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WHY THE ALI SHOULD REWRITE THE ANIMAL-CRUELTY PROVISION OF THE MODEL PENAL CODE

By Nicole Pakiz

Introduction

After six years of ownership, Douglas Juras decided that he no longer wanted his cat Momma. Instead of taking Momma to a shelter or trying to find her another home, thirty-six-year-old Juras sliced Momma’s throat with a box cutter. Because he missed the jugular artery and a neighbor heard her cries, Momma was able to wriggle free from his grasp and escape to the hands of law enforcement who responded to the neighbor’s call. However, after suffering shock from the blood loss, she was later euthanized at the humane hands of the police.

Juras pleaded guilty to animal cruelty, a Class A misdemeanor under North Dakota law. For this intentional act of cruelty, he was sentenced to 400 hours of community service, one year of unsupervised probation, and ordered to pay $300 in court costs. This slap on the wrist is consistent with North Dakota’s disregard for the welfare of companion animals, where the criminal laws have not kept up with societal values. Further,
North Dakota is not the only state employing outdated criminal code regarding animal abuse.

Had Juras committed the same acts in Illinois, for example, his crime would have been classified as a felony, and the sentence would have been more commensurate. Unfortunately, the punishment for animal cruelty varies drastically from one state to the next. One reason for this is that the Model Penal Code (MPC), which state legislatures have traditionally looked to for guidance in modifying state penal codes, has not kept up with society’s values either. Under the MPC, Juras’s horrific acts would have likely been treated the same. This Note argues that the MPC’s animal-cruelty section desperately needs revision.

The MPC has been the most successful attempt to codify American criminal law. Even before the MPC was first finalized, tentative versions were used by states to reform their penal codes. In 1962, at the completion of the MPC, “Cruelty to Animals” was listed under “Part II. Definition of Specific Crimes, Offenses Against Public Order and Decency, Article 250. Riot, Disorderly Conduct and Related Offenses.”

At that time, animal abuse was associated with other morally reprehensible behaviors such as public intoxication, desecration of venerated objects, gambling, prostitution, and abuse of corpses.

Today, despite mounting evidence linking animal cruelty with domestic violence, child abuse, and murder among juveniles and adults alike, crimes of “Cruelty to Animals” remains buried under “Riot, Disorderly Conduct and Related Offenses.” Therefore, the statutory model reflects a fifty-year-old view on animal cruelty that calls for minimal punishment, uses inadequate terminology, and fails to recognize the broad range of acts that now constitutes animal abuse. In this way, the MPC fails to act as a guide for state penal-code reform, resulting in animal-cruelty laws that vary drastically across the country.

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9 See infra Part IV.A.
12 Robinson & Dubber, supra note 10, at 320.
13 Id. at 326.
14 MODEL PENAL CODE § 250.11 (1962).
16 Id. at 503–04; see infra Part III.
17 MODEL PENAL CODE § 250.11 (1962).
18 See infra Part IV.
This Note proceeds in five parts. Part I discusses a brief history of the Model Penal Code and its pervasive influence on states drafting and revising their penal codes. Part II explores the evolution of state animal-cruelty laws. Part III discusses the connection between animal cruelty and other serious criminal offenses. Part IV then explains the lack of continuity among state animal-cruelty statutes, both good and bad, and how the MPC is adding to this disparity. Finally, Part V discusses how the MPC might model its revision of “Cruelty to Animals” and explains why a redraft of this provision is absolutely necessary.

I. History and Influence of the Model Penal Code

The MPC is the closest thing to a comprehensive American criminal code. The United States is comprised of jurisdictions that have a total of fifty-two different criminal codes in addition to a federal penal code. The U.S. Constitution grants states the primary authority to impose criminal liability on its citizens pursuant to state interests or “street crimes.” Claiming that state criminal codes were “chaotic and irrational,” the American Law Institute (ALI) published the first version of the Code in 1962. Whereas restatements of law act as “general statements of principle digesting the state of the common law,” the purpose behind the MPC was to act as a comprehensive body of criminal law to be adopted by state legislatures across the country.

After publication of the MPC in 1962, thirty-four states redrafted their criminal codes in a way that was influenced in whole or in part by the MPC. The influence of the MPC has not been limited to state codes; thousands of court opinions have cited the MPC as persuasive authority for interpreting statutes and formulating criminal-law doctrine. As

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19 Robinson & Dubber, supra note 10, at 320.
20 Id.
21 Id. (describing “street crimes” as “homicide, rape, robbery, assault, and theft”).
22 Id. at 323.
23 The ALI is a nongovernmental organization comprised of lawyers, judges, and law professors in the U.S. who typically draft “restatements” of an area of the law. Id. ALI’s mission was “to promote the clarification and simplification of the law and its better adaption to social needs . . . .” ALI Overview, A.L.I., http://www.ali.org/index.cfm?fuseaction=about.creation (last visited Feb. 19, 2012).
25 Robinson & Dubber, supra note 10, at 324 (listing the states in order of recodification from 1962 to 1983).
26 See, e.g., Hawai‘i v. Aiwohi, 123 P.3d 1210, 1221 (Haw. 2010) (looking to the Model Penal Code to fill in gaps in the state law in distinguishing the three material elements of any criminal offense); Pennsylvania v. Henley, 459 A.2d 365, 369 (Pa.
influential as the MPC has proven to be, however, legal scholars have recognized that it has become notably dated in many areas of the law including rape, drug offenses, domestic violence, and bias crimes.\textsuperscript{27} Likewise, the MPC’s “Cruelty to Animals” section has become terribly outdated. In the 1950s, animal cruelty was treated as a social misbehavior.\textsuperscript{28} Consequently, the objective in drafting § 250.11 of the MPC in 1962 was to “prevent outrage to the sensibilities of the community.”\textsuperscript{29}

Following that objective, the animal-cruelty provision was categorized under “Offenses Against Public Order and Decency”\textsuperscript{30} and viewed as petty mischief that affected the morals of society as a whole. Similar indecency offenses include behavior related to rioting, disorderly conduct, making false public alarms, harassment, public drunkenness, loitering, obstructing highways, disrupting meetings and processions, desecrating venerated objects, abusing corpses, and violating privacy.\textsuperscript{31} The offenses in Article 250 are described as those that “affect a large number of defendants, involve a great proportion of public activity, and powerfully influence the view of public justice.”\textsuperscript{32} While in 1962 the public might have viewed animal cruelty as similar to these offenses, this Note will explore how this consensus has drastically evolved, while the MPC has not.

\textbf{II. The Evolution of State Animal-Cruelty Laws}

States began enacting animal-cruelty statutes in the first half of the nineteenth century.\textsuperscript{33} The first animal-cruelty statutes were not to promote animal welfare, but rather to “(1) protect the property rights of those who owned commercially valuable animals . . . and (2) prevent harm to human beings.”\textsuperscript{34} The owner of an animal had an interest in the animal only as

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\textsuperscript{27} See Lynch, \textit{supra} note 24, at 230–35 (explaining that these areas are in need of statutory reform because they did not exist in the 1950s to the extent they do today); Robinson & Dubber, \textit{supra} note 10, at 329 (explaining the change in society’s views on the treatment of sex and drug offenses since the 1950s).


\textsuperscript{29} Id. at 425.

\textsuperscript{30} MODEL PENAL CODE § 250.11 (1962).

\textsuperscript{31} Id. at §§ 250.1–250.10, 250.12.

\textsuperscript{32} MPC COMMENTARIES, \textit{supra} note 28, at 309.

\textsuperscript{33} Challener, \textit{supra} note 15, at 500–01.

\textsuperscript{34} Id. at 501.
chattel. However, a change in this view was evident as early as post-
Civil War, when the emancipation of slaves moved society toward “a
more profound recognition of the dignity of all beings.” In 1866, New
York amended its animal-cruelty statute to expand the scope of animals
protected and abusive acts covered. The amended statute read: “Every
person who shall, by his act or neglect, maliciously kill, maim, wound,
injure, torture, or cruelly beat any horse, mule, ox, cattle, sheep, or other
animal, belonging to himself or another, shall, upon conviction, be
adjudged guilty of a misdemeanor.” This animal-cruelty law then
became the model for reformed animal-cruelty statutes throughout the
country.

Although animals continued (and continue) to be regarded, legally, as
personal property, courts began adopting the view that cruelty to animals
was also degrading to the human perpetrator, human witnesses, and
society as a whole. Animal cruelty was regarded as a problem that
“diminished the human condition.” Not only were animal-cruelty laws
meant to prevent and punish the destruction of property, but also to
discourage and protect people from barbarous and uncivilized behavior
that negatively impacted the general public. The type of behavior that
aligned with humans committing animal cruelty was thought to be
indicative of a character that also participated in excessive gambling,
dissemination of pornography, public intoxication, loitering, and similar
actions. As a result, the animal-cruelty provisions of many state codes
were found in chapters entitled, for example, “Of Offenses Against
Chastity, Decency and Morality,” reflected in the drafting of the MPC.

Margit Livingston, Desecrating the Ark: Animal Abuse and the Law’s Role in
Prevention, 87 Iowa L. Rev. 1, 21 (2001). “Chattel” is thought to be derived from the
word “cattle,” which was one of the most valuable animals and thus personal property.
Id.

Id. at 24 (emphasis added).

Id. at 25.

N.Y. Agric. & Mkts. § 26 (McKinney 1881).

Livingston, supra note 35, at 25.

See, e.g., Waters v. People, 46 P. 112, 113 (Colo. 1896) (“[The animal-cruelty
law’s] aim is not only to protect these animals, but to conserve public morals . . . .”);
Johnson v. Dist. of Columbia, 30 App. D.C. 520, 522 (D.C. 1908) (explaining that the
prevention of animal cruelty “is in the interest of peace and order and conduces to the
morals and general welfare of the community”); see also Livingston, supra note 35, at 26.

Livingston, supra note 35, at 26.

Id. at 27–28.

Id. at 28.

David Favre & Vivien Tsang, The Development of Anti-Cruelty Laws During the
1800’s, 1993 Detroit C. L. Rev. 1, 9 (1993) (citing specific examples of early codes in
New Hampshire, Minnesota, Michigan, and Pennsylvania).
While most animal-cruelty statutes still resembled their earlier counterparts by 2002,45 some state provisions have started to reflect society’s increasing concern about animal welfare.46 Currently, all fifty states and the District of Columbia have some type of statute to protect animals from cruelty and neglect.47 Further, some states’ anti-cruelty statutes reflect the purpose of preventing cruelty to animals for the benefit of the animals as opposed to society.48 For example, Oregon catalogues its animal cruelty statute under “Offenses Against Public Health, Decency, and Animals.”49 By assigning a separate section for offenses against animals, the Oregon legislature recognizes that the primary purpose of the animal-cruelty provision is to protect animal welfare, not public health and property.50 Still, a number of modern animal-cruelty statutes have retained their purpose as “promot[ing] moral behavior and thereby ‘improv[ing] human character’” rather than promoting animal welfare.51

Not only has society’s conception about animal cruelty greatly evolved in the last 200 years, discussion about animal rights has “moved from the periphery and towards the center of political and legal debate.”52 Professor David Favre suggests that vertebrate animals should be considered under a new category of “living property” with at least some legal rights because animals have “individual interests worthy of our consideration.”53 Another legal scholar, Steven Wise, suggests that some animals, particularly large primates, are entitled to basic legal rights based on the sophisticated nature of animal minds.54 While many people continue to view the idea of animal legal rights as implausible,55 the growing animal-rights movement serves as another example of how attenuated the original concepts of animal cruelty are from today’s vision of protecting our companion animals.

46 Livingston, supra note 35, at 29.
47 Id.
49 OR. REV. STAT. § 167.310–167.390 (2011); see also Moore, supra note 48, at 95.
50 Moore, supra note 48, at 95.
54 Wise, supra note 45, at 101.
55 Sunstein, supra note 52, at 387.
III. The Connection Between Animal Cruelty and Other Serious Offenses

The animal-cruelty provision of the MPC was drafted in part to promote “moral behavior,” and in part to “prevent those who harm animals from engaging in other antisocial conduct that is harmful to humans.”56 Unfortunately, decades of research have demonstrated that the antisocial conduct perpetuated by animal abuse is much more severe than riot, disorderly conduct, or public intoxication. As mentioned, the link between animal abuse and other serious crimes has become well established.57 The gambit of crimes ranges from domestic abuse within the home, to drug-related offenses, to serial killings and mass murder.58

Several studies demonstrate that where there is domestic violence in the home, you will also likely find an abused animal.59 Killing or abusing an animal demonstrates an offender’s control and domination over the subject, similar to the mindset behind an offender’s violent action toward an abused partner or child.60 68% of women who reported domestic violence also reported animal abuse.61 Furthermore, 75% of these incidences occurred in the presence of children.62 Where there is a child being abused or witnessing abuse, there is a strong probability that the child will adopt this behavior and continue both animal and human abuse in a generational cycle.63

Additionally, children in homes where animal abuse is occurring are often subject to the abuse themselves.64 For example, in a Kentucky case, the county animal shelter was alerted that animals were being kept in the marks, which is why it is often difficult to obtain custody of the animal and the child in the same court.65

56 Challener, supra note 15, at 503.
57 Randall Lockwood, Animal Cruelty and Violence Against Humans: Making the Connection, 5 ANIMAL L. 81, 81 (1999) (describing a compilation of fifty classic references to the connection in various fields of study over the last 200 years).
60 Sauder, supra note 58, at 11–12.
62 Id.
63 Sauder, supra note 58, at 11–12; see also Challener, supra note 15, at 503–04 (describing studies showing that juveniles and adults who abuse animals are more likely to continue the abuse against humans).
64 Sauder, supra note 58, at 13.
defendants’ garage without food, water, or ventilation. The county game warden responded to the complaint, finding seventeen to twenty-three dogs in three to five inches of feces, without water, and in a temperature exceeding 90 degrees. After seizing the animals, investigators later discovered that the defendants’ four children, ages five to thirteen, were being forced to perform anal and oral sex on both the defendants and other men and women while tied to a tree.

While animal abusers are four times more likely to commit property-related crimes, and three times more likely to commit drug-related offenses, they are also five times more likely to commit violent crimes such as assault, rape, and murder. Outside the home, some of the most notable violent offenders started out as animal abusers. For example, the “Son of Sam” serial murder er killed both his grandmother’s parrot and a neighbor’s dog before going on his infamous killing spree. Additionally, the gunmen in the Columbine High School shooting, which resulted in the death of twelve students and one teacher, had a history of mutilating animals prior to their mass murder, double suicide. Further, “[Seventy-five] percent of violent offenders in prison have earlier records of animal cruelty.”

Psychologists conjecture that only the object of a serial killer’s violent actions change, and the violent behavior does not. In the same

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65 Schambon v. Kentucky, 821 S.W.2d 804, 806 (Ky. 1991).
66 Id.
67 Id. at 807–08.
68 Sauder, supra note 58, at 13–14; see also Slitting the Throat of Girlfriend’s Rottweiler, PET-ABUSE.COM, http://www.pet-abuse.com/cases/1678/AL/US/ (last visited Dec. 6, 2011) (describing how defendant slit the throat of his girlfriend’s Rottweiler resulting in conviction of misdemeanor animal cruelty and then broke his probation buying crack cocaine from an undercover agent).
69 Iannacone, supra note 58, at 753; Lockwood, supra note 57, at 83 (also describing infamous serial killer Jeffrey Dahmer’s fascination with animal corpses and incident of killing an entire tank of tadpoles in the third grade); see also Weslander, supra note 8 (explaining that serial killer BTK admitted that before he started strangling people to death, he killed numerous dogs and cats).
72 Sauder, supra note 58, at 14.
way that acts of cruelty towards humans causes a great deal of harm to the
humans involved, acts of animal cruelty cause a great deal of harm to both
the animals and humans involved. As it turns out, acts of animal cruelty
are indicative of a character that participates in much more severe actions
than rioting or disorderly conduct.

IV. The Current “State” of Animal-Cruelty Laws

Animal-cruelty laws differ drastically from state to state. While some
states recognize the large scope of criminal activity that animal abuse
encompasses, others have failed to move beyond what is covered under
the MPC. Further, how the act of animal cruelty is defined differs
depending on what jurisdiction the crime was committed. One of the
biggest issues is the disparity in maximum punishments. While forty-six
states and the District of Columbia have felony animal-cruelty provisions,
each state varies drastically on what type(s) of crime(s) and animal(s) are
covered. Location of the animal-cruelty provision within a state’s
criminal code is also a good indicator of how progressive the anti-cruelty
law is within the state. The following gives a brief insight into how state
animal-cruelty statutes differ across the country and why some are more
effective than others.

A. The Good, the Bad, and the Ugly

The animal-cruelty laws in Illinois, Maine, and Michigan are three of
the most progressive animal-cruelty statutes in the country. These three
states are the only ones that have felony penalties available for cruelty,

73 Moore, supra note 48, at 91.
(2011).
75 See supra note 74.
76 Id.
77 Iannacone, supra note 58, at 748.
78 Cf. TEX. PENAL CODE ANN. § 42.092 (West 2011) (listing “Cruelty to
Nonlivestock Animals” under “Disorderly Conduct and Related Offenses”), with IND. CODE § 35-46-3-12 (2011) (listing “Beating vertebrate animal” under “Offenses Relating
to Animals”).
79 ANIMAL LEGAL DEF. FUND, 2010 STATE ANIMAL PROTECTION LAWS RANKINGS:
COMPARING OVERALL STRENGTH AND COMPREHENSIVENESS 2 (2010) [hereinafter
RANKINGS], available at http://aldf.org/article.php?id=1548. The ADLF study, the
longest and most authoritative of its kind, researches fourteen broad categories to
determine the ranking of state animal-protection laws each year. Id. These categories
include: the range of statutory protections, adequacy of the definitions used, penalties for
repeat offenders, and other categories regarding animal forfeiture, enforcement, and
mitigation measures. Id.
neglect, fighting, abandonment, and sexual assault. Further, all three statutes also treat animal cruelty violations separate from offenses against public order and decency in their criminal codes, providing coverage of animal abuse in its own chapter.

Illinois is deemed to have one of the most effective animal-cruelty statutes because of its wide array of protections. For example, Illinois is one of only two states that specifically defines animal hoarding. Besides recognizing a relatively new phenomenon, the Illinois animal-hoarding provision is progressive for two more reasons. First, it goes beyond traditional punishment by including a mental health component, which requires judges to order offenders to undergo psychological evaluation if convicted. Second, it includes specific definitions of an owner’s duties to their companion animal, leaving little room for misinterpreting, for example, “an open toilet bowl [as] an adequate source of water.”

Further, Illinois provides for mandatory forfeiture of animals upon conviction and also allows courts to restrict ownership when necessary. Veterinarians and animal-related professionals are required to report suspected acts of animal-cruelty. Additionally, there are broad measures listed to mitigate the costs of care for abused pets seized by animal-welfare agencies. The Illinois statute also recognizes the effect of animal abuse on human victims, requiring mental health evaluations and counseling beyond animal hoarding convictions, and allowing pets to be included in domestic protective orders. Lastly, anyone convicted of animal torture, “infliction of or subjection to extreme physical pain,

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80 Id. at 4 (While other states provide felony penalties for cruelty or fighting, these are the only three states that provide felony penalties for all five offenses comprehensively).

81 See 510 ILL. COMP. STAT. 70/3.01 (2011) (placing cruel treatment of companion animals under Chapter 510. Animals); ME. REV. STAT. tit. 17, § 1031 (2011) (placing cruelty to animals under Chapter 42. Animal Welfare); MICH. COMP. LAWS ANN. § 750.50(b) (2011) (placing the animal cruelty provision under Chapter IX. Animals).

82 RANKINGS, supra note 79, at 2.


84 510 ILL. COMP. STAT. 70/3 (2011); Renwick, supra note 83, at 599; see also 30 Dogs Seized, Odin, IL, PET-ABUSE.COM, http://www.pet-abuse.com/cases/18780/IL/US/ (last visited Feb. 29, 2012) (describing an Illinois man who plead guilty to animal cruelty for hoarding thirty dogs and was ordered to undergo mental evaluation in October 2011).

85 510 ILL. COMP. STAT. 7/3 (2011); Renwick, supra note 83, at 600.

86 510 ILL. COMP. STAT. 70/3.04 (2011); RANKINGS, supra note 79, at 4.

87 510 ILL. COMP. STAT. 70/3.07 (2011); RANKINGS, supra note 79, at 4.

88 510 ILL. COMP. STAT. 70/16.2–16.17 (2011); RANKINGS, supra note 79, at 4.

89 510 ILL. COMP. STAT. 70/3.03 (2011); RANKINGS, supra note 79, at 4.

90 510 ILL. COMP. STAT. 70/16.3 (2011); RANKINGS, supra note 79, at 4.
motivated by an intent to increase or prolong the pain, suffering, or agony of the animal,” can face up to five years in prison.\textsuperscript{91}

The Maine and Michigan statutes also include notable sections that distinguish them as leaders in the anti-cruelty law arena. A major strength of the Maine statute is it provides police officers with an affirmative duty to enforce animal-protection laws.\textsuperscript{92} The police’s role in enforcing animal-cruelty laws is a vital first step in successful prosecution.\textsuperscript{93} While Michigan has some of the same strengths as the Illinois and Maine statutes, it also provides a few other positive distinctions.\textsuperscript{94} For example, Michigan treats malicious animal cruelty as a felony punishable by up to four years imprisonment on the first conviction.\textsuperscript{95} Additionally, Michigan gives humane officers broad law enforcement authority.\textsuperscript{96} When a state has an integrated plan in place to respond to animal-cruelty complaints, allowing other agencies enforcement authority can provide extra resources necessary for successful reporting and investigation.\textsuperscript{97}

On the other end of the spectrum, Idaho, Kentucky, and North Dakota have been named three of the worst states for companion animals due to some of the weakest protection laws in the country.\textsuperscript{98} There are a few characteristics that separate the bad laws from the downright ugly. None of these three consider cruelty, neglect, or abandonment a felony.\textsuperscript{99} As demonstrated in the Introduction, the maximum penalty for cruelty to animals in North Dakota is seemingly minimal regardless of how horrific the act may be; cruelty to animals is a Class A misdemeanor with a

\textsuperscript{91} 510 ILL COMP. STAT. 70/3.03 (2011); see Kitten’s Head Ripped Off During Domestic Dispute Bethalto, IL, PET-ABUSE.COM, http://www.pet-abuse.com/cases/9663/IL/US/ (last visited Feb. 29, 2012) (sentencing defendant to two years imprisonment for ripping off a kitten’s head during a domestic dispute in exchange for a guilty plea).

\textsuperscript{92} ME. REV. STAT. tit. 17, § 1023 (2011); RANKINGS, supra note 79, at 4; see also Brief for the State Appellee at 9, State v. Clark, No. LIN-08-193 (Me. filed Aug. 5, 2008), 2008 WL 5974812 (urging the Supreme Court of Maine to uphold the seizure of animals from the appellant’s puppy mill under ME. REV. STAT. tit. 17, § 1023).

\textsuperscript{93} See Sherry Ramsey, Enforcing State Animal Cruelty Laws: Interpreting the Laws to Obtain Successful Prosecutions, 2 LEX CANIS 2, 2 (2010) (explaining that when police do not have a direct incentive to respond to animal-cruelty cases they often get shuffled to other agencies, disallowing prompt and consistent investigation).

\textsuperscript{94} See generally RANKINGS, supra note 79, at 4 (comparing the select provisions used by ALDF in determining the rank between the top five state animal cruelty statutes).

\textsuperscript{95} MICH. COMP. LAWS ANN. § 750.50(b) (West 2011).

\textsuperscript{96} Id. at § 750.52; see also MASS. GEN. LAWS ANN. ch. 147, § 10 (West 2011) (allowing nonprofits to enforce anti-cruelty statutes when they have been appointed as special police officers).

\textsuperscript{97} Ramsey, supra note 93.

\textsuperscript{98} Thornton, supra note 7.

\textsuperscript{99} Id.

It signals to a judge how opposed legislators think a society actually is to a particular wrong . . . [and] [b]ecause a judge usually will not impose a penalty near the maximum for a first ‘run-of-the-mill’ offense, the typical penalty for cruelty will remain low so long as the maximum penalty remains low.\footnote{104}{Thornton, supra note 7.} Moreover, while states like Michigan require veterinarians to report animal-abuse, veterinarians in Kentucky are prohibited from reporting either cruelty or animal fighting.\footnote{105}{IDAHO CODE ANN. § 25-3507 (West 2011); KY. REV. STAT. ANN. § 525.125 (West 2011).} Moreover, Kentucky’s and Idaho’s felony penalties only apply to dog fighting, leaving out other types of animals.\footnote{106}{IDAHO CODE ANN. § 25-3504 (West 2012).} Despite the shortcomings of the entire Idaho animal-cruelty statute, the legislature succeeded in correctly placing the provision under a chapter entitled “Animal Care.”\footnote{107}{N.D. CENT. CODE ANN. §§ 12.1-32-01, 36-21.1-02, 36-21.1-11 (West 2011).} North Dakota’s provision is hidden under “Livestock,”\footnote{108}{KY. REV. STAT. ANN. § 525.125 (West 2012).} and Kentucky follows the MPC, listing it under “Riot, Disorderly Conduct, and Related Offenses.”\footnote{109}{Between 2009 and 2010, Alaska strengthened its felony punishment for sexual assault on animals. ALASKA STAT. ANN. § 11.61.140 (West 2012); RANKINGS, supra note 79, at 1. Further, eleven states including West Virginia, Arizona, Minnesota, and Oklahoma now have laws that allow companion animals to be included in domestic protective orders. Brief for a Group of American Law Professors as Amicus Curiae in Support of Neither Party at 22–23, United States v. Stevens, 130 S. Ct. 1577 (2010) (No.}
have been calling for more modern animal-cruelty laws on a state-by-state basis.\textsuperscript{110} Unfortunately, as the wide disparity among U.S. animal-cruelty laws persists, it will continue to matter whether an animal abuser is, for example, a Kentucky resident or a Maine resident,\textsuperscript{111} in determining if companion animals like Momma (discussed in the Introduction) will see justice.

**B. The MPC’s Role in Retarding the Evolution of State Animal-Cruelty Laws**

States have received no new guidance for structuring an animal-cruelty section in their criminal codes since the MPC was published in 1962. As a result, most states have struck out on their own to mirror modern society’s view on animal cruelty (whether they have met success or not is another question), while others have more or less retained the MPC or a similar version of § 250.11. As just discussed, this has resulted in a wide disparity in animal-cruelty statutes across the country, or worse—a failure to recognize the drastic difference between animal cruelty from other petty misbehaviors and the similarity of animal abuse to more serious violent crimes.\textsuperscript{112} It is first important to analyze why § 250.11 is ineffective in order to understand how the MPC should be revised.

The animal-cruelty provision in the MPC prevents meaningful enforcement and prosecution. The placement of the provision serves to underscore the misapprehension that these crimes are insignificant and of lesser importance.\textsuperscript{113} Substantively, the MPC is flawed as well. Section 250.11 “Cruelty to Animals” reads:

A person commits a misdemeanor if he purposely or recklessly:

1. subjects any animal to cruel mistreatment; or

\textsuperscript{110} E.g., Challener, supra note 15; Will Coxwell, The Case For Strengthening Alabama’s Animal Cruelty Laws, 29 LAW & PSYCHOL. REV. 187 (2005); Frasso, supra note 70; Kara Gerwin, There’s (Almost) No Place Like Home: Kansas Remains in the Minority On Protecting Animals From Cruelty, 15 KAN. J.L. PUB’Y 125 (2005).

\textsuperscript{111} Cf. KY. REV. STAT. ANN. § 525.130 (West 2011), with MAINE REV. STAT. tit. 17, § 1031 (2011).

\textsuperscript{112} See supra Part III.

\textsuperscript{113} Ramsey, supra note 93, at 2–3 (explaining the importance of the location of state animal-cruelty provision(s) within the state criminal code).
(2) subjects any animal in his custody to cruel neglect; or 
(3) kills or injures any animal belonging to another without legal privilege or consent of the owner.

Subsections (1) and (2) shall not be deemed applicable to accepted veterinary practices and activities carried on for scientific research.\(^\text{114}\)

The MPC fails to provide adequate definitions or guidance on the meaning of the words used in the offense, such as “animal” and “cruel” used in sections (1), (2), and (3) of § 250.11.\(^\text{115}\) The commentators felt that failure to define these terms would not “cause much trouble” in the section’s interpretation.\(^\text{116}\)

1. What is an “animal?”

Contrary to the commentators’ speculation, the ALI could have contributed much in deliberating on what types of animals should enjoy protection from statutes drafted similar to the MPC.\(^\text{117}\) Further guidance on this term might have minimized the disparity in state statutes, subsequently creating a patchwork of law. For example, some states have provided relatively broad definitions of “animals,” such as “every living, sentient creature not a human being,”\(^\text{118}\) while some have limited animal-cruelty statutes to pets, which includes dogs and cats.\(^\text{119}\) Other states have limited their animal-cruelty provision to “companion animals.”\(^\text{120}\) Yet, other states have failed to define “animal,” leaving it up to the courts to decide.\(^\text{121}\) This lack of guidance leaves open the question as to what categories of animals the MPC provision was intended to protect and whether the appropriate group is covered.

\(^{114}\) \text{MODEL PENAL CODE} § 250.11 (1962).
\(^{115}\) \text{MPC COMMENTARIES, supra} note 28, at 426.
\(^{116}\) \text{Id.}
\(^{117}\) \text{Id.}
\(^{118}\) \text{ME. REV. STAT.} tit. 17, § 1011 (2011).
\(^{119}\) \text{AL. CODE} § 13A-11-241 (2012) (applying certain cruelty practices only to cats and dogs); \text{HAW. REV. STAT.} § 711-1108.5 (2011) (limiting felony cruelty practices only to cats, dogs, and horses); \text{see also} Iannacone, \text{supra} note 58, at 760–61.
\(^{120}\) \text{N.Y. AGRIC. \\& MKTS. LAW} § 353-a (McKinney 2012) (limiting the felony animal-cruelty statute to companion animals); \text{see also} Iannacone, \text{supra} note 58, at 760.
\(^{121}\) \text{See People v. Garcia, 812 N.Y.S.2d 66, 70 (N.Y. App. Div. 2006) (expanding “companion animal” in the New York anti-cruelty statute to cover fish and reptiles); State v. Cleve, 980 P.2d 23, 29 (N.M. 1999) (holding that “any animal” did not include wildlife unless previously reduced to captivity).}
2. What is “cruel?”

Similar problems have arisen in light of the MPC’s failure to provide any kind of intended meaning of the word “cruel.” Some states have attempted to overcompensate for this failure by simply using more words to supplant it, often using antiquated language such as “overdriving and overworking” that is only relevant to working animals. Other states have attempted to define “cruelty” more generally. Either way, the lack of guidance on what is intended by the word “cruel” in § 250.11 begs the question of what types of cruelty practices are actually included within each section of the provision. For example, in New York, aggravated cruelty is defined as conduct that “(i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.” Because this definition fails to take into account that not all cruel acts that cause extreme pain are apparent, New York courts have inconsistently provided a felony penalty for cases of extreme neglect. Recent cases in New York have interpreted this statute to mean that prosecutors must show that a defendant exhibited a pattern of neglect by the defendant. Leaving important words such as “cruel” and “animal” undefined in a statute makes it challenging for prosecutors and courts to correctly interpret the law.

122 Iannacone, supra note 58, at 760.
123 Animal Cruelty: Opportunities for Early Response to Crime and Interpersonal Violence, SPECIAL TOPIC SERIES (Am. Prosecutors Research Inst., Alexandria, Va.), July 2006, at 15 [hereinafter Opportunities for Early Response]; see also CAL. PENAL CODE § 597(b) (West 2011) (describing animal cruelty as “every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal . . . or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor”); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 2012) (reading similar to the California provision).
124 WIS. STAT. § 951.02 (2011) (“No person may treat any animal . . . in a cruel manner.”); see also Iannacone, supra note 58, at 761.
126 Iannacone, supra note 58, at 758.
127 Id.
128 Id. at 758–59; Compare People v. Arroyo, 777 N.Y.S.2d 836, 846 (N.Y. Crim. Ct. 2004) (finding no aggravated cruelty under N.Y. AGRIC. & MKTS. LAW § 353 when defendant failed to provide veterinary care for a dog who had a grapefruit size tumor in his stomach), with People v. O’Rourke, 369 N.Y.S.2d 335, 342 (N.Y. Crim. Ct. 1975) (finding aggravated cruelty under N.Y. AGRIC. & MKTS. LAW § 353 for failing to provide medical attention to a working horse who was limping).
129 Ramsey, supra note 93, at 3.
3. Penalties under the MPC

Under the MPC animal-cruelty provision, the maximum punishment for this offense is a misdemeanor, undermining the importance of prosecuting animal-cruelty cases as discussed previously. Even in states that provide a felony penalty under their animal-cruelty statute, it often applies only to specific types of cruelty or provides minimal incarceration time. In New York, the maximum sentence for a felony animal-cruelty violation “may not exceed two years.” Kentucky’s felony violation only applies to four-legged animal fighting. North Carolina’s maximum jail time for a conviction of cruelty is six months, even after the third subsequent offense. Not only does the MPC not provide adequate potential jail-time for offenders, it also fails to recognize the root of the problem by failing to provide measures to seize abused animals or require psychological treatment. Some scholars even advise that states should develop an animal-abuse registry or tracking system to protect animals from further abuse.

V. The Future of the MPC: A Revised Animal-Cruelty Section

The ALI expresses that “[t]he purpose of the Model Penal Code was to stimulate and assist legislatures in making a major effort to appraise the content of the penal law by a contemporary reasoned judgment.” In other words, the MPC intended “to promote the reform of the nation’s actual criminal codes, as adopted by state legislatures and Congress.” However, as early as 1980, the ALI recognized that the “constitutional background of the[] offenses [listed in Article 250] ha[d] changed significantly since the promulgation of the [MPC] in 1962.” While state

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130 MODEL PENAL CODE § 250.11 (1962).
131 Iannacone, supra note 58, at 768.
132 N.Y. AGRIC. & MKTS. LAW § 353–a(3) (McKinney 2012).
133 KY. REV. STAT. ANN. § 525.125 (2012).
135 Iannacone, supra note 58, at 769.
137 In recent years, many academics have begun discussing the possibility of a Model Penal Code Second or smaller more manageable projects revising specific sections of the current MPC. Joshua Dressler, The Model Penal Code: Is it Like a Classic Movie in Need of a Remake?, 1 OHIO ST. J. CRIM. L. 157, 158–59 (2003).
138 Lynch, supra 24, at 219.
139 MPC COMMENTARIES, supra note 28, at 312; see also Kent Greenawalt, A Few Reflections on The Model Penal Code Commentaries, 1 OHIO ST. J. CRIM. L. 241, 243.
legislatures have attempted reform on their own, this has led animal-cruelty laws to the same place most state penal codes were before the publication of the MPC—chaos and disarray.\textsuperscript{140} A revised MPC provision in line with today’s views on animal-abuse could narrow the disparity in animal-cruelty provisions across the country.

A. What the Revision Should Look Like

The starting point for revision is the location of the animal-cruelty section. The most logical placement of the animal-cruelty provisions under the MPC would be to place these offenses in their own section. For example, prosecutors, law enforcement, humane officers, and laypeople can easily identify where the animal-cruelty provisions are located in the Oregon Penal Code, as the legislature clearly placed it in its own chapter under “Offenses Against Animals.”\textsuperscript{141} The MPC should follow the Oregon legislature and move its animal-cruelty provision to a newly created section entitled “Offenses Against Animals” under Part II: “Definitions of Specific Crimes.”\textsuperscript{142} Removing the animal-cruelty provision from “Offenses Against Public Order and Decency” would demonstrate that the ALI no longer views animal abuse parallel with minor social misbehaviors but rather recognizes its position in a multi-dimensional legal spectrum. Further, this type of revision “avoid[s] the temptation to rethink the [MPC’s] basic organization and approach.”\textsuperscript{143} Rather, this revised placement perpetuates the drafters attempt to organize offenses conceptually, making it easy for a code user to find the relevant offense, while ensuring that related offenses are nearby and “not hidden in a dark corner elsewhere in the code.”\textsuperscript{144}

Second, the substance of the animal-cruelty provision also needs revision. The current anti-cruelty section under the MPC fails to recognize the many facets that animal abuse encompasses. Fortunately, the ALI drafters have a handful of progressive, well-written state statutes to use as a guide in redrafting a new comprehensive model law.\textsuperscript{145} A successful redraft of the MPC’s “Cruelty to Animals” section should provide a basic

\begin{itemize}
\item \textsuperscript{140} Robinson & Dubber, supra note 10, at 323.
\item \textsuperscript{141} OR. REV. STAT. §§ 167.310–167.36 (2011).
\item \textsuperscript{142} See generally MODEL PENAL CODE (1962) (looking at the layout of the different parts); see also MICH. COMP. LAWS ANN. § 750 (West 2012) (listing animal-cruelty under “Animals”); infra Appendix.
\item \textsuperscript{143} Lynch, supra note 24, at 237 (emphasis added).
\item \textsuperscript{144} Robinson & Dubber, supra note 10, at 333.
\item \textsuperscript{145} See supra Part IV.A.
\end{itemize}
guide, which covers all recognized types of animal abuse and includes adequate definitions, enforcement techniques, and penalties that are easily accessible to law enforcement, prosecutors, and advocates. State legislatures could then adopt or amend this revised MPC section to their respective animal-cruelty statutes across the country.

B. Why the Revision is Important Now

The desperate need for penal code reform in some areas of state law is no different than it was before the MPC was published in 1962. However, it is no longer expected that states will radically change their state penal codes today based on the 1962 MPC.146 Many states that have attempted penal code reform on their own since 1962 had little success in both the legislature and public arena.147 This lack of success can be attributed to the “dynamics of local criminal law politics [which] make it very difficult, if not impossible, to achieve general criminal law recodification without the kind of outside help provided by the Model Penal Code in the 1960s and 70s.”148 State legislatures have attempted to respond to public pressure by addressing new and previously “unimportant” criminal offenses with non-MPC terminology “undermin[ing] the coherence and clarity of many MPC-inspired codes.”149 “A new MPC, if it focused on the areas in which [there is] a real need and demand for reform . . . could be of great value to those seeking to reform [their] criminal codes”150 in the same way the original MPC was in 1962.

As a revised draft of the MPC’s sentencing provisions was discussed at the Annual Meeting in 2012,151 many scholars have begun to discuss whether a second coming of the MPC is or should be on the horizon.152 Judge Lynch153 suggests that the biggest weaknesses of the MPC are those

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146 Lynch, supra note 24, at 224.
147 Id.
149 Dressler, supra note 137, at 159.
150 Lynch, supra note 24, at 225.
152 E.g., Debra W. Denno, Why the Model Penal Code’s Sexual Offense Provisions Should Be Pulled and Replaced, 1 OHIO ST. J. CRIM. L. 207 (2003); Dressler, supra note 137; Lynch, supra note 24; Robinson & Cahill, supra note 148, at 176.
153 Gerard E. Lynch is a U.S. Federal judge for the United States Court of Appeals for the Second Circuit appointed by the Obama administration in 2009. Previous to this position, he was appointed by the Clinton administration and served as a Federal judge
where the criminal-law theorists have been the least active, and the need for reform is the greatest.\textsuperscript{154} Some of the weak areas of the MPC include definitions of particular crimes, areas of criminal law that were neglected by the original drafters, and those areas which did not exist when the MPC was created in 1962.\textsuperscript{155} Three of these areas are rape, narcotics, and domestic violence and bias crimes.\textsuperscript{156}

Similar to animal abuse, the social change of the last fifty years has drastically changed the principles and practices of defining the crime of rape.\textsuperscript{157} The MPC arrived just before the feminist movement, which changed the way society viewed family, reproduction, and sexual relations.\textsuperscript{158} The MPC treats the crime of rape as gender-specific and adheres to an old notion that a husband cannot sexually assault his wife.\textsuperscript{159} Although a number of legislative and judicial reforms have essentially rendered the rape provisions of the MPC irrelevant today, the variety of different statutes adopted across the state-penal system have inconsistently addressed this, “causing a host of interpretive questions, penal problems, and social consequences.”\textsuperscript{160} Only twenty-four states have completely abolished the marital-immunity rule\textsuperscript{161} despite drastic changes in the way society views rape.\textsuperscript{162} Similarly, although society once viewed animal abuse as a social misbehavior equivalent to acts of vagrancy, 67\% of Americans today believe that protecting animals from cruelty and abuse is “very important.”\textsuperscript{163}

The modern “war on drugs” had also yet to be declared at the time the ALI drafted the MPC, therefore failing to include drug offenses in the

\textsuperscript{154} Lynch, \textit{supra} note 24, at 228.
\textsuperscript{155} \textit{Id.}
\textsuperscript{156} \textit{Id.} at 230–35. Judge Lynch also suggests reform for sentencing, conspiracy, money laundering, and terrorism. \textit{Id.} at 229, 235; \textit{see also} Dressler, \textit{supra} note 137, at 158–59 (agreeing with Judge Lynch on the need for MPC reform in rape law, new statutory crimes, and the “war on drugs”).
\textsuperscript{157} Lynch, \textit{supra} note 24, at 230.
\textsuperscript{158} \textit{Id.}
\textsuperscript{159} JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 605 (5th ed. 2009).
\textsuperscript{160} Lynch, \textit{supra} note 24, at 231.
\textsuperscript{161} DRESSLER, \textit{supra} note 159, at 599.
\textsuperscript{162} \textit{See id.} (discussing how the marital immunity rule still exists in some states for intercourse with a physically or mentally helpless spouse, and lesser forms of nonconsensual sexual conduct, while some states have abolished the immunity for the specific offense of forcible rape).
\textsuperscript{163} Opportunities for Early Response, \textit{supra} note 123, at 9.
original publication.164 This can be attributed to the fact that the possession and sale of narcotics was much less prevalent in the 1950s165—or was just regarded as a less serious problem. Judge Lynch recognizes that ignoring the dangerous consumption of drugs cannot be part of a modern model criminal code, when law officials and prosecutors devote a large portion of their resources on narcotics enforcement.166 He also points out that deliberate omission by the 1962 drafters cannot mean that some form of criminal regulation is not now necessary to attack the modern narcotics problem.167 He suggests that some type of “Model Controlled Substances Act” could stand a significant chance of adoption in many state jurisdictions because of the current diverse system of state penal codes relating to narcotics offenses.168 While animal abuse was regarded as a much less serious and insignificant problem in the 1950s—equated to minor social deviances—the link between animal cruelty and drug abuse169 suggests that a modern MPC could not continue to regard animal cruelty through a 1962 lens.

Judge Lynch suggests a third reform in the area of domestic violence and bias crimes, which the feminist movement has also been spearheading since the promulgation of the MPC in 1962.170 Similar to how animal welfare was not on the “criminal agenda” of the MPC drafters in the 1950s, neither was the concern of “minorities [and] disempowered groups.”171 Judge Lynch suggests that these topics should concern MPC reformers not only because the MPC treated them either with silence or inadequacy in 1962, but also because they represent a “broader criminal law trend that requires [re]consideration” in today’s society.172 Cruelty to animals must fit within this broad trend, as domestic abuse and animal abuse are “commonly intertwined.”173

The aforementioned areas, among others, are in the same “chaotic and irrational”174 disarray among state-penal codes as the originally targeted areas of reform were prior to 1962.175 These are the areas that legal

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164 Lynch, supra note 24, at 231.
165 Id. at 232.
166 Id.
167 Id.
168 Id. at 233.
169 Brief for Law Professors, supra note 109, at 31; Sauder, supra note 58, at 13.
170 Lynch, supra note 24, at 223.
171 Id. at 233.
172 Id.
173 Sauder, supra note 58, at 12.
174 Robinson & Dubber, supra note 10, at 323.
175 Lynch, supra note 24, at 223–24; see also Dressler, supra note 137, at 158 (discussing the dramatic improvement in culpability requirements in state penal codes after the MPC).
scholars have focused on when discussing the possibility of a revised MPC. However, animal-cruelty statutes among state-penal systems are in the same “archaic, inconsistent, unfair, and unprincipled” state as the popularly analyzed areas for reform. It only seems logical that because animal abuse acts as a precursor to all of the above areas proffered for reform by Judge Lynch, a revision of § 250.11 of the MPC is not only relevant but also necessary. Further, if the ALI is going to remain true to the MPC’s mission of “assist[ing] legislatures in making a major effort to appraise the content of the penal law by a contemporary reasoned judgment,” then the ALI needs to update the animal-cruelty section of the MPC. This revision could “stimulate state criminal code reform [to] help states crawl out from under the decades of ad hoc amendments” that are continuing to widen the gap of animal-cruelty laws that vary from state to state.

Conclusion

A modern revision of the MPC’s “Cruelty to Animals” section would provide a progressive guide for statewide legislative change. As the saying goes, history repeats itself. In the 1960s and 1970s, the drafting of the MPC sparked “a wave of state code reform[]” across the country. Just recently, the ALI embarked on a wholesale revision of the sentencing guidelines in the MPC “in light of the many changes in sentencing philosophy and practice that have taken place in the more than 40 years since the Code was first developed.” Given the MPC’s purpose, this undertaking suggests that the ALI intends for states to reform their sentencing guidelines in light of the new model once published. Today, although society’s views on animal cruelty have drastically evolved, the only guide for state legislatures is tainted with a 1950’s view on animal abuse that is far attenuated from reality. A revision of the MPC’s treatment of animal cruelty can potentially provide courts, legislators, and prosecutors with a progressive model to fill in statutory, legislative, and judicial gaps that can act as good precedent for the rising trend in promoting the welfare of our companion animals. The ALI has an obligation to undertake this challenge.

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176 Dressler, supra note 137, at 157.
177 Publications Catalog, supra note 136 (emphasis added).
178 Dressler, supra note 137, at 159.
179 Robinson & Dubber, supra note 10, at 320.
180 Current Projects, supra note 151.
181 Lynch, supra note 24, at 219.