmond’s Law has the Potential to Reduce Costs to Taxpayers

Animal abuse cases often result in high fees for municipalities.<sup>145</sup> The daily costs of caring for animals under state supervision during animal cruelty cases are significant.<sup>146</sup> Animals are often impounded for over a year, and the cost of care ultimately falls upon the municipality taxpayer.<sup>147</sup> Practicing attorneys who volunteer as animal advocates would not need to be trained on the inner workings of the court system. These volunteer attorneys can potentially facilitate the faster disposition of cases, thus dissipating some of the high tax costs of caring for the animals.<sup>148</sup>

On the other hand, this law gives yet another chore to the Department of Agriculture, if not the judicial branch as well. There are undoubtedly administrative responsibilities and costs acquired by the Department of Agriculture for maintaining a list of advocates. Further, judges have to use additional time and resources to determine when an advocate is necessary and should be appointed. Advocates may also have to be notified of times and places for court proceedings, and constantly be updated on the status of

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WORLD REPORT (Mar. 30, 2016, 9:30 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2016-03-30/law-schools-innovate-with-hands-on-learning>.

142. *Id.*

143. *See An Act Concerning Support for Cats and Dogs That Are Neglected or Treated Cruelty, Hearing on H.R. 5344 Before the Ct. Gen. Assemb., Sen. 2058-2399, Pt. 7, at 2234 (2016)* (statement of Sen. Eric Coleman).

144. *See id.* at 710 (statement of Taylor Hanson).

145. *See id.* at 684 (statement of Prof. Jessica Rubin).

146. *See id.*

147. *See id.*

148. *See id.*

the case. Although these costs may be minimal, they would nevertheless fall upon the taxpayer's checkbook.

B. THE LEGAL STATUS OF AN ANIMAL ADVOCATE IS VERY LIMITED AND CLOSER TO A VICTIM'S ADVOCATE AS OPPOSED TO A GUARDIAN AD LITEM

The court system provides human victims of crimes with a victim's advocate.<sup>149</sup> A victim's advocate is able to talk to the victim and plead to the court about the problem, but they cannot intervene as a party, nor can they intervene in other matters.<sup>150</sup> A guardian ad litem ("GAL"), on the other hand, is a court-appointed individual who investigates a child's situation, typically in a divorce or parental rights and responsibilities case.<sup>151</sup> A GAL represents the "best interests of the child" and advises the court on a variety of matters, such as where the child should live, whether the child is being harmed by a parent, and the extent of contact a child should have with his parent.<sup>152</sup> A guardian ad litem is a heightened status when compared to a victim's advocate.<sup>153</sup>

Therefore, although supporters of Desmond's Law would like to view the animal advocate as a type of "guardian ad litem" for the animal, the advocate is in fact most comparable to a victim's advocate. According to the language of the bill, the advocate does not represent the "best interests of the animal" but rather the "interests of justice."<sup>154</sup> As discussed previously, the animal advocate is able to monitor the case, consult with individuals on information that could aid the judge or fact finder, and review records from the control officer, veterinarian, or police. However, the animal advocate does not have the power to subpoena, cross-examine or file motions.<sup>155</sup> The information that the volunteer advocate provides is not intended in any way to have any greater weight than any other valid

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149. See *Hearing on H.R. 5344 Before the Conn. Gen. Assemb.*, *supra* note 143, at 2244 (statement of Sen. Len Fasano, Member, Conn. Gen. Assemb. S.).

150. See *id.*

151. See *What is a Guardian ad Litem?*, PINE TREE LEGAL ASSISTANCE, <https://ptla.org/what-guardian-ad-litem#> (last modified Sept. 17, 2018, 8:46 AM) (explaining and defining what a Guardian ad Litem is).

152. See *id.*

153. See *Hearing on H.R. 5344 Before the Conn. Gen. Assemb.*, *supra* note 143, at 2245–46 (statement of Sen. Len Fasano, Member, Conn. Gen. Assemb. S.).

154. 2016 Conn. Acts No. 16–30 §1(c).

155. See *Hearing on H.R. 5344 Before the Conn. Gen. Assemb.*, *supra* note 143, at 2240–41, 2256 (statement of Sen. Len Fasano and Sen. Coleman, Members, Conn. Gen. Assemb. S.).

and responsible information from any other source.<sup>156</sup> Therefore, it is unlikely that the advocate can add any additional information to the case that the prosecutor is not already telling the court. Specifically in Ohio, it is difficult to imagine a situation in which an advocate can provide more vital information than a special prosecutor, who is able to receive all of the vital information they need from the humane agents that appoint them.

Whereas advocates would be able to voice their opinions, the overall effect of their testimony seems weak and lacking. Prosecutors, as attorneys to the case, have actual power and weight in affecting the final disposition to the case. Furthermore, advocates can only be appointed at the discretion of the judge, and a judge's decision to not appoint an advocate is not appealable. And although prosecutors and defense counsel can both request advocates, it is difficult to imagine a situation where defense counsel would actually request an advocate.

Similar to attorneys, veterinarians must keep communication between themselves and their client-patients confidential. If advocates were to try and investigate conditions of animals owned by defendants, they could potentially be charged with evidence tampering or trespassing. Although the assistance of an animal advocate may be welcomed by overburdened prosecutors in states like Connecticut, a special prosecutor in a state such as Ohio may find an animal advocate an unnecessary burden in the case.

### C. PROSECUTORS ARE MORE POWERFUL THAN ADVOCATES AND ARE BEST SUITED TO WORK WITH LOCAL HUMANE AGENTS TO COMBAT ANIMAL ABUSE

Prosecutors are arguably the most powerful players in the courtroom. The prosecutor has the power of discretion and can exercise his own judgment in bringing charges, dropping charges, reducing charges, and even offering deals recommending particular sentences.<sup>157</sup> Additionally, Special Prosecutors such as Jeffrey Holland have dedicated the majority of their careers to animal abuse cases, and are extremely knowledgeable about every facet of these cases. Through their expertise in this area of the law,

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156. See *id.* at 2272 (statement of Sen. Martin Looney, Member, Conn. Gen. Assemb. S.).

157. See *The Prosecutor-The Most Powerful Person in the Courtroom*, LIJT LAW, at 1 (June 1, 2013), <http://lijtlaw.com/the-prosecutor-the-most-powerful-person-in-the-courtroom/> (explaining the role of the prosecutor within the court system); see also *Criminal Justice Standards for the Prosecution Function*, A. BAR ASSOC., Part IV. Standard 3–4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges (4th ed. 2016), [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition.html](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html) (emphasizing the discretion of the prosecutor).

these Special Prosecutors are able to work closely with humane agents to ensure the best possible outcomes for both the animals and defendants.

Local Humane Law Enforcement Departments play a vital role in addressing animal cruelty occurring within their communities.<sup>158</sup> These law enforcement officers are typically certified state peace officers whose daily tasks include responding to possible situations of animal cruelty and educating the public on the law and how to provide responsible care for their pets.<sup>159</sup> In many cases, individuals who are suspected of animal abuse are first-time offenders who simply need to be educated on how to best care for their animals. Examples of many first time offenses include: (1) leaving dogs outside without food, water, or shelter, (2) failing to properly treat sick or injured pets, (3) failing to provide pets with sanitary living conditions, (4) hoarding animals, and (5) leaving animals alone in a car during extreme weather conditions.<sup>160</sup> In such situations, Humane Officers will educate owners on the welfare laws of that state and on proper animal care to improve the quality of life for the animal and prevent the animal from being removed from the home.<sup>161</sup> Humane Officers only seize animals if remediation is not successful, or if there is an imminent threat to the animal's safety and an immediate need for veterinary care.<sup>162</sup> Animal cruelty charges are typically only filed as a last resort.<sup>163</sup>

In Ohio, Humane Agents are able to work closely with special prosecutors throughout this entire process thanks to O.R.C. § 2931.18. The special prosecutor is therefore in a better position to work with the humane societies than an advocate would be. By working with law enforcement officers, special prosecutors can make more informed and guided decisions about whether and when prosecution is necessary.

Finally, prosecutors have a professional duty to respect the constitutional and legal rights of defendants.<sup>164</sup> Advocates, on the other hand, may not understand the legal rights of the defendant—even if they do, they may be so *emotionally* invested in the animal's suffering that they may

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158. See *Humane Law Enforcement*, HUMANE SOC'Y GREATER ROCHESTER, 1, <https://www.lollypop.org/humane-law-enforcement/> (last visited Feb. 20, 2019).

159. See *id.*

160. See *id.* at 2.

161. See *Humane Law Enforcement & Investigations*, HUMANE SOC'Y SUMMIT COUNTY, at 2, <https://www.summithumane.org/investigations#> (last visited Feb. 20, 2019).

162. See *id.*

163. See *id.*

164. See *Criminal Justice Standards for the Prosecution Function*, *supra* note 157, at 2.

not be appropriately objective. Although well-intentioned, an advocate may be overly zealous, which can be counterproductive.

## V. CONCLUSION

This article has focused on the strengths and weaknesses of Desmond's Law to predict its future success and viability. In its first year after implementation, Desmond's Law has demonstrated to be a great first step towards reaching the laudable goal of bringing attention to animal abuse cases and ensuring proper punishment for offenders of animal abuse.<sup>165</sup> Providing the court system with animal advocates who are given proper, limited responsibilities, may be beneficial to the overall prosecution of animal abuse cases and the interests of justice.<sup>166</sup> The minimal to no costs of appointing volunteer advocates and the experiential learning that law students can receive are positive aspects of the law as well.<sup>167</sup> Ultimately, however, it seems that O.R.C. § 2931.18 is a more effective means for prosecuting animal abuse cases. Prosecutors have more power in the courtroom and are in a better position than volunteer advocates to get faster, more effective, and more holistic results.<sup>168</sup>

With the FBI and national law enforcement agencies beginning to take a stronger stance on animal abuse issues,<sup>169</sup> now is the time for states to reciprocate. State legislatures should first and foremost focus their resources on laws and programs that seek to tackle and prevent animal abuse issues at their core. These include funding humane education programs, providing proper psychological reviews and treatment programs for animal abusers, and creating laws which require cross-reporting, restitution, and stricter punishments for repeat offenders.<sup>170</sup> For the most serious of cases, Desmond's Law and O.R.C. § 2931.18 provide examples

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165. See Daniel Tepfer, *Bridgeport 'Legal Beagle' Advocates for Abuse Dog*, CTPOST, at 2 (May 6, 2018, 3:35 PM), <https://www.ctpost.com/local/article/Bridgeport-legal-beagle-advocates-for-12889211.php>.

166. See *id.* at 2–3.

167. See *Hearing on H.R. 5344 Before the Ct. Gen. Assembly*, *supra* note 143, at 683–84.

168. See HOLLAND & MUIRDEN ATTORNEYS AT LAW, <http://holland-muirden.com/ohio-legal-news-legislative-updates/> (last visited Feb. 20, 2019) (providing articles of animal abuse cases that Mr. Holland was involved in and which were successfully prosecuted in Ohio).

169. See *FBI Releases 2016 NIBRS Crime Statistics in Report and CDE, Promotes Transition of Agencies*, *supra* note 49, at 1.

170. See generally Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 IOWA L. REV 1, 7 (2001) (explaining some laws and programs that should be instilled to prevent animal abuse).

of laws which afford prosecutors and volunteer advocates stronger roles in the prosecution of animal abuse cases.

Attitudes about animal cruelty and neglect are changing, and society is gradually appreciating that a truly civilized community must care for all of its vulnerable members, including companion animals.<sup>171</sup> Because the majority of animal abuse cases do not occur in isolation, prioritizing animal cruelty cases can expose other forms of violence and better protect human victims too.<sup>172</sup> Desmond's Law has rejuvenated the vigor and dedication towards keeping animals safe and protected, and ultimately giving the voiceless a voice. Ultimately, both Desmond's Law and Ohio's Special Prosecutor Law will hopefully inspire other state legislatures to strengthen their animal cruelty laws as well.

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171. See Rebecca Riffkin, *In U.S., More Say Animals Should Have Same Rights as People*, GALLUP, 1–2 (May 18, 2015), <https://news.gallup.com/poll/183275/say-animals-rights-people.aspx> (emphasizing that about a third of Americans believe animals should have the same rights as people and about 62% of American believe animas deserve some sort of protection).

172. See Randour and Davidson, *supra* note 27, at v.

