



## Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws

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*Since Michael Vick's arrest and conviction, federal, state and local governments have attempted to step up efforts at enforcing laws prohibiting dogfighting. However, because of biases held by some law enforcement personnel, prosecutors, and judges as well as burdensome investigatory costs and evidentiary problems, enforcement of the laws is ineffective in many cases. This Article discusses these issues and argues that, because of various social problems that are tied closely to dogfighting, continued efforts must be made to make prosecution of dogfighting more effective. To that end, the Article makes recommendations to address the problems that hinder enforcement. Recommendations include several statutory changes and the creation of local, state, and federal*

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*task forces to improve enforcement through educational efforts, behavior modification, coordinated investigation, and cost-sharing.*

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## Introduction

*Look at ya watch and see what time it is/Time to stop  
dogfighting.*<sup>1</sup>

On May 20, 2009, former Atlanta Falcons quarterback Michael Vick was released from prison after serving nineteen months in a federal penitentiary for his participation in a dogfighting venture.<sup>2</sup> From April to July 2007, Vick made daily headlines as he was investigated and indicted on charges to which he eventually pleaded guilty.<sup>3</sup> News of Vick's arrest led to an outcry against dogfighting and animal cruelty. Some, though, tried to excuse Vick's actions on various grounds. Clinton Portis, running back for the Washington Redskins, for example, was reported as suggesting that, because a dog is considered property, ownership entitles the owner to fight it.<sup>4</sup> Further support

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<sup>1</sup> Humane Soc'y of the United States (HSUS), Demetrius Ware's Rap Lyrics, available at [http://www.hsus.org/acf/news/demetrius\\_ware\\_rap\\_lyrics\\_061209.html](http://www.hsus.org/acf/news/demetrius_ware_rap_lyrics_061209.html) (last visited Oct. 28, 2009). Chicago seventh-grader Demetrius Ware wrote his rap "Why," excerpted above, and submitted it as an entry in (and won) an HSUS competition.

<sup>2</sup> Larry O'Dell, *Vick Released from Prison, QB Heads for Home in Virginia After 19 Months on Dogfighting Conviction*, CHARLESTON GAZETTE, May 21, 2009, at 4B. After his release, Vick remained in federal custody, largely confined to his home, and was required to maintain a paying job. His federal custody ended on July 20, 2009. See David Macaulay, *Vick Free from Confinement Today*, DAILY PRESS (Newport News, Va.), July 20, 2009, at A1. He has since signed a contract to play with the Philadelphia Eagles. See ESPN.com, *Vick, Eagles Agree to 2-Year Deal*, Aug. 14, 2009, <http://sports.espn.go.com/nfl/news/story?id=4397938>.

<sup>3</sup> Summary of the Facts at 3-4, 9, *United States v. Michael Vick*, No. 3:07CR274 (E.D. Va. Aug. 24, 2007) (hereinafter *Vick Summary of Facts*); Indictment at 4, *United States v. Purnell A. Peace, Quanis L. Phillips, Tony Taylor & Michael Vick*, No. 3:07CR274 (E.D. Va. July 17, 2007) (hereinafter *Vick Indictment*).

<sup>4</sup> Mark Ferenchik, *Can It Be Debated?*, COLUMBUS DISPATCH, Aug. 28, 2007, at 1A ("It's his property. It's his dog. If that's what he wants to do, do it." (quoting Clinton Portis)); see also Mike Bianchi, *Despicable Dogfighting Reflects Poorly on Our Culture*, ORLANDO SENTINEL, May 27, 2007, at C1 ("Somebody needs to tell Clinton Portis you can't make meth [methamphetamine] on your property, you can't set kittens on fire on your property and you can't fight dogs to the death on your property. . . . Dogfighting is a felony, and the NFL needs to hold these guys accountable. It's irresponsible and dangerous for sports figures and celebrities to have such a nonchalant attitude toward this extreme form of animal cruelty." (quoting John Goodwin of HSUS responding to Portis's comments)).

came from Stephon Marbury, New York Knicks point guard, and NAACP Atlanta chapter president R.L. White. According to the media, Marbury explained away dogfighting as “just a sport” that is “behind closed doors,”<sup>5</sup> and White took a similar view, considering dogfighting to be no different than hunting.<sup>6</sup> Even Whoopi Goldberg weighed in on the subject, suggesting that Vick’s actions were a result of his “cultural upbringing.”<sup>7</sup> “There are certain things that are indicative to certain parts of our country,” she said, like “cockfighting in Puerto Rico.”<sup>8</sup>

Attitudes and assumptions such as these have hindered prosecution, even though prosecution under state and federal statutes has been on the rise. Sadly, though, the number of fights has also increased,<sup>9</sup> making eradication of the illegal activity an uphill battle. Indeed, John Goodwin, manager of animal fighting issues for the Humane Society of the United States,<sup>10</sup> estimates that at least 40,000 people engage in high-stakes dogfighting, with at least another 100,000 participating at the street level for bragging rights.<sup>11</sup> He indicates that animal shelters are taking in ten times the number of pit bulls<sup>12</sup> that

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<sup>5</sup> Ferenchik, *supra* note 4, at 1A.

<sup>6</sup> *Id.*

<sup>7</sup> Richard L. Eldredge, *Wednesday Talk*, ATLANTA J.-CONST., Sept. 5, 2007, at B2; *see also* *Vick May Work with Humane Society*, N.Y. TIMES, May 21, 2009, at B15 (noting that Wayne Pacelle, president of HSUS, stated that “dogfighting was a ‘culturally complex problem’ prevalent among black urban teenagers”).

<sup>8</sup> Lisa de Moraes, *Whoopi, Day 2: She Doesn’t Condone Dogfighting*, WASH. POST, Sept. 6, 2007, at C07; *see also* *Boston Legal: The Chicken and the Leg* (ABC television broadcast Oct. 9, 2007), *unofficial transcript available at* <http://www.boston-legal.org/episodes-season4.shtml> (portraying a Mexican immigrant as a defendant in a cockfighting case and translating the defendant’s testimony as “[Cockfighting is] part of our Mexican culture. As little children, we’re raised to revere the noble cockfighting rooster”).

<sup>9</sup> Carlos Frias, *Vicious Fight*, PALM BEACH POST, June 3, 2007, at 1B (noting that dogfighting is on an “upswing”); Wendy Koch, *Dogfighting Raids Climb after Vick; Case Raises Awareness of Dog Torture, Killings*, USA TODAY, Aug. 30, 2007, at 1A (noting that, in July and August 2007, law enforcement authorities pursued 25 more dogfighting cases—up to 42 from 17—than they had during the same time the previous year).

<sup>10</sup> HSUS, *Subject Experts*, [http://www.hsus.org/about\\_us/board\\_and\\_staff/experts/experts/subject\\_experts\\_goodwin.html](http://www.hsus.org/about_us/board_and_staff/experts/experts/subject_experts_goodwin.html) (last visited Aug. 8, 2009).

<sup>11</sup> Benita Y. Williams, *Cases of Animal Cruelty Abound*, KANSAS CITY STAR, Sept. 3, 2007, at B1.

<sup>12</sup> General reference to the term “pit bull” (without more) can be confusing because the term may be used to refer generally to several different breeds. *See* Jamey Medlin, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 DEPAUL L. REV. 1285, 1285 n.12 (2007); *see also infra* notes 30-35 and accompanying text

they have in the past, with many of the animals suffering from scars and wounds from fighting.<sup>13</sup> Goodwin further notes that in the last ten to fifteen years, urban dogfights have begun to outnumber rural fights.<sup>14</sup>

Law enforcement focus on high-profile cases, such as the case of Michael Vick or other celebrity dogfighters,<sup>15</sup> is an easy call. Pursuit of celebrities serves as an example to others. Media coverage is high because of their high-profile status, and a larger audience receives the message that certain activities are not tolerated.<sup>16</sup> However, prosecution of these cases is not any easier than prosecution of any other type of dogfighting case. Law enforcement officials face a variety of difficulties,

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(discussing the American Pit Bull Terrier). Although “pit bulls” are commonly viewed as the preferred fighting dog in the United States, other dogs are used for fighting as well, including the Fila Brasileiros, Dog Argentinos, and Presa Canarios. See Am. Soc’y for the Prevention of Cruelty to Animals (ASPCA), Dog Fighting FAQ, <http://www.aspc.org/fight-animal-cruelty/dog-fighting/dog-fighting-faq.html> (last visited Aug. 9, 2009) (hereinafter Dog Fighting FAQ). To avoid confusion, this Article will avoid use of the generic term “pit bull” where possible and use the term “fighting dog” as a general reference to a dog that is used to fight other dogs.

<sup>13</sup> Brian Mann, *Illegal Dogfighting Rings Thrive in U.S. Cities*, NPR, July 20, 2007, available at <http://www.npr.org/templates/story/story.php?storyId=12104472>.

<sup>14</sup> *Id.* (“Up until 10 or 15 years ago, this was pretty much an entirely rural activity. . . . Now, there’s still a lot of dog fighters in the rural areas, but they’ve kind of been overtaken by an urban crowd.” (quoting John Goodwin)).

<sup>15</sup> See Frias, *supra* note 9, at 1B (“Vick isn’t the first athlete to be connected to dogfighting. NBA player Qyntel Woods was accused of hosting dogfights at his Portland home in 2004 and he eventually pled guilty to first-degree animal abuse. Former NFL running back LeShon Johnson received a five-year deferred sentence in 2005 after officials seized 200 dogs during a raid of his dogfighting operation that led to 20 people being convicted. And former Dallas Cowboys lineman Nate Newton was arrested at a dogfight in Texas, although charges were later dropped.”); see also Mike Mosedale, *Public Enemy Number One*, CITY PAGES (Minneapolis/St. Paul), Oct. 25, 2006, at 4-6, <http://www.citypages.com/2006-10-25/news/public-enemy-number-one> (discussing the extensive involvement of Will Grigsby, an International Boxing Federation junior flyweight champion, in dogfighting).

<sup>16</sup> See George Dohrmann, *The House on Moonlight Road*, SPORTS ILLUSTRATED, June 4, 2007, at 44 (suggesting that federal law enforcement sought to indict Michael Vick on dogfighting charges because “an indictment filed against one of the NFL’s signature stars would boost their broader efforts to combat the grisly pastime of dogfighting”). A study by The Pew Research Center for the People and the Press indicated that one quarter of Americans closely followed media coverage of the Vick case, although the survey respondents split on racial lines over the question of whether the media treated Vick fairly. Pew Research Ctr. for the People & the Press, *Michael Vick Case Draws Large Audience*, Aug. 28, 2007, <http://people-press.org/reports/pdf/352.pdf>.

not only in investigating the dogfighting rings that remain shrouded in secrecy,<sup>17</sup> but also in proving the cases<sup>18</sup> and even overcoming biases in the prosecution of the activity.<sup>19</sup> Indeed, investigative difficulties have moved some jurisdictions to create task forces devoted to dogfighting enforcement issues.<sup>20</sup>

Yet continued and more effective enforcement efforts are required—and not simply because of the inherent cruelty involved in dogfighting.<sup>21</sup> Dogfights serve as a hub for a wide variety of other social ills. For example, dogfighting has long been associated with gambling, the illegal possession of weapons or banned substances, and even prostitution.<sup>22</sup> Indeed, as in the Vick case, a number of dogfighting rings have been discovered because of a law enforcement investigation based on other grounds.<sup>23</sup> In addition, because dogfights are viewed as social occasions, children are often present and instructed in the ways of the dogfighter, raising issues of child welfare.<sup>24</sup>

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<sup>17</sup> See Joanne Kimberlin & Phillip Taylor, *World of the Pit Difficult to Penetrate*, DAILY PRESS (Newport News, Va.), Sept. 17, 2000, at B3; Mann, *supra* note 13.

<sup>18</sup> Mann, *supra* note 13; see also James Hohmann, *Officials Face Challenge as They Confront Dogfighting in Texas: Tougher Penalties on the Way, but Blood Sport Grows and Enforcement Proves Difficult*, DALLAS MORNING NEWS, Aug. 22, 2007; Hanna Gibson, *Dog Fighting Legal Overview*, Mich. St. U. Coll. Law Animal Legal & Historical Center (2005), available at <http://www.animallaw.info/articles/ovusdogfighting.htm>.

<sup>19</sup> See *infra* Part II.A.

<sup>20</sup> See Gibson, *supra* note 18; see also Eileen Loh Harrist, *Fight Clubs: They Call It 'The Game': Two Dogs, Their Owners, Pride and Money*, GAMBIT WKLY., July 10, 2001, at 21 (discussing actions taken by the New Orleans Anti-Dogfighting Task Force, which includes members from the SPCA and the Housing Authority of New Orleans); Karen Lee Ziner, *Blood Sport*, PROVIDENCE J.-BULL., May 2, 2004, at A (discussing the Rhode Island animal fighting coalition and noting that such coalitions also exist in New Hampshire, Connecticut, and Maine).

<sup>21</sup> See *infra* Part III.A (discussing animal cruelty in the context of dogfighting).

<sup>22</sup> See, e.g., Anthony Westbury, *Drugs, Prostitution, Often Trail Dog Fights*, FORT PIERCE TRIB. (Fort Pierce, Fla.), July 12, 2005, at B1; Gibson, *supra* note 18.

<sup>23</sup> For example, the case against Vick arose not because of a dogfighting investigation, but because of the arrest of his cousin, Davon Boddie, on drug charges. See Nancy Grace & Mike Brooks, *NFL Star Michael Vick Indicted on Federal Dog-Fighting Charges, Part 1*, CNN NEWS, July 18, 2007, transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0707/18/ng.01.html>. Boddie identified Vick's house as his home address, which was subsequently searched pursuant to an arrest warrant. *Id.* The authorities discovered fifty-four American Pit Bull Terriers with scars and injuries associated with dogfighting, along with several pieces of dogfighting equipment. See *Vick Summary of Facts*, *supra* note 3, at 9.

<sup>24</sup> See, e.g., Loh Harrist, *supra* note 20, at 21.

The purpose of this Article is two-fold. First, since Vick's arrest, numerous newspaper articles about dogfighting have been published. However, the articles often tend to skim the surface and give the reader little information regarding the dogfighting world and the dogfighters within it. To provide the researcher with a more accurate picture, this Article sets forth the background and current state of dogfighting, its criminalization, and the reasons that relatively few dogfighters are prosecuted. The Article also presents a detailed picture of the different types of dogfighters, discussing characteristics of dogfighters in general and the differences between each group.

Second, this Article makes the case for an increased focus on dogfighting enforcement because of the sport's connection to cruelty, child welfare issues, and other criminal activities, such as gambling, gangs, weapons, and drugs. It sets out the basis for additional charges that may be used against dogfighters to assist prosecutors when a dogfighting case cannot be supported. The Article also suggests ways in which enforcement efforts might be improved by offering options to address the obstacles that currently plague law enforcement.

The Article is divided into four main parts. Part I sets forth a brief history of dogfighting in America, detailing the origins of the dogfighting interest, the types of dogfighters, and the current rise in urban dogfighting. Part I ends with a discussion of the current statutory regime for prosecuting dogfighting under both federal and state law. Part II then turns to enforcement problems, detailing the difficulties that law enforcement officers and prosecutors face when attempting to enforce dogfighting laws. Part III addresses the necessity of continued enforcement, identifying other criminal activity associated with dogfighting and additional means of prosecution based on these offenses. Part IV concludes the Article with suggestions for improving enforcement, discussing options available that may help to overcome the biases, costs, and other hurdles that make enforcement so difficult.

## **I. Background**

### **A. *History of Dogfighting in America***

#### *1. English Origins*

Dogfighting as practiced in the United States originated in England. British interest in dogfighting began to rise, especially among

the working classes, as the popularity of bull baiting began to wane.<sup>25</sup> As one historian explains, the appeal of dogfighting was fueled by circumstances:

Industrialization and urbanization in the late 18th and early 19th centuries shifted the focus of blood sports from baiting (in which dogs attacked other species) to fighting (in which dogs attacked each other). Rural laborers flocked to cities to become factory hands. They retained their love for blood sports but lacked the space and free days for baits of large animals. Dogfights, on the other hand, could be held indoors, artificial light allowing evening matches, and workers could still go to work the next day.<sup>26</sup>

“Pit” businesses filled the gap left by the loss of baiting activities, which had offered not only the entertainment of the fight but also gambling opportunities,<sup>27</sup> and breeders turned to developing a more aggressive dog (crossbreeding bulldogs and terriers) to better meet dogfighting needs.<sup>28</sup>

As Britons immigrated to America with their fighting dogs, dogfighting came with them.<sup>29</sup> However, Americans enjoyed the bulldog and terrier mix for more than its dogfighting capabilities, seeking it out as a farm dog, family guardian, and companion.<sup>30</sup> The

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<sup>25</sup> Bull baiting was an activity where a dog (or more often several dogs) attempted to pin a bull to the ground while avoiding being gored. See Medlin, *supra* note 12, at 1288. For a description of a typical English bull-bait, as described in England’s early nineteenth century journal *The Sporting Magazine*, see HOUNDS IN THE MORNING: SUNDRY SPORTS OF MERRY ENGLAND 138-42 (Carl B. Cone, ed. 1981).

<sup>26</sup> Edmund Russell, *A Tale of Two Smithfields*, UVA TOP NEWS DAILY, Sept. 11, 2007, <http://www.virginia.edu/topnews/facultyopinions/2007/russell.html>; see also Rhonda D. Evans & Craig J. Forsyth, *The Social Milieu of Dogmen and Dogfights*, 19 DEVIANT BEHAVIOR 51, 51-52 (1998) (stating that the “lower visibility” of dogfighting compared to baiting activities added to dogfighting’s popularity).

<sup>27</sup> See Rhonda D. Evans & Craig J. Forsyth, *Entertainment to Outrage: A Social Historical View of Dog Fighting*, 27 INT’L REV. MOD. SOC. 59, 61 (1997); Russell, *supra* note 26.

<sup>28</sup> See Russell, *supra* note 26.

<sup>29</sup> As in England, Americans at one time participated in baiting sports, with evidence suggesting the existence of this activity as early as 1726. Evans & Forsyth, *supra* note 26, at 52. It is unclear when dogfighting first arose in the United States, although some have noted that the Staffordshire terrier arrived in the United States in approximately 1817. See, e.g., Gibson, *supra* note 18.

<sup>30</sup> See Medlin, *supra* note 12, at 1288. The reputation of the pit bull in the early 20th century was much kinder than it is today, and its image was often used to promote trust in products. Buster Brown shoes and RCA both used pit bull images to



dog also began to evolve as breeders crossbred the “best of the best” of the British lines, seeking to maximize gameness,<sup>31</sup> that is, a dog’s “willingness to continue to attack an opponent, or to scratch [i.e., re-engage the fight], despite being overpowered and despite having been injured.”<sup>32</sup> The resulting American Pit Bull Terrier (the dog of choice for dogfighting)<sup>33</sup> was recognized as a standard breed by the United Kennel Club (UKC)<sup>34</sup> in 1898 and by the American Dog Breeders

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convey the quality of their products. *See, e.g., id.* at 1289 (Buster Brown); Bull & Terrier, Origin & History, <http://www.bullandterrier.com/features/> (last visited Aug. 13, 2009) (noting use of the pit bull for advertising the clarity of the RCA phonograph as well as “to illustrate American neutrality without fear in 1914, the toughness of Levi jeans, and as a ‘defender of Old Glory’”). Some pit bulls also held celebrity status, while others were the companions of celebrities. *See* Medlin, *supra* note 12, at 1288-89 (describing the popularity of the Little Rascal’s Petey, Juneau’s official greeter Patsy Ann, and the World War I hero Stubby, and noting that Helen Keller owned a pit bull); Safia Gray Hussain, Note, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won’t Solve the Dangerous-Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2853-54 (2006) (noting that Theodore Roosevelt owned a pit bull).

<sup>31</sup> JOE STAHLKUPPE, *THE AMERICAN PIT BULL TERRIER HANDBOOK* 34 (2000).

<sup>32</sup> CARL SEMENCIC, *THE WORLD OF FIGHTING DOGS* 40 (1984). Unlike other dogs, the survival instinct has been bred out of many fighting dogs, resulting in gameness. *See* Julie Bank & Stephen Zawistowski, *Game Dogs*, ASPCA Education: Resources, [http://www.asPCA.org/site/PageServer?pagename=edu\\_resources\\_gamedogs](http://www.asPCA.org/site/PageServer?pagename=edu_resources_gamedogs) (last visited Sept. 10, 2007) (“One of the most important steps in breeding fighting dogs was to eliminate [the survival instinct] aspect of their behavior. Fighting dogs will continue to attack regardless of the submission signals of an opponent. Similarly, these dogs will continue to fight even though badly injured.”).

<sup>33</sup> Evans & Forsyth, *supra* note 27, at 60.

<sup>34</sup> The American Kennel Club (AKC) does not recognize the “American Pit Bull Terrier” as a registered breed. However, it registers and has established standards for the Staffordshire Bull Terrier and the American Staffordshire Terrier, both of which originated from the original bulldog and terrier mixes in England. *See* American Kennel Club, *Staffordshire Bull Terrier History*, [http://www.akc.org/breeds/staffordshire\\_bull\\_terrier/history.cfm](http://www.akc.org/breeds/staffordshire_bull_terrier/history.cfm) (last visited Aug. 9, 2009); American Kennel Club, *American Staffordshire Terrier History*, [http://www.akc.org/breeds/american\\_staffordshire\\_terrier/history.cfm](http://www.akc.org/breeds/american_staffordshire_terrier/history.cfm) (last visited Aug. 9, 2009); *see also* STAHLKUPPE, *supra* note 31, at 53-55 (describing the registry issues relating to the various pit bull-type breeds). Interestingly, legislation regulating or banning “pit bulls” often defines the term as including American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, and mixes of each. *See, e.g.,* Amy Cattafi, *Breed Specific Legislation: The Gap in Emergency Preparedness Provisions for Household Pets*, 32 *SETON HALL LEGIS. J.* 351, 354-55 (2008) (describing Denver’s breed-specific ordinance). One expert notes that the AKC-registered American Staffordshire Terrier was merely an American Pit Bull Terrier registered under a different name to avoid the “pit connotation.” *See* STAHLKUPPE, *supra* note 31, at 54, 58 (noting that the breed was originally registered as the Staffordshire Terrier in 1936,

Association about a decade later.<sup>35</sup> Shortly thereafter, Chauncy Z. Bennett, the founder of the UKC, wrote a set of rules for dogfighting that “brought organization . . . and a semblance of respectability for the breed, if not for the fighting.”<sup>36</sup>

Dogfighting was a lawful sport for a short period in American history, although not overly popular with those outside the game.<sup>37</sup> However, as in England, states began outlawing this activity in the latter half of the nineteenth century.<sup>38</sup> Despite these statutes, dogfighting continued, but moved into secrecy. Although dogfighting was not limited to any particular region of the United States, Louisiana played a particularly important role as the source for the sport’s “Cajun Rules.” Penned in the 1950s by G.A. “Gaboon” Trahan, a former Lafayette police chief and successful dogman, Cajun Rules are one of the more popular standards used for regulating dogfights.<sup>39</sup>

Dogfighting still exists in many parts of the country<sup>40</sup> – indeed, it is a half-billion dollar industry<sup>41</sup> – and some say the activity is on the

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but later changed to the American Staffordshire Terrier in 1972 to distinguish it from the English version of the breed). Although American Pit Bull Terriers and American Staffordshire Terriers may look similar, for the most part the breeds are now separate with only a few dogs still registered with both the UKC and AKC. *See id.* at 58-59. Advocates of American Pit Bull Terriers note the loss of gameness in American Staffordshire Terriers as a distinguishing characteristic between the breeds. *See id.* at 61-62 (“From the perspective of gameness, the APBT and the Amstaff are as far from being the same breed as the Collie and the Border Collie are in sheepherding ability.”).

<sup>35</sup> STAHLKUPPE, *supra* note 31, at 55, 57.

<sup>36</sup> *Id.* at 55.

<sup>37</sup> *Id.* at 43 (noting that dogfighting audiences generally consisted of “[d]ogfighters, pit dog breeders, gamblers, and the retinue of hangers-on who preyed on the gamblers – prostitutes, sycophants, muggers, and creditors,” as well as “the morbidly curious, the thrill-seekers, and the sadistic elements of the community”).

<sup>38</sup> *See, e.g.,* Evans & Forsyth, *supra* note 26, at 52 (noting a New York statute enacted in 1856 that prohibited dogfighting, cockfighting, and ratting).

<sup>39</sup> Loh Harrist, *supra* note 20. Cajun Rules are not the only rules that dogfighters might use. Other rules that have been used for dogfighting include Al Brown’s Pit Rules and Armitage’s Rules. *See* GEORGE C. ARMITAGE, THIRTY YEARS WITH FIGHTING DOGS 123-33 (Read Country Books 2004) (1935) (reprinting Armitage’s Rules and Regulations to Govern Dogfighting); SEMENCIC, *supra* note 32, at 41-46 (reprinting Al Brown’s Pit Rules); RICHARD F. STRATTON, THE WORLD OF THE AMERICAN PIT BULL TERRIER 252-54 (1983) (reprinting the English Rules of 1850 and the Police Gazette Rules of 1900).

<sup>40</sup> For example, a chart of select dogfighting raids prepared by the Animal Legal and Historical Center sets out dogfighting arrests in seventeen different states across the continental United States that occurred between 1996 and 2004. *See* Dog-

rise. However, the nature of much of the current fighting has changed, although it is still accompanied by other societal ills. To see this change, it is helpful to have a better understanding of the types of people who engage in the activity, as discussed below.

2. *Profiles of the Dogfighter*

a. Common Characteristics

As a group, dogfighters tend to share similar characteristics: they engage in dogfighting as a show of masculinity, they often have other criminal tendencies, and they tend to rationalize their behavior by anthropomorphizing the dogs.

Masculinity and brotherhood are important in the dogfighting world. During the 1990s, a team of sociologists—Rhonda Evans, DeAnn Gauthier, and Craig Forsyth—conducted a study on dogmen<sup>42</sup> in the South to ascertain the motivation behind continued dogfighting despite its criminalization. The researchers concluded through attendance at dogfights and interviews with over thirty dogmen (who were predominately white, male, and working-class) that dogfighting, like other sports, represented a way for the dogfighters “to validate their masculine identities while remaining only on the periphery of actual violence.”<sup>43</sup> As the sociologists explained:

Research suggests that men from lower-class backgrounds, who lack opportunities for expression of masculinity through occupational success, tend to rely on more accessible routes of expression which emphasize aggression,

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Fighting Raids: A Comparative Analysis of Peripheral Criminal Activity and Seizures, Mich. St. U. Coll. Law Animal Legal & Historical Center, <http://www.animallaw.info/topics/spusdogfighting.htm> (last visited Sept. 17, 2007) [hereinafter Dog-Fighting Raids]; see also SEMENCIC, *supra* note 32, at 39 (“The fact of the matter is that dogfighting is not confined to small pockets of the South but rather that organized fights are being held as a spectator sport throughout the United States, Canada and Mexico. While the average New York City dweller feels closer to bullfights in Madrid than to dogfights in the United States, I have known Bulldog men residing in New York City who own a dozen pit dogs that are fought on a regular basis throughout the country.”).

<sup>41</sup> Bill Burke, *Once Limited to the Rural South, Dogfighting Sees a Cultural Shift*, VIRGINIAN-PILOT, June 17, 2007.

<sup>42</sup> “Dogmen” is the name by which breeders of fighting dogs and high-stakes fighters refer to themselves. Frias, *supra* note 9, at 1B.

<sup>43</sup> Rhonda Evans, DeAnn K. Gauthier & Craig J. Forsyth, *Dogfighting: Symbolic Expression and Validation of Masculinity*, 39 SEX ROLES: J. RES. 825, 827 (1998).

violence, and strength. This is evident in the arena of sport where participants in boxing, football, and wrestling, are disproportionately drawn from the working-class sectors of society.<sup>44</sup>

Although dogfighting is not limited to the white male working class—it crosses racial and economic lines<sup>45</sup>—this view of dogfighting as a representation of masculinity generally holds true throughout dogfighting circles. In fact, the dogmen themselves refer to their circles as fraternities,<sup>46</sup> and within the fraternity, senior dogmen<sup>47</sup> are well-respected by young fighters and breeders who strive to emulate them.<sup>48</sup>

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<sup>44</sup> *Id.* at 829 (citations omitted).

<sup>45</sup> To some extent, dogfighting crosses gender lines in the form of spectators. See Evans & Forsyth, *supra* note 26, at 54 (noting that, although women are rarely dog handlers, they participate as spectators and actively participate in gambling). Indeed, the United Kingdom's National Canine Defence League (established in 1891) described in an early anti-dogfighting booklet the insidious impacts of dogfighting on not only young men, but women as well:

Young women, future mothers of the race, are being accustomed to find entertainment in some of the filthiest spectacles that have ever been staged. Vampires or ghouls, in a mad twilight of the mind they sit, leaning forward in ecstatic anticipation. Pity, an emotion they can never feel, must move us when we see to what extremes unbalanced humanity can go. And few will not be angry at the thought that every day a new recruit is drawn from the ranks of our cherished youth and maidenhood.

MIKE HOMAN, A COMPLETE HISTORY OF FIGHTING DOGS 243-44 (1999). However, nothing limits women to just the role of spectator. One reporter has noted the activities of a female pit bull breeder who is a well-published scientist, medical researcher, and patent holder with alleged links to a high-level dogman in North Carolina. See Jennifer Strom, *Orange Dog Panel Member Quits*, INDEP. WKLY., Apr. 25, 2007, at 5.

<sup>46</sup> See Evans & Forsyth, *supra* note 26, at 55 (noting that the term "fraternity" is used in both dogfighting and cockfighting circles).

<sup>47</sup> According to one study, breeders hold the highest position in dogfighting circles because "[breeding] is the facet on which every other element within the sport is based and without it the sport could not exist." *Id.* at 55.

<sup>48</sup> One young dogfighter described the relationship between senior dogmen and junior dogmen as follows:

The old timers do most of the talking and we just listen. People will think you're crazy if you go in there [to a pre-fight meeting] talking a lot and you're just a newcomer. That's a privilege that has to be earned and the old timers have more than earned it. Someday we'll be in their position and everybody will listen to what we have to say. We'll be the teachers instead of the students.

*Id.* at 62 (quoting an unidentified dogfighter).

Dogfighters may also have criminal tendencies apart from any dogfighting infractions. Dogfighting and other crimes are closely associated,<sup>49</sup> and many dogfighters (at least in urban areas) have also been arrested on charges of drugs, guns, and other crimes.<sup>50</sup> In addition, dogfighting locations often serve as the venues for commission of other crimes.<sup>51</sup> Indeed, according to the offices of Congressmen Elton Gallegly and Earl Blumenauer, during a period of six months, every reported dogfighting arrest also included arrests for gambling and drug trafficking.<sup>52</sup>

Dogfighters also tend to justify their behavior by placing human emotions on the dogs (i.e., anthropomorphism). Typically, dogmen state that the dogs enjoy fighting and it would be cruelty not to allow them to engage in that behavior.<sup>53</sup> This belief exists even though the gameness characteristic has been bred into the fighting dogs by humans and despite the fact that the dogs have been specifically placed into the ring and are encouraged to fight.<sup>54</sup> As one authority explained:

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<sup>49</sup> See *supra* Part III.

<sup>50</sup> See Daniel Walsh, *Cop Faces 5 Charges of Animal Cruelty*, PRESS OF ATLANTIC CITY, Sept. 18, 2007, at A1 (noting an analysis by Chicago Police of a three-year period of dogfighting during which 332 people were arrested for the offense and, of that number, 70% were convicted felons); Mich. St. U. Coll. Law Animal Legal & Historical Center, *Dog-Fighting Database: Criminal Profile of the Urban Dog-Fighter*, [http://www.animallaw.info/articles/art\\_img/dog\\_fighting\\_database.doc](http://www.animallaw.info/articles/art_img/dog_fighting_database.doc) (last visited Aug. 11, 2009) (collecting data “of known and suspected dog-fighters in a smaller urban community” to show the “criminal propensity of dog-fighters”).

<sup>51</sup> See *Dog-Fighting Raids*, *supra* note 40, at 2-4 (collecting data showing “peripheral criminal activity” at various dogfighting raids in several states).

<sup>52</sup> Elton Gallegly, Press Release, *Gallegly & Blumenauer Introduce Federal Dog Protection Act*, Aug. 3, 2007.

<sup>53</sup> See, e.g., SEMENCIC, *supra* note 32, at 269-70 (“What an average person doesn’t realize about fighting dogs is that no one forces them to fight; they *enjoy* it! There is no fun for a good fighting dog like rolling it out with a capable opponent. Anyone who has ever seen a game pit dog face another dog will realize that the pit dog needs no coaxing in order to be willing to attack.”); STRATTON, *supra* note 39, at 195 (stating that “the cur (i.e., non-Pit Bull) fights out of fear or for dominance, while a Pit Bull fights for the sheer enjoyment of it”).

<sup>54</sup> See MITCHELL JONES, *THE DOGS OF CAPITALISM*, BOOK 1: ORIGINS 262-63 (1988) (describing how dogs are encouraged to return to a fight—i.e., scratch—after it has turned from an opponent or cried out); Drew Jubera, *Dogfighting: A Shadow World of Bloodlust*, ATLANTA J.-CONST., July 20, 2007, at A1 (“The dogs are so exhausted, their mouths wrapped around a part of the other dog, both lying on the floor, breathing super heavy, their lungs about to explode. Their handlers are on the floor with them, pounding on the floor, encouraging them with commands.”).

[G]ameness involves more than just a desire to fight to the death if need be. It also involves an intense desire to please a master who wants to see the dog continue to attack at all costs. Pit men understand this desire to please on the part of the dog and capitalize on it. At any organized pit fight in which two dogs are really going at each other wholeheartedly, one can observe the owner of each dog changing his position at pit-side in order to be in sight of his dog at all times. The owner knows that seeing his master rooting him on will make a dog work all the harder to please its master.<sup>55</sup>

Thus, it is not merely instinct that makes the dogs fight, but the human factor as well.

### b. Categorical Profiles

Dogfighters are categorized into three types: the professional dogman, the hobbyist, and the streetfighter.<sup>56</sup> Each category is distinguished by the stakes at issue and the locations of the dogfights as well as other traits and tendencies, as discussed below.

Professionals are those dogmen who work at a national and, sometimes, international level and fight at the highest stakes.<sup>57</sup> These dogmen are both fighters and breeders who often sell their stock for thousands of dollars because the animals come from champion bloodlines.<sup>58</sup> Fights at the professional level are the most secretive and the most lucrative. Meeting with a professional dogman or attending a professional's fight usually requires a personal introduction or invitation from a current member of that dogfighting circle,<sup>59</sup> and the location of a fight is usually not revealed until hours before the fight.<sup>60</sup>

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<sup>55</sup> SEMENCIC, *supra* note 32, at 67-68.

<sup>56</sup> Dohrmann, *supra* note 16, at 44. It is not unknown for a dogfighter to move from one category to another. *See, e.g.,* Mosedale, *supra* note 15, at 5 (describing a former dogfighter's move from a streetfighter to a professional based on the performance of his Grand Champion dog and his acquisition of a mentor professional).

<sup>57</sup> *See* Loh Harrist, *supra* note 20.

<sup>58</sup> *See, e.g.,* Paul Duggan, *A Blood Sport Exposed, Vick's Case Puts Dogfighting Culture in the Spotlight*, WASH. POST, Aug. 22, 2007, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/21/AR2007082101997.html> (stating that a game fighter in its prime could sell for \$10,000 or more).

<sup>59</sup> *See* Loh Harrist, *supra* note 20.

<sup>60</sup> Until revealed, the fight location is generally known only to the actual participating dogfighters and the location owner. Secrecy is required to prevent raids

Stakes are highest with professional fights, with the winner of some matches taking home \$100,000 or more.<sup>61</sup> Professional fighters often set their fights in rural areas, cross state lines, and can drive hundreds of miles for a fight.<sup>62</sup> However, there is a growing national trend to find professional or near-professional operations located just outside major cities, either in the suburbs or bordering rural areas.<sup>63</sup>

Professional dogmen are also communication oriented. Although secrecy is the keyword as far as outsiders are concerned, within the circle, professionals keep in touch with the activities of other fighters and breeders. Before professional fights, dogmen bond in long pre-fight meetings to discuss issues of interest, such as bloodlines, fighting results, or training issues.<sup>64</sup> Professionals also communicate through printed and electronic media. Originally, when dogfighting was legal, newspapers published fighting results, noting the names of the dogs and their owners.<sup>65</sup> When papers stopped printing results, the void was filled by dogfighting journals and magazines that went underground as dogfighting became illegal.<sup>66</sup> The Internet also enables instant communication, with numerous websites providing information on bloodlines, training tips and fights, and even the Cajun Rules.<sup>67</sup> Some even webcast their fights to allow offshore betting.<sup>68</sup>

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by law enforcement. See Evans & Forsyth, *supra* note 26, at 59-60 (suggesting also that a raid will “push those marginal dogmen and spectators out of the sport” and that, since dogfighting has “such a small fraternity[, it] cannot afford to lose any peers”).

<sup>61</sup> *Id.* at 56; see also Joelton Dog Fighting Bust Gains National Attention, THE CITY PAPER, Oct. 11, 2007, <http://www.nashvillecitypaper.com/content/city-news/joelton-dog-fighting-bust-gains-national-attention> [hereinafter *Joelton Dog Fighting*] (“[S]uburban operations with a dozen or fewer dogs can see tens of thousands of dollars change hands every weekend at fights and nearly \$50,000 in annual, untaxed revenue from breeding dogs.”).

<sup>62</sup> Loh Harrist, *supra* note 20.

<sup>63</sup> *Joelton Dog Fighting*, *supra* note 61.

<sup>64</sup> Evans & Forsyth, *supra* note 26, at 60.

<sup>65</sup> See, e.g., HOMAN, *supra* note 45, at 202-23 (reprinting newspaper articles from the 1800s about dogfights in America). The link between a dog and its owner-trainer or breeder is so close that fighting dogs of superior bloodlines are often known partly by the name of the owner. See, e.g., STAHLKUPPE, *supra* note 31, at 49; see also HOMAN, *supra* note 45, at 242-43 (picturing various fighting dogs, including Russell’s Tip, O’Donnell’s Sean, Hall’s Champion Old Swamper, and Snakeman’s Pedro Junior).

<sup>66</sup> See Loh Harrist, *supra* note 20 (identifying various dogfighting journals such as the *Sporting Dog News*, *Pit Bull Reporter*, and *The American Pit Bull Terrier Gazette*).

<sup>67</sup> See Hanna Gibson, *Dog Fighting Detailed Discussion*, Animal Legal & Historical Center, <http://www.animallaw.info/articles/ddusdogfighting.htm> (2005)

The second category is the hobbyists. According to one breeder, hobbyists are the “bush-leaguers” of the dogfighting world.<sup>69</sup> Hobbyists – or fanciers or enthusiasts as they are sometimes called – are dogfighters who operate at the regional level,<sup>70</sup> tending to stay closer to home. Although hobbyists may participate in fights in rural areas, many hobbyist fights occur within the same group of hobbyists and take place in urban locations, such as abandoned buildings.<sup>71</sup> Unlike professionals, hobbyists tend to own fewer dogs and generally do not engage in large-scale breeding,<sup>72</sup> but they usually show more interest in the care and breeding of their dogs than streetfighters.<sup>73</sup> They participate in dogfights not just as a means of entertainment, but also as a way to supplement their income.<sup>74</sup>

Streetfighters make up the third category. Streetfighters tend to fight in urban locations at the lowest stakes – some fighting merely for street credibility.<sup>75</sup> Although streetfighters may engage in arranged fights that involve preparation and training, many streetfighters participate in impromptu fights,<sup>76</sup> with traditional dogfighting rules often ignored. As one writer explains:

In the dogfighting game, professional dogmen are akin to the Mafia, bestowing to the illicit activity a set of generally accepted rules. Using that parallel, streetfighters can be construed as gangs. They don’t operate under many rules, and though they’re involved in the same sport, the philosophies of professionals and streetfighters are, in many ways, miles apart.<sup>77</sup>

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(noting that “cyber-dogmen” websites and message boards appear as legitimate breeding sites and provide disclaimers that the information is provided “for entertainment purposes only”); *see also* Burke, *supra* note 41 (noting that dogfighting websites often include notations that dogfighting is not condoned and that descriptions of dogfights are fictional).

<sup>68</sup> Burke, *supra* note 41.

<sup>69</sup> *Id.* (quoting an unnamed pit-bull breeder).

<sup>70</sup> *See* Loh Harrist, *supra* note 20.

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

<sup>72</sup> *Id.*

<sup>73</sup> Dog Fighting FAQ, *supra* note 12.

<sup>74</sup> *Id.*

<sup>75</sup> *See, e.g.,* Cindy Wolff, *Premature Death Is the Fate of Fighting Dogs*, MEMPHIS COM. APP., Mar. 29, 1998, at F4.

<sup>76</sup> *See id.*

<sup>77</sup> Loh Harrist, *supra* note 20; *see also* STAHLKUPPE, *supra* note 31, at 51 (“Equating the gangs and thugs that fight dogs in alleys and vacant buildings with the



The philosophical gap between streetfighters and professionals is most evident in the brutal twists that urban fights have taken. Some streetfighters, for example, engage in a fight format called “trunking,” which is “a mobile battle where two dogs are thrown into the trunk of a car and bets are placed on which dog will emerge alive when the car stops and the lid is lifted.”<sup>78</sup> Abandoned buildings might also be used for fights to the death. Several years ago, for example, Baltimore animal control officers discovered a new wrinkle to dogfights “where three dogs would be locked inside an abandoned row house with nothing but a small bag of food. Only one dog would emerge victorious.”<sup>79</sup> These forms of dogfight abandon the traditional reasons for watching a dogfight—to see the display of gameness.<sup>80</sup> Except for gambling on the outcome, the fights have little resemblance to professional dogfights.

Streetfighters may also breed their dogs, but often with different visions in mind than the professional. Whereas professionals seek to breed dogs with gameness, streetfighters have been known to breed dogs for size, seeking large, intimidating dogs rather than dogs with fighting tenacity.<sup>81</sup> It is this type of breeding that has caused

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true Pit Bull Terrier enthusiasts is like making some connection between a baseball player who earns his living swinging a bat and a mugger who makes his living also swinging a bat.” (quoting an unidentified pit bull terrier breeder)).

<sup>78</sup> Jim Nesbitt, *Urban Dog Fighters Tough to Track*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 12, 2007, at A1; see also Pet Pulse, *Trunking: The Hidden World of Dog Fighting*, Aug. 26, 2008, [http://www.metacafe.com/watch/1666489/trunking\\_the\\_hidden\\_world\\_of\\_dog\\_fighting/](http://www.metacafe.com/watch/1666489/trunking_the_hidden_world_of_dog_fighting/) (explaining trunking and noting that the activity is also performed by hobbyists).

<sup>79</sup> Chuck Amos, *Dogfights and the Fight to Stop Them*, BALT. DOG MAGAZINE, Winter 2007.

<sup>80</sup> As one author explains:

Thousands of dollars are often gambled on the results of these pit fights . . . by people who care far less about the money involved than they do about the aggression and ability displayed by the dogs in question. There is a vicarious thrill one receives from watching a fighting dog attack its opponent in the face of all odds; for some people, the thrill relieves the frustrations of normal life in a way that no other spectator sport can.

SEMENCIC, *supra* note 32, at 39-40.

<sup>81</sup> STAHLKUPPE, *supra* note 31, at 13 (discussing how streetfighters have bred true American Pit Bull Terriers with other larger aggressive breeds, creating “large and powerful and quite vicious dogs that did share some pit dog genetic heritage”); Gloria Campisi & Leon Taylor, *Dogs of Death Where Life’s the Pits; Behind Bars, Fighters Face Death Sentences*, PHIL. DAILY NEWS, Aug. 8, 1997, at 3 (noting that streetfighters are cross-breeding in an attempt to get more aggressive characteristics and strength, such as mixes between Rottweilers and Shar-Peis).

professionals and hobbyists to accuse streetfighters of ruining the pit bull breed, arguing that indiscriminate breeding has resulted in human-aggressive dogs, which has turned the public against the pit bull.<sup>82</sup>

Streetfighters often use their dogs for more than fighting. Gangs initially gravitated toward fighting dogs—pit bulls in particular—because they not only served as protection (“four-legged guns”),<sup>83</sup> but also provided status: “You can’t walk down the street with your 9mm hanging out of your pants, but you can walk down the street with your two-time champion pit bull.”<sup>84</sup> Vicious or menacing dogs were also used as a way to protect illegal goods, such as drugs or weaponry. For example, drugs could be stashed in a dog’s collar or inside its kennel for protection from thieves or police.<sup>85</sup> This type of use has resulted in the destruction of a greater number of dogs during encounters with police officers.<sup>86</sup>

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<sup>82</sup> See, e.g., STAHLKUPPE, *supra* note 31, at 8-9, 13. Interestingly, one scholar notes that “[p]roblems with unstable pit bulls only began surfacing in the 1980s,” suggesting “something other than genetics—perhaps human influence—is at work.” Medlin, *supra* note 12, at 1295. This modification of the traditional pit bull might be attributable to the increased association of pit bulls and gangs because, according to one report, it was during that time period that pit bulls became popular with gangs. See Julie Sullivan, *Pit Bulls: A Popular Pariah*, OREGONIAN, Aug. 29, 2004, at A01.

Tales of pit bull attacks on humans, especially children, have resulted in some towns and cities banning the breed from their jurisdictions. See, e.g., Medlin, *supra* note 12, at 1290 (noting that as many as 200 counties in the United States and several large cities have banned pit bulls). This move for breed-specific legislation is vigorously disputed in many areas, and many jurisdictions have rejected the legislation because of constitutional issues, future enforcement problems, and objection from the community. See, e.g., Hussain, *supra* note 30, at 2859-68.

<sup>83</sup> Strat Douthat, *Pit Bulls Becoming the Weapon of Choice for Inner-City Gangs*, HOUS. CHRON., Nov. 13, 1994, at A9.

<sup>84</sup> Kathleen Parrish, *Dogfighting: Underground Epidemic Difficult to Stop: Forty Thousand in Nation Train Canines in Illegal Blood Sport, Police Hampered by Weak Laws*, MORNING CALL, May 14, 2006 (quoting John Goodwin of HSUS).

<sup>85</sup> See, e.g., Lynn Anderson, *Putting a Leash on Dogfighting in Underworld of Drugs and Violence, Pit Bulls Can Be as Menacing as Those Who Own Them*, BALT. SUN, Aug. 26, 2007, at 1A (noting that 45 tubes of cocaine were discovered inside a flashlight and kept near the dogs outside).

<sup>86</sup> See, e.g., Amanda Iacone, *Drug House Keepers Add Teeth, Dogs Deter Rival Dealers and Hinder Police, Officers Say*, FORT WAYNE J. GAZETTE, July 31, 2005, at 1C (stating that officers in Fort Wayne encounter dogs in at least two-thirds of police raids and that shooting aggressive dogs is more commonplace).

3. *Rise of the Streetfight*

Although dogfighting has a long history, streetfighting has been on the rise at least for the last twenty-five years.<sup>87</sup> Some argue that increased gang activity helped move dogfighting across the nation and into western urban areas that had not appeared to have dogfighting problems before.<sup>88</sup> Most major urban areas in the United States, of course, suffer from the activity. For example, dogfighting was so rampant in one Detroit neighborhood that postal service had to be temporarily suspended.<sup>89</sup>

According to one source, the popularity of pit bulls and other types of dogs used for fighting appeared to surge during the 1980s, when gangs “discovered dogfighting.”<sup>90</sup> The ferocity of dogfighting may be, in part, what draws gang members to the activity. As one law enforcement official has noted: “There is a marriage between dog fighting and gangs. Dog fighting is violent and that is what gangs like.”<sup>91</sup>

Some credit the hip-hop culture with the rise in streetfighting. They argue that the celebration of pit bulls by hip-hop performers has generated a greater interest not only in the breed, but also in dogfighting among the younger generation.<sup>92</sup> Many songs include reference to pit bulls or dogfighting. DMX, for example, is a well-known pit bull owner accused of glorifying the sport.<sup>93</sup> His compact disc “Grand Champ,” for example, contains numerous references to dogfighting and tells of the close relationship between the dogfighter

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<sup>87</sup> John Simerman, *Dogfighting Crosses Economic and Cultural Divisions*, ALAMEDA TIMES-STAR, Aug. 27, 2007.

<sup>88</sup> *See id.*

<sup>89</sup> Ben Schmitt, *Contests of Cruelty*, DETROIT FREE PRESS, Sept. 7, 2007 (noting that U.S. mail service was halted for almost two months because daytime dogfights occurred two to three times a week in the neighborhood).

<sup>90</sup> Sullivan, *supra* note 82, at A01.

<sup>91</sup> Agustina Guerrero, *Police Say Dogfights Becoming Gang Game, Bouts Increasing All Over Chicago*, CHI. TRIB., July 29, 2001, at 1 (quoting Chicago Police Sergeant Steve Brownstein).

<sup>92</sup> *See, e.g.,* Burke, *supra* note 41; Kevin Van Valkenburg, *Dogfight Fans Aren't So Easy to Categorize, Experts Say Interest Tends to Cross Lines of Race, Geography*, BALT. SUN, July 29, 2007, at 1D.

<sup>93</sup> *See, e.g.,* SMOKEY D. FONTAINE, E.A.R.L.: THE AUTOBIOGRAPHY OF DMX 167-71 (2002) (discussing how DMX would fight his dog, Boomer, against cats, raccoons, and other dogs).

and his dog.<sup>94</sup> Inserts within the disc case delineate the qualities of a “champion” fighting dog<sup>95</sup> and advertise “Game Dog Professional” dog food.<sup>96</sup>

Others, however, disagree that hip-hop is responsible for increasing interest in streetfighting. Assistant Professor of Urban Education at Temple University Dr. Marc Lamont Hill, for example, suggests that making superficial connections between dogfighting and the hip-hop culture “fails to recognize the larger truth.”<sup>97</sup> As Hill says:

The world “culture” is secret-agent talk for race in this country . . . . It allows people to mythologize poor people, black people, brown people without being labeled a racist. There’s not a culture of animal abuse in black America or Latino America. Mike Vick’s actions certainly don’t have anything to do with hip-hop culture. And in reality, hip-hop doesn’t show images of dogfighting that much. Even when DMX does, I still don’t think young people walk away after listening to his music and think about dogfighting. . . . But the reality of race relations in America is, one black person’s bad acts are paid for by the whole community, at least within the realm of the media.<sup>98</sup>

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<sup>94</sup> DMX, *Dog Intro*, on GRAND CHAMP (Def Jam 2003) (“I don’t really trust humans that much these days/\*\*\*\*, fact of the matter is, I trust dogs more than I trust humans/\*\*\*\*, nothin’ like that dog love I tell you/Not just any dog, gotta be a pit bull/Yep, that’s the only dog for me/You don’t wanna get caught in a pit with one a them boy/They make good companions, but even worse enemies/It’s all on how you take it.”). Other entertainers who have used pit bulls in their work include Missy Elliott, who features pit bulls on her CD “This Is Not a Test,” and Jay-Z, who features in his video “99 Problems” dogs in a pit with spectators nearby. See Burke, *supra* note 41.

<sup>95</sup> HSUS, *DMX’s Pit Bulls Seized*, Aug. 31, 2007, [http://www.hsus.org/acf/news/dmx\\_pit\\_bulls.html](http://www.hsus.org/acf/news/dmx_pit_bulls.html).

<sup>96</sup> See Van Valkenburg, *supra* note 92, at 1D.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* (quoting Dr. Marc Lamont Hill); see also Kathy Rudy, Op-Ed., *Michael Vick, Dog Fighting and Race*, Duke U. Office of News & Comm., Aug. 29, 2007, [http://www.dukenews.duke.edu/2007/08/vick\\_oped.html](http://www.dukenews.duke.edu/2007/08/vick_oped.html) (“I am not saying dog fighting is acceptable, but rather that Vick should be publicly criticized for that activity, not for his participation in hip-hop subculture. Whether or not dogs are fought more by minorities than white people is actually unknown, but the media representations of the last several weeks make it appear that black culture and dog fighting are inextricably intertwined. We need to find ways to condemn dog fighting without denigrating black culture with it.”).

Regardless of the reason, the increase in dogfighting at all levels has raised concern among legislators, resulting in more stringent prohibitions against the activity.

## B. *Criminalization*

Dogfighting is prohibited at both the federal and state levels. Although states began enacting statutes as early as the mid-nineteenth century,<sup>99</sup> it took the federal government more than a hundred years to take its first bite at regulation.

### 1. *Federal Legislation*

Federal criminalization of dogfighting is important because it provides a system that overlaps state programs, allowing federal charges to be brought in instances where state enforcement is inadequate or nonexistent or where state penalties are low. Federal regulation began in 1976 when Congress amended the Animal Welfare Act<sup>100</sup> to prohibit certain forms of animal fighting. These provisions have been amended twice, once in 2002<sup>101</sup> and most currently with the Animal Fighting Prohibition Enforcement Act of 2007.<sup>102</sup>

The statute works to eliminate animal fighting in several ways. Section 2156(a)(1) makes it unlawful “for any person to knowingly sponsor or exhibit an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce.”<sup>103</sup> The statute excludes cockfighting that is otherwise permitted under the law of the state in which the fight occurs, unless the person knows that the bird was knowingly made a part of interstate or foreign commerce in order to participate in the fighting venture.<sup>104</sup> The statute makes no

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<sup>99</sup> The ASPCA notes that its founder, Henry Bergh, wrote the first known animal fighting law in 1867 for New York. Although restrictions in Washington, D.C. and California can be traced back to 1892 and 1905, respectively, the ASPCA notes that most states enacted dogfighting laws in the 1980s. Dog Fighting FAQ, *supra* note 12.

<sup>100</sup> Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 421.

<sup>101</sup> Farm Security & Rural Investment Act of 2002, Pub. L. No. 107-171, tit. X, §§ 10302(a), 10303(a), 116 Stat. 491, 492.

<sup>102</sup> Pub. L. No. 110-22, § 3, 121 Stat. 88 (2007).

<sup>103</sup> 7 U.S.C. § 2156(a)(1) (2006).

<sup>104</sup> *Id.* § 2156(a)(2). This provision was necessary at one time when cockfighting was still legal in a number of states; however, all fifty states and the District of Columbia now have cockfighting statutes in place. Louisiana became the

exemption for dogfighting and defines “animal fighting venture” as “any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment,” but does not include activities in which hunting is the primary purpose.<sup>105</sup>

The statute also prohibits the knowing placement of a “dog or other animal” in interstate or foreign commerce if the purpose is to have the animal “participate in an animal fighting venture”<sup>106</sup> and prohibits using the mail or other “instrumentality of interstate commerce” for promoting such ventures.<sup>107</sup>

When originally enacted, penalty for violation of the provision was a misdemeanor, with violators subject to a maximum of one year imprisonment and a \$5000 fine.<sup>108</sup> Although the 2002 amendments increased the monetary penalty to \$15,000, the crime remained a misdemeanor.<sup>109</sup> In 2007, Congress made violation of the animal fighting venture provisions a felony, with imprisonment up to three years and a \$15,000 fine.<sup>110</sup>

The congressional purpose behind increasing the penalty to a felony was to give greater incentive to prosecute animal fighting cases because federal prosecutors had pursued relatively few. As the Committee Report for the 2007 Act indicates:

Since [1976,] Federal authorities have pursued fewer than a half dozen animal fighting cases, despite receiving numerous tips from informants and requests to assist with state and local prosecutions. The animal fighting industry continues to thrive within the United States, despite 50 State laws that ban dogfighting . . . . Numerous nationally circulated animal fighting magazines still promote these cruel practices, and advertise fighting animals and the

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last state to ban the activity when it enacted its cockfighting statute, effective August 2008. Russell McCulley, *Louisiana to Be Last State to Ban Cockfighting*, Reuters, June 28, 2007, <http://www.reuters.com/article/domesticNews/idUSN2729513120070628>. For a list of state cockfighting laws, see HSUS, *State Cockfighting Laws*, May 2009, [http://www.hsus.org/acf/fighting/cockfight/state\\_cockfighting\\_laws.html](http://www.hsus.org/acf/fighting/cockfight/state_cockfighting_laws.html).

<sup>105</sup> 7 U.S.C. § 2156(g) (2006).

<sup>106</sup> *Id.* § 2156(b).

<sup>107</sup> *Id.* § 2156(c).

<sup>108</sup> See Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 421.

<sup>109</sup> See Farm Security & Rural Investment Act of 2002, Pub. L. No. 107-171, tit. X, § 10303(a)(1), 116 Stat. 491, 492.

<sup>110</sup> See Animal Fighting Prohibition Enforcement Act of 2007, Pub. L. No. 110-22, § 3(3), 121 Stat. 88.

accouterments of animal fighting. There are also several active websites for animal fighting enthusiasts, and paid lobbyists advocating animal fighters' interests.

. . . . By increasing penalties to the felony level, H.R. 137 will give prosecutors greater incentive to pursue cases against unlawful animal fighting ventures, and strengthen deterrence against them.<sup>111</sup>

The felony measure passed with a large majority—368 members in the House and unanimous in the Senate.<sup>112</sup> It was also supported by over 400 law enforcement agencies, as well as numerous animal welfare groups and even the poultry industry.<sup>113</sup> Not everyone was interested in raising the penalties, however, believing that dogfighting prosecution should be left to the state. Lynn Westmoreland, United States Representative from Georgia, for example, stated in an editorial that he believes federal authority in general should be decreased: "This [dogfighting] issue provides a good example. We don't need greater federal intervention on dogfighting when it's already illegal in all 50 states. Leaving the issue to the states allows each legislature to determine how it wishes to punish violators of its animal fighting laws."<sup>114</sup> United States Representative Scott Garrett from New Jersey agreed; he further argued that federal dollars should be used to pursue crimes requiring federal resources and not duplicate state criminal laws.<sup>115</sup>

Since enactment of the Animal Fighting Prohibition Enforcement Act, several additional bills have been introduced into Congress aimed specifically at dogfighting ventures. These bills would increase the reach of the interstate and foreign commerce provisions to not just the

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<sup>111</sup> H.R. REP. NO. 110-27(I), at 2 (2007), reprinted in 2007 U.S.C.C.A.N. 37, 38.

<sup>112</sup> See Michael Markarian, Op-Ed., *Putting More Bite into Animal-Cruelty Legislation*, N.J. RECORD, Aug. 29, 2007, at L09.

<sup>113</sup> *Id.*

<sup>114</sup> Lynn Westmoreland, Editorial, *Dogfighting Penalty Best Handled by States*, ATLANTA J.-CONST., at A15.

<sup>115</sup> Scott Garrett, Editorial, *Why I Voted Against the Federal Dog-Fighting Law*, N.J. RECORD, Sept. 4, 2007, at L07 ("My vote was to stop federal law enforcement from further creeping into state criminal statutes. Regrettably, with each passing year, Congress seems to expand the reach of federal law, overlapping significantly with state law in ways that diminish our ability to marshal federal resources to fight criminal activity. When we allow federal law enforcement to pursue federal crimes and state law enforcement to pursue state crimes, we can take a bigger bite out of crime overall.").

transported animal, but also the animal's offspring, would increase the penalty to five years imprisonment, and would, like state statutes, impose penalties against spectators who attend the event.<sup>116</sup> In addition, one bill would also extend the ban on the use of the Postal Service to uses that "in any manner further" the prohibited venture, and would create supplemental avenues for prosecution by animal welfare agencies.<sup>117</sup>

## 2. State Legislation

State legislation regarding dogfighting takes a number of forms. The most common prohibitions include those against the dogfighting act itself, possessing dogs owned for fighting, and being a spectator at a dogfight. As discussed further below, however, inconsistencies between the statutes show the need for an overlapping federal program and improvements in state systems.

All fifty states have enacted legislation prohibiting the fighting of dogs in some form or fashion.<sup>118</sup> Currently, all fifty states have elevated dogfighting to the felony level.<sup>119</sup> Penalties for violation of the provisions range from as little as four to eight months in North Carolina<sup>120</sup> to as much as ten years in Alabama, Louisiana, and

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<sup>116</sup> See Federal Dog Protection Act, H.R. 3327, 110th Cong. § 2 (2007); Dog Fighting Prohibition Act, H.R. 3219, 110th Cong. § 2 (2007).

<sup>117</sup> See Federal Dog Protection Act, H.R. 3327, 110th Cong. § 2 (2007). The extension of the ban on the use of the mails would, for example, cover dogfighting paraphernalia (e.g., training tools, videos, and magazines).

<sup>118</sup> Note, however, that criminalization of dogfighting—that is, fighting between one or more dogs—does not mean that other activities involving a fighting dog are prohibited. For example, some states still allow fights between dogs and feral hogs, although several states have moved to ban this type of activity. See Mark Davis, *Hog-Dog Events Stir Controversy*, ATLANTA J.-CONST., July 30, 2006, at C1 (noting that all Southern states, except Georgia, have banned hog-dog fighting).

<sup>119</sup> See HSUS, *Fact Sheet: Dogfighting State Laws*, Sept. 2009, [http://www.hsus.org/acf/fighting/dogfight/ranking\\_state\\_dogfighting\\_laws.html](http://www.hsus.org/acf/fighting/dogfight/ranking_state_dogfighting_laws.html) (hereinafter *Ranking of State Dogfighting Laws*) (comparing the penalties of the dogfighting laws of each state).

<sup>120</sup> N.C. GEN. STAT. §§ 14-362.2, 15A-1340.17(c) (2006).



Oklahoma.<sup>121</sup> Maximum fines range as high as \$100,000 in Kansas, \$125,000 in Oregon, and \$150,000 in Arizona.<sup>122</sup>

Possession of fighting dogs is also illegal in all fifty states, with forty-six of them considering the crime a felony. The remaining states limit possession to a misdemeanor.<sup>123</sup> Penalties for violation of the felony provisions are equivalent to the penalties that can be assessed for the act of dogfighting. Misdemeanor penalties range from six months to one year imprisonment and fines range from \$300 to \$15,000.<sup>124</sup>

Spectator provisions have been enacted in all but two states—Hawaii and Montana.<sup>125</sup> Compared to the dogfighting or possession crimes, spectators are generally penalized at a lesser level. Twenty-eight jurisdictions (including the District of Columbia) consider the crime to be a felony on first conviction<sup>126</sup> or elevate the crime to a felony

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<sup>121</sup> See ALA. CODE §§ 3-1-29(a)-(b), 13A-5-6 (2005); LA. REV. STAT. ANN. § 14:102.5(A)(1), (C) (2004); OKLA. STAT. ANN. tit. 21, § 1694, 1699.1(A) (West 2002). Note, however, that the penalties in each of these states range from one to ten years. Most states provide for a maximum of five years. See *Ranking of State Dogfighting Laws*, *supra* note 119.

<sup>122</sup> See ARIZ. REV. STAT. ANN. §§ 13-801(A), 13-2910.01(B) (2001); KAN. STAT. ANN. §§ 21-4315, 21-4503a(a)(3) (1995); OR. REV. STAT. ANN. §§ 161.625(1)(d), 167.365(2) (West 2005).

<sup>123</sup> Possession of fighting dogs is a misdemeanor in New York, Texas, and West Virginia. N.Y. AGRIC. & MKTS. LAW § 351(3) (McKinney Supp. 2007); TEX. PENAL CODE ANN. § 42.10(a)(5), (e) (Vernon 2003); W. VA. CODE ANN. § 61-8-19(a) (Lexis Nexis 2005); see also 2009 Nevada Assembly Bill No. 199, 75th Reg. Sess. (May 22, 2009) (adding NEV. REV. STAT. ANN. § 574.070(2), which makes possession of a fighting dog a felony only upon conviction of a second or subsequent offense).

<sup>124</sup> See N.Y. AG. & MKTS. LAW § 351(3) (McKinney Supp. 2007) (one year and \$15,000); W. VA. CODE ANN. § 61-8-19(a) (Lexis Nexis 2005) (six months and \$300).

<sup>125</sup> See *Ranking of State Dogfighting Laws*, *supra* note 119. Bills to create spectator provisions were introduced in the 2009 legislative session for both Hawaii and Montana, but none were passed before the close of the regular sessions. See H.B. 730/S.B. 763, 25th Leg. Reg. Sess. (Haw. 2009); H.B. 349, 61st Leg., Reg. Sess. (Mont. 2009). Spectator provisions in animal fighting statutes in a number of states have been upheld despite constitutional attack. See, e.g., *Gonzalez v. State*, 941 So.2d 1226 (Fla. App. 2006); *People v. Cumper*, 268 N.W.2d 696 (Mich. 1978); *State v. Arnold*, 557 S.E.2d 119 (N.C. App. 2001); *Commonwealth v. Craven*, 817 A.2d 451 (Pa. 2003); *State v. Tabor*, 678 S.W.2d 45 (Tenn. 1984).

<sup>126</sup> See ALA. CODE § 3-1-29(b) (1996); ARIZ. REV. STAT. ANN. § 13-2910.02 (2001); COLO. REV. STAT. ANN. § 18-9-204(1)(b)(I), (2) (West 2004); CONN. GEN. STAT. ANN. § 53-247(c) (West 2007); DEL. CODE ANN. tit. 11, § 1326(b) (2001); D.C. CODE § 22-1015(b) (Supp. 2007); FLA. STAT. ANN. § 828.122(3)(h) (2006); GA. CODE ANN. § 16-12-37(c) (2007); LA. REV. STAT. ANN. § 14:102.5(A)(6), (C) (2004); MASS. GEN. LAWS ANN. ch. 272, § 95 (West Supp. 2007); MICH. COMP. LAWS ANN. § 750.49(2)(f), (4) (West

upon subsequent conviction.<sup>127</sup> Twenty-one states continue to classify it as a misdemeanor.<sup>128</sup> Penalties vary and run as low as a mere \$500 fine with no jail time in Alaska for a first offense.<sup>129</sup>

## II. Obstacles to Enforcement

Unfortunately, despite the proliferation of laws that criminalize dogfighting activity, prosecution of dogfighters is relatively rare in most jurisdictions, and where prosecution does occur, imposed penalties are insignificant.<sup>130</sup> The rarity of prosecution comes as no surprise, though, because prosecution rates of cases involving animal

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Supp. 2007); MISS. CODE ANN. § 97-41-19(2) (2006); NEB. REV. STAT. § 28-1005(3) (2003); N.H. STAT. ANN. § 644:8-a(II) (West 2007); N.J. STAT. ANN. § 4:22-24(b) (West 1998); N.M. STAT. § 30-18-9(A)(1), (C) (2004); N.C. GEN. STAT. § 14-362.2(c) (Supp. 2006); OHIO REV. CODE ANN. §§ 959.16(A)(5)-(6), 959.99(H) (Lexis 1988); OR. REV. STAT. ANN. § 167.370 (2005); 18 PA. CONS. STAT. § 5511(h.1)(6) (West Supp. 2007); R.I. GEN. LAWS. § 4-1-11 (1998); VT. STAT. ANN. tit. 13, §§ 352(6), 353(a)(3) (1998); VA. CODE ANN. § 3.2-6571(A)(2), (B)(1) (Supp. 2007); WASH. REV. CODE ANN. § 16.52.117(1)(b), (2) (West Supp. 2007).

<sup>127</sup> See 720 ILL. COMP. STAT. ANN. § 5/26-5(g), (i)(3) (West Supp. 2007) (second offense); IOWA CODE ANN. §§ 717D.2(10), 717D.4(2) (West Supp. 2007) (second offense); NEV. REV. STAT. ANN. § 574.070(2), (4) (West 2004) (third offense); S.C. CODE ANN. § 16-27-40(b) (2003) (third offense).

<sup>128</sup> See ALASKA STAT. § 11.61.145(a)(3), (d)(2) (2006); ARK. CODE ANN. § 5-62-120(b) (2005); CAL. PENAL CODE § 597.5(b) (West 1999); IND. CODE ANN. § 35-46-3-10 (West 2004); KAN. STAT. ANN. § 21-4315(c) (1995); KY. REV. STAT. ANN. § 525.130(1)(a), (4) (Lexis Nexis 1999); ME. REV. STAT. ANN. tit. 17, § 1033(2)-(2-A) (2006); MD. CODE ANN., CRIM. LAW § 10-605(a), (c)(1) (Lexis Nexis Supp. 2006); MINN. STAT. ANN. § 343.31, subd. 1 (West Supp. 2007); MO. ANN. STAT. § 578.025(2) (West 2003); N.Y. AGRIC. & MKTS. LAW § 351(4) (McKinney Supp. 2007); N.D. CENT. CODE. § 36-21.1-07(2) (2004); OKLA. STAT. ANN. tit. 21, § 1698 (West 2002); S.D. CODIFIED LAWS § 40-1-9 (2004); TENN. CODE ANN. § 39-14-203(a)(4), (d) (2006); TEX. PENAL CODE ANN. § 42.10(a)(6), (e) (Vernon 2003); UTAH CODE ANN. § 76-9-301.1(4) (2003); W. VA. CODE ANN. § 61-8-19b (Lexis Nexis 2005); WIS. STAT. ANN. § 951.08(3) (West 2005); WYO. STAT. ANN. § 6-3-203(g) (2007).

<sup>129</sup> See ALASKA STAT. §§ 11.61.145(a)(3), (d)(2), 12.55.035(b)(7) (2006).

<sup>130</sup> See, e.g., Joey Bunch, *Prosecution of Dogfighting Cases Is Kept on Short Leash Despite the Blood Sport's Suspected Popularity in the West*, DENVER POST, July 30, 2007, at B01 (reporting that "dogfighting cases are time-consuming and expensive, and tend to slip down the priority list because the cases rarely result in punishment that would deter the activity"); Jack Leonard, *Putting the Hurt on Pet Abusers*, L.A. TIMES, Feb. 8, 2009, at A1 (reporting that the defendant spent only one day in jail for his first dogfighting conviction, spent twenty-three days for his second conviction, and was sentenced to five years on his third conviction).

cruelty in general tend to be low.<sup>131</sup> Indeed, studies have shown a marked disproportion between the number of reports of animal cruelty and the number of prosecutions that result.<sup>132</sup> With regard to dogfighting, reasons for the low prosecution rate include differences in the values people place on prosecution, the costs involved in investigating cases, and the difficulties of proving the criminal violations.

#### A. *Differing Value of Prosecutorial Worth*

One reason that prosecution is rare is that law enforcement officials face biases of various individuals regarding the worth of prosecution, even though the United States population as a whole views enforcement of cruelty laws as a priority.<sup>133</sup> Despite statutory provisions to the contrary, not all people view dogfighting as a crime worthy of prosecution or steep penalties. These biases occur at all levels—from legislators to the laypeople—and have an impact on how seriously law enforcement takes its duties.

##### 1. *By Legislatures*

Differences in how states value the prosecution of dogfighting cases are evident in two ways. First, the fact that states are inconsistent in classifying and penalizing dogfighting activity shows that legislators and their constituents differ in how reprehensible they consider the act

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<sup>131</sup> Prosecution rates of animal cruelty and other crimes may be rising, however, in jurisdictions where such cases are assigned to permanent animal cruelty prosecutors rather than to prosecutors on a rotating basis. See Allie Phillips, *The Few and the Proud: Prosecutors Who Vigorously Pursue Animal Cruelty Cases*, PROSECUTOR, July-Sept. 2008, at 20; see also *infra* note 332 and accompanying text (recommending designation of dedicated animal cruelty prosecutors).

<sup>132</sup> See Jennifer H. Rackstraw, *Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Crimes*, 9 ANIMAL L. 243, 246 (2003) (describing various studies showing a prosecution rate of three percent or less); see also Arnold Arluke & Carter Luke, *Physical Cruelty Toward Animals in Massachusetts, 1975-1996*, 5 SOC'Y & ANIMALS 195, 200 (1997) (examining cases investigated over a 21-year period by the Massachusetts Society for the Prevention of Cruelty to Animals and finding that only 0.3 percent of the cases investigated were prosecuted).

<sup>133</sup> See AM. PROSECUTORS RES. INST., OFF. OF JUV. JUST. & DELINQ. PROTECTION, ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE 9 (2006), available at <http://ricp.uis.edu/ASPCA/AnimalCrueltyProsecutionAPRI.pdf> (noting that 67% of 1,031 representative households asked “how important is it to you that animals are protected from cruelty and abuse” responded “very important”).

to be. Even between those states that agree that dogfighting should be a certain category (felony or misdemeanor), criminal sanctions for the activity differ,<sup>134</sup> which shows a different value for the crime.

Second, the way individual legislators vote when enacting statutes shows that the legislators (or their constituents) consider the crime to be of differing importance. For example, Congressman Steve King of Iowa voted against the recent upgrades to the federal dogfighting provisions because he believed that the activity should not be criminalized while abortion is still allowed. As he stated, “My vote says that human life needs to be elevated and stay above animal life. And I think it devalues all human life, when you set the life of an animal up above that of a human.”<sup>135</sup>

The differences in value are more understandable when one considers the legal treatment of animals as property.<sup>136</sup> Although some statutes and courts allow compensation for companion animal loss to include such things as emotional distress,<sup>137</sup> most states still allow compensation only for the value of the animal as determined by the market.<sup>138</sup> The low value placed on animals in this context may negatively impact people’s views about how severe criminal punishment should be for dogfighting or for animal cruelty laws in general.

## 2. *By Law Enforcement*

Inconsistency in views on the seriousness of dogfighting is also evident among those who enforce the laws. Police, prosecutors, and judges may each consider the crime to be of differing value, which affects whether or how well the crime is investigated and prosecuted

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<sup>134</sup> See *supra* text accompanying notes 118-129.

<sup>135</sup> Mann, *supra* note 13 (quoting Rep. Steve King).

<sup>136</sup> For a discussion of the view that animals are property, see generally Elizabeth L. DeCoux, *Pretenders to the Throne: A First Amendment Analysis of the Property Status of Animals*, 18 FORDHAM ENVTL. L. REV. 185 (2007); Darian M. Ibrahim, *A Return to Descartes: Property, Profit, and the Corporate Ownership of Animals*, 70 LAW & CONTEMP. PROBS. 89 (2007).

<sup>137</sup> See Rebecca J. Huss, *Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQ. L. REV. 47, 93-97 (2002).

<sup>138</sup> See Kara Gerwin, *There’s (Almost) No Place Like Home: Kansas Remains in the Minority on Protecting Animals from Cruelty*, 15 KAN. J.L. & PUB. POL’Y 125, 130 (2005) (indicating that, in valuing loss, jurors may consider the purchase price of the animal, life expectancy, special training, veterinary expenses, and, in the case of show animals, future earnings).

and how harshly the offender will be punished.<sup>139</sup> For example, should a law enforcement officer or prosecutor perceive dogfighting to be of little value to pursue in comparison to his other cases, prosecution against a dogfighter may be given a low priority.<sup>140</sup> Similarly, should a judge or jury consider the crime to be less egregious than other crimes, penalties dispensed may be minimal regardless of how intensely the case had been pursued by police or prosecutors.<sup>141</sup>

Lesser intensity in pursuing prosecution may also occur if law enforcement personnel participate in the sport. Dogfighting, of course,

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<sup>139</sup> See *id.* at 129 (discussing the inconsistency of law enforcement in relation to animal abuse laws); Rackstraw, *supra* note 132, at 249-50 (analyzing the prosecutorial process and noting how the thoroughness of investigation will impact whether prosecution is pursued); see also Loh Harrist, *supra* note 20 (indicating that at least one animal activist in New Orleans “thinks the cops don’t take dogfighting seriously”).

<sup>140</sup> See Gerwin, *supra* note 138, at 129; Corwin R. Kruse, *Baby Steps: Minnesota Raises Certain Forms of Animal Cruelty to Felony Status*, 28 WM. MITCHELL L. REV. 1649, 1678 (2002); Rackstraw, *supra* note 132, at 250-51; see also George Dohrmann, *Complex Case: Answering Questions about Vick, Alleged Dogfighting*, SI.com, May 31, 2007, <http://sportsillustrated.cnn.com/2007/football/nfl/05/31/vick/index.html> (noting how prosecutors might be influenced by politics and explaining how the state prosecutor for the Vick case had previously chosen not to prosecute a defendant, even though the investigation ran for months, animal control had seized thirty-three dogs and a variety of training equipment from the suspect, and animal control officials indicated that the suspect was a “well-known dogfighter”). In addition to a perceived lower value to prosecuting animal crimes, according to one scholar, other rationalizations for the low prosecutorial rate for animal abuse include:

- 1) the fact that legislative “overcriminalization” makes certain actions criminal, in contrast to modern societal tolerances; 2) the belief that discretion is necessary to best utilize limited public resources; 3) the perceived need to individualize justice for particular perpetrators; 4) the fact that a victim has expressed a desire that the perpetrator not be prosecuted; 5) the desire to not unduly harm an individual or her reputation for various inconsequential crimes; 6) the fact that an offender could help with the prosecution of another crime; and 7) the fact that the harm resulting from the crime can be corrected by the offender without resorting to prosecution.

Rackstraw, *supra* note 132, at 250 (citations omitted). Because of the low prosecutorial rate, some scholars advocate the use of self-help prosecution, in which citizens draw attention to the lack of prosecution in a particular case to force prosecution. See, e.g., *id.* at 245; see also Gerwin, *supra* note 138, at 129-30.

<sup>141</sup> See Gerwin, *supra* note 138, at 130-31 (arguing that some jurors may issue low animal abuse penalties because animals are considered property under the law); Kruse, *supra* note 140, at 1679 (suggesting that judges in rural areas seem “especially prone” to lack concern for animal abuse issues because “hunting, trapping, and home slaughtering” are so common).

is not limited to any demographic, with participants noted in many segments of society, and it is not unknown for law enforcement officials to engage in the activity.<sup>142</sup> (Remember, the Cajun Rules were created by a Louisiana police chief, after all.<sup>143</sup>) Thus, some dogfighting may escape unpunished as any officers that might be involved serve as a warning system for the group<sup>144</sup> or turn a blind eye to the activity.<sup>145</sup>

Enforcement of dogfighting laws is also problematic because of confusion over enforcement authority. In many cities, animal issues are handled by understaffed and underfunded animal control departments<sup>146</sup> whose officers have little or no law enforcement authority and may be armed with little more than catch poles.<sup>147</sup> Yet, as one animal control officer explained, police involvement in dogfighting investigations is essential because “animal control officers do not carry guns or wear bulletproof vests” and police surveillance of suspects is required.<sup>148</sup> Part of the problem is that some police officers do not see dogfighting as falling within the realm of traditional policing; instead,

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<sup>142</sup> See, e.g., Frias, *supra* note 9 (indicating that two Palm Beach County Sheriff's deputies were arrested at a dogfight and were later found discarding a dying pit bull); Bill McKelway, *Deputy in Dog Fighting Case Fired: Richmond Sheriff's Employee Dismissed After Probe Findings*, RICHMOND TIMES-DISPATCH, Apr. 30, 2009, at B06 (reporting the dismissal of a deputy sheriff after he was charged with animal cruelty and dogfighting); *Six Arrested in N.O. for Dog Fighting*, BATON ROUGE ADVOC., Feb. 18, 2004, at 5 (hereinafter *Six Arrested*) (noting that a sheriff's deputy was suspended without pay and arrested along with six other people for dogfighting).

<sup>143</sup> See *supra* text accompanying note 39.

<sup>144</sup> See Loh Harrist, *supra* note 20 (“These days, dogfighters will tell you it's no big deal to see off-duty police officers and sheriff's deputies at illicit dogfights—a presence that's welcome since they can warn the crowd of approaching cops or possible raids. Some dogfighters rattle off the names of top state and city politicians they claim to have seen at dogfights.”); *Six Arrested*, *supra* note 142 (noting that a sheriff's deputy told others to flee the scene as police officers arrived at a dogfight).

<sup>145</sup> Brett Nauman, *Trained to Kill: Animal Cruelty Investigators Say More Dogs Forced into Blood Sport of Fighting*, PANTAGRAPH, July 6, 2006, at A1 (noting that a cruelty investigator in the Chicago area indicated that he has “often run into county sheriffs who don't consider dog fighting a crime and look the other way”).

<sup>146</sup> See Randall Lockwood, *Humane Concerns about Dangerous-Dog Laws*, 13 U. DAYTON L. REV. 267, 271 (1988); Hussain, *supra* note 30, at 2875.

<sup>147</sup> See Liz Austin Peterson, *Animal Control Urges Law Change*, HOUS. CHRON., July 30, 2008, at B1; Aline McKenzie, *Never Straying from Duty*, DALLAS MORNING NEWS, Oct. 7, 1998, at 1A.

<sup>148</sup> Kevin Krause & Mel Melendez, *Dog Fights Drawing Deputies' Attention, South Florida Authorities Are Talking About Joining Forces to Build Cases on Fights, Drugs and Guns*, STUART NEWS, Oct. 9, 2000, at A1.

they consider the crime to be an issue of animal control.<sup>149</sup> Therefore, responses to reports of dogfighting are often ineffective, with suspects and evidence disappearing if police response is not immediate.

In those situations where police do respond, inexperience with investigating dogfighting, or even cruelty cases in general, may lessen the probability of successful prosecution. Officers untrained in recognizing dogfighting paraphernalia, for example, may not understand the significance of treadmills or weighted collars or might overlook a telling trophy.<sup>150</sup> Similarly, where an investigator is unfamiliar with processing an animal cruelty scene, the value of certain physical evidence might be overlooked or misunderstood. As ASPCA forensic veterinarian Dr. Melinda Merck explains: "Evidence associated with any crime has to be analyzed and interpreted in the proper context. In order to properly identify evidence, analyze it and interpret the findings, you have to know animals and animal behavior."<sup>151</sup>

Inexperience with prosecuting dogfighting cases can also lead to unfavorable or inconsistent results. Generally, animal cruelty cases are distributed in a prosecutor's office as they come in, often to the newest lawyers to join the team. This leads to a situation where attorneys with the least experience are asked to present cases for which statutory or evidentiary subtleties may not be understood or where the importance of prosecution for the social good is ignored. Because of the lack of oversight, consistency may be lost, with some cases pursued vigorously and others pursued not at all.<sup>152</sup> Further, the lack of a consistently assigned prosecutor means that neither animal control nor law enforcement officers have a regular contact with whom they can build a relationship; therefore, they may be less likely to take on longer-term investigations such as those required to prosecute hobbyist and professional dogfighters. Rather than taking a proactive approach to enforcing dogfighting laws and reducing the activity, they are left to be reactive, responding to the chance report or fortuitous tip that the activity might be occurring.

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<sup>149</sup> See Gerwin, *supra* note 138, at 129; Hohmann, *supra* note 18.

<sup>150</sup> Cf. Pet-Abuse.com, *Dog-fighting – 3 Dogs Seized; Case Updates*, Aug. 13, 2007, <http://www.pet-abuse.com/cases/11986/MI/US/RSS/> (reporting recovery of a three-foot-high trophy inscribed "The Gamest of Show" as evidence in a dogfighting case).

<sup>151</sup> ASPCA, *Dr. Melinda Merck, ASPCA Forensic Veterinarian*, <http://www.asPCA.org/fight-animal-cruelty/animal-csi/dr-melinda-merck-asPCA.html> (last visited Jan. 10, 2010).

<sup>152</sup> See Gerwin, *supra* note 138, at 129.

## B. *Investigative and Prosecutorial Costs*

The cost of investigating and prosecuting dogfighting cases also hinders prosecution. Dogfighting often receives a low priority because of the sheer number of criminal cases that police and prosecutors face on a daily basis. Crimes against humans in most circumstances are ranked higher than crimes against animals.<sup>153</sup> Therefore, dogfighting investigation may be left solely to animal welfare organizations which often have little money for and lack the capacity to do an investigation adequate for prosecutorial purposes.<sup>154</sup>

Second, the cost of investigating dogfighting is often greater than the cost of investigating other types of crimes because of the secretive nature of the activity and the difficulty in proving that the act has occurred.<sup>155</sup> Thus, more time may be involved in infiltrating a dogfighting ring, meeting with potential witnesses, or collecting other evidence.

Even more costly, though, is the housing and feeding requirements for the dogs that have been confiscated. In many cases, housing requirements are prohibitively high because the dogs must be caged separately to avoid having them fight each other.<sup>156</sup> Animal shelters, already overwhelmed with strays and other animals, are forced to take many of the dogs even though they may not have the money or space to do so.<sup>157</sup> Although numerous jurisdictions allow confiscated animals to be euthanized in certain circumstances, a hearing is generally required in order to fulfill the dog owner's due

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<sup>153</sup> *See id.*

<sup>154</sup> *See id.*

<sup>155</sup> *Cf. Amos, supra note 79* (discussing the costs and limitations that local agencies encounter when investigating dogfighting).

<sup>156</sup> *See, e.g., Rex Bowman, Agents Say Site Was Pit Bull "Boot Camp," RICHMOND TIMES-DISPATCH, Apr. 13, 2000, at B1* (noting a sheriff's concern that ninety different cages would be required if the pit bulls were taken from the location at which they were found). Some shelters have created a type of security kennel, which secures dangerous dogs from the regular dog population. *See, e.g., Dana DiFilippo, S Kennel: Danger Zone, Illegal Dogfighting in Phila. Leads to Heightened Security at PSPCA in Juniata, PHILA. DAILY NEWS, Oct. 1, 2007, at 7.*

<sup>157</sup> *See, e.g., DiFilippo, supra note 156, at 7* (noting that, in 2006, of the almost 9,000 dogs that were taken in by one of Philadelphia's animal shelters, 60% were pit bull mixes and 4,700 were euthanized).



process rights, and the dogs must be housed and maintained until that time.<sup>158</sup>

The costs that shelters incur when holding fighting dogs can mount up. Veterinary costs may jump when a dogfighter's hoard of dogs is discovered, as many of the animals that come in require treatment for wounds or infections. Dogs confiscated from streetfighters often must be treated for parasites or for gastric problems relating to stress and "training" foods,<sup>159</sup> and veterinarians routinely must repair the problems caused by the at-home care provided by untrained and unskilled dogmen.<sup>160</sup> In addition, shelters face costs caused by the dogs themselves as they destroy property deemed indestructible to other dogs, such as metal bowls, watering mechanisms, fencing, or even the kennel walls themselves.<sup>161</sup>

Further costs may be incurred from addressing security issues that plague shelters housing fighting dogs. Dogs with game, of course, are highly valued, and shelters face burglaries as owners (or others who know of the confiscation) attempt to recover the dogs.<sup>162</sup> Such costs might include repair of fencing, kennels, and other shelter property damaged during break-ins, relocation costs for dogs moved to more secure premises, and costs of round-the-clock security when they are not.<sup>163</sup>

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<sup>158</sup> See, e.g., COLO. REV. STAT. ANN. § 18-9-202.5(1)(a) (West 2004); FLA. STAT. ANN. § 828.122(6) (2006).

<sup>159</sup> Professional dogmen tend to provide basic veterinary care to their animals to protect their investment, so dogs reflecting poor general health (notwithstanding injuries) generally come from streetfighting backgrounds. See Carrie Allan, *Dog Fighting Investigations: Where We Stand*, ANIMAL SHELTERING, July-Aug. 2006, at 20, 33, available at [http://www.animalsheltering.org/publications/magazine/back\\_issues/asm\\_jul\\_Aug06\\_pp1\\_37.pdf](http://www.animalsheltering.org/publications/magazine/back_issues/asm_jul_Aug06_pp1_37.pdf). Although unsubstantiated, some dogfighters have also been rumored to feed their dogs gunpowder to increase their viciousness. See, e.g., Leonard Doyle, *Fighting Dogs Taken from Gridiron Star's Kennels Face Death*, U.K. INDEP., Aug. 24, 2007 (alleging that urban pit bull owners "turn the animals vicious by whipping them, burning them with cigarettes and putting gunpowder and jalapeno in their food"); Tom Droege, *Canine Controversy: Breed Lovers Want to Keep Pets*, TULSA WORLD, Feb. 12, 2006, at A1.

<sup>160</sup> See Allan, *supra* note 159, at 34.

<sup>161</sup> *Id.* To relieve the fighting dogs' boredom, some shelters have provided them indestructible toys for enrichment, such as bowling balls and kibble frozen inside blocks of ice. See HSUS, *Fighting Takes Toll on Shelters*, July 24, 2007, [http://www.hsus.org/acf/news/fighting\\_takes\\_toll\\_on\\_shelters.html](http://www.hsus.org/acf/news/fighting_takes_toll_on_shelters.html).

<sup>162</sup> See Karen Snelling, *Pit Bulls Relocated After Break-In Try*, MERRILLVILLE POST-TRIB., June 11, 2006, at A1.

<sup>163</sup> See *id.*

### C. *Proof Problems*

In addition to the difficulties created by biases and costs, actually proving the violation of dogfighting statutes makes prosecution difficult. Several factors hinder investigation: the secrecy surrounding professional dogfights, the spontaneity of streetfights, unwilling witnesses, and forced reliance on circumstantial evidence.

#### 1. *Secrecy of Dogmen*

One of the greatest hurdles that law enforcement faces with regard to enforcing dogfighting provisions is locating the illegal activity. Although most dogfighters tend to be secretive because of the nature of the activity, professional dogmen take that secrecy to a higher level. Strangers to the group are viewed with suspicion and even information given to insiders is provided on a need-to-know basis. While dogmen usually agree to a fight two to three months before the scheduled fight day, the location of the fight is hidden from spectators until mere hours before.<sup>164</sup> At an appointed time, participants and spectators meet at a designated spot and then leave for the fight location at different times so as not to arouse suspicion.<sup>165</sup> Sometimes, to ensure secrecy, spectators are taken to two or three different pre-fight locations before eventually arriving at the true location, usually deep in a rural area,<sup>166</sup> other times, they may be bused to the location, giving up their car keys and cell phones to join the group.<sup>167</sup> Once there, posted lookouts notify the crowd of pending raids a few minutes before they occur, often resulting in police arresting only a few as the others disperse into the night.<sup>168</sup> Because of this secrecy, arrests of professional dogmen are difficult and cost-prohibitive, and it may take months or years to infiltrate an organization to build a case.

#### 2. *Spontaneity of Streetfights*

Streetfights are even more difficult to detect, not because of any particular pains that the streetfighter takes to hide the fight, but because of the spontaneity of the activity. Although some fights may be scheduled, many streetfights occur when two owners meet by chance

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<sup>164</sup> See Evans & Forsyth, *supra* note 26, at 59.

<sup>165</sup> See *id.*

<sup>166</sup> See DiFilippo, *supra* note 156, at 7.

<sup>167</sup> Dohrmann, *supra* note 16, at 44.

<sup>168</sup> See Nauman, *supra* note 145.

and decide to match their dogs. In these circumstances, detection generally occurs only when a law enforcement officer inadvertently discovers the activity or when neighbors report it.<sup>169</sup> However, even if an officer finds a dogfight in progress, the officer may be unable to arrest more than one or two people, if that, because the participants and spectators quickly flee once the officer is sighted. In addition, because of the potential for violence, animal control officers may be unwilling to enter the scene, thereby frustrating arrests if all participants have dispersed by the time police arrive.<sup>170</sup>

Because catching any level of dogfighters or spectators in the act is difficult, prosecutors must seek a willing witness or base their case on circumstantial evidence, such as training equipment discovered at the location. However, as discussed below, these options are also difficult.

### 3. *Unwilling Witnesses*

Even though there are usually several witnesses to dogfighting activity, garnering one willing to testify for, or even talk to, the prosecution is difficult. Those who watched the fight, for example, may be unwilling to step forward because of potential prosecution as a spectator, retribution by fellow lawbreakers, or merely a sense of honor among thieves. Neighbors who see a fight occurring or who know of a fight location may also keep quiet because they are intimidated by the participants and fear retaliation.<sup>171</sup> As one officer noted, this fear may not be unfounded: “Most [dogfighters] are not friendly people. . . . Eighty percent of the people I’ve dealt with have gone on to bigger and better crimes.”<sup>172</sup> Regardless of whether the fear is justified,<sup>173</sup> fear of

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<sup>169</sup> See Nesbitt, *supra* note 78; Steve Rock, *Dog Fighting: Is Increase in Pit Bull Bites Linked to a Rise in Fights?*, KANSAS CITY STAR, July 16, 2006; Ishmael Tate, *Dogfights Persist Despite Crackdown*, COLUMBIA STATE, July 20, 2007, at A9.

<sup>170</sup> Cf. Nesbitt, *supra* note 78 (stating that hunting streetfighters is “hazardous duty” for unarmed animal control officers and noting that one officer was threatened with a box cutter, another with a golf club, and many had been “cussed out and threatened”).

<sup>171</sup> Bryan Denson & David Austin, *Brutal Pit Bull Fighting Persists Even in Dog-Friendly Oregon*, OREGONIAN, Aug. 19, 2007, at C01; Alan Judd, *Dogfighting in Georgia: A Blood Sport Raid Focuses Spotlight on Dark, Gory Tradition*, ATLANTA J.-CONST., Dec. 19, 1999, at D7.

<sup>172</sup> Judd, *supra* note 171 (quoting Lt. Larry Gibson, Clayton County Police Department).

<sup>173</sup> The fear of retaliation may not be as grounded in fact as it is in people’s minds. Investigators of gang-related crimes in Ventura County, California, for example, “estimate roughly half of non-gang witnesses are influenced by fear, . . . yet

involvement makes both investigation and prosecution of dogfighting more difficult as fewer crimes are reported and prosecutors are left with no eyewitness proof of actual dogfighting. Instead, prosecutors must rely on circumstantial evidence to prove the crime, which has problems in its own right.

#### 4. *Circumstantial Evidence*

Because of the lack of willing witnesses, law enforcement and prosecutors must often rely on indirect evidence to make a case; however, proving a case using circumstantial evidence is not easy. To prove a violation of actual dogfighting, prosecutors must show not just dogs fighting, but also that the defendant was the impetus behind the fight and, sometimes, the reason for the fight (e.g., for entertainment purposes or to receive some benefit). California's statute is typical of many state statutes. It prohibits the defendant from, "[f]or amusement or gain, caus[ing] any dog to fight with another dog, or caus[ing] any dogs to injure each other."<sup>174</sup> Possession statutes generally prohibit ownership, possession, or training coupled with intent to use the dog for dogfighting. California's statute, again typical of most others, requires proof that the defendant "[o]wns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog."<sup>175</sup>

Since catching dogfighters in the act of actual dogfighting is rare, prosecutors must rely on indirect evidence to prove the violation. Dead, injured, or scarred dogs may be some evidence that a fight between dogs occurred, but it is not necessarily proof that the defendant "caused" the dogfight. Proving violation of a possession statute is equally difficult, not only because it would be rare to catch a defendant in the act of training a dog, but also because of the requirement that the prosecutor prove an intention to fight the dog. Therefore, prosecutors must rely on other physical evidence found at a scene, such as scales or washtubs, training equipment like treadmills or jennies, or even

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gang assaults on ordinary citizens who work with police are few and far between." Adam Foxman, *Police Say Gangs' Reputations Silence Would-Be Tipsters: Fear Thwarts Investigations*, VENTURA COUNTY STAR, Feb. 15, 2009.

<sup>174</sup> CAL. PENAL CODE § 597.5(a)(2) (West 2009).

<sup>175</sup> *Id.* § 597.5(a)(1).

dogfighting journals, to try to convince a jury that a violation has occurred.<sup>176</sup>

Problems with using circumstantial evidence in proving violations of dogfighting statutes include overcoming objections regarding relevance<sup>177</sup> and prior bad acts<sup>178</sup> and being challenged on appeal for sufficiency of the evidence.<sup>179</sup> Even where the evidence is admitted, the jury (or judge in a non-jury trial) may not make the connection between the indirect evidence and the offense or may reject the evidence entirely. The case against alleged Louisiana dogman Floyd Boudreaux is a case in point. Boudreaux is a world-renowned breeder of game pit bulls, with some of the puppies from his top stock—the very old Boudreaux bloodline and the newer Eli bloodline—selling for thousands of dollars.<sup>180</sup> A known dogfighter when dogfighting was legal, Boudreaux is now in his seventies and is considered “royalty”<sup>181</sup> by dogfighting circles and has been given such monikers as the “Don of Dogfighting” and the “Godfather.”<sup>182</sup> In 2005, after one of the largest

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<sup>176</sup> See Nesbitt, *supra* note 78; see also Dohrmann, *supra* note 16 (indicating that evidence of dogfighting in the Michael Vick case included a scale, treadmills, a rape stand, syringes, and injectable diuretics and nutrition supplements for dogs); Cynthia Hubert, *Stakes Grow in Vicious Underworld of Dogfighting*, SACRAMENTO BEE, Jan. 10, 1999, at A1 (noting that, in uncovering a dogfighting operation in California, investigators found fifty-five scarred pit bulls, treadmills, chains, breaking sticks, weights, a fighting pit, blood spatters where dogs were fought, dogfighting rules, schedules and journals, and championship certificates).

<sup>177</sup> See, e.g., *Jones v. State*, 473 So. 2d 1197, 1201 (Ala. Crim. App. 1985) (reviewing challenge that veterinarian’s testimony regarding dog’s condition was not relevant to appellant’s intent to fight dogs and was merely provided to inflame the passion of the jury).

<sup>178</sup> See, e.g., *Davis v. State*, 907 N.E.2d 1043, 1055-56 (Ind. Ct. App. 2009) (finding that a receipt for trophies and a handwritten paper titled “April Show 2004” were inadmissible where defendant was charged with crime in 2006, but finding that error from introduction was harmless due to other overwhelming evidence against defendant).

<sup>179</sup> See, e.g., *Fuller v. State*, 674 N.E.2d 576, 578-79 (Ind. Ct. App. 1996) (reviewing appellant’s claim that evidence was insufficient to sustain convictions for promoting a dogfight and using a dog in a fighting contest).

<sup>180</sup> Michael Perlstein, *Fighting Back*, NEW ORLEANS TIMES PICAYUNE, May 29, 2005, at 1. The Boudreaux bloodline may have gone back 200 years. See Jason Brown, *Judge Acquits Man, Son, Decision: State Lacked Evidence of Men’s Dogfighting*, BATON ROUGE ADVOCATE, Oct. 16, 2008, at B1.

<sup>181</sup> Perlstein, *supra* note 180.

<sup>182</sup> Duggan, *supra* note 58; HSUS, *Dogfighting Kingpin Toppled in Louisiana Raid*, Mar. 23, 2005, [http://www.hsus.org/acf/news/pressrel/dogfighting\\_kingpin\\_toppled\\_in\\_louisiana\\_raid.html](http://www.hsus.org/acf/news/pressrel/dogfighting_kingpin_toppled_in_louisiana_raid.html) (hereinafter *Dogfighting Kingpin*). Boudreaux’s

raids in Louisiana history, Boudreaux and his son were arrested and charged with over forty counts of breeding or training a fighting dog, animal cruelty, illegal possession of anabolic steroids, and possession of a sawed-off shotgun.<sup>183</sup> Fifty-seven pit bulls, some with scars, were found chained to broken-down shelters; after confiscation and veterinary evaluation, they were put down.<sup>184</sup> Police also recovered from Boudreaux's property, among other things, steroids, exercise treadmills, computer records, a video featuring Floyd Boudreaux, dogfighting magazines containing Boudreaux bloodline advertisements, and photos of Boudreaux's more valuable dogs.<sup>185</sup>

After three years of delays, the Boudreauxs were tried in 2008,<sup>186</sup> with both defendants denying that they had bred or trained fighting dogs.<sup>187</sup> They rejected a trial by jury, seeking sole resolution by District Judge Kristian Earles.<sup>188</sup> The Louisiana statute required proof that the defendants owned, possessed, kept, or trained a dog for dogfighting purposes.<sup>189</sup> The prosecution introduced ninety-five pieces of evidence to produce its case. During cross-examination, the Boudreauxs' defense attorney elicited from witnesses that investigators had not checked whether the seized treadmills worked and showed that only one of the confiscated breaking sticks showed any markings, which were so faint that it was impossible to determine whether they were made by dogs.<sup>190</sup> In addition, although a veterinarian testified that many of the dogs' wounds were consistent with dogfighting, she admitted they could have had other causes. She also testified that one of the dogs had its teeth removed by a human and was likely used to train other

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reputation was so legendary that a website created to solicit funds for his defense after he was arrested pulled in even international donations. Perlstein, *supra* note 180.

<sup>183</sup> Perlstein, *supra* note 180; Aaron Kuriloff, *U.S. Dogfighting's Bayou Swagger Gains Urban Cool (Update 1)*, Bloomberg.com, Aug. 22, 2007, <http://www.bloomberg.com/apps/news?pid=20601079&sid=aRVnXby8NoT8&refer=home>.

<sup>184</sup> See Perlstein *supra* note 180; *Dogfighting Kingpin*, *supra* note 182. The Boudreauxs' defense attorney suggested that the state's real purpose was to seize the dogs and terminate the bloodlines. See Brown, *supra* note 180.

<sup>185</sup> See Perlstein *supra* note 180; Jason Brown, *Dogfighting Trial Starts, Judge Trying Father, Son*, BATON ROUGE ADVOCATE, Oct. 14, 2008, at B1.

<sup>186</sup> Brown, *supra* note 185.

<sup>187</sup> Perlstein, *supra* note 180.

<sup>188</sup> Brown, *supra* note 185.

<sup>189</sup> LA. REV. STAT. ANN. § 14:102.5(A)(7)(a) (2009).

<sup>190</sup> Jason Brown, *State Trooper Takes Stand in Dogfighting Trial of Father, Son*, BATON ROUGE ADVOC., Oct. 15, 2008, at B1.

dogs.<sup>191</sup> The state tried to conclude with testimony from an award-winning animal control superintendant who had worked on the Vick case, but was unable to have her deemed an expert because, among other things, she was not formally educated, had not testified before, and was being paid by the Humane Society of the United States.<sup>192</sup> The state sought a stay to appeal the decision, but the stay was denied by the court.<sup>193</sup>

On the third day of trial, the prosecution rested its case, after which the judge directed the verdict, acquitting the defendants for lack of evidence.<sup>194</sup> In seeking the verdict, the defense argued that the prosecution had shown no evidence of intent to fight the dogs and had introduced no witnesses who had ever seen the Boudreauxs conduct or attend a dogfight, even when it was still legal.<sup>195</sup> Although the prosecution argued that the evidence, taken in its entirety, showed that the defendants were breeding fighting dogs, the court disagreed, stating “[t]he state has to come forward with some proof.”<sup>196</sup>

Although the Boudreauxs’ arrest has been hailed as a major victory for dogfighting,<sup>197</sup> the unsatisfactory resolution of the case (from the state’s point of view) demonstrates the problems of trying to use indirect evidence to prove a case. Despite a reputation of breeding game dogs—as one investigator explained, “Floyd is sort of like the Adam in the dogfighting world. He’s the standard everybody else judges their dogs by”<sup>198</sup>—the state was unable to convince the judge to make a connection between an intent to fight and the dogs, the paraphernalia, and the training equipment found on Boudreaux’s property, and he was therefore not convicted.

### III. Connection to Other Offenses

That a state has criminalized dogfighting should be reason enough to pursue enforcement of the dogfighting laws, but the

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<sup>191</sup> *Id.*

<sup>192</sup> Brown, *supra* note 180.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Dogfighting Kingpin*, *supra* note 182.

<sup>198</sup> Perlstein, *supra* note 180 (quoting Kathryn Destreza, director of animal services for the SPCA).

activity's connection to other criminal offenses may be more persuasive to those jurisdictions reluctant to expend the time or money involved in investigating and prosecuting dogfighters. As noted above, dogfighting is associated with other social ills, such as cruelty to animals, child welfare and domestic violence issues, and other criminal conduct such as gambling, gangs, weapons, and drugs. Outside of the dogfighting-related offenses themselves, then, pursuit of dogfighters is important as a way to expand the net for these other issues. Further, because prosecution of a dogfighting offense may be impossible or impracticable in certain cases, successful prosecution based on periphery offenses ensures the imposition of at least some penalty and recognition of wrongdoing.

### A. *Cruelty*

In addition to the cruelty inherent in having one dog fight another, dogs that are kept for dogfighting are often subjected to actions that would constitute cruelty under state animal welfare laws. Although some dogmen may treat their animals relatively well between fights,<sup>199</sup> many dogfighters subject their dogs to harsh living conditions, providing insufficient food and water<sup>200</sup> and little socialization.<sup>201</sup> Some fighters may also provide their dogs with little or inadequate medical treatment after a fight<sup>202</sup> or may even kill the dogs that lose, sometimes in horrific fashion.<sup>203</sup>

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<sup>199</sup> Cf. Loh Harrist, *supra* note 20 (comparing conditions of two dogmen in New Orleans).

<sup>200</sup> See, e.g., Connie Baggett, *Pit Bulls Destroyed*, MOBILE REG., Apr. 13, 2005, at A1 (noting that most of twenty-six pit bulls "stood exposed to the elements, tethered by logging chains to stakes" and that "[t]he animals were forced to lie in their own excrement, mud and rainwater with only sparse dog food and spoiled milk to eat" and with most having no water); Don Plummer, *Two Charged Over Fighting Dogs in Cobb, Third Arrest Made for Gun*, ATLANTA J.-CONST., Jan. 28, 2006, at E2 (noting that fifteen pit bulls were found with no food or water, indicating that one dog had eaten "dirt and rocks" and the only water available had been rainwater).

<sup>201</sup> *A Fighting Dog's Life: How Illegal Dogfighting Has Stigmatized a Breed Once Considered the All-American Pet*, METROLAND, Nov. 8, 2001, at 10 (noting that, because dogfighters do not want to get caught, they keep their dogs "locked up in crates or cages, train them in dank basements and abandoned buildings, and don't generally take them out where they can be viewed—wounds, scars, poorly cropped ears and all—by suspicious neighbors").

<sup>202</sup> Dogmen often provide their own care for dogs injured in a fight because of the fear that veterinarians will report the fight to authorities. See Loh Harrist, *supra*



Prosecutors can bring claims under animal welfare statutes in addition to, or in lieu of, dogfighting actions, especially where proof of a dogfight or possession of a fighting dog is questionable. All states have animal anti-cruelty statutes, and though differing in the details, each statute does require provision of adequate food, water, and medical care or contains a comparable provision that prohibits neglect.<sup>204</sup>

In addition, in instances where an animal death or injury has occurred, prosecution may be possible under provisions that prohibit killing or harming an animal. For example, Colorado law prohibits a person from knowing, reckless, or criminally negligent torture,

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note 20 (noting that the dogmen “suture wounds and treat infections and illnesses themselves, trading often-erroneous medical advice with their peers”).

<sup>203</sup> See Dog Fighting FAQ, *supra* note 12; see also Guerrero, *supra* note 91 (noting that “dogs that lose fights are often shot, set on fire or left to starve in vacant buildings”); *Vick Indictment*, *supra* note 3, at 6, 12, 14, 17 (describing executions of dogs by shooting, drowning, electrocution, and being slammed to the ground).

<sup>204</sup> See, e.g., ALA. CODE § 13A-11-241(b) (2005); ALASKA STAT. § 3.55.100 (2006); ARIZ. REV. STAT. ANN. § 13-2910 (2001); ARK. CODE ANN. § 5-62-101 (2005); CAL. PENAL CODE §§ 597.1, 597a (West 1999); COLO. REV. STAT. ANN. § 18-9-202(a) (West 2004); CONN. GEN. STAT. ANN. § 53-247(a) (West 2007); DEL. CODE ANN. tit. 11, § 1325(a) (2001); D.C. CODE § 22-1001(a) (Supp. 2007); FLA. STAT. ANN. § 828.12(a) (2006); GA. CODE ANN. § 16-12-4(a)(3), (b) (2007); HAW. REV. STAT. §§ 711-1100, 711-1109 (2007); IDAHO CODE ANN. §§ 25-3502(5)(b), 25-3504 (2000); 510 ILL. COMP. STAT. ANN. § 70/3 (West Supp. 2007); IND. CODE ANN. § 35-46-3-7 (West 2004); IOWA CODE ANN. § 717B.3(1) (West Supp. 2007); KAN. STAT. ANN. § 21-4310(a)(3) (1995); KY. REV. STAT. ANN. § 525.130(1)(a) (Lexis Nexis 1999); LA. REV. STAT. ANN. § 14:102.1(A)(1)(c) (2004); ME. REV. STAT. ANN. tit. 17, § 1035 (2006); MD. CODE ANN., CRIM. § 10-604(a)(5) (Lexis Nexis Supp. 2006); MASS. GEN. LAWS ANN. ch. 272, § 77 (West Supp. 2007); MICH. COMP. LAWS ANN. § 50(1)(a), (2)(a) (West Supp. 2007); MINN. STAT. ANN. § 343.21, subd. 2 (West Supp. 2007); MISS. CODE ANN. §§ 97-41-1, 97-41-7 (2006); MO. ANN. STAT. §§ 578.005(a)(1), 578.009(1) (West 2003); MONT. CODE ANN. § 45-8-211(1)(c) (2007); NEB. REV. STAT. §§ 28-1008, 28-1009(a) (2003); NEV. REV. STAT. ANN. § 574.100(1)(b) (West 2004); N.H. STAT. ANN. § 644:8(III)(a) (West 2007); N.M. STAT. § 30-18-1(B)(2) (2004); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney Supp. 2007); N.C. GEN. STAT. § 14-360(a) (Supp. 2006); N.D. CENT. CODE. § 36-21.1-02(2) (2004); OHIO REV. CODE ANN. § 959.13(A)(1) (Lexis 1988); OKLA. STAT. ANN. tit. 21, § 1685 (West 2002); OR. REV. STAT. ANN. §§ 167.325(1), 167.330(1) (2005); 18 PA. CONS. STAT. § 5511(c)(1) (West Supp. 2007); R.I. GEN. LAWS. § 4-1-2(A) (1998); S.C. CODE ANN. § 47-1-40(A) (2003); S.D. CODIFIED LAWS §§ 40-1-2.3, 40-1-2.4, 40-1-27 (2004); TENN. CODE ANN. § 39-14-202 (2006); TEX. PENAL CODE ANN. § 42.09(a)(2) (Vernon 2003); UTAH CODE ANN. § 76-9-301(1)(a) (2003); VT. STAT. ANN. tit. 13, § 352(4) (1998); VA. CODE ANN. § 3.1-796.122(A)(ii) (Supp. 2007); WASH. REV. CODE ANN. § 16.52.205(2) (West Supp. 2007); W. VA. CODE ANN. § 61-8-19(a) (Lexis Nexis 2005); WIS. STAT. ANN. § 951.13 (West 2005); WYO. STAT. ANN. § 6-3-203(b) (2007).

needless mutilation, or needless killing of an animal.<sup>205</sup> This provision applies regardless of whether the animal is owned by the person causing the harm or is owned by another. However, some jurisdictions, although having provisions that prohibit unnecessary or cruel injuries regardless of ownership of the animal, still follow traditional rules that allow an owner to kill his own animal, but not the animal of another.<sup>206</sup> In those cases, and depending on the action at issue, a prosecutor might be hindered rather than helped by the statute.

### B. *Child Welfare and Domestic Violence*

Child welfare issues are also raised by dogfighting. Children attend dogfighting events at all levels, from professional fights where the occasion may be seen as a family event (complete with supper provided)<sup>207</sup> to streetfights where children may not only be spectators but actual participants.<sup>208</sup> The number of children who witness these events is startling. One study in Chicago, for example, revealed that

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<sup>205</sup> COLO. REV. STAT. ANN. § 18-9-202(1.5)(a) (West 2009).

<sup>206</sup> For example, Arizona prohibits the killing of “any animal under the custody or control of another person without either legal privilege or consent of the owner.” ARIZ. REV. STAT. ANN. § 13-2910(5) (West 2009); *see also* MO. ANN. STAT. §§ 578.007(6), 578.012(1) (West 2009) (prohibiting the killing of an animal except by the owner, the owner’s agent, or the owner’s veterinarian at the request of the owner); OHIO REV. CODE ANN. § 959.02 (West 2009) (prohibiting the malicious or willful killing of designated animals without the consent of the owner, except for certain actions by veterinarians); 18 PA. CONS. STAT. ANN. § 5511(a)(1)(i) (West 2009) (prohibiting the killing of an animal owned by another).

<sup>207</sup> One dogfight raided in San Francisco, for example, revealed that the participants had brought in a cook for the event who served barbecue chicken, potato salad, soda, and beer. Jeffrey Mize, *Dogfighting Ugly Hunt for Blood Money; Seizure of 21 Pit Bulls in Vancouver Shines Light on Issue*, COLUMBIAN, Oct. 21, 2004, at A1; *see also* Burke, *supra* note 41 (noting that, at one time, dogfights were a “Saturday ritual,” drawing 50 to 100 people, and regularly included sellers of refreshments like popcorn and chewing gum); Steve Tuttle, *A Dogfighting Scandal Dogs an NFL Star*, NEWSWEEK, July 30, 2007, at 38 (noting that one location was built specifically for dogfighting, “complete with bleachers and even a concession stand”); Tom Weir, *Vick Case Sheds Light on Dark World of Dogfighting*, USA TODAY, [http://www.usatoday.com/sports/football/nfl/falcons/2007-07-18-vick-cover\\_N.htm?csp=34](http://www.usatoday.com/sports/football/nfl/falcons/2007-07-18-vick-cover_N.htm?csp=34) (“At some raids where spectators have fled into the woods as police invaded, . . . abandoned toddler-sized chairs and nearby milk and cookies suggest some people consider dogfighting family entertainment.”).

<sup>208</sup> *See* Wendy Melillo, *Attack Dogs Newest Weapon on Street*, SAN FRAN. CHRON., Sept. 18, 1995, at A3 (describing a neighbor’s inability to stop three teen-aged youths from using a cat to train pit bulls).

more than twenty percent of second to eighth grade students had attended a dogfight.<sup>209</sup> Perhaps more unnerving than the numbers, though, is the children's view of dogfighting as a commonplace and exciting activity. As one researcher explained:

A 7th grader told us a dogfight is the most exciting thing in his neighborhood and that dogfights are the place to meet girls. . . . It is normal entertainment for [neighborhood children]. They don't have movie theaters; they don't have cable TV. They don't need to care whether the media are too violent or cruelty is too much in the Nintendo games. . . . They have the violence for real in their alleys.<sup>210</sup>

1. *Link to Development of Violent and Other Criminal Tendencies in Children*

Attendance at dogfighting events or being raised in an environment where dogfighting activity occurs is unhealthy for children (if not others as well) because animal abuse negatively impacts childhood development and can influence whether the children will become violent toward humans in the future.<sup>211</sup> As Ramsey County (Minnesota) Attorney Susan Gaertner explains:

[Dogfights] affect children in a number of ways. Not only are they taught to take pleasure in the pain of a creature, but they are taught that their affection for a being is expendable. Very often the parents are taking the family pet . . . into the dog fight, where it will likely be injured or killed. Imagine what that does to a child.<sup>212</sup>

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<sup>209</sup> See Guerrero, *supra* note 91; see also *Michael Vick Pleads Not Guilty to Dogfighting Charges; How Widespread Is Dogfighting in America? – Part I*, CNN NEWS, July 27, 2007 (noting that preliminary indications of the study show that one in five Chicago children in elementary school participated in dogfighting to the extent that they were “getting the dogs, bringing the dogs, and involved in the fights” (quoting Dr. Gene E. Mueller, Anti-Cruelty Society President)).

<sup>210</sup> Guerrero, *supra* note 91 (quoting Dr. Gene E. Mueller, Anti-Cruelty Society President); see also Loh Harrist, *supra* note 20 (describing the excitement of teenagers as they discuss their enthusiasm for dogfighting).

<sup>211</sup> See, e.g., Will Coxwell, *The Case for Strengthening Alabama's Animal Cruelty Laws*, 29 LAW & PSYCHOL. REV. 187, 188 (2005).

<sup>212</sup> Susan Gaertner, Ramsey County Attorney, Address at the 42nd Ann. Crim. Just. Inst.: The Link Between Animal Abuse and a Culture of Violence 8 (Aug. 27, 2007), available at <http://www.co.ramsey.mn.us/NR/rdonlyres/E4B3303E-AF48->

Sadly, statistics show that what that often does is to instill violent and criminal tendencies in the child. Animal abuse in general has long been understood to be a predictor of future human violence,<sup>213</sup> and statistics repeatedly show a strong connection between animal abuse and both human violence<sup>214</sup> and the commission of non-violent crimes.<sup>215</sup> One study notes, for example, that “46 percent of sexual homicide perpetrators, 48 percent of all convicted rapists, 60 percent of those who commit aggravated assault, and . . . 100 percent of all serial killers abused animals” at some time during their lives.<sup>216</sup> As for non-violent crime, researchers have found a correlation between animal abuse and property crimes, drug-related crimes, and disorderly conduct.<sup>217</sup>

Although no published studies appear to directly link the act of dogfighting with future violence and crime, and one study considers

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4DCC-98D1-A31347E96721/8718/GaertnerAnimalAbuseViolence.pdf (emphasis omitted).

<sup>213</sup> Interestingly, early eighteenth century woodcuts by William Hogarth entitled “The Four Stages of Cruelty” depict this connection, with the first woodcut showing a child physically abusing a dog with an arrow, the second showing the same child, now an adult, blinding and maiming a horse that he has overloaded, the third showing the same man killing his mistress, and the fourth depicting the man’s hanging. Randall Lockwood, *Animal Cruelty and Violence against Humans: Making the Connection*, 5 ANIMAL L. 81, 82, 86 (1999). In addition, the Federal Bureau of Investigation has used childhood animal abuse as a predictor since the 1970s. *See id.* at 82-83.

<sup>214</sup> *See See Spot Die: The City Needs Teeth in Its Dog Control Laws or Hundreds More Pups Will Perish*, SYRACUSE NEW TIMES, Aug. 15, 2001, at 10 (hereinafter *See Spot Die*); *see also* Coxwell, *supra* note 211, at 190 (discussing other studies showing links between animal abuse and violent crimes against humans); Suzanne E. Tallichet & Christopher Hensley, *Exploring the Link between Recurrent Acts of Childhood and Adolescent Animal Cruelty and Subsequent Violent Crime*, 29 CRIM. JUST. REV. 304 (2004) (showing a link between recurring animal cruelty in childhood and adolescence and violent crime as an adult).

For a more complete discussion of the connection between animal abuse and human violence, *see* Coxwell, *supra* note 211, at 188-91; Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 8-12 (1998); Lockwood, *supra* note 213, at 81-87.

<sup>215</sup> *See, e.g.,* Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963 (1999).

<sup>216</sup> *See Spot Die*, *supra* note 214.

<sup>217</sup> Arluke et al., *supra* note 215, at 969 (finding that subjects who committed animal abuse were three and a half to four times more likely than the control group to have been arrested for property crimes, drug-related crimes, and disorderly conduct).

the act to be a “confounding variable” in animal abuse research,<sup>218</sup> at least some researchers consider dogfighting to be within the scope of animal abuse.<sup>219</sup> Other types of animal abuse often accompany dogfighting (for example, the use of bait animals during training or the killing of a losing animal).<sup>220</sup> Acts of abuse and the fight itself should fall within the general definitions of abuse or cruelty used in this type of research.<sup>221</sup> For example, Professor Frank Ascione, a noted author of

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<sup>218</sup> See LINDA MERZ-PEREZ & KATHLEEN M. HEIDE, ANIMAL CRUELTY: PATHWAY TO VIOLENCE AGAINST PEOPLE 94 (2004). In this study, researchers Merz-Perez and Heide interviewed 45 violent and 45 non-violent offenders at a maximum-security prison in Florida in an attempt to measure past cruelty of the offenders to four types of animal populations: wild, farm, pet, and stray animals. The researchers determined that 24% of the violent offenders interviewed committed animal cruelty towards pets, while only 7% of the non-violent offenders committed such acts. *Id.* at 92. The researchers noted, however, that dogfighting was a “confounding variable” because it was the only type of cruelty to pet animals that was reported by non-violent offenders and that cultural factors may have played a role. *Id.* at 95 (noting that the non-violent offenders who engaged in dogfighting were African-Americans from urban areas).

<sup>219</sup> See, e.g., FRANK R. ASCIONE, CHILDREN & ANIMALS: EXPLORING THE ROOTS OF KINDNESS & CRUELTY 55 (2005) (“Animals are abused when they are directed to become *instruments of aggression*. Training dogs to engage in dog fights or using a dog to purposely attack another person essentially converts an animal into a weapon. The animal becomes an extension of the antisocial behavior of its owner.”); Alan R. Felthous & Stephen R. Kellert, *Psychosocial Aspects of Selecting Animal Species for Physical Abuse*, 32 J. FORENSIC SCIENCES 1713 (1987), reprinted in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE: READINGS IN RESEARCH AND APPLICATION 225, 232 (Randall Lockwood & Frank R. Ascione eds., 1998) (hereinafter CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE) (noting that pet dogs were beaten “to foster an aggressive disposition, so they would attack people on command or ferociously battle other dogs”).

<sup>220</sup> See, e.g., Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 HUMAN RELATIONS 1113 (1985), reprinted in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE, *supra* note 219, at 194, 204 (“Cruelty to animals was sometimes used to express violent, aggressive behaviors toward other people or animals. For example, cruelty occasionally occurred as a device for instilling violent tendencies in an animal, or for attacking other animals or people. One subject inflicted extreme pain on his animal to make it ‘mean’; another fed his dog gunpowder so it would be ‘tough’; still another used his dog to attack and kill other animals without provocation.”).

<sup>221</sup> Certainly, some activities may fall into the abuse or cruelty category without question. For example, law enforcement easily classified as “major cruelty” an incident where a dog “was allegedly doused with sizzling cooking oil during a brutal dogfight” and burned to such an extent that euthanasia was required. Anderson, *supra* note 85, at 1A. In addition, some states include dogfighting within the list of actions that can constitute “animal cruelty.” See HAW. REV. STAT. § 711-

numerous studies and books on the connection between animal abuse and violence and crime, defines animal abuse as “socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal.”<sup>222</sup> One might question, of course, whether dogfighting or the acts typically associated with dogfighting constitute socially unacceptable behavior (at least within dogfighting circles, which view the act as a sport)<sup>223</sup> and whether the intent of the actions is to cause pain, suffering, or distress.<sup>224</sup> The criminalization of the act, however, suggests that outside dogfighting circles, the actions are socially unacceptable. Further, although the intent may not be to cause harm to the dogfighter’s own dog during the fight, the intent is to cause pain and suffering to the opposing dog in order to win the match and certainly to cause death if a dog is terminated for losing a match.

Even without direct sociological studies, evidence is growing suggesting a connection between dogfighting and other juvenile crimes. Animal control investigations in at least some jurisdictions support such a link,<sup>225</sup> and psychiatrists suggest that dogfighting “could have a disturbing impact on emotionally troubled or vulnerable youths, making them more prone to destructive behavior.”<sup>226</sup> Tulane University School of Medicine professor and psychiatrist Ed Foulks, for example, has stated that dogfighting is “a pernicious exercise . . . that causes not only pain in dogs but pain in humans. Violence becomes a nonchalant part of everyday life . . . . Children and adolescents are learning

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1109.3 (2007); IND. CODE ANN. § 35-46-3-10 (West 2004); KY. REV. STAT. ANN. § 525.125 (Lexis Nexis 1999); N.D. CENT. CODE. § 36-21.1-07 (2004); UTAH CODE ANN. § 76-9-301(2)(3) (2003).

<sup>222</sup> ASCIONE, *supra* note 219, at 28 (quoting Frank R. Ascione, *Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology*, 6 ANTHROZOÖS 226 (1993)).

<sup>223</sup> See MERZ-PEREZ & HEIDE, *supra* note 218, at 95 (noting that the three non-violent offenders who engaged in past dogfighting “described dogfights as a popular neighborhood activity that, despite its illegality, was attended by both adults and children”); cf. ASCIONE, *supra* note 219, at 28 (noting that societies differ in their views of acceptable animal welfare standards and comparing the distaste that Americans might feel over including bullfighting as an Olympic event with the less controversial reaction that Spaniards would likely feel).

<sup>224</sup> Ascione identifies “intention” as requiring an “understanding that one’s actions can have effects on others and some level of self control such that an individual is free to choose to act or not act.” ASCIONE, *supra* note 219, at 29.

<sup>225</sup> Anderson, *supra* note 85, at 1A.

<sup>226</sup> Loh Harrist, *supra* note 20, at 21 (stating that “disturbed youths gravitate toward violently tinged pastimes”).

values . . . and incorporating a culture that would encourage violent behavior of this kind, even as a spectator . . . .”<sup>227</sup>

Because of the links between animal abuse and later violence, more than half of the states now require or permit a judge to order counseling where a juvenile is found engaging in animal cruelty.<sup>228</sup> Thus, in instances of childhood participation in dogfighting, a court might impose psychological counseling, which could help address the future criminal potential of the child.<sup>229</sup> In addition, since attendance at dogfighting events exposes children to the peripheral criminal activities that accompany dogfights, prosecutors can turn to child welfare laws (such as those aimed at prohibiting neglect or endangerment of a child) as a basis for prosecution because of the exposure of children to illegal activities. If the child is provided alcohol or controlled substances at the event, for example, a person—even one that is not the parent—could also be prosecuted for contributing to the delinquency of a minor.<sup>230</sup>

## 2. *Link to Domestic Abuse*

Animal abuse is also an indicator of domestic abuse,<sup>231</sup> with connections to not only spousal and child abuse,<sup>232</sup> but to elder abuse as

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<sup>227</sup> *Id.* (quoting Professor Ed Foulks).

<sup>228</sup> See U.S. Cruelty Laws: Felony vs. Misdemeanor, [http://www.pet-abuse.com/pages/cruelty\\_laws.php](http://www.pet-abuse.com/pages/cruelty_laws.php) (last visited Apr. 3, 2008) (indicating that counseling provisions have been enacted in Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia); see also Gerwin, *supra* note 138, at 138 n.162 and statutes cited therein.

<sup>229</sup> See, e.g., MD. CODE ANN., CRIM. LAW § 10-607(b)(2) (Lexis Nexis Supp. 2006) (allowing a court to impose participation in psychological counseling as a condition of sentencing for a dogfighting violation).

<sup>230</sup> See, e.g., *People v. Jackson*, No. 275908, 2008 WL 786526 (Mich. App. Mar. 25, 2008) (finding evidence sufficient to show that defendant contributed to delinquency of a minor, despite his argument that he was retrieving his minor children and did not approve of their presence at the fight, where evidence showed defendant had attended fight for at least ten minutes and that defendant had participated in the fight).

<sup>231</sup> For an argument that animal abuse should be permitted as “specific propensity evidence” in domestic and child abuse trials, see Angela Campbell, *The Admissibility of Evidence of Animal Abuse in Criminal Trials for Child and Domestic Abuse*, 43 B.C. L. REV. 463 (2002).

<sup>232</sup> See, e.g., Coxwell, *supra* note 211, at 189 (“One study, which used a sample of women affiliated with domestic violence agencies that had experienced domestic

well.<sup>233</sup> Studies have shown that a person who abuses a spouse or partner, parent, or child is also likely to have abused the victim's pet. For example, one study found that, of 101 battered women who entered a shelter, fifty-four percent reported that their partners abused their pets, while such reports were made by only five percent of 120 non-battered women at the shelter.<sup>234</sup> Although the reasons for animal abuse vary, when connected to domestic abuse, the cruelty is often intended as psychological abuse of the human victim or as a means to control and dominate.<sup>235</sup> Indeed, many battered women either refuse to leave their abuser or eventually return because of concern for a pet's welfare. In the above-described study, for instance, one quarter of the battered women put off seeking shelter because of fear for their pet's safety.<sup>236</sup>

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violence and had children, found that fifty-seven percent of the children in these environments demonstrated acts of cruelty to animals. In a similar study, [the researcher] surveyed a sample of thirty-eight women in a domestic violence shelter and found that thirty-two percent reported child-inflicted animal cruelty in the family."); see also Frank R. Ascione, Claudia V. Weber & David S. Wood, *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered*, 5 SOC'Y & ANIMALS 3 (1997), available at [http://www.vachss.com/guest\\_dispatches/ascione\\_1.html](http://www.vachss.com/guest_dispatches/ascione_1.html) (discussing the connection between animal abuse and women and children who seek protection in shelters); Lacroix, *supra* note 214, at 10 (discussing results of various studies); Catherine Simmons & Peter Lehmann, *Exploring the Link between Pet Abuse and Controlling Behaviors in Violent Relationships*, 22 J. INTERPERSONAL VIOLENCE 1211 (2007) (discussing the correlation between animal abuse and certain controlling behaviors exhibited by batterers).

For a searchable map of animal abuse cases with a domestic abuse component, see Interactive Animal Cruelty Maps, [http://www.pet-abuse.com/pages/cruelty\\_database/local\\_maps.php](http://www.pet-abuse.com/pages/cruelty_database/local_maps.php) (last visited Apr. 14, 2010).

<sup>233</sup> See HSUS & STATE OF WISCONSIN DEP'T OF HEALTH & FAMILY SERVICES, *CREATING SAFER COMMUNITIES FOR OLDER ADULTS AND COMPANION ANIMALS* 75-76 (2003); B.W. Boat & J.C. Knight, *Experiences and Needs of Adult Protective Services Case Managers When Assisting Clients Who Have Companion Animals*, 12 J. ELDER ABUSE & NEGLECT 145 (2000).

<sup>234</sup> ASCIONE, *supra* note 219, at 130-31; see also Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 11 (2000) ("In a survey of thirty-eight women seeking protection from domestic violence, seventy-one percent of those who owned pets reported that their abusers also harmed or killed their pets." (citing Frank R. Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals*, in *CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE*, *supra* note 219, at 290-91)).

<sup>235</sup> Sauder, *supra* note 234, at 11 (citing Carol J. Adams, *Bringing Peace Home: A Feminist Philosophical Perspective on the Abuse of Women, Children, and Pet Animals*, in *CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE*, *supra* note 219, at 318, 330).

<sup>236</sup> ASCIONE, *supra* note 219, at 132.



As for children, those who live in abusive homes in turn may abuse animals themselves.<sup>237</sup> As Professor Joan Schaffner explains the problem:

[C]hildren who are exposed to family abuse are at a greater risk of psychological and behavioral problems. These behavioral problems often include animal cruelty. . . . [C]hildhood animal abuse is, in turn, linked to persistence of anti-social, aggressive behavior into adolescence and adulthood with animal cruelty identified as one of four factors that predict interpersonal violence. Thus, the cycle is complete; children from abusive family settings themselves grow up and abuse their own families.<sup>238</sup>

When it comes to dogfighting, the fact that children see adults engaging in the activity lends a certain aura of permissibility to the event. As with any type of animal cruelty, what has been learned at home is likely to continue as children become dogfighters and spectators later in life.<sup>239</sup>

As with the connection between dogfighting and violent and non-violent crimes, there are no direct studies indicating that dogfighting is linked to domestic violence. However, the same arguments can be made showing that dogfighting and its accompanying activities would constitute animal abuse as defined in the studies. Anecdotal evidence also supports the connection. Gaertner, for example, notes that dogfighting was exposed only after an investigation was begun for a complaint of domestic violence. As she explains of one case, dogfighting took place in the basement of a home in which a dogfighter, his girlfriend, and children lived. The abused girlfriend eventually called for help, which resulted in the police subsequently finding evidence of dogfighting activity and a videotape of a dogfight. As Gaertner describes:

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<sup>237</sup> Sauder, *supra* note 234, at 12-13 (noting a study that showed 30% to 40% of abused children become abusers themselves (citing Barbara Rosen, *Watch for Pet Abuse – It Might Save Your Client’s Life*, in *CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE*, *supra* note 219, at 340, 341)).

<sup>238</sup> Joan E. Schaffner, *Linking Domestic Violence, Child Abuse, and Animal Cruelty*, ABA TIPS ANIMAL LAW COMMITTEE NEWSLETTER (Am. Bar. Ass’n Tort Trial & Ins. Prac. Section), Winter 2006, available at <http://www.animallaw.info/articles/arusjschaffner2006.htm>.

<sup>239</sup> Cf. Loh Harrist, *supra* note 20.

[The] tape, and the dog-fighting operation surrounding it, were found only after his girlfriend fled a terrifying domestic violence at his hands. The spine-chilling complaint describes how he threw her on a bed, choked her, ripped her necklace, hid her purse and keys and pulled the phone out of the wall when she tried to call 911. He told her that if she tried to leave, he would tie her up, duct tape her, and then bury her, and that no one would find her. She was scared to leave because the pit bulls that surrounded the house would bark. In the end, she escaped. When investigators looked into her complaint, they found the dogs, and evidence that they were being fought. But they might never have found it if not for the tip from a domestic violence victim.<sup>240</sup>

Because of the strong link between domestic and animal abuse, it is worthwhile to at least be aware that where dogfighting occurs, evidence of domestic violence may also exist and be pursued under the domestic violence laws. Further, as in Gaertner's case, a call on domestic violence may lead to proof of dogfighting. Because of this connection, coordinated activity between child and animal welfare agencies as well as different divisions of the prosecutor's office could result in greater enforcement against both types of abuse.

### C. *Related Criminal Activity*

Perhaps the most well-known connection with dogfighting is the one that exists with criminal offenses involving gambling, gangs, weapons, and drugs. Participants in dogfighting—both dogmen and spectators—often have previous criminal records. A study of dogfighting in Chicago, for example, showed that over a three-year period, “86 percent of the offenders had two previous arrests, 70 percent had previously committed felonies, 59 percent were members of street gangs and 91 percent were male.”<sup>241</sup> With these statistics, then, it is unsurprising that prosecutors usually include not only dogfighting charges, but also charges related to other criminal activity that was uncovered along with the dogfighting. Indeed, a collection of peripheral charges associated with thirty-seven dogfighting raids occurring across the nation between 1996 and 2004 shows that, of that number, law enforcement officials seized money in eighteen of the

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<sup>240</sup> Gaertner, *supra* note 212, at 7.

<sup>241</sup> See Walsh, *supra* note 50, at A1.

raids, drugs in thirty-three of the raids, and weapons in twenty-four of the raids.<sup>242</sup>

With such a close connection to these criminal offenses, pursuit of dogfighting is worth expenditure of extra time and money because of the added value that law enforcement receives when a bust is successful. In many circumstances, both state and federal charges are available.

1. *Gambling, Weapons, and Drugs*

Gambling, of course, is closely related to dogfighting, especially at the hobbyist and professional levels, which can involve large amounts of money. Generally, one finds two types of bets at these fights—bets between owners and bets between spectators.<sup>243</sup> The bets between owners are what fund the purse for the fight. Each owner finances one-half of the purse, which goes in full to the owner of the winning dog after the fight.<sup>244</sup> The purse in a professional fight can run into the tens of thousands of dollars.<sup>245</sup>

Along with gambling, however, comes all the criminal activity that attaches to it, including guns, drugs, and even murder. An investigation in Liberty County, Texas, is illustrative. In August 2006, three men broke into the home of twenty-seven-year-old Thomas Weigner, Jr. After restraining Weigner's parents with tape, one of the men shot Weigner above the knee in front of his wife and two of his young children, allegedly seeking return of a \$100,000 wager that had been made on a dogfight in a nearby county.<sup>246</sup> When Weigner bled to death (the gunman hit an artery), the men fled, taking up to \$500,000 with them.<sup>247</sup> Investigators arrived shortly thereafter, finding not only

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<sup>242</sup> See Dog-Fighting Raids, *supra* note 40, at 2-4.

<sup>243</sup> Michael S. Schmidt, *Vick's Links to Gambling May Be Biggest Danger*, GLOBE & MAIL, Aug. 15, 2007, at S2.

<sup>244</sup> *Id.*

<sup>245</sup> The purse for one fight at issue in the Vick case, for example, was alleged to be \$23,000. *See id.*

<sup>246</sup> Jack Douglas, Jr., *Dogfighting Linked to Drugs, Gangs, Violence*, CHARLESTON GAZETTE & DAILY MAIL, Oct. 21, 2007, at 5C.

<sup>247</sup> *See id.* One account of the story states that the gunmen left with nothing. *See, e.g.,* Cindy Horswell, *Was Dog Fighting at Core of Homicide? Authorities Think Killers Were After Cash Breeder Won in Pit Bull Contest*, HOUS. CHRON., Oct. 21, 2007, at A1. Another story indicates that the attack might have been partly to retaliate for a drug deal gone wrong, in which \$450,000 in drug money was accidentally burned by friction and heat after being placed in a vehicle's wheels for transport from New York to Texas. *Id.*

the crime scene, but also 285 pit bulls that, based on their bloodlines, were valued at over one million dollars.<sup>248</sup> Ten months later, a suspect in the shooting was located as a result of an unrelated arrest for his alleged attempt to buy \$89,000 in cocaine.<sup>249</sup> The suspect eventually jumped bail,<sup>250</sup> but a search of his home uncovered rifles, shotguns, a grenade, ten pit bulls, a variety of illegal drugs, and \$4,000 in cash.<sup>251</sup> In an interesting twist that shows the small world of professional dogfighters, the suspect was also believed to have sold two pit bulls to Vick for \$2,000 each.<sup>252</sup>

As the above example shows, dogfighting is often intimately linked with other types of crime, and pursuit of dogfighters will help law enforcement fight other criminal activities. For instance, all states have gambling laws,<sup>253</sup> as does the federal government,<sup>254</sup> which allows pursuit of participants and spectators based on betting activity. Charges under statutory money laundering provisions or for conspiracy might also be appropriate.<sup>255</sup> Even the federal Racketeer Influenced and Corrupt Organizations Act (RICO)<sup>256</sup> and analogous state statutes might be used if a pattern of racketeering can be shown.<sup>257</sup>

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<sup>248</sup> Most of the pit bulls were euthanized based on their aggressiveness; all but one of the remaining dogs died of disease. See Cindy Horswell, *Sale of Confiscated Pit Bulls is Canceled*, HOUS. CHRON., Jan. 9, 2007, at B4. Interestingly, the remaining dogs (twenty-seven puppies) had been ordered auctioned by a Liberty County judge (as with livestock), but the auction was canceled after the puppies died of Parvo and blood parasites. See *id.*

<sup>249</sup> Horswell, *supra* note 246, at A1.

<sup>250</sup> Jack Douglas, Jr., *Figure's Whereabouts a Mystery*, FT. WORTH STAR-TELEGRAM, Mar. 18, 2008, at B4.

<sup>251</sup> Horswell, *supra* note 246, at A1.

<sup>252</sup> Douglas, *supra* note 246, at 5C.

<sup>253</sup> For a summary of state gambling laws along with links to the related statutory provisions, see Chuck Humphrey, *State Gambling Law Summary*, <http://www.gambling-law-us.com/State-Law-Summary> (last visited Apr. 14, 2010).

<sup>254</sup> For a summary of federal gambling laws, see Chuck Humphrey, *U.S. Federal Gambling Laws*, <http://www.gambling-law-us.com/Federal-Laws> (last visited June 28, 2009).

<sup>255</sup> Cf. Jay Stapleton, *Dogfighting Ring Trial Begins for Daytona Beach Man*, DAYTONA NEWS-J., Feb. 18, 2009, at 01C ("The Humane Society of the United States calls dogfighting 'a highly organized underground movement often involving other crimes, such as drugs, weapons trafficking, prostitution and money laundering.'").

<sup>256</sup> 18 U.S.C. §§ 1961-68 (2006).

<sup>257</sup> *Id.* § 1962; see also Amy A. Breyer, *Asset Forfeiture and Animal Cruelty: Making One of the Most Powerful Tools in the Law Work for the Most Powerless Members of Society*, 6 ANIMAL L. 203, 227 (2000) (suggesting that a RICO claim based on

State and federal criminal laws relating to illegal drugs and weaponry are also important because they will both remove the contraband from the streets and stringently penalize the convicted.<sup>258</sup>

## 2. Gangs

Gang membership is also linked to dogfighting. According to the National Youth Gang Survey, as of 2007, the United States is home to approximately 27,000 active gangs nationwide (in mostly urban and suburban areas),<sup>259</sup> with total gang membership up to 788,000.<sup>260</sup> Long associated with violent crime and drug trafficking,<sup>261</sup> gang membership shares a similarly close relationship with dogfighting and ownership of aggressive dogs. A survey of Chicago-area dogfighters by the Humane Society of the United States and the University of Chicago Survey Lab indicates that gang members use streetfighting not only as a way to appear tough and gain street credibility, but also as a way to earn money, fight boredom, and work out street or gang conflicts.<sup>262</sup> Further, gang members use their dogs as a means of protection of both themselves and their contraband<sup>263</sup> and as a way to intimidate

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dogfighting might be possible in the instrumentality context of RICO because the act of dogfighting could constitute a RICO enterprise).

<sup>258</sup> See, e.g., 18 U.S.C. § 924(c) (2006) (providing for enhanced punishment where both drug trafficking and firearms are involved).

<sup>259</sup> See U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S REPORT TO CONGRESS ON THE GROWTH OF VIOLENT STREET GANGS IN SUBURBAN AREAS, Apr. 2008, <http://www.usdoj.gov/ndic/pubs27/27612/index.htm>.

<sup>260</sup> Arlen Egley, Jr. & Christina E. O'Donnell, *Highlights of the 2007 National Youth Gang Survey*, OJJDP FACT SHEET (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, Wash., D.C.), Apr. 2009, at 1, <http://www.ncjrs.gov/pdffiles1/ojjdp/225185.pdf>.

<sup>261</sup> See, e.g., SCOTT H. DECKER & BARRIK VAN WINKLE, *LIFE IN THE GANG: FAMILY, FRIENDS, AND VIOLENCE* 184-86 (1996) (discussing gang involvement in serious crimes, including drugs and violence); JUDITH GREENE & KEVIN PRANIS, JUSTICE POLICY INSTITUTE, *GANG WARS: THE FAILURE OF ENFORCEMENT TACTICS AND THE NEED FOR EFFECTIVE PUBLIC SAFETY STRATEGIES* 58-59 (2007), <http://www.justicepolicy.org/content-hmID=1811&smID=1581&ssmID=22.htm> (discussing surprising statistics related to gang violence and drug-related crimes).

<sup>262</sup> See UNIVERSITY OF CHI. SURVEY LAB, *DOG FIGHTING IN CHICAGO EXPLORATORY RESEARCH: FINAL REPORT 2* (2008); see also Allan, *supra* note 159, at 22-23 (noting that gang members participate in streetfighting as a means to show power).

<sup>263</sup> See *supra* text accompanying note 85.

neighbors and potential witnesses, which can make prosecution of crimes difficult.<sup>264</sup>

In the last twenty years, gang activity has engendered such concern that a number of jurisdictions have created anti-gang task forces, and billions of state and federal dollars have gone toward investigating and prosecuting gang-related crimes.<sup>265</sup> Indeed, as part of the battle against gangs, a number of states and localities have enacted anti-gang statutes and ordinances that are aimed at reducing gang participation and gang crime.<sup>266</sup> Texas law, for example, enhances criminal penalties if a member of a “criminal street gang” engages in certain offenses, including gambling, promotion of prostitution, money laundering, and certain drug and weapons offenses.<sup>267</sup> Because of the link between dogfighting and gang activities, use of anti-gang statutes may result in even greater penalties should such activity occur at a dogfight involving gang members. Therefore, from the perspective of reducing gang activity, pursuit of penalties against streetfighting is worthwhile.

#### IV. Recommendations

As set out in Part II of this Article, two basic obstacles hinder enforcement of dogfighting laws: the low value placed on prosecuting dogfighters and the costs and proof problems that make successful investigation and prosecution of the crime difficult. Because of the close ties between dogfighting and other criminal activities as well as the sociological connection to the development of violent and abusive

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<sup>264</sup> See Allan, *supra* note 159, at 23 (noting the explanation of Scott Giacoppo, Deputy Director of Advocacy for the Massachusetts SPCA: “If I’m standing on the corner selling my drugs and I need to have the neighborhood intimidated by me so they don’t call the police, I could wave a gun, but someone’s going to call the cops . . . . But if I have a pit bull on the end of a leash, and his ears are cut down to his skull, and he’s all muscular . . . and the only thing separating the residents of the community from certain death by pit bull is this drug dealer holding a leash and whether or not he lets go, that’s intimidating.”).

<sup>265</sup> Rebecca Rader Brown, *The Gang’s All Here: Evaluating the Need for a National Gang Database*, 42 COLUM. J.L. & SOC. PROBS. 293, 293 (2009) (noting that billions of state and federal dollars have been spent investigating and prosecuting gang-related crimes).

<sup>266</sup> See, e.g., GA. CODE ANN. § 16-15-4 (2007); TEX. PENAL CODE § 71.02 (Vernon 2003).

<sup>267</sup> See TEX. PENAL CODE § 71.02 (Vernon 2003).

behaviors in young dogfighters and spectators, efforts should be made to improve enforcement of the dogfighting laws. Recommendations for doing so are set out below. They include strengthening the value of prosecution by implementing statutory changes and encouraging cooperation between jurisdictions and between public and private authorities.

### A. *Statutory Changes*

Part of the reason for infrequent enforcement of dogfighting laws is the low value that some states and individuals place on prosecution of the crime and the difficulty that exists for successful prosecution of defendants. Through legislative changes, states can encourage greater enforcement by increasing penalties for dogfighting and related offenses and by streamlining proof requirements so that prosecutors can more efficiently make a case.

#### 1. *Increased Penalties*

Until just a few years ago, states varied as to whether they classified dogfighting as a misdemeanor or a felony. After Michael Vick was arrested, animal welfare organizations condemned a number of states for their classification of dogfighting as the lower-level offense.<sup>268</sup> Legislatures responded with a flurry of activity that resulted in felony-level consistency for the act of dogfighting across the nation.<sup>269</sup> Despite these changes, however, statutory penalties still vary greatly, with some states—North Carolina and Ohio, in particular—having maximum penalties of only a few months for first time offenders.<sup>270</sup> These low penalties can be interpreted as a general indication of the states' lower value of the crime (i.e., these states consider the offense

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<sup>268</sup> See, e.g., HSUS, *The Humane Society of the United States Releases List of Best and Worst State Dogfighting Laws*, Sep. 12, 2007, [http://www.hsus.org/acf/news/pressrel/state\\_dogfighting\\_laws\\_ranked\\_091207.html](http://www.hsus.org/acf/news/pressrel/state_dogfighting_laws_ranked_091207.html).

<sup>269</sup> See HSUS, *Dogfighting State Laws, Animal Fighting Laws: Where Does Your State Stand?*, [http://www.hsus.org/legislation\\_laws/state\\_legislations/animal\\_fighting\\_laws\\_where\\_does\\_your\\_state\\_stand.html](http://www.hsus.org/legislation_laws/state_legislations/animal_fighting_laws_where_does_your_state_stand.html) (hereinafter *Where Does Your State Stand?*).

<sup>270</sup> See N.C. GEN. STAT. §§ 14-362.2, 15A-1340.17(c) (Supp. 2006); OHIO REV. CODE ANN. §§ 959.99(H), 2929.14(A)(4) (Lexis 1988). Two other states with low maximum penalties are New Mexico, with a maximum of 18 months, and Rhode Island, with a maximum of two years. N.M. STAT. § 31-18-15(A)(10) (2004); R.I. GEN. LAWS. § 4-1-9 (1998).

less grave than other states). Law enforcement, when faced with limited resources, may therefore tend to ignore enforcement of this crime in favor of enforcement of others. By increasing penalties, then, a state may send a stronger message to law enforcement, prosecutors, and dogfighters about the seriousness of dogfighting.

In addition, raising penalties in low-penalty states may also ease the enforcement burden in those states. Substantial differences in the severity of penalties raises the possibility that some offenders (mainly, professional dogmen) could gravitate to lower-penalty states to engage in this activity, making a few states dogfighting hotspots.<sup>271</sup> North Carolina is a prime example. The maximum penalty for dogfighting in each of the five adjoining states—Virginia, Kentucky, Tennessee, South Carolina, and Georgia—is at least five years.<sup>272</sup> By contrast, the maximum penalty for the same act in North Carolina is ten months.<sup>273</sup> Thus, for the cost of a few hours' drive, dogmen living in the surrounding states can minimize their penalties by holding their fights in North Carolina.<sup>274</sup> If North Carolina police officers spend less time enforcing (having received the message that was conveyed by the legislature through the statute), the citizens of North Carolina suffer, not only because of the dogfighting, but also because of all the other

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<sup>271</sup> Cf. Burke, *supra* note 41 (noting that dogfighters from Virginia used to travel to North Carolina to fight because, at the time, misdemeanor penalties applied there); Betsy Z. Russell, *Dogfighting Bill Gains Support in Idaho: Vick Case Renews Call for Felony Status*, SPOKESMAN-REV., Aug. 22, 2007, at 3B (noting the concerns of Jeff Rosenthal, Idaho veterinarian and director of the Idaho Humane Society, that Idaho might “be seen as some type of haven for this type of behavior” because of the lower penalties provided for dogfighting); Diane Webber, *Iowa: An Animal Fighting Haven No More*, HUMANE SOC'Y OF THE UNITED STATES REGIONAL NEWS, Fall 2004, <http://www.hsus.org/web-files/PDF/MWRO.pdf> (indicating that, at one time, Iowa had gained “the dubious distinction of being a haven for animal fighting” because Iowa’s statute classified animal fighting as only a misdemeanor, whereas all the surrounding states classified the act as a felony).

<sup>272</sup> See GA. CODE ANN. § 16-12-37(b) (2007) (five years); KY. REV. STAT. ANN. §§ 525.125(3), 532.060(2)(d) (Lexis Nexis 1999) (five years); S.C. CODE ANN. § 16-27-30(d) (2003) (five years); TENN. CODE ANN. §§ 39-14-203(c)(1), 40-35-111(b)(5) (2006) (six years); VA. CODE ANN. §§ 3.2-6571(B)(1), 18.2-10(f) (Supp. 2007) (five years).

<sup>273</sup> N.C. GEN. STAT. §§ 14-362.2, 15A-1340.17(c) (Supp. 2006) (identifying the range of penalties available for a first time Class H felony offense). Note, however, that penalties can be enhanced to up to twenty months depending on the severity of the offender’s past criminal record.

<sup>274</sup> The importance of an overlapping federal system thus becomes evident when viewed in this light because it provides a consistent penalty that crosses states lines.



criminal activity that comes with it (e.g., weapons and drugs). Even if the crime is enforced at the same frequency as the surrounding states, if the state has become a hotspot, the citizens still suffer as the police are faced with a greater group of potential defendants. By increasing the penalty, then, the state can send two messages: first, that dogfighting should be taken seriously as a crime and, second, that out-of-state dogfighters will get no benefit by conducting their criminal activity within North Carolina borders.

Increased federal efforts could bolster state schemes and send the same messages. Where a dogfighting hotspot or lax state enforcement exists, prosecution under the federal dogfighting law could be used to elevate punishment to levels consistent with surrounding states. Federal involvement might also force state action by shining a light on the state's lack of response, galvanizing the public to demand greater state enforcement or an improvement in state laws. Where dogfighting rings involve several states, federal involvement could also be used to ensure consistency of penalties.

States should also raise penalties for status as a spectator at a dogfight. Currently, twenty-seven states classify it as a felony, twenty-one states classify it as a misdemeanor, and two states do not criminalize it at all.<sup>275</sup> Increasing spectator penalties could help cut down on behavior that encourages continued dogfighting. Indeed, part of the lure of dogfighting, especially at the professional and hobbyist level, is the gambling that accompanies the actual fight.<sup>276</sup> Admission fees from spectators and the gambling that occurs at a dogfight are the main source of a fight's profit.<sup>277</sup> As one animal welfare group has explained: "[S]pectators do not merely happen upon a fight; they seek it out. They are willing participants who support a criminal activity through their paid admission and attendance."<sup>278</sup> For states that wish to make a distinction between spectators at gambling and non-gambling dogfights, states can create tiered penalties as New York has, elevating spectator fines if gambling is present at the dogfight.<sup>279</sup> By increasing

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<sup>275</sup> See *Where Does Your State Stand?*, *supra* note 269.

<sup>276</sup> See MERZ-PEREZ & HEIDE, *supra* note 218, at 95.

<sup>277</sup> HSUS, Dogfighting Fact Sheet, [http://www.hsus.org/acf/fighting/dogfight/dogfighting\\_fact\\_sheet.html](http://www.hsus.org/acf/fighting/dogfight/dogfighting_fact_sheet.html) (last visited Aug. 9, 2009).

<sup>278</sup> *Id.*

<sup>279</sup> Compare N.Y. AGRIC. & MKTS. LAW § 351(4) (McKinney Supp. 2007) (imposing jail time up to one year and a fine up to \$1,000 for paying an admission fee or placing a bet at a dogfight) *with id.* § 351(5) (imposing jail time up to one year and a fine up to \$500 for "knowing presence as a spectator" at a dogfight).

penalties, the state can create a greater deterrent, which may reduce the overall interest in dogfighting activity.

In addition, where states have not already done so, statutes should be amended to include other dogfighting-related activity. All states currently penalize the act of dogfighting and ownership or possession of a fighting dog; however, other activities that have significant implications for continued dogfighting should be prohibited. For example, breeding dogs to be used for fighting purposes not only keeps a steady supply of dogs on the market for dogfighters, but also keeps the interest in the activity alive. Training dogs for fighting has a similar impact. In either case, states should penalize the activity because it will allow the state to cast a greater net for offenders and partly relieve the difficult burden that prosecutors face when forced to prove that a defendant has “caused” a dogfight.<sup>280</sup> States could even go so far as to prohibit ownership or possession of dogfighting equipment, a provision already included in some cockfighting statutes.<sup>281</sup> Although similar equipment might be used to train dogs for weight pull training competitions, states could limit the scope of the provision by linking it to an intent to use the equipment for dogfighting purposes.<sup>282</sup>

Increasing statutory penalties or increasing the scope of the law, of course, does not guarantee that greater enforcement will occur or that convicted dogfighters will serve longer sentences. Many states merely set out a range of penalties that are available should a defendant be convicted. A judge or jury may always issue penalties at the lower end of the scale. However, by allowing higher penalties to be issued, the state has at least given a better indication of how serious it deems

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<sup>280</sup> Some states have already adopted such provisions. *See, e.g.*, ALA. CODE § 3-1-29(a)(1) (1996) (training); ARIZ. REV. STAT. ANN. § 13-2910.01(A)(1) (2001) (training); CAL. PENAL CODE § 597.5(a)(1) (West 1999/2009) (training); DEL. CODE ANN. tit. 11, § 1326(a) (2001/2008) (training); GA. CODE ANN. § 16-12-37(b)(1) (2007) (training); 720 ILL. COMP. STAT. ANN. § 5/26-5(a) (West Supp. 2007/2009) (breeding and training); MASS. GEN. LAWS ANN. ch. 272, § 94 (West 2009) (breeding and training); MICH. COMP. LAWS ANN. § 750.49(2)(g) (West Supp. 2007/2009) (breeding); N.H. REV. STAT. ANN. § 644:8-a(I) (2007) (breeding and training); OR. REV. STAT. ANN. § 167.365(1)(a) (West 2005/2009) (breeding and training).

<sup>281</sup> *See, e.g.*, CAL. PENAL CODE § 597i (West 1999/2009).

<sup>282</sup> *See, e.g.*, OR. REV. STAT. ANN. § 167.372 (2005/2009) (“A person commits the crime of possessing dogfighting paraphernalia if the person owns or possesses dogfighting paraphernalia with the intent that the paraphernalia be used to train a dog as a fighting dog or be used in the furtherance of a dogfight.”).

the crime, and therefore enforcement should become a higher priority to police and prosecutors.

## 2. *Proof Requirements*

States should also consider clarifying their proof requirements to streamline prosecution of dogfighting cases. In most states, prosecuting the crime of dogfighting generally requires reliance on circumstantial evidence. Direct evidence of dogfighting is rare because it is not often that defendants are caught in the act, especially in the case of spontaneous streetfighting. In many states, the prosecutor must prove that the defendant “caused” the dogs to fight or injure one another.<sup>283</sup> This proof requirement might be relatively easy if there is an eyewitness who can testify that the dogfighters placed their dogs in the dogfighting pit and gave the orders to fight. However, finding an eyewitness is difficult because dogfighters and spectators tend to scatter when law enforcement arrives on the scene,<sup>284</sup> not only because of potential penalties arising from the act of dogfighting, but because of other illegal activities that may be going on (e.g., activities relating to weapons, drugs, and gambling).

The use of circumstantial evidence can become problematic for prosecutors, however, if the court deems the evidence irrelevant to proving the crime and excludes it. In such a case, conviction may become impossible because an essential piece of the evidence needed for the jury to infer the charged violation of the law is missing.<sup>285</sup> Prosecutors can also run into problems if, even with all circumstantial evidence presented, the jury does not make the necessary inference

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<sup>283</sup> See, e.g., LA. REV. STAT. ANN. § 14:102.5(A)(1) (2004); N.Y. AGRIC. & MKTS. LAW § 351(2)(a) (McKinney Supp. 2007).

<sup>284</sup> Carol Biliczky, *Group to Battle Dog Fighting, Task Force Formed to Coordinate Battle Against Sport Described as Growing Problem*, AKRON BEACON J., Aug. 1, 2001, at D1.

<sup>285</sup> Cf. GEORGE E. DIX ET AL., MCCORMICK ON EVIDENCE § 185, at 733 (Kenneth S. Broun ed., 6th ed. 2006) (“Under our system, molded by the tradition of jury trial and predominantly oral proof, a party offers his evidence not *en masse*, but item by item. An item of evidence, being but a single link in the chain of proof, need not prove conclusively the proposition for which it is offered. It need not even make the proposition appear more probable than not. Whether the entire body of one party’s evidence is sufficient to go to the jury is one question. Whether a particular item of evidence is relevant to the case is quite another . . . . Thus, the common objection that the inference for which the fact is offered ‘does not necessarily follow’ is untenable. It poses a standard of conclusiveness that very few single items of circumstantial evidence ever could meet. A brick is not a wall.” (citations omitted)).

either because it is not a natural conclusion or because the jurors are not aware that they are permitted to draw the inference.<sup>286</sup> States can help lower these prosecutorial hurdles by revising statutes to specifically allow the admission of certain types of evidence to prove dogfighting offenses or by creating permissive inferences that will help jurors see appropriate steps in logic.

As to the first, by designating within the statute the types of evidence that are admissible, the prosecutor is saved from battling anew in each case the relevance of certain circumstantial evidence. Some states have already taken this step. Louisiana, for example, specifically provides that the following evidence can be admitted to prove ownership, possession, keeping, or training a fighting dog:

(i) Possession of any treadmill wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia, together with evidence that the paraphernalia is being used or intended for use in the unlawful training of a dog to fight with another dog, along with the possession of any such dog.

(ii) Tying, attaching, or fastening any live animal to a machine or power propelled device, for the purpose of causing the animal to be pursued by a dog, together with the possession of a dog.

(iii) Possession or ownership of a dog exhibiting injuries or alterations consistent with dogfighting, including but not limited to torn or missing ears, scars, lacerations, bite wounds, puncture wounds, bruising or other injuries, together with evidence that the dog has been used or is intended for use in dogfighting.<sup>287</sup>

The Texas statute also includes an evidentiary provision, stating that a conviction for participating in the earnings of or operating a dogfighting facility or allowing use of the location where the dogs are fought “may be had upon the uncorroborated testimony of a party to the offense.”<sup>288</sup>

States should also consider amending their dogfighting statutes to create permissive presumptions (better described as “instructed

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<sup>286</sup> See Michael H. Graham, *Burden of Proof and Presumptions in Criminal Cases*, 45 CRIM. L. BULL., Winter 2009, art. 6.

<sup>287</sup> LA. REV. STAT. ANN. § 14:102.5(B) (2004).

<sup>288</sup> TEX. PENAL CODE ANN. § 42.10(c) (Vernon 2003).

inferences")<sup>289</sup> that the jury may draw if basic facts like those specified above are proven. Because of the state's burden to prove every element of a criminal offense beyond a reasonable doubt, the state may not shift the burden of proof to the defendant.<sup>290</sup> However, the state can create a permissive presumption as long as the inference to be drawn is not mandatory.<sup>291</sup> According to the United States Supreme Court, a permissive presumption is one that "allows—but does not require—the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one and which places no burden of any kind on the defendant. In that situation the basic fact may constitute *prima facie* evidence of the elemental fact."<sup>292</sup> The use of permissive presumptions is especially appropriate in situations where the defendant has greater access than the government to proof of the crime.<sup>293</sup> This is the situation that arises with dogfighting, because it is rare that police officers come upon a scene of dogs in actual combat or being trained.

Two states—Utah and Minnesota—have created statutory presumptions based on proof similar to that provided for in the Louisiana statute, although Minnesota's provision has been held unconstitutional because of its mandatory nature. Utah's statute provides that *prima facie* evidence of a defendant's violation of causing a dogfight or using live bait animals in training devices exists if the defendant is in possession of both a fighting dog and "any breaking stick, treadmill, hot walker, cat mill, cat walker, jenni, or other paraphernalia" and there is "evidence that the paraphernalia is being used or is intended for use in the unlawful training of a dog to fight

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<sup>289</sup> See Graham, *supra* note 286, at 160.

<sup>290</sup> See *Court of Ulster County v. Allen*, 442 U.S. 140, 157 (1979). Presumptions in the criminal context are therefore misnamed because, by definition, they unconstitutionally shift the burden of producing evidence to the defendant.

<sup>291</sup> See *Francis v. Franklin*, 471 U.S. 307, 317 (1985) (holding the use of mandatory presumptions unconstitutional because it "relieves the State of the affirmative burden of persuasion on the presumed element by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make such a finding"); see also Murl A. Larkin, *Texas Rules of Evidence Handbook, Part I, Article III: Presumptions*, 30 HOUS. L. REV. 241, 271-72 (1993) (discussing mandatory presumptions).

<sup>292</sup> *Francis*, 471 U.S. at 317 (citations omitted).

<sup>293</sup> See Larkin, *supra* note 291, at 272 ("Presumptions authorize short-cuts in proof and lessen the government's evidentiary burden by placing pressure on the defendant as the person with the most knowledge to come forward with an explanation in certain circumstances.").

with another dog.”<sup>294</sup> Minnesota created a presumption of training a fighting dog that was rebuttable by a preponderance of the evidence if the state could show certain actions indicative of training, to wit, “fresh wounds, scarring, or other indications that the dog has been or will be used for fighting” and possession by the defendant of “training apparatus, paraphernalia, or drugs known to be used to prepare dogs to be fought.”<sup>295</sup> Because Minnesota’s statute appeared to create a mandatory presumption that shifted the burden of proof to the defendant, the provision was struck down as unconstitutional by a trial court in 2006.<sup>296</sup>

For a state creating a presumption, the statute should be drafted in a way to pass constitutional muster by ensuring not only that the jury is free to reject the inference created<sup>297</sup> but also that a rational connection exists between the basic fact proved and the inferred fact. As Professor Michael Graham explains:

Whether sufficient rational connection exists between the basic fact and the fact to be inferred . . . depends not only upon the natural strength of the logical inference but also upon the wording of the particular instruction given. Rational connection also varies depending on whether the

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<sup>294</sup> UTAH CODE ANN. § 76-9-301.1(2) (2003); *see also id.* § 76-9-301.1(1)(b)-(c) (making it unlawful to “cause a dog to fight with another dog or cause a dog to injure another dog for amusement or gain” or to “tie, attach, or fasten any live animal to a machine or device propelled by any power, for the purpose of causing the animal to be pursued by a dog”).

<sup>295</sup> MINN. STAT. ANN. § 343.31, subd. 2 (West Supp. 2007). An almost identical presumption is also created for training birds for cockfights. *See id.* § 343.31, subd. 3.

<sup>296</sup> Mosedale, *supra* note 15, at 4 (noting that the provision was declared unconstitutional in a written opinion issued September 6, 2006, by Hennepin County Judge Kathryn Quaintance). It is unclear whether Utah’s statute could withstand constitutional attack, but because it does not specifically state that the defendant *must* rebut the presumption, it might do so.

<sup>297</sup> The necessity of requiring the inference to be permissive is so that the statute does not shift the burden of proof to the defendant. Of course, this does not mean that the jury might not expect a rebuttal from the defendant. As Professor Michael Graham explains:

[T]he burden of production may shift in reality with the jury being ready to find each element of the charge proven beyond a reasonable doubt from proof offered by the prosecution, unless the defendant offers contradictory evidence. Because this practical shift arises as a result of the jury’s assessment of the weight of the evidence, and not as a matter of law, it is not prohibited.

Graham, *supra* note 286.

fact to be inferred is an element of the offense or negates a defense or whether the fact to be inferred has a lesser effect. . . . [A]t a minimum for an instructed inference to be given the court must determine that the fact to be inferred more probably than not flows from the basic fact.<sup>298</sup>

Inferences could possibly be used to help show a defendant's violation of at least some of the provisions set out above by the Utah and Minnesota statutes. If a prosecutor can prove that the defendant is in possession of both a fighting dog and dogfighting equipment and has intent to use the dog for fighting *and* the dog has fresh wounds or scarring consistent with dogfighting, there is likely a rational connection between these findings and proof of actual dogfighting, as well as possession and training.<sup>299</sup> Indeed, in cases in which the sufficiency of evidence has been reviewed for dogfighting convictions, courts in several jurisdictions have upheld the juries' decisions based on these same types of evidence,<sup>300</sup> suggesting that such inferences

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<sup>298</sup> See *id.* Professor Graham continues: "The more probably true than not true threshold standard is imposed to prevent the jury from overvaluing the weight to be given to the inference having a lesser probative value simply because the inference is instructed by the court." *Id.*

<sup>299</sup> By showing an intent to dogfight, prosecutors should overcome a defendant's possible response that the training equipment was used to lawfully train the dog for strength competitions. *Cf. Davis v. Indiana*, 907 N.E.2d 1043, 1055 (Ind. Ct. App. 2009) (noting that the defendant planned to introduce evidence that she bred dogs, not to dogfight, but for purposes of entering them into "weight pulling contests and treadmill races").

<sup>300</sup> See, e.g., *Ware v. State*, 949 So. 2d 169, 176 (Ala. Crim. App. 2006) (holding that evidence of 23 freshly wounded and scarred pit bulls located on defendant's property along with dogfighting equipment was enough for the jury to "reasonably exclude[] every reasonable hypothesis except that [defendant] was engaged in dog fighting"); *Jones v. State*, 473 So. 2d 1197, 1201 (Ala. Crim. App. 1985) (finding relevant to the issue of "intent to fight" the testimony of a shelter veterinarian and director that the seized dogs were dehydrated and undernourished, had scarring over their entire bodies and faces in varying degrees of healing, escaped their pens and fought other dogs, required placement in reinforced pens, and bit an employee); *People v. McCree*, No. C035853, 2002 WL 276134, at \*3 (Cal. Ct. App. Feb. 27, 2002) (holding that circumstantial evidence that defendant's dogs were "heavily scarred and possessed other physical ailments common to fighting dogs" along with other circumstantial evidence was sufficient to convict defendant for violation of ownership of a dog with intent to fight or causing a dog to fight another dog); *Stephens v. State*, 545 S.E.2d 325, 327 (Ga. App. 2001) (noting that evidence of bloodstained pit and carpet, bite sticks, first aid kit in pit area, and scarred dogs, among other things, would have supported dogfighting if defendant had been charged with such); *Fuller v. State*, 674 N.E.2d 576, 578-79 (Ind. Ct. App. 1996) (upholding conviction where

arise “more probably than not” from the facts proven and that a similar inference should pass constitutional scrutiny. In addition, by allowing the jury to reject the inference (e.g., in those cases where the jury is not quite convinced that the provision was violated), the inference would stay within constitutional bounds since the prosecutor is still bound by the standard to prove the violation beyond a reasonable doubt.

3. *Related Social Ills*

Because of the detrimental impact that dogfighting can have on childhood development, states should consider statutory provisions that address this issue, either by deterring behavior that may lead to juvenile participation in dogfighting or by addressing the potential impact of the dogfight. As to participation, states might take two approaches. First, states could make it a crime to encourage youths to participate in dogfighting or dogfighting-related activities. Illinois takes this approach by specifically prohibiting the solicitation of minors to engage in dogfighting.<sup>301</sup> Second, states might enhance penalties otherwise authorized for conviction of a dogfighting offense if the defendant also encouraged a minor to watch or engage in the activity. Virginia, for example, elevates misdemeanor penalties issued for fighting of animals that are not dogs to the felony level if a person “permits or causes” a minor to attend an animal fight or engage in certain specified activities, such as training.<sup>302</sup> Taking either approach

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evidence showed two men held pit bulls about five feet from each other, the dogs had fresh wounds, and dead pit bulls and a heavy chain were found on the property); *State v. Schneider*, 981 So.2d 107, 110-16 (La. Ct. App. 2008) (discussing circumstantial evidence presented and holding that it was sufficient for conviction of dogfighting); *State v. Ogletree*, No. 2005-P-0059, 2006 WL 2390255, at \*3 (Ohio App. Aug. 18, 2006) (finding evidence sufficient to uphold dogfighting conviction where state seized 44 break sticks and a livestock antibiotic, veterinarian testified that dogs’ scarring suggested dogfighting, and dog warden testified that blood spatters were consistent with dogfighting); *State v. Killion*, No. E2008-01350-CCA-R3-CD, 2009 WL 1748959 (Tenn. Crim. App. June 22, 2009) (upholding conviction where evidence showed blood spattered walls and blacked out window in basement, a break stick and sprayer, a digital clock with time-keeping capabilities, and two pit bulls with fresh and bleeding puncture wounds that veterinarian testified were likely caused by dogfighting); *State v. Scott*, No. W1999-01309-CCA-R3-CD, 2001 WL 846037, at \*4 (Tenn. Crim. App. July 19, 2001) (noting that, among other things, evidence of dogfighting equipment, scarring and injuries, and “atrocious” conditions in which dogs were kept was sufficient to support appellant’s guilty plea).

<sup>301</sup> 720 ILL. COMP. STAT. ANN. § 5/26-5(c-5) (West Supp. 2007).

<sup>302</sup> VA. CODE ANN. § 3.2-6571(B)(6) (Supp. 2007). The Virginia statute enhances penalties if the animals that were fighting were dogs. Therefore, if a minor



would not only help deter juvenile participation, but also would bring dogfighting statutes in line with other statutes that criminalize actions or enhance penalties for influencing a minor with regard to weapons or drugs.<sup>303</sup>

Alternatively, or perhaps in addition to penalization, states might address the impacts that dogfighting has on minors by ordering psychological counseling as part of a sentence for minors caught engaging in or watching a dogfight. Maryland specifically provides for psychological counseling of juvenile participants in dogfighting,<sup>304</sup> and a number of other states have counseling provisions included within or related to the animal cruelty portions of their laws.<sup>305</sup> By requiring counseling, minors can be encouraged to work through issues that cause their behavior (or at least better understand it) and possibly be re-sensitized to the violence of dogfighting.

In addition, because of the close connection that dogfighting has to other illegal activities, states might consider additional deterrents. Many states already permit enhancement of penalties for defendants who commit crimes for gang-related offenses<sup>306</sup> and for crimes committed while in the possession of a weapon.<sup>307</sup> States might also consider adding dogfighting to the list of activities covered by their organized crime statutes, which would then enhance the penalty for dogfighting-related convictions. Texas, for example, amended its organized crime provision to specifically include any offense listed in the dogfighting section, which covers not only the act of dogfighting

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attends a dogfight, the penalty is not enhanced again merely because of the presence of the minor. *See id.* § 3.2-6571(B)(1).

<sup>303</sup> *See, e.g.*, ARK. CODE ANN. § 5-73-109 (2005); GA. CODE ANN. § 16-13-1 (2007) (prohibiting the sale, delivery, distribution, display, or provision of drug-related objects to a minor); HAW. REV. STAT. § 712-1241(c) (2007) (classifying distribution of dangerous drugs to a minor as a Class A felony); MASS. GEN. LAWS ANN. ch. 140, § 130 (West Supp. 2007) (prohibiting the sale or provision of weapons or ammunition to minors); MONT. CODE ANN. § 45-9-101(5) (2007) (enhancing penalties for distribution of drugs to a minor).

<sup>304</sup> *See* MD. CODE ANN., CRIM. LAW § 10-607(b)(2) (Lexis Nexis Supp. 2006).

<sup>305</sup> ARK. CODE ANN. § 5-62-101(c)(1) (2005); CONN. GEN. STAT. ANN. § 46b-140(c)(4) (West 2007); D.C. CODE § 22-1001(a)(2)-(3) (Supp. 2007); ME. REV. STAT. ANN. tit. 7, § 4016(1)(D) (2006); NEV. REV. STAT. ANN. § 62E.680(1) (West 2004).

<sup>306</sup> For a list of state laws that enhance penalties for gang-related behavior, see Nat'l Youth Gang Center, Inst. for Intergovernmental Res., Gang-Related Legislation by Subject, [http://www.iir.com/nygc/gang-legis/enhanced\\_penalties.htm](http://www.iir.com/nygc/gang-legis/enhanced_penalties.htm) (last visited July 13, 2009).

<sup>307</sup> *See, e.g.*, FLA. STAT. ANN. § 775.087 (West 2006); HAW. REV. STAT. § 706-660.1 (2007); OKLA. STAT. ANN. tit. 21, § 1287.1 (West 2002).

but also all related activities (e.g., training, possession, spectator status, and so on).<sup>308</sup> The statute's enhancement thus would elevate a conviction of dogfighting from a state jail felony to a felony in the third degree, while conviction for being a spectator would be enhanced from a misdemeanor to a state jail felony.<sup>309</sup>

### B. *Joint Efforts to Reduce Dogfighting and Enforce Laws*

In addition to making the statutory changes suggested above, federal, state, and local governments must make conviction an obtainable goal. To do so requires joint efforts at three levels: educating enforcement personnel and local citizens, creating local and state task forces, and encouraging public and private cooperation in responding to enforcement.

Education is key in the battle against dogfighting, not only to increase reporting and discovery of dogfighting activity but also to unify communities against the offenders and the offense. Local governments can provide such education through their own efforts or with the assistance of private groups. In 2002, for example, the Chicago Police Department responded to the city's increase in dogfighting by training patrol officers to recognize signs of dogfighting and abuse,<sup>310</sup> and training continues today through the Department's cooperation with Chicago Animal Care and Control.<sup>311</sup> Similarly, the Humane Society of the United States (HSUS) offers dogfighting and cruelty training programs nationwide to all criminal justice personnel, including police and animal control officers.<sup>312</sup> Such training programs allow law enforcement agencies to use their officers more effectively. By recognizing the behavior and paraphernalia associated with

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<sup>308</sup> 2009 Tex. Sess. Law Serv. 1357 (West) (S.B. 554) (amending TEX. PENAL CODE § 71.02(a)).

<sup>309</sup> TEX. PENAL CODE ANN. § 71.02(b) (Vernon 2003); *see also id.* §§ 12.03(a), 12.04(a), 42.10(e) (classifying and showing progression of criminal penalties).

<sup>310</sup> *See* Tom McCann, *Police Take Aim at Dogfighting, 10,000 Officers Train to Curb It*, CHI. TRIB., July 19, 2002, at 1.

<sup>311</sup> Chicago Animal Care & Control, Animal Abuse Training Initiative, Programs & Initiatives, <http://egov.cityofchicago.org/city/webportal/home.do> (last visited July 19, 2009) (noting training initiatives for supervisors, tactile, and narcotics officers).

<sup>312</sup> Humane Soc'y Univ., Animal Cruelty & Fighting Investigations, [http://www.humanesocietyu.org/workshops\\_and\\_classes/iaf\\_main\\_page.html](http://www.humanesocietyu.org/workshops_and_classes/iaf_main_page.html) (last visited July 19, 2009). HSUS's program also focuses on training for prosecutors, judges, and government-employed veterinarians. *See id.*

dogfighting,<sup>313</sup> even officers who respond to calls unrelated to a dogfighting disturbance can assist in identifying suspects of dogfighting offenses.

Local governments might also increase reporting by offering similar training to those who routinely gain lawful access to private property. Meter readers, postal carriers, utility repairman and the like have been known to report suspected animal cruelty seen in the course of their duties,<sup>314</sup> and proper training in recognizing the signs of dogfighting may prove helpful in garnering more reports. Pilots and spotters in police helicopters and traffic choppers could also be trained because of their unique vantage point. Large-scale operations often show evidence of possible breeding or training activity that, although not visible from the street, is clearly visible by aerial surveillance. A flyover above the home of Boudreaux, for example, resulted in a search warrant after a Louisiana state trooper spotted what looked like treadmills and a fighting pit on Boudreaux's property.<sup>315</sup>

Similarly, aerial surveillance<sup>316</sup> can usually pinpoint possession of fighting dogs because of the way they are maintained, especially

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<sup>313</sup> Signs of dogfighting include numerous unsocialized and chained pit bulls in a single location, scarred dogs (especially those with scars on the face, front legs, and stifle area), dogfighting equipment like treadmills, break sticks, and tires, and foot traffic at the location that arrives at unusual hours. HSUS, *Taking Action to Stop Dogfighting: How to Spot the Signs and What You Can Do*, [http://www.humanesociety.org/issues/dogfighting/tips/dogfighting\\_action.html](http://www.humanesociety.org/issues/dogfighting/tips/dogfighting_action.html) (last visited Apr. 17, 2010).

<sup>314</sup> See, e.g., Craig Kapitan, *Info on Animal Abuse Cases Sought*, SAN ANTONIO EXPRESS-NEWS, Oct. 14, 2008, at 3B (postal carrier reported children burning tail of kitten); Margaret Smykla, *Meter Readers' Home Visits Symbolize Bygone Era*, PITTSBURGH POST-GAZETTE, June 5, 2008, at S2 (noting that meter readers report cases they see of child, elderly, and animal abuse); Pet-Abuse.com, *Hoarding – 15 Dogs, 23 Cats, Cages of Mice*, Sept. 29, 2006, <http://www.pet-abuse.com/cases/9821/CA/US/> (last visited Apr. 14, 2010) (utility repairman reported animal hoarder).

<sup>315</sup> See Brown, *supra* note 185, at B1.

<sup>316</sup> In some instances, an actual flight may be unnecessary. Where an address of a suspected dogfighter is known, law enforcement personnel (or even curious neighbors) can get an aerial view of the property (although possibly several years out of date) by using readily obtainable satellite imaging software such as Google Earth or Yahoo! Maps, which present a viewer with images of property that are generally close enough to see the typical signs of a large-scale breeder. Indeed, use of such software was the basis for a legal claim of ownership for a shipwreck allegedly found in Refugio, Texas, by a California man. See *Nathan Smith v. The Abandoned Vessel*, Findings of Fact & Conclusions of Law, Civ. Action No. H-07-784 (S.D. Tex. Apr. 27, 2009).

when there are large numbers.<sup>317</sup> Dogfighting expert Mark Kumpf was reported as stating that aerial surveillance is an easy way to locate dogfighting activity. In his words, “If you’re flying over you look for blue plastic barrels. They use them as shelters for the dogs because they’re inexpensive and rugged. They are the housing of choice.”<sup>318</sup> Although such evidence may not be enough to convict, it could pave the way for further investigation.

Educating the populace, on the other hand, requires greater effort than merely offering a local training program because individuals must be encouraged to overcome the fear of becoming involved at the expense of retribution. Particular efforts must be made to reach the targeted audiences, namely, the dogfighters and spectators themselves and their communities, because often people are unaware of the signs of dogfighting or that the activity is illegal, or they may feel that not reporting the crime is the status quo. HSUS efforts provide a good example of an education program, as the organization has started “End Dogfighting” campaigns in several problem urban areas, including Chicago, Atlanta, and Charlotte, North Carolina.<sup>319</sup> The campaigns take a comprehensive approach, providing education to both law enforcement and the communities plagued with dogfighting. As for the communities, the campaigns are multi-pronged, aimed at education,

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<sup>317</sup> Owners of fighting dogs often use heavy chains to tether the dogs near makeshift shelters, around which the dogs have worn down circular dirt paths. Dogs are often placed close enough to another dog to maintain aggression, but far enough away that the dogs cannot physically fight. See Cindy Horswell, *Court Orders Most of 285 Pit Bulls to Be Put to Death*, HOUS. CHRON., Aug. 18, 2006, at A1.

<sup>318</sup> Alexi Howk, *Cruelty May Link to Dog Fighting*, TCPALM, July 29, 2007, <http://www.tcpalm.com/news/2007/jul/29/cruelty-may-link-dog-fighting/> (quoting Mark Kumpf). Blue barrels, of course, are not always used by dogfighters, but generally the dogs are tethered separately to individual shelters.

<sup>319</sup> HSUS, *Campaign Tackles Urban Dogfighting*, [http://www.hsus.org/acf/fighting/dogfight/programs/hsus\\_end\\_dogfighting.html](http://www.hsus.org/acf/fighting/dogfight/programs/hsus_end_dogfighting.html) (last visited July 19, 2009) (hereinafter *Urban Dogfighting*); HSUS, *The HSUS Launches ‘End Dogfighting in Charlotte’ Modeled After Successful Chicago Program*, Oct. 21, 2008, [http://www.hsus.org/press\\_and\\_publications/press\\_releases/hsus\\_launches\\_end\\_dogfighting\\_in\\_charlotte\\_102108.html](http://www.hsus.org/press_and_publications/press_releases/hsus_launches_end_dogfighting_in_charlotte_102108.html). Other organizations have begun community educational efforts, although on a less grand scale than the HSUS. See, e.g., Indy Pit Crew, *It’s Time for the “Circle City” to BREAK the “Circle of Violence”*, [http://www.indypitcrew.org/CircleCity\\_CircleOfViolence.htm](http://www.indypitcrew.org/CircleCity_CircleOfViolence.htm) (last visited July 20, 2009); Training Wheels Urban Solutions Lug-Nuts Program, <http://www.suesternberg.com/03programs/04lugnuts.html> (last visited July 22, 2009).

community building, and behavior modification.<sup>320</sup> Because of the particular impact of dogfighting on children, HSUS developed an eight-week middle-school curriculum targeted at reshaping current views of dogfighting.<sup>321</sup> Community building is accomplished through various HSUS events aimed at creating trust, including vaccination clinics, rallies, and involvement of religious leaders.<sup>322</sup> The dogfighters themselves are targeted through the use of “anti-dogfighting advocates” (young men from the community) who intervene in dogfights and mediate disputes,<sup>323</sup> while those in danger of becoming dogfighters are encouraged to join “pit bull training teams” that provide alternatives to dogfighting and create stronger bonds between the dogs and their owners.<sup>324</sup> Public service announcements featuring

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<sup>320</sup> A program based on a similar theory called Training Wheels was created by animal trainer Sue Sternberg. See Training Wheels Urban Solutions, <http://www.suesternberg.com/03programs/03trainwheelsurban.html> (last visited July 22, 2009).

<sup>321</sup> See Urban Dogfighting, *supra* note 319.

<sup>322</sup> See *id.* As an example of the improved morale that residents of Chicago’s South Side have against dogfighting, more than 50 people rallied in the area to honor the two-year anniversary of the death of Julius Birdine, a 26-year-old who was killed when he refused to fight his two pit bulls. See Erica L. Green, *Dogfighting Puts Everyone’s Life on the Line*, HSUS Animal Cruelty & Fighting Campaign, July 8, 2008, [http://www.hsus.org/acf/news/julius\\_birdine\\_shot\\_defending\\_pit\\_bulls\\_070808.html](http://www.hsus.org/acf/news/julius_birdine_shot_defending_pit_bulls_070808.html).

Other means could also be used to unify communities against dogfighting, including participation in National Night Out, an event sponsored by the National Association of Town Watch designed to make communities more aware of and encourage participation in crime and drug prevention programs. See National Night Out, What Is National Night Out?, <http://www.nationaltownwatch.org/nno/about.html> (last visited Aug. 10, 2009).

<sup>323</sup> Urban Dogfighting, *supra* note 319; see also Andy MacAlpine, *Sean Moore: Reformed Fighter Is Now Friend to Pit Bulls*, HSUS Animal Cruelty & Fighting Campaign, May 22, 2009, [http://www.hsus.org/acf/news/sean\\_moore\\_profile\\_ada\\_052209.html](http://www.hsus.org/acf/news/sean_moore_profile_ada_052209.html).

<sup>324</sup> See Urban Dogfighting, *supra* note 319; see also Jeff Jenkins, *The Pit Bull Training Team, Springing into Action*, HSUS Animal Cruelty & Fighting Campaign, June 10, 2009, [http://www.hsus.org/acf/fighting/dogfight/programs/pit\\_bull\\_training\\_team\\_0904.html](http://www.hsus.org/acf/fighting/dogfight/programs/pit_bull_training_team_0904.html) (providing highlights of the 2009 training session and showing the changing relationships between owners and dogs). Other areas also offer dogfighting alternatives. See, e.g., Harris County Public Health & Environmental Services, Tricks for Pits Program, June 5, 2009, <http://www.hcphe.org/hcpress/press%20release%20pits%20june2009.htm>; Nik Kleinberg, *Don’t Be Like Mike*, ESPN.com, <http://sports.espn.go.com/espn/eticket/story?page=dogpull> (last visited July 22, 2009) (describing Sue Sternberg’s Lug-Nuts Program).

sports figures or celebrities might also be used to modify behavior by making visible role models who discourage dogfighting.<sup>325</sup>

To encourage reporting, telephone tip lines are important, especially where the report can be anonymous and rewarded. A number of jurisdictions have teamed up with Crime Stoppers programs—now made easier with the elevation of dogfighting to felony status<sup>326</sup>—to reward informants who provide information leading to an arrest.<sup>327</sup> HSUS also offers awards up to \$5,000 for reports of dogfighting and other animal-related crimes.<sup>328</sup> Despite concern that even anonymous reporting might have repercussions, at least where gangs are concerned,<sup>329</sup> telephone tip lines are proving successful.<sup>330</sup>

Jurisdictions can also take a more proactive approach to dogfighting by using other methods to uncover the activity. Because streetfighting generally does not cross jurisdictional boundaries and occurs on an unplanned basis, local task forces can be formed to create an overall approach to attack the problem.<sup>331</sup> One goal, for example,

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<sup>325</sup> Several public figures have already made public service announcements discouraging dogfighting, including hip-hop mogul Russell Simmons, the Ohio and South Carolina attorneys general working with HSUS, and UFC champions Tito Ortiz and Andrei Arlovski, along with a number of other athletes, working with For Pit Sakes, Inc.'s Knock Out Dog Fighting program. See HSUS, *Dogfighting Public Service Announcements*, [http://www.hsus.org/acf/news/dogfighting\\_psa.html](http://www.hsus.org/acf/news/dogfighting_psa.html) (last visited Aug. 10, 2009); Knock Out Dog Fighting, PSAs, <http://www.knockoutdogfighting.org/psas.html> (last visited Aug. 10, 2009).

<sup>326</sup> Generally, Crime Stoppers programs reward tips on felonies only. See MTSU/Rutherford County Crime Stoppers, [http://police.mtsu.edu/crime\\_stoppers.htm](http://police.mtsu.edu/crime_stoppers.htm) (last visited Sept. 21, 2007) (noting the general limitation of most Crime Stoppers programs).

<sup>327</sup> See, e.g., Manatee County Crime Stoppers, *Manatee CrimeStoppers Targets Dog Fighting in the New Year*, Jan. 2009, <http://www.manateecrimestoppers.com/news.html>; Indianapolis Animal Care & Control Div., Canine Crime Stoppers, July 16, 2008, at [http://www.indy.gov/eGov/City/DPS/ACCD/Control/Pages/crime\\_stoppers.aspx](http://www.indy.gov/eGov/City/DPS/ACCD/Control/Pages/crime_stoppers.aspx).

<sup>328</sup> HSUS, *HSUS Rewards*, [http://www.hsus.org/acf/cruelty/publiced/hsus\\_rewards.html](http://www.hsus.org/acf/cruelty/publiced/hsus_rewards.html) (last visited July 20, 2009).

<sup>329</sup> Foxman, *supra* note 173.

<sup>330</sup> See, e.g., *City Continues Crack Down on Dog Fighting*, *Indy.gov*, Aug. 29, 2006, <http://www.indy.gov/eGov/Mayor/PR/2006/8/Pages/20060829c.aspx> (noting that from the time Indiana launched Canine Crimestoppers in 2004 to the time that the article was written, the program had “led to more than 100 dog fighting investigations by Animal Care and Control officers and several successful prosecutions”).

<sup>331</sup> HSUS recommends that membership of local task forces should include representatives from the district attorney's office, local law enforcement authorities

might be to create an understanding of the problems that each authority faces when attempting to enforce dogfighting laws and to try to work them out. For example, animal control and law enforcement authorities might cooperate regarding misunderstood jurisdictional issues by dedicating an armed officer to assist animal control officers on dangerous calls, such as dogfighting. Similarly, the prosecutor's office could appoint a single prosecutor to oversee case management of all animal-related cases to promote consistency of prosecution and to reduce the learning curve.<sup>332</sup> By creating a better-integrated team that responds to and prosecutes dogfighting (as well as other animal-related crimes), jurisdictions should see a reduction in the impacts caused by inexperience and enforcement and prosecutorial bias.<sup>333</sup>

The task force might also be used to open avenues of communication between and within departments to aid in effective enforcement. Prosecutors, for instance, might detail the types of evidence that investigators should look for to ensure a well-presented case and caution police officers of common evidentiary snags.<sup>334</sup> Similarly, sharing information between police divisions (e.g., passing on tips from the narcotics division or vice squad to animal cruelty officers) or between Child Protective Services and the police department (e.g., information regarding items spotted during a home visit) may help in identifying additional dogfighting suspects. Similarly, if animal control officers are trained to recognize domestic abuse issues, they can return the favor and report child or adult protective issues when they make animal cruelty calls.

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and animal control, the mayor's office, local shelters and veterinary associations, and local anti-violence organizations. HSUS, *How to Create an Animal Fighting Task Force*, [http://www.hsus.org/acf/news/create\\_an\\_animal\\_fighting\\_task\\_force.html](http://www.hsus.org/acf/news/create_an_animal_fighting_task_force.html) (last visited July 22, 2009).

<sup>332</sup> Several district attorneys offices have begun centralizing animal cruelty cases in a single prosecutor, and Harris County has officially created an Animal Cruelty Division within its District Attorney's Office. See Phillips, *supra* note 131, at 20; Leonard, *supra* note 130, at 1; Kimberly Matas, *Pinal County Is Going After Pet Abusers*, ARIZ. DAILY STAR, Jan. 20, 2005, at H; Bill Murphy, *Dogfight Unit Now Part of DA Office, Lykos Targets the Owners Who Dump Dead Dogs*, HOUS. CHRON., Jan. 27, 2009, at A1.

<sup>333</sup> Some jurisdictions have already begun forming cruelty teams or task forces. See, e.g., Leonard, *supra* note 130, at 1; *supra* note 20 and sources cited therein.

<sup>334</sup> See, e.g., *Malad Couple Face Dogfighting Charges*, DESERET MORNING NEWS, Sept. 1, 2007, at B06 (noting that the dogs were not initially seized because there was question over whether seizure was allowed where the dogs did not show outward signs of being fought).

Local task forces could also identify areas that require targeted programs and implement them. For example, animal control and/or law enforcement could increase their presence in areas known for dogfighting to monitor and discourage the activity. Additionally, educational or behavioral modification programs such as those discussed above could also be implemented in at-risk neighborhoods to reduce the number of dogfights.

State-level task forces may be useful in creating a comprehensive approach to combating dogfighting statewide. Such task forces might review the overall dogfighting situation in the state to determine the gravity of the problem and prioritize areas requiring special need. State level task forces might also review current laws and make recommendations to close loopholes in statutes and create incentives for greater enforcement.

Finally, a cooperative public and private response is essential to enforcement, especially for investigation at the hobbyist and professional levels. Cooperation between law enforcement authorities, animal control, and local humane shelters often occurs already for street level fighting because of insufficient public resources. Many local humane shelters work closely with law enforcement and prosecutors in dogfighting and cruelty cases, serving as initial investigators, providing veterinary care and shelter for seized animals, and testifying in court. This partnership—as well as coordination with other local, state, and federal authorities—is essential for investigating and prosecuting hobbyist and professional dogfighting because such fights generally cross jurisdictional lines, involve the arrest and prosecution of numerous defendants, and in many cases result in the seizure, evaluation, and possible destruction of overwhelming numbers of fighting dogs and bait animals.<sup>335</sup>

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<sup>335</sup> One of the largest dogfighting raids in the United States to date illustrates these points. The raid—known as Operation Dead Game—occurred on November 14, 2008, in and near Houston, Texas, spanned five counties, and resulted in criminal charges issued against 55 defendants, with possible charges against 35 more still pending. Charges included dogfighting-related charges, as well as charges for drugs, gambling, and theft. The investigation into the ring took 17 months, during which time two undercover agents, working with an informant, slowly worked their way into a hobbyist-level ring where bets ranged from the thousands to the tens of thousands of dollars and spectators numbered up to 100 at a time. The ring itself had links to organized dogfighting in other states as well as in Mexico, and spectators came from as far away as the Czech Republic. The investigation and raid required the cooperation and coordination of a number of federal, state, and local agencies, including three divisions of the Texas Department of Public Safety (the Criminal



Investigation into hobbyist and professional dogfighting rings is long-term, requiring gradual infiltration into the upper levels of dogfighting circles, and is usually done by state or federal authorities because of cost and jurisdictional limitations of local agencies.<sup>336</sup> Investigators generally work undercover, and the investigations suffer from the same problems borne by other covert criminal operations (e.g., finding and paying for informants and surveillance, placing the lives of law enforcement officers in danger, risking the creation of entrapment defenses, creating bad publicity, and so on). Because of these issues, it is essential that the agencies most responsible for the investigation be committed to the project. Although garnering this commitment might be difficult in situations where individuals value enforcement of the offense less than local authorities, commitment may be more easily granted where costs are shared and there is promise of a higher payout in terms of the numbers of defendants caught, the types of crimes covered, and the possibility of higher penalties.<sup>337</sup>

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Intelligence Service, Texas Highway Patrol, and DPS Aircraft), the Harris County District Attorney's Office, the Harris County Sheriff's Office, the United States Department of Agriculture (USDA), and the United States Marshal's Office. The Veterinary Public Health Division of Harris County's Public Health & Environmental Services coordinated with the Houston Humane Society and the Houston SPCA to handle the 187 dogs that were seized. See *CIS Busts Major Dog-Fighting Ring*, DPS CHAPARRAL (Tex. Dep't of Public Safety), Dec. 2008, at 2, available at [http://www.txdps.state.tx.us/director\\_staff/public\\_information/publications/chaparral/chap1208.pdf](http://www.txdps.state.tx.us/director_staff/public_information/publications/chaparral/chap1208.pdf); James C. McKinley, Jr., *Dogfighting Subculture, Illegal and Secretive, Is Taking Hold in Texas*, N.Y. TIMES, Dec. 7, 2008, at A30; Animal Abuse Case Details: Dog-Fighting—187 Dogs Seized, [http://www.pet-abuse.com/pages/cruelty\\_laws.php](http://www.pet-abuse.com/pages/cruelty_laws.php) (last update June 10, 2009).

In a more recent year-long investigation led by federal authorities, over 400 dogs were seized in a raid that covered eight states—Arkansas, Illinois, Iowa, Mississippi, Missouri, Nebraska, Oklahoma, and Texas. Because of the extensive reach of the investigation and raid, numerous federal, state, and local agencies were involved, including the USDA, the Missouri State Highway Patrol, and the Federal Bureau of Investigation. See *Information Issued by U.S. Attorney's Office for Western District of Missouri on July 8: Seven Defendants from Three States Indicted for Dog Fighting*, U.S. FED. NEWS (July 14, 2009); Humane Soc'y of Missouri, *Humane Society of Missouri Animal Cruelty Task Force Works with State and Federal Agencies on Largest Dog Fighting Raid and Rescue in U.S. History*, [http://member.hsmo.org/site/PageNavigator/Federal\\_dog\\_fighting\\_case\\_7\\_8\\_09](http://member.hsmo.org/site/PageNavigator/Federal_dog_fighting_case_7_8_09) (last updated July 13, 2009).

<sup>336</sup> Investigators in Operation Dead Game, for example, were Texas Department of Public Safety officers, whereas the eight-state raid was led by federal authorities. See *supra* note 335.

<sup>337</sup> The size and complexity of organized dogfighting allows law enforcement to broaden its reach and take down larger numbers of fighters and

Cost-sharing is important because of the high cost of investigation, particularly where the size of the dogfighting ring is large and the organization widespread and complex. Although local funds are scarce for assisting large-scale investigations,<sup>338</sup> state and federal authorities can agree to share these costs, especially where both state and federal charges are possible. The brunt of prosecution costs, of course, lies at the local level, as do the enormous costs related to animal management (housing, feeding, etc.), which are often shared between public and private shelters. Because dozens or even hundreds of dogs might be seized during a raid, local animal control resources are usually overwhelmed, and private humane shelters must assist to ensure a successful raid and prosecution. The total costs are not insignificant and, despite statutory provisions allowing reimbursement,<sup>339</sup> are rarely recovered, which affects the shelter's ability to pursue other cruelty cases in the future. Prosecutors can assist cost recovery by insisting upon, as a measure of cooperation, a reasonable reimbursement share to be paid by each defendant seeking a plea bargain. In this way, shelters may find defendants digging deeper into their resources to pay their fair share.

## Conclusion

Since Michael Vick's arrest and conviction, national attention has focused on dogfighting, resulting in revision to a number of statutory provisions relating to the offense and an increase in prosecution of the crime. Despite this step forward, more work needs to be done. Many states and localities, and even the federal government, still resist

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spectators. Defendants might also face higher penalties in situations where state or federal dogfighting penalties are enhanced because of the commission of a related crime at the time of the fight (e.g., gambling).

<sup>338</sup> See Amos, *supra* note 79 ("Well-funded organizations like the Humane Society and the ASPCA have infiltrated dogfights in the past, but it's a rare occurrence that is difficult for a local animal welfare agency to recreate. Baltimore City's animal control department has 16 officers when fully staffed, and because of their heavy presence on the streets, their faces are immediately recognizable to members of the dogfighting community. Additionally, it takes a large amount of money to successfully coordinate and execute an undercover operation, money that isn't normally available to local agencies.").

<sup>339</sup> See, e.g., ARK. CODE ANN. § 5-62-120(e) (2005); OHIO REV. CODE ANN. §§ 959.132(F)(1), 959.161(D) (Lexis 1988); OR. REV. STAT. ANN. § 167.375(1) (West 2005); WASH. REV. CODE ANN. § 16.52.200(5) (West Supp. 2007).

spending time or money on enforcement of dogfighting laws, even though dogfighting has strong ties to other criminal acts, such as gambling, drugs, weapons possession, and gang membership. Prosecution of the crime is also made difficult by the secrecy of hobbyist and professional dogfighting, the spontaneity of streetfighting, the unwillingness of many witnesses to come forward, and the necessity of using indirect evidence to prove most cases. To weaken resistance to enforcing the laws, states should amend their statutes to strengthen penalties for dogfighting and related offenses, allow enhancement of dogfighting penalties for commission of related crimes at a dogfight, and streamline evidentiary requirements by specifically designating indirect evidence as relevant proof and creating permissible statutory inferences. In addition, by creating state and local task forces, enforcement can be improved through coordination of investigation and by local efforts at education. Costs can also be shared between various agencies as well as public and private animal welfare groups to decrease the impacts of investigation and prosecution.