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DESMOND'S LAW: EARLY IMPRESSIONS  
OF CONNECTICUT'S COURT ADVOCATE PROGRAM  
FOR ANIMAL CRUELTY CASES

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In March 2012, police found the body of a dog in a trash bag in the woods of Madison, Connecticut.<sup>1</sup> The dog was Desmond.<sup>2</sup> Desmond's necropsy told a tragic story: he had been strangled to death; his teeth were broken; he had bruises across his ribs and back; he was emaciated and had gauze, paper, and plastics in his stomach.<sup>3</sup> When confronted, Desmond's owner admitted he had beaten Desmond, kept him locked in a bathroom, and finally killed him by twisting his collar until he died.<sup>4</sup> Despite his admission, evidence that he had choked his ex-girlfriend, and the prosecutor's recommendation that he receive a sentence that included incarceration,<sup>5</sup> Desmond's owner was allowed to enroll in a diversionary program, so that the crime would be wiped from his record after two years.<sup>6</sup>

Desmond's owner faced greater legal consequences than most animal abusers. Between 2008 and 2018, only one in five of those charged with animal cruelty in Connecticut had their cases prosecuted to a conclusion.<sup>7</sup> This statistic captures only those cases that prosecutors actually charge, likely a small fraction of actual incidents of animal cruelty.

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\* Clinical Professor of Law and Director of the UConn Animal Law Clinic. I thank the *Harvard Law Review* and Professor Justin Marceau for the opportunity to engage on the topic of Desmond's Law and court advocate programs. I applaud Marceau's dedication to fairness in the criminal justice system. I write with the hope that our conversation will advance justice for nonhumans and humans. I thank David Rosengard, Senior Staff Attorney with the Animal Legal Defense Fund's Criminal Justice Program; my colleagues at the University of Connecticut School of Law, Professors Bethany Berger, Alexandra Lahav, Leslie Levin, Jennifer Maily and Richard Pomp; and Teaching Fellow Jamie Woodside.

<sup>1</sup> Kayte Mulligan, *Not "Just a Dog": The Justice for Desmond Campaign*, NEW CANAAN PATCH (July 25, 2012, 7:39 AM), <https://patch.com/connecticut/newcanaan/bp--not-just-a-dog-the-justice-for-desmond-campaign> [https://perma.cc/439K-WKJ7].

<sup>2</sup> *Id.*

<sup>3</sup> See *id.*; Jennifer Swift, *Ex-Branford Man Avoids Jail Time in Dog Killing Case*, NEW HAVEN REG. (July 26, 2017, 9:34 PM), <https://www.nhregister.com/connecticut/article/Ex-Branford-man-avoids-jail-time-in-dog-killing-11430574.php> [https://perma.cc/92FC-NPGX].

<sup>4</sup> Mulligan, *supra* note 1.

<sup>5</sup> Marcia Chambers, *New Twist in Dog-Killing Case*, BRANFORD EAGLE (Feb. 4, 2013, 9:00 AM), [http://www.newhavenindependent.org/index.php/branford/entry/a\\_new\\_twist\\_in\\_desmond\\_the\\_dog\\_case](http://www.newhavenindependent.org/index.php/branford/entry/a_new_twist_in_desmond_the_dog_case) [https://perma.cc/7T8T-UEK7].

<sup>6</sup> See Swift, *supra* note 3; Rick Rojas, *Abused Dogs and Cats Now Have a (Human) Voice in Connecticut Courts*, N.Y. TIMES (Aug. 27, 2017), <https://nyti.ms/2vAMUNj> [https://perma.cc/8K24-72L9].

<sup>7</sup> MICHELLE KIRBY, CONN. GEN. ASSEMBLY OFF. OF LEGIS. RSCH., ANIMAL CRUELTY CASES IN CONNECTICUT (2008–2018), 2019-R-0154, at 1 (2019), <https://www.cga.ct.gov/2019/>

The justice system simply does not — or cannot — give cases of animal cruelty the time and attention they deserve. Animals are sentient beings; they experience pain and suffering.<sup>8</sup> Every state in the nation criminalizes cruelty against them.<sup>9</sup> Animal cruelty is also a warning sign of cruelty against human beings. Those who are cruel to animals are over five times as likely to commit cruelty against humans;<sup>10</sup> one study found that sixty-five percent of those arrested for cruelty to animals had also been charged with other offenses;<sup>11</sup> and the Federal Bureau of Investigation tracks acts of animal cruelty because of the distinct risks of such abusers.<sup>12</sup> But because animals lack voices to communicate their suffering to us, crimes against them often fall through cracks in the justice system.<sup>13</sup>

Connecticut enacted Desmond's Law<sup>14</sup> in 2016 to give animals a voice and to provide courts with tools to address animal cruelty.<sup>15</sup> The law allows courts to appoint legal advocates to “represent the interests of justice” in cruelty cases involving dogs and cats.<sup>16</sup> Connecticut was the first state to have a law of this kind and has been followed by a

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rpt/pdf/2019-R-0154.pdf [https://perma.cc/L4BX-HYGK] (“Approximately 80% of these cases were either dismissed or not prosecuted . . .”).

<sup>8</sup> Helen Proctor, Review, *Animal Sentience: Where Are We and Where Are We Heading?*, 2 ANIMALS 628, 636 (2012), <https://www.mdpi.com/2076-2615/2/4/628> [https://perma.cc/MN27-8VFN]; see also Marc Bekoff, *Animal Emotions: Exploring Passionate Natures: Current Interdisciplinary Research Provides Compelling Evidence that Many Animals Experience Such Emotions as Joy, Fear, Love, Despair, and Grief — We Are Not Alone*, 50 BIOSCIENCE 861, 862 (2000).

<sup>9</sup> 2020 U.S. State Animal Protection Laws Rankings, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings> [https://perma.cc/3WGC-D49X] (assessing animal protection laws in all fifty states).

<sup>10</sup> Arnold Arluke, Jack Levin, Carter Luke & Frank Ascione, *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963, 969 (1999) (“[A]busers were 5.3 times more likely to have a violent criminal record . . .”).

<sup>11</sup> OFF. OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUST., NAT'L SHERIFFS' ASS'N, ANIMAL CRUELTY AS A GATEWAY CRIME 13 (2018), [https://www.sheriffs.org/publications/eo71818886AnimalCruelty\\_v10\\_508.pdf](https://www.sheriffs.org/publications/eo71818886AnimalCruelty_v10_508.pdf) [https://perma.cc/X75Q-6DCY] [hereinafter ANIMAL CRUELTY AS A GATEWAY CRIME].

<sup>12</sup> *Tracking Animal Cruelty: FBI Collecting Data on Crimes Against Animals*, FED. BUREAU OF INVESTIGATION (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> [https://perma.cc/ZX7X-TZGD]; cf. Ian Urbina, *Animal Abuse as Clue to Additional Cruelties*, N.Y. TIMES (Mar. 17, 2010), <http://www.nytimes.com/2010/03/18/us/18animal.html> [https://perma.cc/8Z5B-H7MX] (adding that state governments are also beginning to track animal cruelty).

<sup>13</sup> See ALLIE PHILLIPS & RANDALL LOCKWOOD, NAT'L DIST. ATT'YS ASS'N, INVESTIGATING & PROSECUTING ANIMAL ABUSE 14 (2013), <https://www.sheriffs.org/publications/NDAA-Link-Monograph.pdf> [https://perma.cc/9S9L-NBH6].

<sup>14</sup> CONN. GEN. STAT. § 54-86n (2019).

<sup>15</sup> See CONN. STATE LIBR., LEGISLATIVE HISTORY FOR CONNECTICUT ACT 2234, 2274-75 (2017), [https://ctstatelibrary.org/wp-content/lh-bills/2016\\_PA30\\_HB5344.pdf](https://ctstatelibrary.org/wp-content/lh-bills/2016_PA30_HB5344.pdf) [https://perma.cc/T72T-2FME].

<sup>16</sup> § 54-86n.

growing list of states introducing similar court advocate programs.<sup>17</sup> As Director of the Animal Law Clinic at the University of Connecticut (UConn) School of Law, I have participated, as an Advocate<sup>18</sup> or supervisor, in hundreds of hours of judicial proceedings under Desmond's Law. This Commentary provides early insight into the use of a court advocate program for animal cruelty cases. This Commentary also shares accounts of and reflections on the use of Desmond's Law in Connecticut and responds to criticisms of the law and similar court advocate programs.

Desmond's Law has changed the landscape of animal cruelty cases in Connecticut in five ways. First, the law helps to ensure that victims of animal cruelty are protected and that their interests are presented to courts. Second, it advances justice by ensuring that well-grounded cases are not dropped, that offenders are held accountable, and that future cruelty is prevented. Third, it equips courts with factual and legal information for thorough treatment of cases. Fourth, the law provides meaningful work and training for lawyers and law students who serve as Advocates.

Fifth and finally, by giving voice to animals' experiences and interests, Desmond's Law presses courts to distinguish between sentient crime victims and nonsentient property. The law reflects a recognition that animal victims are not merely property. While animals currently lack legal personhood, their interests as sentient but voiceless victims can nevertheless be presented to courts through court advocate programs like Desmond's Law. Appropriate treatment of cruelty cases, including but not limited to punishment of perpetrators, can improve the status of animals.<sup>19</sup> Conversely, without accountability for cruelty offenses, the status of animal victims will not improve.

This Commentary responds to Professor Justin Marceau's critiques of Desmond's Law and court advocate programs. Marceau charges that these programs overcriminalize animal cruelty,<sup>20</sup> yet the laws increase

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<sup>17</sup> Several states have enacted, introduced, or are in the process of drafting legislation modeled on Connecticut's Desmond's Law. Maine enacted Franky's Law in 2019, *see* ME. REV. STAT. ANN. tit. 7, § 4016 (2020); Judy Harrison, "Franky's Law" Would Give Animals Legal Advocates in Cruelty Cases, BANGOR DAILY NEWS (May 1, 2019), <https://bangordailynews.com/2019/05/01/news/frankys-law-would-give-animals-legal-advocates-in-cruelty-cases> [https://perma.cc/99AJ-VEPM]; the New Jersey Senate passed a Courtroom Animal Advocate Program bill in 2020, *see* S. 2868, 219th Leg., Reg. Sess. (N.J. 2020); *see also* Assemb. 4533, 219th Leg., Reg. Sess. (N.J. 2020); Florida introduced the Courtroom Animal Advocate Program bill in 2020, S.B. 1048, 2020 Leg., Reg. Sess. (Fla. 2020); and in California, Illinois, Michigan, New York, Nevada, and Rhode Island, planning is underway to introduce similar legislation.

<sup>18</sup> This Commentary capitalizes the word "Advocate" when referring to legal advocates appointed to represent animals under Desmond's Law.

<sup>19</sup> *See* PHILLIPS & LOCKWOOD, *supra* note 13, at 2–5.

<sup>20</sup> JUSTIN MARCEAU, BEYOND CAGES: ANIMAL LAW AND CRIMINAL PUNISHMENT 79 (2019).

neither criminalization nor sentences. Nor are the programs fairly described as punitive;<sup>21</sup> Advocates recommend noncarceral remedies where appropriate.

Marceau finds it “almost laughable” that Advocates purport to give voice to voiceless animals.<sup>22</sup> Yet he provides no alternate avenues for presenting the interests of nonhuman victims to courts.<sup>23</sup> This perhaps reveals our most fundamental disagreement. Desmond’s Law reflects the insistence that animals’ interests be presented to courts so that justice may be served. Advocates recognize that we cannot perfectly know or translate animal wishes and experiences. But if we accept that animals do not want to suffer, then Advocates must do the best we can to uncover their experiences and voice their pain.

### I. ROLE OF THE ADVOCATE

Our criminal justice system traditionally serves human-focused goals — deterrence, rehabilitation of offenders, restoration of human victims, punishment, and community protection.<sup>24</sup> Until Desmond’s Law, the system did not promote the interests or restoration of animal victims, as no law in the world allowed lawyers to advocate for the interests of animal victims.<sup>25</sup>

Desmond’s Law changes this.<sup>26</sup>

<sup>21</sup> See *id.* at 82.

<sup>22</sup> *Id.* at 81.

<sup>23</sup> See *id.* at 81–83; Yale Law School, *Justin Marceau, Beyond Cages: Animal Law and Criminal Punishment*, VIMEO, at 4:35 (Sept. 23, 2019), <https://vimeo.com/363909189> [<https://perma.cc/6D7D-93SA>] [hereinafter Marceau Presentation].

<sup>24</sup> See 1 CHARLES E. TORCIA, *WHARTON’S CRIMINAL LAW* § 1 (15th ed.) (Westlaw) (last visited Mar. 3, 2021); Mark S. Umbreit et al., *Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls*, 8 *CARDOZO J. CONFLICT RESOL.* 511, 514–15 (2007).

<sup>25</sup> See Rojas, *supra* note 6.

<sup>26</sup> The following factors coalesced to create Desmond’s Law: (a) increased recognition of animal sentience, see Marc Bekoff, *Scientists Conclude Nonhuman Animals Are Conscious Beings*, *PSYCH. TODAY* (Aug. 10, 2012), <https://www.psychologytoday.com/blog/animal-emotions/201208/scientists-conclude-nonhuman-animals-are-conscious-beings> [<https://perma.cc/Z3JG-DWEQ>] (“*The Cambridge Declaration on Consciousness* . . . declares that . . . [c]onvergent evidence indicates that non-human animals have the neuroanatomical, neurochemical, and neurophysiological substrates of conscious states along with the capacity to exhibit intentional behaviors. Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness.”); (b) increased acceptance of the link between violence to animals and violence to humans — both as a concurrent association and as a potential predictor of future violence, see *ANIMAL CRUELTY AS A GATEWAY CRIME*, *supra* note 11, at 7, 11; Melissa A. Bright et al., *Animal Cruelty as an Indicator of Family Trauma: Using Adverse Childhood Experiences to Look Beyond Child Abuse and Domestic Violence*, 76 *CHILD ABUSE & NEGLECT* 287, 288, 294 (2018); (c) historic underenforcement of anticruelty laws in Connecticut, KIRBY, *supra* note 7, at 1; and (d) Desmond’s tragic case, see *supra* notes 1–6 and accompanying text. Though prosecutors are already charged with seeking justice, Connecticut’s legislature understood that animal cruelty offenses were serious, yet often overlooked, and that advocates should be appointed to help. See

Desmond's Law allows an appointed legal professional to present factual and legal analyses to a court and advocate for justice.<sup>27</sup> Advocates provide legal triage to help animal victims and present information relating to the alleged offense, including the defendant's conduct, planning, provocation, justification, and mitigation. Importantly and uniquely, Advocates present courts with the following additional information: (1) facts related to the victim's ill treatment, including its duration and severity, any resulting wound or injury, the use of a weapon, any component of sexual assault, acts of close-range cruelty, and any binding, torture, or mutilation; (2) recommendations regarding restoration and protection of the animal victim(s) and similarly situated potential victims; and (3) recommendations regarding a range of creative sentencing options.<sup>28</sup>

Advocates consider a wide range of questions in formulating a recommendation: What happened? How many victims were impacted? What did the victims experience? For how long? Was there pain, suffering, serious injury, or death? Was a weapon used? Why did the defendant commit the charged offense? Was it intentional? Were there mitigating factors?

A just outcome of a cruelty case should reflect the interests of animal victims, potential victims, the accused, and members of the community. A sentence may include conviction, probation, incarceration, fines, restitution, education, evaluation and treatment, relinquishment of animals, bans on owning animals, protective orders, community service, pretrial diversionary programs, and management plans to avoid subsequent offense.<sup>29</sup> Advocates contribute expertise to recommend fair and specific outcomes that focus on the defendant's accountability and the animal victim's experience.

## II. THE FIRST FOUR YEARS

Animal cruelty cases are often complex, involving human and non-human victims; victims who might live with an offender; domestic violence; legal and factual questions of ownership, possession, intent, and mitigation; and assessment of an animal victim's experience and suffering. Cases are especially difficult because animal victims are unable to report or describe their victimization. The Advocate is a resource to help analyze a case and devise appropriate outcomes, which is especially

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CONN. STATE LIBR., *supra* note 15, at 2239, 2248, 2270–72. For a general discussion of the origins of Desmond's Law, see Jessica Rubin, *Desmond's Law: A Novel Approach to Animal Advocacy*, 24 ANIMAL L. 243, 244, 250–55 (2018).

<sup>27</sup> CONN. GEN. STAT. § 54-86n(a)–(b) (2019).

<sup>28</sup> See Rubin, *supra* note 26, at 260–61.

<sup>29</sup> See PHILLIPS & LOCKWOOD, *supra* note 13, at 10, 52, 63–65, 69–70.

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important where court personnel lack sufficient information, expertise, time, or resources to obtain that information.<sup>30</sup>

The Advocate's most important role is helping animal victims. Advocates get involved early in cases to protect animals in ways that the legal system has not previously done. Many cases involve animal victims who are alive and vulnerable, and who often need to be safeguarded in protective orders, placed in new homes, or treated by veterinary professionals.<sup>31</sup> Where the animal is deceased, the Advocate opines on appropriate disposition of the case.<sup>32</sup>

As of November 1, 2020, UConn's Animal Law Clinic served as the Advocate in forty cases. In addition, courts have appointed volunteer attorneys to serve as Advocates in cases throughout the state. Through the clinic, fifteen law students and one teaching fellow have worked with me as Advocates. We have also embarked on an empirical research project to assess the impact of Desmond's Law.

In advance of the results of that project, our clinic's work illustrates three aspects of the Advocate's role — gathering and presenting information; serving as a resource not affiliated with either prosecution or defense; and developing creative remedies for the protection of animals and the interests of justice.

#### *A. Gathering and Presenting Information*

The Advocate can contribute a command of the facts of a case, which is especially helpful when documentation is old, voluminous, or complicated. As the Advocate, our clinic has summarized and synthesized old, long, and uncoordinated investigative records from state and town municipalities. Without the Advocate's reports, court personnel may not have digested or understood such large amounts of uncoordinated materials.

The Advocate can also contribute innovative factual investigation, within the bounds of the law. Our clinic has uncovered submissions of falsified documents by defendants and informed courts of the same.

#### *B. Serving as a Resource Not Affiliated with the Prosecution or Defense*

The Advocate can be a neutral resource for the court.<sup>33</sup> Our clinic, sometimes at the request of defense counsel, has provided research reports on the likelihood of childhood trauma increasing a defendant's propensity to commit animal cruelty or crimes against humans. While

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<sup>30</sup> See CONN. STATE LIBR., *supra* note 15, at 683–84.

<sup>31</sup> See Rubin, *supra* note 26, at 260.

<sup>32</sup> See *id.* at 261.

<sup>33</sup> See CONN. STATE LIBR., *supra* note 15, at 683.

the courts and all counsel want to understand this topic, they often lack the time or resources to conduct the research.

The Advocate can contribute novel legal analyses, sometimes recommending that courts treat animals as abandoned property (and therefore owned by a municipality) where putative owners have failed to attend to them.<sup>34</sup> Without such intervention by the Advocate, which resolves ownership and allows animals to be rehomed by the municipality, animals in those cases would otherwise have remained impounded for the duration of the case, suffering ill effects of prolonged confinement.

### C. *Developing Creative Remedies*

The Advocate can create animal-caretaking plans and obtain pro bono dog-training services to enable animals to remain with defendants.

The Advocate has, when appropriate, recommended sentences with multiple components, some of which were designed to protect potential future victims. These sentences required payment of restitution to rescue organizations that rehabilitated victims, and, importantly for the protection of potential victims, banned future possession of animals.

### D. *Early Impressions*

These examples illustrate contributions that Advocates can make to animal cruelty cases. While data are still being collected to measure their impact, early impressions suggest that Advocates may promote early and tailored case resolutions, including voluntary forfeiture of animals, restitution for rescue organizations, agreements to avoid future contact with animals, and agreements to seek counseling.

Desmond's Law and similar advocacy programs enable a court to move away from an incarceration-release binary, and focus instead on the welfare of animal victims, restitution for service providers, and prevention of future harm. For example, in the course of plea discussions, the Advocate may prioritize establishing a record of a defendant's offenses to notify others of conduct and support a sentence without incarceration in exchange for the certainty of a record conviction.

Our experiences show that the work of the Advocate is often restorative and forward looking. An important goal of the Advocate is to protect surviving animal victims and potential victims from future offenses.<sup>35</sup> Sometimes the Advocate's intervention is purely restorative, such as when our clinic advocated for education for a defendant and training for her dog so that they could maintain and improve their relationship. Other times, intervention is largely preventative, as when our clinic sought removal of animals and forfeiture of relevant licenses.<sup>36</sup> In

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<sup>34</sup> See Rubin, *supra* note 26, at 260.

<sup>35</sup> See *id.*

<sup>36</sup> In Connecticut, such licenses may include those for pet shops, grooming facilities, commercial kennels, and training facilities. See CONN. GEN. STAT. § 22-344 (Supp. 2020).

these cases, the focus was not on punishing the defendants, but on preventing and deterring future cruelty. The Advocate can seek removal orders, protective orders, or seizure orders — all measures to restore and protect a surviving victim and similarly situated potential victims.

The Advocate functions in the trenches of a courtroom, sorting out the realities of cases with victims who are unable to describe offenses. The Advocate considers the offenses, the victims, the offenders, rehabilitation, restoration, punishment, restitution, and the impact of a record of a conviction. An Advocate's goals are nuanced, varied, and specific to each case.

### III. RESPONSES TO CRITICISMS OF DESMOND'S LAW<sup>37</sup>

The examples in Part II show that Marceau's criticisms of Desmond's Law and court advocate programs are unfounded. Marceau objects to these programs on bases ranging from misconceiving Advocates as trying to maximize incarceration, to disregarding the legal triage Advocates provide, to disagreeing with Advocates' ability to voice an animal's interests.<sup>38</sup>

First, advocating for justice for an animal is not the same as advocating for prosecution and punishment. Marceau mischaracterizes the Advocate's role as "seek[ing] to increase the probability and duration of incarceration."<sup>39</sup> He argues that Advocates take a punitive approach.<sup>40</sup> By defining Advocates as people who urge incarceration and aid prosecution,<sup>41</sup> Marceau oversimplifies their work. He incorrectly characterizes them as having a monolithic charge to maximize incarceration.<sup>42</sup> This characterization fails to appreciate the complexities of cruelty cases and Advocates' work. As the examples above show, Advocates argue for an array of remedies, including noncarceral ones such as animal forfeiture and additional resources for animal care. Our clinic has handled many cases in which we did not advocate for incarceration.<sup>43</sup> The

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<sup>37</sup> Without seeing Marceau's Commentary in this Forum prior to publication, I respond to his previously published criticisms.

<sup>38</sup> See MARCEAU, *supra* note 20, at 78–81.

<sup>39</sup> *Id.* at 78.

<sup>40</sup> See *id.* at 82.

<sup>41</sup> *Id.* at 78–79.

<sup>42</sup> *Id.* at 80.

<sup>43</sup> Advocates can prevent potential future cruelty without even recommending incarceration by recommending removal or surrender of the victim and other animals from a defendant's possession. To support his argument that Advocates help prosecutors and seek incarceration, Marceau presents a prosecutor's comment that an Advocate helped, *id.* at 79, but, significantly, this comment is provided without accurate context — the prosecutor described the Advocate's work on a case in which neither the prosecutor nor the Advocate sought incarceration and, in fact, the outcome of the case was a sentence *without* incarceration, see Pat Eaton-Robb, *In One State, Abused Animals Get a Legal Voice in Court*, ASSOCIATED PRESS (June 2, 2017), <https://apnews.com/article/eob2e676ae1447a09fab4c8807acodea> [<https://perma.cc/B32P-NH85>].

Advocate does not seek to maximize the punitive outcome of every case and assuming so misconceives Desmond's Law, which specifically defines the Advocate's role.<sup>44</sup>

Marceau also overlooks important parts of the legal triage that Advocates provide for animal victims, including seeking protective orders, forfeiture, and veterinary care (or restitution thereof).<sup>45</sup> His critique conflates the perils of overincarceration with the pursuit of justice for animals, and assumes that prosecution is a zero-sum game where anything that does not help a defendant hurts a defendant. Advocating for justice for an animal, however, does not necessarily align with prosecution and punishment.

Although Marceau argues that Desmond's Law overcriminalizes animal cruelty,<sup>46</sup> the law does not increase criminalization or sentences. It simply allows for advocacy in cases involving existing cruelty laws.<sup>47</sup>

Importantly, although we, like Marceau,<sup>48</sup> are concerned lest Desmond's Law contribute to pervasive racial disparities in criminal justice, there is no statistical evidence that it does; therefore, this question merits further study.<sup>49</sup> Marceau claims that efforts like Desmond's Law exacerbate racial disparities in the prosecution of animal cruelty.<sup>50</sup>

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<sup>44</sup> See CONN. GEN. STAT. § 54-86n(b)(4) (2019) (stating that the Advocate may "present information . . . that relate[s] to the interests of justice").

<sup>45</sup> See Rubin, *supra* note 26, at 260.

<sup>46</sup> MARCEAU, *supra* note 20, at 78–79.

<sup>47</sup> See § 54-86n.

<sup>48</sup> See MARCEAU, *supra* note 20, at 39–43.

<sup>49</sup> No one can deny that systemic racial bias pervades our criminal justice system — this is a tremendously important issue. See THE SENT'G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE 1 (2018) ("African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and [sic] they are more likely to experience lengthy prison sentences. African-American adults are 5.9 times as likely to be incarcerated than whites . . ."). Whether use of court advocates in animal cruelty cases contributes to disparate racial impact is a question that warrants more rigorous investigation and evaluation of data.

<sup>50</sup> See MARCEAU, *supra* note 20, at 40 ("Animal protection advocates promise that their efforts are colorblind and race neutral, but pursuing increased criminal punishment tends always to be negatively racially inflected."). Marceau offers observations on the historical origins of animal protection efforts, *id.* at 166–69, which are not helpful for analyzing the current state of animal criminal law. Further, in arguing that race animates society's views of animal fighting, *see id.* at 177–78, Marceau overassumes a connection between animal fighting and race. David Rosengard, Senior Attorney with the Animal Legal Defense Fund explains: We know that animal fighting has historically been and remains still a cross-cultural/cross-racial phenomenon — and that, therefore, criminalizing animal fighting cuts across cultural/racial lines. To the extent that there are disparities in society's views of animal fighting as conduct that may be properly criminalized, those disparities seem tied more to who the animals are than the race/culture of their exploiters. For example, fought fish, fought insects, and hunted wildlife generally are not protected by animal fighting laws — regardless of the race or culture of the people putting on those fights or engaged in those hunts. E-mail Interview with David Rosengard, Senior Staff Att'y, Crim. Just. Program, Animal Legal Def. Fund (Oct. 11, 2020) (on file with author) [hereinafter Interview with David Rosengard].

He does not share current data to support this allegation,<sup>51</sup> and his claim appears to be based on the well-known racial disparities in the criminal justice system.<sup>52</sup> The problems that Marceau identifies are not limited to the enforcement of cruelty laws; they extend to the entire criminal justice system and incarceration as a sentencing option, generally.

Marceau's critiques, moreover, miss the focus of Desmond's Law, which is not aimed at increasing punishment for humans, but at shifting focus to animals' interests.<sup>53</sup> Marceau dismisses the need for an Advocate by pointing to low prosecution rates for other crimes and arguing that cruelty cases should not be given special attention or resources.<sup>54</sup> Despite the troubling statistics regarding prosecution of other types of crimes, justice is still a worthy pursuit in animal cruelty cases. The data point that *is* important to justifying Desmond's Law is the

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<sup>51</sup> See, e.g., MARCEAU, *supra* note 20, at 166 (acknowledging that "almost no effort has been made to collect or analyze data regarding the racial demographics of individuals historically imprisoned for animal-related crimes").

<sup>52</sup> See, e.g., *id.* at 40–41; THE SENT'G PROJECT, *supra* note 49, at 1. According to the National Incident-Based Reporting System (NIBRS), the reported percentages of offenders in 2018 who were Black or African American, by offense type, are as follows: crimes against persons = 35.09%, crimes against property = 24.13%, and animal cruelty = 20.28%. Spreadsheet on file with the Harvard Law School Library [hereinafter Spreadsheet]; see *National Incident-Based Reporting System, 2018: Data Tables*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/nibrs/2018/tables/data-tables> [<https://perma.cc/9UKP-ND5V>] (download "Offenders, Race by Offense Category, 2018"). Meanwhile, the percentages of offenders in 2018 who were White, by offense type, are as follows: crimes against persons = 56.01%, crimes against property = 45.01%, and animal cruelty = 66.07%. Spreadsheet, *supra*. These data, when informally compared to reported census data, see *Quick Facts*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quick-facts/table/US/PST045219> [<https://perma.cc/DXW7-BAC3>] (reporting that 13.4% of the U.S. population is Black or African American and that 76.3% is White), signify that Black or African American offenders as compared to the general population are overrepresented in animal cruelty cases (20.28% versus 13.4%, respectively), but less so than in other crimes. As mentioned in the main text, the question of whether advocates impact racial disparities in animal cruelty cases requires further study.

<sup>53</sup> For example, although Marceau points to the racialized, high-profile case of Michael Vick, MARCEAU, *supra* note 20, at 174, he fails to distinguish between the case against Vick, see *Plea Agreement at 1–2, United States v. Vick*, No. 07CR274 (E.D. Va. Dec. 10, 2007), 2007 WL 2571293, and the parallel case resolving the fate of the animals exploited by Bad Newz Kennels, see *Complaint ¶ 11, United States v. Approximately 53 Pit Bulldogs*, No. 07CV397 (E.D. Va. Dec. 6, 2007), 2007 WL 4333264. Rosengard explains that the former is a narrative involving the intersection of celebrity, race, and national/local politics — but has little significance in terms of the development of the law around fought animals specifically or animal victim representation more broadly. Interview with David Rosengard, *supra* note 50. The latter, in contrast, caused a sea change in how fought animals are seen by the law and society — demonstrated the sort of critical impact that can arise from animal victims having their own legal advocates. Notably, Vick is essentially absent from *U.S. v. 53 Pit Bulldogs* — that case looked not at what Vick did or why he did it, but rather at what disposition would serve the interests of justice and the victimized animals. *Id.* The distinction between these two cases illustrates that the Advocate's role can focus on restoration of animal victims rather than punishment of human offenders.

<sup>54</sup> See MARCEAU, *supra* note 20, at 79.

small percentage of cruelty cases that progress to adjudication,<sup>55</sup> potentially due to lacking or compromised resources, evidence, or interest. Desmond's Law helps with this shortfall by providing an Advocate to contribute time and resources to a case. Why should animals go without effective advocacy because prosecution rates are low for other crimes? Instead, Desmond's Law can and should inspire greater advocacy and just outcomes in all types of cases.

Many of the critiques in Marceau's book are not really critiques of animal cruelty laws so much as healthy critiques of the criminal justice system. Advocates add *more* justice to the mix, but unfortunately cannot solve every flaw in the system.<sup>56</sup> Animals should not suffer from lesser justice while all other issues are addressed, particularly when Advocates do no injustice to the state or defense.

Moreover, emphasizing prosecutions against cruelty to individual animals does not detract from efforts to address cruelty to larger numbers of animals, as in cases of animals used for food or research. Marceau argues that some cruel acts may not constitute criminal cruelty due to, for example, agricultural exemptions.<sup>57</sup> Yet David Rosengard, Senior Staff Attorney at the Animal Legal Defense Fund, in endorsing the law, opined that the impact of Desmond's Law to frame animal cruelty as *malum in se* (with cruelty constituting the inherent wrong, *because* animals are sentient and have their own interests) moves society closer to reckoning with those cruelty exemptions.<sup>58</sup> If animal cruelty is a crime simply because the state says so (*malum prohibitum*), then the fact that the cruelty law is burdened with arbitrary exemptions is of no consequence and need never be confronted. If, on the other hand, the cruelty is inherently wrong, then for any given exemption society either must repeal it, or must at least consciously acknowledge that we choose to permit a wrong for our own interests.<sup>59</sup>

Marceau posits that animal abusers should receive therapy instead of punishment,<sup>60</sup> yet acknowledges that evidence-based treatment programs for animal cruelty offenders have yet to be developed.<sup>61</sup> UConn School of Law is collaborating to develop a diagnosis and treatment

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<sup>55</sup> KIRBY, *supra* note 7, at 1, 4.

<sup>56</sup> Interview with David Rosengard, *supra* note 50.

<sup>57</sup> See MARCEAU, *supra* note 20, at 98–102, 259 (examining statutory exemptions from animal cruelty by state legislatures for agricultural uses of animals, including the treatment of food animals in large-scale operations).

<sup>58</sup> Interview with David Rosengard, *supra* note 50.

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

<sup>60</sup> See MARCEAU, *supra* note 20, at 245–48.

<sup>61</sup> *Id.* at 255–56; see also Frank R. Ascione et al., *The Relations Among Animal Abuse, Psychological Disorders, and Crime: Implications for Forensic Assessment*, 36 BEHAV. SCIS. & L. 717, 724 (2018) (recommending additional research on forensic evaluations of animal abusers).

program. The hope is that Desmond's Law can contribute to just treatment for all, defendants and victims alike. Further, having an Advocate could increase the likelihood of noncarceral outcomes since an Advocate likely has more time and resources to identify those options than would an overdocketed public defender or prosecutor.

As to the "almost laughable" idea that Advocates voice animal interests,<sup>62</sup> why is this so different from what advocates already do in cases involving human beings? Prosecutors regularly represent "the People" in cases where victims cannot speak, or in domestic violence cases where victims are unwilling to prosecute, and the individuals are not consulted.<sup>63</sup> Conservators and guardians ad litem represent adults and children unable to speak for themselves. Courts are accustomed to making inferences regarding experiences of these human victims, yet may not make similar inferences regarding animal victims' experiences. Advocates can voice animal victims' interests, which are far more intuitive than in many human cases. It takes no special insight to recognize that animals do not want to be starved, tortured, beaten, or killed. It accomplishes more for animals to have an Advocate trying to give voice to their experiences than to refuse this advance and offer no alternative, based upon the contrived objection that the animal has not communicated instructions to the Advocate. We need to intervene and interject our values, assumptions, and protective efforts — we do so for victims in cases where an abused child or domestic partner forgives their abuser.

The legal profession has devoted significant work to representing the interests of parties or quasi-parties that find it difficult or impossible to communicate their desires. That an Advocate would, with sincerity and thought, provide a court with information speaking to a range of animal interests is no more laughable than the work of attorneys who operate on behalf of human victims whose disabilities or ages render them incapable of voicing their interests. Desmond's Law makes productive contributions to the cause of justice, regardless of specific substantive cruelty laws or the particulars of how the criminal justice system operates. As a result, Advocates contribute to more justice now and can seamlessly continue to do so in the future as unfair flaws in the system are addressed.<sup>64</sup>

## CONCLUSIONS

Desmond's Law is in its early stage but the Connecticut legal community can already recognize its impact and potential. This Commentary raises questions: How does the Advocate affect the out-

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<sup>62</sup> MARCEAU, *supra* note 20, at 81.

<sup>63</sup> See Alan Vinegrad, Essay, *The Role of the Prosecutor: Serving the Interests of All the People*, 28 HOFSTRA L. REV. 895, 897 (2000).

<sup>64</sup> Interview with David Rosengard, *supra* note 50.

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come of an animal cruelty case? Should Desmond's Law apply to cruelty cases involving all types of animals? Can the law serve as a model for other forms of advocacy, inspiring, for example, advocates for the environment? To what extent should the Advocate focus on rehabilitation versus punishment? Additionally, can a diagnostic and therapeutic program successfully evaluate cruelty offenders, and predict and reduce the likelihood of reoffending? These questions beg for attention and innovation.

Desmond's Law and the Advocates' work encourage courts to accept the intrinsic legal worth of animal victims. This goes to the core of animal law and criminal justice.

How *should* we treat those who commit cruelty to animals? We need a nuanced mix of punishment, deterrence, rehabilitation, restoration, and protection, all focused on human and nonhuman animal victims.

Failing to address cruelty offenses fails to recognize animal victims as sentient beings. Yet every state has decided that animals are entitled to protection against cruelty because they are sentient beings.<sup>65</sup> By empowering Advocates to inform courts about the interests of animals, we acknowledge that animals are not merely property, but are instead sentient beings. As such, they are entitled to judicial consideration and treatment that is deeper and more thorough than that afforded to other property.

For crimes with human victims, a finding of guilt and imposition of a fair sentence allows the community to communicate how utterly they reject a defendant's treatment of their victim as a means to an end rather than a fellow being with intrinsic worth. This is part of why we *have* criminal law,<sup>66</sup> rather than just relying on tort law to address damages caused by offenses.

The Advocate is a positive, cost-free resource, to help courts with complex animal cruelty cases. The presence of an Advocate, representing the voiceless victim's perspective, is neither a redundancy nor a flaw. It is, in fact, the core premise of our legal system that when those impacted "get their day in court," outcomes are more just and reliable. Desmond's Law and court advocate programs allow a legal professional to bring the experience and interests of an animal victim before a court. This is a step forward for both nonhuman and human justice.

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<sup>65</sup> Cf. 2020 U.S. State Animal Protection Laws Rankings, *supra* note 9.

<sup>66</sup> See 1 TORCIA, *supra* note 24, §§ 5, 7.