

CANINES (AND CATS!) IN CORRECTIONAL INSTITUTIONS: LEGAL AND ETHICAL ISSUES RELATING TO COMPANION ANIMAL PROGRAMS

Rebecca J. Huss*

I. INTRODUCTION

Approximately one in 107 adults in the United States is incarcerated in some type of correctional institution.¹ Effective programs are necessary to address the issues of these inmates. A growing number of correctional facilities allow for companion animals to be integrated into their programs in a variety of ways.² A Dominican nun, Sister Pauline Quinn, is frequently credited with beginning the first dog-training program in the United States in a Washington State women's correctional facility in 1981.³ A cable television program called

* Rebecca J. Huss 2013. Professor of Law, Valparaiso University Law School; LL.M. University of Iowa, 1995; J.D. University of Richmond, 1992.

¹ LAUREN E. GLAZE & ERIKA PARKS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES 1 (2012), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4537> (discussing the correctional population at the end of 2011, the most recent statistics available). At the end of 2011 approximately one out of thirty-four adults in the United States "was under some form of correctional supervision." *Id.* The term correctional facility or institution will be used throughout this Article to refer to all institutions that are run by governmental entities or their private contractors for the housing of persons in the criminal justice system. In most cases, the types of programs discussed in this Article are in facilities for individuals who have been through the adjudication process, as inmates selected for the programs generally need sufficient time remaining in their sentences to support their participation.

² See, e.g., Dana M. Britton & Andrea Button, *Prison Pups: Assessing the Effects of Dog Training Programs in Correctional Facilities*, 9 J. FAM. SOC. WORK 79, 80 (2005) (reporting that there has been a dramatic increase in the number of programs but acknowledging there is no comprehensive data on the number of programs); Gennifer Furst, *Prison-Based Animal Programs: A National Survey*, 86 PRISON J. 407, 407 (2006) (reporting on a survey of state prison based animal programs, including programs that utilized animals for animal assisted therapy—a topic beyond the scope of this Article); Earl O. Strimple, *A History of Prison Inmate-Animal Interaction Programs*, 47 AM. BEHAV. SCIENTIST 70, 71, 74–77 (2003) (discussing both the historical and current prison-based programs and calling for more research in the area). The discussion of companion animals in this Article is limited to animals in care programs and inmate owned animals. *Id.* Note that there are several programs that also train horses—these programs will not be considered in this Article. See *id.* at 76–77 (discussing equine programs). Issues relating to animals used for security, including animals used to detect contraband, are also beyond the scope of this Article.

³ E.g., Robin Brown, *Program Improves Lives of Dogs, Inmate Trainers*, NEWS J. (Wilmington, Del.), Aug. 17, 2012, available at <http://www.delawareonline.com/article/201208>

Cell Dogs, broadcast in 2004, increased the visibility of these types of programs.⁴ Reportedly, *Cell Dogs* triggered the establishment of programs in additional facilities.⁵ New programs are being established on a regular basis.⁶ Some states have adopted the concept in greater measure.⁷ For example, the State of Washington has animal programs in all twelve of its correctional institutions and the State of Missouri has programs in eighteen of its facilities.⁸ These programs are cited as conforming to a philosophy of “restorative justice” adopted by many departments of correction.⁹

17/NEWS/308170032/Program-improves-lives-dogs-inmate-trainers (attributing the first program to Sister Quinn and discussing a new program in Delaware and the trend of incorporating these programs into correctional facilities).

⁴ See Julia Szabo, *Dogs in Jail; Inmates and Strays Rehabilitate Each Other*, N.Y. POST (Feb. 29, 2004, 12:00 AM) <http://nypost.com/2004/02/29/dogs-in-jail-inmates-and-strays-rehabilitate-each-other/> (describing the *Cell Dogs* series as a reality television program on Animal Planet); Mark Todd, *Dayton Helps Prison Inmates Go to the Dogs*, STAR BEACON (Ashtabula, Ohio) (Dec. 7, 2009) <http://starbeacon.com/currents/x546367090/Dayton-helps-prison-inmates-go-to-the-dogs> (discussing the Pound Puppy program and stating it was featured on the Discovery Channel’s *Cell Dogs* program).

⁵ Charles M. Bartholomew, *New Leash on Life: Dogs, Inmates Pair Up in Dual Rehab Opportunity*, POST-TRIB. (Merrillville, Ind.), Nov. 18, 2004, at A1 (reporting that the Prison Tails program at an Indiana prison was inspired by the Animal Planet show *Cell Dogs*); Julie Shaw, *Program’s Cell-ing Point Helps Both Man & Beast*, PHILLY.COM (Aug. 26, 2011) http://articles.philly.com/2011-08-26/news/29930629_1_shelter-dogs-philadelphia-prison-system-inmates (discussing the New Leash program and the fact that the founder saw the *Cell Dogs* program on Animal Planet and decided to begin one locally).

⁶ Brown, *supra* note 3 (discussing the establishment of programs at two Delaware prisons in 2012); Mihir Zaveri, *Maryland Prisons Launch Dog-Training Program*, WASH. POST (July 2, 2012, 4:03 PM), http://www.washingtonpost.com/blogs/crime-scene/post/Maryland-prisons-launch-dog-training-program/2012/07/02/gJQADIMrIW_blog.html (announcing the establishment of a program with America’s VetDogs to begin in August 2012).

⁷ See e.g., *Prisoners Rehabilitate Death-row Dogs*, NBCNEWS.COM (Oct. 3, 2006, 1:16 PM) <http://www.nbcnews.com/id/15014860/#.U12PrxZOCFJ> (citing a prison warden explaining that the Safe Harbor Prison Dog Program at the Lansing Correctional Facility in Kansas is one of the largest prison-based dog adoption programs, which helps reduce violence among inmates).

⁸ Jennifer Sullivan, *Cats Bringing out the Soft Side of Inmates*, SEATTLE TIMES (May 3, 2012, 10:35 PM), http://seattletimes.com/html/localnews/2018135930_prisonpets04m.html (discussing the programs in the State of Washington); John L. Inman III, *Tipton Correctional Center: 18th Missouri Prison to Implement ‘Puppies for Parole’ Program*, CAL. DEMOCRAT, May 30, 2012, at 11 (announcing the establishment of a program at a Missouri correctional center and stating that the other two facilities are not compatible with the programs). See also Alan Johnson, *“It Gave Me a Purpose,”* COLUMBUS DISPATCH, Nov. 10, 2003, at A1 (reporting that a dog training program was in thirty out of thirty-three prisons in Ohio in 2003); Andrea Uhde Shepherd, *Dog-Adoption Program Changes Lives Behind Bars*, SUNDAY GAZETTE-MAIL (Charleston, W. Va.), May 8, 2011, at 10A (reporting that in Kentucky there are dog programs at twelve out of thirteen state prisons (with one just beginning) and at two private facilities).

⁹ E.g., Richard Crumbacker, *Inmates, Staff Ready to Handle America’s Vet Dogs: Incarcerated Veterans Will Train Dogs Inside Prison to Work with Injured Veterans*, CRISFIELD TIMES (Md.), July 11, 2012, at 4 (discussing the America’s VetDogs program and how it is consistent with other restorative justice programs); Pat Pheifer, *Prisoners Paw it Forward: The Offenders at the Shakopee Women’s Prison Who Train Future Service Dogs Hope Their Work Will Give Back to the Community*, STAR TRIB. (Minneapolis, Minn.), Jan. 10, 2010, at 1B (discussing a dog training program at a prison with the transition coordinator stating that “the dog training program fits well with the DOC’s philosophy of restorative justice”).

The limited research in this phenomenon has considered the impact of the programs on the human prison population.¹⁰ This Article focuses on the legal and ethical issues involved with keeping companion animals in this very specific institutional environment. First, this Article analyzes various types of programs that correctional institutions have established and assesses common benefits of and challenges for the programs.¹¹ Second, this Article considers programs that may allow for an inmate to have his or her “own” animal in a facility, including the question of whether service or assistance animals must be accommodated.¹² Third, this Article evaluates the risks to humans involved with these programs and makes recommendations to ensure the safety of the participants to reduce the liability to the institutions and organizations involved.¹³ Fourth, this Article considers the ethical implications of having companion animals in these environments, focusing on whether it is an appropriate placement for companion animals and providing guidance for those who wish to consider implementing or supporting such programs.¹⁴

II. TYPES OF TRAINING AND CARE PROGRAMS

Each program at a correctional institution is likely to be unique in some aspects of its administration. This Part utilizes examples to illustrate the primary categories of companion animal programs at correctional institutions.

A. Shelter and Rescue Organization Animals

In one type of program the inmates provide care and training for animals from local shelters or rescue organizations. These programs can either offer sheltering for the overflow from local shelters or rescue organizations, or focus on animals that may need additional care and training to become more adoptable. For example, after Hurricane Katrina, a few facilities took in animals displaced by the storm.¹⁵ The Dixon Correctional Institution housed over 200 animals, including dogs, cats, and poultry after the storm.¹⁶ The temporary pro-

¹⁰ E.g., Christiane Deaton, *Humanizing Prisons with Animals: A Closer Look at “Cell Dogs” and Horse Programs in Correctional Institutions*, 56 J. CORRECTIONAL EDUC. 46 (2005) (discussing these programs and the benefits to the inmate participants); Angela Krom Fournier et al., *Human-Animal Interaction in a Prison Setting: Impact on Criminal Behavior, Treatment Progress, and Social Skills*, 16 BEHAV. & SOC. ISSUES 89 (2007) (reporting on a field study that evaluated the impact of a dog training program on the inmate participants in a Virginia facility); Wendy G. Turner, *The Experiences of Offenders in a Prison Canine Program*, 71 FED. PROBATION 38, 38 (2007) (reporting on a qualitative research study regarding the experiences of inmates involved in a service animal training program in Indiana).

¹¹ See *infra* notes 15–121 and accompanying text.

¹² See *infra* notes 122–176 and accompanying text.

¹³ See *infra* notes 177–230 and accompanying text.

¹⁴ See *infra* notes 231–330 and accompanying text.

¹⁵ *Inmates Take in Cats Displaced by Katrina*, CHARLESTON DAILY MAIL (W. VA.), Oct. 19, 2005, at 10A (discussing the Pen Pals Program at Four Pocahontas Correctional Unit in Virginia that took in two dozen cats).

¹⁶ Susan Berger, *Prison Becomes Shelter, Inmates Rise to Occasion*, CHI. TRIB., Nov. 26, 2005, at 1.8 (discussing the Humane Society of the United States’ placement of 200 animals including geese, chickens, and ducks at the Dixon Correctional Institute in Louisiana).

ject at that Louisiana facility was so successful that it developed into a permanent clinic and shelter on its grounds.¹⁷ The Humane Society of the United States (“HSUS”), the School of Veterinary Medicine at Louisiana State University, and the Dixon Correctional Institute worked together to establish an emergency shelter in addition to a permanent clinic and shelter.¹⁸ The project was financed by a \$600,000 grant from the HSUS and was built using inmate labor.¹⁹ The emergency shelter area can house as many as 300 animals and was first used after Hurricane Gustav in August 2008.²⁰ The clinic and permanent shelter was opened on the fifth anniversary of Hurricane Katrina in August 2010, and is designed for sixty dogs and thirty-four cats.²¹ The purpose-built shelter is structured like many traditional shelters with runs for the dogs and cages for the cats.²² Inmates work at the shelter but the animals are not integrated into the inmates’ housing.²³ Volunteers take animals to events in the area to promote their adoption.²⁴ The shelter at the correctional institution is the only shelter in the Parish.²⁵

Another example of a program at a corrections institution acting as a rescue organization or shelter is located at Madison Correctional Facility in Indiana.²⁶ A Dog On Prison Turf (A.D.O.P.T.) is a program that takes in both cats and dogs, many from a local shelter.²⁷ The animals are integrated into two units of the inmates’ dormitory style housing facilities.²⁸ In the unit housing the dogs, each inmate is paired with a dog.²⁹ The inmate handler is responsible for the care and training of the dog.³⁰ The goal of the basic obedience training is to enable the dog to become adoptable.³¹ Training for the inmate handlers is provided by outside volunteers and more experienced inmate handlers.³² As part of

¹⁷ Jim Baker, *Pen Pals: An Unusual Partnership Brings an Animal Shelter and Emergency Evacuation Site Inside Prison Walls*, ANIMAL SHELTERING, Jan.–Feb. 2011, at 18, available at http://www.animalsheltering.org/magazine/animal-sheltering/back-issues/jan_feb_2011_pp1-23.pdf; Sheila Stroup, *HSUS Prison Animal Shelter Saves Pets and Inmates*, NOLA.COM (June 24, 2012, 5:50 AM), http://blog.nola.com/pets_impact/print.html?entry=/2012/06/hsus_prison_animal_shelter_sav.html.

¹⁸ Stroup, *supra* note 17.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Inmates and Animals Get Second Chance at Louisiana Prison* (WWLTV Eyewitness News television broadcast Feb. 15, 2012), available at <http://www.wwltv.com/news/Inmate-Dogs-139413268.html> (showing video of facility including outdoor dog runs and cat cages).

²³ Baker, *supra* note 17, at 19.

²⁴ Stroup, *supra* note 17.

²⁵ *Id.* (discussing the fact that East Feliciana Parish did not have a shelter prior to the Pen Pals, Inc. shelter).

²⁶ Peggy Vlerebome, *Dogs Find Love on Prisoners’ Turf*, MADISON COURIER (Nov. 12, 2011, 9:00 AM), <http://madisoncourier.com/main.asp?SectionID=182&SubSectionID=264&ArticleID=66231>; Telephone Interview with Jessica Bradley, Coordinator, A Dog On Prison Turf (Jan. 18, 2013).

²⁷ Bradley, *supra* note 26. On January 18, 2013 there were thirty-four dogs and twenty-eight cats at the facility. *Id.*

²⁸ *Id.*

²⁹ *Id.* In a few cases an inmate may be paired with and be responsible for two dogs. *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

their training, the dogs are crated at night in the unit.³³ The inmate handlers have the ability to take the dogs outside for toileting at all times, and there is a secured fenced area for the dogs to run in the afternoon hours.³⁴

In the unit that houses the cats for the A.D.O.P.T. program, the expectations for the training of the animals are lower. The cats are litter box trained, and the inmates provide general care and socialization for the cats.³⁵ The cats are free-roaming within the unit and there is a secure outdoor area that the cats may access.³⁶ The cats' need for vertical space is met with cat trees and because the unit utilizes bunk beds, many cats spend time on the top bunks and on the top of the unit lockers.³⁷

The programs at Dixon Correctional Facility and Madison Correctional Facility are unique because adoptions are done through the correctional facility shelter or program itself; there is no independent local rescue organization partnering with the correctional institution.³⁸

Cat programs are much less common than dog programs, but Washington State has two prisons that operate cat programs.³⁹ In both programs, a local animal welfare organization is partnered with the correctional facility to provide cats to the inmate handlers and to handle subsequent adoptions.⁴⁰

The program at Larch Corrections Center focuses on cats that are behaviorally challenged, making it difficult for them to be adopted.⁴¹ The administrators at this facility thought a cat program would be more effective because, as the Superintendent of the facility stated, "dogs are too macho" and "working with cats is far more complex [than dogs] because inmates have to work harder to earn the animal's affection."⁴² As with dog training programs, the inmates involved must pass through a screening process and have a history of good behavior and those who qualify are paid thirty-five cents an hour.⁴³ The local organization partnering with the Larch Corrections Center has volunteers who

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Pen Pals, Inc. Animal Shelter*, FACEBOOK, <http://www.facebook.com/PenPalsIncAnimalShelter/info> (last visited Dec. 4, 2013) (describing shelter and discussing adoption procedure); Bradley, *supra* note 26 (stating that adoptions are done through the organization itself though occasionally an animal may be transferred to another rescue organization, such as a breed rescue organization, in order to facilitate adoption).

³⁹ *Dog Training and Adoption Programs*, WASH. ST. DEP'T OF CORRECTIONS, <http://doc.wa.gov/facilities/prison/animaltrainingprograms.asp> (last visited Nov. 3, 2013).

⁴⁰ *The Program Goes On . . .*, CUDDLY CATZ, <http://cuddlycatz.org/the-program-goes-on/> (last visited Nov. 3, 2013) (reporting that the Cuddly Catz organization that initially partnered with the Larch Corrections Center was turning over its role as the partner to the West Columbia Gorge Humane Society); "Monroe Corrections Kitten Connections" *Prison Foster Program*, PURRFECT PALS, <http://www.purrfectpals.org/About/PrisonProgram.asp> (last visited Nov. 3, 2013) [hereinafter *Monroe Corrections Kitten Connections*] (reporting on the fostering program with Monroe Correctional Facility).

⁴¹ See Sullivan, *supra* note 8 (describing one of the cats in the program as having a "testy disposition" and the inmate handler stating that the cat "growls and swipes").

⁴² *Id.* (quoting Superintendent Eleanor Vernell regarding the cat program). Washington State has animal programs in each of its correctional institutions. *Id.*

⁴³ *Id.* (describing standards for participation in the cat program).

train the inmates to work with the cats, and, with assistance from others in the community, provide everything the cats need, including veterinary care.⁴⁴ The prison has an outdoor play area for the cats.⁴⁵

The program at Monroe Correctional Complex-Special Offender Unit was established in 2006.⁴⁶ The Special Offender Unit houses mentally ill inmates within the larger correctional facility.⁴⁷ In this program, the inmates provide foster care for young or feral kittens that need socialization and human contact in order to be adoptable.⁴⁸ The inmates who qualify for the program are interviewed by the staff and must show “exemplary behavior, good hygiene, psychiatric stability, a pro-social attitude and a high level of participation in correctional programs.”⁴⁹ The local organization reports that the program has been beneficial for both inmates and the local organization, because kittens that “might otherwise be euthanized” are adopted.⁵⁰

B. *Private Client Animals*

Although most of the programs doing general obedience training focus on dogs from shelter and rescue organizations, it is possible to structure a program to assist animals belonging to private clients.⁵¹ One correctional institution in Northwest Indiana had a general training program for animals from a rescue organization, but also provided dog-training for the general public. This program at Westville Correctional Facility (“WCF”), working with the organization Mixed Up Mutts, Inc. (“MUM”), began in 2004.⁵² Over the next eight years approximately 375 male inmates participated in the program and over 500 rescue dogs were trained and adopted out.⁵³ In addition to the dogs that were placed through the rescue organization this program also trained over 200 dogs that belonged to members of the general public.⁵⁴

The terms of the agreement between MUM and WCF provided that MUM would provide the dogs and all supplies necessary for training of the dogs.⁵⁵

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Monroe Corrections Kitten Connections*, *supra* note 40 (describing the program).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* (reporting that the program has “reduced offender idleness, taught offenders about responsibility and increased their self esteem,” and has motivated offenders to, among other things, “obey unit rules and improve their hygiene so that they may become MCKC participants”). The local organization pays for all the costs related to the program. *Id.*

⁵¹ *Budget Squeezes Out Prison Dog Training*, EVANSVILLE COURIER & PRESS, Sept. 24, 2012, at 8A (discussing the Prison Tails Program that trained more than 500 shelter dogs and 200 privately owned dogs before the program ended in late 2012 due to budgetary concerns).

⁵² Gabrielle Gonzalez, *Prison Tails Program to End at Westville Correctional*, HERALD ARGUS.COM (La Porte, Ind.) (Sep. 21, 2012, 9:36 AM), <http://heraldargus.com/articles/2012/09/21/news/local/doc505c7b4d400a6589464183.txt>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ E-mail from John Schrader, Pub. Info. Officer, Westville Corr. Facility, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 28, 2013, 8:30 AM CST) (on file with author) (providing 2004 and 2010 agreements between MUM and the facility).

MUM also chose which dogs would be used for the program.⁵⁶ The inmate participants had a high school diploma or GED and a history of good conduct, among other requirements.⁵⁷ Extensive training was provided to the inmate participants.⁵⁸ The dogs each had a crate in the dormitory or room where their inmate handler resided and the handlers were allowed to take them outside for toileting at any time.⁵⁹ There were also fenced in areas for exercise.⁶⁰

Unlike some other programs, ownership of the dogs in this program was transferred from MUM to the WCF upon the dogs' arrival on the premises.⁶¹ This transfer of ownership also occurred for the dogs owned by members of the public through the agreement each private dog owner signed with MUM.⁶² Upon the dog's release from the facility, ownership was re-established by MUM and members of the general public.⁶³ This transfer of title remedied insurance coverage issues, as it was cost prohibitive for MUM's liability insurance to cover the dogs while they were in the program.⁶⁴

Although not as extensive as the WCF program, in one prison in Alaska, the inmates provide temporary care for dogs that have been dropped (taken out of the race) from the annual Iditarod dog sledding race.⁶⁵ Training privately owned animals can be a source of income for programs and provide inmate handlers with opportunities to hone their skills when dealing with members of the public. However, there are obvious complications with programs dealing with dogs belonging to members of the public. The negative impact of a privately-owned dog being injured during the animal's time in a program could be substantial. Even if there is effective contractual language waiving liability—

⁵⁶ *Id.* (stating that MUM chose the dogs but the facility did not allow Rottweilers or Pit Bull-type dogs or mixes).

⁵⁷ *Id.* The men also had to be in good health and not have any family domestic or animal abuse in their history among other crimes. *Id.*

⁵⁸ *Id.* There was a resident program supervisor in addition to volunteers and guest speakers. *Id.* There was a timeline for completing each class and the material covered ranged from animal behavior to customer service. *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *E.T. Owner Release, MIXED UP MUTTS, INC.*, <http://www.mixedupmutts.org/forms/form?formid=1138&siteid=2934&contactsformsid=&verify=abc123&page=contact> (last visited Nov.3, 2013) (providing that the dogs must be the sole property of MUM, thus members of the general public must transfer title to their dogs to MUM, and that subsequently the dogs would be transferred to WCF).

⁶³ *Id.* (stating that if a member of the general public did not re-establish ownership of the dog in the program within three days of notification that the dog had completed the program or been removed from the program, the dog would be offered to the public for adoption).

⁶⁴ Schrader, *supra* note 55.

⁶⁵ Lisa Demer, *Hiland Inmates Take a Turn Caring for Dropped Dogs*, ANCHORAGE DAILY NEWS (Mar. 13, 2011), <http://www.adn.com/2011/03/13/1753969/hiland-inmates-take-a-turn-caring.html> (discussing the program that provides temporary housing for the dogs that can no longer race in the Iditarod). This facility also has a small dog training program that began in 2006. Kaylin Bettinger, *Service Dog Trained by Prisoner Aids Soldier*, ANCHORAGE DAILY NEWS (July 13, 2010), <http://www.adn.com/2010/07/13/1365539/service-dog-trained-by-prisoners.html> (reporting on the dog training program at Hiland Mountain Correctional Center that trains shelter dogs, with a few of the dogs in the program being trained as service animals).

thus no legal liability—the adverse public relations could have a deleterious effect on a program as a whole.

C. Service Animals

It is also common to have programs that train dogs for placement as service animals. An example of this type of program is the Indiana Canine Assistance Network (“ICAN”).⁶⁶ Three prisons in Indiana have programs with ICAN that train dogs to act as service animals for children and adults with physical or developmental disabilities.⁶⁷ ICAN also places dogs in special needs facilities, such as hospitals and schools.⁶⁸ The inmates must meet several standards for eligibility in this program, including no documented record of cruelty to animals and demonstrating good behavior for a specified period of time.⁶⁹ This program utilizes purpose-bred dogs, breeder donations, and dogs from shelters.⁷⁰ ICAN holds title to the dogs during the entire time the dogs are in the program and makes all decisions regarding veterinary care and placement of the dogs.⁷¹ The ICAN program utilizes only positive reinforcement training to train the dogs.⁷² ICAN trainers train the dog handlers through outside volunteers, more experienced inmates, and course work.⁷³

D. Facility Animals

Of course, companion animals may not be part of a work program to be residents at a correctional institution. In the case of both facility animals and feral cat colonies, inmates may be interacting with animals, and thus concerns

⁶⁶ ICAN, <http://www.icandog.org/> (last visited Nov. 3, 2013).

⁶⁷ *Who We Serve*, ICAN, <http://www.icandog.org/who-we-serve> (last visited Nov. 3, 2013) [hereinafter ICAN, *Who We Serve*]; E-mail from Carol Foster, Program Dir., Ind. Women’s Prison, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 8, 2013, 1:57 PM) (on file with author) (stating that the three prisons that train ICAN dogs are the Indiana Women’s Prison, Plainfield Correctional Facility, and the Correctional Industrial Facility).

⁶⁸ ICAN, *Who We Serve*, *supra* note 67. Dogs that do not have the temperament or physical health to be a service or facility dogs are released for adoption to the general public. *Release Dogs for Adoption*, ICAN, <http://www.icandog.org/release-dogs-for-adoption> (last visited Nov. 3, 2013).

⁶⁹ E-mail from Carol Foster, Program Dir., Ind. Women’s Prison, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 17, 2013, 11:11 AM) (on file with author) (attaching the ICAN Handler Eligibility Guidelines). The length of time an inmate must be clear of misconduct is dependent on the level of misconduct. Telephone Interview with Jennifer Cattet, Dir. of Training, Ind. Canine Assistance Network (Jan. 16, 2013) (explaining that less serious misconduct may preclude participation in the program for six months and more serious misconduct would preclude participation in the program for a year).

⁷⁰ *Where We Get Our Dogs*, ICAN, <http://www.icandog.org/where-we-get-our-dogs> (last visited Nov. 3, 2013).

⁷¹ Cattet, *supra* note 69. The decision on which dog to place with which inmate is at the discretion of ICAN. *Id.* The correctional institution could request that a dog be removed from the program but Ms. Cattet indicated that the level of monitoring is such that if a dog is not appropriate for the program, such as if the dog began to growl or otherwise show behavior that might indicate the dog is reactive to humans, the dog is removed by ICAN. *Id.*

⁷² *How We Train*, ICAN, <http://www.icandog.org/how-we-train> (last visited Nov. 3, 2013) [hereinafter ICAN, *How We Train*].

⁷³ Cattet, *supra* note 69 (discussing the extensive training protocol used by the program). Some of the inmates have been part of the ICAN programs for more than five years. *Id.*

over injuries and the animals' care should be considered. In a program incorporating a facility animal, the general intent is to have the animal, often a cat, live out their lives at the facility.⁷⁴ A Lincoln County, Nebraska detention center received international media attention in 2011 when the sheriff adopted three cats for placement in the facility.⁷⁵ The cats share a common area with about twenty inmates.⁷⁶ The sheriff who instituted the program had considered an animal program for years, but it was only feasible once a new facility opened where he felt that they could provide a safe environment for the cats.⁷⁷ Although some inmates in the facility initially were reluctant to have the cats, there have been no recent complaints, including no complaints about possible allergies.⁷⁸

E. Feral Cat Programs

The establishment of a feral cat program is one way that feral cats can be in a protected environment. In Nevada, a group of cats that needed to be relocated were trapped and rehomed on prison grounds.⁷⁹ The local rescue organization responsible for the program traps the cats by colony and provides sterilization and other veterinary care prior to their placement at the prison.⁸⁰ The prison has feeding stations and protected housing, and inmates are responsible for the care of the cats.⁸¹ The prison has not reported any problems with the cats and has seen a substantial reduction in the number of rodents at the facility.⁸²

F. Benefits and Challenges

There are both certain benefits that are often reported, and universal challenges that are usually faced by animal programs in correctional institutions.

1. Benefits of Programs

An often-cited and significant benefit to these institutions is a decrease in inmate violence. In Ohio, one program is credited with contributing to a decline

⁷⁴ See Rebecca J. Huss, *Reevaluating the Role of Companion Animals in the Era of the Aging Boomer*, 47 AKRON L. REV. (forthcoming 2014) (manuscript at 31) (on file with author) (discussing facility and "resident" animals in institutional environments).

⁷⁵ See, e.g., Silvia Ayuso, *Felines Face Life in Prison*, NATION (Thailand) (Sept. 4, 2011), <http://www.nationmultimedia.com/home/2011/09/04/life/Felines-face-lift-in-prison-30164417.html> (reporting on the program in the Lincoln Nebraska facility).

⁷⁶ *Id.*

⁷⁷ *Id.* (discussing the ability to classify the inmates better once they moved to the new facility).

⁷⁸ *Id.* (discussing the implementation of the program). There are unique ethical aspects to keeping a facility animal that are beyond the scope of this Article. See Huss, *supra* note 74 (manuscript at 45–69) (discussing issues relating to facility animals).

⁷⁹ Cathy Scott, *Compassion Behind Bars*, BEST FRIENDS, May–June 2012, at 33, available at <http://digitaleditions.walworthprintgroup.com/publication/?i=107072> (describing program in Nevada).

⁸⁰ *Id.* (discussing the need to place the cats as a colony to increase the likelihood that the cats will get along when they are placed in the same area and the provision of veterinary care).

⁸¹ *Id.* (discussing the inmate overseeing the care of the cats).

⁸² *Id.* at 34 (discussing the reduction in rodents in the dairy facility).

in inmate violence as much as fifty percent over a five-year period.⁸³ The producers for the *Cell Dogs* program, discussed in Part I,⁸⁴ found that, in the thirteen states on which that program focused, the dog programs reduced violence by about forty percent.⁸⁵ As one prison warden stated about facilities with dog programs, “[t]he presence of dogs seemed to have a calming [e]ffect and improve everyone’s mood.”⁸⁶ Another administrator discussing a program stated, “ ‘it settles down an institution,’ and provides ‘a sense of pride.’ ”⁸⁷

There is often significant competition for dog trainer positions in these programs.⁸⁸ The screening for the inmate participants varies by program, but often inmates with a history of domestic violence, child abuse, or animal abuse are not eligible for the programs.⁸⁹ Additional criteria may be in place to ensure the suitability of the participants in the program.⁹⁰ Examples include requiring the inmate to have a high school diploma or GED, in addition to a record of good behavior.⁹¹ These types of criteria encourage inmates to accomplish goals and maintain good behavior.

It is possible that participation in programs can help prevent reoffending. One program in Washington reports that the average three-year recidivism rate in the state is twenty-eight percent, but it is only five percent for inmates that have participated in its program.⁹² Other often-cited benefits to inmates for the programs are difficult to quantify, such as increased self-esteem.⁹³

There can be objective practical benefits to the inmates for participating in these programs. In some institutions, the pay for the program may be better

⁸³ Johnson, *supra* note 8 (referencing the Tender Loving Care program in Ohio).

⁸⁴ See *supra* notes 4–5 and accompanying text.

⁸⁵ Johnson, *supra* note 8 (discussing research done by the *Cell Dogs* program producers).

⁸⁶ Sushat Pederson, *Pooches Program Provides Motivation to Inmates at Baylor*, NEWS J. (Wilmington, Del.), July 7, 2012 (reporting on the warden’s experience touring other facilities and stating that a similar change occurred at her institution when a dog program was instituted).

⁸⁷ Crumbacker, *supra* note 9.

⁸⁸ Shepherd, *supra* note 8 (reporting that there were 100 applications for the ten spots for the Camp Canine program when it first began).

⁸⁹ E.g., Bartholomew, *supra* note 5 (reporting that one program excluded child molesters and domestic or animal abusers).

⁹⁰ See Becca Gregg, *Program at SCI-Camp Hill Pairs Inmates with Orphaned Dogs*, SENTINEL (Carlisle, Pa) (Mar. 13, 2011, 12:00 PM), http://cumberlink.com/news/local/program-at-sci-camp-hill-pairs-inmates-with-orphaned-dogs/article_4705c10c-4d2a-11e0-96e9-001cc4c002e0.html (setting forth the process for the inmate candidates, beginning with an application, physical and mental evaluation, and personal interviews for the Hounds of Prison Education Program).

⁹¹ Bartholomew, *supra* note 5 (reporting that the Prison Tails program at an Indiana prison required a high school diploma or GED and a good behavior record).

⁹² Hugh McMillan, *Prisoners Partner with Pets: Job Skills: Inmates Train Companion Animals, and They’re Proud of Their Work*, NEWS TRIB. (Tacoma, Wash.), May 9, 2012 (reporting on program participants recidivism rate and aspects of the program that would assist with issues such as job placement support to released inmates). See also Strimple, *supra* note 2, at 70, 75 (reporting recidivism rates in one program in Wisconsin and in another program at a juvenile facility in Oregon, as well as discussing the inmates involved in one program in Ohio).

⁹³ Cattet, *supra* note 69 (discussing how the ICAN program is working on a study to try to quantify the benefits of the program to the inmate participants). See also Furst, *supra* note 2, at 413–16 (reporting on impact of programs).

than other jobs (noting that better pay may consist of approximately \$2 per day), and the living conditions may be better than in the general population, with inmates in one program being housed in a private cell.⁹⁴

There are clear benefits for animals from these programs as well. For the programs where the animals come from shelters or rescue organizations, the organizations will have more room to house additional animals that need care. Given that the space restrictions in traditional shelters can adversely affect dogs' behavior, removing them from that environment to one with more space and one-on-one training time can be beneficial.⁹⁵ Further, a recent study found that training is "effective in increasing adoptability of shelter dogs."⁹⁶

Allowing inmates to train dogs to act as service animals increases the number of service animals available to persons with disabilities.⁹⁷ In fact, "dogs raised in prison have a much better success rate" than puppies in service dog training programs in the outside world.⁹⁸ The length of time it takes to accomplish the initial service dog training in a correctional institution, with the one-on-one attention, can be cut in half compared with foster homes in the community.⁹⁹

2. Challenges for Programs

Administrative support is key to the success of these programs. At first, some institutions' staff members were hesitant to support training programs. In one institution " 'some saw it as a privilege for a prisoner to have a dog.' "¹⁰⁰

⁹⁴ Shepherd, *supra* note 8 (reporting on the Camp Canine Program).

⁹⁵ Andrew Urs Luescher & Robert Tyson Medlock, *The Effects of Training and Environmental Alterations on Adoption Success of Shelter Dogs*, 117 *APPLIED ANIMAL BEHAV. SCI.* 63, 66–67 (2009) (discussing how extended stays in shelters can influence the behavior of dogs).

⁹⁶ *Id.* at 66. Essentially training results in improvement in the dogs' behavior making them more attractive to adopters and creates a less stressful environment. *Id.*

⁹⁷ See generally *Absolute Trust*, 58 *PARAPLEGIA NEWS* 34 (2004) (discussing prison training programs and the shortage of service dogs); Rebecca J. Huss, *Canines in the Classroom: Service Animals in Primary and Secondary Educational Institutions*, 4 *J. ANIMAL L. & ETHICS* 11, 55 (2011) (discussing the long waiting lists for service animals).

⁹⁸ Maureen Hayden, *Yo, Dog: Prisoners Get Collar: Southern Indiana Pen Teaches Inmates to Train Canines for Service Work*, *J. GAZETTE* (Fort Wayne, Ind.), Feb. 8, 2004, at 5 (quoting a community services director of a program who compared the success rate of the dogs in the prison program with an approximately twenty-five percent success rate for puppies in outside service dog training programs); *Prison PUP Partnership*, NEADS, <http://www.neads.org/training-placement/prison-pup-partnership> (last visited Nov. 3, 2013) (describing the NEADS puppy training programs and stating that "[o]ur statistics show that dogs trained by prison inmates complete the additional required advanced training in half the time of dogs raised exclusively in foster homes").

⁹⁹ See Crumbacker, *supra* note 9 (discussing the time necessary to train service dogs in the America's Vet Dog program); *Prison PUP Partnership*, *supra* note 98 (stating that because of the inmate training the organization is able to place dogs with individuals with disabilities faster).

¹⁰⁰ Hayden, *supra* note 98 (discussing the concerns of some prison staff when a program was first launched, but their concerns were assuaged when it became clear how much work was involved in training the dogs).

Concerns over the safety of the dogs have also been cited.¹⁰¹ A change in administration is all that is needed to require an animal program to be terminated. One prison in Vermont that had a feral cat program for twenty years made an unexpected decision, which was unpopular with some inmates, to remove the cats from the property.¹⁰² The superintendent of the facility stated that, “the cats are inconsistent with the mission of the facility.”¹⁰³

The physical space in some institutions is not appropriate for caring for animals. For example, one program has four women inmates share a room that is large enough to contain a dog cage, however in another facility, two men share a room that is too small for a dog crate.¹⁰⁴ Correctional facilities are designed for the primary purpose of securing the human population, and that design is sometimes not conducive to housing animals.¹⁰⁵

A universal challenge for these programs is consistent financial support.¹⁰⁶ Donations and volunteers are the basis of most of the programs,¹⁰⁷ but programs may apply for grants to defray expenses.¹⁰⁸ One prison subsidizes its program by selling dog beds made by inmates.¹⁰⁹ Adoption fees are a source of revenue for other programs.¹¹⁰ It is common for advocates of programs to high-

¹⁰¹ E.g., Rebecca Hyman, *Man’s Best Cellmate: Inmates Gain Sense of Purpose as Prison Puppy Raisers*, BRIDGEWATER INDEP., Sept. 12, 2012, at 1, (discussing service dog training program and initial concerns by some of the correctional officers).

¹⁰² Wilson Ring, *In Vt., Prison Cats Must Go, Supe Says*, WASH. POST (Jan. 29, 2007, 4:57 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/29/AR2007012900212.html> (reporting on the decision at Southeast State Correctional Facility to remove the cats that had been on the property since the 1980s from the premises). The facility sterilized the cats and provided vaccinations prior to placing them with persons in the community. *Id.* Not all the placements were successful, with one of the placed cats disappearing the first time it was let out of its new home. *Id.*

¹⁰³ *Id.* (quoting Superintendent Anita Carboneel).

¹⁰⁴ Bill McClellan, *Training of Dogs Transforms Prison*, ST. LOUIS POST-DISPATCH (Oct. 11, 2009, 12:00 AM) http://www.stltoday.com/news/training-of-dogs-transforms-prison/article_97dbbd99-812b-5adf-9ed2-236e596351ff.html (discussing dog programs in Missouri correctional institutions).

¹⁰⁵ See *infra* notes 246–260 and accompanying text (discussing issues relating to the physical space needed for the proper care of animals).

¹⁰⁶ E.g., McMillan, *supra* note 92 (reporting on fundraising auction for program); Sandy Meindersma, *Barking Down the River*, WORCESTER TELEGRAM & GAZETTE, Oct. 6, 2011, at 1 (reporting on fundraiser for Prison PUP Program).

¹⁰⁷ E.g., Crumbacker, *supra* note 9 (discussing the America’s VetDogs program and how there would be no cost due to volunteers and donations); Bradley, *supra* note 26 (stating that donations from the community support the A.D.O.P.T. program and the program also fundraises to pay for veterinary costs).

¹⁰⁸ E.g., *Corrections Cell Dog Program Gets \$25,000 Grant*, NEWS-PRESS (Fort Meyers, Fla.), June 2, 2007 (reporting on the receipt of a grant of \$25,000 to a local cell dog program which will be used to pay for medical and/or nutritional needs of the dogs in the program); Chereen Langrill, *Inmates in Idaho “Rehabilitate” Dogs*, DESERET NEWS, Aug. 23, 2004, at B5, available at <http://www.deseretnews.com/article/595086071/Inmates-in-Idaho-rehabilitate-dogs.html?pg=all> (reporting on a grant that will fund a dog training program for two years).

¹⁰⁹ Darcy Gray, *Making Their Beds*, HUTCHNEWS.COM (Sept. 15, 2011, 4:15 PM), <http://www.hutchnews.com/Todaystop/Inmates-make-dog-beds-from-recycled-mattresses—1> (describing program at prison where inmates make dog beds using old mattresses for sale to the public and to use in the prison dog programs).

¹¹⁰ Johnson, *supra* note 8 (discussing the funding for a program in Ohio).

light the low or no cost to taxpayers for the programs.¹¹¹ A highly regarded program in one prison in Indiana was recently terminated because the prison determined it could not justify the cost of the full-time staff member responsible for the program.¹¹²

Finally, these programs are subject to the status of a facility as a whole. The closing of a facility in Virginia illustrates the problem.¹¹³ The Lorton Correctional Complex in Virginia had over 500 cats on the premises when it began the process of closing down.¹¹⁴ The cats at this facility had access to veterinary care, including sterilization, and local organizations had provided support for the animals.¹¹⁵ The cats at this facility were described as ranging from feral to ones that belonged to specific inmates.¹¹⁶ Some of the cats were allowed to sleep in the dormitories for the lower security portions of the complex, but most slept in the tunnels and gutters.¹¹⁷ All of the cats would spend some time outdoors, as no litter boxes were allowed.¹¹⁸ When inmates were paroled or began to be transferred out of the facility, they initially had other inmates take over the care of the cats. However, as the number of inmates transferred out of the facility increased, that was no longer a viable alternative.¹¹⁹ The task to find placements for the cats fell to volunteers with local animal rescue organizations.¹²⁰ The rescue organizations' goal was to find placements for the cats in private homes and on farms.¹²¹ Every correctional institution must determine whether the benefits outweigh the challenges to maintain a program.

¹¹¹ *E.g.*, Inman, *supra* note 8 (stating that in the Puppies on Parole program at the Tipton Correctional Center, the program works with a local shelter to provide all the material items with the inmates providing the labor and quoting the warden of the facility, Doug Prudden, "it is a great situation as taxpayers do not pay a cent for it"); Bill McClellan, *Prison Dogs are Bridge to Respect*, ST. LOUIS POST-DISPATCH (Nov. 13, 2011, 12:00 AM), http://www.stltoday.com/news/local/columns/bill-mcclellan/prison-dogs-are-bridge-to-respect/article_82ce6a5b-6997-55fe-9199-68aafe8926e8.html (discussing the Puppies for Parole program in Missouri and stating that there "is no cost to the state"); Drew Winchester, 'Cell Dogs' Arrive at Charlotte Jail, CHARLOTTE SUN (Port Charlotte, Fla.), Apr. 19, 2012, at B1 (quoting Sheriff Bill Cameron that the program "carries little to no overhead for the taxpayer").

¹¹² *Budget Squeezes Out Prison Dog Training*, *supra* note 51 (discussing the cutting of a program at the Westville Correctional Facility in Indiana).

¹¹³ Peter Pae, *No Reprieve in Sight for Prison Pets; Cats Must Leave as Lorton Closes*, WASH. POST, June 1, 1999, at A1 (reporting on problem of cats at the facility).

¹¹⁴ *Id.*

¹¹⁵ *Id.* (describing the local support, including sterilization services beginning in 1993); Lisa Applegate, *Felines and the Felons Who Love Them*, ROANOKE TIMES, May 15, 1996, at 1 (describing veterinary services provided to the Lorton cats).

¹¹⁶ Pae, *supra* note 113 (describing the categories of cats as " 'walk cats,' those that don't respond to anyone; 'yard cats,' those that stay outdoors and are cared for collectively; and 'dorm cats,' which have collars and belong to particular inmates").

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* (describing the efforts of the Feline Foundation of Greater Washington and the Northern Virginia chapter of the Society for the Prevention of Cruelty to Animals).

¹²¹ *Id.*

III. OWNED ANIMALS

A. *Companion Animals*

Although most of the companion animals in correctional facilities are part of a training or care program, there are other ways that a companion animal may end up residing in a facility. It is still unusual for individual inmates to have an “owned” animal in a correctional institution. An owned animal, for purposes of this Article, is one that assigned to an inmate, with the intent that the inmate will be able to keep the animal with them, possibly for the entire duration of his or her confinement. In these programs the animal is not being trained for placement outside the facility.

One facility in Switzerland began an experimental program in the 1980s to allow twenty to twenty-five inmates to each have a cat in their cells and/or outside with the ability to take the cat with them at the end of their confinement.¹²² The facility ensured the well-being of the cats by creating a set of strict regulations.¹²³ In 2003, a study of the program was made to determine the results of the program.¹²⁴ The study found that the inmates with the cats, the inmates who did not have the cats, and the personnel at the facility, all reported favorably on the program.¹²⁵

The inmates with the cats reported similar benefits as other inmates involved in animal programs, such as positive psychological benefits from taking care of the animals.¹²⁶ The inmates without the cats appreciated the presence of the cats in the common area as well as outdoors, but expressed reservations about taking care of the cats, and expressed a concern that they did not want to “confine and punish the animal ‘like a criminal.’ ”¹²⁷ The staff reported that the objectives of the program had been met. Specifically, the program helped the inmates develop skills necessary for their lives after confinement, and the staff expressed intent to continue the program.¹²⁸ One reason it may have been logical to allow for cats to be owned by inmates was that this small facility already had animals on the property, and the extension of allowing cats was not a significant change to the status quo.¹²⁹

¹²² Nadine Nef, *The Cat Programme, An Animal-Assisted Therapy at Saxierriet Prison for Men: Its Effects and Results in a Correctional Establishment*, Presentation before the Conference on Human-Animal Interactions, People and Animals: A Timeless Relationship (Oct. 6–9, 2004), available at <http://www.petpartners.org/documents.doc?id=257>.

¹²³ *Id.* (not reporting the language of the regulations but stating that there were “very strict regulations concerning the well-being of the animal”).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* (reporting that the cat “was a means of coping with loneliness, a living creature which they could trust and was non-judgmental” and “provided the only reason at all to go on living while behind prison bars”).

¹²⁷ *Id.* (reporting concerns about the responsibility of caring for the cat including calling on the staff veterinarian).

¹²⁸ *Id.* (reporting that the inmates’ self-confidence and self-esteem improved and it helped the inmates learn to take responsibility).

¹²⁹ *Id.* (reporting that the facility, with about 130 inmates, had other animals on the premises including cows, pigs, and horses).

The Indiana State Prison has a very different profile, with security levels ranging from minimum to housing death row inmates; however, it has a similar cat program.¹³⁰ Unlike the Swiss facility that intentionally brought the cats into the program, cats reportedly entered the Indiana facility through sewer pipes and other small openings.¹³¹ There is speculation that there were generations of cats in and around the facility from abandoned cats in the area.¹³² In the 1990s, a judgment was made to register the existing cats and to phase them out.¹³³ After the initial attempt to phase the cats out, a decision was made in 2004 to expand the program to forty cats.¹³⁴ By 2011, seventy-five inmates were allowed the privilege of keeping a cat.¹³⁵ Currently, inmates are allowed to keep the cats, subject to good behavior, and they are required to pay for the care of the cats including the cost of food, litter and veterinary care.¹³⁶ Inmates in the program cannot have been convicted of committing crimes against animals.¹³⁷ There is a waiting list of inmates who want to be part of the program.¹³⁸

The cats live in six and a half by eight-foot cells with their owners and must be tethered with an eight-foot leash.¹³⁹ On days when the weather is nice, the inmate owners may bring the cats outside on a leash.¹⁴⁰ The cell houses with cats have very large windows that allow for natural light, and there are shelves that the cats can access.¹⁴¹ There have been no injuries to cats or serious injuries to people in connection with the program.¹⁴² The cell houses are kept very clean and dander is kept to a minimum.¹⁴³ An inmate who has an

¹³⁰ *Indiana State Prison*, IND. DEP'T OF CORRECTION, <http://www.in.gov/idoc/2413.htm> (last visited Nov. 3, 2013) (reporting basic statistics regarding the facility in Michigan City, Indiana including the fact that the average daily population exceeds 2,000 male inmates).

¹³¹ Sara Toth, *Cats Make the Big House Seem Bit More Like Home: Pets Ease Tensions at Michigan City*, J. GAZETTE (Fort Wayne, Ind.), Sept. 12, 2004, at 7.

¹³² *Feline Friendships Foster Peace in Prison: Despite Effects, Cats' Days are Numbered*, INDIANAPOLIS STAR, Sept. 9, 2000, at A1 [hereinafter *Feline Friendships Foster Peace*].

¹³³ Toth, *supra* note 131.

¹³⁴ *Id.*

¹³⁵ Amy Lavalley, *Prison a Haven For Cats*, POST-TRIBUNE (Feb. 11, 2011, 5:52 PM), <http://posttrib.suntimes.com/lifestyles/3486595-423/prison-haven-for-cats.html>; E-mail from Pamela James, Admin. Servs., Ind. State Prison, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 29, 2013, 1:08 PM) (on file with author) [hereinafter James 1:08 PM E-mail].

¹³⁶ *Feline Friendships Foster Peace*, *supra* note 132 (reporting that the cats must be spayed or neutered and receive annual vaccinations). A local rescue group arranges transportation if veterinary care is required. Joel Freedman, Commentary, *Let New York Prisoners Adopt Cats: It Would Help Both the Inmates and the Animals*, DAILY MESSENGER (CANANDAIGUA, N.Y.), May 7, 2012, at 6A. The inmates (other than those on death row) are required to have a job to pay for the cat's care. Lavalley, *supra* note 135.

¹³⁷ Freedman, *supra* note 136.

¹³⁸ *Id.*

¹³⁹ *Feline Friendships Foster Peace*, *supra* note 132.

¹⁴⁰ James 1:08 PM E-mail, *supra* note 135.

¹⁴¹ *Id.* Ms. James also stated that the inmates are not allowed to have cathouses or other places to hide or cover items because of safety concerns. *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

allergy to cats that rises to a medical problem is transferred out of the cell houses that allow the cats.¹⁴⁴

The inmates adopt the cats from a no-kill shelter.¹⁴⁵ If an inmate loses the privilege of keeping the cat or is transferred to another facility, the cat can be placed with someone of the inmate's choosing.¹⁴⁶ The chief corrections officer at the facility reportedly recommended the program for other correctional institutions, citing to the impact on inmate behavior.¹⁴⁷ In discussing why the program works so well, an administrator for the facility reported that she was unaware of any disciplinary charges relating to a cat (such as an inmate harming a cat) and that the "offenders protect their cats like they are their children."¹⁴⁸

An owned-animal program essentially results in another way to ensure good behavior of inmates while at the same time providing care for animals. The issue of service and assistance animals is different. Fundamentally this is a question about whether an inmate will have the right to be housed with an animal pursuant to laws preventing discrimination on the basis of a disability.

B. Service and Assistance Animals

A significant percentage of inmates have some type of disability.¹⁴⁹ Survey results found twenty-three percent of federal prison inmates, thirty-one percent of state prison inmates, and thirty-seven percent of jail inmates report they have a disability, with mental and learning disabilities reported in significant numbers.¹⁵⁰ These percentages are significant because, although comparisons are difficult, it appears that the prevalence of disabilities in the incarcerated population is "two to three times as high as the household working population."¹⁵¹ Given the high percentage of persons with disabilities, it is necessary

¹⁴⁴ *Id.* (reporting also that a staff member who is allergic to cats has no problems in the cell house because of the level of cleanliness, but she does not pet the animals).

¹⁴⁵ *Id.* The shelter chooses the cats to place with the inmates. In one cell house, two offenders share a cell—both must agree to have the cat and it is possible to have two cats in those cells. *Id.*

¹⁴⁶ *Id.* If the cat will be sent outside the facility it is the responsibility of the inmate to have it picked up within seven days. *Id.* If the cat is not picked up, it will be returned to the no-kill shelter from where it was adopted. *Id.*

¹⁴⁷ Freedman, *supra* note 136 (providing the following quote: "The bottom line, it gives the offenders a reason to behave. It changes them. I've got guys in here who caused all kinds of problems, then they got a cat and that's it.").

¹⁴⁸ James 1:08 PM E-mail, *supra* note 135; E-mail from Pamela James, Admin. Servs., Ind. State Prison, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 29, 2013, 3:25 PM) (on file with author) [hereinafter James 3:25 PM E-mail].

¹⁴⁹ PEIYUN SHE & DAVID C. STAPLETON, CORNELL UNIV., RESEARCH BRIEF: A REVIEW OF DISABILITY DATA FOR THE INSTITUTIONAL POPULATION 2 (2006), available at <http://digitalcommons.ilr.cornell.edu/edicollect/1205/>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* (discussing the level of disability in the incarcerated population and the fact that almost all the incarcerated population fits within the definition of working age). See also Huss, *supra* note 74 (manuscript at 2–3, 32) (discussing the aging of the population and the increase in the percent of the population that is disabled). See Nadine Curran, *Blue Hairs in the Bighouse: The Rise in the Elderly Inmate Population, Its Effect on the Overcrowding Dilemma and Solutions to Correct It*, 26 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 225, 227 (2000) (discussing the increasing geriatric inmate population and issues relating to over-

to address whether service or assistance animals may be part of the companion animal population in correctional institutions.

I. Americans with Disabilities Act and Rehabilitation Act

The comprehensive federal civil rights law that prohibits discrimination on the basis of disability is the Americans with Disabilities Act (“ADA”).¹⁵² Supreme Court cases have established that the ADA applies to inmates in state prisons.¹⁵³ The federal government and its programs (including the Federal Bureau of Prisons), along with state institutions are subject to the provisions of the Rehabilitation Act.¹⁵⁴

The ADA regulations set forth the obligations of correctional institutions¹⁵⁵ to:

ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity¹⁵⁶

crowding); Betsy Ginsberg, *Out with the New, In with the Old: The Importance of Section 504 of the Rehabilitation Act to Prisoners with Disabilities*, 36 *FORDHAM URB. L.J.* 713, 717–19 (2009) (discussing the changing demographics of the prison population and estimates of the size of the prison population with disabilities).

¹⁵² 42 U.S.C. § 12101 (2012). Each state also has laws against discrimination of persons with disabilities. A practitioner should confirm that a state does not provide additional protection for an inmate with a disability.

¹⁵³ *United States v. Georgia*, 546 U.S. 151, 159 (2006) (applying Title II of the ADA and abrogating state sovereign immunity); *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 204, 210 (1998) (holding that state prisons fall within the statutory definition of public entity). There are many issues relating to the ADA and Rehabilitation Act’s application to correctional institutions beyond the scope of this Article. *See e.g.* Paul Evans, Note, *The Americans with Disabilities Act and Inmates with Disabilities: The Extent to Which Title II of the Act Provides a Recourse*, 22 *WASH. U. J.L. & POL’Y* 563, 566 (2006) (discussing state sovereign immunity issues). Note that the analysis relating to service animals in this Article is limited to the application of the ADA. State laws should be consulted to see if there are additional arguments that may be made to support an inmate’s request to be housed with a service animal. *See Livingston v. Beeman*, 408 S.W.3d 566, 576 (Tx. Ct. App. 2013) (holding that prison facilities operated by the Texas Department of Criminal Justice are not considered “public facilities” under the Texas Human Resources Code in connection with the need to make reasonable accommodations for persons with disabilities).

¹⁵⁴ 29 U.S.C. § 794 (2012). Note that Section 504 of the Rehabilitation Act provides “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, . . . be denied the benefits of . . . any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (2012). If applicable, Section 504 is utilized along with the ADA in service animal cases relating to state and local facilities. The Rehabilitation Act does not have a separate definition of service animals and the language regarding discrimination in programming is similar to what is found in the ADA. 28 C.F.R. § 39.101 (2013) (setting for the regulations relating to the “Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice”). The Federal Bureau of Prisons is an agency of the U.S. Department of Justice. *Protecting Society & Reducing Crime*, FED. BUREAU OF PRISONS, <http://www.bop.gov/> (last visited Nov. 3, 2013).

¹⁵⁵ The provision applies to jails, detention and correctional facilities, and community correctional facilities, including private correctional facilities. 28 C.F.R. § 35.152(a) (2013).

¹⁵⁶ 28 C.F.R. § 35.152(b)(1) (2013).

and that public entities “shall implement reasonable policies . . . so as to ensure that each inmate . . . is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.”¹⁵⁷

The ADA regulations also include a definition of “service animal.”¹⁵⁸ Service animal is defined as “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.”¹⁵⁹ The regulations also require entities to make reasonable accommodations to permit the use of a miniature horse as a service animal; however, the entity may consider several assessment factors prior to allowing the miniature horse into a facility.¹⁶⁰

Based solely on these regulations, it would appear that an inmate could argue that if he or she meets the definition of an individual with a disability¹⁶¹ and uses a service animal, such an animal should be able to accompany the inmate in a facility.¹⁶² However, the ADA regulations also clearly state that public entities are required to make “*reasonable modifications* in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would *fundamentally alter* the nature of the service, program or activity.”¹⁶³ Administrative and structural concerns of correctional

¹⁵⁷ 28 C.F.R. § 35.152(b)(3) (2013).

¹⁵⁸ 28 C.F.R. § 35.104 (2013).

¹⁵⁹ *Id.* The remainder of the definition is as follows:

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.

Id. This language is mirrored in regulations applicable to Title III of the ADA. 28 C.F.R. § 36.104 (2013). Given the broad definition of the type of work or tasks that could be performed by a service animal, persons with a wide range of disabilities may use a service animal, and the right to be accompanied by the service animal may be protected under the regulations.

¹⁶⁰ 28 C.F.R. § 35.136(i) (2013).

¹⁶¹ Disability is defined in the regulations in part as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual . . .” 28 C.F.R. § 35.104.

¹⁶² Especially given the additional assessment factors that can be used by the correctional facilities to argue against an accommodation of a miniature horse, it would seem unlikely that a correctional institution would be required to allow a disabled inmate to maintain a miniature horse in a facility as a service animal. *See* 28 C.F.R. § 35.136(i) (listing among the assessment factors whether a facility could accommodate the physical features of the horse, whether the horse is house trained, and whether the horse’s presence would “compromise legitimate safety requirements that are necessary for safe operation”).

¹⁶³ 28 C.F.R. § 35.130(b)(7) (2013) (emphasis added) (describing the general requirements of the ADA). *See also* Brian Lester, *The Americans with Disabilities Act and the Exclusion of Inmates From Services in Prisons: A Proposed Analytical Approach Regarding the*

institutions will be balanced with the needs of inmates to determine whether a request is a reasonable accommodation.¹⁶⁴ Courts have also considered “security concerns and other factors peculiar to the prison environment in deciding whether an accommodation is reasonable.”¹⁶⁵ Some courts grant significant deference to prison policies because of the overall institutional requirements of prisons.¹⁶⁶

Another way to view this issue is to consider a service animal as an auxiliary aid for an inmate with a disability. The ADA and Rehabilitation Act Section 504 require correctional institutions to provide aids or services if reasonable.¹⁶⁷ As with any accommodation, an argument may be made that providing the requested auxiliary aid is an undue burden on the institution.¹⁶⁸ Institutions have successfully defended against claims where aids such as canes and even prosthetic limbs have been confiscated.¹⁶⁹ Given the unique aspects of housing a live animal in a secure environment, there is a strong argument that allowing service animals would be an undue burden on a correctional institution.

Because of the language in the regulations and deference granted to the decisions of administrators by the courts, a correctional institution will likely prevail if it denies an inmate’s request to keep his or her service animal in the facility. A correctional institution could certainly allow an inmate to have a service animal. However, given all the factors that may be considered, it appears unlikely that an institution would be required under the ADA or Section 504 of the Rehabilitation Act to accommodate a service animal.¹⁷⁰

Appropriate Level of Judicial Scrutiny of a Prisoner’s ADA Claim, 79 N.D. L. REV. 83, 84–85 (2003) (analyzing the judicial approaches to the level of scrutiny of inmate ADA claims, including the role of “reasonable accommodation” and “fundamentally alter”).

¹⁶⁴ COLUMBIA HUMAN RIGHTS LAW REVIEW, A JAILHOUSE LAWYER’S MANUAL 770 (9th ed. 2011), available at <http://www3.law.columbia.edu/hrlr/jlm/toc/> [hereinafter JAILHOUSE LAWYER’S MANUAL]. Specifically a court will consider “(1) whether the modification will ‘fundamentally alter’ a program or activity, (2) the cost of the modification, and (3) the burden the modification would have on administration of the prison” *Id.*

¹⁶⁵ JOHN BOSTON & DANIEL E. MANVILLE, PRISONERS’ SELF-HELP LITIGATION MANUAL 97–98 (4th ed. 2010) (discussing the application of the ADA to disabled inmates); JAILHOUSE LAWYER’S MANUAL, *supra* note 164, at 770.

¹⁶⁶ JAILHOUSE LAWYER’S MANUAL, *supra* note 164, at 772.

¹⁶⁷ *Id.* at 774.

¹⁶⁸ *Id.* at 775.

¹⁶⁹ LAURA ROTHSTEIN & JULIA ROTHSTEIN, DISABILITIES AND THE LAW § 9.11 (4th ed. 2009) (discussing court decisions where concerns over safety and cost have allowed institutions to deny requests by inmates with disabilities).

¹⁷⁰ The ethical issues of keeping a service dog in a correctional institution with his or her inmate owner is beyond the scope of this Article. See Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1170–74 (2010) (discussing ethical issues relating to service animals). It is not unprecedented for an individual to be accompanied by his service dog, at least in the context of a short stay in a county jail. *Minnesota Briefing*, ST. PAUL PIONEER PRESS, May 17, 2007, at B6 (reporting on a man who was allowed to keep his service animal with him in the Mower County Jail while awaiting his initial appearance in court). The judge in the case ruled that the dog would not be allowed in the jail or in the courtroom in the future. *Id.*

B. Fair Housing Act

An inmate may be tempted to argue that the federal Fair Housing Act (“FHA”) would require a correctional institution make a reasonable accommodation to allow the inmate to have an assistance animal with him or her in the facility.¹⁷¹ The FHA’s definition of assistance animal is broader than the definition of service animal under the ADA.¹⁷² Unlike the ADA, the FHA does not limit the species of animal and does not require that the animal be individually trained.¹⁷³ The FHA has been interpreted to allow individuals with a disability to request an accommodation from a no-pet policy if there is a nexus between the disability and the need for the animal in order to use and enjoy a dwelling.¹⁷⁴ This would obviously be a serious issue for correctional institutions; however, it has been established that although the FHA applies to a wide range of dwellings, correctional institutions are not covered by the act.¹⁷⁵ In *Garcia v. Condarco*, the court rejected the argument that a jail would be a covered dwelling under the FHA and concluded that the FHA’s policy of providing fair housing has “no application in the prison context.”¹⁷⁶

IV. RISKS TO HUMANS AND LIABILITY ISSUES

Any time companion animals are part of an environment there is the possibility that an injury could occur. It is also not uncommon for personal injuries to occur in correctional institutions.¹⁷⁷ However, the ability of an inmate to successfully sue in connection with such an injury is limited by multiple barriers.

In the federal prison system, and in some states, a form of workers’ compensation is utilized if an inmate is injured during the course of a work program, and, in those situations, the inmate is barred from suit.¹⁷⁸ The statutes that provide for compensation for injuries sustained in work programs generally require the reporting of all injuries, in addition to claims and appeals processes.¹⁷⁹

¹⁷¹ 42 U.S.C. § 3601 (2012).

¹⁷² Huss, *supra* note 74 (manuscript at 38–42) (discussing the FHA).

¹⁷³ *Id.* (manuscript at 41).

¹⁷⁴ *Id.* (manuscript at 42).

¹⁷⁵ Karen Wong, *Narrowing the Definition of “Dwelling” Under the Fair Housing Act*, 56 UCLA L. REV. 1867, 1870 (2009) (citing to the *Garcia v. Condarco* case discussed *infra* note 176).

¹⁷⁶ *Garcia v. Condarco*, 114 F. Supp. 2d. 1158, 1161–63 (D.N.M. 2000). Note that housing in the community, such as a half way house, may be considered a dwelling under the FHA. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008).

¹⁷⁷ The liability claims that would arise due to injuries caused by having these types of animal programs would be considered personal injury claims and implicate tort theory rather than constitutional claims. *But see* IVAN E. BODENSTEINER & ROSALIE BERGER LEVINSON, STATE & LOCAL GOVERNMENT CIVIL RIGHTS LIABILITY § 1:14 (2013) (analyzing various constitutional claims including § 1983 claims by inmates).

¹⁷⁸ BOSTON & MANVILLE, *supra* note 165, at 159.

¹⁷⁹ *Cf.* 28 C.F.R. §§ 301.101–319 (2013) (setting forth the Inmate Accident Compensation system applicable to work-related injuries for federal prison inmates); CAL. LAB. CODE § 3370 (West 2013) (setting forth the process for inmates of California correctional institutions who are entitled to worker’s compensation benefits for injuries arising out of assigned

Even if an incident falls outside the purview of a worker's compensation program, there will still be obstacles to bringing a suit. The doctrine of sovereign immunity provides that, without the government's consent, citizens cannot sue the government or its agents.¹⁸⁰ The Federal Tort Claims Act sets forth the circumstances in which the federal government can be held liable for damages caused by its employees.¹⁸¹ The process for determining possible liability for each state is dependent on the process set up by that state regarding suits against it.¹⁸² Each state has provisions that govern how claims can be brought against it.¹⁸³ For inmates, there is generally an administrative procedure (grievance process) that must be exhausted before a claim can be brought against the governmental entity.¹⁸⁴

Due to the coverage of the worker's compensation statutes and other procedural processes, there are very few reported cases involving inmates being injured by animals involved in the type of programs that are the subject of this Article.¹⁸⁵ This is not to say that injuries do not occur, but only that the incidents do not result in reported litigation.¹⁸⁶

Animal bites remain a serious health concern.¹⁸⁷ The following reported cases illustrate how injuries resulting from bites may occur in connection with these types of programs. In *Pickett v. Department of Rehabilitation and Cor-*

employment); N.D. CENT. CODE § 65-06.2 (2011) (setting forth the process for worker's compensation for inmates relating to injuries directly related to work assignments).

¹⁸⁰ BARBARA BELBOT & CRAIG HEMMENS, *THE LEGAL RIGHTS OF THE CONVICTED* 224 (2010).

¹⁸¹ 28 U.S.C. §§ 2671–2680 (2012) (setting forth the Federal Tort Claims Act). Note that if an inmate is subject to the provision of the Inmate Accident Compensation regulations, discussed *supra* note 179, he or she is barred from recovery under the Federal Tort Claims Act. 28 C.F.R. § 301.319 (2013) (stating that the provisions of the regulations are the exclusive remedy for inmates).

¹⁸² BELBOT & HEMMENS, *supra* note 180, at 224 (stating that “[m]ost states . . . have passed laws that severely limit the doctrine of sovereign immunity”).

¹⁸³ *See id.* Similar to the application of the Inmate Accident Compensation regulations, for states that have a worker's compensation statute in place, that statute is likely to be the exclusive remedy against the state for work injuries. *E.g.*, CAL. LAB. CODE § 3602(a)(9) (West 2013) (stating that the provisions of the statute are the exclusive remedy for injuries that fall within the scope of the statute).

¹⁸⁴ BELBOT & HEMMENS, *supra* note 180, at 226. *See also* JAILHOUSE LAWYER'S MANUAL, *supra* note 164, at 354–67 (discussing the role of the inmate grievance procedure). Readers may be familiar with the Prison Litigation Reform Act. The impact of the Prison Litigation Reform Act's restrictions on bringing suit in federal court is beyond the scope of this Article. *See generally id.* at 288–353 (analyzing the provisions of the Prison Litigation Reform Act).

¹⁸⁵ Injuries due to interaction of inmates with dogs used for security or to detect contraband are beyond the scope of this Article.

¹⁸⁶ *E.g.*, Schrader, *supra* note 55 (reporting that there were a few bites/stitches in inmates usually due to handler error or an inmate being in the wrong place). Mr. Schrader also reported that one tort claim was filed by an inmate who was not a handler, who was bitten, and his recollection was that medical care was provided but there was no other tort compensation. *Id.* At a facility in Vermont that removed feral cats from the premises, an administrator reported that although some of the inmates cared for the cats there were problems at the facility, including issues with inmates being scratched and allergies. Ring, *supra* note 102.

¹⁸⁷ The Centers for Disease Control estimates that dogs bite 4.7 million people in the United States each year. *Dog Bite: Fact Sheet*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html> (last visited Nov. 3, 2013).

rections,¹⁸⁸ an inmate trainer was bitten by a Norwegian Elkhound assigned to him in a training program.¹⁸⁹ The training program at Madison Correctional Institution utilized dogs from the Madison County Humane Society (“MCHS”) and was designed to train dogs in basic obedience for a ninety-day period before being eligible for adoption.¹⁹⁰ The inmates in the program were provided training by the Department of Rehabilitation and Correction.¹⁹¹ The program rules provided that an inmate was to “[n]otify the Correctional Counselor/ Unit Manager immediately if [a] dog shows any aggressive behavior toward any person.”¹⁹²

Pickett had worked in the program approximately nine months and trained three other dogs before the incident.¹⁹³ Pickett previously was assigned a different dog that displayed violent tendencies and that dog was returned to MCHS.¹⁹⁴ After Pickett was assigned to work with the Norwegian Elkhound, he took the dog to his cubicle and the dog lunged at Pickett when he picked up crumbs from a dog treat.¹⁹⁵ Pickett’s cellmate reported the incident to the responsible sergeant and, when the sergeant and other corrections officers went to Pickett’s cell, the dog reportedly either lunged or barked at the sergeant, depending on the testimony of the witness.¹⁹⁶ The following day, the dog bit Pickett after he told the dog to sit and reached for the dog’s leash.¹⁹⁷

One issue was the Ohio strict liability statutory provision relating to civil liability of owners, keepers, or harborers of dogs for injuries causes by their dogs.¹⁹⁸ The Department of Rehabilitation and Correction argued that Pickett had no cause of action because, as the keeper of the dog, he could not state a statutory cause of action for a dog bite.¹⁹⁹ The court agreed that the statutory claim would fail because of Pickett’s status as keeper of the dog.²⁰⁰ However, the court found that that a keeper or harbinger of a dog could still maintain a common law cause of action against the owner, and, even if the Department of Rehabilitation and Correction was a harbinger (rather than the owner), a plaintiff

¹⁸⁸ Pickett v. Dep’t of Rehab. & Corr., No. 2000-02755, 2001 WL 34070026 (Ct. Cl. Ohio Dec. 27, 2001).

¹⁸⁹ *Id.* at *3. The inmate volunteered to participate in the program and was paid approximately \$22 per month for his work. *Id.* at *1. The dog was not named in the claim, but only referred to as a Norwegian Elkhound. *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* The training “included instructional videos, classes and a written packet of instructions.” *Id.*

¹⁹² *Id.* at *3.

¹⁹³ *Id.* at *1.

¹⁹⁴ *Id.* The dog that was returned was a Dalmatian. *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* Pickett testified that the sergeant told him “that the dog would only be there a couple of days and that he should stick with it” and “did not offer to return the dogs to MCHS.” *Id.* The sergeant testified after the lunging or barking incident that she “offered to return the dog to MCHS but that [the] plaintiff and his cell mate stated that they wanted to work with the dog.” *Id.* at *2.

¹⁹⁷ *Id.* at *1.

¹⁹⁸ *Id.* at *2.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* A previous case had found that the keeper of the dog was “not within the class of people that the legislature intended to protect in enacting the strict liability provision.” *Id.* (citing *Khamis v. Everson*, 88 Ohio App. 3d 220 (1993)).

could maintain an action “where the harbinger has knowledge of the dog’s vicious propensities.”²⁰¹

The court found that once the sergeant received notice that the dog lunged at Pickett, the facility “had actual notice of the vicious propensity of the dog, and its failure to remove the dog from the program constitutes a breach of ordinary care” that proximately caused Pickett’s injuries.²⁰² A judgment in favor of Pickett was granted on the common law theory of negligence, and a subsequent holding awarded damages in the amount of \$15,025.²⁰³

Two cases were decided in 2003 relating to injuries incurred by inmates in connection with a dog-training program at the Lima Correctional Institution in Ohio.²⁰⁴ In the first case, a dog was startled and snapped at the plaintiff (Barr) when he entered the cell of the dog handler and reportedly bent down over the sleeping dog to pet him.²⁰⁵ The dog’s inmate handler and cellmate reported that they had never seen the dog react in that manner before.²⁰⁶ Barr received medical treatment for the injuries to his face and claimed \$2,500 in damages for pain and suffering and emotional distress.²⁰⁷

In *Barr v. Lima Correctional Institution* the court utilized the Ohio Revised Code provision regarding civil liability for injuries caused by dogs in its analysis.²⁰⁸ The focus of the court was whether the correctional facility fell within the definition of “owner, keeper or harbinger of a dog.”²⁰⁹ The court found that the institution fell within the definition of harbinger: “one who has possession and control of the premises where the dog lives, and silently acquiesces to the dog’s presence.”²¹⁰ Barr successfully established that he had been damaged, but the court assessed damages only in the amount of \$525.²¹¹

In the second case, *Chester*, a dog handler, was unsuccessful in his claim based on a dog bite.²¹² *Chester* was bitten when he separated two dogs who were fighting.²¹³ Citing to *Pickett*, discussed previously,²¹⁴ the court reiterated

²⁰¹ *Id.*

²⁰² *Id.* at *3. The court rejected the contributory negligence argument that the Department of Rehabilitation and Correction made finding that the sergeant’s testimony regarding Pickett’s desire to continue working with the dog lacked credibility. *Id.*

²⁰³ *Id.* The court found that Pickett suffered severe pain and has a permanent scar on this face. *Pickett v. Dep’t of Rehab. & Corr.*, No. 2000-02755, 2002 WL 31926511, at *1 (Ct. Cl. Ohio Dec. 27, 2002).

²⁰⁴ *Barr v. Lima Corr. Inst.*, No. 2002-08033-AD, 2003 WL 23697092 (Ct. Cl. Ohio Mar. 19, 2003); *Chester v. Lima Corr. Inst.*, No. 2003-01091-AD, 2003 WL 21694739 (Ct. Cl. Ohio July 11, 2003).

²⁰⁵ *Barr*, 2003 WL 23697092, at *1.

²⁰⁶ *Id.*

²⁰⁷ *Id.* Mr. Barr received five stitches on his face with the injury described as a “1/4 inch laceration of the upper right lip and a smaller laceration of the right lower lip in the corner of the mouth.” *Id.*

²⁰⁸ *Id.* at *2.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at *3 (assessing damages in the amount of \$500 plus the \$25 filing fee). *Id.*

²¹² *Chester v. Lima Corr. Inst.*, No. 2003-01091-AD, 2003 WL 21694739, at *1 (Ct. Cl. Ohio July 11, 2003). *Chester* was also unsuccessful in claims for overtime compensation and relating to alleged indifference to his medical needs. *Id.* at *5–6.

²¹³ *Id.* at *1–3.

²¹⁴ *Supra* notes 188–203.

that Chester would be barred from utilizing the statutory strict liability provision because of his status as a keeper of the dog.²¹⁵ Chester also failed to present evidence that the dog who bit him “had previously displayed vicious propensities or that [the Lima Correctional Institution] knew about any prior vicious nature,” so a common law dog bite action was not supported.²¹⁶

Chester also claimed that the correctional institution should be liable because it inadequately trained him and did not provide proper restraining devices for the dogs.²¹⁷ There were several witnesses to the incident with the facts varying to some degree.²¹⁸ The court found the evidence predominantly showed Chester’s injury “was caused by his own wrongful act of physically imposing himself between two fighting dogs in a bare-handed attempt to separate the animals.”²¹⁹ The comparative negligence statute barred Chester from recovery because the court found that his negligence in trying to separate the dogs outweighed any negligence that might be attributable to the Lima Correctional Institution or its employees.²²⁰

Each of these cases illustrates the complex foundation for liability that could occur because of these programs. Even if a tort action can be brought, it is necessary to show that there was negligence,²²¹ and these actions may be subject to defenses such as contributory or comparable negligence.²²²

As illustrated by these cases, injuries and liability for these programs may arise under a variety of circumstances. The ownership of the animals is the first issue that a program should determine. In many cases, ownership will be retained by an outside organization;²²³ however, in other circumstances, the state will have legal title to the animals.²²⁴ Requiring individuals who have access to the animals execute strong liability waiver forms help protect the legal owners from liability—but that does not address the issue of preventing injuries.

Correctional institutions should determine which inmates (or staff) may have any contact with the animals, even if such individuals are not involved with a particular program.²²⁵ In the case of free-roaming cats, this could involve a large number of individuals. At a minimum, anyone who might have

²¹⁵ *Chester*, 2003 WL 21694739, at *6.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.* at *1–3. For example, Chester alleged that a staff member ordered him to pull the dogs apart. *Id.* at *1. The staff member’s testimony was that when the dog fight began she issued verbal instructions to get a “fight stick” and that the inmate dog trainers had access to instructions on techniques to break up a fight. *Id.* at *3.

²¹⁹ *Id.* at *6.

²²⁰ *Id.* The statute barred recovery if a plaintiff’s own negligence is greater than the defendant’s. *Id.*

²²¹ In the absence of a statutory dog bite statute or worker’s compensation statute being applicable, a tort claim based on negligence may be a viable cause of action.

²²² BOSTON & MANVILLE, *supra* note 165, at 158–59.

²²³ *See, e.g., supra* note 71 (describing program where ownership of the animals is retained by the organization).

²²⁴ *See, e.g., supra* notes 61–64 (describing program where title was transferred to the correctional institution).

²²⁵ For example, even if the animals are confined to one unit, are the animals transported through or exercised in an area in which other inmates have access?

contact with the animals should receive instructions about the risk of injury. For example, in the case of free-roaming cats, an institution should advise the inmates that any cat may bite or scratch. In this situation, a simple instruction to the inmates may be to “just leave the cats alone.”

Institutions should not assume that everyone who may have contact with the animals has familiarity with dog or cat behavior.²²⁶ Especially in programs like those supporting rescue organizations or shelters, where there may be a rapid turnover of animals whose behavioral history is unknown, the need to provide basic training to anyone who might possibly interact with the animals is necessary to avoid bites or other injuries.

The inmates (and staff) who are handling animals should receive adequate training in animal behavior to reduce the possibility of injury. It is not uncommon for inmate handlers to have various levels of training and experience.²²⁷ Animals that are more challenging should be assigned to more experienced handlers. Any animal that is involved in an incident where there is a serious injury to a human should be removed from the program.²²⁸

Measures should be taken to ensure a clean environment, including ensuring the animals receive adequate parasite control. This also helps prevent the spread of zoonotic illnesses.²²⁹ Any animal waste or vomit should be immediately cleaned up to avoid “slip and fall” type accidents. If animals are provided any toys, the animals’ area should be monitored to ensure that floors are not cluttered.

Although not as serious as personal injuries, programs should also have in place procedures to limit the opportunity that an animal may cause damage to the property in the facility. While the animals in most programs are either consistently supervised or confined, in situations where animals have some freedom to roam, damage could occur. Inappropriate chewing can also result in problems for the animals—as foreign bodies may cause a blockage resulting in the need for immediate veterinary care for the animal.²³⁰

²²⁶ It may seem obvious to someone who has lived with a dog, that a person should not bend over an unfamiliar sleeping dog because of the possibility the dog could be startled, but the plaintiff in the *Barr* case, discussed *supra* notes 204–211, apparently did not have or exhibit that knowledge. *Barr v. Lima Corr. Inst.*, No. 2002-08033-AD, 2003 WL 23697092, at *1 (Ct. Cl. Ohio Mar. 19, 2003).

²²⁷ See, e.g., *Paws4Prisons*, PAWS4PEOPLE FOUND., <http://paws4people.org/our-programs/training-programs-2/paws4prisons/> (last visited Nov. 3, 2013) (describing a program at several federal correctional institutions where the inmates move through several levels of the training program, beginning at the Entry-Level K-9 Trainer to Certified K-9 Trainer). This program has several requirements at each level, including a minimum time involved in the program, coursework, and evaluations before an inmate can move to the next level. *Id.*

²²⁸ E.g., Schrader, *supra* note 55 (stating that dogs that were involved in bite incidents were removed from the facility).

²²⁹ See Huss, *supra* note 74 (manuscript at 50–51) (discussing various zoonotic illnesses that can be spread from companion animals to humans).

²³⁰ *Ask Martha: TIPS for Keeping your Pets Safe*, RICHMOND TIMES DISPATCH (Feb. 12, 2011, 12:00 AM), http://www.timesdispatch.com/entertainment-life/ask-martha-tips-for-keeping-your-pets-safe/article_54fdf0b6-a94c-5f97-8f78-50ad5a16aab1.html (discussing risks of dogs chewing on toys and the need to monitor them); Dawn M. Kurry, *Man’s Best Friend Has a Tough Stomach*, RICHMOND CO. DAILY J., Apr. 27, 2011, at 1A, available at http://matchbin-assets.s3.amazonaws.com/public/sites/476/assets/4Z0H_RDJ042711A01.pdf (discussing things that dogs may swallow and the possibility of blockages).

If a correctional institution or organization has adequately addressed the risks and liability concerns inherent in any animal program and determines that it wishes to move forward, the next step is to determine whether the program is an appropriate placement for companion animals.

V. ETHICAL IMPLICATIONS OF PROGRAMS

Companion animals are part of many people's lives.²³¹ Philosophical discussions relating to humans' use of animals do not often focus on domestic animals acting as companions or assisting humans with disabilities.²³² Some commentators have considered the moral implications of keeping pets.²³³ There are also guidelines for keeping companion animals.²³⁴ As an example, the American Veterinary Medical Association Guidelines contemplate issues such as providing veterinary care, appropriate training, exercise, and socialization.²³⁵ There are also guidelines regarding the training and use of animals acting as service animals.²³⁶

It is more useful to consider the narrower issue of whether the programs discussed herein would, at a minimum, meet the standards set by those who are considering the care of animals in a shelter environment. A shelter environment by its very nature is structured for the temporary care of animals; thus, the analogy to the programs in correctional institutions is apt. With the exception

²³¹ AM. PET PRODS. ASS'N, 2011–2012 APPA NATIONAL PET OWNERS SURVEY 4 (2012) (reporting that a survey showed that the percentage of U.S. households that include a companion animal has been over 60% for more than a decade). *See also* KATHERINE C. GRIER, PETS IN AMERICA: A HISTORY 4–8 (2006) (documenting the keeping of pets in the United States).

²³² *But see* Tzachi Zamir, *The Moral Basis of Animal-Assisted Therapy*, 14 SOC'Y & ANIMALS 179, 192–94 (2006) (discussing ethical issues relating to animal assisted therapy programs and service animals). In general, it is not controversial to state that animals are protected only when it is in the interest of humans. *See, e.g.*, Gary L. Francione & Anna E. Charlton, *Animal Advocacy in the 21st Century: The Abolition of the Property Status of Nonhumans*, in ANIMAL LAW AND THE COURTS: A READER 7 (Taimie L. Bryant et al. eds., 2008) (discussing the fact that animal interests are only protected when it is economically beneficial for humans). *See also* Pia Lucidi et al., *Ethotest: A New Model to Identify (Shelter) Dogs' Skills as Service Animals or Adoptable Pets*, 95 APPLIED ANIMAL BEHAV. SCI. 103, 103 (2005). The goal of the study appears to be to provide a method to encourage the use of dogs otherwise confined to shelters to be removed from those facilities and trained for therapy work but ultimately the study referenced back to humans' interest that the dogs had continued utility as service animals. *Id.* (stating that the "paucity of dogs dedicated to animal assisted therapy . . . for disabled people creates long waiting lists worldwide and compromises the health of the few certified animals by demanding too much work from them at times, thus jeopardizing their future as service dogs").

²³³ *E.g.*, Leslie Irvine, *Pampered or Enslaved? The Moral Dilemmas of Pets*, 24 INT'L J. SOC. & SOC. POL'Y 5, 5 (2004). *See also* Huss, *supra* note 74 (manuscript at 63–69) (discussing the moral implications of keeping companion animals).

²³⁴ *Guidelines for Responsible Pet Ownership*, AM. VETERINARY MED. ASS'N, <https://www.avma.org/KB/Policies/Pages/Guidelines-for-Responsible-Pet-Ownership.aspx> (last visited Nov. 3, 2013).

²³⁵ *Id.* Additional guidelines relate to the choice of the pet, impact on other people, controlling a pet's reproduction, and making appropriate end of life care decisions. *Id.*

²³⁶ Huss, *supra* note 170, at 1170–74 (discussing ethical and safety issues relating to service animals).

of the limited number of programs where inmates are allowed to keep “personal” cats or animals are kept as facility pets, the goal of these programs is to take care of and train the animals for a permanent home outside the institution.²³⁷

This Article considers whether these programs can meet the guidelines for the standard of care in animal shelters developed by the Association of Shelter Veterinarians.²³⁸ Essentially, this underscores the minimal standards that should be met by the programs in addition to discussing some ideal and best practices.²³⁹ Within this structure, the Article utilizes recent studies that focus on how specific factors, such as noise and odor, could be issues in correctional institutions by impacting the well-being of the animals.²⁴⁰ An animal that is less stressed is less likely to cause injuries to humans, and the purpose of the programs—to rehome the animal—is supported.

It is important to begin with the premise that every animal is an individual. The same space or environment that works well for one dog or cat may cause another animal significant stress.²⁴¹ The goal of any program should be to have an animal thrive rather than just survive in that environment. The inmate-handlers and program administrators should monitor each animal in the program to ensure that if an animal exhibits signs of stress, the issue is addressed promptly.

A. *The Five Freedoms*

The Guidelines for Standards of Care in Animal Shelters (“Guidelines”) begin with the broad set of animal welfare principals created in 1965 by a United Kingdom organization now known as the Farm Animal Welfare Council.²⁴² Although initially applied to farm animals, the “Five Freedoms” established by the Farm Animal Welfare Council are applicable to all animals.²⁴³

The Five Freedoms are:

1. Freedom from Hunger and Thirst—by ready access to fresh water and a diet to maintain full health and vigor.

²³⁷ See *supra* notes 74–78, 123–148, and accompanying text (discussing facility animals and owned animals in correctional institutions). The ethical issues relating to these programs would be focused on keeping companion animals generally. See Huss, *supra* note 74 (manuscript at 63–69) (discussing ethical issues relating to keeping companion animals generally).

²³⁸ SANDRA NEWBURY ET AL., ASS’N OF SHELTER VETERINARIANS, GUIDELINES FOR STANDARDS OF CARE IN ANIMAL SHELTERS (2010).

²³⁹ The guidelines were developed as a tool for organizations of many types to identify minimum standards of care in addition to best and unacceptable practices. *Id.* at v. Although the guidelines do not define the time frame in which an animal’s length of stay is considered long-term, especially for programs that train service animals over a period of several months, the applicability of recommendations for animals kept in the long-term would be appropriate. *Id.* at 5 (discussing the lack of definition of long-term and short-term).

²⁴⁰ See *infra* notes 274–292 and accompanying text (discussing issues relating to the auditory and olfactory environment).

²⁴¹ For example, confinement may inhibit some dogs from urinating or defecating and the aversive location of a litter box may do the same for some cats. NEWBURY ET AL., *supra* note 238, at 14.

²⁴² *Id.* at 10.

²⁴³ *Id.* (citing to the use of the Five Freedoms for standards for boarding facilities in New Zealand and by the Canadian Veterinary Medical Association for cats).

2. Freedom from Discomfort—by providing an appropriate environment including shelter and a comfortable resting area.
3. Freedom from Pain, Injury or Disease—by prevention or rapid diagnosis and treatment.
4. Freedom to Express Normal Behavior—by providing sufficient space, proper facilities and company of the animal's own kind.
5. Freedom from Fear and Distress—by ensuring conditions and treatment which avoid mental suffering.²⁴⁴

The Guidelines used the Five Freedoms as a base to discuss several aspects of sheltering.²⁴⁵ A few of the Five Freedoms should be “non-issues” in correctional institution programs. Specifically, every program should provide the animals appropriate food and clean water. Similarly, the ability to be free from pain, injury, or disease must be dealt with through the provision of adequate veterinary care.

The second and fourth of the Five Freedoms focus on the environment for the animal and are relevant in considering whether animal programs at correctional institutions are an appropriate place for companion animals.

B. Facility Design

Facility design is perhaps the most challenging issue that correctional institution programs face. After all, the focus of the correctional institutions is to secure the human population—not to ensure that any animals involved in just one of the programs in the facility have a proper environment.

1. Space

In a traditional shelter environment, the primary enclosure for an animal is likely to be a cage, kennel, or run. However, in most of the correctional institution programs, for at least the primary portion of the day, the animals are kept where the inmates are housed—such as a cell or dormitory.²⁴⁶ Thus, the minimum space requirements for the dogs or cats would likely not be applicable.²⁴⁷ That said, a facility where there is not enough space for the humans and animals to exist comfortably should not institute an animal care program.

Rather than focusing on the specific amount of space, which should be more than adequate, the way that space is allocated is important.²⁴⁸ The

²⁴⁴ *Five Freedoms*, FARM ANIMAL WELFARE COUNCIL, <http://www.fawc.org.uk/freedoms.htm> (last modified Apr. 16, 2009); NEWBURY ET AL., *supra* note 238, at 10 (listing the Five Freedoms).

²⁴⁵ NEWBURY ET AL., *supra* note 238, at 10–11.

²⁴⁶ *E.g.*, Bradley, *supra* note 26 (stating the dogs in the A.D.O.P.T. program are with the inmates in the dormitory-style housing).

²⁴⁷ Minimum space requirements are articulated as allowing an animal to stand, stretch, and lie in a comfortable position, and, in the case of cats, allowing two feet between each area of litter, resting, and food. NEWBURY ET AL., *supra* note 238, at 13–14. Typically shelters do not meet many of the minimum dimensions recommendations that have been suggested by several organizations. *Id.*

²⁴⁸ Leticia M. S. Dantas-Divers et al., *Agonistic Behavior and Environmental Enrichment of Cats Communally Housed in a Shelter*, 239 J. AM. VETERINARY MED. ASS'N 796, 797 (2011) (stating “[i]t is commonly accepted that space use is more relevant than the size of the area itself” when discussing the confinement of cats).

arrangement of the space should allow for easy cleaning and free movement.²⁴⁹ The living space should be monitored for any sharp edges or gaps that could cause injury.²⁵⁰

Many cats have a preference for spending time on elevated surfaces, so vertical dimensions are extremely important.²⁵¹ One expert suggested “[a] cat tree fastened to the floor, or wall attached shelves with boxes would be good for a prison cell.”²⁵² Dogs may also prefer an elevated surface for resting.²⁵³ It is important that resting surfaces are soft and washable.²⁵⁴

A place to hide or retreat is important for many animals.²⁵⁵ A study showed that cats who had the ability to hide decreased stress hormones.²⁵⁶ For many dogs, having a “safe place,” whether a crate or other designated area, where the dog is not disturbed is important.²⁵⁷ For other dogs, being crated or placed in a kennel can create anxiety.²⁵⁸

The Guidelines state that “[t]ethering is an unacceptable method of confinement for any animal.”²⁵⁹ This is one aspect of the owned-cat program at Indiana State Prison that could cause concern. There are no reported incidents

²⁴⁹ NEWBURY ET AL., *supra* note 238, at 13.

²⁵⁰ *Id.* In situations where an animal is confined during the night or while the inmate-handler is out of the space, the cage or crate should be monitored for these issues as well.

²⁵¹ *Id.* at 14; Telephone Interview with Joan Miller, Chair, The Cat Fanciers’ Ass’n Inc., Outreach & Educ. (Jan. 16, 2013) [hereinafter Miller Telephone Interview].

²⁵² E-mail from Joan Miller, Chair, The Cat Fanciers’ Ass’n Inc., Outreach & Educ., to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 18, 2013, 3:47 PM) (on file with author).

²⁵³ NEWBURY ET AL., *supra* note 238, at 14.

²⁵⁴ Miller, *supra* note 252 (stating that “[c]at trees need to have washable surfaces . . . for easy laundering”); NEWBURY ET AL., *supra* note 238, at 14 (discussing the need for a soft resting surface to avoid pressure sores). In most correctional institution programs, the animals would not be confined in a way that the animal is required to stay on a specific resting surface for the length of time this would be an issue. *But see supra* notes 16–25 and accompanying text (discussing the “traditional” sheltering program at the Dixon Correctional Institution, which utilizes cages for confining the cats).

²⁵⁵ Dantas-Divers et al., *supra* note 248, at 797 (discussing the hiding behavior of cats). *Facility Design and Animal Housing*, KORET SHELTER MED. PROGRAM, <http://www.sheltermedicine.com/print/389> (last visited Nov. 3, 2013) [hereinafter *Facility Design*] (discussing the need for both cats and dogs to have the opportunity for concealment); *Sit, Stay, Retreat! Enrichment Ideas for Dog Housing in Shelters*, KORET SHELTER MED. PROGRAM, <http://sheltermedicine.com/print/587> (last visited Nov. 3, 2013).

²⁵⁶ NEWBURY ET AL., *supra* note 238, at 15.

²⁵⁷ Nancy Kerns, *Crate Expectations: A Terrific Management Tool as Well as a Home Away from Home*, 14 *WHOLE DOG J.* 14, 14 (2011) (discussing the benefits of crate training for dogs, including providing the dogs with a safe space where he or she cannot be bothered by other dogs or people and can be safely contained).

²⁵⁸ *Id.* at 16 (discussing the need to consult with an animal behaviorist if a dog exhibits anxiety in his or her crate); Karen L. Overall, *Separation Anxiety: Not All Dogs Crated or Kenneled Successfully*, *DVM NEWSMAGAZINE*, June 2003, at 20S (cautioning about the universal use of crates and emphasizing the need to consider the individual dog).

²⁵⁹ NEWBURY ET AL., *supra* note 238, at 13. The Department of Primary Industries in Victoria, Australia has developed a code of practice for the tethering of animals. *Code of Practice for the Tethering of Animals (Revision no. 1)*, DEP’T OF ENV’T & PRIMARY INDUSTRIES, <http://www.dpi.vic.gov.au/agriculture/about-agriculture/legislation-regulation/animal-welfare-legislation/codes-of-practice-animal-welfare/tethering-of-animals> (last visited Nov. 3, 2013). This code cautions against the tethering of animals but sets forth general require-

of cats in that program being physically harmed by the tethering and it appears that the tethered cats are monitored most of the time.²⁶⁰

2. *Temperature and Air Quality*

The issue of odor is discussed in Part V.E; however, facilities should consider whether their heating, cooling and ventilation systems are adequate. It seems unlikely that the ambient temperature inside a correctional facility would regularly fall outside of American Veterinary Medical Association recommendations for housing dogs and cats of sixty to eighty degrees Fahrenheit.²⁶¹ Essentially, animals should be able to maintain their normal body temperature.²⁶² If outside areas are used in the program, animals should be monitored to ensure that they are protected from extreme heat or cold.

Air quality can be a significant issue in environments housing multiple people and animals. It is vital to have fresh air to maintain good health and limit the spread of infectious disease.²⁶³ Proper ventilation can mitigate issues of airborne microbes and other pollutants.²⁶⁴ Sanitary protocols can also assist in reducing airborne microbes.²⁶⁵ It seems unlikely that most correctional institutions have the capacity to have an isolation area for sick animals. It is logical to try to reduce the likelihood that respiratory pathogens are transmitted to other animals—by separating them from the general population as much as is feasible.²⁶⁶ Programs taking in shelter animals should be especially sensitive to the possibility of disease transmission, given the unknown medical history of at least some of the animals they may house.

3. *Sanitation*

Adequate sanitation is necessary to keep both humans and animals safe and healthy. Many aspects of the facilities that house correctional institutions are consistent with the need to easily clean and disinfect. For example, correctional institutions tend to use hard surface flooring.²⁶⁷ Given the one-to-one nature of most of the pairings of inmates and animals, it should not be a problem for programs to have sanitary standards that help reduce the transmission of diseases to animals as well as people.²⁶⁸

ments if tethering is used. *Id.* Tethering is “not suitable for long-term confinement.” *Id.* The Code of Practice also states that cats should not be tethered under any circumstances. *Id.*

²⁶⁰ See James 3:25 PM E-mail, *supra* note 148 (stating that she was unaware of any measure to ensure a cat does not get entangled with the tether).

²⁶¹ NEWBURY ET AL., *supra* note 238, at 15.

²⁶² *Id.*

²⁶³ *Id.* at 16.

²⁶⁴ *Id.* at 16.

²⁶⁵ *Id.* at 16. See also *infra* notes 267–68 and accompanying text (discussing the importance of sanitation).

²⁶⁶ NEWBURY ET AL., *supra* note 238, at 16 (stating that an isolation area with separate air circulation from the rest of the facility is recommended).

²⁶⁷ Mark Baxter, *Taking Care of Carpets*, CORRECTIONS.COM (OCT. 15, 2012), <http://www.corrections.com/news/article/31340-taking-care-of-carpets->

²⁶⁸ NEWBURY ET AL., *supra* note 238, at 20–23 (discussing cleaning and disinfecting procedures). Daily cleaning is recommended for cage free and home environments—and should be part of a correctional institution’s policy. *Id.* at 21. The guidelines also recommend that all equipment that comes into contact with animals be cleaned after use with a single animal.

C. Visual Environment

The visual environment, including natural light and lighting, is important to consider. The ability to look out of windows or to have visual contact with other animals of the same species is important for the mental well-being of animals.²⁶⁹ As with other aspects of the correctional facilities, the amount of natural light in the facility is governed by the purpose of the structure as a whole.²⁷⁰ Ideally, in areas housing the animals, as much natural light should be available as possible.²⁷¹ Lighting (including darkness) that supports natural circadian rhythms of wakefulness and sleep is beneficial to both humans and animals.²⁷² There has been a study indicating that visual images in the form of visual recordings containing prey items and linear movement may hold some enrichment potential for domestic cats in rescue shelters.²⁷³ Although visual recordings may provide some enrichment potential, the ability of animals to view live action would seem to be preferable.

D. Auditory Environment

Excessive noise has been shown to have a detrimental effect on humans and animals.²⁷⁴ Given that dogs and cats have more sensitive hearing than humans, it is recommended that noise be minimized in animal areas.²⁷⁵ Again, given the fact that correctional facilities are not designed specifically for animal programs, this may be a challenging environmental factor to control. For example, it may be difficult to utilize architectural strategies to minimize noise.²⁷⁶

In a correctional institution, noise is generated by the nature of the facility itself (a large group of people in a secure confined space) and by the animals. Some aspects of the management of inmates in correctional institutions, such as announcements made via intercom, may be necessary for the smooth running of

Id. at 22. The goal of this is to reduce disease transmission between animals. This may be a challenging task for animals kept in common areas—but, at a minimum, any equipment used with an animal that is exhibiting signs of illness must be disinfected. *Id.* See Huss, *supra* note 74 (manuscript at nn.270–75 and accompanying text) (discussing various zoonotic diseases).

²⁶⁹ *Facility Design*, *supra* note 255 (stating “[a]nimals in normal environments choose to spend a significant amount of time in visual contact with other animals or looking out windows.”).

²⁷⁰ Some facilities have more natural light than others. For example, the correctional facility used in the A.D.O.P.T. program was previously used as a hospital, and the buildings that house the units with the animals have lots of windows. Bradley, *supra* note 26.

²⁷¹ NEWBURY ET AL., *supra* note 238, at 10.

²⁷² *Id.*

²⁷³ Sarah L.H. Ellis & Deborah L. Wells, *The Influence of Visual Stimulation on the Behaviour of Cats Housed in a Rescue Shelter*, 113 APPLIED ANIMAL BEHAV. SCI. 166, 172–73 (2008).

²⁷⁴ NEWBURY ET AL., *supra* note 238, at 11 (discussing the issue of sound control in kennels).

²⁷⁵ *Id.*; Peter Scheifele et al., *Effect of Kennel Noise on Hearing in Dogs*, 73 AM. J. VETERINARY RES. 482, 488 (2012) (recommending that noise mitigation strategies be mandated for animal care).

²⁷⁶ An example would be the use of sound proofing materials. See NEWBURY ET AL., *supra* note 238, at 11.

the facility but could be disruptive to certain animals.²⁷⁷ However, other aspects of life in the institution can be controlled. In a shelter environment staff can be instructed to avoid creating excessive noise during their activities (such as not slamming cage doors), and, to a certain extent, the inmates can be asked to do the same.²⁷⁸

Noise created by the animals is also something to be considered—for both the humans and the animals. One study that assessed the noise in a kennel and shelter environment found that dogs housed in the environment for a prolonged period suffered hearing loss.²⁷⁹ Given the structure of most of these programs (with direct human interaction with each animal), there should not be a problem with dogs barking constantly. Cats can be adversely impacted by the sound of barking dogs, so, if both species are in the same facility, steps should be taken to insulate them from that noise.²⁸⁰

Auditory stimulation, including music, has been found to have a dramatic impact on both the mood and behavior of humans.²⁸¹ In kenneled dogs, classical music has been shown to increase the time dogs spend sleeping.²⁸² Experts caution that the volume of music should not exceed conversational levels and it may be contraindicated for some animals.²⁸³ The reality is that humans' preference for music varies widely—and it may be challenging to have consensus by the humans in a unit regarding this aspect of the environment. That said, given recent studies that indicate that certain types of music, specifically heavy metal,

²⁷⁷ As one inmate stated, "There are always people around. The intercom is always going off. It's very stressful for dogs." McClellan, *supra* note 104 (quoting inmate Tommie Tibbetts regarding the lack of privacy in the prison).

²⁷⁸ NEWBURY ET AL., *supra* note 238, at 11. An unpublished study comparing five California shelters found that the lowest rate of lower upper respiratory infection rates in cats was in the shelter with the lowest noise level. *Facility Design*, *supra* note 255.

²⁷⁹ Scheifele et al., *supra* note 275, at 488 (describing a study that found detrimental effects from potentially damaging noise levels).

²⁸⁰ NEWBURY ET AL., *supra* note 238, at 11; *Facility Design*, *supra* note 255 (stating that "visual and auditory exposure to dog[s] is a significant stressor for confined cats").

²⁸¹ Deborah L. Wells, *A Review of Environmental Enrichment for Kennelled Dogs*, *Canis Familiaris*, 85 *APPLIED ANIMAL BEHAV. SCI.* 307, 312 (2004) (citing to multiple studies regarding auditory stimulation's impact on humans).

²⁸² Lori R. Kogan et al., *Behavioral Effects of Auditory Stimulation on Kenneled Dogs*, 7 *J. VETERINARY BEHAV.* 268, 272 (2012). One commercial product asserts that in its small study that its music that is fifty to sixty beats per minute resulted in seventy percent of dogs in a kennel environment becoming calmer and eighty-five percent of dogs in a home environment becoming calmer, with half the dogs falling asleep. *Research, THROUGH A DOG'S EAR*, <http://throughadogsear.com/research/> (last visited Nov. 3, 2013); *Bioacoustic Research & Development (BARD), Canine Research Summary, THROUGH A DOG'S EAR 7*, <http://throughadogsear.com/pdfs/BardExecutiveSummary.pdf> (last visited Nov. 3, 2013). The Through the Dog's Ear music is likely to sound very slow paced to humans. The instructions to the CD actually warn against driving or operating heavy machinery while listening to it because humans "also find it deeply relaxing" and it "may make you drowsy or cause you to fall asleep." *Music to Calm Your Canine Companion* (Volume 1), *THROUGH THE DOG'S EAR*, <http://throughadogsear.com/music-to-calm-canine-1/> (last visited Nov. 3, 2013).

²⁸³ NEWBURY ET AL., *supra* note 238, at 11 (cautioning that animals should be able to move away or control their exposure to music and other enrichment).

may increase behaviors of dogs that suggest agitation, participants in animal programs should monitor their charges if exposed to this type of stimulation.²⁸⁴

E. Olfactory Environment

Cats and dogs both have excellent olfactory senses.²⁸⁵ One unpublished study found that calming odors (especially lavender) encouraged behaviors that suggested the dogs were relaxed.²⁸⁶ Studies on big cats (e.g., lions) found certain scents increased the activity level of the animals.²⁸⁷ A recent study on cats in a rescue shelter found that catnip and a prey scent encouraged behavior indicative of reduced activity.²⁸⁸ It will come as no surprise to many people living with cats that this study also found that catnip encouraged what is described as the “catnip response”—play-like behavior.²⁸⁹

The use of pheromones to reduce stress and address undesirable behavior has been the subject of multiple studies.²⁹⁰ A recent review of pheromone research did not find sufficient evidence to support the premise that they are effective for the treatment of undesirable behavior in dogs or cats.²⁹¹ Although, it is clear that more research is needed, given that there have been studies that have found positive benefits,²⁹² the use of commercially available pheromones such as Feliway® and D.A.P.® (Dog Appeasing Pheromone) may be appropriate for certain environments.

F. Conspecific Contact

The fourth of the Five Freedoms states that animals should be free to express normal behavior including contact with others of their own species.²⁹³ For many of the correctional institution programs there is some level of contact between other animals within the program. In some programs, multiple animals are kept in a dormitory style unit, which essentially acts as the “primary enclo-

²⁸⁴ Wells, *supra* note 281, at 312 (discussing her previous study regarding music in shelter environments).

²⁸⁵ Miller Telephone Interview, *supra* note 251 (discussing feline olfactory activity); Wells, *supra* note 281, at 313 (discussing canine olfactory acuity).

²⁸⁶ Wells, *supra* note 281, at 313. “Stimulating odors” such as peppermint resulted in more movement of the dogs. *Id.*

²⁸⁷ *Id.*

²⁸⁸ Ellis & Wells, *supra* note 273, at 59, 61.

²⁸⁹ *Id.* at 60. The “catnip response” is described as consisting of four elements—sniffing, licking and chewing with head shaking, chin and cheek rubbing, and head-over rolling and body rubbing. *Id.* Genetics determine whether a cat will have the catnip response with fifty percent to seventy percent of cats showing the response. *Id.*

²⁹⁰ Diana Frank et al., *Systematic Review of the Use of Pheromones for Treatment of Undesirable Behavior in Cats and Dogs*, 236 J. AM. VETERINARY MED. ASS’N 1308, 1314–16 (2010).

²⁹¹ *Id.*

²⁹² Elaine Tod et. al., *Efficacy of Dog Appeasing Pheromone in Reducing Stress and Fear Related Behaviour in Shelter Dogs*, 93 APPLIED ANIMAL BEHAV. SCI. 295, 306 (2005) (finding that there was a significant increase in resting behavior under certain circumstances and a decrease in barking frequency in the area where D.A.P. was diffused). Note that the Tod study was criticized in the Frank article discussed *supra* note 290, at 1315.

²⁹³ *Supra* note 243–44 and accompanying text (listing Five Freedoms).

sure.”²⁹⁴ A direct connection has been shown between group density and stress in cats.²⁹⁵ Even if the animals are primarily cared for in a cell, they may come in contact with others of their species in common or outside areas. If an animal cannot be safely managed or is stressed by the set-up of the program, it is inappropriate for the program to keep the animal. If animal-to-animal contact is not closely monitored, inmate-handlers and staff can be injured.²⁹⁶

There are benefits for animals to have conspecific contact.²⁹⁷ The risks to the animals and humans can be minimized with proper training and procedures. For example, appropriate introduction of new animals (both cats and dogs) can reduce the likelihood of injury to humans and stress to the animals.²⁹⁸ Social enrichment in group housing can be promoted through both physical and occupational enrichment.²⁹⁹

G. Administrative and Policy Aspects of Programs

1. Management and Record Keeping

The animal care programs should have policies and procedures in place regarding all aspects of the animals’ time in the facility.³⁰⁰ Given that these are programs within a larger administrative structure, the ability to institute and maintain policies would seem to be a natural fit. Record-keeping problems, including those relating to animal identification, should be minimal given the limited number of animals in the programs. Having inmates assist with record keeping also helps to teach valuable skills. Additionally, keeping a thorough record of each animal’s progress assists in determining whether the animal is ready for adoption, or suitable for the next step of training as a service animal.³⁰¹

Controlling the animal population, including restricting the number of animals in a program to a number that can adequately be cared for on the prem-

²⁹⁴ Bradley, *supra* note 26 (discussing the dogs’ and cats’ units in the A.D.O.P.T. program).

²⁹⁵ Dantas-Divers et al., *supra* note 248, at 797.

²⁹⁶ E.g., *supra* notes 212–220 (discussing case where inmate was injured breaking up a conflict between two dogs); Anne J. Pullen et al., *The Effect of Familiarity on Behavior of Kenneled Dogs During Interactions with Conspecifics*, 16 J. APPLIED ANIMAL WELFARE SCI. 64, 65 (2013) (discussing the benefits and risks of conspecific contact).

²⁹⁷ Pullen et al., *supra* note 296, at 65 (discussing benefits of conspecific conduct and citing to studies that consider the prevention of physical contact and the likelihood that would increase the stress of dogs).

²⁹⁸ Miller Telephone Interview, *supra* note 251 (discussing the need for care in introducing new cats to each other and recommending a gradual process including first allowing the cats to be able to smell each other before visual contact is made); Pullen et al., *supra* note 296, at 74 (discussing the behavior of dogs that are familiar versus unfamiliar to each other and finding that when unfamiliar individuals are paired with each other both dogs may be more wary of the reaction and move farther away while exploring the area, perhaps to avoid confrontation due to misinterpreted signals).

²⁹⁹ Dantas-Divers et al., *supra* note 248, at 797. See *infra* notes 319–326 and accompanying text (discussing environmental enrichment). For group housing for cats, it is important to provide sufficient retreats for cats coping with social stress. Dantas-Divers et al., *supra* note 248, at 797.

³⁰⁰ NEWBURY ET AL., *supra* note 238, at 6.

³⁰¹ Cattet, *supra* note 69 (describing the large notebook that is prepared for each dog in the program with information from each trainer and furlough foster home).

ises, is also an aspect of the management of the programs.³⁰² Most of the programs have a limited number of animals, controlled in large measure by the facility and supervision available.³⁰³ It is common for programs to “start small” and, once a program is deemed successful, increase the number of inmates and animals that participate in the program.³⁰⁴

2. Sterilization Policy

The Guidelines discuss the need to spay or neuter animals.³⁰⁵ Absent a medical necessity or another compelling justification, animals within a correctional institution program should be sterilized.³⁰⁶ The purpose of sterilization is not only to decrease the birthrates of animals³⁰⁷ but also because, following spaying and neutering, there is a rapid decline in spraying, marking, and fighting, resulting in a reduction of animal stress.³⁰⁸ It would be extremely unusual (and inappropriate) for a program in a correctional institution to lack a process ensuring that all animals are sterilized prior to placement in the community.³⁰⁹

H. Ensuring the Physical and Mental Well-Being of the Animals

The last of the Five Freedoms is that animals should be free of fear and distress.³¹⁰ The possibility that animals in these programs could be abused is a concern. Although there are isolated reports of animals being injured in correctional institution programs, given the structure of these programs, the animals

³⁰² NEWBURY ET AL., *supra* note 238, at 18–19 (discussing the capacity for care in shelters).

³⁰³ See *supra* notes 15–82 and accompanying text (describing programs). If animals are being housed for longer terms or are undergoing extensive training, more time is required for their care and fewer animals may be accommodated. NEWBURY ET AL., *supra* note 238, at 18 (discussing the role the length of stay has on the needs of the animals).

³⁰⁴ See, e.g., Bartholomew, *supra* note 5 (discussing how the persons involved with the *Cell Dogs* television program recommended that the Prison Tails program should be kept small and move forward slowly); see *supra* notes 130–35 and accompanying text (discussing the growth of the cat program at the Indiana State Prison).

³⁰⁵ NEWBURY ET AL., *supra* note 238, at 43–44.

³⁰⁶ *Id.* at 43 (discussing the benefits of spaying and neutering animals). E.g., Cattet, *supra* note 69 (stating that the dogs in the correctional institutions for the ICAN program are sterilized). ICAN uses some purpose-bred dogs in its program. *Where We Get Our Dogs*, *supra* note 70. See also Rebecca J. Huss, *Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations*, 39 CONN. L. REV. 2059, 2094–2105 (2007) (discussing the importance of sterilization procedures for shelters and rescue organizations).

³⁰⁷ Estimates are that 3–4 million dogs and cats are still euthanized by shelters in the United States each year. Andrew Mach, *Behind the Big Drop in Euthanasia for America's Dogs and Cats*, CHRISTIAN SCI. MONITOR (Feb. 10, 2012), <http://www.csmonitor.com/USA/Society/2012/0210/Behind-the-big-drop-in-euthanasia-for-America-s-dogs-and-cats> (discussing the role sterilization has played in reducing the number of dogs and cats euthanized by shelters from 20 million in the 1970s to about 3 million in 2011); *Pet Statistics*, ASPCA, <http://www.aspc.org/about-us/faq/pet-statistics.aspx> (last visited Nov. 3, 2013).

³⁰⁸ NEWBURY ET AL., *supra* note 238, at 43.

³⁰⁹ E.g., Bradley, *supra* note 26 (stating that all the animals in the A.D.O.P.T. program are sterilized before they are adopted out to members of the public); Schrader, *supra* note 55 (stating that all dogs in the MUM program were sterilized prior to being adopted out and would be spayed or neutered as soon as possible after admittance to the facility). See Huss, *supra* note 306, at n.270 (discussing best practices of shelters and rescue organizations).

³¹⁰ See *supra* notes 243–45 and accompanying text (discussing the Five Freedoms).

appear to be well protected.³¹¹ Essentially, the possibility of intentional acts of cruelty is reduced because of the careful selection of the participants and monitoring by volunteers. Also, the inmates involved with the animals are reportedly quite protective of them. In response to a question of whether cats at the property were abused by any of the inmates, one inmate articulated, “[t]here would be repercussions.”³¹²

The issue of negligence is more complicated. Even if the physical space is safe and the animals are protected from intentional harm, there is always the possibility of human error. Positive reinforcement is generally the only, or the primary, training method that is used and the animals’ safety is the responsibility of the inmate-handlers.³¹³

The inmate-handlers’ ability to provide individual attention is key to the well-being of the animals.³¹⁴ A significant portion of time with the inmate-handlers is spent on training.³¹⁵ Adequate training is important for humane animal care and to ensure the safety of inmates and staff.³¹⁶ It is common for programs to utilize outside volunteers to train the inmates, as well as to allow more experienced inmates to train less experienced inmates.³¹⁷ In addition, some programs are qualified as a Department of Labor Apprenticeship Program, adding additional structure.³¹⁸

³¹¹ *But see* Ring, *supra* note 102 (reporting on an incident at a Vermont facility where an inmate used a lighter to burn the fur off of a feral cat on the premises). The cat recovered from the injury. *Id.* The feral cats at this facility were not protected and the superintendent removed them from the facility. *Id.* From the report about the feral cats, it did not appear that there was an organized program at the facility. *Id.* The reality is that there are no national statistics kept on the number of prosecutions or convictions for animal abuse cases so it is difficult to determine whether an animal is safer from intentional injury inside or outside one of these programs. *See* Huss, *supra* note 74 (manuscript at 55) (discussing the lack of a governmental database regarding crimes against animals).

³¹² Pae, *supra* note 113.

³¹³ *E.g.*, ICAN, *How We Train*, *supra* note 72 (discussing the positive reinforcement training used in the ICAN program); Bradley, *supra* note 26 (stating that all the training in the A.D.O.P.T. program uses positive reinforcement). One concern articulated regarding the training of service animals is that the animals may be trained using methods other than positive reinforcement. Huss, *supra* note 170, at 1170–74 (discussing ethical issues relating to the use and training of service animals).

³¹⁴ Wells, *supra* note 281, at 309. It has been suggested that human contact is even more important than conspecific contact in the well-being of dogs. *Id.* *See supra* notes 293–99 and accompanying text (discussing conspecific contact).

³¹⁵ *E.g.*, E-mail from Jessica Bradley, Classification Specialist, Madison Corr. Facility, to Rebecca J. Huss, Professor of Law, Valparaiso Univ. Law Sch. (Jan. 22, 2013, 8:42 AM) (on file with author) (attaching the weekly training schedule for the inmate-handlers in the A.D.O.P.T. program illustrating the significant amount of time that is spent training the dogs).

³¹⁶ NEWBURY ET AL., *supra* note 238, at 12. *See supra* notes 187–224 and accompanying text (discussing tort actions caused by dog bites).

³¹⁷ *E.g.*, Cattet, *supra* note 69 (describing the training that inmates in the ICAN program receive).

³¹⁸ For information about apprenticeship and training programs, see *Search Program Sponsors Database*, U.S. DEP’T OF LAB., OFF. OF APPRENTICESHIP SPONSORS, http://oa.doleta.gov/list_by_occ.cfm (select “Indiana” from the state drop-down menu, then “Madison,” from the county drop-down menu; then click the “View” hyperlink next to “Animal Trainer”) (listing two Indiana Department of Correction facilities in Madison County, Indiana, that sponsor animal training programs).

Enrichment outside of training is also important to ensure the mental well-being of animals.³¹⁹ The availability of toys, with supervised play, is one option.³²⁰ A recent study found that kennel-housed dogs interacted with “less robust” toys for a longer period of time than robust toys.³²¹ If less robust toys (such as softer toys or toys that have an internal squeaker) are used, it is necessary to supervise the dogs to ensure that there is no consumption of parts of the toys.³²²

In the correctional institution programs, because the housing of the dogs is a hybrid of home and shelter, the use of toys may be more beneficial. If nothing else, studies have shown that dogs that had toys in their primary enclosure were more likely to be adopted.³²³ If the impact of having toys around makes the dogs more attractive, the toys may benefit the relationship the dogs may have with inmates who are not their handlers. Given the role of these programs is to help both the dogs and the inmates, it would be useful to ensure that the animals have access to toys, even though research findings on the impact of toys have been mixed.³²⁴

Cats also benefit from play and environmental enrichment.³²⁵ One study supported the use of a puzzle feeder to enrich the environment of cats.³²⁶

Finally, it is important that the animals are exposed to a variety of stimuli. As much as animals may benefit from structure, it is important to ensure that they do not develop behaviors that are consistent with living in an institutional environment but may not be appropriate for the outside world. Programs address this in a variety of ways. One service dog-training program “never keeps the dogs in the prison training programs for longer than four months to limit institutionalization effects.”³²⁷ Many programs have volunteers who take the animals back to their homes outside the institution for socialization and other training on weekends.³²⁸ The ICAN program has a furlough training pro-

³¹⁹ Dantas-Divers et al., *supra* note 248, at 797 (stating “[e]nvironmental enrichment has been one of the most successful techniques for behavioral modification and improving welfare of confined animals, including cats”).

³²⁰ Wells, *supra* note 281, at 311 (discussing the use of toys in shelters and studies that found that dogs housed in rescue shelters do not appear to benefit from toys).

³²¹ Anne Jennifer Pullen et al., *Preferences for Toy Types and Presentations to Kennel Housed Dogs*, 125 *APPLIED ANIMAL BEHAV. SCI.* 151, 156 (2010).

³²² *Id.* (discussing the need to trade off the risk of destruction and ingestion with the stronger preference for less robust toys).

³²³ Wells, *supra* note 281, at 311.

³²⁴ *Id.* at 310–11 (discussing the impact of the introduction of toys in a shelter environment).

³²⁵ Miller Telephone Interview, *supra* note 251.

³²⁶ Dantas-Divers et al., *supra* note 248, at 800 (finding that a “stimulating item that can be shared by all individuals in a stable group, such as puzzle feeder of appropriate size, can play an important role in promoting positive social interactions among cats and improving their welfare”).

³²⁷ Christine Hochkeppel, *Keno & Nick: Family Adopts Service Dog*, Cape Cod Times (Aug. 14, 2011), <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110814/NEWS/108140320&cid=sitesearch> (discussing training for a dog placed as a service animal through the CARES, Inc. program).

³²⁸ *E.g.*, Crumbacker, *supra* note 9 (discussing the America’s VetDog program and how employees at the facility will be paired with the animals for socialization); Izaskun F. Larrañeta, *Prison Inmates Train Dogs, Change Lives*, DAY CONN. (May 26, 2012, 12:00 AM),

gram for the dogs that consists of a two-week period with a volunteer trainer in the community for every six weeks a dog is in a correctional facility.³²⁹ The ICAN program changes each dog's trainer about every six months to help the dogs adjust to different people providing them with commands.³³⁰

Ultimately, each correctional institution needs to determine whether it is meeting the minimum standards set forth in the Five Freedoms and Guidelines and whether its facility has the capacity to adequately house animals.

VI. CONCLUSION

These programs are attractive because of the benefits to the correctional institutions and inmates. Risks can be managed with suitable training and policies. If properly structured, with the needs of the animals considered, these programs can be positive for animals as well. It is the responsibility of the correctional institutions to determine whether they have the means to adequately house animals on the premises. All of the organizations involved must ensure that each animal is being viewed as an individual to determine whether the facility is an appropriate placement for such animal.

<http://www.theday.com/article/20120526/NWS01/305269970/-1/NWS1501> (reporting on a program where volunteers take the dogs on weekends to expose the dogs to new experiences).

³²⁹ ICAN, *How We Train*, *supra* note 72.

³³⁰ Cattet, *supra* note 69. The time between the furlough training program periods differs based on the level of training of the individual dog. *Id.*