

Agenda
Public Policy Committee
September 18, 2024 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee.....Joseph P. McGill, Chairperson

A. Reports

1. Approval of July 24, 2024 minutes
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2023-26: Proposed Amendments of MCJC 4 and 6

The proposed amendments of Canon 4E and Canon 6 of the Michigan Code of Judicial Conduct would expand the requirements of annual financial disclosure statements by judicial officers.

Status: 11/01/24 Comment Period Expires.

Referrals: 07/11/24 Civil Procedure & Courts Committee; Judicial Ethics Committee.

Comments: Civil Procedure & Courts Committee.

Comments provided to the Michigan Supreme Court are included in the materials.

Liaison: Suzanne C. Larsen

2. Michigan State Bar Foundation Proposed Amendment of MCR 2.606

Referrals: 08/01/24 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.

Liaison: Aaron V. Burrell

C. Legislation

1. Courtroom Animal Advocate Program (CAAP) Legislative Proposal From Animal Law Section

Referrals: 08/01/24 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

Liaison: Takura N. Nyamfukudza

D. Consent Agenda

To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

1. M Crim JI 17.26

The Committee proposes a new jury instructions, M Crim JI 17.26 (Unlawfully Posting a Message), for offenses charged under MCL 750.411s. The instruction is entirely new.

2. M Crim JI 33.3 and 33.3a

The Committee proposes two new instructions, M Crim JI 33.3 (Assaulting or Harassing a Service Animal) and 33.3a (Interfering with a Service Animal Performing Its Duties), for the offenses found at MCL 750.50a. The instructions are entirely new.

3. M Crim JI 35.1a

The Committee proposes amendments to M Crim JI 35.1a, formerly identified as (Malicious Use of Telecommunications Service), for the offense found at MCL 750.540e. The amendments (1) refine the title and first paragraph of the instruction to include the possible intents required under the statute, (2) add language addressing the “malicious” wording in the statute that had not been included when the instruction was originally adopted, and (3) reformat the second element to make it more user friendly than the single-paragraph original format. Deletions are in ~~strike-through~~, and new language is underlined. A “clean copy” without the struck language but including the added language is also provided.

4. M Crim JI 42.1

The Committee proposes a new instruction, M Crim JI 42.1 (Misconduct in Office) for the common law crime of misfeasance or malfeasance in office, punishable under MCL 750.505. The instruction is entirely new.

Agenda
Public Policy Committee
July 24, 2024 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Committee Members: Lori A. Buiteweg, Aaron Burrell, Suzanne Larsen, Joseph P. McGill, Thomas P. Murray, Jr., John W. Reiser, Valerie R. Newman, Takura Nyamfukudza, Judge Cynthia D. Stephens (Ret'd), Danielle Walton
SBM Staff: Peter Cunningham, Nathan Triplett, Carrie Sharlow
GCSI: Marcia Hune

A. Reports

1. Approval of June 12, 2024 minutes – The minutes were unanimously (8) approved.
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2022-38: Proposed Amendments of MCR 2.625, 7.115, 7.219 and 7.319

The proposed amendments of MCR 2.625, 7.115, 7.219 and 7.319 would: (1) require courts to stay enforcement of taxed costs while an appeal is pending or until time for filing an appeal has passed, (2) align the timeframe for filing a bill of costs in the Court of Appeals with the timeframe for filing an application for leave to appeal, (3) incorporate into MCR 7.219 the Court of Appeals internal operating procedure 7.219(B) that allows, upon reversal of a Court of Appeals decision, the new prevailing party to file a new bill of costs in the Court of Appeals, and (4) include in the lists of taxable costs those costs awarded in the lower court in accordance with MCL 600.2445(4).

The following entities offered recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously (8) to support ADM File No. 2022-38 as drafted.¹

2. ADM File No. 2022-46: Proposed Amendment of MCR 3.305

The proposed amendment of MCR 3.305 would clarify where to file a mandamus action.

The following entities offered recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously (9) to support ADM File No. 2022-46 as drafted.²

3. ADM File No. 2024-06: Proposed Amendment of MCR 3.306

In accordance with MCL 600.4501(2), the proposed amendment of MCR 3.306(B)(3)(b) would prohibit a court from granting leave to a private individual who is bringing a quo warranto action that relates to the offices of electors of President and Vice President of the United States.

The following entities offered recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously (10) to support ADM File No. 2024-06 as drafted.

4. ADM File No. 2021-05: Proposed Amendment of MCR 6.302

The proposed amendment of MCR 6.302 would require a court that has engaged in a preliminary evaluation of the sentence to inform the defendant that the final sentencing range may differ from the original estimate, and if different, advise the defendant about whether they would be permitted to withdraw their plea, and include in the evaluation a numerically quantifiable sentence term or range.

¹ Valerie R. Newman arrived after this vote.

² Judge Cynthia D. Stephens arrived after this vote.

The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The committee voted unanimously (10) to support ADM File No. 2021-05 as drafted.

5. ADM File No. 2022-25: Proposed Amendment of MCR 7.103

The proposed amendment of MCR 7.103 would require that an appeal to circuit court be heard by a judge other than the judge that conducted the trial.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The committee voted unanimously (10) to support ADM File No. 2022-25 as drafted.

6. ADM File No. 2022-12: Proposed Amendment of MCR 7.118

The proposed amendment of MCR 7.118 would allow the prisoner's attorney access to the parole eligibility report(s) and guidelines, require MDOC to provide the record on appeal within 14 days of being served with a prosecutor's application for leave to appeal the parole board's decision, require in all other appeals that MDOC provide the record on appeal within 14 days of the court granting the application for leave to appeal, and require confidential portions of the record to be filed under seal with access limited to certain people.

The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The committee voted unanimously (10) to support ADM File No. 2022-12 as drafted.

7. ADM File No. 2022-56: Proposed Amendment of MRPC 3.7

The proposed amendment of MRPC 3.7 would clarify that in accordance with Const 1963, art 1, § 13, a lawyer can appear in pro per.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee voted unanimously (10) to support ADM File No. 2022-56 as drafted.

C. Legislation

1. HB 5749 (Carter) Civil rights: public records; certain law enforcement disciplinary personnel records; require to be subject to freedom of information act requests. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The Committee voted 6 to 4 that the legislation is reasonably related to the availability of legal services and therefore *Keller* permissible.

The Committee voted 7 to 3 to support HB 5749 with two amendments: (1) complaints that have not been adjudicated should not be subject to disclosure; and (2) the name and identifying information of a complainant should not be subject to disclosure unless that individual is law enforcement personnel.

2. Landlord-Tenants

HB 5758 (Paiz) Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.

HB 5759 (Hoskins) Housing: landlord and tenants; form containing summary of tenant's rights; require the department to make available to the public. Amends sec. 57i of 1939 PA 280 (MCL 400.57i).

HB 5760 (Hoskins) Housing: landlord and tenants; form containing summary of tenant's rights; require the authority to make available to the public. Amends 1966 PA 346 (MCL 125.1401 - 125.1499c) by adding sec. 22e.

The following entities offered recommendations: Access to Justice Policy Committee.

The Committee voted unanimously (10) that the legislation is reasonably related to both improvement in the functioning of the courts and availability of legal services to society and therefore *Keller* permissible.

The Committee voted unanimously (10) to support HB 5758 – HB 5760 with amendments consistent with the Board's previously adopted position on HB 5236.

3. HB 5788 (Hope) Civil procedure: civil actions; lawsuits for exercising rights to free expression; provide protections against. Creates new act.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The Committee voted unanimously (10) that the legislation is necessarily related to the functioning of the courts and therefore *Keller* permissible.

The committee voted unanimously (10) to support HB 5788.

4. SB 810 (Shink) Civil procedure: personal protection orders; expiration date; prescribe. Amends sec. 2950 of 1961 PA 236 (MCL 600.2950).

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The Committee voted unanimously (10) that the legislation is reasonably related to the functioning of the courts and therefore *Keller* permissible.

The Committee voted unanimously (10) to oppose the legislation as drafted.

5. SB 914 (Shink) Criminal procedure: other; certain requirements for the use of informants in criminal proceedings; provide for. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 36a, 36b, 36c, 36d, 36e, 36f & 36g to ch. VIII.

The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The Committee voted unanimously (10) that the legislation is necessarily related to the functioning of the courts and therefore *Keller* permissible.

The committee voted unanimously (10) to Support SB 914 in concept. The legislation should both track in-custody informants and their offers of relief from the police and/or prosecutors and afford criminal defendants access to this information with appropriate safeguards for the informants.

6. SB 916 (Santana) Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

HB 4746 (Steele) Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee (HB 4746); Criminal Law Section.

The Committee voted unanimously (10) that the legislation is reasonably related to the functioning of the courts and therefore *Keller* permissible.

The committee voted unanimously (10) to support SB 916 and HB 4746.

7. SB 936 (Irwin) Courts: reporters or recorders; prohibited conduct of court reporter, court recorder, stenomask reporter, or owner of firm; modify. Amends sec. 1491 of 1961 PA 236 (MCL 600.1491).

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The Committee voted unanimously (10) that the legislation is necessarily related to both access to legal services and the functioning of the courts and therefore *Keller* permissible.

The committee voted unanimously (10) to support SB 936.

D. Consent Agenda

The Committee allowed the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

1. M Crim JI 5.14a

The Committee proposes a new instruction, M Crim JI 5.14a (screening of witness) where the court has permitted a witness to be screened from viewing the defendant at trial. The instruction is entirely new.

2. M Crim JI 7.6

The Committee proposes amending jury instruction M Crim JI 7.6 (Duress) to comport with discussions of the defense in *People v Reichard*, 505 Mich 81, 96 n 32 (2020), and *People v Lemons* 454 Mich 234, 248 n 21 (1997). A question remains which party bears the burden of proof relative to the defense of duress, so alternative paragraphs are provided. Deletions are in ~~strike-through~~, and new language is underlined. A “clean copy” without the struck language but including the added language is also provided (without the Use Note).

July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-38: Proposed Amendments of Rules 2.625, 7.115, 7.219, and 7.319 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-38. In its review, the Board considered a recommendation from the Bar's Civil Procedure & Courts Committee. The Board voted to support the proposed amendments. The Board believes that amending Rules 2.625, 7.115, 7.219, and 7.319 will clarify the proper procedures governing taxation of costs, especially the treatment of costs at issue in matters where a direct appeal is pending or could still be filed under the Rules.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President





July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-46: Proposed Amendment of Rule 3.305 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-46. In its review, the Board considered a recommendation from the Bar's Civil Procedure & Courts Committee. The Board voted to support the proposed amendment, which will align Rule 3.305 governing mandamus actions against state officers with the associated statutory provisions found in the Revised Judicature Act, 1961 PA 236.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

A handwritten signature in black ink that reads "Peter Cunningham".

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President



July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2024-06: Proposed Amendment of Rule 3.306 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2024-06. In its review, the Board considered a recommendation from the Bar's Civil Procedure & Courts Committee. The Board voted to support the proposed amendment and appreciates the Court's effort to align Rule 3.306 with the requirements of MCL 600.4501(2). While this statutory provision has been effective since February of this year, given the election-related content of this statutory provision, it is both timely and appropriate for the Court to amend the related court rule prior to the upcoming presidential election.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President





July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2021-05: Proposed Amendment of Rule 6.302 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-05. In its review, the Board considered recommendations from the Bar's Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee, as well as the Criminal Law Section. The Board voted to support the proposed amendment. The proposed amendment of Rule 6.302 will ensure that defendants are fully and timely advised by the court of the limitations of any preliminary evaluations concerning potential sentencing ranges in their cases.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

A handwritten signature in black ink that reads "Peter Cunningham".

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President



July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-25: Proposed Amendment of Rule 7.103 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-25. In its review, the Board considered recommendations from the Bar's Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Criminal Jurisprudence & Practice Committee, as well as the Criminal Law Section. The Board voted to support the proposed amendment, which will align the Rules with the Court's prior precedent and the requirements of due process.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President



July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-12: Proposed Amendment of Rule 7.118 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-12. In its review, the Board considered recommendations from the Bar's Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee, as well as feedback from the Criminal Law Section. The Board voted to support the proposed amendment of Rule 7.118 and believes that this proposal will clarify the procedures governing appeals from the Michigan Parole Board and, in doing so, improve the functioning of such appeals.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President



July 29, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-56: Proposed Amendment of Rule 3.7 of the Michigan Rules of Professional Conduct.

Dear Clerk Royster:

At its July 26, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-56. In its review, the Board considered recommendations from the Bar's Access to Justice Policy Committee and Civil Procedure & Courts Committee. The Board voted to support the proposed amendment of Rule 3.7 of the Michigan Rules of Professional Conduct, which will remove any existing ambiguity whatsoever about the permissibility of an attorney representing themselves in a matter in which the attorney is a party, as required by Article 1, Section 13 of the Michigan Constitution of 1963.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President



Order

Michigan Supreme Court
Lansing, Michigan

July 10, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-26

Proposed Amendments of
Canons 4 and 6 of the
Michigan Code of Judicial
Conduct

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Canons 4 and 6 of the Michigan Code of Judicial Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Canon 4. A Judge May Engage in Extrajudicial Activities.

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge may engage in the following activities:

A.-D. [Unchanged.]

E. Financial Activities.

(1)-(3) [Unchanged.]

(4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a)-(b) [Unchanged.]

- (c) A judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and if the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds ~~\$1,000~~\$375, the judge reports it ~~as required by~~in the same manner as compensation is reported in Canon 6C. For purposes of reporting gifts under this subsection, any gift with a fair market value of ~~\$500~~\$150 or less need not be aggregated to determine if the ~~\$1,000~~\$375 reporting threshold has been met.

(5)-(7) [Unchanged.]

F.-I. [Unchanged.]

Canon 6. A Judge May Receive Compensation and Expense Reimbursement and Must~~Should Regularly File Annual Financial Disclosure Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities and of Monetary Contributions.~~

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety, subject to the ~~following~~restrictions described in this canon. A judge must file a financial disclosure report as provided in this canon.

A. Definitions. As used in this canon, the following definitions apply.

- (1) "Compensation": includes earned and unearned income.
- (2) "Creditor" means an entity to whom a judge owes a debt.
- (3) "Earned income" means salaries, wages, tips, bonuses, commissions, or other earnings from employment during the reporting period.
- (4) "Financial disclosure report" or "report" means the report described in Canon 6D, which must
 - (a) be on a form approved by the State Court Administrator,
 - (b) contain the required information from the reporting period, and

- (c) be signed and dated by the judge.
- (5) “Liabilities” means a debt owed to a creditor. For purposes of this canon, a debt does not include mortgages on personal residences, vehicle loans, student loans, a revolving debt, an unsecured debt that is from a financial institution or the federal government, or a debt owed by a business entity.
- (6) “Real property” means all land within this state, all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law.
- (7) “Reporting period” means both of the following:
- (a) For the first financial disclosure report required to be filed under D(1), from [DATE] to [DATE].
- (b) For subsequent reports required to be filed under D(1), January 1 to December 31 of the preceding calendar year in which the report is filed.
- (8) “Spouse” means an individual who is lawfully married, as described under 26 CFR 301.7701-18, to a judge.
- (9) “Unearned income” means a judge’s income that is not earned from employment, including, but not limited to, financial prizes, net proceeds from rental properties, unemployment benefits, annuities, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include sales of security and commodity options.
- B. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- CB. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s spouse. Any payment in excess of such an amount is compensation. Any payment that does not constitute compensation under this paragraph does not need to be included on a financial disclosure report.
- DC. Public Financial Disclosure Reports.
- (1) Except as otherwise provided in D(2), a judge must shall file with the State Court Administrative Office a financial disclosure report that includes a complete statement of all of the following for the applicable reporting period:

~~the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received.~~

- (a) The judge's full name, court name, court address, court telephone number, and position(s) with the court.
- (b) The name, occupation, and employer(s) of the judge's spouse.
- (c) A list of all positions that the judge held as an officer, director, or trustee of any organization, educational institution, association, or governmental agency other than the judge's court. The judge does not need to report positions that are solely of an honorary nature or that are held in any religious, social, or fraternal entity. If the judge reports a position under this paragraph, the judge must include the entity's name.
- (d) The source of earned income, other than income earned from the judge's personal salary, received by the judge if the judge received \$10,000 or more from that source. The judge must include the nature of any activity for which the judge received earned income, the name of the payor, and the amount of earned income received.
- (e) The source of unearned income received by the judge if the judge received \$10,000 or more from that source. The judge must include the nature of any activity for which the judge received unearned income, the name of the payor, and the amount of unearned income received.
- (f) A list of all liabilities permitted under these canons that exceed \$10,000 and that are owed by the judge to a creditor at any time during the reporting period. The list must include the name of the creditor, the month and year the liability was incurred, and the type of liability.
- (g) Except as otherwise provided in this paragraph, for each financial account, a list of any stocks, bonds, or other forms of securities held by the judge or held jointly with the judge's spouse, if the value of the security held at a given point in time is \$10,000 or more for an individual security or \$100,000 or more for aggregate securities. While a judge must list the name of all funds that exceed the required threshold set forth in this subparagraph, a judge is not required to list specific stocks in a publicly-traded index fund, mutual fund, or

exchange traded fund. A judge does not need to report holdings in a pension or deferred compensation plan.

- (h) A list of any real property in which the judge holds an ownership or other financial interest. For purposes of this paragraph, the judge is required to include a real property in the report only if that real property has a fair market value of \$50,000 or more during the reporting period. A judge need only include the county in which the parcel of real property is situated for purposes of identifying a parcel of real property disclosed under this paragraph.
 - (i) A description of any gifts required to be reported by the judge under Canon 4, including the name of the donor and recipient, the relationship between the donor and recipient, the nature of the gift, the value or amount of the gift, and the date received.
 - (j) Whether a detailed report of campaign contributions and expenditures was filed with the Secretary of State.
- (2) A judge filing a financial disclosure report may omit from the report the following:
- (a) Information that the judge reported to the Secretary of State under the Michigan Campaign Finance Act, MCL 169.201 et seq.
 - (b) An item otherwise required to be reported under D(1)(g) or D(1)(h) if all of the following apply:
 - (i) The item is not within the control of the judge because it represents the exclusive financial interest and responsibility of the judge's spouse or another member of the judge's household.
 - (ii) The item is not in any way derived from the judge's income, assets, or activities.
 - (iii) The judge does not derive, or expect to derive, financial benefit from the item.
 - (c) An item that concerns a spouse who is living separate and apart from the judge with the intention of terminating the marriage or maintaining a legal separation.

- (d) An item that concerns income of the judge that arises from the judge’s divorce or permanent legal separation.
- (e) Except for gifts reported under subdivision (1)(m), the value of any real property or property disclosed under paragraph (1).
- (3) A financial disclosure report must include the following certification: “I certify that the statements I have made in this report are true, complete, and correct to the best of my knowledge and belief, and that I have not moved assets during the reporting period for the purpose of avoiding disclosure under Canon 6 of the Michigan Code of Judicial Conduct.”.
- (4) The judge’s report ~~must~~ shall be made at least annually and ~~must~~ shall be filed as a public document in the office of the State Court Administrator or other office designated by law. These reports will be made available by the Michigan Supreme Court upon request.

Staff Comment (ADM File No. 2023-26): The proposed amendments of Canon 4E and Canon 6 of the Michigan Code of Judicial Conduct would expand the requirements of annual financial disclosure statements by judicial officers.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by November 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-26. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J., would have declined to publish the proposal for comment.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 10, 2024

Clerk

To: Members of the Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: August 1, 2024

Re: Comparison of ADM File No. 2023-26 (Judicial Financial Disclosure) and the Public Officers Financial Disclosure Act, 2023 PA 281

Background on Public Officer Financial Disclosure in Michigan

Prior to 2022, Michigan was one of only two states (Idaho being the other) that did not require high ranking elected officials serving in the executive and legislative branches of government to publicly disclose their financial interests. Similarly, only two states (Idaho and Utah) do not require judges to file annual financial disclosures.¹ Disclosures for Michigan judges are governed by [Canon 6 of the Michigan Code of Judicial Conduct](#). The Michigan Legislature has introduced bill packages aimed at, establishing financial disclosure requirements for Michigan’s executive and legislative officers, and/or statutorily expanding the financial disclosures required of judges under Canon 6, in every legislative session since 1995. While a few of these bills were able to clear at least one chamber over the course of the last three decades, none ever made it to the Governor’s desk.

In 2022, the Legislature placed a proposal to amend the Michigan Constitution (Proposal 22-1) on the ballot to require annual public financial disclosures by legislators and state executive officers (and also to amend legislator term limits). The constitutional amendment did not include judicial officers. The amendment specified minimum content requirements for annual disclosures but directed the Legislature to “further implement this section by appropriate legislation.” It also provided that, if implementing legislation was not enacted by December 31, 2023, “a resident of this state may initiate a legal action against the legislature and the governor in the Michigan supreme court[.]” Proposal 22-1 was approved on November 8, 2022 with over 66% of the vote and is now Article IV, § 10 of the Michigan Constitution. In response, on November 9, 2023, the Legislature passed the Public Officers Financial Disclosure Act (“PA 281”), [2023 PA 281](#), which was signed into law by Governor Whitmer on December 7, 2023. The first disclosures required under PA 281 were filed by covered officeholders on April 15, 2024.

While some legislators wished to see judicial officers included under PA 281—despite their omission from Article IV, § 10—concerns were raised about, among other things, whether legislation acting directly on the judicial branch in this fashion would offend the separation of powers. In the end, PA 281 included only those public offices enumerated in Article IV, § 10: legislators, governor, lieutenant governor, secretary of state, and attorney general.

[ADM File No. 2023-26](#) was issued by the Michigan Supreme Court on July 10, 2024. It proposes several amendments to Canons 4 and 6 of the Michigan Code of Judicial Conduct to expand the annual financial disclosure requirements for judicial officers. The Court’s comment period on this matter expires on November 1, 2024.

Comparing ADM File No. 2023-26 and the Public Officers Financial Disclosure Act

While the amendments of Canon 4 and Canon 6 of the Michigan Code of Judicial Conduct proposed in ADM File No. 2023-26 and PA 281 both require annual financial disclosures, the required contents of the disclosures would be quite different:

Filer/Spouse Name and Address: Both PA 281 and ADM File No. 2023-26 require disclosure of the filer's full name and the name of their spouse.² PA 281 requires disclosure of the mailing address, telephone number, and email address of a public officer.³ ADM File No. 2023-26 instead requires the court name, court address, and court telephone number.⁴ PA 281 requires a public officer to disclose if their spouse was registered as a lobbyist or lobbyist agent,⁵ while ADM File No. 2023-26 does not impose such a requirement on judges.⁶

Positions Held: Generally, both PA 281 and ADM File No. 2023-26 require filers to disclose all positions held in an organization other than the state/court,⁷ but the language used to define the scope of the required disclosure varies.⁸ Both exclude positions that are solely of an honorary nature or that are held in a religious, social, or fraternal entity.⁹ PA 281 also excludes positions in political organizations from disclosure.¹⁰

Earned Income: PA 281 requires filers to disclose a source of earned income that is \$1,000 or more.¹¹ ADM File No. 2023-26 has a higher reporting threshold of \$10,000 or more.¹² Both use essentially the same definition of "earned income."¹³

Unearned Income: ADM File No. 2023-26 requires filers to disclose a source of unearned income¹⁴ that is \$10,000 or more.¹⁵ PA 281 has a lower reporting threshold of \$200 or more.¹⁶

Assets: ADM File No. 2023-26 does not include a specific asset disclosure requirement. PA 281 requires filers to disclose each asset held for investment or production of income with a fair market value of \$1,000 or more. This figure is to be adjusted for inflation every four years and rounded up to the nearest \$1,000.¹⁷

Liabilities: PA 281 requires filers to disclose all liabilities¹⁸ that exceed \$10,000 at any time during the reporting period.¹⁹ ADM File No. 2023-26 likewise has a reporting threshold of \$10,000 for liabilities.²⁰

Securities: PA 281 requires filers to disclose a list of any stocks, bonds, or other forms of securities held by the public officer or held jointly with their spouse during the reporting period if the total aggregate value of the security is \$1,000 or more.²¹ This figure is to be adjusted for inflation every four years and rounded up to the nearest \$1,000.²² PA 281 filers are not required to disclose a stock in a widely held investment fund (including a mutual fund, pension, etc.) if it is widely diversified and the public officer or officer's spouse does not exercise control over the financial interests held by the fund.²³ ADM File No. 2023-26 requires disclosure of any stocks, bonds, or other forms of securities held by the judge or held jointly with their spouse only if the value of the security was \$10,000 or more for an individual security or \$100,000 or more for aggregate securities.²⁴ Similar to PA 281, ADM File No. 2023-26 does not require a judge to list specific stocks held in a publicly-traded index fund, mutual fund, or exchange traded fund. It also excludes holdings in a pension or deferred compensation plan.²⁵

Real Property: PA 281 requires filers to disclose any real property in which the public officer holds an ownership interest or other financial interest if it had a fair market value of \$1,000 or more during the reporting period.²⁶ PA 281 filers may exclude the street number of a parcel of real property.²⁷ ADM File No. 2023-26 requires disclosure of real property with a fair market value of \$50,000 or more during the reporting period. A judge is only required to disclose the county in which the property is situated.²⁸

Gifts: Canon 4 currently permits a judge or family member residing in the judge's household to accept a gift only if the donor is not a party or other person whose interests have come or are likely to come before a judge.²⁹ It also requires that, if the aggregate value of gifts from any one source exceeds \$375, a judge must report such gifts.³⁰ A judge is not required to aggregate any gifts with a fair market value of \$150 or less to determine if the \$375 reporting threshold has been met.³¹ ADM File No. 2023-26 would increase the reporting threshold to \$1,000 and would not require the aggregation of gifts less than \$500. By comparison, PA 281 requires disclosure of gifts (of any value whatsoever), but only those gifts that are received from "a lobbyist or lobbyist agent under state law."³² PA 281 does not require the disclosure of any gift of any value received by a public officer from someone other than a lobbyist or lobbyist agent. Note that the Michigan Lobby Registration Act prohibits a public official from accepting a gift—which is defined³³ in that act as a payment, advance, forbearance, or the rendering or deposit of money, services or anything of value, the value of which exceeds \$76.00 (the 2024 threshold, which adjusted annually) during any 1-month period—from a lobbyist or lobbyist agent.³⁴

Public Access: PA 281 requires the Department of State to make reports filed under the Act available without charge to the public on "a separate internet webpage or its website homepage" not later than five business days after a report is received.³⁵ ADM File No. 2023-26 requires reports to be "made available by the Michigan Supreme Court upon request."³⁶ Twenty-four states (out of 48 that require financial disclosures by judges) post judicial disclosures online today.

Other Provisions: PA 281 contains several required disclosures that are not contained in ADM File No. 2023-26. Filers must disclose the date, identity of the parties to, and general terms of any agreements or arrangements with respect to future employment, a leave of absence while serving as a public officer, continuation or deferral of payments by a former or current employer other than the state, or continuing participation in an employee welfare or benefit plan maintained by a former employer.³⁷ The act imposes an ongoing duty on a public officer who is not reelected or seeking reelection to report such an arrangement within 10 days of entering into the arrangement, if the future employment is to begin within one year after the end of the officer's term of office.³⁸ PA 281 requires disclosure of all travel payments "received and reported by a lobbyist or lobbyist agent under state law."³⁹ It also requires a list of each payment made by a lobbyist or lobbyist agent to a charity in lieu of an honoraria⁴⁰ and requires a filer to disclose if they or their spouse are registered vendors with the state.⁴¹ Finally, in addition to the earned income disclosure, PA 281 requires a filer to disclose all employers and positions from which the public officer receives \$1,000 or more in annual income.⁴²

ADM File No. 2023-26 and PA 281 both include nearly identical provisions that permit a filer to omit information in certain circumstances where the item is the exclusive financial interest of the filer's spouse, concerns a spouse who is living separate and apart from the filer with the intention of terminating the marriage or maintaining a legal separation, or concerns income that arises from a divorce or permanent legal separation.⁴³

Both require filers to certify that their disclosures are true, complete, and correct to the best of their knowledge and belief, and that they have not moved assets for the purpose of avoiding disclosure.⁴⁴

PA 281 includes extensive provisions outlining the Secretary of State's duties and responsibilities related to enforcing the Act, establishes late filing fees, and provides for civil fines for individuals who knowingly file incomplete or inaccurate reports.⁴⁵

¹ The National Center for State Courts has not conducted a state survey of financial disclosure requirements for judges. *State Court Report*, a project of the nonpartisan Brennan Center for Justice at the NYU School of Law, conducted a [survey](#) and graded each state's disclosure. Michigan was ranked 47th.

² MCL 15.707(1)(a); Canon 6(D)(1)(a).

³ *Id.*

⁴ *Id.*

⁵ MCL 15.707(1)(d).

⁶ A judge is not a lobbyable "public official" under the Michigan Lobby Registration Act, 1978 PA 472, while officials in the executive and legislative branch of state government are. See MCL 4.415(2) and MCL 4.416(2).

⁷ MCL 15.707(1)(e); Canon 6(D)(1)(c).

⁸ The relevant portion of PA 281 reads: "A list of all positions currently held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than this state. If this subdivision applies, the public officer shall include the name of the organization. For purposes of this subdivision, positions held in any religious, social, fraternal, or political entity, or positions that are solely of an honorary nature, are excluded." MCL 15.707(1)(e). The relevant portion of ADM File No. 2023-26 reads: "A list of all positions that the judge held as an officer, director, or trustee of any organization, educational institution, association, or governmental agency other than the judge's court. The judge does not need to report positions that are solely of an honorary nature or that are held in any religious, social, or fraternal entity. If the judge reports a position under this paragraph, the judge must include the entity's name." Canon 6(D)(1)(c).

⁹ *Id.*

¹⁰ Canon 7 of the Michigan Code of Judicial Conduct governs a judge's obligation to refrain from political activity inappropriate to judicial office, including holding any office in a political party. Canon 7(A)(1)(a).

¹¹ MCL 15.707(f).

¹² Canon 6(D)(1)(d).

¹³ PA 281 defines "earned income" as "salaries, wages, tips, bonuses, commissions, or other compensation or earnings from employment earned during the reporting period." MCL 15.703(c). ADM File No. 2023-26 defines "earned income" as "salaries, wages, tips, bonuses, commissions, or other earnings from employment during the reporting period." Canon 6(A)(3).

¹⁴ PA 281 defines "unearned income" as "income that is not earned from employment, including, but not limited to, financial prize, unemployment benefits, annuities, stock dividends, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include inheritance money or a familial gift." MCL 15.703(n).

ADM File No. 2023-26 defined "unearned income" as "a judge's income that is not earned from employment, including, but not limited to, financial prizes, net proceeds from rental properties, unemployment benefits, annuities, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include sales of security and commodity options." Canon 6(A)(9).

¹⁵ Canon 6(D)(1)(e).

¹⁶ MCL 15.707(g).

¹⁷ MCL 15.707(g).

¹⁸ PA 281 defines “liabilities” as “what a person owes to another person, including, but not limited to, mortgages or other debts. For purposes of this act, a debt does not include a revolving debt, an unsecured debt that is from a financial institution or the federal government, or a debt owed by a business entity.” MCL 15.703(g). ADM File No. 2023-26 defines “liabilities” as “a debt owed to a creditor. For purposes of this canon, a debt does not include mortgages on personal residences, vehicle loans, student loans, a revolving debt, an unsecured debt that is from a financial institution or the federal government, or a debt owed by a business entity.” Canon 6(A)(5).

¹⁹ MCL 15.707(h).

²⁰ Canon 6(D)(1)(f).

²¹ MCL 15.707(i).

²² *Id.*

²³ *Id.*

²⁴ Canon 6(D)(1)(g).

²⁵ *Id.*

²⁶ MCL 15.707(j).

²⁷ *Id.*

²⁸ Canon 6(D)(1)(h).

²⁹ Canon 4(E)(4)(c).

³⁰ *Id.*

³¹ *Id.*

³² Attorney General Nessel issued [Opinion No. 7325](#) on June 5, 2024. Among other things, it construed filers’ obligations to report gifts, travel, and charitable donations from lobbyists and lobbyist agents.

³³ MCL 4.414(1).

³⁴ MCL 4.421(2).

³⁵ MCL 15.713(1)(f).

³⁶ Canon 6(D)(4).

³⁷ MCL 15.707(1)(k).

³⁸ MCL 15.708.

³⁹ MCL 15.707(1)(m).

⁴⁰ MCL 15.707(1)(n).

⁴¹ MCL 15.707(1)(o).

⁴² MCL 15.707(1)(b).

⁴³ MCL 15.709; Canon 6(D)(2).

⁴⁴ MCL 15.707(4); Canon 6(D)(3).

⁴⁵ MCL 15.713; MCL 15.715.

Public Policy Position
ADM File No. 2023-26: Proposed Amendment of MCJC 4 and 6

No Position

Explanation

The Committee voted to take no position on the proposed amendment of MCJC 4 and 6.

Position Vote:

Voted For position: 16

Voted against position: 1

Abstained from vote: 3

Did not vote (absence): 10

Contact Person:

Marla Linderman Richelew lindermanrichelewm@michigan.gov

From: [Nancy Thane](#)
To: [ADMcomment](#)
Cc: [Nancy Thane](#)
Subject: Comment on ADM File No. 2023-26
Date: Wednesday, August 21, 2024 2:53:45 PM

Dear Michigan Supreme Court Justices,

I appreciate this opportunity to comment on ADM File No. 2023-26: Proposed Amendments of Canons 4 and 6 of the Michigan Code of Judicial Conduct

As a trial court judge for the past 12 years in a rural community, I have always tried to hold myself to the highest standards of our great profession. I have always complied with the Canons of Ethics, including the reporting of financial activities. However, as a trial judge who must live in the rural community in which I serve, I am fearful of the potential impact that ADM 2023-26 may have.

While I have nothing to hide, that does not mean that I want everything publicized. If ADM 2023-26 becomes a reality, then it becomes a public document, subject to distribution to all. This will mean that everyone will know all of my financial information, including my pensions, deferred compensation, inheritances, etc., etc. I know enough that if I utilize a certain bank, financial advisor, or specific institution which may be involved within a matter before me, I bring that matter forth, on the record, and recuse myself if necessary. But, I have saved and invested over the years; and, I do not believe that this should be provided to the public: the people who I serve and live next door to. Again, while I have nothing to hide, that does not mean that I want it publicized.

I ask that you reconsider some of the specific parameters set within ADM 2023-26.

Respectfully submitted,

Judge Nancy L. Thane

Hon. Nancy L. Thane P38918
Tuscola County Probate & Presiding Family Court Judge
440 N. State Street
Caro Michigan 48723

(989)672-3850

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the message sender. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: [Daniel Schwalm Licensed Attorney](#)
To: [ADMcomment](#)
Subject: ADM File No. 2023-26 [Schwalm Comment]
Date: Saturday, July 27, 2024 11:36:07 AM

Dear Michigan Supreme Court,

I am writing to express my opposition to the proposed amendments to Canons 4 and 6 of the Michigan Code of Judicial Conduct, with particular emphasis on the changes to Canon 6.

The proposed amendments are excessively invasive. Requiring judges to disclose details about their real estate holdings and their spouses' incomes is an unwarranted intrusion into their private lives. Such mandates could have a severe chilling effect on the willingness of high-quality candidates to pursue judicial positions, fearing that their personal affairs will be exposed to public scrutiny.

Consider the example of a highly successful attorney in private practice who has accumulated significant wealth through years of hard work. At the culmination of their career, this individual might be inclined to give back to the community by accepting a judicial position with a lower salary. However, under the proposed amendments, this attorney would likely be dissuaded from doing so, concerned about the mandatory public disclosure of their personal and financial information.

The intrusive nature of these amendments could deter many qualified candidates from serving as judges, ultimately depriving the judiciary of experienced and capable professionals. I urge you to reconsider these amendments and to find a balance that ensures transparency without unnecessarily compromising the privacy of judicial candidates.

In my over twenty years of practicing law, I have gained some wisdom, one piece of which is, "if it ain't broke, don't fix it." The current canons are functioning effectively, and there is no widespread concern about the judiciary in this state. While there will always be a few bad actors, this is not an area that necessitates new amendments. The existing system is robust and effective. If these proposed amendments are enacted, we can expect a decline in the quality of attorneys willing to become judges, ultimately causing the public to suffer as a consequence.

Thank you for considering my concerns.

Respectfully,
Daniel Schwalm (P61476)

Texas Corners Criminal Law, PLLC
6967 West Q Avenue
Kalamazoo, MI 49009
(269) 444-JURY
(269) 242-6719 fax
<http://www.texascornerslaw.com/>
"Enforce the law on YOUR behalf."

Name: Richard Santoni

Date: 09/13/2024

ADM File Number: 2023-26

Comment:

I certainly understand the need for transparency given some of the recent news events. However, instead of requiring specific information regarding the Judge's financial information and information regarding the Judge's spouse, could a rule be instituted requiring recusal when these conflicts occur? For example, if my wife is a consultant or employee of a company, I would be required to recuse if a case involving that company comes before me.

Thank you

August 12, 2024

BOARD OF DIRECTORS

Officers

Craig H. Lubben
President

Julie I. Fershtman
Vice-President

Richard K. Rappleye
Treasurer

Ronda L. Tate Truvillion
Secretary

Larry S. Royster
Clerk of Court
Michigan Supreme Court
P.O. Boz 30052
Lansing, Mi 48909

RE: Proposed Addition of MCR 2.606 regarding Qualified or Designated Settlement Funds

Directors

Thomas R. Behm

Thomas W. Cranmer

Steven G. Howell

W. Anthony Jenkins

Karen Leppanen Miller

Hon. William B. Murphy

Jonathan E. Osgood

Michael L. Pitt

Robert F. Riley

Hon. Victoria A. Roberts

Richard A. Soble

Dear Clerk Royster,

The Michigan State Bar Foundation is requesting that the Court consider and adopt amendments to Michigan Court Rule 2.600 regarding the interest earned on Qualified or Designated Settlement Funds. Attached is a proposed new section 2.606 (Attachment A).

The Michigan State Bar Foundation provides leadership and grants to improve the administration of justice and increase access to justice. The Foundation is Michigan's largest statewide civil legal aid funder. The Foundation has administered the Interest on Lawyer Trust Account ("IOLTA") Program since 1990 and in 1994 was assigned the responsibility of administering filing fee funds pursuant to MCL 600.1485. In 1997, the Foundation created and continues to administer the Access to Justice Fund to increase resources for civil legal aid. Under MCR 3.501, the Foundation also receives residual funds in some class action cases to support activities and programs that promote access to justice. The Foundation is governed by an 18-member Board of Directors.

Ex-Officio Directors

Chief Justice Elizabeth T. Clement

Daniel D. Quick

Joseph P. McGill

Qualified or Designated Settlement Funds are often utilized in class actions or mass tort actions as a settlement tool that, when established pursuant to Court Order, assumes the tort liability from the Defendant and provides a tax deduction. In such cases, money is held in the Qualified or Designated Settlement Fund rather than in an IOLTA and therefore, interest earned is not submitted to the Foundation. This proposed rule change is intended to capture a portion of the interest earned in any Michigan court case when a settlement fund receives payments from the defendant. The proposed 180-day limitation is intended to provide law firms and administrators time to disburse funds so as not to impose undue burden on small, short-term cases or limit attorneys in their handling of client funds.

Executive Director

Jennifer S. Bentley

The working group that developed this proposed rule change includes Plaintiff's attorneys Thomas Behm, Michael Pitt and Robert Riley. The working group also consulted with pro bono counsel regarding cy pres settlements and tax implications of Qualified or Designated Settlement Funds. In addition, the working group vetted this proposal with prominent Michigan attorneys who specialize in class action and mass tort litigation.

The Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2083
(517) 346-6400
FAX (517) 371-3325
msbf.org

Larry Royster
Clerk of Court, Michigan Supreme Court
Page 2 of 2

We encourage the Michigan Supreme Court to consider this rule change that will capture a portion of the interest earned on settlement funds that are created outside of IOLTAs. MSBF looks forward to working with the Court as this proposal advances through the administrative review process. We are hopeful that our proposal will ultimately be adopted by the Court. Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in black ink that reads "Jennifer S. Bentley". The signature is written in a cursive, flowing style.

Jennifer S. Bentley
Executive Director
Michigan State Bar Foundation

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Craig Lubben, MSBF Board President

ATTACHMENT A

Proposed Amendment/Addition of MCR 2.606

1 RULE 2.606 DESIGNATED OR QUALIFIED SETTLEMENT FUND
2 OBLIGATIONS

3 (A) A settlement agreement, judgment or order shall provide that a portion of
4 interest earned on any settlement fund (including any Designated Settlement
5 Fund or Qualified Settlement Fund described in Section 468B of the Internal
6 Revenue Code and regulations promulgated thereunder) into which a defendant
7 transfers funds shall be disbursed to the Michigan State Bar Foundation to
8 support activities and programs that promote access to the civil justice system
9 for low income residents of Michigan.

10 (B) This provision shall apply (i) only to interest earned on settlement funds not
11 otherwise disbursed within the first 180 days after the deposit by the settling
12 Defendant(s) and (ii) after that 180-day date until the distributions to the
13 claimants have been completed and the settlement fund account is closed.

14 (C) Distributions from interest pursuant to this provision shall be limited to five
15 percent of the interest earned after that 180-day date but shall not exceed
16 \$250,000.

17 (D) The settlement agreement, judgment, or order shall require that settlement
18 funds be held in an interest-bearing account with reasonable efforts to obtain a
19 competitive rate of return.

Public Policy Position
Michigan State Bar Foundation Proposed Amendment of MCR 2.606

Support

Explanation

The Committee voted unanimously to support the proposed addition of Rule 2.606 to the Michigan Court Rules, as requested by the Michigan State Bar Foundation.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 8

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org

Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
Michigan State Bar Foundation Proposed Amendment of MCR 2.606

Support

Explanation

The Committee voted to support the proposed addition of Rule 2.606 to the Michigan Court Rules, as requested by the Michigan State Bar Foundation.

Position Vote:

Voted For position: 18

Voted against position: 1

Abstained from vote: 1

Did not vote (absence): 10

Contact Person:

Marla Linderman Richelew lindermanrichelew@michigan.gov

Public Policy Position
**Proposed Addition of MCR 2.606 Regarding Qualified or Designated
Settlement Fund**

Support

Explanation

The Committee voted to support the proposed amendments of MCR 2.600, as submitted by the Michigan State Bar Foundation.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 1

Contact Persons:

Ashley E. Lowe alowe@lakeshorelegalaid.org



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: September 13, 2024

Re: Animal Law Section Draft Legislation: Courtroom Animal Advocate Program (CAAP)

Background

The Animal Law Section (“Section”) has requested that the State Bar of Michigan (“Bar”) support legislation proposed by the Section that would create a courtroom animal advocate program (“CAAP”) in Michigan. This legislation has not yet been introduced. Instead, a draft bill is before the Board for consideration, because the proposed bill language names the State Bar of Michigan and proposes to assign the Bar or its designee certain functions.

In brief, CAAP legislation would permit a judge to appoint a trained volunteer attorney or supervised law student to advocate on behalf of the interests of an animal or the interests of justice in a criminal proceeding related to the treatment, welfare, or custody of an animal. One might think of the function performed by a courtroom animal advocate on behalf of an animal as somewhat analogous to a guardian ad litem’s work on behalf of a child (though the animal advocate is not an additional party to the proceeding). The appointment of an advocate is discretionary, not mandatory.

The Section’s proposed CAAP bill would allow a courtroom animal advocate to monitor the criminal proceeding; gather information through reviewing records or consulting with persons with relevant information (e.g., veterinarians, law enforcement, animal control); attend hearings; recommend and coordinate expert testimony; make recommendations regarding animal placement; present a victim impact statement on the animal’s behalf; and present information and recommendations relevant to the animal’s interests or the interests of justice. These services would be made available to a court that opted to appoint an advocate at no cost.

Under typical circumstances, the Board of Commissioners would consider such legislation after a bill had been introduced. As noted above, in this case, that approach is impractical because the draft bill proposes to assign the State Bar of Michigan or its designee certain functions. The bill sponsor working with the Animal Law Section wishes to know whether the Bar is willing to undertake those functions – should the bill become law – prior to introduction. Specifically, the proposed bill would require the State Bar of Michigan or its designee to (1) maintain a list of attorneys who are willing and eligible to serve as animal advocates, as well as a list of law schools in Michigan that have a clinical program that enrolls law students with an interest in animal issues in the legal system, and (2) approve a training that an attorney or law student must complete before being eligible to serve as an animal advocate. Rather than have the Bar itself preform these functions, the proponents of this draft bill would suggest that the State Bar of Michigan designate the Animal Law Section and/or the Animal Legal Defense Fund to do so in its stead.

CAAP bills have been introduced in two prior legislative sessions: 2019 HB 4592 and 2018 HB 6029. Unlike the bill draft before the Board of Commissioners for consideration at present, these earlier iterations assigned the list keeping and training functions to an animal welfare clinic located in Michigan. The discontinuation of the MSU College of Law Animal Welfare Clinic prompted the change. Neither of these earlier bills were reported from committee and SBM did not take a position on either.

***Keller* Considerations**

The Animal Law Section’s proposed legislation would necessarily impact the functioning of Michigan courts. It permits (but does not require) courts to appoint animal advocates in criminal proceedings related to the treatment of an animal. It also permits any party in such a proceeding to file a motion requesting the appointment of an advocate. The legislation also enumerates several ways in which an advocate may take actions that will directly impact court proceedings (e.g., recommending and coordinating expert testimony, presenting victim impact statements, making recommendations to the court as to animal placement). Because all of these components of the legislation are directly and necessarily related to court functioning, the legislation is germane to a *Keller*-permissible purpose.

Both the Access to Justice Policy Committee and the Criminal Jurisprudence & Practice Committee determined that the proposed CAAP legislation was *Keller*-permissible as germane to the functioning of the courts.

Section Advocacy Considerations

The Animal Law Section Council has adopted and submitted a public policy position in support of the proposed CAAP legislation. They have also requested that the State Bar of Michigan adopt a position supporting the proposal. The SBM Bylaws permit a section to publicly advocate a position on a *Keller*-permissible policy, unless it is “inconsistent” with “State Bar policy” (i.e., a position adopted by the Board of Commissioners or Representative Assembly). If the Board opts to support the proposed legislation, there is no inconsistency, and no further action is required. If the Board opts to oppose the proposed legislation and takes no further action, the Animal Law Section will not be permitted to continue to advocate for their proposal by operation of the Bylaws. If the Board opts to oppose the legislation but wishes to permit the Section to continue its advocacy, such inconsistent advocacy must be approved by a majority for of the Board.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

	Regulation of Legal Profession	Improvement in Quality of Legal Services
<i>As interpreted by AO 2004-1</i>	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

The Animal Law Section’s proposed CAAP legislation is necessarily related to the functioning of the courts and therefore *Keller*-permissible. The proposal may be considered on its merits.

Public Policy Position

Proposed Legislation to Create A Courtroom Animal Advocate Program

The Animal Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 266 members. The Animal Law Section is not the State Bar of Michigan and the position expressed herein is that of the Animal Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Animal Law Section has a public policy decision-making body with 15 members. On August 15, 2024, the Section adopted its position after an electronic discussion and vote. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Support

Explanation:

The State Bar of Michigan (SBM) Animal Law Section (ALS) Council unanimously supports proposed legislation (attached request 02817'23 Draft 1) to create a courtroom animal advocate program (CAAP) in Michigan and respectfully requests that the SBM Board of Commissioners support the legislation.

A courtroom animal advocate program (CAAP) is created legislatively and allows a judge to appoint a trained volunteer attorney or supervised law student, similar to a guardian ad litem, to advocate for the interests of the animal or the interests of justice in a criminal prosecution related to the treatment, welfare, or custody of an animal.

Legally, animals are property. However, unlike other types of property, Michigan law protects them from cruelty (MCL § 750.50b) and neglect (MCL § 750.50). Even so, without a CAAP, animals do not have a voice in the criminal justice system.

Michigan's proposed CAAP bill would allow a volunteer attorney or supervised law student to monitor proceedings; gather information through reviewing records or consulting with persons with relevant information, such as veterinarians, law enforcement, and animal control; attend hearings; recommend and coordinate expert testimony; make recommendations regarding animal placement; present a victim impact statement on the animal's behalf; and present information and recommendations relevant to the animal's interests or the interests of justice. Given the limited time and resources in the criminal justice system, CAAPs have the benefit of making these services available at no cost.

The volunteer attorney or law student is independent and objective, working for neither the

prosecution nor the defense, but instead serves as a voice for the animal victim or victims and represents the interests of justice. A CAAP would exist within the framework of Michigan's animal protection statutes and would not create any new crimes or penalties.

There is a well-researched connection, referred to as The Link,[®] between violence against animals and violence against humans. CAAP programs are one result of the growing understanding of the seriousness of animal abuse and provide the legal system with a no-cost resource to thoroughly address animal cruelty cases to the benefit of both animals and people.

Contact Person: Ann M. Griffin

Email: annmgriffin@hotmail.com

DRAFT 1

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 50d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 50d. (1) In a criminal prosecution related to the
2 treatment of an animal under this chapter or a criminal prosecution
3 related to the welfare or custody of an animal under the laws of
4 this state, the court may appoint, on the court's own motion or the
5 motion of any party, a volunteer advocate to represent the
6 interests of the animal or the interests of justice. If a court
7 orders the appointment of a volunteer advocate under this section,



1 the court shall appoint the volunteer advocate from a list as
2 described in subsection (3), provided to the court by the State Bar
3 of Michigan or the State Bar of Michigan's designee. A decision by
4 the court denying a request to appoint a volunteer advocate under
5 this section is not subject to appeal.

6 (2) A volunteer advocate appointed by the court under
7 subsection (1) may do any of the following:

8 (a) Monitor the case.

9 (b) Consult an individual with information that may aid the
10 judge or fact finder and review records relating to the condition
11 of the animal and a defendant's actions, including, but not limited
12 to, records from an animal control officer, veterinarian, or police
13 officer.

14 (c) Attend hearings.

15 (d) If necessary and appropriate, recommend and coordinate
16 appropriate expert testimony.

17 (e) Make recommendations related to animal placement.

18 (f) Prepare and present a victim impact statement on behalf of
19 the animal.

20 (g) Present other information or recommendations to the court
21 that are related to a determination of the interests of the animal
22 or the interests of justice. The information and recommendations
23 permitted under this subdivision are limited to information and
24 recommendations that are relevant to the duties undertaken under
25 this subsection.

26 (3) The list provided to the court under subsection (1) must
27 include the following:

28 (a) The name and contact information of attorneys licensed to
29 practice law in this state who have knowledge of animal issues in



1 the legal system and who are willing and eligible to be a volunteer
2 advocate under this section.

3 (b) The name and contact information of the law schools in
4 this state that have a clinical program that enrolls law students,
5 or anticipates enrolling law students, who have an interest in
6 animal issues in the legal system and that are willing to have the
7 law students enrolled in the clinical program meet the requirements
8 under this section and participate as volunteer advocates as part
9 of the clinical program.

10 (4) An attorney or law student must complete a training that
11 is approved by the State Bar of Michigan or the State Bar of
12 Michigan's designee before being eligible to serve as a volunteer
13 advocate under this section. A law student who participates as a
14 volunteer advocate under this section is subject to the Michigan
15 Rules of Professional Conduct.

16 (5) As used in this section:

17 (a) "Animal" means a vertebrate other than a human.

18 (b) "Clinical program" means a law school program that allows
19 students to earn law school credit for performing legal services
20 under attorney faculty supervision.

21 (c) "Law school" means a law school accredited by the American
22 Bar Association located in this state.

23 (d) "Volunteer" means that the attorney or law student
24 advocate does not receive monetary payment or reimbursement from
25 the court. A volunteer may, however, receive pro bono hours or law
26 school credit under this section.

27 Enacting section 1. This amendatory act takes effect 90 days
28 after the date it is enacted into law.



Public Policy Position
Courtroom Animal Advocate Program (CAAP) Legislative Proposal from
Animal Law Section

Oppose the CAAP Concept; Support SBM Involvement

Explanation

The Committee voted to oppose the concept of legislation implementing a courtroom animal advocate program in Michigan, as proposed by the Animal Law Section. A majority of the Committee believed that the legislation was unnecessary and that the proposed advocates had the potential to function as a “second prosecutor” to the detriment of a defendant and procedural fairness. Concerns were also raised about how the program would impact animals as evidence in a criminal proceeding and the potential for disruption to such proceedings.

Position Vote:

Voted For position: 8

Voted against position: 5

Abstained from vote: 1

Did not vote (absence): 10

Should the Legislature decide to proceed with a courtroom animal advocate program in Michigan, the Committee voted to support the State Bar of Michigan or its designee taking on the duties assigned by the legislation proposed by the Animal Law Section.

Position Vote:

Voted For position: 12

Voted against position: 2

Abstained from vote: 0

Did not vote (absence): 10

Keller Permissibility Explanation

The Committee concluded that the proposed legislation is *Keller*-permissible because it is reasonably related to the functioning of the courts. The legislation is also necessarily related to the regulation of the legal profession, because it assigns specific duties to the State Bar of Michigan itself.

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org

Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
Courtroom Animal Advocate Program (CAAP) Legislative Proposal from
Animal Law Section

Oppose as Drafted

Explanation:

The Committee voted to oppose the proposed legislation to establish a courtroom animal advocate program as drafted. The Committee would support an alternative to the draft that limited the powers of the animal advocate enumerated in Sec. 50d(2) to making recommendations related to animal placement.

Position Vote:

Voted For position: 13
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 10

Should the Legislature decide to proceed with a courtroom animal advocate program in Michigan, the Committee voted to support the State Bar of Michigan or its designee taking on the duties assigned by the legislation proposed by the Animal Law Section.

Position Vote:

Voted For position: 13
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 10

Keller Permissibility Explanation

The Committee concluded that the proposed legislation is *Keller*-permissible because it is reasonably related to the functioning of the courts.

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

Connecticut's Courtroom Animal Advocate Program (CAAP) under Desmond's Law Summary of Program and Research

Connecticut is the first state to have a CAAP law and program. This handout summarizes the law, the University of Connecticut's law clinic program, and recent research that looks at their use in animal cruelty cases.

1. Connecticut's CAAP

Desmond's Law allows courts to appoint legal advocates to represent "the interests of justice" in cruelty cases involving dogs or cats. Advocates can be law students or volunteer lawyers. In practice, an advocate is part victim advocate (explaining the victim animal's experience), part case manager (accessing goods and services like fencing or training), and part special master (sharing with courts factual and legal information).

An advocate can share factual and legal research with a court, offer recommendations on appropriate outcomes, and be a conduit of information regarding the animal. Advocates participate in hearings and judicial conferences.

Since the law was enacted in late 2016, courts have appointed advocates in at least 150 cases, including 101 in which UConn was the appointed advocate.

2. Research methods

The research surveyed prosecutors. Of the small group that replied, most or all felt that advocates provide information, help to solve issues to protect victim animals, and liaise with the public.

The research also collected data from 693 animal cruelty cases. We compared the 58 cases with advocates to 189 cases without advocates, between 2016 and 2019. We also looked at 88 cases in which UConn was the advocate.

3. Observations

- a. Courts are using Desmond's Law and appointing advocates at an increasing rate.
- b. The rates of conviction and incarceration are nearly identical between cases with and without advocates.
- c. Advocates may have a stabilizing influence on sentence durations (less variability in cases with advocates).
- d. When defendants applied for pretrial diversionary programs, the proportion of granted applications was slightly lower in advocate cases; UConn had a lower rate of granted programs.
- e. There is a significant association between the use of an advocate and whether a court orders a pretrial condition, a condition of a granted program, or a condition of probation that restricts a defendant's contact with animals, with a higher percentage of contact restrictions in cases with advocates.
- f. There is a significant association between an advocate's presence and a court's imposition of probation.
- g. Advocates may recommend that courts require defendants to participate in counseling or education as part of a sentence or diversionary program or encourage defendants to surrender the animal victim and/or potential animal victims.
- h. Based upon a small sample of cases with convictions, it appears more likely that the courts order defendants to pay restitution to a municipality or organization for costs of care in cases with advocates, but this same trend is not apparent in cases that end with diversionary programs.

4. Conclusions

An advocate's involvement can encourage court personnel to devote attention to a case and can lead to more fulsome and tailored case outcomes. The presence of a new and third advocate enhances the visibility and consideration of animal victims, and sensitizes courts to the needs, interests, and experiences of animal victims.

Volume 41
Number 2
2023

QUINNIPIAC LAW REVIEW

Contents

Articles

An Empirical Study of the Nation's First Court
Animal Advocate Law

Jessica Rubin and Tara Cooley 175

What States Are Doing About Qualified Immunity:
A Report and Recommendation

Bryan Castro 237

Note

Worker Rights in the Only Industrialized Country
Without Federal Paid Family and Medical Leave:
Comparing Connecticut's Paid FMLA and
Insurance Program at the State-level and Beyond

Allison Noteware 269

Articles

AN EMPIRICAL STUDY OF THE NATION’S FIRST COURT ANIMAL ADVOCATE LAW*

*Jessica Rubin** and Tara Cooley****

INTRODUCTION	176
I. CONNECTICUT’S COURT ANIMAL ADVOCATE PROGRAM— DESMOND’S LAW	178
II. METHODOLOGY	181
A. <i>Qualitative Methodology</i>	181
B. <i>Quantitative Methodology: Judicial Case Files</i>	182

* The authors thank the UCLA Animal Law and Policy Small Grants Program, especially Professor Taimie Bryant and Empirical Research Group Director Benjamin Nyblade, each of whom played a significant role in advising and designing this study. The authors also thank the Brooks Institute for Animal Rights Law and Policy, Inc. for its financial support which enabled the authors to research and write this Article and acknowledge that the Article does not reflect the Institute’s perspectives or endorsement. The authors remain grateful to Jamie Woodside, former Teaching Fellow in the University of Connecticut Animal Law Clinic, who co-initiated this project. The authors thank the following research assistants (who are now lawyers) for their diligent and patient reviews of court files throughout the state: Sara Bigman, Patrick Kania, Zach Mazza, Jared Mikulski, Kaylee Navarra, Celena Stoia, and Mallori Thompson. The authors thank student research assistants Kevin Lizon, Taylorann Vibert, and Colette Polezonis for reviewing case files. The authors thank Professor Leslie Levin for her thoughtful and constructive feedback on this Article. Finally, the authors are grateful to Timothy Moore, Director of the University of Connecticut’s Statistical Consulting Services Center whose collaboration and statistical analyses were invaluable to this project.

** Associate Dean for Experiential Education, Clinical Professor and Director of the Animal Law Clinic at the University of Connecticut School of Law.

*** Teaching Fellow in the Animal Law Clinic at the University of Connecticut School of Law.

C. *Quantitative Methodology: UConn Case Files* 184

D. *Statistical Analyses* 184

III. RESULTS AND ANALYSES 187

A. *Qualitative Results and Discussion* 187

B. *Quantitative Results and Discussion* 189

IV. DISCUSSION 222

A. *Observations* 222

B. *Challenges and Limitations* 224

C. *Conclusions* 225

APPENDICES 228

INTRODUCTION

Animal¹ cruelty and efforts to stop it have plagued civilization since ancient times.² Animal protection laws in the United States date back to 1641, when the Massachusetts Bay Colony enacted its legal code, the Body of Liberties; the ninety-second liberty prohibited cruelty to animals.³ While early laws aimed to protect owners’ property interests in their animals, later laws aimed to protect animals from pain and suffering.⁴ Today, every state in the United States has at least one statute criminalizing animal cruelty, including at least one felony provision.⁵

Sometimes, though, existing anti-cruelty statutes are ineffective or underutilized.⁶ States seeking to address animal cruelty may take varied approaches, including expansion of anti-cruelty statutes, creation of

¹ For simplicity and clarity in this Article, the authors use the term “animals” to refer to nonhuman animals. The authors emphasize that humans are animals.

² See generally Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part I*, 19 ANIMAL L. 23, 25–29 (2012).

³ EMILY STEWART LEAVITT, ANIMALS AND THEIR LEGAL RIGHTS 13–17 (1968); Samantha D.E. Tucker, *No Way to Treat Man’s Best Friends: The Uncounted Injuries of Animal Cruelty Victims*, 19 ANIMAL L. 151, 154–55 (2012).

⁴ DAVID FAVRE, THE ARC OF HISTORY: ANTI-CRUELTY, ANIMAL WELFARE, AND ANIMAL RIGHTS, IN THE FUTURE OF ANIMAL LAW 10–11 (2021); David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800’s*, 1993 DET. C.L. REV. 1, 1–2 (1993).

⁵ BRUCE A. WAGMAN, SONIA S. WAISMAN & PAMELA D. FRASCH, ANIMAL LAW: CASES AND MATERIALS 92 (6th ed. 2019).

⁶ See Darian M. Ibrahim, *The Anticruelty Statute: A Study in Animal Welfare*, 1 J. ANIMAL L. ETHICS 175, 176 (2006) (arguing that anti-cruelty laws are ineffective because of exempted practices and animals); M. B. Rodriguez Ferrere, *Animal Welfare Underenforcement as a Rule of Law Problem*, 12 ANIMALS 1, 8, 12 (2022) (arguing that anti-cruelty laws are underenforced); Tucker, *supra* note 3, at 179 (arguing that anti-cruelty laws should treat animals as crime victims).

specialized prosecution units⁷ or animal cruelty courts,⁸ statutory authorization of citizen suits,⁹ or creation of court animal advocate programs (“CAAPs”). Connecticut was the first state to create a statutory CAAP, enacting a law to permit court appointment of a volunteer attorney or supervised law student to advocate for animal victims in cruelty cases.¹⁰

In 2016, the Connecticut legislature enacted Public Act No. 16-30, colloquially known as “Desmond’s Law.”¹¹ This law is the first of its kind, allowing courts in Connecticut to appoint advocates to represent the interests of justice in animal cruelty cases involving dogs and cats.¹² Other states have followed Connecticut’s example and introduced similar laws, such as Maine’s 2019 “Franky’s Law”¹³ and New Jersey’s 2020 Courtroom Animal Advocate Program Bill.¹⁴

To date, there has not been reported research showing how Desmond’s Law is operating in Connecticut. This Article offers information about how Connecticut’s state courts are using Desmond’s Law. Knowledge about the law’s use is important for creating additional legislation and public policies that might allow courts to further consider animal victims. It is, however, difficult to evaluate the law and programming under it because of challenges isolating and measuring impact, the variety of animal cruelty crimes and situations, and the complexity of case outcomes.¹⁵ The research project sought qualitative and quantitative information regarding judicial handling of animal cruelty cases—instances where the human-animal relationship has gone wrong.

⁷ Pamela D. Frasch & Joyce Tischler, *Animal Law: The Next Generation*, 25 ANIMAL L. 303, 312–13 (2019).

⁸ Tayana Kaplan et al., *Looking Backward, Looking Forward: How the Evolution of Specialty Courts Can Inform the Courts of Tomorrow*, 54 CT. REV. 14, 17–18 (2018).

⁹ E.g., N.C. GEN. STAT. § 19A-2 (2022) (providing a civil remedy in addition to any criminal remedies available for the protection of animals).

¹⁰ Jessica Rubin, *Desmond’s Law: A Novel Approach to Animal Advocacy*, 24 ANIMAL L. 243, 251 (2018) [hereinafter Rubin, *A Novel Approach*].

¹¹ 2016 Conn. Acts 216 (Reg. Sess.) (codified at CONN. GEN. STAT. § 54-86n (2021 & Supp. 2022)). All Connecticut General Statutes referenced in this Article are current with the enactments of the 2023 Regular Session). For access, see CONN. GEN. STAT., <https://www.cga.ct.gov/current/pub/titles.htm>.

¹² See CONN. GEN. STAT. § 54-86n; Rubin, *A Novel Approach*, *supra* note 10, at 251.

¹³ ME. REV. STAT. tit. 7, § 4016(1-A) (2022) (effective June 16, 2020); ME. REV. STAT. tit. 17, § 1031(3-C) (2022).

¹⁴ S.B. 2211, 220th Leg., Reg. Sess. (N.J. 2022).

¹⁵ See, e.g., Jessica Rubin, *Desmond’s Law: Early Impressions of Connecticut’s Court Advocate Program for Animal Cruelty Cases*, 134 HARV. L. REV. 263, 267, 271 (2021) [hereinafter Rubin, *Early Impressions*] (discussing factors that advocates may consider in animal cruelty cases such as the details of an incident and the experience of animal victims).

Part I of this Article describes Desmond's Law, including its history, legislative purpose, and an advocate's role in an animal cruelty case. Part II describes the research methodologies used in this project to collect qualitative and quantitative data to study the law's use. Part III presents the results of the research and statistical analyses based upon data from animal cruelty case files within the State of Connecticut Judicial Branch as well as case files of the Animal Law Clinic at the University of Connecticut ("UConn") School of Law.¹⁶ Part IV discusses observations and challenges regarding the law's use and recommendations for further study. Evaluation of Desmond's Law can inform implementation and offer data for states considering similar legislation.

I. CONNECTICUT'S COURT ANIMAL ADVOCATE PROGRAM— DESMOND'S LAW

Desmond's Law created the nation's first statutory CAAP.¹⁷ In Connecticut, between 2011 and 2021, prosecutors filed 3,348 animal cruelty cases, an annual average of 304.¹⁸ The majority (80%) of those cases, however, were eventually dropped or dismissed, with 86% of the dismissals occurring after the defendant completed a pretrial diversionary program.¹⁹ This dismissal rate suggests that animal cruelty cases and anti-cruelty laws may sometimes receive inadequate attention or resources. Desmond's Law attempts to address this problem by adding advocates to cruelty cases.²⁰

¹⁶ Confidential access to the Judicial Branch files was granted under a Memorandum of Agreement between the State of Connecticut Judicial Branch and the University of Connecticut. Other confidential data compilations are on file with the authors.

¹⁷ Rubin, *A Novel Approach*, *supra* note 10, at 251. While Desmond's Law is the first statutory CAAP, a program may exist under judicial, rather than legislative, authorization. For example, the Onondaga County (New York) Bar Association Volunteer Advocate Lawyer for Animal Abuse Court Program (VALAC) accepted its first appointment in February 2015. See *Volunteer Advocate Lawyer for Animal Abuse Court*, ONONDAGA CNTY. BAR ASS'N, <https://www.onbar.org/about-us/committees/volunteer-advocate-lawyer-animal-abuse-court/> (last visited Jan. 14, 2023); Douglass Dowty, *Syracuse lawyers volunteer to save their clients' lives: One dog at a time*, SYRACUSE.COM: EMPIRE MAG. (Jan. 13, 2017, 4:02 PM), https://www.syracuse.com/empire/2017/01/syracuse_lawyers_volunteer_to_save_their_clients_lives_one_dog_at_a_time.html.

¹⁸ See MICHELLE KIRBY, CONN. GEN. ASSEMB. OFF. OF LEGIS. RSCH., 2022-R-0123, ANIMAL CRUELTY CASES IN CONNECTICUT (2011-2021), at 1 (2022), <https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0123.pdf>.

¹⁹ *Id.*

²⁰ See generally Rubin, *Early Impressions*, *supra* note 15, at 266–70 (describing the role of an advocate under Desmond's Law).

The Connecticut legislature enacted the law in response to four factors: (1) increased recognition of animal sentience; (2) increased acceptance of the link between violence to animals and violence to humans; (3) historic underenforcement of animal anti-cruelty laws in Connecticut; and (4) a tragic animal cruelty case involving a dog named Desmond.²¹ While these four factors culminated with legislation unique to Connecticut, underenforcement of anti-cruelty laws is common across the nation.²² Desmond's Law represents a novel approach to help mitigate this.²³

Desmond's Law allows courts to appoint volunteer lawyers or supervised law students as legal advocates in animal cruelty cases involving dogs or cats.²⁴ Shortly after the law's enactment, UConn School of Law developed a program to train students to serve, under faculty supervision, as advocates.²⁵ As student interest and caseload increased, UConn School of Law created an animal law clinic to provide students with structured coursework, supervision, and instruction on the substantive law and skills needed to serve as advocates.²⁶

In January 2023, three bills were introduced to the Connecticut Legislature that would expand Desmond's Law by removing its limitation to cases involving dogs and cats and allowing courts to appoint advocates in a wider range of animal cruelty cases.²⁷

The goals of Desmond's Law include: (1) ensuring that victims of animal cruelty receive protection; (2) advancing justice by ensuring that well-grounded cases are not dropped, holding offenders accountable, and preventing future cruelty; (3) equipping courts with information for

²¹ *Id.* at 266, n.26.

²² See ALLIE PHILLIPS & RANDALL LOCKWOOD, NAT'L DISTRICT ATT'YS ASS'N, INVESTIGATING & PROSECUTING ANIMAL ABUSE: A GUIDEBOOK ON SAFER COMMUNITIES, SAFER FAMILIES & BEING AN EFFECTIVE VOICE FOR ANIMAL VICTIMS 1, 13–14 (2013), <https://ndaa.org/wp-content/uploads/NDAA-Animal-Abuse-monograph-150dpi-complete-1.pdf>. See also Ibrahim, *supra* note 6, at 176.

²³ Rubin, *A Novel Approach*, *supra* note 10, at 243.

²⁴ CONN. GEN. STAT. § 54-86n.

²⁵ Rubin, *A Novel Approach*, *supra* note 10, at 255–56.

²⁶ See *Clinics and Experiential Education*, UNIV. CONN. SCH. OF LAW, <https://law.uconn.edu/academics/clinics-experiential-education/#>; see also *Law Course 7384 – Clinic: Animal Law*, UNIV. CONN. SCH. OF LAW, <https://law.uconn.edu/academics/clinics-experiential-education/animal-law-clinic/> (last visited Jan. 4, 2023).

²⁷ See S.B. 1060, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023) (proposing to allow appointment of an advocate in proceedings concerning the welfare or custody of any animal); H.B. 5579, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023) (proposing to allow appointment of an advocate in proceedings concerning egregious animal abuse, regardless of the animal involved); H.B. 6260, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023) (proposing to allow appointment of an advocate on behalf of any animal owned or kept by a person).

thorough treatment of cases; (4) providing meaningful opportunities and training for lawyers and law students serving as advocates; and (5) encouraging courts to treat animals as sentient crime victims.²⁸

In practice, the advocate's role is a hybrid of three components: a special master,²⁹ a victim advocate, and a case manager.³⁰ An advocate serves as a victim advocate by explaining, in legal proceedings, an animal victim's experiences.³¹ An advocate serves as a special master by sharing legal and factual information that might otherwise be unavailable, providing legal analyses of novel issues, and informing courts about analogous cases.³² An advocate serves as a case manager where animal victims or potential animal victims need protection, rehabilitation, or rehoming or where a defendant needs services to care for the animal(s).³³

Advocates can provide the following information to a court: facts about a defendant's conduct; information about an animal victim's condition, injury, and any treatment; recommendations for sentencing and future protection of an animal victim; and other factual information and legal research relating to a case.³⁴ The goal of an advocate is to achieve a just outcome in these cases, which "reflect[s] the interests of animal victims, potential victims, the accused, and members of the community" through fair and tailored case outcomes.³⁵

Animal cruelty, whether based upon acts of commission or omission and whether intentional or negligent, is a crime with frequently complicating factors, including the perpetrator's situation, underlying mental health issues, and the unique features of a voiceless, sentient, and

²⁸ Rubin, *Early Impressions*, *supra* note 15, at 265.

²⁹ For example, in 2007, Professor Rebecca Huss was appointed by the United States District Court for the Eastern District of Virginia to serve as the guardian/special master of the 53 pit bulls in the Michael Vick case. See Rebecca Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 69, 78 (2008) (explaining Huss's appointment, role, and perspective) ("It was important to [Huss] that each dog be considered an individual.").

³⁰ Rubin, *Early Impressions*, *supra* note 15, at 267–69.

³¹ *Id.* at 265–67.

³² *Id.* at 265–69.

³³ *Id.* at 269.

³⁴ *Id.* at 267.

³⁵ *Id.*; see generally H.B. 5344, 2016 Gen. Assemb., Reg. Sess. (Conn. 2016) (demonstrating that legislative records use similar language to describe the role of advocates); OFF. OF LEGIS. RSCH., BILL ANALYSIS FOR HB-5344, AS AMENDED BY HOUSE "A", CONN. GEN. ASSEMB. (2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R01-BA.htm>.

living victim whom the law categorizes as property.³⁶ An appointed advocate for the animal victim can assist with managing and sorting through these complexities. It is important, however, to consider the effects of inserting an additional person into the process of an animal cruelty case.³⁷

Despite appointed advocates perceiving and reporting individual impact in cases, there has been no reported research aggregating the use of the law in Connecticut prior to this study.

II. METHODOLOGY

This research project began in 2019 and was designed to obtain qualitative and quantitative data. The qualitative inquiry collected data based on knowledge and impressions of the law held by lawyers involved in the criminal justice system. The quantitative inquiry collected data from animal cruelty cases with and without advocates.

A. *Qualitative Methodology*

The author (JR) first developed a research survey to assess perceptions of the law by requesting information from prosecutors, defense lawyers, and current and prospective advocates registered with Connecticut's Department of Agriculture. The author (JR) designed the survey to collect qualitative data on case management, outcomes, duration, and public engagement associated with animal cruelty cases. Appendix A contains the survey instrument used in the qualitative inquiry.³⁸

The survey was developed in the UConn Qualtrics system and administered electronically through e-mail messaging. The survey was disseminated to all state prosecutors by one point of contact in the state's Division of Criminal Justice and to all public defenders by another point

³⁶ Rubin, *Early Impressions*, *supra* note 15, at 264 ("Animals are sentient beings; they experience pain and suffering. Every state in the nation criminalizes cruelty against them. . . . But because animals lack voices to communicate their suffering to us, crimes against them often fall through cracks in the justice system.").

³⁷ *See generally id.* at 267 (arguing that advocates can assist courts with complex cases involving animal victims, but identification of an advocate's full effect on proceedings requires further research).

³⁸ The survey consisted of 21 questions that requested the participants to select responses from multiple choices or rank their responses on a scale of 1 to 7, where 1 indicates strong disagreement and 7 represents strong agreement. The survey contained open text boxes for explaining such responses. The UConn Institutional Review Board approved the study.

of contact in the state's Division of Public Defender Services. Therefore, the authors cannot determine how many individuals received survey access. Additionally, the author (JR) was not permitted to send the survey to state judges. The survey opened on November 1, 2019, and closed on January 15, 2020. Twenty-two people responded to the survey.

B. Quantitative Methodology: Judicial Case Files

The quantitative data for this study were collected in two different parts. The initial research effort was made by reviewing case files provided by the Connecticut Judicial Branch. The authors were provided access to clerk files in cases involving charges under section 53-247 (animal cruelty) or section 22-329a (civil forfeiture of animals) of the Connecticut General Statutes.³⁹ The authors requested access to data from cases two years prior to enactment and two years after enactment of the law.⁴⁰

The project initially sought data from court files ("Judicial case files"). The Judicial collection phase entailed reviewing files in animal cruelty cases in which advocates were appointed and those in which advocates were not appointed.

Data were collected by research assistants at courthouses across the state and at the Connecticut Judicial Branch's Administrative Services Office. The available data depended on record retention at individual courthouses. The project collected and coded cases that were initiated before and after Desmond's Law was enacted (2016) and compared features and outcomes in the following animal cruelty cases: (1) cases commenced after the law was enacted in which an advocate was appointed, and (2) cases commenced after the law was enacted in which an advocate was not appointed. Where possible and specified in court records, the project tried to focus on cases started since the effective date of Desmond's Law and involving dogs and/or cats because Desmond's

³⁹ See CONN. GEN. STAT. § 53-247 (prohibiting cruelty to animals, malicious or intentional cruelty to animals, engaging in exhibition of animal fighting, and intentionally injuring or killing police animals or dogs in volunteer canine service and rescue teams); CONN. GEN. STAT. § 22-329a (allowing animal control and/or law enforcement officers to seize neglected or cruelly treated animals). Although not requested, a small number of these files were for cases based on animal-related, non-cruelty statutory violations.

⁴⁰ While the requested case range was for cases commenced between October 2014 through October 2018, the scope of the cases received extends beyond that two-year window, covering a longer period and having a range of December 17, 2013, through January 14, 2020.

Law's current application is limited to cases involving dog and/or cat victims.⁴¹

Trained and calibrated student research assistants reviewed cases in which courts appointed advocates and cases in which courts did not appoint advocates, either because a case predated the law, a case involved a victim other than a dog or a cat, or a court did not appoint an advocate for some other reason. Desmond's Law allows (but does not require) courts to appoint legal advocates for animals in cruelty cases in which dogs or cats were the victims.⁴²

The research assistants reviewed case files and collected data on a Microsoft Excel sheet with specified variables but were limited to the information available within case files. Appendix B lists data points that correspond to column headings on the data collection spreadsheet. Variables included durations of cases, types of offenses, and case outcomes, including protective orders, probation conditions, sentencing, animal surrender, restitution, and education/counseling. For each question, the sample ("N") excludes cases lacking the sought data either because the cases were pending or because the value was unascertainable for the question.

The data collection itself spanned over two years. The extensive collection time is due primarily to court closures and backlogs due to the COVID-19 pandemic (the "Pandemic"). Due to the Pandemic, in the final stage of research, the authors pursued remote data collection instead of on-site collection. The Connecticut Judicial Branch uploaded the remaining case files through a secure electronic process, and the authors viewed these files and completed data collection in February 2022. The Judicial case files include cases with arraignment dates through January 14, 2020. The total set of Judicial case files includes 693 animal cruelty cases, 58 of which used advocates and 635 of which did not use advocates.

⁴¹ See CONN. GEN. STAT. § 54-86n (limiting qualifying animal victims to dogs or cats). In the UConn case files, 87 of 88 cases involved a dog or cat. In the 87 cases with a dog or cat, some of these cases also included other animals (e.g., horse, rabbit, guinea pig, snake, chicken). Of the 693 Judicial case files, 289 involved victims of unknown species; of the 404 cases including known species, 317 involved a dog or cat and 87 did not involve a dog or cat.

⁴² CONN. GEN. STAT. § 54-86n(a) ("In any prosecution . . . regarding the welfare or custody of a cat or dog, the court may order, upon its own initiative or upon request of a party or counsel for a party, that a separate advocate be appointed to represent the interests of justice.").

C. *Quantitative Methodology: UConn Case Files*

The project also collected data from the UConn Animal Law Clinic for cases in which it was appointed as an advocate (“UConn case files”). The UConn collection phase was limited to reviewing files in animal cruelty cases in which courts appointed UConn as the advocate. The authors conducted the same analyses and applied the methodology listed above.

In the data analyses, the two attempts at data collection—one from Judicial case files and one from UConn case files—are treated separately. The UConn data include only those cases in which courts appointed a UConn advocate. Courts may also appoint private volunteer lawyers to serve as advocates.

The UConn case files include 88 cases in which courts appointed UConn as the advocate. The UConn case files include cases with appointment dates through June 30, 2022. For some research questions, the sample was further reduced if a case was pending and the sought information was unavailable.

D. *Statistical Analyses*

In order to conduct the statistical analyses, the authors compared data from cases with advocates to only those cases in which advocates could have been appointed (because they involved a dog or cat victim and were pending after the enactment of Desmond’s Law). These are referred to as Judicial Eligible Cases throughout this Article.

Of the 693 Judicial cases, 498 have or will have a resolution date after October 1, 2016. Of those cases, 246 involved a dog or cat. Of the 246 cases, courts appointed advocates in 57.⁴³ In 189 cases, courts could have appointed advocates but did not. These are the Judicial Eligible Cases (those eligible for appointment but without advocates), which were used for the majority of comparisons in the project.

The authors used the following case dispositions to determine final outcomes: dismissal, *nolle prosequi* (a prosecutor’s decision not to prosecute a case),⁴⁴ grant of application to enroll in a diversionary

⁴³ Of the 58 Judicial Advocate Cases, one case is not included because that case did not include a dog or cat victim.

⁴⁴ Also referred to as a “*nolle*.” See *Nolle Prosequi*, CONN. PRAC. BOOK § 39-29 (2022).

program, and sentence. A case with any final outcome was coded as a resolved (non-pending) matter.

In attempting to depict cases and advocate use most accurately, the authors present, and sometimes compare, the following key groups of cases: Judicial Eligible Cases, Judicial Advocate Cases (Judicial cases with advocates), UConn Advocate Cases (cases with UConn advocates), and Combined Advocate Cases (Judicial Advocate Cases plus UConn Advocate Cases, correcting for duplication of cases included in both groups).

The sample varies among research questions and tables depending on the number of cases in which the sought information was available and ascertainable. For example, cases missing sought data were excluded from analyses. Pending cases were also excluded if they did not have a value sought by the question.

Statistical tests were performed within the Judicial dataset, comparing Judicial Advocate Cases with Judicial Eligible Cases. Separate tables depict data from the UConn case files. There are 30 cases that appear in both sets of case files, so the analyses do not compare Judicial data with UConn data except in instances where duplication was avoided.

Table 1 lists the questions used in this research project to investigate advocate use in animal cruelty cases and to depict how courts are using the law and any observed case features.

TABLE 1: RESEARCH QUESTIONS.

Q1.	How many advocates were appointed in each year?
Q2.	Based upon Judicial case files only, how many cases that were pending on October 1, 2016 (the effective date of Desmond's Law) and involved dogs or cats, used advocates, and how many could have used advocates but did not?
Q3.	What was the duration of cases, in days?
Q4.	Was advocate use more common in cases involving felony or misdemeanor charges?
Q5.	Was advocate use more common in cases with intentional or neglectful conduct? ⁴⁵
Q6.	Was advocate use more common in cases in which animals died or survived?
Q7.	Was advocate use more common in cases involving multiple animals?
Q8.	Was advocate use more common in certain locations?
Q9.	In cases with and without advocates, how many outcomes included convictions?
Q10.	In cases with and without advocates, how many outcomes included incarceration?
Q11.	In cases with and without advocates, what was the length of sentences, in months?
Q12.	In cases with and without advocates, what was the length of suspended sentences, in months?
Q13.	In cases with and without advocates, in what percentages of cases did defendants apply for diversionary programs and the programs were granted?
Q14.	In cases with and without advocates, in what percentages of cases did outcomes include court-ordered probation?
Q15.	In cases with and without advocates, in what percentages of cases did outcomes include restitution?
Q16.	In cases with and without advocates, in what percentages of cases did courts restrict defendants' contact with animals?
Q17.	Based upon UConn case files only, in what percentage of cases did outcomes include court-ordered education or counseling?
Q18.	Based upon UConn case files only, in what percentage of cases did outcomes include surrender of animal victims and/or other animals?
Q19.	Based upon UConn case files only, when did defendants surrender animal victims and/or other animals?
Q20.	Based upon UConn case files only, in what percentage of cases were other (non-animal cruelty) charges filed?

⁴⁵ Here and throughout, intentional/neglectful descriptors are used to distinguish between acts of commission and acts of omission. In this context, "intentional" refers to acts of commission and should not be conflated with "intentional" as a particular *mens rea*.

The authors used Chi-square (“ χ^2 ”) tests of association to analyze the majority of these questions.⁴⁶ Note that this test requires cases with and without advocates.⁴⁷ This is only possible for the Judicial case files, so these tests were used with the Judicial data and not the UConn data. The tables for the UConn data represent the frequency of occurrences.

Statistical tests were also performed to evaluate whether case and sentence durations in Judicial case files differed between cases with advocates and cases without advocates. In these instances, because the outcome variable is continuous (time), the tests used are Wilcoxon Rank Sum tests (“W”), which are the non-parametric equivalent of a t-test.⁴⁸ A significant p-value for these tests suggests that there was a significant difference in durations between advocate and non-advocate cases.⁴⁹

III. RESULTS AND ANALYSES

The results of the analyses offer some insights but not a comprehensive review. The data show how the law appears to be operating and offer a prompt to better record case information.

A. Qualitative Results and Discussion

As of January 15, 2020, when the survey closed, only 22 of the participants finished the survey to completion. Approximately 73% of the survey participants (16 out of 22) self-identified as state prosecutors. The authors focused on the responses from the 16 state prosecutors due to the

⁴⁶ See ALAN AGRESTI, AN INTRODUCTION TO CATEGORICAL DATA ANALYSIS 34–40 (2d ed. 2007). This test examines whether there is a significant association between two categorical variables where the null hypothesis (“ H_0 ”) is that there is no association between variables. *Id.* A significant p-value ($p \leq 0.05$) received after χ^2 analyses would suggest a significant association between variables. *Interpret the Key Results for Chi-Square Test for Association*, MINITAB, <https://support.minitab.com/en-us/minitab/21/help-and-how-to/statistics/tables/how-to/chi-square-test-for-association/interpret-the-results/key-results/> (last visited Jan. 3, 2023). If the p-value is not significant, then there is no association between variables, and advocate use does not change, or has no association with, the other variable included.

⁴⁷ See AGRESTI, *supra* note 46, at 34–36 (explaining that Chi-square tests of association require a binary variable). This difference (between cases with and without advocates) constitutes the variable that the test measures.

⁴⁸ See Clay Ford, *The Wilcoxon Rank Sum Test*, UNIV. VA. LIBR. RSCH. DATA SERV. + SCI. (Jan. 5, 2017), <https://data.library.virginia.edu/the-wilcoxon-rank-sum-test/>. See generally MYLES HOLLANDER & DOUGLAS A. WOLFE, NONPARAMETRIC STATISTICAL METHODS 27–33 (1973) (providing further reading and examples of the Wilcoxon rank sum test).

⁴⁹ See *The Wilcoxon Signed Rank Test for a Median*, PENN STATE EBERLY COLL. OF SCI., <https://online.stat.psu.edu/stat415/lesson/20/20.2> (last visited Jan. 4, 2023).

low number of responses from other types of recipients. Below is an overview of the results.

OVERVIEW OF SURVEY RESPONSES.

Of the 16 responses from state prosecutors:

➤ 15 reported working on at least one animal cruelty case	
8 of 15 (53%)	Worked on 1 to 5 cruelty cases
3 of 15 (20%)	Worked on 6 to 10 cruelty cases
4 of 15 (27%)	Worked on 11 or more cruelty cases
➤ 14 reported having knowledge of Desmond's Law	
➤ 9 reported working on at least one case in which an advocate was appointed	
8 of 9 (89%)	Reported that advocates provide information to courts about defendants
9 of 9 (100%)	Reported that advocates provide information to courts about animal victims
6 of 9 (67%)	Reported that advocates solve issues related to animal victims' protection
7 of 9 (78%)	Reported that advocates help to liaise with members of the public who are interested in cruelty cases
5 of 9 (56%)	Strongly disagreed that prosecutors devote more attention or time to a cruelty case when an advocate is appointed (2 of 9 strongly agreed)
6 of 9 (67%)	Strongly disagreed that an advocate impacts a court's neutrality (1 of 9 strongly agreed)
5 of 9 (56%)	Reported that advocates have no impact on the determination of charges (3 of 9 reported slight impact)
3 of 9 (33%)	Reported that advocates do not impact sentencing (3 of 9 reported high impact)
7 of 9 (78%)	Reported that advocates impact pretrial protections and restrictions on animal contact

The results of this survey provide some information on the early experiences of prosecutors. Due to the low number of responses, the results of this study cannot be read to represent the experiences of all legal professionals in Connecticut. The low response rate may be due to unfamiliarity with Desmond's Law, given that the authors administered the survey soon after the state enacted the law. There is an opportunity for more qualitative research now that court personnel, prosecutors, and defense counsel are likely more familiar with the law than when the initial

qualitative survey was conducted. The results suggest the need for educational outreach regarding Desmond's Law.

B. Quantitative Results and Discussion

Quantitative results from Judicial and UConn case files will be presented separately. The Judicial case files include cases brought under sections 53-247 (cruelty to animals) or 22-329a (civil forfeiture) of the Connecticut General Statutes, whether or not advocates were appointed. The UConn case files include only cases in which courts appointed UConn as the advocate.⁵⁰ The two sets of case files were analyzed separately because the methods of data collection and the completeness of data differed between them. The authors combine both sets in the discussion of each research question for ease of narration and comprehension. While the authors compare Judicial Eligible Cases with Judicial Advocate Cases throughout, in a few instances where relevant, the authors also compare Judicial Eligible Cases with Combined Advocate Cases.

The research questions were designed to capture how courts are using advocates and any observed associations in case outcomes. The following tables are based on cases that the authors could access either as an appointed advocate or through the Judicial Branch request. The research posed the following questions for both Judicial case files and UConn case files unless otherwise noted.

Q1. How many advocates were appointed in each year?⁵¹

In Tables 2, 3, and 4, cases were attributed to the year in which an advocate was appointed.

⁵⁰ In the Judicial case files and/or the UConn case files, a small number of cases include charges under CONN. GEN. STAT. §§ 53a-32 (violating probation), 22-351 (killing/injuring companion animal), 22-339a (licensing), 22-339b (vaccinating), 22-350a (illegal tethering), 22-344(e)(1) (illegal importing), 22-363 (allowing nuisance/barking dog), and 22-364 (allowing roaming dog).

⁵¹ See App. B: Column BT, Year Advocate Appointed.

TABLE 2: JUDICIAL ADVOCATE CASES—NUMBER BY YEAR.

Year	Number of Cases
2016	2
2017	12
2018	24
2019	20
Total	58

Throughout this Article, the authors compare the 58 cases in Table 2, Judicial Advocate Cases, with Judicial Eligible Cases.

TABLE 3: UCONN ADVOCATE CASES—NUMBER BY YEAR.

Year	Number of Cases
2016	2
2017	8
2018	12
2019	13
2020	4
2021	28
Jan. 1–June 30, 2022	21
Total	88

The Animal Law Clinic at UConn Law has served as an advocate in 88 cases since the law's enactment and through June 30, 2022, as demonstrated in Table 3. The authors analyze and present these 88 UConn Advocate Cases but do not statistically compare them with Judicial Eligible Cases or Judicial Advocate Cases because of different methods and times of collection.

In addition to UConn serving as an advocate in cases, volunteer attorney advocates serve in cases,⁵² but those cases are not reported in this study except those included in the Judicial Advocate Cases. In 28 of 58 Judicial Advocate Cases, a private volunteer lawyer served as the advocate.

Since the enactment of Desmond's Law in October 2016, Tables 2 and 3 illustrate an increase in advocate appointments, possibly as court

⁵² See CONN. DEP'T OF AGRIC., ANIMAL ADVOCATE LIST 1–3 (2022), https://portal.ct.gov/-/media/DOAG/Animal_Control/DOAG-Animal-Advocate-List-revised-4132022.pdf (listing the advocates that courts may appoint).

personnel became accustomed to the law. While appointments for UConn cases increased (except in 2020 when courts closed due to the Pandemic), the same trend is not observable in Judicial Advocate Cases because data collection ended at the start of 2020.

TABLE 4: COMBINED ADVOCATE CASES—NUMBER BY YEAR.

Year	Number of Cases			
	UConn	Judicial	UConn & Judicial	Total
2016	-	-	2	2
2017	3	7	5	15
2018	1	13	11	25
2019	1	8	12	21
2020	4	-	-	4
2021	28	-	-	28
Jan. 1–June 30, 2022	21	-	-	21
Total	58	28	30	116

Data were collected through March 2020 and included cases with arraignment dates until January 2020. The UConn column includes cases that were in the UConn case files only. The Judicial column includes cases that were in the Judicial case files only. The UConn & Judicial column includes cases that were in both the Judicial case files and the UConn case files. Table 4 corrects for duplication between the Judicial Advocate Cases and UConn Advocate Cases.⁵³

To determine the total number of analyzed advocate cases, the authors accounted for these cases only once. The authors avoided double counting these cases by separating analyses of UConn Advocate Cases from Judicial Advocate Cases and only using information from Judicial case files to analyze Judicial Advocate Cases.

Q2. Based upon Judicial case files only, how many cases that were pending on October 1, 2016 (the effective date of Desmond’s

⁵³ During this period, UConn Law was appointed in 5 cases that are not included in Judicial Advocate Cases; those cases are Judicial Eligible Cases because UConn was appointed after data was collected from the Judicial case files. Including the 58 Judicial Advocate Cases and the additional 58 UConn Advocate Cases that are not represented in the Judicial Advocate Cases, there is a total of 116 analyzed advocate cases.

Law) and involved dogs or cats, used advocates, and how many could have used advocates but did not?⁵⁴

These data do not reflect when, in the case proceeding, an advocate was appointed or who requested the appointment. The timing of an appointment could impact an advocate’s role, in particular their ability to provide information and recommendations. To focus on advocates, the authors filtered the Judicial case files to identify Judicial Eligible Cases—those 189 cases that involved dogs or cats, were pending when the state enacted Desmond’s Law, and did not have advocates.

TABLE 5: JUDICIAL CASE FILES—APPOINTMENTS.

Advocate Appointed?	N = 246
No	189 (77%)
Yes	57 (23%)

Notes. N = the number of cases pending on or after October 1, 2016 and involving dogs or cats. Table 5 excludes from the sample 216 Judicial case files because the victim species was unknown in those cases and 36 Judicial case files because the victim was not a dog or cat.

The sample in Table 5 (246) includes cases after Desmond’s Law and involving dogs or cats. Note that there are 57 cases rather than 58 (the number of Judicial Advocate Cases). One case from the Judicial case files had an appointed advocate but is excluded here because the case did not involve dogs or cats. Nothing in the current case documentation process prompts the identification of victim species. The analyses exclude cases lacking that information.

Q3. What was the duration of cases, in days?⁵⁵

- a.** In cases with and without advocates, what was the duration of cases, in days?

Table 6 provides summary statistics of case durations for categories of resolved (non-pending) cases. Collection of data from the Judicial case

⁵⁴ See App. B: Column AV, Date of Final Resolution of Case; Column BA, Dog or Cat Involved; Column T, Appointed Advocate.

⁵⁵ See App. B: Column AV, Date of Final Resolution, minus Column R, Arraignment Date.

files reviewed cases with arraignment dates until January 14, 2020, and included cases that were impacted by Pandemic disruptions and postponements.

TABLE 6: ALL CASES—DURATIONS OF RESOLVED CASES, IN DAYS.

Case Category	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Judicial Eligible Cases N = 171 of 189	236.5	249.5	143	0	1326
Combined Advocate Cases N = 82 of 116	358.9	296.5	264	20	1342
Judicial Advocate Cases N = 48 of 58	332.0	305.9	257	20	1342
UConn Advocate Cases N = 74 of 88	454.1	372.6	326	36	1529

Notes. N = the number of resolved cases in each category. The number of resolved cases in each category is used for subsequent calculations and analyses that depend on case resolutions.

In Table 6, the key comparison is between Judicial Advocate Cases and Judicial Eligible Cases. Judicial Advocate Cases had a longer median duration (257 days) than Judicial Eligible Cases (143 days) ($W = 5177.5$; $p = 0.006$). In addition, the median duration of Combined Advocate Cases (264 days) was longer than the median duration of Judicial Eligible Cases (143 days) ($W = 9203.5$; $p < 0.0001$).

The increased duration of advocate cases might reflect that when an advocate is present, courts and parties take additional time to provide resources to defendants and victims and/or to resolve cases. Having a third lawyer appointed might complicate scheduling or prolong deliberations and therefore extend case durations.

The longer duration might signify that cases with advocates are no longer being dismissed or *nolled* at arraignment. Alternatively, case duration might be longer when an advocate supports a *nolle* or dismissal on condition of and pending a defendant's completion of a course of conduct (e.g., an animal's training, vaccination, containment, or

spaying/neutering). These types of arrangements are common for less serious offenses, a majority of which are assigned to UConn by the Hartford Community Court, a special session of the Hartford Judicial District Superior Court that handles lower-level crimes.⁵⁶

Another potential explanation for the longer median duration for advocate cases is that courts may appoint advocates in cases that are complicated, serious, contested, or have been pending for long periods of time. More generally, the length of cases might not be typical because of disruptions due to the Pandemic.⁵⁷

An advocate can sometimes help to expedite a case by accepting notice, providing information, and liaising with parties who might not be available for court. For example, an advocate can present statements from a veterinarian or animal control officer or convey a municipality's costs of care when individuals are unable to attend court.

It is essential to recognize the toll that longer case durations may have on defendants, including repercussions on their familial and social relationships, immigration status, employment opportunities, scheduling burdens, and mental health.⁵⁸ In addition, if animals have not been surrendered or otherwise forfeited, longer case durations may impact animals who remain in municipal custody during a case.⁵⁹

⁵⁶ See *List of Special Sess. of the Superior Court*, CONN. JUD. BRANCH, <https://www.jud.ct.gov/external/super/spsess.htm#CommunityCourt> (last visited Jan. 4, 2023) [hereinafter *Community Court*] (“Committed to the concept of restorative justice, the Community Court in Hartford utilizes a combination of court-supervised community service and social services to promote responsibility among defendants for their actions while simultaneously offering a helping hand to address the social issues that may be contributing to their behavior.”).

⁵⁷ See *Protection of Public Health and Safety During Covid-19 Pandemic*, Exec. Order No. 7G (Mar. 19, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7G.pdf> (Governor Lamont suspending non-critical Connecticut court operations); see *Archived COVID-19 Website Notices by Topic*, CONN. JUD. BRANCH, https://jud.ct.gov/Covid19_archive.htm#Matters_archive (last visited Jan. 4, 2023) (showing a timeline of the suspension of court operations and gradual reopenings).

⁵⁸ See, e.g., Griff Witte & Mark Berman, *Long after the courts shut down for covid, the pain of delayed justice lingers*, WASH. POST (Dec. 19, 2021, 6:00 AM), https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7_story.html.

⁵⁹ See Christina Raudies et al., *Characteristics and Welfare of Long-Term Shelter Dogs*, 11 ANIMALS, no. 194, Jan. 2021, at 1, 2; Alexandra Protopopova, *Effects of Sheltering on Physiology, Immune Function, Behavior, and the Welfare of Dogs*, 159 PHYSIOL & BEHAV. 95, 98–99 (2016).

- b.** In cases with and without advocates and with final outcomes before March 15, 2020 (pre-Pandemic), what was the duration, in days?

The authors examined case durations for cases resolved before the Pandemic to attempt to show typical durations of animal cruelty cases.⁶⁰

TABLE 7: ALL CASES—DURATIONS OF RESOLVED PRE-PANDEMIC CASES, IN DAYS.

Case Category	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Judicial Eligible Cases N = 160 of 189	195.4	185.6	133	0	987
Combined Advocate Cases N = 48 of 116	275.5	222.4	223.5	20	1044
Judicial Advocate Cases N = 44 of 58	272.9	227.6	223.5	20	1044
UConn Advocate Cases N = 25 of 88	319	309.4	202	36	1186

Notes. N = the number of cases in each category that were resolved before March 15, 2020.

Comparing the maximum case durations in Tables 6 and 7, the impact of the Pandemic on case durations is apparent.

In the Judicial data, for pre-Pandemic cases, the median duration was longer for Judicial Advocate Cases (223.5 days) than Judicial Eligible Cases (133 days) ($W = 4473.5$; $p = 0.006$). The median duration of Combined Advocate Cases (223.5 days) was longer than Judicial Eligible Cases (133 days) ($W = 4940$; $p = 0.0003$).

⁶⁰ Around March 15, 2020, Connecticut implemented shutdowns to prevent the spread of COVID-19. *See supra* note 57 and accompanying text (showing a March 12, 2020 notice that courts would handle only “priority” cases including only arraignments in criminal cases and reporting on March 19, 2020, the Governor’s Executive Order No. 7G, which suspended all “non-critical” court operations).

- c. For UConn case files only, in cases with arraignment dates after August 1, 2021, and with final outcomes, what was the duration, in days?

Table 8 attempts to control for Pandemic effects by examining durations of cases with arraignment dates after August 1, 2021, a date when Connecticut's criminal courts were fully open and operating in-person and no longer directly impacted by Pandemic disruptions. Of the 88 UConn Advocate Cases, 26 had arraignment dates after August 1, 2021, and of those, 15 had final outcomes at the time of data collection.

TABLE 8: UCONN ADVOCATE CASES—DURATIONS OF RESOLVED POST-PANDEMIC CASES, IN DAYS.

Advocate N = 15 of 88	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Yes	152.7	113.2	99	42	430

Notes. N = the number of resolved cases with arraignment dates on or after August 1, 2021.

Table 8 suggests that cases started after the Pandemic closures ended moved faster than those during and before the Pandemic. Because the latest arraignment date in the Judicial data is January 14, 2020, the analysis cannot compare case durations before and after the Pandemic based on Judicial data. In the UConn data, median case durations were 202 days (for pre-Pandemic cases), 99 days (for post-Pandemic cases), and 326 days (all cases, including those during the Pandemic).

This chart has a small sample size and might reflect more effective use of advocates to expedite cases and/or shorter case durations for all cases after Pandemic disruptions eased.

In summary, due to the limited sample size and the major disruptions caused by the Pandemic, it is difficult to assess whether an advocate's presence increases or decreases case duration. On the one hand, extended duration might suggest that an advocate's involvement is associated with more nuanced consideration and treatment of cases, which often entails affording extended periods to comply with conditions (such as fencing property, providing veterinary care, enrolling in educational programs, or securing animal behavioral training). On the other hand, extended duration might suggest that an advocate's involvement is associated with additional postponements and scheduling difficulties necessitated by the involvement of an additional lawyer, plus potential detrimental impact on

defendants. Advocates may also reduce durations by providing prompt information to avoid postponements.

Q4. Was advocate use more common in cases involving felony or misdemeanor charges?⁶¹

In Connecticut, animal cruelty can be either a misdemeanor or a felony. The distinction relates to the offender’s motive and state of mind, the degree of the victim’s suffering and injury, whether the offender was involved in animal fighting, and whether the victim is a police dog or a search and rescue dog.⁶²

These data capture initial charges in cases and do not reflect the fact that charges may change during a case. Prosecutors retain discretion to determine the type and number of charges. Misdemeanor charges can change to felony charges (and the opposite is also possible) during the investigation, prosecution, plea bargain, or sentence stages of a case.⁶³

TABLE 9: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—TYPE OF CHARGE.

Charge	Judicial Eligible Cases N = 182	Judicial Advocate Cases N = 58
Misdemeanor	171 (94%)	53 (91%)
Felony	11 (6%)	5 (9%)

Notes. $\chi^2 = 0.147$; p -value = 0.702; N = the number of cases with identified charges. Table 9 excludes 7 Judicial Eligible Cases from the sample because the type of charge was unknown in those cases.

In the Judicial data, there was no association between the classification of a charge and whether an advocate was used. Prosecutors determine charges before arraignment, which is the earliest point at which advocates are appointed. Once appointed, an advocate may recommend that a prosecutor modify charges.

⁶¹ See App. B: Column Q, Classification of Charge.

⁶² See CONN. GEN. STAT. § 53-247 (detailing the types of animal cruelty offenses under Connecticut law).

⁶³ See *State v. Salamon*, 287 Conn. 509, 555 (2008) (citing CONN. PRAC. BOOK § 36-17) (“Before a trial commences, a prosecutor has broad authority to add or delete charges, provided the defendant is not unduly prejudiced by those actions.”).

TABLE 10: UCONN ADVOCATE CASES—TYPE OF CHARGE.

Charge	N = 88
Infraction ⁶⁴	7 (8%)
Misdemeanor	73 (83%)
Felony	8 (9%)

Notes. N = the number of cases with identified charges.

In the UConn data, a large proportion of cases includes misdemeanor or infraction charges (91%), and a small proportion includes felony charges (9%). These proportions are similar to those shown in the Judicial data (94% of Judicial Eligible Cases and 91% of Judicial Advocate Cases) and those reported by the Connecticut General Assembly Office of Legislative Research, the latter reporting that 95% of animal cruelty cases brought between 2011 and 2021 were charged as misdemeanors.⁶⁵

Q5. Was advocate use more common in cases with intentional or neglectful conduct?⁶⁶

For both datasets, the authors used the conduct that was charged at arraignment. The research assistants read entire case files to characterize conduct based on its seriousness and level of intent, and then the statistical analyses grouped categories of conduct.

TABLE 11: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—CONDUCT.

Conduct	Judicial Eligible Cases N = 173	Judicial Advocate Cases N = 49
Intentional	82 (47%)	27 (55%)
Neglectful	91 (53%)	22 (45%)

Notes. $\chi^2 = 0.625$; p-value = 0.429; N = the number of cases with ascertainable conduct. Table 11 excludes 16 Judicial Eligible Cases and 9 Judicial Advocate Cases from the sample because the type of conduct was unknown in those cases.

⁶⁴ Infractions are offenses for which only fines may be imposed. See CONN. GEN. STAT. § 51-164m (describing the minimum fine for infractions).

⁶⁵ KIRBY, *supra* note 18, at 3.

⁶⁶ See App. B: Column BD, Conduct: Neglectful or Intentional.

In the Judicial data, statistical analyses suggest there was no association between a defendant's conduct and advocate use. Data collection efforts on this question were limited because many case files did not characterize the conduct, and nothing in the current case documentation process prompts that description.

TABLE 12: UCONN ADVOCATE CASES—CONDUCT.

Conduct	N = 88
Intentional	33 (37.5%)
Neglectful	55 (62.5%)

Notes. N = the number of cases with ascertainable conduct.

More of the UConn cases were associated with neglect than intentional abuse, which may be because the Hartford Community Court specializes in low-level offenses⁶⁷ and ordered 32% of UConn's appointments.

Q6. Was advocate use more common in cases in which animals died or survived?⁶⁸

TABLE 13: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—DEATH OR SURVIVAL OF ANIMAL VICTIM(S).

Death of Animal(s)?	Judicial Eligible Cases N = 142	Judicial Advocate Cases N = 44
No	99 (70%)	26 (59%)
Yes	43 (30%)	18 (41%)

Notes. $\chi^2 = 1.273$; p-value = 0.259; N = the number of cases in which animal victim death was ascertainable. Table 13 excludes 47 Judicial Eligible Cases and 14 Judicial Advocate Cases from the sample because the outcome of the animal victim(s) was unknown in those cases.

In the Judicial data, there was no association between whether any animals died and the use of an advocate, suggesting that advocate use was not more frequent in cases involving animal victims' deaths.

⁶⁷ See *Community Court*, *supra* note 56.

⁶⁸ See App. B: Column BG, Did Any Animals Die.

TABLE 14: UCONN ADVOCATE CASES—DEATH OR SURVIVAL OF ANIMAL VICTIM(S).

Death of Animal(s)?	N = 88
No	59 (67%)
Yes	29 (33%)

Notes. N = the number of cases in which animal victim death was ascertainable.

Q7. Was advocate use more common in cases involving multiple animals?⁶⁹

TABLE 15: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—NUMBER OF ANIMALS.

Number of Animals (range)	Judicial Eligible Cases N = 179	Judicial Advocate Cases N = 48
1	125 (70%)	29 (60%)
2 to 3	26 (14%)	11 (23%)
4 to 7	14 (8%)	1 (2%)
8 or more	14 (8%)	7 (15%)

Notes. $\chi^2 = 5.887$; p-value = 0.117; N = the number of cases with ascertainable numbers of animal victims. Table 15 excludes 10 Judicial Eligible Cases and 10 Judicial Advocate Cases from the sample because the number of animal victims was unknown in those cases.

In the Judicial data, there was no association between the number of animals involved in a case and advocate use. This suggests that advocates were not more likely to be appointed in cases involving more animals.

TABLE 16: UCONN ADVOCATE CASES—NUMBER OF ANIMALS.

Number of Animals (range)	N = 88
1	63 (72%)
2 to 3	15 (17%)
4 to 7	3 (3%)
8 or more	7 (8%)

Notes. N = the number of cases with ascertainable numbers of animal victims.

Most of UConn’s cases involved only one animal, which may suggest that an advocate was not more likely to be appointed when

⁶⁹ See App. B: Column AY, Number of Animal(s) (Range).

multiple animals were involved or may reflect the large number of cases involving one animal.

Q8. Was advocate use more common in certain locations?⁷⁰

Connecticut's Superior Court (trial court) system is divided geographically into Judicial Districts and Geographical Areas ("G.A.s").⁷¹ Generally, criminal matters are heard in the G.A. courthouses.⁷²

The appointment of an advocate is at a court's discretion and may depend on many variables, including court personnel's familiarity with the law and the facts of a case.

⁷⁰ See App. B: Column F, Geographical Area.

⁷¹ *Organization of the Courts*, CONN. JUD. BRANCH, <https://www.jud.ct.gov/ystday/orgcourt.html> (last visited Jan. 4, 2023).

⁷² See *About Us*, CONN. ST. DIV. OF CRIM. JUST., <https://portal.ct.gov/DCJ/About-Us/About-Us/About-Us> (last visited Jan. 4, 2023) (explaining that G.A.s are responsible for the adjudication of less serious offenses).

TABLE 17: TOTAL CASES AND JUDICIAL ADVOCATE CASES—BY LOCATION.

Geographical Area (G.A.)	Number of Cases N = 247	Judicial Advocate Cases N = 58
G.A. 1 at Stamford	9 (4%)	3 of 9 (33%)
G.A. 2 at Bridgeport	19 (8%)	2 of 19 (10.5%)
G.A. 3 at Danbury	7 (3%)	1 of 7 (14%)
G.A. 4 at Waterbury	6 (2%)	3 of 6 (50%)
G.A. 5 at Derby	3 (1%)	1 of 3 (33%)
G.A. 7 at Meriden	16 (6%)	2 of 16 (12.5%)
G.A. 9 at Middletown	7 (3%)	3 of 7 (43%)
G.A. 10 at New London	15 (6%)	1 of 15 (7%)
G.A. 11 at Danielson	3 (1%)	0 of 3 (0%)
G.A. 12 at Manchester	20 (8%)	9 of 20 (45%)
G.A. 13 at Enfield	11 (4.5%)	3 of 11 (27%)
G.A. 14 at Hartford	18 (7%)	8 of 18 (44%)
G.A. 14 at Hartford Community Court	9 (4%)	8 of 9 (89%)
G.A. 15 at New Britain	33 (13%)	4 of 33 (12%)
G.A. 17 at Bristol	10 (4%)	4 of 10 (40%)
G.A. 18 at Torrington	25 (10%)	3 of 25 (12%)
G.A. 19 at Rockville	7 (3%)	0 of 7 (0%)
G.A. 20 at Norwalk	2 (1%)	0 of 2 (0%)
G.A. 21 at Norwich	4 (2%)	0 of 4 (0%)
G.A. 22 at Milford	11 (4.5%)	1 of 11 (9%)
G.A. 23 at New Haven	12 (5%)	2 of 12 (17%)

Notes. N = the number of total cases (Judicial Eligible Cases and Judicial Advocate Cases combined); N = the number of Judicial Advocate Cases.

In the Judicial data, the courts with the highest number of animal cruelty cases were G.A. 15 at New Britain (33), G.A. 18 at Torrington (25), and G.A. 12 at Manchester (20).

The courts with the highest percentages of advocate use in their animal cruelty cases were G.A. 14 at Hartford Community Court (89%), G.A. 4 at Waterbury (50%), and G.A. 12 at Manchester (45%). Possible explanations for this are (1) the geographic proximity of these courts to the UConn Animal Law Clinic; and (2) personnel in those courts who were familiar with the law and program and early users of them. Table 17 includes only those G.A.s in which there were qualifying cases at the time

of data collection. Since that time, additional G.A.s have appointed advocates in cases.

TABLE 18: UCONN ADVOCATE CASES—BY LOCATION.

Geographical Area (G.A.)	N = 88
G.A. 2 at Bridgeport	1 (1%)
G.A. 4 at Waterbury	10 (11%)
G.A. 7 at Meriden	1 (1%)
G.A. 9 at Middletown	3 (3%)
G.A. 10 at New London	9 (10%)
G.A. 11 at Danielson	1 (1%)
G.A. 12 at Manchester	19 (22%)
G.A. 13 at Enfield	5 (7%)
G.A. 14 at Hartford	1 (1%)
G.A. 14 at Hartford Community Court	28 (32%)
G.A. 15 at New Britain	4 (5%)
G.A. 19 at Rockville	1 (1%)
G.A. 22 at Milford	2 (2%)
G.A. 23 at New Haven	3 (3%)

Notes. N = the number of cases.

Approximately half of the cases (54%) in which courts appointed UConn as an advocate were in two courts—G.A. 12 at Manchester and G.A. 14 at Hartford Community Court. Combined, these two courts appointed UConn in 47 of 88 cases. Since the time of data collection, additional courts have appointed UConn as the advocate in cases.

Q9. In cases with and without advocates, how many outcomes included convictions?⁷³

⁷³ See App. B: Column AF, Conviction.

TABLE 19: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—CONVICTIONS.

Conviction	Judicial Eligible Cases N = 171	Judicial Advocate Cases N = 48
No	88 (51%)	27 (56%)
Yes	83 (49%)	21 (44%)

Notes. $\chi^2 = 0.179$; p-value = 0.672; N = the number of resolved cases.

Table 19 demonstrates no association between advocate use and convictions. The animal cruelty conviction rates for Judicial Eligible Cases and Judicial Advocate Cases are higher than the 18% reported by the Connecticut General Assembly Office of Legislative Research for the period between 2011 and 2021.⁷⁴

TABLE 20: UCONN ADVOCATE CASES—CONVICTIONS.

Conviction	N = 74
No	39 (53%)
Yes	35 (47%)

Notes. N = the number of resolved cases.

Of the 39 UConn Advocate Cases without convictions, 26 ended in diversionary programs, and 13 ended in dismissals.

Q10. In cases with and without advocates, how many outcomes included incarceration?⁷⁵

If a defendant is convicted, their sentence may include a period of incarceration. Cases were marked as “Yes” if incarceration was ordered, even if the execution of the sentence was fully suspended, meaning that the defendant was not incarcerated for any amount of the sentenced time.

Two tables are presented to answer Question 10. Table 21A shows cases that reached any final outcome (dismissal, *nolle*, grant of a diversionary program, or conviction) and the percentage of those that included incarceration.

More pertinently, because cases were only marked as “Yes” for incarceration if they had corresponding convictions, Table 21B shows

⁷⁴ KIRBY, *supra* note 18, at 4.

⁷⁵ See App. B: Column AL, Incarceration.

only cases that ended with convictions and the percentage of those that included incarceration. There are 83 convictions in the Judicial Eligible Cases (Table 19), 21 convictions in the Judicial Advocate Cases (Table 19), and 35 convictions in the UConn Advocate Cases (Table 20).

TABLES 21A–B: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—INCARCERATION.

TABLE 21A: CASES WITH FINAL OUTCOMES.

Incarceration (of cases with final outcomes)	Judicial Eligible Cases N = 112	Judicial Advocate Cases N = 30
No	38 (34%)	11 (37%)
Yes	74 (66%)	19 (63%)

Notes. $\chi^2 = 0.004$; p -value = 0.949; N = the number of resolved cases. Table 21A excludes 59 Judicial Eligible Cases and 18 Judicial Advocate Cases from the sample because incarceration was unknown in those resolved cases.

There was no association between advocate use and incarceration, with both Judicial Eligible Cases and Judicial Advocate Cases having similar incarceration rates.

TABLE 21B: CASES WITH CONVICTIONS.

Incarceration (of cases with convictions)	Judicial Eligible Cases N = 83	Judicial Advocate Cases N = 21
No	9 (11%)	2 (10%)
Yes	74 (89%)	19 (90%)

Notes. $\chi^2 = 0.049$; p -value = 0.825; N = the number of cases with convictions.

Table 21B shows that there was no association between advocate use and incarceration, with both Judicial Eligible Cases and Judicial Advocate Cases having similar incarceration rates in cases with convictions. The sentenced period of incarceration was fully suspended (meaning that the defendant did not serve any sentenced time) in 45 of 74 Judicial Eligible Cases (61%) and in 14 of 19 Judicial Advocate Cases (74%). In the 5 Judicial Advocate Cases without fully suspended sentences, defendants were sentenced to serve a combined total of 66 of 228 months (24 of 60; 24 of 60; 6 of 60; 6 of 12; 6 of 36).

TABLES 22A–B: UCONN ADVOCATE CASES—INCARCERATION.

TABLE 22A: CASES WITH FINAL OUTCOMES.

Incarceration (of cases with final outcomes)	N = 74
No	43 (58%)
Yes	31 (42%)

Notes. N = the number of resolved cases.

TABLE 22B: CASES WITH CONVICTIONS.

Incarceration (of cases with convictions)	N = 32
No	1 (3%)
Yes	31 (97%)

Notes. N = the number of cases with convictions. Table 22B excludes 3 UConn (infraction) Advocate Cases from the sample because courts may not impose incarceration in infraction cases.⁷⁶

Tables 21B and 22B include only cases with convictions and include all sentences with incarceration, regardless of whether a defendant was required to serve any of that time. The sentenced period of incarceration was fully suspended (meaning that the defendant did not serve any sentenced time) in 24 of 31 UConn Advocate Cases (77%). In the 7 UConn Advocate Cases without fully suspended sentences, defendants were sentenced to serve a combined total of 43 of 156 sentenced months (3 of 12; 3 of 12; 6 of 36; 5 of 12; 1 of 36; 13 of 36; 12 of 12).

Q11. In cases with and without advocates, what was the length of sentences, in months?⁷⁷

A court may sentence a defendant to serve a period of incarceration, the execution of which may be partially or fully suspended.⁷⁸ Table 23 examines only those cases with sentences that included incarceration. Sentence durations were recorded, whether a defendant was required to serve the full period, or the court suspended some of the sentence period.

⁷⁶ See CONN. GEN. STAT. § 51-164m (describing the minimum fine for infractions).

⁷⁷ See App. B: Column AM, Sentenced Incarceration Time (Months).

⁷⁸ See CONN. GEN. STAT. § 53a-28(b)(5).

TABLE 23: ALL CASES—SENTENCE DURATIONS, IN MONTHS.

Case Category	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Judicial Eligible Cases N = 74 of 189	24.9	30.4	12	2	192
Combined Advocate Cases N = 35 of 116	19.8	15.9	12	3	60
Judicial Advocate Cases N = 19 of 58	23.7	19.4	12	6	60
UConn Advocate Cases N = 31 of 88	15.9	9.4	12	3	36

Notes. N = the number of resolved cases in each category that included a sentence with incarceration.

In the Judicial data, there was no difference between median sentence length in Judicial Eligible Cases and Judicial Advocate Cases (both 12 months) ($W = 709$; $p = 0.95$). In addition, there was no difference between median sentence length in Judicial Eligible Cases and Combined Advocate Cases (both 12 months) ($W = 1095$; $p = 0.16$). However, in Judicial Eligible Cases, there was a wider range of sentence durations (190 months) than in Judicial Advocate Cases (54 months).

Q12. In cases with and without advocates, what was the length of suspended sentences, in months?⁷⁹

In Connecticut, sentences can include a period during which a defendant is incarcerated plus another period that the defendant does not have to serve, so long as they comply with the terms of probation; this latter component is referred to as a “suspended sentence.”⁸⁰

⁷⁹ See App. B: Column AN, Time Suspended (Months).

⁸⁰ See CONN. GEN. STAT. § 53a-28(b) (allowing a court to impose a sentence of imprisonment with the execution of such sentence suspended either entirely or after a period determined by the court).

TABLE 24: ALL CASES—SUSPENDED SENTENCE DURATIONS, IN MONTHS.

Case Category	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Judicial Eligible Cases N = 74 of 189	21.3	20.5	12	3	114
Combined Advocate Cases N = 34 of 116	17.9	12.7	12	3	54
Judicial Advocate Cases N = 19 of 58	20.2	14.7	12	6	54
UConn Advocate Cases N = 30 of 88	15	8.6	12	3	36

Notes. N = the number of resolved cases in each category that included suspended sentences.

This analysis includes only those cases in which a suspended sentence was part of the outcome. In the Judicial data, there was no significant difference between the median length of suspended sentences in Judicial Eligible Cases and Judicial Advocate Cases (both 12 months) ($W = 548.5$; $p = 0.88$). In addition, there was no significant difference between the median length of suspended sentences in Judicial Eligible Cases and Combined Advocate Cases (both 12 months) ($W = 857$; $p = 0.14$).

Q13. In cases with and without advocates, in what percentages of cases did defendants apply for diversionary programs and the programs were granted?⁸¹

In Connecticut, statutory pretrial diversionary programs are available to qualifying defendants as alternatives to conventional criminal case processing.⁸² Defendants who successfully complete a program can have their charges dismissed.⁸³ Defendants in animal cruelty cases often apply

⁸¹ See App. B: Column AA, Pretrial Diversionary Program; Column AC, Date Pretrial Diversionary Program Granted.
⁸² ALEX TSARKOV ET AL., CONN. SENT’G COMM’N, REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY ON PRETRIAL DIVERSIONARY PROGRAMS, at vi (2020).
⁸³ *Id.*

to use the Accelerated Rehabilitation Program (generally available if a court finds that the offense charged is not of a serious nature and unlikely to reoccur)⁸⁴ and occasionally apply to use the Supervised Diversionary Program (generally available if a court finds that the offense charged is not of a serious nature and the defendant has a psychiatric disability).⁸⁵ If a defendant was ineligible to apply for a program or elected not to apply for a program, or if a case was dismissed, then there was no application entered into the spreadsheet.

- a. In what percentage of cases did defendants apply for pretrial diversionary programs?

TABLE 25: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—DIVERSIONARY PROGRAM APPLICATIONS.

Diversiónary Program	Judicial Eligible Cases N = 189	Judicial Advocate Cases N = 58
Application	76 (40%)	31 (53%)
No application	113 (60%)	27 (47%)

Notes. $\chi^2 = 2.651$; p -value = 0.104; N = the number of cases.

Defendants applied for diversionary programs in a slightly higher proportion of cases in which advocates were used (53%) compared to cases in which advocates were not used (40%), but there was no association between advocate use and diversionary program applications.

In the Judicial Eligible Cases, 99 of the 113 cases without applications had final outcomes; 25 were dismissed, and 74 had convictions. In the Judicial Advocate Cases, 20 of 27 cases without applications had final outcomes; 5 were dismissed, and 15 had convictions.

TABLE 26: UCONN ADVOCATE CASES—DIVERSIONARY PROGRAM APPLICATIONS.

Diversiónary Program	N = 88
Application	41 (47%)
No application	47 (53%)

Notes. N = the number of cases.

⁸⁴ See CONN. GEN. STAT. § 54-56e.

⁸⁵ See CONN. GEN. STAT. § 54-56l.

Table 26 shows similar proportions of diversionary program applications as Table 25. In the UConn Advocate Cases, 37 of 47 cases without applications had final outcomes; 13 were dismissed, and 24 had convictions.

- b. Of those cases in which defendants applied for pretrial diversionary programs, in what percentage were applications granted?

TABLE 27: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—GRANTED DIVERSIONARY PROGRAMS.

Diversiónary Program	Judicial Eligible Cases N = 66	Judicial Advocate Cases N = 26
Granted	62 (94%)	22 (85%)
Denied	4 (6%)	4 (15%)

Notes. $\chi^2 = 1.037$; p-value = 0.309; N = the number of cases in which the outcome of diversionary program applications was ascertainable. Table 27 excludes 10 Judicial Eligible Cases from the original sample of 76 applications and excludes 5 Judicial Advocate Cases from the original sample of 31 applications because the outcomes of diversionary program applications were unknown in those cases.

Courts granted applications for diversionary programs in a slightly lower proportion of cases with advocates (85%) than cases without advocates (94%), but there was no association between advocate use and granted diversionary program applications.

TABLE 28: UCONN ADVOCATE CASES—GRANTED DIVERSIONARY PROGRAMS.

Diversiónary Program	N = 39
Granted	26 (67%)
Denied	13 (33%)

Notes. N = the number of cases in which the outcome of diversionary program applications was ascertainable. Table 28 excludes 2 UConn Advocate Cases from the original sample of 41 applications because they were pending at the time of review.

Depending on the case, an advocate might support or oppose a defendant’s application for a diversionary program. Of the 26 granted programs in the UConn Advocate Cases, the advocate opposed

applications in 16 cases and did not oppose applications in 10 cases. In 13 cases, the advocate opposed program applications, and courts denied program applications. It would be interesting to examine the impact of an advocate’s recommendation on a court’s decision to grant or deny an application.

Q14. In cases with and without advocates, in what percentages of cases did outcomes include court-ordered probation?⁸⁶

A defendant’s sentence may include a probationary period during which the defendant must comply with ordered conditions.⁸⁷ Failure to comply with the conditions may lead to a new charge—a violation of probation.⁸⁸ Two tables are presented to answer Question 14. Table 29A shows cases that reached any final outcome (dismissal, *nolle*, grant of a diversionary program, or conviction) and the percentage of those that included probation.

More pertinently, because cases were only marked as “Yes” for probation if they had corresponding convictions, Table 29B shows only cases that ended with convictions and the percentage of those that included probation as part of a sentence.

TABLES 29A–B: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—PROBATION.

TABLE 29A: CASES WITH FINAL OUTCOMES.

Probation (of cases with final outcomes)	Judicial Eligible Cases N = 123	Judicial Advocate Cases N = 29
No	74 (60%)	10 (34%)
Yes	49 (40%)	19 (66%)

Notes. $\chi^2 = 5.264$; p -value = 0.022; N = the number of resolved cases. Table 29A excludes 48 Judicial Eligible Cases and 19 Judicial Advocate Cases from the sample because the ordering of probation was unknown in those resolved cases.

Table 29A indicates a significant association between advocate use and the imposition of probation. In cases with final outcomes, the

⁸⁶ See App. B: Column AR, Probation.

⁸⁷ See CONN. GEN. STAT. § 53a-30(a) (outlining potential conditions of probation that a court may order).

⁸⁸ CONN. GEN. STAT. § 53a-32.

percentage in which probation was imposed was higher in Judicial Advocate Cases (66%) compared to Judicial Eligible Cases (40%).

TABLE 29B: CASES WITH CONVICTIONS.

Probation (of cases with convictions)	Judicial Eligible Cases N = 81	Judicial Advocate Cases N = 20
No	32 (40%)	1 (5%)
Yes	49 (60%)	19 (95%)

Notes. $\chi^2 = 7.184$; $p\text{-value} = 0.007$; N = the number of cases with convictions. Table 29B excludes 2 Judicial Eligible Cases and 1 Judicial Advocate Case from the sample because the ordering of probation in connection with convictions was unknown in those cases.

More pertinently, Table 29B indicates a significant association between advocate use and the imposition of probation as part of a sentence. In cases with convictions, the percentage in which probation was imposed was higher in Judicial Advocate Cases (95%) compared to Judicial Eligible Cases (60%).

It is unclear what the use of probation indicates in these cases. An absence of probation occurs when a sentence includes either no conditions or unmonitored conditions (a conditional discharge under section 53a-29 of the Connecticut General Statutes). Advocates might be successful in recommending that courts include probation terms that are creative and specific to animal cruelty offenses.

TABLES 30A–B: UCONN ADVOCATE CASES—PROBATION.

TABLE 30A: CASES WITH FINAL OUTCOMES.

Probation (of cases with final outcomes)	N = 74
No	50 (68%)
Yes	24 (32%)

Notes. N = the number of resolved cases.

TABLE 30B: CASES WITH CONVICTIONS.

Probation (of cases with convictions)	N = 32
No	8 (25%)
Yes	24 (75%)

Notes. N = the number of cases with convictions. Table 30B excludes 3 UConn Advocate (infraction) Cases.⁸⁹

Of cases with convictions, probation was imposed in 60% of Judicial Eligible Cases, 95% of Judicial Advocate Cases, and 75% of UConn Advocate Cases.

Q15. In cases with and without advocates, in what percentages of cases did outcomes include restitution?⁹⁰

In some civil cases, municipalities or organizations that provide veterinary care and shelter to animal victims may seek restitution for their expenses.⁹¹ Restitution may be ordered as a condition of probation attached to a sentence⁹² or as a condition attached to a defendant's enrollment in a diversionary program. Tables 31 through 34 below include only cases in which courts could order restitution, either as part of a conviction and sentence (Tables 31 and 32) or as a condition of using a diversionary program (Tables 33 and 34).

⁸⁹ See CONN. GEN. STAT. § 51-164m (describing the minimum fine for infractions).

⁹⁰ See App. B: Column AO, Restitution/Fine.

⁹¹ See CONN. GEN. STAT. § 22-329a.

⁹² See, e.g., CONN. GEN. STAT. § 53a-30(a)(4).

TABLES 31A–B: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—RESTITUTION.

TABLE 31A: CASES WITH FINAL OUTCOMES.⁹³

Restitution (of cases with final outcomes)	Judicial Eligible Cases N = 115	Judicial Advocate Cases N = 36
No	100 (87%)	28 (78%)
Yes	15 (13%)	8 (22%)

Notes. $x^2 = 1.149$; p -value = 0.284; N = the number of resolved cases. Table 31A excludes 56 Judicial Eligible Cases and 12 Judicial Advocate Cases from the sample because the ordering of restitution was unknown in those resolved cases.

TABLE 31B: CASES WITH CONVICTIONS.

Restitution (of cases with convictions)	Judicial Eligible Cases N = 81	Judicial Advocate Cases N = 21
No	78 (96%)	19 (90%)
Yes	3 (4%)	2 (10%)

Notes. $x^2 = 0.285$; p -value = 0.594; N = the number of cases with convictions. Table 31B excludes 2 Judicial Eligible Cases from the sample because the ordering of restitution was unknown in those cases.

In the Judicial data, there was no association between advocate use and the frequency of courts requiring defendants to pay restitution as part of their sentences.

⁹³ In 11 of 15 Judicial Eligible Cases and in 6 of 8 Judicial Advocate Cases, courts ordered restitution in connection with diversionary programs. Note that in one Judicial Eligible Case the defendant paid restitution in connection with a *nolle* of the charges.

TABLES 32A–B: UCONN ADVOCATE CASES WITH CONVICTIONS—RESTITUTION.

TABLE 32A: CASES WITH FINAL OUTCOMES.⁹⁴

Restitution (of cases with final outcomes)	N = 74
No	57 (77%)
Yes	17 (23%)

Notes. N = the number of resolved cases.

TABLE 32B: CASES WITH CONVICTIONS.

Restitution (of cases with convictions)	N = 35
No	25 (71%)
Yes	10 (29%)

Notes. N = the number of cases with convictions.

Of cases with convictions, restitution was ordered in 4% of Judicial Eligible Cases, 10% of Judicial Advocate Cases, and 29% of UConn Advocate Cases.

TABLE 33: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—RESTITUTION AS PART OF A DIVERSIONARY PROGRAM.

Restitution (of granted programs)	Judicial Eligible Cases N = 27	Judicial Advocate Cases N = 13
No	16 (59%)	7 (54%)
Yes	11 (41%)	6 (46%)

Notes. $\chi^2 = 0.0003$; p-value = 0.986; N = the number of cases with granted diversionary programs (62 in Judicial Eligible Cases and 22 in Judicial Advocate Cases). Table 33 excludes 35 Judicial Eligible Cases and 9 Judicial Advocate Cases from the sample because the ordering of restitution was unknown in those cases.

In the Judicial data, there was no association between advocate use and the frequency of courts requiring defendants to pay restitution in connection with their use of diversionary programs.

⁹⁴ In 7 of 17 UConn Advocate Cases, courts ordered restitution in connection with diversionary programs.

TABLE 34: UCONN ADVOCATE CASES—RESTITUTION AS PART OF A DIVERSIONARY PROGRAM.

Restitution (of granted programs)	N = 26
No	18 (69%)
Yes	8 (31%)

Notes. N = the number of cases with granted diversionary programs.

Of cases with granted diversionary programs, restitution was ordered in 41% of Judicial Eligible Cases, 46% of Judicial Advocate Cases, and 31% of UConn Advocate Cases.

While an advocate can inform a court of the costs of an animal victim’s care, courts do not always require defendants to pay the full amount. Future research could measure the ratio of the restitution ordered to the restitution requested and the impact of surrounding circumstances, including whether the animal was deceased, surrendered, or the recipient of substantial veterinary care or rehabilitation.

Q16. In cases with and without advocates, in what percentages of cases did courts restrict defendants’ contact with animals?⁹⁵

In criminal cases, there are a variety of ways in which courts may restrict defendants’ interactions with animal victims and/or potential animal victims. A court may restrict a defendant’s contact with animals as a pretrial condition of release,⁹⁶ condition of a diversionary program, or term of probation attached to a sentence.

For the Judicial data, the authors labeled a restriction on contact as “Yes” if the court ordered restriction as a condition of the defendant’s release during a pending case or if the court ordered it as a part of a diversionary program or sentence.

⁹⁵ See App. B: Column AU, Restriction on Contact with Animal(s).

⁹⁶ See, e.g., *Town of Wethersfield ex rel. Monde v. Eser*, 211 Conn. App. 537, 557 (2022) (prohibiting contact with animals as a condition of release).

TABLE 35: JUDICIAL ELIGIBLE CASES AND JUDICIAL ADVOCATE CASES—CONTACT RESTRICTIONS AS A CONDITION OF PRETRIAL RELEASE, DIVERSIONARY PROGRAM, OR SENTENCED PROBATION.

Restriction on Contact	Judicial Eligible Cases N = 90	Judicial Advocate Cases N = 43
No	58 (64%)	16 (37%)
Yes	32 (36%)	27 (63%)

Notes. $\chi^2 = 7.676$; p-value = 0.006; N = the number of cases in which the ordering of contact restrictions was ascertainable. Table 35 excludes 99 Judicial Eligible Cases and 15 Judicial Advocate Cases from the sample because the ordering of contact restrictions was unknown in those cases.

In the Judicial data, there was a significant association between the presence of an advocate in a case and the likelihood of a court restricting a defendant's contact with animals, whether as a pretrial condition, a condition of a diversionary program, or a condition of sentenced probation, with there being a higher percentage of Judicial Advocate Cases (63%) in which contact was restricted than Judicial Eligible Cases (36%).

For the UConn cases, the authors divided restriction orders to distinguish between orders entered as a condition of release pending resolution of a case and orders entered either as a condition of a diversionary program or as part of a sentence.

TABLE 36: UCONN ADVOCATE CASES—CONTACT RESTRICTIONS AS A CONDITION OF A DIVERSIONARY PROGRAM OR SENTENCED PROBATION.

Restriction on Contact	N = 63
No	16 (25%)
Yes	47 (75%)

Notes. N = the number of resolved cases. Table 36 excludes 8 UConn Advocate Cases from the sample because they were *nolled* and 3 UConn Advocate (infraction) Cases.⁹⁷

⁹⁷ See CONN. GEN. STAT. § 51-164m (describing the minimum fine for infractions).

TABLE 37: UCONN ADVOCATE CASES—CONTACT RESTRICTIONS AS A PRETRIAL CONDITION OF RELEASE.⁹⁸

Restriction on contact	N = 88
No	22 (25%)
Yes	66 (75%)

Notes. N = the number of cases.

In the UConn Advocate Cases, the percentages of cases in which restrictive orders were entered, either as a condition of a diversionary program, probation, or pretrial release, were higher than the percentages in Judicial cases, both with and without advocates.

Q17. Based upon UConn case files only, in what percentage of cases did outcomes include court-ordered education or counseling?⁹⁹

As part of a sentence or a diversionary program, a court may order a defendant to participate in educational or therapeutic programming.¹⁰⁰

TABLE 38: UCONN ADVOCATE CASES—COUNSELING OR EDUCATION.

Counseling or Education	N = 75
No	61 (81%)
Yes	14 (19%)

Notes. N = the number of cases in which court-ordered counseling or education was ascertainable.

Of the 75 UConn Advocate Cases, courts ordered defendants to complete counseling or education in 14 (19%). Of those 14 cases, courts ordered defendants to complete counseling in 4, and to complete education programs in 10.

At the time of writing, no state-specific education or counseling program exists for animal cruelty offenders. The authors are developing programming for nonserious and nonviolent offenders.

⁹⁸ See App. B: Column BH, Conditions of Release.

⁹⁹ See App. B: Column BO, Court Ordered Education; Column BP, Court Ordered Counseling. This data point was not collected from the Judicial case files.

¹⁰⁰ See CONN. GEN. STAT. § 53a-30(a)(16) (permitting courts to order a sentence condition that a defendant undergo counseling or participate in an education program).

Q18. Based upon UConn case files only, in what percentage of cases did outcomes include surrender of animal victims and/or other animals?¹⁰¹

Animals owned by a defendant may be surrendered during a case or as part of a case outcome. Surrender may include animals who are direct cruelty victims or animals who are at risk of cruelty. Advocate recommendations related to surrender are not uniform but instead are based upon an animal’s condition and a defendant’s conduct.

TABLE 39: UCONN ADVOCATE CASES—SURRENDERED ANIMALS.

Surrender	N = 54
No	24 (44%)
Yes	30 (56%)

Notes. N = the number of cases in which surrender was possible. Table 39 excludes 34 UConn Advocate Cases from the sample because surrender was impossible because the animal victim was abandoned, deceased, or not owned by the defendants in those cases.

Q19. Based upon UConn case files only, when did defendants surrender animal victims and/or other animals?¹⁰²

Surrender of an animal victim and/or other animals (who are potential victims) can occur at any point during a case by agreement or through a separate civil forfeiture proceeding.¹⁰³

TABLE 40: UCONN ADVOCATE CASES—TIMING OF SURRENDER, IN DAYS INTO A CASE.

UConn Advocate Cases N = 30 of 88	Mean Duration	Standard Deviation	Median Duration	Minimum Duration	Maximum Duration
Yes	86.3	188	4.5	-123	770

Notes. N = the number of cases in which animals were surrendered.

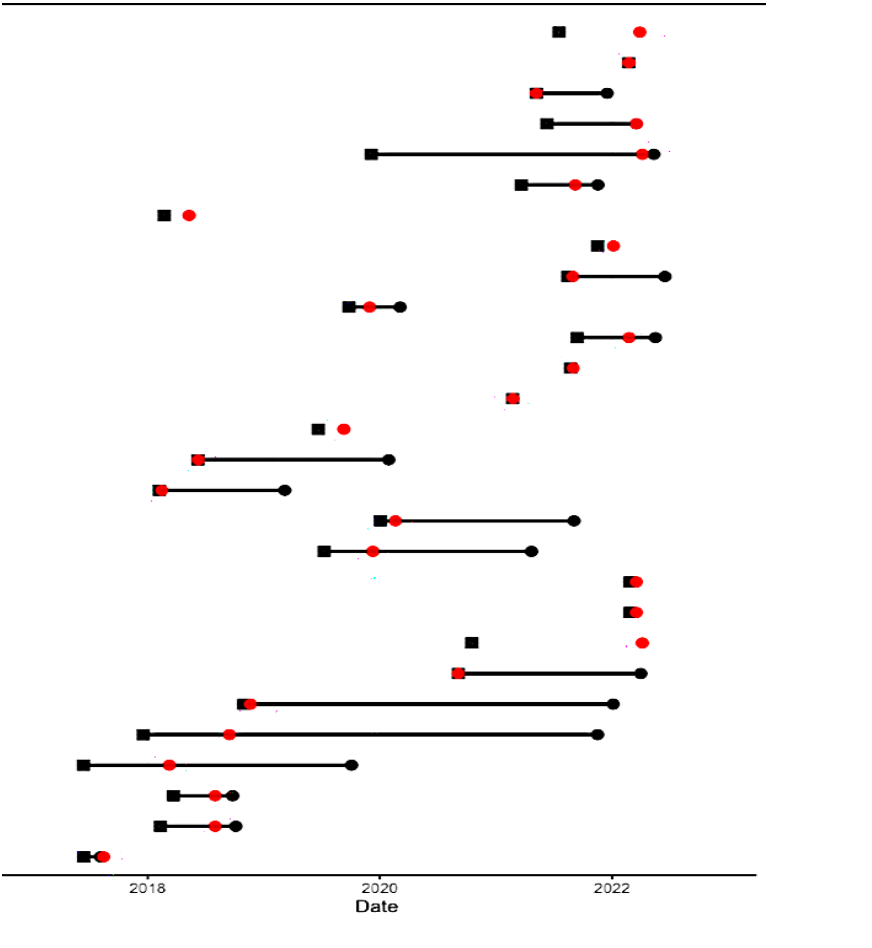
¹⁰¹ See App. B: Column BL, Surrendered/Forfeited Animal(s).

¹⁰² Compare App. B: Column BM, Date of Surrender/Forfeiture, with Column L, Date of Incident, Column O, Arrest Date, Column R, Arraignment Date, and Column AV, Date of Final Resolution of Case.

¹⁰³ See CONN. GEN. STAT. § 22-329a.

The average time from arraignment to surrender was 86 days, but in 12 cases, surrender happened *before* arraignment (producing negative values), meaning that animals were surrendered before the case was initiated, typically on the date of the incident.

FIGURE 1: UCONN ADVOCATE CASES—SEQUENCE OF (1) INCIDENT, (2) SURRENDER OF ANIMAL, AND (3) RESOLUTION.



Date of incident
 Date of surrender/forfeiture
 Date of final outcome

Notes. Figure 1 plots the sequence of events for UConn cases for which the date of surrender of the animal victim is known (x-axis = Date (years)).

Q20. Based upon UConn case files only, in what percentage of cases were other (non-animal cruelty) charges filed?¹⁰⁴

Within the same case and based upon the same incident, the state may file multiple charges, which may directly or indirectly relate to animals.¹⁰⁵

TABLE 41: UCONN ADVOCATE CASES—OTHER CHARGES.

Other Charges Related to Incident	N = 88
No	46 (52%)
Yes, not related to animals	22 (25%)
Yes, related to animals	20 (23%)

Notes. N = the number of cases.

In 48% of the UConn Advocate Cases, other non-animal cruelty charges were filed, which often impacts case outcomes.

Q21. Sample comparison of selected features of cases.

In addition to reviewing data to answer the research questions, the authors tried to match and compare cases that were similar in certain data points but different in whether an advocate was appointed. The data were too sparse to make matching comparisons, especially in cases with many unknowns. Table 42 shows a sample of the effort. The authors compared advocate and non-advocate cases that were charged as misdemeanors and involved multiple dogs or cats who survived, where defendants were of the same gender, ethnicity, and race.

¹⁰⁴ See App. B: Column BI, Other Charges Related to Incident.

¹⁰⁵ Commonly co-occurring offenses that relate to animals but are not animal cruelty misdemeanors or felonies include, but are not limited to, roaming, nuisance, and illegal tethering. Offenses that may or can occur with animal cruelty but do not directly relate to animals include, but are not limited to, risk of injury to a child, assault, and breach of peace.

TABLE 42: JUDICIAL ADVOCATE CASES—SAMPLE COMPARISON OF SELECTED FEATURES.¹⁰⁶

Case No.	Advocate Appointed	Sex and race/ethnicity	Age range (at incident)	Outcome	Incarcerated	Probation	Restriction on contact	Restitution	Counseling /education
1	Yes	White, non-Hispanic female	51-60	Program granted	No	No	No	Yes	No
2	Yes	White, non-Hispanic female	31-40	Conviction	6 months	0-12 months	No	No	No
3	No	White, non-Hispanic female	21-30	Program granted	N/A	N/A	No	Yes	No
4	No	White, non-Hispanic female	51-60	Dismissed	N/A	N/A	N/A	N/A	N/A
5	No	White, non-Hispanic female	51-60	Conviction (unconditional discharge)	No	N/A	N/A	N/A	N/A
6	No	White, non-Hispanic female	41-50	Program granted	N/A	N/A	No	No	No
7	No	White, non-Hispanic female	41-50	Conviction	24 months	13-24 months	No	No	No

IV. DISCUSSION

While it is difficult to assess a new law early in its use and during Pandemic-interrupted court operations, preliminary data suggest that the law is being used and may be impactful, but challenges in case documentation and the timing of the research qualify the conclusions.

A. Observations

Desmond's Law is still early in its life, and its uptake by courts appears to increase where courts know about it and advocates are available for appointment. Improvements are needed, however, in appointing advocates and recording case information.

The results of the qualitative research also suggest the need for educational outreach regarding the implementation of Desmond's Law.

Courts used Desmond's Law and appointed advocates at an increasing rate throughout the state (Tables 2 and 3).

¹⁰⁶ The authors used data from Connecticut's Uniform Arrest Report Form for Column 2, Sex and race/ethnicity, and Column 3, Age range. See Uniform Arrest Report Form JD-CR-21(1) (rev. 03-21).

Looking at all resolved cases in the Judicial dataset, the presence of advocates may have contributed to longer case durations (Tables 6 and 7). Based on the UConn data, cases moved faster after Pandemic-related court closures and delays (Table 8).

The rates of conviction (Table 19) and the rates of incarceration (Table 21B) were similar between Judicial Advocate Cases and Judicial Eligible Cases. There was no association between advocate use and convictions (Table 19). In cases with convictions, there was no association between advocate use and incarceration (Table 21B). When defendants were convicted, the presence of advocates may have had a stabilizing influence on sentence durations since there was less variability in sentence durations among Judicial Advocate Cases than among Judicial Eligible Cases (Table 23).

When defendants applied for diversionary programs, the proportion of granted applications was slightly lower in Judicial Advocate Cases than the proportion of granted applications in Judicial Eligible Cases (Table 27). This trend, however, was not statistically significant. The presence of UConn as an advocate was associated with a lower rate of granted program applications (Table 28).

The presence of advocates may also influence courts to impose probation terms that address some of the complexities of animal cruelty cases for both the defendant and victim(s) (Tables 29 and 30). There was a significant association between an advocate's presence in a case and a court's imposition of probation (Tables 29A and 29B).

Further, based upon a very small sample of cases that ended with convictions, courts ordered defendants to pay restitution to municipalities or organizations for costs incurred to care for and/or rehabilitate animal victims slightly more often in cases with advocates than in cases without advocates, though this difference was not statistically significant (Table 31B). This difference was not apparent in cases that ended with diversionary programs (Table 33).

Additionally, advocates may influence courts to restrict defendants' contact with animals as a pretrial condition or a condition of a diversionary program or a sentence (Tables 35–37). In the Judicial data, there was a significant association between the use of an advocate and whether a court ordered a condition restricting a defendant's contact with animals, with a higher percentage of contact restrictions in Judicial Advocate Cases than in Judicial Eligible Cases.

Advocates can also recommend that courts require defendants to participate in counseling or education as part of a sentence or diversionary

program (Table 38) or encourage defendants to surrender the animal victim and/or potential animal victims (Table 39). The UConn Animal Law Clinic prioritizes the surrender of victim animal(s) and potential victim animal(s), where appropriate. This early intervention can prevent further injury and/or death.

The authors offer additional examples of their work under Desmond's Law, including facilitating early animal surrender, informing courts of outcomes in analogous cases, procuring *pro bono* animal training, and negotiating monetary donations to rescue organizations. The simple presence of a new and third advocate, where traditionally only two existed (a prosecutor and a defense lawyer), can enhance the visibility and consideration of animal victims. An advocate's presence can sensitize courts to the needs, interests, and experiences of animal victims, including their right to be free from harm and their right to be considered crime victims.¹⁰⁷

The authors continue to learn and adapt their advocacy efforts by making new, case-specific requests and recommendations, sometimes in cooperation with defendants, municipalities, and/or law enforcement personnel. These developments impact courts' acceptance of advocates and their input. The Judicial data from the early years likely do not reflect advocacy under the law in its current and best iteration.

B. Challenges and Limitations

The largest challenge of this study was disruption due to the Pandemic, which affected both data collection and interpretation. As stated previously, the project endured multiple suspensions and postponements due to court closures, all of which delayed cases and data collection. It is difficult, therefore, to offer definite conclusions regarding case durations. These complications may have also impacted advocacy efforts and decision-making by courts and parties.

The differences between the Judicial data and the UConn data are worth noting. In some cases, the Judicial files lacked detailed information.¹⁰⁸ Cases with missing data were excluded from analyses for

¹⁰⁷ Rubin, *Early Impressions*, *supra* note 15, at 275.

¹⁰⁸ Connecticut court records were inconsistent, leading to varying amounts of information in each case file. Judicial cases were missing a median of 42% (IQR: 31%-55%) of the data sought. The percent of missing information for a given case is defined as the proportion of cells in the data spreadsheet that contained missing data. None of this information was missing for the UConn cases. Missing information may be due to collection constraints or availability of information.

certain questions. Similar patterns between Judicial Advocate Cases and UConn Advocate Cases could be a function of overlap in data sets and/or one advocate using the same strategies rather than a function of having an advocate or not.

An important ancillary finding and recommendation is that it would be beneficial to have more complete and detailed reporting in animal cruelty cases. Appendix C provides a suggested form to include in court files to better inform case deliberations, management, tracking, and outcomes. More attention to case file notation is needed to assess the impact of Desmond's Law or any similar law.

This study may have been conducted too early in the life of Desmond's Law. The law was early in use when the authors conducted initial qualitative surveys. The quantitative research was also conducted early, which resulted in fewer eligible cases, fewer cases in which advocates were appointed, and small sample sizes.

A practical consideration and shortcoming of Connecticut's current program is that no central entity administers it. Many advocates work independently with occasional collaboration to share outcomes and promote consistent efforts and strategies. To remedy this, the authors propose a program to train and certify advocates. Such a program would promote consistency and best practices and provide a structure for sharing information among advocates.

Further, this research is limited to the experiences in one state. It would be beneficial to continue the inquiry to include data from other states in which similar programs are established. While the authors based their research on a small set of data, the project offers a glimpse into the use of Desmond's Law in Connecticut. As CAAPs like Desmond's Law expand across the country, more data will be available to assess the impact that legal advocates have on case outcomes.

Finally, animal cruelty prosecutions may involve other types of animals. Those cases and victims warrant research and attention because advocacy in those realms can impact large numbers of animals used for food, experimentation, and/or entertainment.¹⁰⁹

C. Conclusions

An advocate can provide additional information to help courts resolve cases in fair, fulsome, and tailored ways. An advocate can also follow a case to ensure that it progresses appropriately. This additional

¹⁰⁹ Rubin, *Early Impressions*, *supra* note 15, at 273.

information and monitoring are especially important when victims need prompt protection, rehabilitation, or rehoming. In addition, successful advocacy may rehabilitate defendants and secure restitution for municipalities, which covers the costs of housing and care for animal victims. This project suggests broad inquiries that relate to animal advocacy.

What are appropriate measures for evaluating Desmond's Law? Possible considerations include the number and types of cases that have used the law, as well as any benefits to animal victims, defendants, and/or courts. It is also important to consider why courts appoint advocates, what they do, and how they impact case outcomes.

How do we define and assess successful outcomes of cruelty cases? Goals of criminal law and theories of punishment,¹¹⁰ as applied to animal cruelty cases, include the following: (1) restoration of victims by providing safety and care through surrender, forfeiture, veterinary care, humane euthanasia, or rehoming, (2) rehabilitation of defendants through education, counseling, and diversionary programs that avoid record convictions, (3) incapacitation or restraint of defendants through possession bans, contact restrictions, or incarceration, (4) deterrence from future offenses through sharing public and consistent case outcomes, (5) retribution through punishment of offenders, and (6) denunciation through society's expression of the unacceptability of cruelty offenses.

These considerations apply to varying degrees. Should we define success by considering animal victims? Or by considering the punishment of a defendant and deterrence of future offenders? How important is the rehabilitation of a defendant or the preservation of the human-animal relationship? Is justice assessed by looking for similar treatment of similar cases? Is justice connected to restitution for caretakers and municipalities?

This Article is the first attempt to explicitly report on the use of Desmond's Law in animal cruelty cases in Connecticut and to observe how advocate use corresponded with certain case features. The data do not permit causal claims regarding the presence or absence of appointed advocates due, in part, to the low number of cases using advocates during the time studied, the interruption of court activities due to the Pandemic, and a lack of detailed data in some files. Instead, we offer a descriptive report of courts' use of advocates plus comparisons of features of cases with and without advocates.

¹¹⁰ See generally WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW, WEST'S CRIMINAL PRACTICE SERIES 40–57 (3d ed. 2018) (discussing purposes of criminal law and theories of punishment).

While the data do not support overarching conclusions about an advocate's impact on a case and, therefore, the effectiveness of Desmond's Law, they do point to certain areas of association between advocate appointments and court actions regarding defendants' contact restrictions and probation. The analyses do not show that the presence of an advocate was associated with the rate of conviction or incarceration. Further studies with larger sample sizes, in multiple states, and over longer periods are warranted to best understand these relationships.

A final and important statistic demonstrates that the law is being used widely throughout the state and at an increasing pace. This, perhaps more than any other information, encourages future study of Desmond's Law. Throughout this Article, there are inquiries that suggest future research. The evolving nature of CAAPs warrants further examination to allow advocates to serve courts, serve animals, and serve the public in the best possible ways.

APPENDICES

APPENDIX A: DESMOND'S LAW SURVEY.

1. Please indicate your position:
Prosecutor
Public Defender
Private Defense Attorney
Appointed Advocate
Other

2. Have you ever prosecuted, defended, or otherwise worked on an animal cruelty case?
Yes
No

3. In how many Connecticut animal cruelty cases have you been involved in the past five years (2014 – present)?
None
1 to 5
5 to 10
10 to 15
15 to 20
20 to 25
Greater than 25

4. Have you heard of Conn. Gen. Stat. § 54-86n (“Desmond’s Law”)?
Yes
No

5. Have you worked on a case in which an advocate was appointed under Desmond’s Law?
Yes
No

6. In your experience, how often do advocates appointed under Desmond’s Law supply the court with information about the defendant?
Never
Sometimes
Usually
Always

7. How often do advocates appointed under Desmond’s Law supply the court with information about the dog(s) and/or cat(s) involved in a cruelty case?

- Never
- Sometimes
- Usually
- Always

8. How often do advocates appointed under Desmond’s Law help to resolve issues of protection or surrender of the dog(s) and/or cat(s) involved in a cruelty case?

- Never
- Sometimes
- Usually
- Always

9. How often do advocates appointed under Desmond’s Law help to liaise with members of the public who are interested in cruelty cases?

- Never
- Sometimes
- Usually
- Always

On a scale of 1 to 7 (1 being “strongly disagree” and 7 being “strongly agree”), please answer the following:

10. State’s Attorneys are more focused on animal cruelty cases in which advocates are appointed:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- N/A

11. State’s Attorneys devote more time to animal cruelty cases in which advocates are appointed:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- N/A

12. Courts more frequently deny applications for pretrial diversionary programs in animal cruelty cases with appointed advocates:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- N/A

13. Courts impose stricter sentences on defendants convicted of animal cruelty in cases with appointed advocates:

1 2 3 4 5 6 7 N/A

14. Courts impose sentences or conditions that are more tailored and specific to the defendants and victims in cases with appointed advocates:

1 2 3 4 5 6 7 N/A

15. Animal cruelty cases reach dispositions faster with appointed advocates:

1 2 3 4 5 6 7 N/A

16. Animal cruelty cases result in more equitable dispositions with appointed advocates:

1 2 3 4 5 6 7 N/A

17. An appointed advocate impacts the neutrality of a court:

1 2 3 4 5 6 7 N/A

18. An appointed advocate provides valuable assistance to a court during a case:

1 2 3 4 5 6 7 N/A

19. Desmond’s Law has been well-received by courts:

1 2 3 4 5 6 7 N/A

22. Please use this text box to provide any feedback on Conn. Gen. Stat. § 54-86n, the implementation of the law, and the appointed advocates:

APPENDIX B: DATA COLLECTION CATEGORIES.

Judicial and UConn data collection categories

Column A, Indicator
Column B, Collector Initials
Column C, Date
Column D, Court Location
Column E, Docket Number
Column F, Geographical Area
Column G, Defendant Month of Birth
Column H, Defendant Year of Birth
Column I, Defendant Gender
Column J, Defendant Ethnicity
Column K, Defendant Race
Column L, Date of Incident
Column M, Location of Incident
Column N, Police Department
Column O, Arrest Date
Column P, Arrest Charging Statute
Column Q, Classification of Charge
Column R, Arraignment Date
Column S, Type of Defense Attorney
Column T, Appointed Advocate
Column U, Date Appointed
Column V, Supplied Facts and Law to Court
Column W, Supplied Recommendations to Court
Column X, Advocate's Recommendations
Column Y, Provided Victim Impact Statement
Column Z, Associated Civil Forfeiture Case
Column AA, Pretrial Diversionary Program
Column AB, Date Applied for Pretrial Diversionary Program
Column AC, Date Pretrial Diversionary Program Granted
Column AD, Pretrial Diversionary Program Successfully Completed
Column AE, Negotiated Plea Agreement
Column AF, Conviction
Column AG, Trial
Column AH, Trial Outcome
Column AI, Sentencing Date
Column AJ, Final Conviction Classification
Column AK, Final Disposition Statute
Column AL, Incarceration

Column AM, Sentenced Incarceration Time (Months)

Column AN, Time Suspended (Months)

Column AO, Restitution/Fine

Column AP, Restitution, Type/Amount

Column AQ, Community Service

Column AR, Probation

Column AS, Length of Probation (Months)

Column AT, Terms of Probation

Column AU, Restriction on Contact with Animal(s)

Column AV, Date of Final Resolution of Case

Column AW, Final Case Outcome

Column AX, Number of Animal(s) Involved

Column AY, Number of Animal(s) (Range)

Column AZ, Type of Animal(s) Involved

Column BA, Dog or Cat Involved

Column BB, Dog, Cat, or Other

Column BC, Accused's Conduct Toward Animal(s)

Column BD, Conduct: Neglectful or Intentional

Column BE, How Many Animal(s) Died Immediately

Column BF, How Many Animal(s) Died Eventually

Column BG, Did Any Animal(s) Die

Column BO, Court Ordered Education

Column BP, Court Ordered Counseling

Column BT, Year Advocate Appointed

Additional data collection categories for UConn case files only

Column BH, Conditions of Release

Column BI, Other Charges Related to Incident

Column BJ, Violation of Probation or Violation of Program

Column BK, Defendant Owner of Victim Animal(s)

Column BL, Surrendered/Forfeited Animal(s)

Column BM, Date of Surrender/Forfeiture

Column BN, Did the Advocate Oppose the Diversionary Program

Column BQ, Did the Town Receive Restitution

APPENDIX C: PROPOSED COURT FORM FOR ANIMAL CRUELTY CASES.

CASE INFORMATION

Docket No: _____ Defendant: _____

Arraignment date: _____

1. Number of cruelty charges: _____
2. Cruelty provision(s) (circle): § 53-247(a) / § 53-247(b)
3. Other charges: _____

Condition(s) of release restricting contact with animals: Yes / No

Other: _____

ANIMAL VICTIM INFORMATION

Type of animal(s) (circle all that apply): Dog / Cat / Rabbit / Ferret / Horse / Pig /

Hamster / Other: _____

1. Animal(s) died? Yes / No
2. Number of live animals: _____ ; number of deceased animals: _____
3. Defendant (circle all that apply): owned / abandoned / surrendered animal(s)
Date: _____
4. Civil forfeiture petition: Yes / No ; date: _____ ; outcome: _____

Current status and condition of animal(s): _____

CASE OUTCOME*Nolle*: Yes / No

Conditional Discharge – if yes, conditions: _____

Divisionary program – if yes, identify program and terms: _____

Sentence – if yes, terms: _____

Dismissal – if yes, terms: _____

Conditions of program or sentence (circle all that apply):

Restriction on ownership / Restriction on contact / Restitution / Counseling / Educational

Program / Community Service / Other: _____

Condition(s) details: _____

Violation of probation related to animals: Yes / No

ADVOCATE APPOINTED

Name of advocate: _____

Date appointed and notified: _____

Advocate's recommendations: _____



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2024. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

PROPOSED

The Committee proposes a new jury instructions, M Crim JI 17.26 (Unlawfully Posting a Message), for offenses charged under MCL 750.411s. The instruction is entirely new.

[NEW] M Crim JI 17.26 Unlawfully Posting a Message

- (1) [The defendant is charged with unlawfully posting a message. / You may consider the lesser offense of unlawfully posting a message that (was not in violation of a court order / did not result in a credible threat / was not posted about a person less than 18 with the defendant being 5 or more years older).¹] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant posted a message through any medium of communication, including on the Internet, a computer, a computer program, a computer system, a computer network, or another electronic medium of communication.²
- (3) Second, that the message was posted without [*name complainant*]'s consent.
- (4) Third, that the defendant knew or had reason to know that posting the message could cause two or more separate non-continuous acts of unconsented contact with [*name complainant*] by another person.³
- (5) Fourth, that the defendant posted the message with the intent that it would cause conduct that would make [*name complainant*] feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (6) Fifth, that the conduct arising from posting the message is the type that would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- (7) Sixth, that the conduct arising from posting the message did cause [*name complainant*] to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[For aggravated message posting, select any that apply from the following according to the charges and the evidence:]⁴

- (8) Seventh, that the message
- (a) was posted [in violation of a restraining order of which the defendant had actual notice / in violation of an injunction / in violation of (a court order / a condition of parole)]; [or]
 - (b) resulted in a credible threat being made to [*name complainant*], a member of [his / her] family, or someone living in [his / her] household. A credible threat is a threat to kill or physically injure a person made in a manner or context that causes the person hearing or receiving it to reasonably fear for his or her safety or the safety of another person;⁵ [or]
 - (c) was posted when [*name complainant*] was less than 18 years of age and the defendant was 5 or more years older than [*name complainant*].

Use Note

MCL 750.411s(7) permits prosecution of this crime where some elements of the offense may not have occurred in the state of Michigan or in the same county. The “venue” instruction, M Crim JI 3.10 (Time and Place), may have to be modified accordingly.

1. This alternative sentence is for use as a lesser included offense where an aggravating factor is charged and the defendant challenges whether the prosecution has proven the aggravating factor.
2. Definitions for these terms can be found at MCL 750.411s(8).
3. *Unconsented contact* is defined at MCL 750.411s(8)(j) and is not limited to the forms of conduct described in that definition. If the jury requests a definition of the phrase, the court may read all of the types of contact mentioned in the statute or may select those that apply according to the charge and the evidence, or the court may describe similar conduct that it finds is included under the purview of the statute.
4. If the basis for aggravated message posting is a prior conviction, do not read this element.

5. *Credible threat* is defined at MCL 750.411s(8)(e). By this definition, a “credible threat” appears to meet the “true threat” standard of *Virginia v Black*, 538 US 343, 359 (2003).

**Public Policy Position
M Crim JI 17.26**

Support

Explanation:

The committee voted to support the proposed Model Criminal Jury Instruction 17.26.

Position Vote:

Voted For position: 11

Voted against position: 3

Abstained from vote: 0

Did not vote (absent): 10

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

John A. Shea jashea@earthlink.net



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2024. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes two new instructions, M Crim JI 33.3 (Assaulting or Harassing a Service Animal) and 33.3a (Interfering with a Service Animal Performing Its Duties), for the offenses found at MCL 750.50a. The instructions are entirely new.

[NEW] M Crim JI 33.3 Assaulting or Harassing a Service Animal

- (1) The defendant is charged with the crime of assaulting or harassing a service animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant intentionally assaulted, beat, harassed, injured, or attempted to assault, beat, harass, or injure a service animal.

A “service animal” means a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of a person with a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the person’s disability.¹

- (3) Second, that the defendant knew or should have known that the animal was a service animal.

- (4) Third, that the defendant knew or should have known that the service animal was used by a person with a disability. The prosecutor alleges that [*name complainant*] is a person with a disability.

A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This includes an armed services veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, or another service-related disability.²

- (5) Fourth, that when the defendant assaulted, beat, harassed, or injured the service animal, or attempted to so, [he / she] did so maliciously.

“Maliciously” means that

[*Provide any that may apply:*]

- (a) the defendant knew that [he / she] was assaulting, beating, harassing, or injuring the service animal, or the defendant intended to do so, or
- (b) the defendant knew that [his / her] conduct would or be likely to disturb, endanger, or cause emotional distress to [*name complainant*], or the defendant intended to do so.
- (6) You may, but you do not have to, infer that the defendant acted maliciously if you find that [*name complainant*] asked the defendant to avoid or to quit assaulting or harassing the service animal but the defendant continued to do so.

You should weigh all of the evidence in this case in determining whether the defendant acted maliciously, including this inference, if you choose to make it. The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

1. See the Code of Federal Regulations, 28 CFR 36.104, stating:
Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic,

trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. *The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.* (Emphasis added.)

2. This sentence does not need to be read where the person with a disability is not a veteran.

[NEW] M Crim JI 33.3a Interfering with a Service Animal Performing Its Duties

- (1) The defendant is charged with the crime of interfering with a service animal performing its duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that [*name complainant*] was a person with disability who used a service animal for work or tasks directly related to [his / her] disability.

A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This includes an armed services veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, or another service-related disability.¹

A “service animal” means a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of a person with a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the person’s disability.²

- (3) Second, that the service animal was performing duties for [*name complainant*].
- (4) Third, that the defendant knew or should have known that the animal was a service animal being used by [*name complainant*].
- (5) Fourth, that the defendant intentionally impeded or interfered with the service animal when it was performing its duties or attempted to impede or interfere with the animal when it was performing its duties.
- (6) Fifth, that when the defendant impeded or interfered with the service animal’s duties, or attempted to so, [he / she] did so maliciously.

“Maliciously” means that
[Provide any that may apply:]

(a) the defendant knew that [he / she] was impeding or interfering with duties performed by the service animal, or the defendant intended to do so, or

(b) the defendant knew that [his / her] conduct would or be likely to disturb, endanger, or cause emotional distress to [*name complainant*], or the defendant intended to do so.

- (7) You may, but you do not have to, infer that the defendant acted maliciously if you find that [*name complainant*] asked the defendant to avoid or to quit impeding or interfering with the service animal as it was performing its duties, but the defendant continued to do so.

You should weigh all of the evidence in this case in determining whether the defendant acted maliciously, including this inference, if you choose to make it. The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

1. This sentence does not need to be read where the person with a disability is not a veteran.
2. See the Code of Federal Regulations, 28 CFR 36.104, stating:
Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or

interrupting impulsive or destructive behaviors. *The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.* (Emphasis added.)

**Public Policy Position
M Crim JI 33.3 and 33.3a**

Support

Explanation:

The committee voted to support the proposed Model Criminal Jury Instructions 33.3 and 33.3a.

Position Vote:

Voted For position: 12

Voted against position: 2

Abstained from vote: 0

Did not vote (absent): 10

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

John A. Shea jashea@earthlink.net



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====
The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2024. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.
=====

PROPOSED

The Committee proposes amendments to M Crim JI 35.1a, formerly identified as (Malicious Use of Telecommunications Service), for the offense found at MCL 750.540e. The amendments (1) refine the title and first paragraph of the instruction to include the possible intents required under the statute, (2) add language addressing the “malicious” wording in the statute that had not been included when the instruction was originally adopted, and (3) reformat the second element to make it more user friendly than the single-paragraph original format. Deletions are in ~~strike-through~~, and new language is underlined. A “clean copy” without the struck language but including the added language is also provided.

[AMENDED] M Crim JI 35.1a Malicious Use of a Telecommunications Service to Frighten, Threaten, Harass, or Annoy

(1) The defendant is charged with the crime of malicious use of a telecommunications service to frighten, threaten, harass, or annoy another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [*identify service provider*] to communicate with [*identify complainant*].

(3) Second, that, when communicating with [*identify complainant*], the defendant, knowing it was wrong, intended to

[threatened physical harm or damage to any person or property / made a

~~deliberately false report that a person had been injured, had suddenly taken ill, had died, or had been the victim of a crime or an accident / deliberately refused or failed to disengage a connection between telecommunications devices or between a telecommunications device and other equipment provided by a telecommunications service⁺ or device / used vulgar, indecent, obscene, or offensive language or suggested any lewd or lascivious act in the course of the conversation or message / repeatedly initiated telephone calls and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered / made an uninvited commercial telephone call soliciting business or contributions that was received between the hours of 9 p.m. and 9 a.m., whether the call was made by a person or recording device / deliberately engaged or caused to engage the use of (*identify complainant*)'s telecommunications service or device in a repetitive manner that caused interruption in the telecommunications service or prevented (*identify complainant*) from using (his / her) telecommunications service or device].~~

[Provide any of the following that apply according to the charges and evidence:]

- (a) threaten physical harm to a person or damage to property in the course of a conversation or message.
- (b) make a false report that a person had [been injured / suddenly taken ill / died / been the victim of a crime or an accident].
- (c) refuse or fail to disengage a connection between a [*identify communication device*] and another [*identify communication device*] or between a [*identify communication device*] and other equipment that sends messages through the use of a telecommunications service or device.
- (d) use vulgar, indecent, obscene, or offensive language or proposed any lewd or lascivious act during a conversation or message.
- (e) repeatedly initiate a telephone call and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered.
- (f) make an unsolicited commercial telephone call between the hours of 9 p.m. and 9 a.m.

An unsolicited commercial telephone call is one made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.

- (g) cause an interruption in [*identify complainant* / another person]'s

telecommunications service or prevented [*identify complainant* / another person] from using [his / her] telecommunications service or device by the defendant's repeated use of [his /her] telecommunications service or device.

(4) Third, that the defendant did so with the intent to terrorize, frighten, intimidate, threaten, harass, molest, annoy, or disturb the peace and quiet of [*identify complainant*].¹

Use Note

This is a specific intent crime.

1. If the jury has not been provided with the definition of a *telecommunications service provider*, a *telecommunications service*, or a *telecommunications access device* and the court finds that it would be appropriate to do so, the following are suggested based on the wording of MCL 750.219a:

A *telecommunications service provider* is a person or organization providing a telecommunications service, such as a cellular, paging, or other wireless communications company, or a facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service, including any fiber optic, cable television, satellite, Internet-based system, telephone, wireless, microwave, data transmission or radio distribution system, network, or facility, whether the service is provided directly by the provider or indirectly through any distribution system, network, or facility.

A *telecommunications service* is a system for transmitting information by any method, including electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

A *telecommunications access device* is any instrument, including a computer circuit, a smart card, a computer chip, a pager, a cellular telephone, a personal communications device, a modem, or other component that can be used to receive or send information by any means through a telecommunications service.

**Public Policy Position
M Crim JI 35.1a**

Support

Explanation:

The committee voted to support the proposed Model Criminal Jury Instruction 35.1a.

Position Vote:

Voted For position: 14

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 10

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

John A. Shea jashea@earthlink.net



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2024. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new instruction, M Crim JI 42.1 (Misconduct in Office) for the common law crime of misfeasance or malfeasance in office, punishable under MCL 750.505. The instruction is entirely new.

[NEW] M Crim JI 42.1 Misconduct in Office

- (1) The defendant is charged with the crime of misconduct in office. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant was [a / an / the] [*identify public office held by the defendant*] [on / between] [*date(s) of offense*].
- (3) Second, that the defendant [*describe wrongful conduct alleged by the prosecutor*].
- (4) Third, that the defendant's conduct was [malfeasance / misfeasance]. [Malfeasance is illegal or wrongful conduct / Misfeasance is a legal act but done in an illegal or wrongful manner].
- (5) Fourth, that the defendant was performing [his / her] duties as [a / an / the] [*identify public office held by the defendant*] or was acting under the color of [his / her] office. "Acting under the color of office" means that the defendant performed the acts in [his / her] role as a public officer or official, or was able to perform the acts because being a public officer or official gave the defendant the opportunity to perform the acts.
- (6) Fifth, that the defendant acted with corrupt intent.

The word “corrupt” is defined as depraved, perverse, or tainted.¹ Corrupt intent includes intentional or purposeful misbehavior related to the requirements or duties of the defendant as a public officer, contrary to the powers and privileges granted to the defendant as a public officer, or against the trust placed in the defendant to perform as expected as a public officer. Corrupt intent does not include erroneous acts made in good faith or honest mistakes committed or made in the discharge of duties, and it does not require that the defendant receive money or property in profit for the conduct.

Use Note

1. These three terms are further defined in *People v Coutu (On Remand)*, 235 Mich App 695, 706-707; 599 NW2d 556 (1999).

**Public Policy Position
M Crim JI 42.1**

Support

Explanation:

The committee voted to support the proposed Model Criminal Jury Instruction 42.1.

Position Vote:

Voted For position: 12

Voted against position: 2

Abstained from vote: 0

Did not vote (absent): 10

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

John A. Shea jashea@earthlink.net