

**NEW JERSEY DOGFIGHTING LAW IS NOT ALL BARK:  
RICO AMENDMENT GIVES TOOLS TO REDUCE CRIME IN THE REGION**

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## I. INTRODUCTION

On April 18, 2014, twenty-one dogs were rescued from a dog fighting ring after officers raided a home in Paterson, New Jersey.<sup>1</sup> Officers entered the residence to find the walls splashed with dog blood.<sup>2</sup> They found various dog-fighting contraband including: steroids, needles, electronic collars, and bloodstained sticks that were used to pry open the dogs' jaws.<sup>3</sup> Of the twenty-one dogs rescued, eighteen were puppies, found malnourished and emaciated in crates in the basement.<sup>4</sup> Most were afflicted with mange, while others were unable to walk.<sup>5</sup> The bodies of four dogs were found next to the crates in bags "like yesterday's garbage."<sup>6</sup> The animal control officer on-site said the scene was "horrible . . . one of the largest dog-fighting rings I've seen."<sup>7</sup>

Police raided the home under suspicion of drugs, and while the police did find an estimated \$12,000 worth of crack cocaine and marijuana, they also found the dogs and a handgun.<sup>8</sup> Less than one year later on March 21, 2015, police raided a home in Elizabeth, New Jersey, and confiscated seventeen dogs from an alleged dog fighting ring.<sup>9</sup> Investigators found a fighting ring stained with blood, various collars, chains and harnesses, a pellet gun, marijuana, and a stolen ATV.<sup>10</sup>

These two incidents were the catalysts prompting New Jersey legislators to amend the state Racketeer Influenced and Corrupt Organizations ("RICO") statute to include dog fighting.<sup>11</sup> The New Jersey RICO amendment has a chance to shine where other criminal laws failed. Elements of the RICO law deter potential dog fighters by

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<sup>1</sup> Sid Kirchheimer, *21 Pit Bulls Rescued from N.J. Dog-Fighting Ring* (Apr. 22, 2014), [http://www.philly.com/philly/blogs/phillypets/20140422\\_PET360\\_21\\_Pit\\_Bulls\\_Rescued\\_from\\_N\\_J\\_Dog\\_Fighting\\_Ring.html](http://www.philly.com/philly/blogs/phillypets/20140422_PET360_21_Pit_Bulls_Rescued_from_N_J_Dog_Fighting_Ring.html).

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

<sup>3</sup> *Id.*

<sup>4</sup> Joe Malinconico & Abbott Koloff, *Large Dog-Fighting Ring Found During Paterson Drug Bust, Authorities Say* (Apr. 19, 2014), <http://www.northjersey.com/news/large-dog-fighting-ring-found-during-paterson-drug-bust-authorities-say-1.999349>.

<sup>5</sup> See Kirchheimer, *supra* note 1.

<sup>6</sup> See Malinconico & Koloff, *supra* note 4.

<sup>7</sup> See Kirchheimer, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> Carly Kilroy, *Nine Indicted for Dog Fighting Ring Operation in Union County* (July 24, 2015), <http://patch.com/new-jersey/summit/nine-union-county-residents-indicted-dog-fighting-ring-operati-on-0>.

<sup>10</sup> *Id.*

<sup>11</sup> Dustin Racioppi & Jim Norman, *N.J. Senate Panel OKs Bill Making Dog Fighting a Crime* (May 8, 2015), <http://www.northjersey.com/news/n-j-senate-panel-oks-bill-making-dog-fighting-a-crime-1.1328964>.

increasing the probability of being caught, guaranteeing punishment for all participants each time, and providing methods to decrease the delay between the act of committing the crime and being punished. The New Jersey law serves as a new standard for dog fighting statutes, and shows that similar additions under all state and federal statutes would create undeviating standards of punishment, thereby strengthening its deterrent value.

The widespread, elusive nature of dog fighting is what makes it such a persistent problem for law enforcement not just in New Jersey, but across the country.<sup>12</sup> Dog fighting is no longer just a way for street gangs to make money through gambling and drugs, but it is also a hobby for men with nine-to-five jobs.<sup>13</sup> Fights are still held in abandoned warehouses in city slums, but are found just as often in secluded suburban homes.<sup>14</sup> Dog fighting owners, breeders, and participants still include lower-class drug dealers, but now further encompass millionaires, celebrities, and professional athletes.<sup>15</sup>

Ultimately, the inherent violence of dog fighting introduces dangerous activity to surrounding neighborhoods because it is almost always linked to other illegal activities including drugs and weapons trafficking, gambling, theft, and other violent crimes,<sup>16</sup> all of which have the potential to wreak havoc on surrounding communities. Dog fighting is a felony in all fifty states and the District of Columbia<sup>17</sup>, but since states have such varied punishments for dog fighting laws,<sup>18</sup> effectiveness is inconsistent throughout the country.<sup>19</sup> Only four states, including New Jersey, have included dog fighting as part of

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<sup>12</sup> The Union County acting prosecutor in the Elizabeth, N.J., case said that dog fighting rings are “harder to uncover than a drug enterprise.” *Id.*

<sup>13</sup> “Audiences contain lawyers, judges, and teachers and other upstanding community leaders drawn in by the excitement and the thrill of the fight.” *Dogfighting FAQ*, AM. SOC’Y FOR PREVENTION CRUELTY TO ANIMALS, <http://www.aspcapro.org/resource/disaster-cruelty-animal-cruelty-animal-fighting/dogfighting-faq> (last visited Mar. 6, 2017).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., Indictment, United States v. Peace, Crim. No. 3:07-CR (E.D. Va., July 17, 2007) (indicting professional football player Michael Vick and others for competitive dog fighting and illegal interstate operation of a business); Eric Fiegel, *Vick Charged With Torturing, Killing Dogs in Virginia Indictment* (Sept. 27, 2007, 4:43 PM), <http://www.cnn.com/2007/US/law/09/25/vick/index.html>.

<sup>16</sup> See Racioppi & Norman, *supra* note 11.

<sup>17</sup> See generally, *Animal Protection Laws of the United States of America and Canada*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/advocating-for-animals/animal-protection-laws-of-the-united-states-of-america-and-canada/> (click on state to see a list of animal laws pertaining to the state) (last visited Mar. 6, 2015).

<sup>18</sup> Compare LA. STAT. ANN. § 14:102.5 (felony for dog fighting punished by not less than one year nor more than ten years imprisonment, a fine not less than \$1,000 to \$25,000), with MISS. CODE ANN. § 97-41-19 (felony for dog fighting punishable of not less than one to three years in prison and a fine not less than \$1,000-\$5,000).

<sup>19</sup> The Animal Legal Defense Fund acknowledges that inconsistent laws and “legal loopholes” create difficulties for investigators and attorneys attempting to prosecute dog fighting participants. See *Animal Fighting Facts*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/laws-cases/animal-fighting-facts/> (last visited Sept. 21, 2015). For example, in some states, possession of animals for fighting may be legal, or only a misdemeanor. *Id.* Further, some jurisdictions consider spectating at an animal fight legal, or only a misdemeanor. *Id.* This inconsistency creates problems because prosecutors must be able to prove who the ring organizer is to achieve a felony. *Id.*

the state RICO statute.<sup>20</sup> “By upgrading penalties for dog fighting, we are saving the lives of countless animals and rescuing families from the hidden dangers of living in a community exposed to violent crime.”<sup>21</sup>

Part II of this note will introduce relevant federal and state animal cruelty and dog fighting laws. This section will also introduce the federal and New Jersey RICO laws and explain how dog fighting fits into the organized crime statute.

Part III of this note discusses, in depth, the problem of dog fighting in the United States. This section focuses how these enterprises foster an environment of fear and violence and discusses the repercussions of dog fighting to public safety, families, children, and animals. It also explains that one of the main problems facing authorities is the lack of training and experience to manage and prevent dog fighting operations.

Part IV of this note makes a case for the RICO amendment to serve as an opportunity to fight crime on a larger scale in the region. This section introduces the cost-benefit analysis used by would-be offenders, and discusses that most criminal laws do not act as a deterrent because offenders see the benefits of committing the crime outweighing the possible consequences. This section balances the elements of RICO against the cost-benefit analysis, and finds that the RICO law functions in such a way as to magnify the “cost” part of the equation so that it can act as a deterrent against dog fighting.

## **II. STATE AND FEDERAL DOG FIGHTING LAWS AND AN INTRODUCTION TO RICO**

This section contains background information to dog fighting in the United States, current animal cruelty and dog fighting laws, and a brief introduction to federal and the recent New Jersey RICO laws. Dog fighting has been around for nearly 200 years, but is still immensely popular. There are three types of fighters, which vary in organization, motivation for fighting, and a variety of other reasons.

There are already a few federal laws enacted or revised to address dog fighting in the United States. However, these laws are either too vague or do not effectively serve as a deterrent to dog fighting. Furthermore, though dog fighting is a felony in all states, the laws are so diverse that they do not serve as an effective tool, especially since most dog fighting involves crossing, or at least advertising, across state lines. This inconsistency makes it difficult for authorities to establish claims for dog fighting, or to penalize the appropriate parties, based on whatever state the organization happens to be in when and if it gets caught.

The section next introduces the RICO statute and its components. It describes how the recent New Jersey law can help to reduce crime in the region because its

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<sup>20</sup> Three additional states that include dog fighting under their RICO laws are Virginia, VA. CODE ANN. § 18.2-513; Oregon, OR. REV. STAT. § 166.715; and Utah, UTAH CODE. ANN. § 76-10-1602(4)(jjj).

<sup>21</sup> *Kean Bill to Criminalize Dog Fighting, Punish Ring Leaders Now Law*, THE OFFICIAL SITE N.J. SENATE REPUBLICANS (Aug. 10, 2015), <http://www.senatenj.com/index.php/tomkean/kean-bill-to-criminalize-dog-fighting-punish-ring-leaders-now-law/23593>.

elements make it easier to trap enterprise members not only for the act of dog fighting, but for a variety of other crimes that often are found to go hand in hand with dog fighting.

## **A. Legal Loopholes in Animal Cruelty and Dog Fighting Laws**

There are numerous state laws that address dog fighting, but since their definitions are varied, their implementation and punishments are inconsistent. In the region surrounding New Jersey, the penalties for owning a fighting dog range from four years in New York<sup>22</sup>, five years in Delaware<sup>23</sup>, and seven years in Pennsylvania<sup>24</sup>.

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- <sup>22</sup> 2. Any person who engages in any of the following conduct is guilty of a felony punishable by imprisonment for a period not to exceed four years, or by a fine not to exceed twenty-five thousand dollars, or by both such fine and imprisonment:
- (a) For amusement or gain, causes any animal to engage in animal fighting; or
  - (b) Trains any animal under circumstances evincing an intent that such animal engage in animal fighting for amusement or gain; or
  - (c) Breeds, sells or offers for sale any animal under circumstances evincing an intent that such animal engage in animal fighting; or
  - (d) Permits any act described in paragraph (a), (b) or (c) of this subdivision to occur on premises under his control; or
  - (e) Owns, possesses or keeps any animal trained to engage in animal fighting on premises where an exhibition of animal fighting is being conducted under circumstances evincing an intent that such animal engage in animal fighting.

N.Y. AGRIC. & MKTS. LAW § 351 (2015).

- <sup>23</sup> (a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a person who rents or otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section, is guilty of a class E felony.

DEL. CODE ANN. tit. 11, § 1326 (2015); DEL. CODE ANN. tit. 11 § 4205(b)(5) (2015) (establishing the penalty for a Class E felony is up to five years incarceration).

- <sup>24</sup> (h.1) A person commits a felony of the third degree if he:
- (1) for amusement or gain, causes, allows or permits any animal to engage in animal fighting;
  - (2) receives compensation for the admission of another person to any place kept or used for animal fighting;
  - (3) owns, possesses, keeps, trains, promotes, purchases, steals or acquires in any manner or knowingly sells any animal for animal fighting;
  - (4) in any way knowingly encourages, aids or assists therein;
  - (5) wagers on the outcome of an animal fight;

Furthermore, the penalty for attending a dog fight ranges from three months in New York<sup>25</sup>, to three years in Delaware<sup>26</sup>, to seven years in Pennsylvania<sup>27</sup>. The differing degrees of penalties foster many legal loopholes to investigators and prosecutors. For instance, since being a spectator at an animal fight is only a misdemeanor offense in Delaware, the prosecutors can only achieve a felony conviction if they can prove the person is the leader of the ring.<sup>28</sup> Hypothetically, a dog fighting ring in New Jersey may relocate to Delaware because only the ringleader, and not the spectators or participants, can be charged in that state. Therefore, consistency across all states is key to effectively prosecute offenders.

There are also federal laws crafted to deter and punish dog fighting. However, the main problem is that federal prosecutors may be unwilling or unable to prioritize animal fighting cases, except in high-profile circumstances.<sup>29</sup> The most important

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- (6) pays for admission to an animal fight or attends an animal fight as a spectator; or
  - (7) knowingly permits any place under his control or possession to be kept or used for animal fighting.

18 PA. CONS. STAT. ANN. § 5511(h.1) (2015); 18 PA. CONS. STAT. ANN. § 1103(3) (establishing that a felony in the third degree is grounds for imprisonment for no more than seven years).

<sup>25</sup> See N.Y. AGRIC. & MKTS. LAW § 351(5) (2015) (any person whose “knowing presence as a spectator at any place where an exhibition of animal fighting is being conducted” is guilty of a class B misdemeanor); N.Y. PENAL LAW § 70.15(2) (2015) (establishing a class B misdemeanor as a sentence not exceeding three months).

<sup>26</sup> DEL. CODE ANN. tit. 11, § 1326(b) (2015) (establishing that a person who is “present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition . . . and knows the exhibition is taking place or is about to take place is guilty of a class F felony”); DEL. CODE ANN. tit. 11, § 4205(b)(6) (establishing the penalty for a Class F felony is up to three years incarceration).

<sup>27</sup> (h.1) A person commits a felony of the third degree if he:

- (1) for amusement or gain, causes, allows or permits any animal to engage in animal fighting;
- (2) receives compensation for the admission of another person to any place kept or used for animal fighting;
- (3) owns, possesses, keeps, trains, promotes, purchases, steals or acquires in any manner or knowingly sells any animal for animal fighting;
- (4) in any way knowingly encourages, aids or assists therein;
- (5) wagers on the outcome of an animal fight;
- (6) pays for admission to an animal fight or attends an animal fight as a spectator; or
- (7) knowingly permits any place under his control or possession to be kept or used for animal fighting.

18 PA. CONS. STAT. ANN. § 5511(h.1) (2015); 18 PA. CONS. STAT. ANN. § 1103(3) (establishing that a felony in the third degree is grounds for imprisonment for no more than seven years).

<sup>28</sup> See *Animal Fighting Facts*, *supra* note 18 and accompanying text.

<sup>29</sup> *Id.*

federal law for dog fighting is the Animal Welfare Act (“AWA”)<sup>30</sup>. The Animal Welfare Act prohibits any person from knowingly sponsoring or exhibiting an animal in an “animal fighting venture” when the animal moves between states.<sup>31</sup> The AWA prohibits the entire commercial activity and punishes everyone involved in it, even if a person just participated in a single fight.<sup>32</sup> This statute is effective because (1) animal fighting is rarely a one-act event; and (2) most animal fighting moves between different states.<sup>33</sup>

Furthermore, the AWA was amended in February 2014 as part of the Farm Bill.<sup>34</sup> The relevant provision, the Animal Fighting Spectator Prohibition Act, made it a federal crime to attend or bring a child under the age of sixteen to an animal fighting event.<sup>35</sup> The provision casts a wider net than it had previously because it now prosecutes attendees, as well as trainers and owners.<sup>36</sup> Organizers, trainers, promoters, and owners were able to disperse and blend into the crowd to escape arrest,<sup>37</sup> but the new amendment expands liability and makes it easier to prosecute those associated, regardless of their level of involvement. The ASPCA claims that this provision discourages individuals from enabling animal fights “via their illegal wagers and admission fees, and will ensure that organizers cannot easily hide in the crowd when law enforcement officials arrive.”<sup>38</sup>

Despite these changes amendments, it is difficult to prove the “interstate commerce” requirements of the law, especially if the laws surrounding those states are

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<sup>30</sup> 7 U.S.C. §§ 2131-2159 (2016).

<sup>31</sup> 7 U.S.C. § 2156 (2014).

<sup>32</sup> *Id.*

<sup>33</sup> Although the dog fighting venture may be conducted in private, and any single fight may involve two dogs that have never crossed state lines, an animal fighting venture is interstate in nature if it involves participants in the gambling who have crossed state lines, or advertised across states lines, or any of the animals in the entire venture have been transported across state lines.

*U.S. v. Thompson*, 118 F. Supp. 2d 723, 725 (W.D. Tex. 1998); § 7 U.S.C.A. § 2156.

<sup>34</sup> *See* Agricultural Act of 2014, Pub. L. No. 79, 128 Stat. 649 (2014).

<sup>35</sup> *See* 7 U.S.C. § 2156.

<sup>36</sup> The ASPCA notes that, “spectators at animal fights are not there accidentally – they intentionally seek out the criminal activity at secret locations for the entertainment of watching two animals fight to the death and the opportunity to gamble on the barbaric event.” Press Release, Am. Soc’y for the Prevention of Cruelty to Animals, ASPCA Commends U.S. Senate for Passing Strong Animal Fighting Provision in Farm Bill (June 11, 2013), <https://www.aspc.org/about-us/press-releases/aspc-commends-us-senate-passing-strong-animal-fighting-provision-farm-bill>.

<sup>37</sup> *Animal Fighting Spectator Prohibition Act*, ANIMAL WELFARE INST., <https://awionline.org/content/animal-fighting-spectator-prohibition-act> (last visited Feb. 20, 2016). In April 2015, the first defendants in Akron, OH, were convicted under the new provision. Eric Heisig, *Leader of Akron Dogfighting Ring Pleads Guilty to Federal Charges* (Apr. 13, 2015, 5:00 PM), [http://www.cleveland.com/court-justice/index.ssf/2015/04/leader\\_of\\_akron\\_dogfighting\\_ri.html](http://www.cleveland.com/court-justice/index.ssf/2015/04/leader_of_akron_dogfighting_ri.html). Eight pit bulls were seized during the raid, including two mid-fight. Authorities seized more than \$52,000 in cash, fifty marijuana plants, and an illegal handgun. *Id.*

<sup>38</sup> *Id.*

all different.<sup>39</sup> Furthermore, current federal dog fighting laws does not include civil liability or give other remedies for those affected by dog fighting. Therefore, it is important that all states have strong laws to supplement their federal counterparts.

## **B. Intro to RICO, and What Gives Jersey’s New Law its Bite**

The New Jersey RICO amendment was designed to deter dog fighting by establishing harsher punishment and expanding liability to all people involved, no matter their level of participation. Before the amendment, dog fighting was an animal cruelty offense in New Jersey. Those convicted – whether they were ringleaders, participants, or gamblers – faced three to five years imprisonment and incurred a \$15,000 fine.<sup>40</sup> Including dog fighting under the RICO statute creates tougher punishments for ringleaders over participants and gamblers, though the statute still criminalizes those who do not lead fights. The bill changed New Jersey laws in two ways. First, it established two new crimes: dog fighting and leading a dog fighting network. Participating is a third-degree crime, carrying a penalty of three to five years in prison and a fine of \$15,000,<sup>41</sup> while leading a dog fight is now a second-degree crime, punishable by five to ten years in prison and a fine of \$150,000.<sup>42</sup>

The second, more crucial, aspect of the law is the RICO amendment. Under the amended RICO statute, dog fighting is considered “racketeering activity,” a second-degree crime.<sup>43</sup> The amendment now punishes participants, spectators, owners, trainers, and generally any person who “for amusement or gain, causes, allows, or permits the fighting or baiting of a dog.”<sup>44</sup> Those convicted could also be required to pay restitution to cover the cost of housing and medical treatment to animals injured as a result of dog fighting.<sup>45</sup> This change is important because it helps surviving dogs and dog owners in a way that did not exist before. The RICO statute also opens up the possibility of civil liability, which can be brought by the Attorney General or by persons injured as a result of RICO violations.<sup>46</sup> Before the amendment, persons injured by dog fighting in New Jersey did not have a remedy, other than if the offenders were prosecuted. Further, any “property or assets” relating to the criminal enterprise could

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

<sup>40</sup> See N.J.S. 736, Sess. Law Serv., 216th Leg., 2d Ann. Sess. (N.J. 2015).

<sup>41</sup> See N.J. STAT. ANN. § 2C:33-31 (West 2015).

<sup>42</sup> See N.J. STAT. ANN. § 2C:33-32 (West 2015).

<sup>43</sup> N.J. STAT. ANN. § 2C:41-1(a)(1)(cc) (West 2015); N.J. STAT. ANN. § 2C:41-3 (West 2015). See *infra* note.

<sup>44</sup> N.J. STAT. ANN. § 2C:33-31 (West 2015).

<sup>45</sup> N.J. STAT. ANN. § 2C:33-32(b)(1)(b) (West 2015).

<sup>46</sup> 18 U.S.C.A. § 1964(b)-(c) (Westlaw 2015).

be seized<sup>47</sup>, including real estate and paraphernalia used before, during, and after the fight.<sup>48</sup>

These changes are crucial because the New Jersey RICO statute punishes not only ringleaders, but spectators, owners, and participants, who were previously much more difficult to prosecute because the legal bar was so high, and the punishments were not strong enough to deter violators. Indeed, because the punishments for participating and spectating were the same, there was nothing to deter former participants from deciding to lead a fight, since they could make more money without adding legal liability.

New Jersey Senator Tom Kean, a sponsor of the bipartisan legislation that created the law,<sup>49</sup> emphasized the difficulty of prosecuting dog fighters, and noted that “amending current racketeering laws to include dog fighting will give law enforcement the tools they need to combat this pervasive underground industry.”<sup>50</sup> Law makers were motivated to include dog fighting under the RICO statute, because the fighting aspect is usually just one part of a broader operation, and has been linked to homicide, prostitution, and illegal drug and weapon trafficking.<sup>51</sup> “Organized dog fighting is a highly lucrative and brutal crime . . . The truth is that dog fighting happens all over the country, but it’s an underground activity that goes mostly unnoticed by the public.”<sup>52</sup>

“In the most basic sense, RICO forbids the running, controlling, or acquiring of an ‘enterprise’<sup>53</sup>(or interest in an enterprise) through racketeering or the collection of illegal debt” that affects interstate commerce.<sup>54</sup> The “prohibited activities” criminalized under RICO generally include a “person” acting through either “a pattern of racketeering” or “the collection of illegal debts” to affect an interest in an “enterprise.”<sup>55</sup>

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<sup>47</sup> See N.J. STAT. ANN. § 2C:33-32(b)(1)(a) (West 2015). This can include property used during the fight, but also paraphernalia used during and before the fight, including steroid needles, electric collars, and treadmills.

<sup>48</sup> See, e.g., *The Final Round: Illegal Animal Fighting Manual*, HUMANE SOC’Y OF THE UNITED STATES, <http://www.slideshare.net/HVCClibrary/hsus-law-enforcement-primer>; Michelle Tsai, *Michael Vick’s “Rape Stand,”* SLATE.COM (July 20, 2007), [http://www.slate.com/articles/news\\_and\\_politics/explainer/2007/07/michael\\_vicks\\_rape\\_stand.html](http://www.slate.com/articles/news_and_politics/explainer/2007/07/michael_vicks_rape_stand.html).

<sup>49</sup> N.J.S. 736, Sess. Law Serv., 216th Leg., 2d Ann. Sess. (N.J. 2015).

<sup>50</sup> See Kean, *supra* note 21.

<sup>51</sup> *Id.*

<sup>52</sup> Press Release, Fed. Bureau of Investigation, ASPCA Assists U.S. Attorney’s Office, FBI, Columbia Police in South Carolina Drug, Dog Fighting Investigation (Oct. 24, 2014).

<sup>53</sup> This note does not discuss whether a dog-fighting ring is an “enterprise,” even though it is not a legal entity. “RICO is directed at groups of individuals informally organized for a common purpose.” Blakey & Gettings, *supra* note 60, at 1025 (1980). Furthermore, “enterprise” has long been attributed to formal and informal group activities; see also ARNOLD H. LOEWY, CRIMINAL LAW IN A NUTSHELL 289 (West, 5th ed. 2009) (noting the Supreme Court has held that the phrase “enterprise” is sufficiently broad to encompass illegitimate as well as legitimate enterprises); *United States v. Turkette*, 452 U.S. 576 (1981) (holding that the term “enterprise” as used in RICO encompassed both legitimate and illegitimate enterprises).

<sup>54</sup> Matthew C. Heger, *Bringing Rico to the Ring: Can the Anti-Mafia Weapon Target Dogfighters?*, 89 WASH. U. L. REV. 241, 255 (2011).

<sup>55</sup> Specifically,

“Racketeering” refers to any of the predicate offenses, or racketeering activities, listed within the RICO statute, including murder, kidnapping, gambling, dealing in a controlled substance, dealing in obscene manner, and robbery and, now, dogfighting.<sup>56</sup> It is under these predicate offenses where the connection to organized crime is really made, because many of the offenses – such as gambling and dealing in a controlled substance – are often found in connection with dog fighting.<sup>57</sup>

The federal RICO statute was the end product of a long legislative effort to develop new legal remedies to deal with an old problem: organized crime.<sup>58</sup> Congress passed the Organized Control Act of 1970<sup>59</sup> to establish a legal option designed to

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a. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which he has participated as a principal within the meaning of N.J.S. 2C:2-6 to use or invest, directly or indirectly, any part of the income, or the proceeds of the income, in acquisition of any interest in, or the establishment or operation of any enterprise which is engaged in or the activities of which affect trade or commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful under this section, provided that the sum total of the securities of the issuer held by the purchaser, the members of his family, and his or their accomplices in any pattern of racketeering activity or in the collection of an unlawful debt does not amount in the aggregate to 1% of the outstanding securities of any one class, or does not, either in law or in fact, empower the holders thereof to elect one or more directors of the issuer, provided further, that if, in any proceeding involving an alleged investment in violation of this section, it is established that over half of the defendant's aggregate income for a period of 2 or more years immediately preceding the investment was derived from a pattern of racketeering activity, a rebuttable presumption shall arise that the investment included income derived from a pattern of racketeering activity.

b. It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in or activities of which affect trade or commerce.

c. It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

d. It shall be unlawful for any person to conspire as defined by N.J.S. 2C:5-2, to violate any of the provisions of this section.

N.J. STAT. ANN. § 2C:41-2 (West 2015).

<sup>56</sup> See N.J. STAT. ANN. § 2C:41-1 (West 2015).

<sup>57</sup> It is important to mention that neither dog fighting nor other Animal Welfare Act violations are listed as predicate offenses under the criminal RICO statute. 18 U.S.C.A. § 1961(1)(A). However, Virginia, Utah, Oregon, and now New Jersey, do include dog fighting and other animal cruelty statutes under their RICO statutes. See VA. CODE ANN. § 18.2-513 (Virginia Racketeer Influenced and Corrupt Organization Act); OR. REV. STAT. § 166.715 (Oregon Racketeering statute); UTAH CODE. ANN. § 76-10-1602(4)(jjj) (Utah Pattern of Unlawful Activity Act).

<sup>58</sup> G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts – Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1013 (1980).

<sup>59</sup> Pub. L. No. 91-452, 84 STAT. 922 (1970).

“eradicat[e] organized crime in the United States.”<sup>60</sup> RICO<sup>61</sup> was enacted as Title IX of the Organized Control Act.

Importantly, state RICO statutes do not completely mirror their federal counterpart,<sup>62</sup> and the flexibility that states have in crafting a RICO statute to their needs is beneficial. For example, many state RICO statutes have significantly broader civil and criminal applications than the federal statute, which incorporate an array of state law offenses that are outside the scope of the federal statute.<sup>63</sup> New Jersey’s RICO statute has more racketeering activities than the federal statute<sup>64</sup>, which permits the state to establish claims for crimes the federal RICO statute cannot.<sup>65</sup> Furthermore, many state RICO statutes have fewer essential elements, which make it easier to convict offenders.<sup>66</sup>

### III. THE BRUTAL WORLD OF DOG FIGHTING, ITS REPERCUSSIONS, AND OUR FAILURE TO PREVENT IT

This section details the brutal act of dog fighting and discusses the repercussions it has on humans and animals. The section begins with a brief history of dog fighting and discusses the consequences and fear that dog fighting imposes on humans, namely, that dog fighting involves violent crime and illegal activity that desensitizes children to violence, poses a danger to public safety, and contributes to the high number of shelter animals euthanized because people are too scared to adopt dogs that were previous fighters. The section then details the animal cruelty aspects of dog fighting and explains that the majority of the terror these animals face is not in the pit – it is at the hands of their owners.

Regrettably, most current law enforcement departments do not have the proper training or resources to effectively deal with dog fighting. Though most law enforcement officials believe that dog fighting is becoming a more serious problem,

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<sup>60</sup> *Id.* at 84 STAT. 923.

<sup>61</sup> 18 U.S.C.A. § 1961 (2013).

<sup>62</sup> John E. Floyd, *Introduction: RICO State by State: A Guide to Litigation Under the State Racketeering Statutes, Second Edition*, 2 GPSOLO EREPORT 1, 1-3 (Nov. 2012), [http://www.americanbar.org/publications/gpsolo\\_ereport/2012/november\\_2012/introduction\\_rico\\_state\\_by\\_state.html](http://www.americanbar.org/publications/gpsolo_ereport/2012/november_2012/introduction_rico_state_by_state.html) (hereinafter referred to as *RICO State by State*). The author points out that state RICO statutes have more in common with one another than with the federal RICO statute. *Id.* Therefore, if two states have similar RICO statutes that both incorporate dog fight laws, it could theoretically make it easier for state authorities to prosecute dog fighting rings under RICO in that region.

<sup>63</sup> *Id.* at 1-3.

<sup>64</sup> Compare N.J. STAT. ANN. § 2C:41-1(a) with 18 U.S.C. § 1961(1) (New Jersey’s RICO statute includes predicate acts differing from the federal statute including, *inter alia*, endangering the welfare of a child, § 2C:41-1(a)(1)(v); dog fighting, § 2C:41-1(a)(1)(cc); and terrorism, § 2C:41-1(a)(1)(y)).

<sup>65</sup> See Brian Mahany, *Predicate Acts for New Jersey RICO Statute*, (2016) <http://www.natlawreview.com/article/predicate-acts-new-jersey-rico-statute>.

<sup>66</sup> *Id.*

almost all of them concede that they have received little to no training, and that if they were confronted with a dog fighting case, they may not know how to deal with it.

### **A. History of Dogfighting in the U.S.**

Dog fighting has been popular in the United States for nearly 200 years.<sup>67</sup> Dog fighting is widely believed to have come to the United States around 1817 when the Staffordshire Bull Terrier was brought to the country from England, where the activity was popular.<sup>68</sup> It is believed that dog fighting's persistence was due to the wave of immigrants to the United States from Europe in the early 19th century.<sup>69</sup> Simply, immigrants brought dogs from their homelands and wanted to continue the tradition.<sup>70</sup>

Though the conduct was banned in most states by the 1860s, its popularity continued.<sup>71</sup> Activists against dog fighting were met with some resistance at first because interest was so pervasive, even law enforcement officers were participating.<sup>72</sup> However, by the 1930s and 1940s, organizations that once backed dog fighting, such as the United Kennel Club, withdrew their endorsements.<sup>73</sup> Dog fighting was universally banned in 1976,<sup>74</sup> but still is popular today. Most dog fighting rings abide by the Cajun Rules<sup>75</sup> which, for the sake of consistency, set out parameters such as the size of the pit,

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<sup>67</sup> Hannah Gibson, *Detailed Discussion of Dog Fighting*, MICH. SCH. L., ANIMAL LEGAL & HISTORICAL CTR. § II (2005).

<sup>68</sup> *Id.*

<sup>69</sup> Phyllis G. Coleman, *Note to Athletes, NFL, and NBA: Dog Fighting is a Crime, Not a Sport*, 3 J. ANIMAL L. & ETHICS 85, 89 (2009).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* Dog fighting was so popular, in fact, that the United Kennel Club endorsed it, even creating rules and sanctioned referees. *Id.*

<sup>72</sup> Coleman, *supra* note 24, at 89.

<sup>73</sup> Gibson, *supra* note 22, at § II.

<sup>74</sup> *Id.*; *see also* Animal Fighting Venture Prohibition, 7 U.S.C.S. § 2156 (1976) (amended 2014).

<sup>75</sup> The Cajun Rules of dog fighting are as follows:

Rule 1: Size of pit, optional; to be square with sides 2 feet high, scratch line 12 feet apart.

Rule 2: Referee to be chosen before the dogs are weighed in or washed and referee to conduct the contest according to these rules and his decision to be final.

Rule 3: Referee to see the dogs weighed at time agreed on and if either dog is over top weight agreed on he loses the forfeit money.

Rule 4: Parties to toss coin to see who shall wash first, each party to furnish two clean towels and a blanket.

Rule 5: If requested to do so the referee shall search the person named to wash the dogs and then have him bare his arm to the elbow and wash both dogs in the same warm water and rinse them each in his half of the warm clean water provided for that purpose.

Rule 6: As the dogs are washed clean and dried they shall be turned over to their handlers and at once taken to their corners of the pit as designated by the referee and the referee must search

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handlers for means of foul play and see that he bares his arms to the elbow before he receives his dog and must keep his arms bare in such a manner during the contest.

Rule 7: The dog's owner or his representative shall be allowed at all times to be near his dog and watch to see that no harm is done him, and each owner shall be allowed to name a man or himself watch his opponent's dog and handler at all times to see he is given no unfair advantage.

Rule 8: Either dog's owner, handler, or watcher if he sees anything wrong must at once appeal to the referee and get his decision. And if any handler, watcher or owner violates any of these rules and thereby favors either dog the dog so favored must at once be declared the loser.

Rule 9: The interested parties shall choose a timekeeper at the pit side.

Rule 10: The dogs are placed in their corners of the pit, opposite corners, faces turned from each other and only the dogs and their handlers inside the pit. Then the referee shall say, "Face you dogs". Each handler must always show his dog full head and shoulders between his legs. The referee says, "Let go", but the handlers must never push or shove their dogs and handlers shall not leave their corners until the dogs are together.

Rule 11: Now when one of the dogs turns his head and shoulders away from his opponent after the fight is on it is a turn, whether they are in holds or free, and the handler must claim the turn and the referee must allow the claim if he believes it is a turn or the referee must call the first fair turn he sees whether the handler claims it or not and when the referee calls a turn he shall say, "Handle your dogs", and each handler must pick up his dog as soon as he can without breaking a hold. Handlers carry their dogs to their respective corners the referee shall say, "Face your dogs". Then the handlers must show their dog's head and shoulders between their legs, facing the center of the pit. The dog that turned first must scratch first. In five seconds more the referee shall say; "Let go", then the dog that made the first turn must be turned loose by his handler and this dog must go across and mouth the other dog. If, when he is turned loose he refuses to start at once or is he stops on the way over, or if he fails to reach his opponent must declare his opponent the winner. A handler is allowed to release his dog at anytime he sees fit after the dog whose turn it is to cross has started over. He must turn him loose when the dogs touch each other. He is not compelled to until then.

Rule 12:

1. If neither dog has made a turn and they cease to fight after 60 seconds of no action the down dog is to scratch first, if he makes his scratch the fight is on and they shall scratch in turns until the contest is decided.
2. If the down dog fails to scratch the other dog is to scratch to win. If he fails to scratch the contest shall be declared a draw by the referee.
3. No handler is to handle his dog until ordered by referee, if he does, it shall be called a foul and he is to forfeit the contest to his opponent.
4. No flash pictures or hitting on pit side shall be allowed unless agreed upon by the two contestants.

Rule 13: After the dogs are together this time either handler is allowed to pick up his dog when they are not in holds, if ordered by referee. If he tries for a pick up and either dog has a hold he must turn him loose at once. If he catches his dog up free both handlers must handle their dogs at once. Take their dogs to their corners and proceed same as at the first turn, except this time the dog which went across before is allowed to remain in his corner while his opponent makes a scratch, or goes across, and they alternate or take it turn about in this manner until one of them is declared the winner under these rules. The referee pays no attention to the turns after the first scratch.

rules for the dogs in the fight, responsibilities of the owners, and even what happens if the fight is raided and must begin again elsewhere.

There are three levels of dog fighting – professionals, hobbyists, and street fighters – which vary based on factors such as amount of money in the purse, level of sophistication, and the scene of the fight.<sup>76</sup> Professional dog fighting is lucrative and well-organized, with a focus on monetary gain by selling, fighting, and breeding dogs.<sup>77</sup> Organized fights can be local or even international events and are supported by a “clandestine subculture of dog fighters and spectators.”<sup>78</sup> There is often high security, codes, or passwords to attend the events, the secrecy of which makes it even more challenging for police to infiltrate.<sup>79</sup>

Members of the second group, hobbyists, may own a few dogs for fighting, but their main involvement comes from waging, socializing, and spectating.<sup>80</sup> Hobbyists’ main source of interest in dog fighting is for the entertaining sportsmanship,<sup>81</sup> and they therefore are not as interested in breeding champion fighters or bloodlines to the extent the professional fighters are. The largest and fastest-growing group<sup>82</sup> are the street fighters, which use dog fighting as a vehicle to prove their superiority and toughness to

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Rule 14: If one of the dogs fangs himself, that is, if he gets his teeth hung in his own lip, his handler is allowed to un-fang him. If the dogs have to be separated for this they are turned loose again, both at the same time within two feet of each other in the center of the pit.

Rule 15: No sponging shall be allowed, and no towels or anything else taken into the pit by the handlers except a bottle of drink for his dog and a fan to cool him with. The handlers must taste their dogs drink before the referee to show that it contains no poison.

Rule 16: If the handler of either dog is seen to take anything from anyone on the outside of the pit he is to lose the battle. Each party shall have the right to put a man near his opponent's corner to watch the handler. Should he see the handler put anything on his dog he may appeal to the referee and if the referee finds anything on the dog he is to lose the battle.

Rule 17: Should either handler leave the pit with his dog before the referee renders his decision he is to lose the battle.

Rule 18: The handlers shall be allowed to encourage their dogs by voice or hand-clapping or snapping of fingers, but must not touch their dogs or use foul, dirty methods, by saving their dogs from hard fall or keeping the other handler away from his dog, or in any other way act unfairly. The referee must decide the battle against the one who does so.

Rule 19: Should the police interfere the referee to name the next meeting place.

G.A. (Gaboon) Trahan, *Cajun Rules*, <http://www.sporting-dog.com/select-pages/cajunrules.html> (last visited March 6, 2016); *see also* United States v. Berry, No. 09-CR-30101-MJR, 2010 WL 1882057, at \*6 (S.D. Ill. May 11, 2010) (acknowledging Cajun Rules as the governing rules of dog fighting).

<sup>76</sup> Heger, *supra* note 59 at 246.

<sup>77</sup> *Berry*, 2010 WL 1882057, at \*3. Because professionals are interested primarily in money, “creating the best specimen for fighting is their main concern.” *Id.*

<sup>78</sup> Heger, *supra* note 59, at 246.

<sup>79</sup> *Berry*, 2010 WL 1882057, at \*3.

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

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

<sup>82</sup> *Id.*; Heger, *supra* note 59, at 246.

their peers.<sup>83</sup> These fights are often unorganized and can take place in alleyways, in backyards, on the street, and are often devoid of any official rules.<sup>84</sup>

Similar to any illicit activity, it is difficult to determine just how many people are involved with dog fighting,<sup>85</sup> but, the American Society for Prevention of Cruelty for Animals (“ASPCA”) estimates that tens of thousands of people are involved in dog fighting in the U.S.<sup>86</sup> Furthermore, the Union County Acting Prosecutor for the Elizabeth, New Jersey, dog-fighting ring estimates that dog fighting is a \$500 million industry nationwide.<sup>87</sup>

## **B. Exposure to Violence and Long-Lasting Fear**

### **1. Danger to Surrounding Neighborhoods**

Dog fighting is accompanied by dangerous conduct long before and long after the fight begins. First, of course, is dog fighting’s crucial component: illegal gambling.<sup>88</sup> At the dog fight ring in Elizabeth, New Jersey, for example, individuals were betting up to \$50,000 on a single fight.<sup>89</sup> Participants also bring large amounts of money to sell, buy, and consume drugs during the fights.<sup>90</sup> In addition, thousands of dollars are spent on stud fees and the sale of pups from successful fighting bloodlines.<sup>91</sup> Because of the substantial amount of money at fights, firearms are almost always present.<sup>92</sup> Dog fighting has been linked to homicide, prostitution, theft, and other violent crimes, which means that the rings threaten the safety and welfare not only of participants, but their families, neighbors, and communities.<sup>93</sup>

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<sup>83</sup> Berry, 2010 WL 1882057, at \*4.

<sup>84</sup> *Id.* at 3.

<sup>85</sup> See *Dogfighting FAQ*, *supra* note 13.

<sup>86</sup> *Id.* (This number is estimated based on fight reports in underground dog fighting publications and on animals entering shelters with evidence of fighting).

<sup>87</sup> See Racioppi & Norman, *supra* note 11.

<sup>88</sup> “Major dogfight raids have resulted in seizures of more than \$500,000, and it is not unusual for \$20,000 - \$30,000 to change hands in a single fight.” *Dogfighting FAQ*, *supra* note 13.

<sup>89</sup> Racioppi & Norman, *supra* note 11 (statement of Union County Acting Prosecutor Grace Park).

<sup>90</sup> See *Dogfighting FAQ*, *supra* note 13; *Dogfighting World is Inhumane Society*, July 19, 2007, <http://www.nydailynews.com/sports/football/dogfighting-world-inhumane-society-article-1.266157> (quoting statement of anonymous New York detective: “A lot of times you can get more drugs and guns off the street by breaking up dog rings than you would breaking up drug rings.”).

<sup>91</sup> *Dogfighting FAQ*, *supra* note 13.

<sup>92</sup> *Dogfighting Fact Sheet*, HUMANE SOC’Y OF THE UNITED STATES, [http://www.humanesociety.org/issues/dogfighting/facts/dogfighting\\_fact\\_sheet.html?referrer=https://www.google.com](http://www.humanesociety.org/issues/dogfighting/facts/dogfighting_fact_sheet.html?referrer=https://www.google.com) (last visited Mar. 6, 2016).

<sup>93</sup> See, e.g., Cindy Horswell, *Was Dog Fighting at Core of 2006 Homicide?* HOUSTON CHRONICLE, Oct. 21, 2007, <http://www.chron.com/news/houston-texas/article/Was-dog-fighting-at-core-of-2006-homicide-1822274.php> (stating that authorities believe an unpaid dog fighting bet led to the murder of a participant and the restraining and binding of his wife, three children, and parents-in-law, who watched his murder at their home).

## 2. Psychological and Emotional Trauma

Dog fighting is not only an activity reserved for adults. The past few decades have seen an increased number of children in urban areas who have witnessed dog fighting on the street or as a result of gang activity.<sup>94</sup> Reports have shown that dog fighting is a way to initiate potential gang members “through blood . . . [gangs] use [dog fighting] to deaden their senses to violence.”<sup>95</sup> Early acquaintance with dog fighting can have numerous serious psychological and emotional repercussions, including indifference to sentient animals and their suffering, interest in violence, and contempt for authority.<sup>96</sup> Some experts believe that, for these malleable minds, violence becomes a nonchalant part of everyday life.<sup>97</sup> Young children who have grown up watching this type of violence may pit two animals together in a fight to the death “to pass the time.”<sup>98</sup> Other young people may view fights as an exciting, but ordinary, social occasion.<sup>99</sup> The link between animal cruelty and violence towards humans is thoroughly documented,<sup>100</sup> and a child growing up with the understanding that it is permissible to be violent towards

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<sup>94</sup> A study by the Anti-Cruelty Society reported that one in five grammar school children in Chicago were actively participating in dog fighting. Transcript of Live Broadcast, *Michael Vick Pleads Not Guilty to Dogfighting Charges; How Widespread Is Dogfighting in America?* CNN, July 27, 2007, <http://transcripts.cnn.com/TRANSCRIPTS/0707/27/pzn.01.html> (quoting Gene Mueller, President of the Anti-Cruelty Society: “Actively participating was construed to mean, “[T]hey were getting the dogs, bringing the dogs, and involved in the fighting.” See also Francesca Ortiz, *Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws*, 3 STAN. J. ANIMAL L. & POL’Y 1, 43 (2010) (commenting that more than twenty percent of second- to eighth-grade students had attended a dog fight).

<sup>95</sup> Angela Rozas, *Cops Look for Gangs Behind Each Dogfight: Animal Crimes Unit Now Part of Investigations*, CHI. TRIB., Aug. 29, 2008, at 3, available at 2008 WLNR 16335238 (quoting Chicago Police Sergeant Brian Degenhardt).

<sup>96</sup> *Dogfighting Fact Sheet*, *supra* note 90.

<sup>97</sup> Eileen Loh Harrist, *Fight Clubs*, GAMBIT, July 10, 2011, <http://www.bestofneworleans.com/gambit/fight-clubs/Content?oid=1239213> (quoting Ed Foulks, psychiatry professor at Tulane University’s School of Medicine, commenting on the lasting effects of dog fighting on children and adolescents: “Children and adolescents are learning values at these crucial periods of their life, and incorporating a culture that would encourage violent behavior of this kind, even as a spectator, is certainly going to have a lasting impression.”).

<sup>98</sup> William Hageman, *A Child, A Pup A Blood Sport*, CHI. TRIBUNE, May 11, 2004, [http://articles.chicagotribune.com/2004-05-11/features/0405110252\\_1\\_dogfighting-animal-welfare-officials-animal-torture](http://articles.chicagotribune.com/2004-05-11/features/0405110252_1_dogfighting-animal-welfare-officials-animal-torture) (“Most fights involve kids . . . and are purely for entertainment. A lot of kids go in alleys, pick up strays, then let ‘em fight till they kill each other. Or they kill ‘em”).

<sup>99</sup> Ortiz, *supra* note 92, at 43 (citing Agustina Guerrero, *Police Say Dogfights Becoming Gang Game*, CHI. TRIB., July 29, 2001, [http://articles.chicagotribune.com/2001-07-29/news/0107290197\\_1\\_dog-fighting-gang-game-anti-cruelty-society](http://articles.chicagotribune.com/2001-07-29/news/0107290197_1_dog-fighting-gang-game-anti-cruelty-society)).

<sup>100</sup> See, e.g., MARY LOU RANDOUR & HOWARD DAVIDSON, A COMMON BOND: MALTREATED CHILDREN AND ANIMALS IN THE HOME, AM. HUMANE (2008); Elizabeth DeViney et al., *The Care of Pets Within Child Abusing Families*, INT’L J. FOR THE STUDY OF ANIMAL PROBLEMS, 321-29 (1983); *Animal Cruelty and Human Violence*, HUMANE SOC’Y OF THE U.S., [http://www.humanesociety.org/issues/abuse\\_neglect/qa/cruelty\\_violence\\_connection\\_faq.html?credit=web\\_id235304807](http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html?credit=web_id235304807) (last visited Mar. 6, 2017).

animals may mirror those same tendencies towards humans.<sup>101</sup> Some experts believe that street fighters invoke the worst animal cruelty because, unlike professionals who prioritize blood lines and fighting capabilities, these amateurs fight to pass the time or prove their street-tough, and therefore just view dogs as disposable.<sup>102</sup>

In many cases, unfortunately, attending a fight is often a family affair.<sup>103</sup> Aside from the potential mental consequences, children at dog fighting events could hamper the ability for prosecutors to hold attendees and participants liable. These youngsters are often used to run bets during the fights and are often overlooked when questioning witnesses.<sup>104</sup> This incentivizes owners and participants to continue to bring them to events and use them for these purposes because they know they have a lesser chance of being caught.<sup>105</sup>

### **3. Fear of Fighting Dogs Leads to Overcrowding and High Euthanasia Rates**

Threats from dog fighting do not just affect human health and welfare. Even if former fighting dogs are rescued and relatively healthy, their fate is still in question. If law enforcement officers believe that the dogs are too dangerous to become pets or working dogs, they are often euthanized.<sup>106</sup> Furthermore, the over-breeding of traditional fighting dogs, such as Pit Bulls, Terriers, Dobermans, and German Shepherds lead to overcrowded shelters and all dogs, not just the former fighters, are threatened with euthanasia due to lack of space or resources.<sup>107</sup> Indeed, many families and individuals are reluctant to adopt former fighting dogs because they are afraid of violence to other animals, children, or people, which also contributes to overcrowding in shelters and subsequent unwarranted deaths.

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<sup>101</sup> An unfortunate reality is that the violent propensities in the family already extend beyond dog fighting. For instance, dogs involved in fighting are usually family pets and live with children while they are not in the pits. A dog owner may harm, or threaten to harm, a beloved pet in front of his or her children to reassert dominance. See *Animal Cruelty's Link to Other Forms of Community Violence*, ANIMAL LEGAL DEF. FUND, May 2011, <http://aldf.org/downloads/ALDFLinkStats2011.pdf>. Threats of, or actual abuse of a companion animal may be used to intimidate, coerce, or control women and children to remain in and/or be silent about their abusive situation, out of concern for the safety of their pet. *Id.*

<sup>102</sup> See *Berry*, 2010 WL 1882057, at \*3 (mentioning a case where two dogs were stabbed, dragged by a car, and burned alive by two teenage boys believed to be associated with street dog fighting).

<sup>103</sup> Ortiz, *supra* note 92, at 42. Reports have shown that some dog fights were complete with concession stands and bleachers, while others had chefs available. *Id.* at 42 n. 208. Some of the abandoned fights left behind toddler-sized chairs and milk and cookies, suggesting that the fights were considered a family-wide activity. *Id.*

<sup>104</sup> *Illegal Animal Fighting*, [http://www.petabuse.com/pages/animal\\_cruelty/animal\\_fighting.php](http://www.petabuse.com/pages/animal_cruelty/animal_fighting.php) (last visited Mar. 6, 2017).

<sup>105</sup> *Id.*

<sup>106</sup> See, e.g., *Dogs Saved from Alleged Dog Fighting Ring Euthanized*, LOCAL10.COM (Oct. 9, 2013), <http://www.local10.com/news/dogs-saved-from-alleged-dog-fighting-ring-euthanized> (stating that nine of eleven dogs that were rescued from a Florida dog fighting ring were euthanized).

<sup>107</sup> See, e.g., *id.* (citing that lack of space at shelter and unwilling adopters or rescuers led to euthanasia of dogs rescued from dog fighting ring).

One reason for overcrowding and overbreeding is because fighters breed a successful fighting dog to ensure a pure “bloodline.”<sup>108</sup> The dogs that do not live up to their aggressive ancestry are killed or abandoned.<sup>109</sup> If the dogs are found, or if a dog fighting ring is broken up, the survivors are taken to a shelter<sup>110</sup> where they must wait in line to be adopted behind other dogs who have been there longer and who may be more socialized (and thus more likely to be adopted).

The stigma towards former fighting dogs, especially Pit Bull breeds, is still very much alive.<sup>111</sup> Thereby, it is plausible to consider that ending dog fighting will also help to end the stigma attached to breeds associated with dog fighting. Subsequently, putting a halt to the stigma may lead to higher adoption rates for those breeds associated with dog fighting, which can cut down on euthanasia rates and overcrowding of shelters.

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<sup>108</sup> See Heger, *supra* note 59, at 247 (emphasizing that, for breeding purposes, championships and bloodlines are closely monitored); see also, *Dogfighting Fact Sheet*, *supra* note 90 (indicating that dogs in rings are “specifically bred, conditioned and trained to fight”); see also, *Dogfighting FAQ*, *supra* note 13 (noting dog fight promoters earn money from breeding and selling fighting dogs).

<sup>109</sup> *Berry*, 2010 WL 1882057, at \*3 (“If a dog is a poor investment, the dog will either be killed or abandoned.”); see also *Dogfighting FAQ*, *supra* note 13 (noting dogs that are not successful fighters are usually killed or given to street dog fighters who want aggressive dogs).

<sup>110</sup> *Berry*, 2010 WL 1882057, at \*9.

<sup>111</sup> Despite what many people believe or have been told, even dogs who were fighters do not always pose a threat to humans or other animals. In fact, many dogs rescued from their dog fighting past do not have to be killed. See, e.g., Malinconico & Koloff, *supra* note 4 (statement from the animal control officer at the Paterson dog ring bust) (“Each dog is adoptable; not one will be put to sleep . . . They’re friendly. They just got hooked up with bad people.”); Klepper, *supra* note 114 (stating that pit bulls’ reputation for violence is undeserved, as a result for the breed’s use in dogfighting and status symbol for gang leaders); Emily Weiss, ASPCA, *Climbing Out of the Pit*, ASPCA COMPREHENSIVE ANIMAL RISK DATABASE SYS., <http://aspapro.org/blog/2015/05/27/climbing-out-pit>. A study by the ASPCA indicated that pit bulls were the second most-adopted dogs in the shelters studied in 2014, and although more people are willing to adopt pit bull dogs, there are still tough obstacles to overcome, including breed-specific legislation and housing restrictions that prevent these dogs from being adopted. *Id.* Most rescues from dog fighting rings can be nursed back to health and, with proper socialization and patience, can live with families and even other pets. See also

The elasticity of former fighting dogs was proved in 2008, when twenty-two dogs rescued from Michael Vick’s dog fighting ring were successfully rehabbed. Cavan Sieczkowski, *Michael Vick’s Former Dogfighting Pups Will Make You Believe in Happily Ever After*, HUFFINGTON POST (April 10, 2014, 3:01 PM), [http://www.huffingtonpost.com/2014/04/10/michael-vick-dogs-victory\\_n\\_5119150.html](http://www.huffingtonpost.com/2014/04/10/michael-vick-dogs-victory_n_5119150.html). The “Victory” dogs – named for their former owner and their new, successful lease on life – were in danger of being euthanized, as authorities and “even some humane groups argued that these dogs were too traumatized and had been made too vicious to live.” *Id.* Of the twenty-two, twelve were adopted out to families, with some living with dogs, children, and cats. *Id.* Other former fighting dogs have been taken from shelters and trained as K9 Officers or drug- and bomb-sniffing dogs. See, e.g., David Kepler, *Pit Bull Police Dog Defies Breed’s Savage Stereotypes*, ASSOCIATED PRESS (Nov. 13, 2015), <http://bigstory.ap.org/article/2ddc7e4b54064a45931ec001f23045c8/pit-bull-police-dog-defies-breeds-savage-stereotypes> (identifying a former fighting dog that is finishing up K9 training school and will be used to detect drugs and track missing people); James Pinkerton, *The Wags to Riches Tale of Popsicle Melts Hearts*, HOUS. CHRON., April 11, 1998, (explaining that the pit bull that assisted in detecting one of the largest cocaine busts in DEA history was originally used as a bait dog).

### C. Animal Cruelty

Animals in fighting rings are subject to terrible treatment long before they are released into the fighting pits. The animal cruelty aspect of dog fighting is not just the actual fight, that is, where two dogs are put together in a pit to fight until one can no longer fight, or is killed. However, the dog fighting enterprise is replete with animal cruelty activities both before and after the fighting takes place. “These dogs do not lead normal lives, but rather every aspect of the dog’s life is carefully calculated to antagonize and thereby increase the aggression level of the dog.”<sup>112</sup> In fact, the majority of suffering and cruelty takes place in the “training” period. Dogs are forced to wear heavy chains, run on treadmills, and are deprived food, water and shelter for long periods of time to increase their aggressive tendencies.<sup>113</sup> The dogs are often neglected by humans and not permitted to interact with one another<sup>114</sup> so that they learn to fear or dislike other dogs. Dogs are often fed steroids and other illegal drugs to increase muscle mass, stimulants to make them aggressive, and narcotics to decrease their pain.<sup>115</sup> Female dogs can also be subjected to “rape boxes,” which hold her in place using curved pieces of metal, where she is mated numerous times.<sup>116</sup> Other some dogs are used as bait animals, which are not trained to fight, but are set in the ring to test a training dog’s aggression and are mutilated and often killed.<sup>117</sup>

Trainers also use specific techniques to weaken the opponent dog before a fight. Some trainers put harmful substances or poison on their dogs’ fur that rub off on or contaminate the other dog during the fight.<sup>118</sup> Owners often cut off or “crop” dogs’ tails and ears<sup>119</sup> to make it more difficult for the opposing dog to grab on during the fight. These painful procedures are rarely performed by veterinary professionals or with anesthetics, and the instruments used are typically dull and unsterilized.<sup>120</sup>

Unfortunately, all of the pain in training was for nothing if the dog does not perform up to par during the fight. Dogs often die in the middle of the fight due to blood

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<sup>112</sup> *Berry*, 2010 WL 1882057, at \*4.

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

<sup>114</sup> Heger, *supra* note 59, at 249.

<sup>115</sup> *Animal Fighting Facts*, *supra* note 18.

<sup>116</sup> *See id.* “Rape boxes” are not technically illegal, but most breeders do not use them because female dogs in heat are usually not particular about mating partners. Michelle Tsai, *Michael Vick’s “Rape Stand,”* SLATE.COM, July 20, 2007, [http://www.slate.com/articles/news\\_and\\_politics/explainer/2007/07/michael\\_vicks\\_rape\\_stand.html](http://www.slate.com/articles/news_and_politics/explainer/2007/07/michael_vicks_rape_stand.html). However, the author noted that, “breeders of attack dogs place special value on female dogs that are so mean they might bite any male dogs that get too close.” *Id.*

<sup>117</sup> *See* Maryann Mott, *U.S. Dogfighting Rings Stealing Pets for “Bait,”* NAT’L GEOGRAPHIC, Feb. 18, 2004, [http://news.nationalgeographic.com/news/2004/02/0218\\_040218\\_dogfighting.html](http://news.nationalgeographic.com/news/2004/02/0218_040218_dogfighting.html); *Family Pets Stolen for Dog Fight “Bait,” Cops Say*, ABC NEWS, <http://abcnews.go.com/US/story?id=613012>.

<sup>118</sup> *See* Gibson, *supra* note 22, at § I, part C. Therefore, a common pre-fight ritual involves trainers or owners washing the opponent dog to prevent this type of cheating. *Id.*; *see also* Cajun Rules Five and Six (pertaining to the washing of dogs before the fight), *supra* note 81.

<sup>119</sup> Heger, *supra* note 59, at 249. *See also* *Berry*, 2010 WL 1882057, at \*9-10; *Animal Fighting Facts*, *supra* note 18.

<sup>120</sup> Heger, *supra* note 59, at 249; *see also* *Berry*, 2010 WL 1882057, at \*9-10.

loss, shock, dehydration, or infection.<sup>121</sup> Those that do not die in the fight could suffer for hours or days after.<sup>122</sup> Owners will often kill dogs who refuse to fight, or who lose fights. Also, dogs whose previous fight leaves them permanently unable to fight again could be kept around as a bait dog to train others.<sup>123</sup> The motive behind the killing of unsuccessful dogs is best explained through the dog fighting credo, “Breed the best and bury the rest.”<sup>124</sup> Known methods include shooting, hanging, drowning, electrocution, and beating.<sup>125</sup> An example of the needlessly brutal and vicious killing comes from one of Michael Vick’s accomplices, upon the witness’s telling of the football player’s notorious dog fighting ring:

*“And then there was one last body that stood out from the rest. It had signs of bruising on all four ankles and all along one side. Its skull was fractured in two places and it had four broken vertebrae... As that dog lay on the ground fighting for air, Quanis Phillips grabbed its front legs and Michael Vick grabbed its hind legs. They swung the dog over their head like a jump rope then slammed it to the ground. The first impact didn’t kill it. So Phillips and Vick slammed it again. The two men kept at it, alternating back and forth, pounding the creature against the ground, until at last, the little red dog was dead.”<sup>126</sup>*

#### **D. Lack of Training and Resources**

One of the biggest challenges facing authorities face is that dog fighting is so secretive. Though law enforcement has shown an increased awareness and interest in preventing and prosecuting dog fighting, one of the largest hurdles is lack of training and resources to efficiently and effectively battle dog fighting.<sup>127</sup> An ASPCA spokesperson claims, “[the increase in awareness] is likely due to a realization that dog fighters are often involved in other criminal activity and a greater awareness and concern from the public.”<sup>128</sup> However, many departments lack resources necessary to investigate and prosecute dog fighting. A recent survey by the ASPCA<sup>129</sup> found that

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<sup>121</sup> *Dogfighting Fact Sheet*, *supra* note 90.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Animal Fighting Facts*, *supra* note 18.

<sup>125</sup> *Id.*

<sup>126</sup> Jim Gorant, THE LOST DOGS: MICHAEL VICK’S DOGS AND THEIR TALE OF RESCUE AND REDEMPTION, 29 (2010).

<sup>127</sup> Arin Greenwood, *Dog Fighting is a Huge Problem, and Many Cops Agree we Need to do More About It*, (Apr. 7, 2015), [http://www.huffingtonpost.com/2015/04/07/dog-fighting-aspca-poll\\_n\\_7019468.html](http://www.huffingtonpost.com/2015/04/07/dog-fighting-aspca-poll_n_7019468.html).

<sup>128</sup> *Id.* (quoting Tim Rickey, vice president of the ASPCA Field Investigations and Response Team).

<sup>129</sup> ASPCA, LAW ENFORCEMENT THOUGHTS ON DOG FIGHTING (2015), <http://big.assets.huffingtonpost.com/aspcapoll.pdf> (last visited Jan. 22, 2017) [hereinafter ASPCA DOG FIGHTING SURVEY].

most law enforcement officers believe that dog fighting is a severe crime, but most agree that their departments do not have the necessary resources to effectively investigate fighting cases in their community.<sup>130</sup> Indeed, most law enforcement officers see a gap between the severity of dog fighting cases they see, and the resources and training provided to address them.<sup>131</sup> Seventy-five percent of officers polled have not received any training or guidance on dog fighting in the last year, while fifty-two percent claim that they have never received training to investigate dog fights.<sup>132</sup> Unfortunately, due to the secrecy of the rings and the wide-spread participation, it is extremely difficult for law enforcement officers to investigate and prosecute animal fighting, even if they have received training.

#### **IV. NEW JERSEY'S RICO AMENDMENT HAS MAJOR POTENTIAL TO DECREASE CRIME IN REGION BY SERVING AS A GREATER DETERRENT**

The most important role of the New Jersey RICO amendment is its ability and opportunity to deter current and would-be dog fighters. Creating a law to that effect is difficult because, generally, criminal laws by themselves have not been found to deter criminal activity.<sup>133</sup> This principle is true for a variety of reasons, but the primary cause is that even if offenders understand a law's consequences, and are able to think about the potential repercussions of breaking the law, most believe that the perceived benefit outweighs the cost of committing the offense.<sup>134</sup> “[The] claim is not that criminal law formulation can never influence behavior but rather that the conditions under which it can do so are not typical.”<sup>135</sup> Therefore, even if dog fighters understand that the activity is illegal, they participate nonetheless because the perceived likelihood of punishment is so small, or because the punishment is too delayed that it is discounted.<sup>136</sup>

Criminal law scholars<sup>137</sup> assert that would-be offenders weigh the costs and benefits of crimes before they will commit them.<sup>138</sup> The cost analysis has three parts:

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<sup>130</sup> ASPCA DOG FIGHTING SURVEY at 1.

<sup>131</sup> *Id.* at 2.

<sup>132</sup> *Id.*

<sup>133</sup> See generally, Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioral Science Investigation*, 24 OXFORD J. LEGAL STUD. 173 (2004) [hereinafter referred to as *Does Criminal Law Deter?*].

<sup>134</sup> *Id.* at 173.

<sup>135</sup> *Id.*

<sup>136</sup> See *id.* at 174.

<sup>137</sup> The test explained below is not entirely attributed to Robinson and Darley, but those authors formulated this test through deciphering works from a line of law and economics scholars, including J. Bentham, David Lieberman, and Gary Becker. See generally Robinson & Darley, *Does Criminal Law Deter*, supra note 139.

<sup>138</sup> The cost-benefit analysis is the third prong of a three-part test interpreted by Robinson & Darley. *Id.* at 175. The authors assert that the three major hurdles that criminal laws must pass to influence conduct are, (1) the Legal Knowledge Hurdle, (2) the Rational Choice Hurdle, and (3) the Cost-Benefit Analysis.

the probability of incurring the penalty, the total amount of the punishment, and the delay with which the penalty will or might follow the crime.<sup>139</sup> Often, criminal laws do not serve as an effective deterrent because offenders see the benefits of the crime – in dog fighting, primarily money – as outweighing the costs of committing the crime, because they are focused on the present instant gratification and decrease the consequences in their minds.<sup>140</sup> However, the New Jersey RICO amendment functions in such a way to help deter both past and future dog fighting participants because it increases the probability of being caught, sets incremental levels of punishment to deter first-time offenders, and can help to cut down on the delay between committing the act and being caught.

### **A. The New Jersey RICO Law Increases a Dog Fighter’s Chances of Punishment**

Typically, persons who have never committed a crime believe that punishment rates are higher than those who have committed a crime.<sup>141</sup> This is especially true for repeat offenders, or “career criminals,” who are more likely to realize that punishment rates in practice are actually quite low.<sup>142</sup> Therefore, consistent dog fighters may not want to, or think that they have to, stop their illegal activities because they have not been caught before, and do not think that they will be in the future.<sup>143</sup>

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*Id.* Essentially, a potential offender must affirmatively (1) know and understand the implications of the law; (2) understand the consequences that the law will bear on him when he is making those choices; and (3) knowing the first and second part, be able to choose compliance of the law rather than commission of the offense. Robinson & Darley, *Does Criminal Law Deter?*, *supra* note 139, at 175. This note will only be discussing the cost-benefit analysis, which is a result of the first and second hurdles. This note will not be discussing the Legal Knowledge Hurdle, because it is assumed that dog fighting participants understand the implications and illegality of the act, due to its inherent secretive nature. This is supported by the fact that even if participants are not aware of the specific penalties or fines that come with dog fighting, it is probable that participants understand the other crimes inherent in dog fighting – for example, drug and weapon trafficking, homicide, and prostitution – are illegal. Therefore, they do have at basic legal knowledge of this conduct.

Further, this note will not be discussing the Rational Choice hurdle because the factors affecting rational choice are revenge, sudden-induced rage, paranoia, and various diagnosable mental difficulties, which will not be analyzed here. *Id.* at 179. This note still chooses not to discuss the first two hurdles, even with the knowledge that “[t]he absence of any one of these prerequisites to deterrence . . . can be fatal to the deterrent effect.” *Id.* at 205. However, this note argues that the specific nature of RICO laws makes this deterrence effect more likely than typical criminal laws.

<sup>139</sup> *Id.* at 182.

<sup>140</sup> *See id.* at 179-80 (2004). This mindset is exacerbated for crimes committed in groups, as the crime-prone individual is surrounded by those with the same neglect of consequences that reinforce the decision to commit the crime. *Id.* at 176.

<sup>141</sup> *Id.* at 184.

<sup>142</sup> The punishment rate for crimes is approximately 1.3%. *Id.*

<sup>143</sup> *Id.* at 184. The net effect is that most criminals do not think that they will be caught and punished. *Id.*

However, criminal law deterrence does its best work is where it generates results based on the community's shared principles of justice.<sup>144</sup> Because an individual believes that he or she may be ostracized by a community that does not approve of the offense, "morally credible enforcement procedures are an effective way to reinforce the group's social norms."<sup>145</sup> Specifically, offenders are dissuaded from committing the offense because it offends the morals of the group. There are individuals who participate in dog fighting in secret – that is, unbeknownst to their families, employers, and communities. If the potential offender thinks about the repercussions of dog fighting to include the loss of any prospects of being hired into decent jobs or being accepted in the community, the social influence forces generated by community stigmatization against the criminally convicted can be quite powerful,<sup>146</sup> likely resulting in a deterrence effect.

This probability aspect is difficult to sell when it comes to street fighters and similar groups whose communities are more accustomed to dog fighting, and therefore will be less likely to be socially pressured to discontinue.<sup>147</sup> Importantly, however, sentences viewed as inconsistent or not reflective of the seriousness of the conduct may raise doubts about the laws fairness,<sup>148</sup> which may raise enforcement issues. This is true in any environment, regardless of whether the activity is socially acceptable. Therefore, it would be beneficial to create more consistent dog fighting laws to reinforce punishment because the laws may be more respected if would-be participants understand that it is a crime that will have penalties. The New Jersey RICO statute as amended can serve as a model for surrounding states because if there are uniform punishments in the region that guarantee certain punishments for dog fighting, then the act, and its other illegal components, may decrease.

The specifics of the RICO law also help with the probability analysis through the statute's use of predicate offenses. From a purely logical point of view, the greater number of prohibited acts that a person working within an enterprise can potentially commit, the greater the possibility that the person or enterprise can be discovered committing that offense.

Hypothetically, if a dog fighter were to inject his dog with illegal steroids, the related drug offenses could form one or more predicate offenses that establish a pattern of racketeering.<sup>149</sup> Similar arguments could be made for the possession or selling of illegal contraband, or the act of dog fighting itself, which is the predicate offense of

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<sup>144</sup> Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At its Worst When Doing its Best*, 91 GEO. L. J. 949, 980-81 (2004) (hereinafter referred to as, *At its Worst When Doing its Best*).

<sup>145</sup> Geraldine Szott Moohr, *Prosecutorial Power in an Adversarial System: Lessons From Current White Collar Cases and the Inquisitorial Model*, 8 BUFF. CRIM. L. REV. 165, 213 (2004).

<sup>146</sup> Robinson & Darley, *At its Worst When Doing its Best*, *supra* note 150, at 981-82.

<sup>147</sup> Indeed, studies have shown that those in a group are more likely to commit crimes when they are surrounded by others who are committing or have already committed crimes. Robinson & Darley, *Does Criminal Law Deter?*, *supra* note 139, at 180.

<sup>148</sup> Moohr, *supra* note 151, at 213.

<sup>149</sup> Heger, *supra* note 59, at 262.

illegal gambling.<sup>150</sup> Another less-acknowledged, but equally important, predicate offense under the RICO statute is that the pattern of unlawful activity, or the enterprise itself, affects interstate commerce. Though dog fighting does not have to include more than one state, many dog fight operations do cross state lines.<sup>151</sup> Therefore, a state RICO statute that punishes interstate activity can also be used against dog fighting.

## **B. The RICO Law Punishes Offenders Every Time, in the Right Way**

The next factor in the cost-benefit analysis is the amount of punishment. A deterrent system is effective only if it is able to “impose punishments that will be perceived as having punitive ‘bite.’”<sup>152</sup> State and federal governments typically use longer sentences to punish more serious crimes, or to punish those who have previously been convicted for longer durations. However, studies have found that the length of time in prison does not deter criminals as much as one may believe, because all people, including prisoners, adapt to their environments, however terrible or frightening, eventually.<sup>153</sup> Instead, the advocated deterrence system is not just to threaten punishment, but to “modulate the amount of punishment it threatens with sufficient accuracy and in sufficiently discrete units.”<sup>154</sup> In other words, deterrence works best when punishment is applied in a specific amount, for a specific offender, for a specific crime. The punishment system must tie punishment amount to the degree of offense seriousness so as to provide a continuing disincentive for offenders to commit a more serious offense.<sup>155</sup>

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<sup>150</sup> Dog fighting itself is illegal gambling, so it is “by far the most promising racketeering predicate offense.” *Id.*

<sup>151</sup> *See, e.g.*, Press Release, Humane Soc’y of the United States, Multi-State Dogfighting Raid Saves 367 Dogs (Aug. 26, 2013) (citing that 376 pit bulls were rescued from a dog fight ring in Alabama, Mississippi, Texas, and Georgia); Sarah Larimer, *225 Dogs Seized as Authorities Break Up Multi-State Dog Fighting Ring*, WASH. POST, (Dec. 23, 2014), <https://www.washingtonpost.com/news/post-nation/wp/2014/12/23/225-dogs-seized-as-authorities-break-up-multistate-dog-fighting-ring/> (citing that 255 dogs were rescued from a dog fight ring operating out of Maryland and West Virginia).

<sup>152</sup> Robinson & Darley, *Does Criminal Law Deter?* *supra* note 137, at 185.

<sup>153</sup> *See id.* at 188. First, the negativity that inmates first experience in prison eventually plateaus after they adapt to their surroundings, and they have a more neutral experience as they get used to their new state of normalcy. *Id.* Second, prisoners become desensitized to prison experiences and, as a result, their overall sensitivity to change decreases over time. *Id.* Therefore, they view terrible experiences as only a little worse than average, and good experiences as only a little better than average. *Id.* In sum, a longer prison sentence does not have the effect that was intended – that people will not commit crimes because they do not want to end up in prison – because it turns out that individuals may just adapt to whatever situation they are in due to their decreased sensitivity to good and bad experiences (and thus, the consequences, or “cost,” of committing a crime are lower and outweighed by the benefit).

<sup>154</sup> *Id.* at 186.

<sup>155</sup> Robinson & Darley, *Does Criminal Law Deter?*, *supra* note 139, at 186.

The catch is, the first round of punishment must be strong enough to deter repeat offenders, a practice that is typically lacking in most criminal laws.<sup>156</sup> This point essentially requires that it is not the amount of punishment that matters, but that an offender is punished every time, and in the right way. The New Jersey RICO amendment accomplishes this goal with punishing participants and spectators, not just ringleaders, with prison time.<sup>157</sup> Simply being part of the dog fighting enterprise – as a ringleader, participant, or even a spectator – is enough to hold that person liable for the actions of the entire group. If only ringleaders were imprisoned and participants received probation or a similar slap on the wrist, the punishment might not be enough to dissuade participants from continuing to dog fight because the penalty for participating was not strong enough to deter doing it again.<sup>158</sup> By ensuring a strong punishment every time and for any level of involvement, the RICO law acts as a deterrent when participants know that they will get jail time for just being part of the enterprise.

### **C. RICO Has the Power to Decrease the Delay in Punishment**

The last factor of the cost-benefit analysis is the delay, which will likely be the most difficult problem for the RICO amendment to address.<sup>159</sup> Essentially, the effects of punishment in deterring behavior drop off rapidly as the delay increases between the time the act is committed and the time punishment may or will occur.<sup>160</sup> Unfortunately, the delay that intervenes between the completion of the offense and beginning of punishment is significant for dog fighting, where often offenders are not caught, if at all, until the fight is over.<sup>161</sup> However, RICO statutes have a secret weapon: civil liability.

In addition to federal or state criminal liability, dog fighting statutes under RICO also allow civilians to file lawsuits against those involved in dog fighting rings. That civil lawsuits are allowed is crucial as civil lawsuits under RICO have been found to be a greater deterrent than federal punishment.<sup>162</sup>

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<sup>156</sup> *Id.* Often, first offenders are short sentences, probation, or suspended sentences, which could be creating offenders who learn to tolerate punishment levels that are not strong enough. If stronger punishments were administered earlier, they could have deterred the punished action.

<sup>157</sup> N.J. STAT. ANN. 2C:41-1 (West 2015).

<sup>158</sup> There is a warning, however, where an escalating series of punishment may simply condition a person to tolerate increasing punishments without reducing the rate of transgressions. See Robinson & Darley, *Does Criminal Law Deter?*, *supra* note 139, at 187.

<sup>159</sup> It is the most difficult because it is highly unlikely that every dog fight will be caught while it is happening, every time.

<sup>160</sup> Robinson & Darley, *Does Criminal Law Deter?*, *supra* note 139, at 193.

<sup>161</sup> See *id.* at 195. Alcoholics, drug users, and substance abusing gamblers have higher discounting rates than normal, especially when money is the gain in the present or the future. *Id.*

<sup>162</sup> *Oversight on Civil RICO Suits: Hearings Before the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 140-41 (1985) (cited in Michelle J. Stahl, Oscar v. University Students Cooperative Ass'n: *Can Citizens Use RICO to Rid Neighborhoods of Drug Houses?*, 67 NOTRE DAME L. REV. 799, 812 (1992)).

[I]n gauging the overall deterrent value of auxiliary enforcement by private plaintiffs, the deterrence provided by the mere threat of private suits must be added to the deterrence supplied by the suits that are actually filed. Furthermore, as the federal government's enforcement efforts continue to weaken organized crime and dispel the myths of invulnerability that have long surrounded and protected its members, private plaintiffs may become more willing to pursue RICO's attractive civil remedies in organized crime contexts. . . . Finally, *civil RICO's utility against continuous large-scale criminality not involving traditional organized crime elements should be kept in mind*. These considerations suggest that private civil RICO enforcement in areas of the organized criminality may have had a greater deterrent impact than is commonly recognized, and. . . . might be expected to produce even greater deterrence in the future.<sup>163</sup>

Some authorities advocate for civil, rather than criminal, RICO claims, especially for cases that are difficult to prove and will take significant resources.<sup>164</sup> Prosecutors may be unwilling, or unable, to pursue a case criminally when the victim can pursue civilly.<sup>165</sup> Furthermore, if citizens know that they can sue members of dog fighting rings, then they may be more likely to report them. Civil suits could cut down on the delay between committing the act and being punished, especially in the case of loud and rowdy fights that are disrupting otherwise quiet and peaceful neighborhoods,<sup>166</sup> as neighbors may be more willing to alert authorities while the dog fight is actually taking place.

Aside from reporting dog fights as they are happening, there are other motives for citizens to bring a civil RICO case for dog fighting. For example, since dog fighting operations often steal dogs for fighting or bait purposes,<sup>167</sup> owners of stolen pets are motivated by the quick and safe return of their pet and may be more likely to report suspects or known ring participants. And, if owners can prove that their stolen pets

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<sup>163</sup> Michelle J. Stahl, *Oscar v. University Students Cooperative Ass'n: Can Citizens Use RICO to Rid Neighborhoods of Drug Houses?*, 67 NOTRE DAME L. REV. 799, 813 n.71 (1992) (emphasis added).

<sup>164</sup> Pamela Bucy Pierson, *RICO, Corruption, and White-Collar Crime*, 85 TEMP. L. REV. 523, 540 (2013).

<sup>165</sup> *Id.* at 539-40.

<sup>166</sup> For example, in *Oscar*, a group sued a neighborhood drug house under the civil RICO statute, claiming that the drug activities caused direct injury by interfering with their use and enjoyment of their leasehold. *Id.* at 810.

<sup>167</sup> See, e.g., *Pet Theft*, <http://www.paws.org/get-involved/animal-cruelty/pet-theft/>; Scott Johnson, *Stolen Pit Bulls Face Grim Fate*, Sept. 9, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-09-09/pit-bull-theft/57716124/1>; Maryann Mott, *U.S. Dogfighting Rings Stealing Pets for "Bait"*, NAT'L GEOGRAPHIC, Feb. 18, 2004, [http://news.nationalgeographic.com/news/2004/02/0218\\_040218\\_dogfighting.html](http://news.nationalgeographic.com/news/2004/02/0218_040218_dogfighting.html); *Family Pets Stolen for Dog Fight "Bait," Cops Say*, ABC NEWS, <http://abcnews.go.com/US/story?id=613012>.

were part of the dog fighting operation, they would assumedly fall under the category of persons whose “property or business” was injured as a result of the dog fighting.<sup>168</sup> Furthermore, animal welfare organizations that rescue, rehabilitate, or care for dogs rescued from dog fighting rings likely have the necessary standing to serve as plaintiffs in these situations where RICO allows for civil remedies.<sup>169</sup>

## II. CONCLUSION

Though cities, counties, states, and the government have been actively trying to reduce dog fighting, the blood sport still thrives in every part of the country. The act is not only a horrific experience for the dogs forced to fight to the death, but it also increases the number of drugs and illegal weapons on the street, acts to desensitize children to violence and respect for authority, and turns otherwise peaceful neighborhoods into breeding grounds for violence, death, and moral turpitude. The amendment to the New Jersey RICO statute can serve as a model to other states with similar statutes, because it has a great likelihood of deterring dog fighting, and in doing so decrease the illegal activities that accompany it.

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<sup>168</sup> 18 U.S.C. § 1964(c) (2006).

<sup>169</sup> Heger, *supra* note 59, at 242 n.20. Ironically, two dogs that were rescued from the Paterson, N.J., dog fighting ring were stolen from the animal shelter not two weeks after they were rescued, presumably by members involved in the dog fighting ring. *See Pit Bulls Rescued From Dog Fighting Ring Stolen From Paterson Animal Shelter*, CBS NEW YORK, May 12, 2015, <http://newyork.cbslocal.com/2015/05/12/pitbulls-stolen-from-shelter/>. The police believe the thieves’ express motive was to steal the two dogs because the thieves allegedly used bolt cutters to cut open the cages of just the two dogs previously rescued from the ring, and nothing else was taken. *Id.* Successful plaintiffs can receive three times the equitable damages, as well as court and attorneys’ fees. 18 U.S.C. § 1964(c); *see also* Heger, *supra* note 59, at 242 n.20.