

# Investigating & Prosecuting Animal Abuse



By Allie Phillips, J.D. and Randall Lockwood, Ph.D.

A Guidebook on  
Safer Communities, Safer Families  
& Being an Effective Voice  
for Animal Victims



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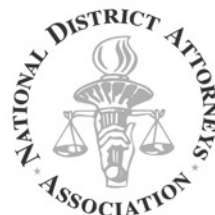


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### ABOUT THE AUTHORS

**Allie Phillips** is a former prosecuting attorney and author who is nationally recognized for her work on behalf of animals. She is the Director of the National Center for Prosecution of Animal Abuse and Deputy Director of the National Center for Prosecution of Child Abuse at the National District Attorneys Association. She was an Assistant Prosecuting Attorney in Michigan and subsequently the Vice President of Public Policy and Human-Animal Strategic Initiatives for American Humane Association. She has been training criminal justice professionals since 1997 and has dedicated her career to helping our most vulnerable victims. She specializes in the co-occurrence between violence to animals and people and animal protection, and is the founder of Sheltering Animals & Families Together (SAF-T) Program, the first and only global initiative working with domestic violence shelters to welcome families with pets. She authored *Defending the Defenseless: A Guide to Protecting and Advocating for Pets* (2011) and *How Shelter Pets are Brokered for Experimentation: Understanding Pound Seizure* (2010) and has written chapters in several animal protection books. She volunteers her time with numerous nonprofit organizations that benefit animals, including being an advisor to the Association of Professional Humane Educators, liaison to the ABA's Commission on Domestic & Sexual Violence (where she contributes on animal issues), council member of the Michigan State Bar Animal Law Section, steering committee member of the National Link Coalition, vice president of No Paws Left Behind, and co-founder of Michiganders for Shelter Pets. She is a graduate of Michigan State University and University of Detroit School of Law. Learn more at [www.alliephillips.com](http://www.alliephillips.com) and [www.animalsandfamilies.org](http://www.animalsandfamilies.org).



**Randall Lockwood** has degrees in psychology and biology from Wesleyan University in Connecticut and a doctorate in psychology from Washington University in St. Louis. He was Assistant Professor in the psychology departments of the State University of New York at Stony Brook and Washington University. In 2005 he joined the staff of the American Society for the Prevention of Cruelty to Animals where he is currently Senior Vice President for Forensic Sciences and Anti-Cruelty Projects. For over thirty years he has worked with law-enforcement agencies serving as an expert on the interactions between people and animals. He has testified in dozens of trials involving cruelty to animals or the treatment of animals in the context of other crimes, including dogfighting, child abuse, domestic violence and homicide. In 2008 he received a Public Service Award from the United States Attorneys Office for his assistance in the Michael Vick dogfighting case. He is a Fellow of the Oxford Centre for Animal Ethics, a member of the American Academy of Forensic Sciences and a member of the Board of Directors of the International Veterinary Forensic Sciences Association. He serves as official advisor on animal crimes to the New York State Police. He is co-author of *Cruelty to Animals and Interpersonal Violence* (1998) and *Forensic Investigation of Animal Cruelty: A Guide for Veterinary and Law Enforcement Professionals*, (2006) and author of *Prosecuting Animal Cruelty Cases: Opportunities for Early Response to Crime and Interpersonal Violence*, (2006) and *Dogfighting Toolkit for Law Enforcement* (2011).



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*Note: Throughout this publication, "animal abuse" is generally used as the overall broad term to describe all forms of crimes towards animals; "animal cruelty" is used to describe intentional criminal conduct towards animals; and "animal neglect" is used to describe negligent acts and/or failing to provide adequate care for animals.*

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## FOREWORD: THE LINK BETWEEN VIOLENCE TO ANIMALS AND PEOPLE

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Historically, violence to animals has been viewed as an issue separate from other forms of violence. However, cruelty to animals, particularly companion animals, is now seen as a part of the landscape of family violence and a risk to human health, safety and welfare with strong links to child maltreatment, domestic violence and elder abuse. “Link” advocates believe that people are at risk when animals are abused, and that animals are at risk when people are abused. Since no forms of family violence should be tolerated, the disciplines involved should collaborate for a more effective, comprehensive approach to reduce violence.

A growing and compelling body of research is confirming these links and describing animal abuse as a predictor and indicator crime that often signals serious interpersonal aggression and familial dysfunction. People who abuse animals have been found to be significantly more likely to commit violent crimes, domestic violence and other antisocial behaviors. Caseworkers in any one field must be trained to observe for other manifestations of family violence and to report them to appropriate authorities.

Animal cruelty perpetrated or witnessed by youths is no longer seen as a benign stage of growing up but rather as one of the earliest diagnostic indicators of conduct disorder. A history of animal abuse is one of the four most significant risk factors of someone becoming a domestic violence batterer, and batterers who also abuse animals are more violent and use more types of controlling behaviors against their intimate partners.

This growing awareness is resulting in a variety of responses addressing The Link. These include: pet foster care and housing programs for domestic violence survivors; inclusion of animals in domestic violence protection-from-abuse court orders; legislation enabling or requiring veterinarians, child protection workers and animal shelter personnel to report suspected abuse; increased criminal penalties and psychological assessment and counseling for animal abuse offenders; training at-risk youth in nonviolent conflict-resolution competencies through animal-assisted interventions; development of veterinary forensic sciences to facilitate animal cruelty prosecutions; and establishing community and national multidisciplinary coalitions based upon The Link between animal abuse and human violence.

Phil Arkow  
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*Consultant, ASPCA & Animals and Society Institute*  
*Chair, Animal Abuse and Family Violence Prevention Project, The Latham Foundation*





## INTRODUCTION

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*“Animal cruelty is more than just a legal issue, it’s a community issue. If you improve animal welfare in a community, you improve public safety for everyone.”*

*—Baltimore Mayor Stephanie Rawlings-Blake*

*In January of 2013, Jimmy Lee Dykes was alleged to have beaten a 120-pound beloved family dog with a lead pipe. The dog died a week later from his injuries. When animal control officers spoke with Dykes about the dog, the officers said that “his only regret was that he didn’t beat him to death all the way. If a man can kill a dog, and beat it with a lead pipe and brag about it, it’s nothing until it’s going to be people.” A few weeks later, in an incident that gripped the nation and media outlets, Jimmy Lee Dykes killed a school bus driver and kidnapped a 5-year-old boy who he then held hostage in an underground bunker for nearly a week. Jimmy Lee Dykes was killed during the rescue efforts of the boy.<sup>1</sup>*

*In July 2012, two dogs were doused with gasoline and set on fire in Philadelphia. Chloe was found and died a day later from her injuries. On another day, Hercules was found with severe burns and survived. Shortly thereafter, Jerry Buckley, the new CEO of the Pennsylvania SPCA (the second oldest animal protection organization in the United States), organized a Rally for Chloe and Hercules to raise awareness regarding animal cruelty and to encourage support for humane education programs. Approximately 250 supporters attended. In June 2013, Jerry Buckley authored an opinion letter in the Philadelphia Enquirer newspaper about the importance of taking animal cruelty seriously, about the need for funding humane education and prevention efforts, rather than funding the care for abused animals. He stated, “One thing I’ve learned in my first year with the Pennsylvania SPCA is that there is so much to teach, and we cannot teach alone. We must come together, educate our peers, be a voice for animals, and ultimately build stronger, healthier, and happier communities. For Hercules, Chloe, and all the animals I’ve met this past year, there has to be a better way.”<sup>2</sup> In spite of \$10,000 in reward money being raised, no one in the community would identify the culprits. Although Chloe lost her life, Hercules was adopted by a veterinarian who cared for him and he is well and thriving.*

*In June of 2012, nearly 50 pit bull type dogs, ranging in age from 12 weeks to five years, were removed from a windowless basement of a six-story apartment building in the Bronx, New York following an investigation involving the ASPCA, the NYPD Vice Enforcement Division and the Bronx District Attorney’s Office. The space, which served as a makeshift dog fighting arena, was littered with crude wooden cages and had the capacity for roughly 100 spectators. Raul Sanchez, the building’s superintendent, was taken into custody and charged with felony animal fighting. Also discovered on scene were a loaded .25-caliber handgun, U.S. currency, and other equipment associated with dog fighting—including dog treadmills, harnesses, muzzles,*

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<sup>1</sup> “Man holding little boy hostage in Alabama is also accused of animal abuse,” available at <http://www.examiner.com/article/man-holding-little-boy-hostage-alabama-is-also-accused-of-dog-abuse>.

<sup>2</sup> Jerry Buckley, *Put an end to animal cruelty*, PHILADELPHIA ENQUIRER (June 7, 2013), available at [http://articles.philly.com/2013-06-07/news/39817584\\_1\\_animal-abuse-animal-cruelty-animal-advocates](http://articles.philly.com/2013-06-07/news/39817584_1_animal-abuse-animal-cruelty-animal-advocates).

## Investigating & Prosecuting Animal Abuse

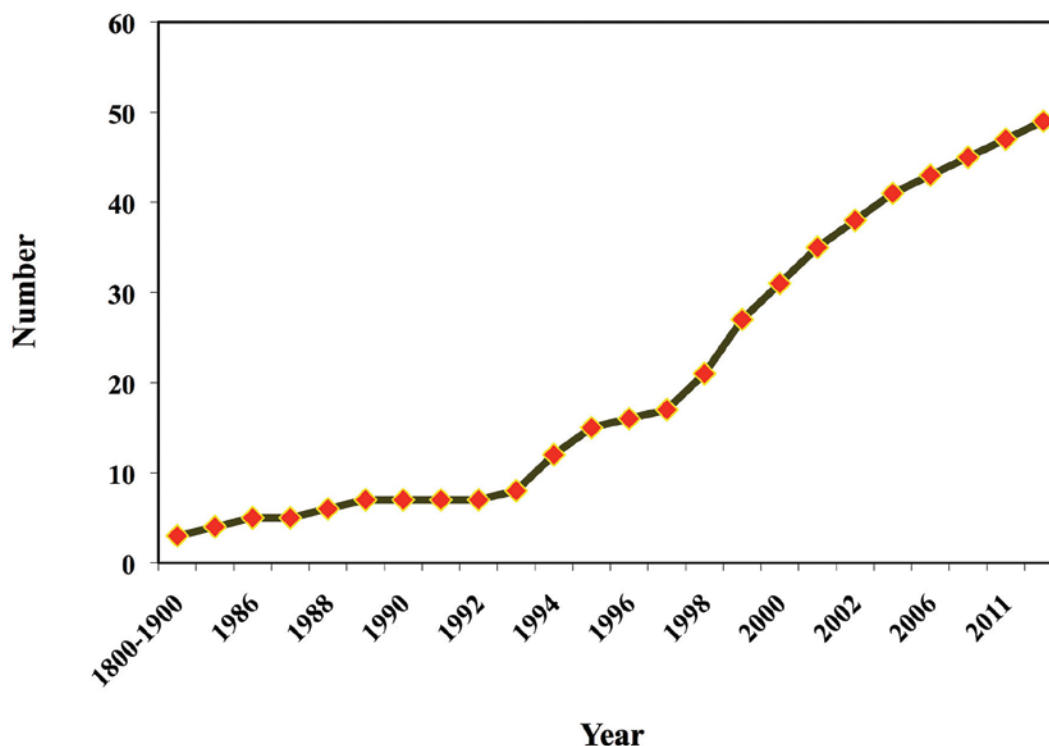
*syringes and a shopping cart full of raw chicken parts. Sanchez, later pleaded guilty to dog fighting and was sentenced to one to three years for animal fighting, one year for animal cruelty and one year for criminal possession of a weapon.*

Animal abuse investigations and prosecutions have become daily events that attract widespread attention. These are not rare crimes that occur at the hands of seriously deranged individuals; they happen everyday, everywhere. The surge of social media, and smart phones that can photograph and videotape crimes as they are happening, has raised the awareness of people as to the plight of animal abuse. Several cities have instituted smart phone applications that specifically allow the reporting of crimes against animals, with the inclusion of photographs, videos and GPS data to help locate the incident. These cases generate enormous emotion and interest, yet they can be challenging for investigators and prosecutors.

Today, animal abuse is in the same posture as child abuse was in the 1980s; largely misunderstood while under-investigated and under-prosecuted. However, in the past decade, we have seen an evolution in the way that animals are perceived.

| <b>The Past</b>                                  | <b>Today</b>                                                                                                                                                                                                                                                                               |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>It's just an animal.</i>                      | Studies have proven that most species of animals are sentient beings and companion animals, in particular, feel emotions and pain similar to humans.                                                                                                                                       |
| <i>Animals have no rights.</i>                   | Every state in the United States has passed laws, many felony laws, against cruelty to animals.                                                                                                                                                                                            |
| <i>This is how we've always treated animals.</i> | Laws and society are evolving to what we instinctively know to be ethically and morally right in the treatment of animals. As society and laws change, so must behavior. Just because cockfighting was a cultural tradition in the past does not mean that it is tolerated or legal today. |
| <i>It's only a misdemeanor.</i>                  | Every state but one now has felony laws for the most serious forms of animal cruelty. And while some incidents are misdemeanor crimes, animal abuse should not be treated dismissively due to its connection to a host of other crimes.                                                    |
| <i>I have more important cases to deal with.</i> | When you hold animal abusers accountable, you can prevent other crime and begin to change a community in regards to safety.                                                                                                                                                                |

**Figure 1:** Number of States with Felony Animal Cruelty Provisions (as of August 2013)



Laws are catching up to what instinctively we know as people to be ethically and morally right in the treatment of animals.

- Letting a tethered dog freeze to death outside ... No one says that is okay.
- Letting someone torture and slit the throat of a cat as a form of retaliation ...  
No one says that is okay.
- Letting a horse die from starvation because the owner is not properly feeding the horse ...  
No one says that is okay.
- Allowing a child to harm or kill an animal and get away with it ...  
No one says that is okay.

Although some may still view these cases as “minor” crimes, there has been a movement in the past decade to recognize animal abuse as a serious societal crime:

- Television shows such as “Animal Precinct,” which highlighted the efforts of the Humane Law Enforcement division of The American Society for the Prevention of Cruelty to Animals (ASPCA) in

New York City, continue to be extremely popular—leading to numerous spin-offs showcasing similar efforts in Houston, Detroit, Miami, San Francisco and elsewhere.

- As of this writing (August 2013) there are now approximately 145 law schools in the United States and Canada that have or continue to offer animal law courses.
- There are over 190 law school student chapters in the United States and internationally addressing animal abuse. This is a growth of over 120 chapters since 2006.<sup>3</sup>
- The American Bar Association (ABA), along with 26 state bar associations, 16 U.S. regional bar associations, and 2 international bar associations, now have animal law committees.
- Prosecutors in many jurisdictions have established task forces, many of which include human protection agencies, to work with a variety of local agencies to specifically address crimes against animals.
- Prosecutor offices are now creating animal abuse units or designating animal abuse prosecutors in an effort to recognize the seriousness and complexities of these cases that require a consistent approach and additional education.
- The number of states with felony-level animal cruelty laws has grown dramatically in the last decade to where all but South Dakota currently have some felony provision for harming animals.

Figure 2



3 <http://aldf.org/resources/law-professional-law-student-resources/law-students-saldf-chapters/student-animal-legal-defense-fund-chapters/>.



## INTRODUCTION

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In our collective experience, we have found these to be some essential attributes for the successful investigation and prosecution of crimes against animals:

- (1) Providing clear information to the community about where animal abuse complaints can be filed;
- (2) A professional and immediate response to complaints of animal abuse by investigators;
- (3) A thorough investigation of the complaint, no matter how simple or severe the allegation;
- (4) Properly trained investigators on responding to and processing animal crime scenes;
- (5) Collaborative relationships with local veterinarians, shelter veterinarians and specialized forensic veterinarians;
- (6) A prosecuting attorney who understands the seriousness of animal abuse and treats the case as such when handling a busy case docket;
- (7) Understanding that a guilty plea, not a nolo contendere or no contest plea, or a guilty finding for offenders is essential to preventing escalation of violence and recidivism;
- (8) A prosecuting attorney who is trained in the nuances of animal abuse cases, including specialized pre-trial motions, civil bonding and forfeiture procedures, housing animal victims, and proper community response;
- (9) A judiciary who treats animal abuse cases for the seriousness that they represent to other violent crimes; and
- (10) Most importantly, a team response that works at the highest standards for animal victims, prosecute the offenders, treat and rehabilitate offenders, and contribute to overall community safety.

This monograph will serve as a guidebook to prosecutors, investigators, veterinarians, shelter staff, treatment providers, and other allied professionals who seek information on handling animal abuse cases.



## WHAT IS ANIMAL ABUSE?

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Dr. Frank Ascione, a pioneer in studying the abuse of animals, has defined animal abuse as “socially unacceptable, non-accidental behavior that causes unnecessary pain, suffering, distress and/or death to an animal.” In this definition, “socially unacceptable” reflects a societal belief that a person’s behavior requires correction. It does not reflect all harm committed by humans against animals.

One challenge for prosecutors in addressing the abuse of animals is that the term is used generically to describe a broad range of mistreatment, from a temporary lapse in providing proper care to the malicious torture or killing of an animal. Many state anti-cruelty laws still contain antiquated language, developed more than a century ago, emphasizing prohibition of “overdriving and overloading” of working animals. However, these laws continue to evolve, adding updated definitions and strengthening provisions on a regular basis.

There is little consistency amongst the states in defining animal abuse. And within a state, counties and cities often have their own animal abuse or animal control ordinance code. This presents law enforcement officials with the task of determining which acts against which creatures are to be addressed by these laws. Some states provide no definition of “animal,” leaving open to question which animals are protected. Other states specify which animals are included or excluded from protection. Laws generally and primarily protect companion animals, and leave other species unprotected (farm animals, rodents, wildlife, animals in research facilities). Since the kinds of animals that are included in or exempted from cruelty laws can change quickly, it is important to be familiar with the most current definitions used in your jurisdiction.

Just as states vary widely in their definition of “animal,” each state defines “cruelty to animals” in its own way. Some definitions are quite brief and non-specific, such as the Wisconsin law that declares that “No person may treat any animal, whether belonging to the person or another, in a cruel manner;”<sup>4</sup> however case law has given a definition.<sup>5</sup> Others incorporate a comprehensive collection of references to both antiquated and modern offenses, such as Connecticut’s single-sentence statute:

“Any person who overdrives, drives when overloaded, overworks, tortures, deprives of necessary sustenance, mutilates or cruelly beats or kills or unjustifiably injures any animal, or who, having impounded or confined any animal, fails to give such animal proper care or neglects to cage or restrain any such animal from doing injury to itself or to another animal or fails to supply any such animal with wholesome air, food and water, or unjustifiably administers any poisonous or noxious drug or substance to any domestic animal or unjustifiably exposes any such drug or substance, with intent that the same shall be taken by an animal, or causes it to be done, or, having charge or custody of any animal, inflicts cruelty upon it or fails to provide it with proper food, drink or protection

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4 Wisc. Stat. Ann. §951.02.

5 State v. Kuenzi, 332 Wis. 2d 297, 796 N.W.2d 222 (2011).

from the weather or abandons it or carries it or causes it to be carried in a cruel manner, or sets on foot, instigates, promotes or carries on or performs any act as assistant, umpire or principal in, or is a witness of, or in any way aids in or engages in the furtherance of, any fight between cocks or other birds, dogs or other animals, premeditated by any person owning, or having custody of, such birds or animals, or fights with or baits, harasses or worries any animal for the purpose of making it perform for amusement, diversion or exhibition, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.”<sup>6</sup>

In addition to having unique definitions of “animal” and what constitutes animal abuse, most state animal abuse laws have specific exemptions for certain socially accepted practices, even when these practices might be seen as resulting in pain or death. Common exemptions include the practice of veterinary medicine, scientific research, generally acceptable livestock husbandry and slaughter, hunting, trapping, rodeos, pest control, and shelter animal euthanasia. Some states expressly exempt harming animals belonging to another from their statute when the defendant had permission from the animal’s owner to harm or kill it as long as those actions do not constitute “torture.”<sup>7</sup> Other states also exempt from protection animals that are stray or un-owned unless the maltreatment constitutes “torture.”

Several state laws include additional unusual exemptions. For example, Alabama’s code contains an exemption for “shooting a dog or cat with a BB gun for defecating/urinating on property,”<sup>8</sup> and Indiana’s code contains an exemption for “parking an animal.”<sup>9</sup> Louisiana’s code exempts “traditional rural Mardi Gras parades, processions or runs involving chickens.”<sup>10</sup>

In recent years there has been a significant movement in the passage of animal protection legislation to better define poorly written laws, enhance penalties and acknowledge the recent changes in the many ways in which animals may be harmed. Like all legislative action, the intent of creating stronger and clearer laws often takes a back seat to pressure from those powerful organizations and lobbies opposing the efforts. The end results are statutes that continue to remain unclear to both investigators and prosecutors

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6 Conn. Gen. Stat. §53-247.

7 Texas Penal Code §42.09.

8 Ala. Code § 13A-11-246.

9 Ind. Code §35-46-3-5(a)(14).

10 La. Rev. Stat. Ann. §14:102.1.

## WHY PEOPLE ARE CRUEL TO ANIMALS

There are many reasons why adults and children are cruel to animals; it should not always be seen as a result of uncontrolled anger. This is important to remember at the time of sentencing and to ensure that the court does not order “anger management” treatment alone. Some of the reasons why animals are abused include:

- Harming the animal to control people or the animal;
- Retaliation against the animal and others through extreme punishment;
- Prejudice against a breed as not being worthy of life;
- Aggression through the animal, such as animal fighting;
- Acting out aggression, such as target shooting;
- Shock for amusement;
- Displacement of aggression (sometimes from children acting out their own abuse); and
- Sadism, which involves inflicting suffering through power and control.<sup>11</sup>

And sometimes animals are abused as part of gratuitous violence. A 2012 study from New Zealand explored the reasons of why companion animals are harmed in intra-familial violence.<sup>12</sup> The study focused on animals abused during and after an abusive relationship and found these factors:

| <b>Cruelty to animals during the abusive relationship</b>                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Abusing animals as normalized violence while harming people                                                                                   |
| Perverse satisfaction from hurting pets, often pets not in the home, which was not anger related but often done to instill fear in the family |
| Abusing the animals as punishment for unwanted behavior from people                                                                           |
| Abusing animals out of jealousy of the relationship between the animal and human victims                                                      |
| Abusing animals as a threat to keep the humans in the home and to show intolerance for misbehaving by people                                  |
| Animals caught in the cross fire of violence towards people                                                                                   |
| Abusing animals to avoid police intervention (which was more likely to occur with human violence)                                             |
| Animals used as sexual objects as a form of power and control over the human victims <sup>13</sup>                                            |

11 Eleanora Gullone, *Conceptualizing Animal Abuse with an Antisocial Behavior Framework*, in 1 *ANIMALS* 144-160 (2011), available at <http://nationallinkcoalition.org/wp-content/uploads/2013/01/AntisocialBehaviorGullone.pdf>; S.R. Kellert & A.R. Felthous, *Childhood cruelty toward animals among criminals and noncriminals*, 38 *HUMAN RELATIONS* 1113-1129 (1985).

12 M. Roguski, *Pets as Pawns: The Co-existence of Animal Cruelty and Family Violence*. (Auckland: Royal New Zealand Society for the Prevention of Cruelty to Animals, 2012), available at <https://womensrefuge.org.nz/users/Image/Downloads/PDFs/Pets%20as%20Pawns.pdf>.

13 “[P]articipants described it as the worse type of abuse that they had experienced as the perpetrator had robbed them of their own value system. With other forms of abuse they knew that the perpetrator was in the wrong. With bestiality they felt they had been forced or manipulated into being complicit in hurting a cherished animal.” Id. at vi.



| <b>Cruelty to animals after the abusive relationship ended</b>                      |
|-------------------------------------------------------------------------------------|
| Threats to harm the animal(s) left behind                                           |
| Actual harm to animals left behind as punishment for the person leaving             |
| Harm to the animals of friends and family out of retaliation for the person leaving |

Children are abusive to animals for a variety of reasons including:

- curiosity or exploration;
- peer pressure;
- to threaten or intimidate others to gain power and control;
- sexual gratification;
- to prevent someone else from harming their pet;
- acting out the abuse they have suffered;
- rehearsing their own suicide;
- seeking to shock or offend others to draw attention to themselves; and
- as a way of producing injury to themselves, analogous to “cutting.”

It is usually not difficult to identify those acts of animal cruelty which are potentially the most serious and which might indicate the greatest need for a response that provides the best protection of the community. The community itself will often demonstrate its desire for aggressive action in response to serious cases of animal cruelty, even when committed by youthful offenders. However, there are certain characteristics of acts of animal cruelty which are indicative of a need for greater concern.

Figure 3 lists the elements of animal cruelty cases most often associated with risk of other interpersonal crimes. This list is based on retrospective studies of acts of cruelty against animals reported by incarcerated violent offenders, reports of acts of animal cruelty committed prior to or in association with child abuse or domestic violence, and extrapolation from criteria used in threat assessment by the National Center for the Analysis of Violent Crime. There are some formal diversion programs available for juvenile or adult animal cruelty offenders and limited programs specifically addressing the mental health needs of such offenders. Most agencies make an attempt to address even serious animal neglect cases through education and assistance with resources. Cases that can be resolved through education should not be advanced for prosecution. Those that involve chronic repeated animal neglect or violent or intentional acts of cruelty should not be considered candidates for diversion.

Figure 3

### Factors in the Assessment of Dangerousness in Perpetrators of Animal Cruelty

1. Victim vulnerability — e.g. size, age, level of harmlessness/aggressiveness
2. Number of victims involved
3. Number of instances within a limited time frame
4. Severity of injury inflicted
5. Repetition of injuries on individual victim(s) — e.g. multiple wounds
6. Multiple forms of injury to individual victim(s) — e.g. stabbing and burning
7. Intimacy of infliction of injury — e.g., direct physical contact or restraint
8. Victim was bound or otherwise physically incapacitated
9. Use of fire
10. Duration of abuse — how prolonged was the act of abuse/torture
11. Degree of pre-planning or premeditation
12. Act involved overcoming obstacles to initiate or complete the abuse
13. Act was committed with high risk of detection or observation
14. Other illegal acts were committed at the scene of the animal cruelty — e.g., threats, vandalism
15. Individual was the instigator of an act involving multiple perpetrators
16. Animal cruelty was used to threaten, intimidate or coerce a human victim
17. Act of animal cruelty was indicative of hypersensitivity to real or perceived threats or slights
18. Absence of economic motive — e.g., killing and stealing animal for food
19. Past history of positive interactions with victim
20. Animal victim was subjected to mutilation or postmortem dismemberment
21. Animal victim was sexually assaulted or mutilated in genital areas or perpetrator indicated sexual arousal as a consequence of the abuse
22. Act of cruelty was accompanied by indicators of sexual symbolism associated with the victim
23. Perpetrator projected human characteristics onto victim — e.g., rehearsal of future acts against humans
24. Perpetrator documented the act of animal abuse through photographs, video or audio recording, or diary entries
25. Perpetrator returned at least once to scene of the abuse, to relive the experience
26. Perpetrator left messages or threats in association with the act of cruelty
27. Animal victim was posed or otherwise displayed
28. Animal cruelty was accompanied by ritualistic or “satanic” actions
29. Act of abuse involved staging or reenactment of themes from media or fantasy sources
30. Perpetrator reportedly experienced altered consciousness during the violent act — e.g., blackout
31. Perpetrator reportedly experienced strong positive affective changes during the violence act — e.g., laughter, “rush,” sexual excitement
32. Perpetrator lacks insight into cause or motivation of the animal abuse
33. Perpetrator sees himself as the victim in this event and/or projects blame onto others including the animal victim

A detailed discussion of this list can be found at <http://coloradolinkproject.com/dangerousness-factors-2/>.



# ANIMAL CRUELTY LAWS: PAST AND PRESENT

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Protecting animals from unnecessary pain and suffering has been a component of many societies throughout history. The earliest printed legal code in America, “The Body of Liberties” established by the Puritans of the Massachusetts Bay Colony in 1641, included among the 100 “liberties” two provisions protecting animals:

“92. No man shall exercise any Tirrany or Crueltie towards any brute Creature which are usuallie kept for man’s use.”

“93. If any man shall have occasion to leade or drive Cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them for a competent time, in any place that is not Corne, meadow, or inclosed for some peculiar use.”

The first American law that moved away from these limitations was in Maine (1821), prohibiting cruelly beating any horse or cattle—regardless of ownership. This was the earliest indication of a law addressing concern for the welfare of the animal itself. However, there was no system or organization established to enforce this law.

In the past decade, there have been a number of changes to animal abuse laws in the United States, thus raising more awareness for the need to protect animals from harm and hold offenders responsible. As of 2013:

- all states, except for South Dakota, have felony laws for severe cruelty to animals;
- all states have laws that prohibit neglect of animals;
- all states have felony laws that prohibit dog fighting; and
- all states have felony laws that prohibit cock fighting, except for Alabama, Hawaii, Kentucky, Mississippi, Ohio, South Carolina, South Dakota, Tennessee, Utah, and West Virginia. California, Louisiana and New Mexico only have felony penalties for the second offense.

Beginning in 2006, states began to include pets in domestic violence protection orders. As of 2013, 22 states and Puerto Rico have passed “pet protective order” laws.<sup>14</sup> And some states, such as Colorado, are beginning to define animal abuse as a form of domestic violence for purposes of domestic violence penalty enhancement.<sup>15</sup>

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14 Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Vermont, Washington, West Virginia and Puerto Rico.

15 Colo. Rev. Stat. §18-6-800.3 (1) states, “Domestic violence” also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

In spite of these advances in the laws for animals, there is still significant room for improvement of animal abuse laws across the United States. Many laws are ill-defined leaving investigators and prosecutors uncertain of whether conduct rises to the level of a crime. Thus, far too many cases of abuse continue to go unaddressed. And laws are woefully inadequate when it comes to the protection of farm animals (for abuses during the farming process or from intentional harm by outsiders), to animals in research facilities, to wildlife, stray and feral animals. As discussed in our June 2013 *Tales of Justice Newsletter* entitled “Hierarchy of Animal Protection Laws: Prosecuting the Abuse of Stray and Feral Cats,”<sup>16</sup> our laws select which animal species shall be afforded protection under the law, while leaving out others. This can also cause difficulties for investigators and prosecutors who uncover an offender who is intentionally harming and/or torturing animals of a species not protected by law.

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<sup>16</sup> Allie Phillips, *Hierarchy of Animal Protection Laws: Prosecuting the Abuse of Stray and Feral Cats*, *TALES OF JUSTICE* 3(3) (2013), available at <http://www.ndaa.org/pdf/Tales%20of%20Justice%20vol%203%20no%203.pdf>.

## WHY IT IS IMPORTANT TO TAKE ANIMAL ABUSE SERIOUSLY: THE LINK

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### *Cruelty to Animals is a Crime*

The prevention of unnecessary animal suffering has been at the core of laws in Western society for centuries. Legislatures and municipalities have responded to the interests of citizens by increasing the penalties for egregious acts of cruelty and providing better resources for the investigation and prosecution of these crimes. In response to such public interest, some prosecutor offices have created animal abuse units or designated animal abuse prosecutors. Some jurisdictions have joined together to create task forces to specifically address concerns about animal fighting and animal cruelty crimes.<sup>17</sup> Training on the investigation of and response to crimes against animals is increasingly being included in standard police training.

Opinion surveys of representative samples of the U.S. population show that a large percentage of the population views the enforcement of animal abuse laws as an important priority. A 2011 report from the Humane Research Council outlined that 91% of Americans view the protection of companion animals as important.<sup>18</sup> The following four charts come from the Humane Research Council's longitudinal *Animal Tracker* study (2008-2013).<sup>19</sup>

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17 Visit the National Link Coalition website at <http://nationallinkcoalition.org/link-coalitions> for a listing of animal abuse task forces, some of which include human protection agencies.

18 *Humane Trends* (2011), available at <http://www.humanetrends.org/summary/>.

19 Use permission granted from Humane Research Council, available at <http://www.humanereseach.org/content/collaborative-research-studies/>.



## Investigating & Prosecuting Animal Abuse

Figure 4 shows us that animal protection is equally important as the top social cause or political movement in the United States. Animal protection continues to be a “hot button” topic and with national news and social media sites publishing more stories and footage of animal abuse, it continues to raise awareness and the ire of people who are intolerant of animals being harmed.

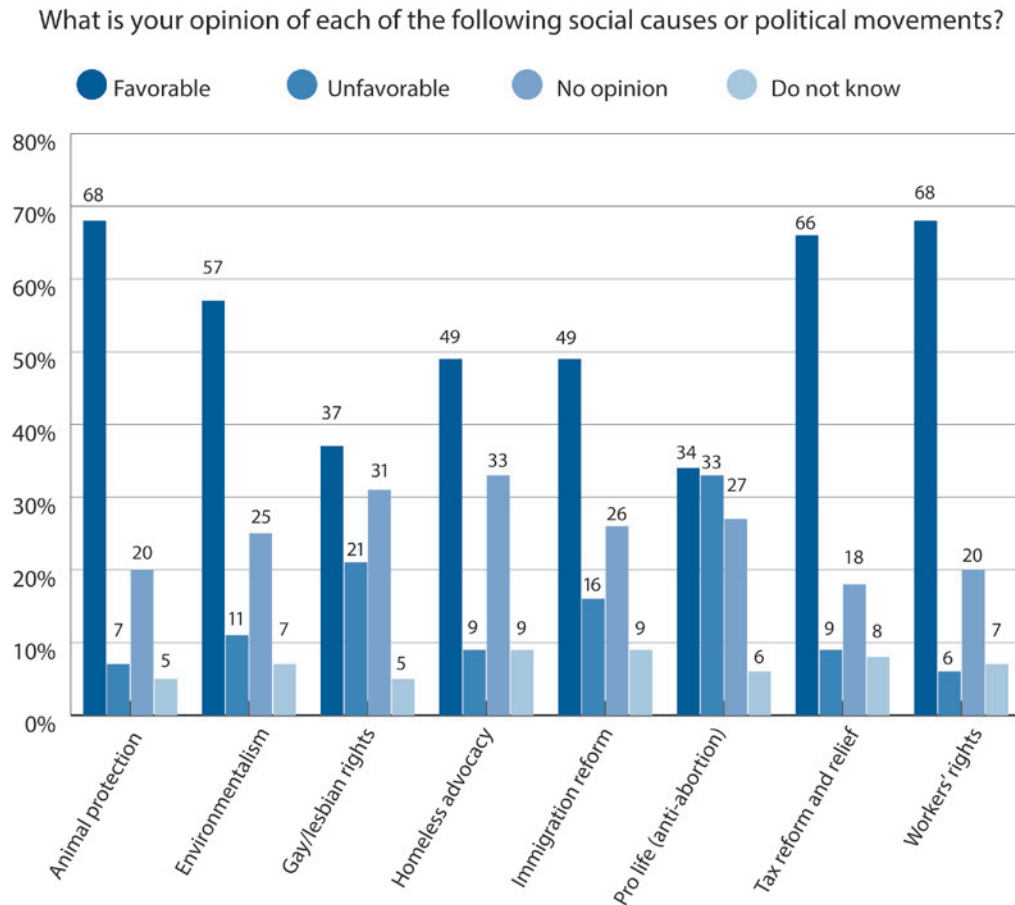


Figure 4: From the Humane Research Council (2012)

## WHY IT IS IMPORTANT TO TAKE ANIMAL ABUSE SERIOUSLY: THE LINK

Figure 5 tells us what Americans are most concerned about when it comes to harming animals. Although some of the options listed in Chart B will not fall into the purview of state and local laws, it is important for prosecutors and investigators to be aware of how communities are less tolerant of many forms of “legally sanctioned” activities that can harm animals. This could be important when selecting a jury.

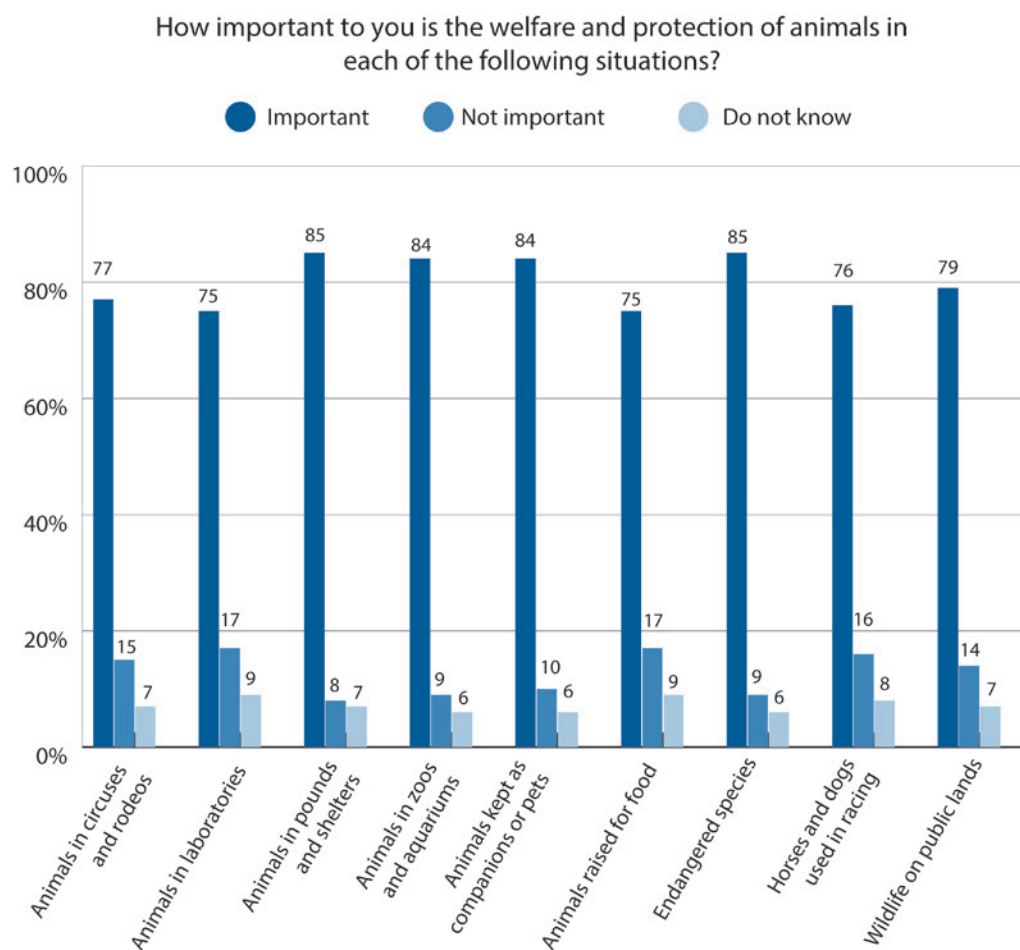


Figure 5: From the Humane Research Council (2012)

## Investigating & Prosecuting Animal Abuse

Figure 6 identifies the tactics that Americans support when it comes to uncovering animal abuse. Anti-cruelty investigations continue to be the most approved tactic that is supported by communities. One tactic not listed is that of private undercover investigations by animal protection organizations (with or without law enforcement's knowledge and/or assistance). This is often due to frustrations within communities from the lack of responsiveness to investigating complaints of animal abuse and obtaining critical undercover photos and videotapes. There has been a significant push back from certain business enterprises (such as agriculture) to lobby for the passage of laws that would prohibit the private videotaping of how animals are treated (i.e., Ag-gag bills), although in 2013 all eleven such bills introduced in state legislatures were defeated. It is important for prosecutors and law enforcement to understand a level of frustration in some communities over lack of enforcement and it is an opportunity to educate communities on the limitations of your state and local laws that, in turn, allow for changes in the law while avoiding backlash against your office.

In general, how much do you support or oppose each of the following tactics?

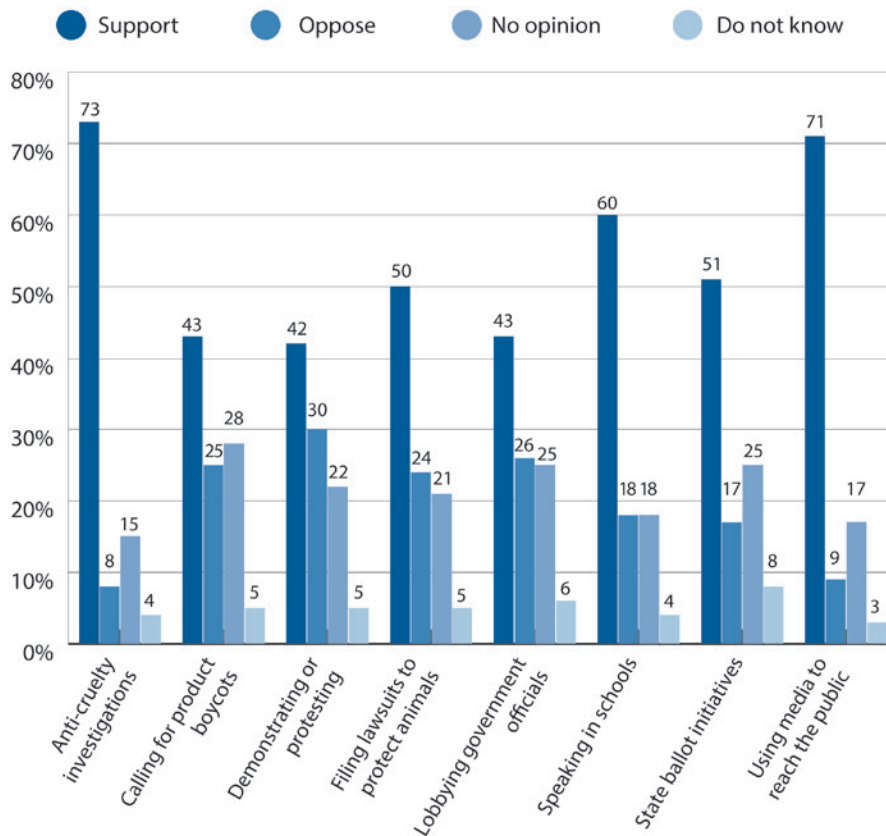


Figure 6: From the Humane Research Council (2011)

## WHY IT IS IMPORTANT TO TAKE ANIMAL ABUSE SERIOUSLY: THE LINK

Figure 7 demonstrates that 68% of those surveyed in this longitudinal study support the animal protection movement. Again, this demonstrates how animal protection is an important issue for Americans and may be helpful in identifying jurors who consider protecting animals from harm to be an appropriate role for the state.

Do you personally support or oppose the animal protection movement's goal to minimize and eventually eliminate all forms of animal cruelty and suffering?

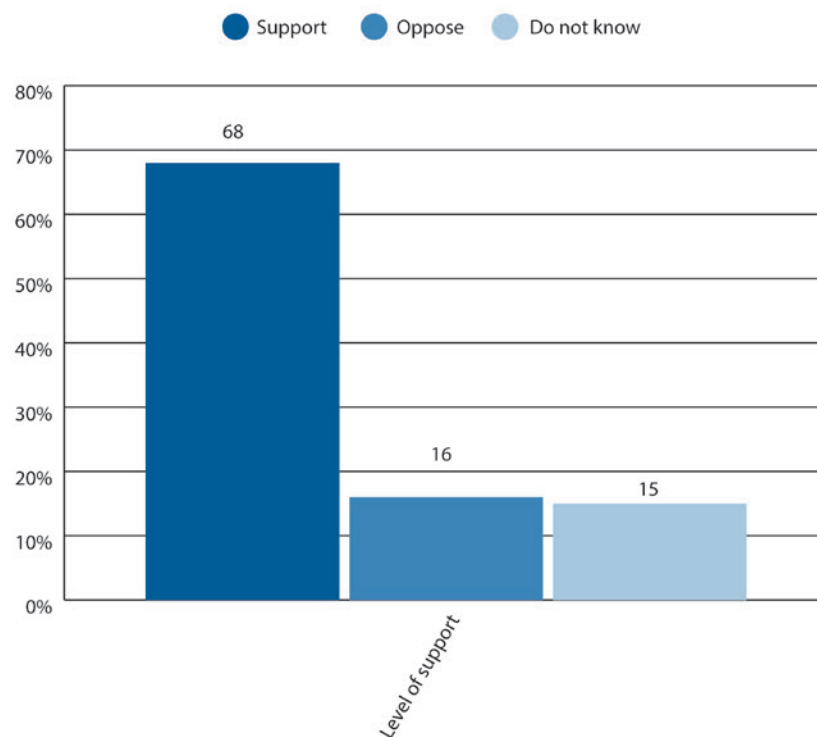


Figure 7: From the Humane Research Council (2013)

### *Cruelty to Animals Can Be a Predictor Crime*

An impressive collection of literature substantiates the common sense knowledge that those who have a history of repeated acts of intentional violence towards animals are at higher risk for exhibiting similar violence or lawlessness towards people in the future.

Studies have told us that (1) adults maltreating animals present a risk of abuse to children; (2) childhood violence towards animals **may** be predictive of future violent behavior and psychopathology; (3) batterers may target and maltreat animals as a way of threatening, coercing, silencing or intimidating their human victims; (4) families may delay or refuse to leave an abusive home out of fear for the pets; and (5) the co-occurrence of multiple forms of violence increases future violence.<sup>20</sup>

<sup>20</sup> Hackett & Uprichard, *Animal Abuse and Child Maltreatment: A review of literature and findings from a UK study*, NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN (2007).

Several studies have shown that animal abusers are important to monitor because of their increased likelihood in continued and increasing violence towards animals and people. “Batterers who also abuse their pets are both more controlling and use more dangerous forms of violence [sexual violence, marital rape, emotional violence and stalking] than batterers who do not.”<sup>21</sup> So brushing off an animal abuse case as “unimportant” is a mistake because a proper response can reduce recidivism.

People who hoard animals and have children are likely to abuse or neglect their children. It is common sense that if a person keeps a dog chained up outside without proper food, water and/or shelter and allows the dog to live with chronic neglect, then they are more likely to allow their children to be neglected.

Animal abuse has been linked to the commission of other crimes, including:

- child physical abuse;
- child sexual abuse (including a correlation to bestiality or sexual assaults of animals);<sup>22</sup>
- child neglect (including a correlation to animal hoarding);
- intimate partner violence;
- elder abuse;<sup>23</sup>
- assault; and
- sexual assault.

Animal fighting enterprises often have a host of other crimes co-occurring and, as a result, are now deemed as racketeering offenses (RICO) by some states.<sup>24</sup> Other crimes related to animal fighting include:

- gambling;
- weapon offenses;
- drug offenses;
- sexual assault;
- simple and serious assault;
- prostitution and human trafficking;
- children exposed to violence; and
- the intentional harm and torture of the animal victims.

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21 C.A. Simmons & P. Lehmann, *Exploring the link between pet abuse and controlling behaviors in violent relationships*, 22(9) JOURNAL OF INTERPERSONAL VIOLENCE 1211-1222 (2007).

22 C. Hensley, S.E. Tallichet & S.D. Singer, *Exploring the possible link between childhood and adolescent bestiality and interpersonal violence*, 21 JOURNAL OF INTERPERSONAL VIOLENCE 910-923 (2006); D.A. Simons, S.K. Wurtele & R.L. Durham, *Developmental experiences of child sexual abusers and rapists*, 32 CHILD ABUSE & NEGLECT 549-560 (2008).

23 Peak, Ascione & Doney, 2012. *Adult Protective Services and Animal Welfare: Should Animal Abuse and Neglect Be Assessed During Adult Protective Services Screening?* 24(1) JOURNAL OF ELDER ABUSE AND NEGLECT (2012); Barbara Boat & Juliette Knight, *Experiences and Needs of Adult Protective Services Case Managers When Assisting Clients Who have Companion Animals*, 12(3/4) JOURNAL OF ELDER ABUSE AND NEGLECT 145-155 (2000); R. Lockwood, *Making the connection between animal cruelty and abuse and neglect of vulnerable adults*, 23(1) THE LATHAM LETTER 10-11 (2002).

24 These states have included animal fighting in their state racketeering and criminal enterprise laws as of 2013: Florida (Fla. Stat. §895.02), Illinois (720 Ill. Comp. Stat. 5/33G-3), Michigan (Mich. Comp. Laws §750.159g), Oregon (Or. Rev. Stat. §166.715), Utah (Utah Code Ann. §76-10-1602) and Virginia (VA. Code Ann. §18.2-513).

## WHY IT IS IMPORTANT TO TAKE ANIMAL ABUSE SERIOUSLY: THE LINK

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Animal abuse is also related to other serious offenses, such as bullying,<sup>25</sup> arson and fire setting by youth<sup>26</sup> and homicide.

### *Cruelty to Animals Can Be an Indicator Crime*

A large and growing body of research has documented the co-occurrence of animal cruelty and interpersonal violence, particularly domestic violence, child abuse and elder abuse. Paying attention to the victimization of animals can often lead to the discovery of people who have been harmed by the same perpetrator, or who are at high risk of being harmed. Animal abuse investigators and humane law enforcement agents are now seen as important sentinels for detecting many forms of abuse, and in some states are key mandated reporters of suspected child and elder abuse.

A 2009 study of 860 college students looked at the link between animal abuse, child abuse and domestic violence. It was found that half of the students had experienced at least one form of violence in the home when growing up. Of interest is that individuals who **witnessed** animal cruelty were 8.14 times more likely to become a perpetrator.<sup>27</sup> This is consistent with other studies that have shown that the mere witnessing of animal abuse may increase the likelihood of violent offending against people and animals by that witness.<sup>28</sup> This is particularly significant for children who grow up in violent homes and witness animals abuse. Treatment for these children is needed to stop the cycle of violence in their lives.

Serious animal neglect can also point to a variety of other problems that should be addressed. Cliché but true ... if someone cannot care for a companion animal, they are not in a position to properly care for a child or family member. Through television shows like “Hoarders,” much attention has been given to the problem of “animal hoarding,” the accumulation of large numbers of animals in extremely unsanitary conditions, often resulting in the death of many animals and potentially serious health consequences for the people who are living with them. Although animal hoarders are unlikely to be involved in serious interpersonal crimes, they are often in need of social and/or mental health services. In many cases, individuals charged with animal abuse and neglect in hoarding situations have been found to have children or dependent adults living in the same squalor conditions as the animals that are suffering. Social service interventions and long-term monitoring in these cases are more effective when they are mandated as part of the adjudication of an animal abuse case.<sup>29</sup>

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25 Gullone (2011); Gullone & Robertson, *The relationship between bullying and animal cruelty behaviours in Australian adolescents*, 29 JOURNAL OF APPLIED DEVELOPMENTAL PSYCHOLOGY 371-79 (2008); A. Arluke, J. Levin, C. Luke & F.R. Ascione, F.R., *The relationship of animal abuse to violence and other forms of antisocial behavior*, 14(9) JOURNAL OF INTERPERSONAL VIOLENCE 963-975 (1999); K.S. Miller & J.F. Knutson, J.F., *Reports of severe physical punishment and exposure to animal cruelty by inmates convicted of felonies and by university students*, 21(1) CHILD ABUSE & NEGLECT 59-82 (1997).

26 D. Kolko (Ed.). HANDBOOK ON FIRESETTING IN CHILDREN AND YOUTH. (San Diego, CA: Academic Press.Kolko, 2002).

27 S. DeGue & D. DeLillo, *Is Animal Cruelty a “Red Flag” for Family Violence? Investigating Co-Occuring Violence Toward Children, Partners and Pets*, 24(6) JOURNAL OF INTERPERSONAL VIOLENCE 1036-1056 (2009).

28 A.C. Baldry, *Animal abuse among preadolescents directly and indirectly victimized at school and at home*, 15 CRIMINAL BEHAVIOUR AND MENTAL HEALTH 97-110 (2005).

29 A review of case outcomes in serious hoarding neglect cases is provided by C. Berry, G. Patronek and R. Lockwood, *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL LAW 167 (2005).



When a human harms an animal, this is a strong ***predictor and indicator*** that additional animal and human victims may be next. Taking animal abuse seriously can help investigators and prosecutors create safer communities through early intervention of those who harm animals.

### *Cruelty to Animals Destabilizes Communities*

With the growth of social media, people and communities can connect across the globe. Publicity involving crimes towards animals has resulted in greater transparency and more pressure on investigators and prosecutors. Law enforcement officials often express surprise at the intense reactions of communities to incidents of animal abuse. High-profile cases involving animal victims often result in substantial offers of rewards of hundreds or even thousands of dollars and citizens demanding that local officials take action. Many people see animals as truly innocent victims, so their victimization may be more disturbing than person-on-person crimes in which parties may be seen as sharing some responsibility.

No longer can communities ignore crimes toward animals. Crimes involving animal abuse can be seen as a classic example of “broken window” crimes, i.e., relatively “low-level” offenses that authorities may overlook, yet may be considered by members of the community as a sign that no one cares about violence and decay in their neighborhood. Effective enforcement of animal abuse laws is increasingly seen as an important component of community-oriented policing.

Animal fighting seems to penetrate all communities; urban and rural. Chicago’s Anti-Cruelty Society conducted written surveys with 37,702 students in grades K-12 between 2003 and 2006 to determine the extent of children attending and witnessing animal fighting. The surveys were administered at over 1,500 schools, summer camps, and other venues. Figure 8 shows the shocking results.<sup>30</sup> When children are witnessing animal abuse, especially animal fighting, it desensitizes them to harm and lowers empathy.

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30 S. Cleveland, *Dog fighting and youth: Effects, consequences, and tools for intervention* (2006). Presentation at 2006 American Humane Annual Conference, Schaumburg, IL, Sept. 28-30. Study also discussed at <http://www.dnainfo.com/chicago/20121126/englewood/dogfighting-is-fact-of-life-for-many-chicago-kids#ixzz2DSgtQbfO>.

## WHY IT IS IMPORTANT TO TAKE ANIMAL ABUSE SERIOUSLY: THE LINK

Figure 8

|                                             | CITY OF CHICAGO | SUBURBS     | TOTAL          |
|---------------------------------------------|-----------------|-------------|----------------|
| No. of students surveyed:                   | 35,815          | 1,887       | 37,702         |
| No. who have attended dogfights             | 2,362 (6.6%)    | 323 (17.1%) | 2,685 (7.1%)   |
| No. aware of dog fights in the neighborhood | 5,187 (14.4%)   | 623 (33%)   | 5,810 (15.4%)  |
| No. who have attended cockfights            | 359 (1%)        | 93 (4.9%)   | 452 (1.2%)     |
| No. of families entering dogfights          | 163             | 13          | 176            |
| No. aware of serious dog bites              | 10,647 (29.7%)  | 636 (33.7%) | 11,283 (29.9%) |



## TYPES OF ANIMAL ABUSE

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### **Simple Neglect**

Most reported cases of animal abuse involve (1) failure to provide adequate food, water, shelter and/or sanitary environment, or (2) failure to provide veterinary care to one or more animals, including emergency veterinary care to an injured or suffering animal. Usually these situations are handled by local animal care and control or humane agencies in an effort to educate the offender to provide proper care. These situations may often involve individuals who are financially struggling (and, therefore, not intending to cruelly place their animal in harm's way) or an elderly person who is physically or financially struggling to care for their pet (which may be their best friend and only family member). Education is an important first step in these situations. If education and assistance from local resources proves ineffective, action may be taken under local ordinances or state law. However, cases involving large numbers of animals or which cause death or serious debilitation of animals may be charged as serious misdemeanor or even felony offenses.

### **Abandonment**

This occurs most often when the owner moves out of their home leaving the animal(s) behind. This happened with great frequency during the economic down-turn from 2007-2009 which coined the term "foreclosure pets" when homes were being foreclosed at record rates and animals were perishing inside the dwellings. These animals are typically abandoned inside of the home without sufficient food or water, or abandoned outdoors with insufficient survival skills. Many local ordinances are weak when it comes to investigating and prosecuting animal abandonment, leaving confusion as to what action can be taken and when seizure of the animal can occur. Most jurisdictions have stray dog laws or ordinances which allow for the quick seizure of those animals; however, there are very few stray cat laws, thus leaving cats unprotected by the law. This leaves far too many investigators and prosecutors to misunderstand or misinterpret the law resulting in failed or delayed action. These cases are rarely prosecuted, yet are the most common form of animal abuse.

### **Severe Neglect**

A growing number of states make a distinction between simply failing to take adequate care of animals and intentionally or knowingly withholding food or water needed to prevent dehydration or starvation. Although some states fail to recognize neglect as meeting the level of intentional cruelty, others treat any act, omission or neglect that results in unnecessary or unjustifiable suffering as a potentially serious offense. Community standards for what is considered to be a reasonable level of care for companion animals have been rising steadily in recent years as veterinary and humane professionals have provided extensive information on proper responsible pet care. These situations typically involve hoarding, commercial breeding establishments (i.e., puppy mills), and animals in hot vehicles.

#### *Hoarding*

Animal care and control and law enforcement agencies are reporting a growing number of cases that involve large numbers of animals (sometimes several hundred) kept under extremely

poor conditions, often resulting in the death of many animals from disease and starvation. Communities and neighbors are now more aware of the horrors of hoarding and are on alert. Such cases present substantial challenges for prosecutors due to the large number of animals involved, the possible mental health issues surrounding the defendant(s) and the extremely high recidivism rate seen with this particular offense. At this time, therapeutic intervention for hoarders is difficult to enforce and is frequently unsuccessful. Constant oversight and monitoring through a coordinated effort of probation, social services, animal care and control, housing authorities and others is the best means to prevent recidivism.

Three types of hoarding have been identified, each requiring a different type of treatment.

- (1) The Overwhelmed Caregiver: This is an individual who may have unsterilized animals who breed and produce more off-spring than the individual can handle. This is usually due to a change in circumstances (loss of employment, loss of marriage, physical disability), and what may start off as two animals can quickly turn into hundreds. Early on the animals may receive appropriate food, water, shelter and veterinary care, but as the numbers climb the individual is overwhelmed financially with the responsibility. These individuals recognize the dire situation and are more likely to work with local officials, to spay and neuter the animals with assistance, to place the animals in new homes or with animal rescue organizations, and are more compliant with non-court ordered treatment. These individuals often do not require prosecution or court intervention and will work effectively with animal care and control or law enforcement officials.
- (2) The Rescue Hoarder: This is an individual who may be involved in animal rescue, or lives in area where s/he finds many animals requiring assistance. These individuals may approach the situation with the best of intentions but often believe that no one can care for the animals as well as they can. They fear the euthanasia of animals and cannot say no to helping “just one more”. So even when approached with offers to place the animals in new homes or with rescue groups, these individuals become deceptive, lie and obfuscate the process out of the belief that the animals will suffer if they leave. In recent years, we have seen a rise in incidents where animal rescue organizations have been criminally prosecuted for animal hoarding. Those situations fall into this category. This individual is more difficult to work with and may require prosecution and court intervention, including the oversight of a probation officer or social worker to insure that the number of animals possessed by this person remains at a safe level.
- (3) The Exploitive Hoarder: This individual is the most difficult to work with and will require prosecution and court intervention. They acquire animals solely for their own personal reasons, often as a means of soliciting funds from the public by misrepresenting the quality of care they are providing. They may fail to care for the animals because they lack empathy and often have sociopathic tendencies. They have no guilt for the squalor and suffering of the animals and are resistant to help. This person will require constant and vigilant oversight to ensure that they do not re-accumulate animals.

The prosecution of animal hoarding cases can sometimes be unpopular if the defendant is elderly, or seen as sympathetic and caring, rather than as someone who has caused substantial suffering to a large number of animals. Responding to the community and selecting a fair jury can be tricky.

## TYPES OF ANIMAL ABUSE

Animal care and control, veterinarians, and prosecutors can be extremely helpful in educating the public and the triers of fact to the real impact of these actions on the animals involved. Although most prosecuted animal hoarding cases result in convictions or pleas, these cases are notoriously difficult to resolve. Hoarders who are required to make restitution for veterinary costs rarely comply. Those who are ordered to undergo psychological assessment and/or treatment also generally fail to comply.<sup>31</sup> And without vigilant oversight, hoarders will re-accumulate animals.

Many agencies have begun to promote a community-based task force approach to respond to hoarding situations.<sup>32</sup> Such groups involve representatives of all stakeholders in the community, including law enforcement, human health and social services, public health, zoning, code enforcement, and animal protection groups to bring a coordinated effort to these cases. Conviction on animal abuse charges and probation that allows long-term monitoring can be important tools for such task forces for preventing recidivism of hoarding. As with other forms of animal abuse, legislators are recognizing that animal hoarding is not a harmless eccentricity, but a potentially serious problem that takes a toll on animals, people and the community as a whole. States are now beginning to pass hoarding specific laws to address this serious concern.

When responding to a hoarding complaint, it is important for investigators and prosecutors to call upon local, state and/or national animal protection organizations for assistance in seizing, assessing and caring for the animals until they can be forfeited and re-homed. These can be costly cases, but the assistance of these organizations and their ability to mobilize a community to assist with financial donations and foster placement will be tremendously helpful during the pendency of the case.

For a detailed discussion and study on animal hoarding, we recommend *Animal Hoarding: Structuring interdisciplinary response to help people, animals and communities at risk*.<sup>33</sup>

### Investigative Checklist for Hoarding Cases

- ✓ Photographs/video showing the conditions observed when first entering the property.
- ✓ Photographs/video of each animal as found and removed from crates documenting any medical conditions. Also note condition of nails, fur, teeth.
- ✓ Photographs/video of the animals as they respond to medical treatment.
- ✓ Seize and/or take samples of crates, furniture cushions, and rugs to preserve the odor and squalor.

*Continued*

<sup>31</sup> Berry, *supra* note 3.

<sup>32</sup> Animal Hoarding: Structuring Interdisciplinary Responses to Help People, Animals and Communities at Risk. (Gary J. Patronek, Lynn Loar & J. N. Nathanson, J.N., eds., Hoarding of Animals Research Consortium, 2006), available at <http://vet.tufts.edu/hoarding/pubs/AngellReport.pdf>. Also check out Victoria Hayes, *A Detailed Discussion of Animal Hoarding* (2010), available at <http://animallaw.info/articles/ddushoarding.htm#s113> and <http://www.asPCA.org/fight-cruelty/humane-law-enforcement/asPCA-cruelty-intervention-advocacy-program>.

<sup>33</sup> *Id.*

## Investigating & Prosecuting Animal Abuse

- ✓ Place the white, clean towel at the door and collect it and preserve it. The odor will be present.
- ✓ Photograph and seize food and water bowls.
- ✓ Seize items that have been urinated on, such as lamp shades and chair cushions.
- ✓ Obtain all records concerning animal ownership, medical care, and food bills.
- ✓ In cases where the hoarder is actually a rescue agency and is selling the animals, obtain a search warrant for all financial records for every animal placement, including all bills, documents, medical records, and records showing where these animals were obtained. Take and search all computers and electronic devices. Assess whether you have a tax fraud case.
- ✓ Obtain property ownership information.
- ✓ Are there rodents present? If any are dead, take them for analysis. If the perpetrators were using rat poison to kill the rodent population, some of the animals may have ingested that poison.
- ✓ Seize all medications found, especially veterinary medications.
- ✓ Take all animals, alive or deceased, including any offspring from animals who are pregnant, and incorporate into the search warrant.

*Thank you to Sandy Sylvester, Prince William Assistant Commonwealth Attorney (Virginia), for supplying this checklist.*

### *Commercial breeders (puppy mills)*

“Puppy mill” cases, like hoarding, come with a host of challenges that investigators and prosecutors must be prepared to handle. As awareness about mass breeding of animals increases throughout the United States, so do the number of complaints, investigations and prosecutions of those involved. Puppy mills involve dogs being bred and housed in cramped cages, often with multiple animals in a small space. These dogs mature with a host of physical and behavioral issues and often receive insufficient food and water, little veterinary care, and little or no socialization. The females are repeatedly impregnated causing the over-breeding of certain breeds which can result in dogs with significant physical issues. These animals are then typically sold at auctions or through pet stores.

To address the growing concern about puppy mills, states have begun to pass “puppy lemon” laws that allow for purchasers to receive a refund of money paid for the dog, including recoupment of veterinary expenses. Twenty-two states have puppy lemon laws as of 2012.<sup>34</sup> It is important for

<sup>34</sup> Arizona (Ariz. Rev. Stat. §44-1799.05); Arkansas (Ark. Code Ann. §4-97-105(b)(1)); California (CA Health & Safety §122070); Connecticut (Conn. Gen. Stat. Ann. §22-344b-344d); Delaware (6 Del. Code Ann. §4005); Florida (Fla. Stat. §828.29); Maine (7 Me. Rev. Stat. Ann. §4155-4156); Maryland (Md. Bus. Reg. §19-705(b)(1)); Massachusetts (33 CMR 12.05); Michigan (Mich. Comp. Laws Ann. §287.335a); Minnesota (Minn. Stat. Ann. §325F.791); Nebraska (Neb. Rev. Stat. § 54-647(2)); Nevada (Nev. Rev. Stat. §574.490); New Hampshire (N.H. Rev. Stat. §437.10); New Jersey (N.J. Stat. Ann. §56.8.95); New York (N.Y. Gen. Bus §753); Oregon (Or. Rev. Stat. §646A.077); Pennsylvania (73 Pa. Stat. Ann. §201-9.3); Rhode Island (R.I. Gen. Laws §4-25-5); South Carolina (S.C. Code Ann. §47-13-160); Vermont (Vt. Stat. Ann. 20 §4301-4304); and Virginia (Va. Code Ann. §3.2-6514). See a compendium of these statutes at <http://animallaw.info/articles/State%20Tables/tbuspetprotectionlaws.htm>.



## TYPES OF ANIMAL ABUSE

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prosecutors to not push these cases with documented evidence of animal injury, pain and suffering into the civil court system under the puppy lemon laws because it will allow the puppy mill owners to continue their cruel business. Criminally, puppy mill owners can be prosecuted for a variety of crimes including intentional animal abuse, animal neglect, tax evasion, and so on.<sup>35</sup>

### *Animals in Hot Vehicles*

When people leave animals in vehicles during hot weather, death can result in as quickly as a few minutes, and if the animal lives they can suffer from a host of life-long physical issues. These can be challenging cases to prosecute because many times the owner was uneducated of the dangers of how quickly a car can become an oven in hot temperatures. These individuals may have remorse and did not have cruel intent. They can be sympathetic defendants. It is important for prosecutors to work together with their animal care and control and law enforcement agencies in public service campaigns to prevent deaths of animals in hot vehicles and to educate about the criminal penalties. This is one instance where prosecutors should be involved in a proactive prevention approach. For a chart of state laws addressing animals left in parked vehicles, please visit the Michigan State University Animal Legal & Historical Center website.<sup>36</sup>

Other situations involving animals in hot vehicles involves the transport of farm animals and livestock,<sup>37</sup> transport of horses,<sup>38</sup> animals in transport to research facilities,<sup>39</sup> animals in transport to auction,<sup>40</sup> and animals in transport as part of traveling circuses or rodeos.<sup>41</sup> While these animals have some protections under federal law, you may still be able to bring charges under state law if an animal dies or is severely injured due to extremes of heat or cold conditions in your jurisdiction.

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35 Sandy Sylvester and Curtis Baranyk, *When animal hoarding is warehousing for profit*, TALES OF JUSTICE, Vol. 1(2 and 3) (2011), available at [http://www.ndaa.org/animal\\_abuse\\_newsletter\\_mailinglist.html](http://www.ndaa.org/animal_abuse_newsletter_mailinglist.html).

36 State chart available at <http://animallaw.info/articles/State%20Tables/tbusdogshotcars.htm>.

37 The federal “Twenty-Eight Hour” law (49 U.S.C. §80502) outlines the interstate transport of farm animals. But some states also have laws on how long farm animals are to be confined during transport. Read more at Paige Tomaselli, INTERNATIONAL COMPARATIVE ANIMAL CRUELTY LAWS, available at <http://www.animallaw.info/articles/ddusiac1.htm#id-13>.

38 See [http://www.aphis.usda.gov/animal\\_welfare/hp/downloads/stakeholder/atteb23c.pdf](http://www.aphis.usda.gov/animal_welfare/hp/downloads/stakeholder/atteb23c.pdf).

39 The Animal Welfare Act (7 U.S.C. §2143) states: (1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors. (2) The standards described in paragraph (1) shall include minimum requirements— (A) for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals; and (B) for exercise of dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the Secretary, and for a physical environment adequate to promote the psychological well-being of primates. The Animal Welfare Act regulations (9 CFR 1.1 et. seq.) is available at <http://www.gpo.gov/fdsys/pkg/CFR-2009-title9-vol1/xml/CFR-2009-title9-vol1-chapI-subchapA.xml/>.

40 Animal Welfare Act, 7 U.S.C. 2142 and 9 CFR, Part 2, Section 2.1, 2.6, 2.75, 2.76 and 2.100  
9 CFR, Part 3, Subpart F. More information available at [http://www.aphis.usda.gov/animal\\_welfare/policy.php?policy=5](http://www.aphis.usda.gov/animal_welfare/policy.php?policy=5).

41 7 U.S.C. 2131 et. seq.

**Signs of heat stroke include** (but are not limited to):

- body temperatures of 104-110F degrees
- excessive panting
- dark or bright red tongue and gums
- sticky or dry tongue and gums
- staggering
- stupor
- seizures
- bloody diarrhea or vomiting
- coma
- death

*Thank you to Sandy Sylvester, Prince William Assistant Commonwealth Attorney (Virginia), for supplying this checklist.*

**Investigative Checklist for Animals in Hot Cars**

- ✓ Record body temperature as soon as possible.
- ✓ Obtain weather for the incident date including ambient temperature, heat index, and humidity.
- ✓ If perpetrator was in a store and left the animal in a car, obtain receipts and video surveillance to show how long animal was left in car.
- ✓ Photograph car to show the condition of shade on the car, position of windows, available water or ventilation in the car.
- ✓ Search vehicle (obtain search warrant if needed) to determine if animal tried to escape. Look for claw marks, chewing, scratching at windows.
- ✓ Search the vehicle looking for bodily fluids.
- ✓ Always take the animal to a veterinarian even if the animal seems fine. There are complications from heat stroke including disseminated intravascular coagulation which can be fatal.
- ✓ Canvas the area for witnesses.
- ✓ Obtain all records pertaining to the animal's care (veterinary records, compliance with local ordinances, etc.).

*Thank you to Sandy Sylvester, Prince William Assistant Commonwealth Attorney (Virginia), for supplying this checklist.*

In addition to the challenges with investigating and prosecuting large scale seizures like hoarding and puppy mill cases comes the financial burden of seizing, caring for and housing the animals. These cases can run in the tens of thousands of dollars, and sometimes into the millions. Most jurisdictions do not have the funds or space to house the animals until they are healthy and/or relinquished for adoption. This is where many national, state and local animal protection groups can be a helpful partner to the prosecution by taking over the care of the animals. Prosecutors should welcome and even approach local, state and national organizations to request assistance with the seizure, care and eventually placement of the seized animals. It is also important to know your civil forfeiture laws that may allow for the transfer of ownership from the owner to your local animal protection agency for placement before conclusion of the case. (See later section on *Seizure and Holding of Animal Victims*).

### **Intentional Harm**

Cases of intentional cruelty, such as those described at the beginning of this monograph, are the ones of greatest concern to the general public and the ones more likely to involve juvenile offenders.<sup>42</sup> There is legitimate fear that the individuals involved in violent acts against animals present a danger to the public that must be addressed.

Intentional cruelty can involve kicking, punching, stabbing, shooting, poisoning, strangling, electrocuting, setting on fire, and other acts that constitute torture. In recent years, some states have passed torture laws that raise the penalty for these offenders in recognition that these individuals are engaging in aggressive and antisocial behavior that needs to be taken seriously.

Intentional animal cruelty is often seen in association with other serious crimes including drug offenses, gang activity, weapons violations, child abuse, sexual assault and domestic violence, and can be one of the most visible parts of an entire history of aggressive or antisocial behavior. Such cases are often easier to prosecute than neglect or hoarding cases since the effects of the crime on the victim may be easier to document and the intentionality of the offense is more clearly recognized.

### **Organized Criminal Enterprise: Animal Fighting**

Some states are now recognizing that animal fighting is part of an organized criminal enterprise. As such, animal fighting is now being included in state racketeering and criminal enterprise statutes.<sup>43</sup> “Blood sports” such as dogfighting and cockfighting have been singled out for special attention in the anticruelty laws of the United States and the United Kingdom since their inception in the 19th century. These crimes continue to flourish, often in connection with other offenses. The lucrative and underground nature of these offenses, and the logistical problems of dealing with many defendants and many animals that may be seized as evidence, can present unique challenges to police and prosecutors.

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42 Randall Lockwood, *Counting Cruelty: Challenges and Opportunities in Assessing Animal Abuse and Neglect in America*, in *INTERNATIONAL HANDBOOK OF THEORY AND RESEARCH ON ANIMAL ABUSE AND CRUELTY* (Purdue University Press 2006-2007).

43 States that have included animal fighting in their racketeering laws are Florida (Fla. Stat. §895.02), Illinois (720 Ill. Comp. Stat. §5/33G-3), Michigan (Mich. Comp. Laws §750.159g), Oregon (Or. Rev. Stat. §166.715), Utah (Utah Code §76-10-1602) and Virginia (VA. Code. Ann. §18.2-513).

The federal Animal Fighting Prohibition Enforcement Act was enacted in 2007. It provides for felony penalties for interstate commerce, import and export relating to commerce in fighting dogs, fighting cocks, and cock fighting paraphernalia. Each violation can result in up to 3 years in jail and a \$250,000 fine. As of 2013, dogfighting is a felony in all 50 states and the District of Columbia, Puerto Rico and the Virgin Islands. In most states the possession of dogs for the purpose of fighting is also a felony offense. In recent years, states have focused on increasing penalties for spectators at animal fighting events (because without spectators betting, these events would not occur) and increased penalties for bringing children to events.

Cockfighting is also illegal in all states and is a felony in all but 10 states.<sup>44</sup> As with fighting dogs, interstate transportation or export of cocks for fighting purposes is prohibited under the federal Animal Welfare Act. Forty-one states and the District of Columbia currently prohibit being a spectator at a cockfight. In a growing number of states the possession of cockfighting implements is also a crime.

Since existing federal laws dealing with these blood sports are weaker than nearly all state laws, they are infrequently applied in such cruelty cases. Federal legislation was introduced in the 2012-13 Congressional session that would add language and additional penalties for bringing spectators and children to animal fighting events.<sup>45</sup>

Other forms of “bloodsport” are beginning to attract legislative and legal attention as well. “Hog dog” competitions in which dogs are pitted against confined hogs have recently been outlawed in Alabama and similar restrictions have been proposed in other states.

For more information on investigating and prosecuting dog fighting, check out the *Dogfighting Tool Kit for Law Enforcement*.<sup>46</sup>

### Ritualistic Abuse

The phrase “occult and ritualistic animal abuse” immediately evokes many disturbing images: a cat nailed to a crucifix and burned, the head of a dog left on the steps of a building with a piece of paper bearing a curse stuck in the animal’s mouth, a goat’s throat slit as part of a ritual sacrifice. Few other crimes against animals create such intense concern within a community. Most crimes in which animals are killed or mutilated and left where they will be discovered immediately raise fears of “satanic” or cult activity and concern about what other crimes the perpetrators of such acts may have committed or be capable of. Yet it is precisely because of the highly emotional nature of these crimes that there is an even greater need for careful, rational, systematic investigation of the evidence and care in prosecution.

Increasingly, law enforcement officials have recognized the need to be knowledgeable of the range of unfamiliar or occult practices one might encounter but, at the same time, they have recognized the need to focus objectively on those actions that may constitute a crime and not be distracted by constitutionally

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44 Those ten states are Alabama, Hawaii, Kentucky, Mississippi, Ohio, South Carolina, South Dakota, Tennessee, Utah, and West Virginia. Three states only have felony penalties for the second offense: California, Louisiana and New Mexico.

45 Animal Fighting Spectator Prohibition Act of 2013, H.R. 366 and S. 666.

46 Available at <http://www.cops.usdoj.gov/pdf/publications/PublicationRequestForm.pdf> (page 5).

protected beliefs that are unconventional or even unpopular. However, prosecutors should not avoid prosecuting well-documented instances of animal cruelty simply because they have allegedly been done in the name of religious practice. In 1987 the City of Hialeah, Florida, passed an ordinance that banned Santeria Church of Lukumi Babalu Aye practitioners from performing animal sacrifice as part of their ceremonies. The ordinance was upheld by the State Supreme Court and Federal District Court but was overturned by the U.S. Supreme Court,<sup>47</sup> which held that the law was too specific in its restriction of a specific religious organization. Although some feared that this decision might open the door to widespread proliferation of animal sacrifice as a protected religious practice, the Supreme Court unanimously held that governments have the right to enforce more broadly based prohibitions on animal cruelty, livestock keeping, and zoning and noted that the decision did not restrict enforcement of anticruelty laws, which were subsequently used in successful prosecution of some practitioners.

### **Bestiality**

Sexual contact with animals was once subsumed within “crimes against nature” laws in nearly every state. Over the last several decades the repeal of many of these laws has had the unintended effect of decriminalizing animal sexual assault unless the act involved some other crime such as cruelty to animals, indecent exposure, trespass, or breaking and entering. In response to this unintended change, many state legislatures have reenacted provisions specifically targeting bestiality as distinct from other traditional “crimes against nature” or animal cruelty offenses. These laws continue to change rapidly, but the majority of states have reinstated such provisions.

Opponents of such laws maintain that their behavior constitutes a lifestyle choice, but this view is countered by the prevailing legal, legislative, and societal view that such contact constitutes “interspecies sexual assault” and is problematic because (1) human-animal sexual contact is coercive as the animal is unable to “consent,” (2) such practice often causes pain or death for the animal, and (3) animals are unable to consent to or communicate about their abuse. There are also growing instances where predators are forcing children to engage in acts of bestiality, which can cause a host of physical and mental issues for children, as well as harm to the animal.

Prosecutions for animal sexual assault are occurring more in recent years, but are still uncommon and can present unique challenges to prosecutors and often require expert veterinary and psychological testimony. The organizations listed in the Resources section can provide assistance in identifying appropriate experts to assist in such cases.

When a defendant is convicted of bestiality, some state sexual offender registration laws will require the defendant to register. Registration for bestiality (or forcing another to engage in bestiality) is required in: Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, and Virginia.<sup>48</sup>

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<sup>47</sup> Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).

<sup>48</sup> Visit <http://www.ndaa.org/pdf/Bestiality%20and%20Sex%20Offender%20Registration.pdf> for a statutory compilation on this issue.

Bestiality is included in the definition of child pornography/obscenity, and requires registration for the production, promotion, distribution, or possession of such materials or live shows in these states: Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and also federal law, Guam and the U.S. Virgin Islands.<sup>49</sup>

Jessica's Law (Fla. Stat. §1012.465), which was passed in Florida in 2005 after Jessica Lunsford was kidnapped, raped and buried alive, has been modeled in 42 other states. These laws require automatic sex offender registration for the sexual assault of children under the age of twelve. This law was successfully applied in Sacramento, California in December 2011 against a defendant who strangled and sexually abused an eight-month old Chihuahua.<sup>50</sup> The dog survived but suffered extensive physical injuries and now has an extraordinary fear of men.

### Crush Video Production

Federal law proscribes the creation and/or distribution of crush videos (18 USC §48). This statute was substantially amended after *United States v. Stevens*, 559 U.S. 460; 130 S. Ct. 1577; 176 L. Ed. 2d 435 (2010) when the United State Supreme Court found the original version of the statute (applied to a dogfighting case) unconstitutional. Crush videos are a sub-genre of the sadomasochist world, *see*, *People v. Thomason*, 84 Cal. App. 4<sup>th</sup> 1064, 101 Cal. Rptr. 2d 247 (2000) and *State v. George A.*, 308 Conn. 274, 63 A.3rd 918 (2013). As of this writing, in *United States v. Richards*, 2013 U.S. Dist. LEXIS 55383, a federal trial court judge has ruled that the post-*Stevens* amendments to 18 USC §48 were not sufficient and that the statute is a facial violation of the First Amendment. The trial court's ruling is pending appeal in the Fifth Circuit.

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49 Visit <http://www.ndaa.org/pdf/Bestiality%20and%20Sex%20Offender%20Registration.pdf> for a statutory compilation on this issue.

50 *Maximum 10-year sentence for man who sexually abused Chihuahua* (December 26, 2011), <http://www.examiner.com/article/maximum-10-year-sentence-for-man-who-sexually-abused-chihuahua>.

## RESPONDING TO ANIMAL ABUSE

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The National District Attorneys Association has recognized that training for prosecutors and investigators is essential in the area of animal abuse, not necessarily due to the difficulty of these cases, but due to the uniqueness. Some of the unique factors include:

- *Understanding the nuances of criminal and civil laws involving the seizure of animals and prosecution of offenders.* Civil procedures, criminal laws, and statutory definitions are often unclear on what investigative authority allows, which too often results in lack of action to safeguard animals in jeopardy of serious injury or death. Prosecutors are experts at criminal law and procedure, but may be unfamiliar with civil procedure that governs defendants posting a bond for the care of animals and forfeiture of the seized animal(s) for placement before conclusion of the case.
- *Understanding that you will never have a victim that can testify.* From the initial report, these cases must be prepared like a homicide case because you will not have a victim that can testify. Approaching every case in that manner, regardless of the criminal penalty or severity of the harm, is important to send a message to communities that animal abuse will not be tolerated.
- *Understanding that animal abusers are in every community.* “We don’t have animal abuse here” may be a comfortable way of living in a community, but it is not based in reality. Unfortunately, animal abusers are everywhere. When investigators and prosecutors can educate a community on signs of animal cruelty and neglect, how to report, and what to expect after a report, this can reduce the amount and frequency of animal abuse and can result in a safer community. When caring citizens report animal abuse only to be met with unfriendly and unhelpful investigators and prosecutors, this erodes communities and their trust in law enforcement.
- *Understanding that animal abuse cases are often circumstantial.* Criminal cases based on circumstantial evidence are tried every day in courtrooms across the country. Not every case has a confession, eyewitness or videotaped commission of the crime. Far too often, prosecutors do not pursue circumstantial evidence cases. The use of forensic evidence and forensic veterinarians can overcome any concern about proceeding with a circumstantial evidence case.
- *Understanding that you may have live evidence.* If your animal victim is alive, it is important to fully know your civil and criminal procedure laws on getting the animal released from custody before the case concluded. Seized animal victims who live for months and sometimes years in cages during the pendency of a case can suffer from a host of physical and behavioral issues. It is unacceptable to seize an animal from an abusive situation only to cage them for an extended period of time.<sup>51</sup> Therefore, prosecutors and investigators need to work with the housing agency to release the animals for adoption or placement, or work with the community to have the animals housed in foster care. This will not only benefit the animal victim, but will eliminate an extensive financial and space burden on your local animal shelter. For every cage that is taken up by an animal victim, that is one needy community animal who will be denied entry to the shelter or will be euthanized due to lack of space. It is critical

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<sup>51</sup> Madeline Bernstein and Barry M. Wolf, *Time to feed the evidence: What to do with seized animals*, 35 ENVIRONMENTAL LAW REPORTER 10679-10689 (2005).



that prosecutors and investigators take an immediate and proactive step to release animals for adoption or placement as soon as possible. This can include making an agreement with the defendant to release custody of the animals before disposition of the case.

- *Understanding that communities will speak out against animal abuse.* Two-thirds of American homes have companion animals and even more people care about animals in general. These individuals will vocalize their displeasure over acts of animal abuse. This can be beneficial when such concern promotes the reporting, investigation and prosecution of animal abuse. On the other hand, this can also create issues for investigators and prosecutors if reports are not taken seriously, citizens are treated rudely and with disrespect, or laws are not clearly defined and consistently enforced. You are more likely to have a packed courtroom of observers on an animal abuse case than in any other case. This may be because the public sees animals as the most innocent victims and insist that they have someone be their voice in the courtroom. If that strong and effective voice is not the investigator and prosecutor, the community will provide that voice.
- *Understanding that communities have varied opinions about animals.* This can become apparent during jury selection, especially in rural or farming communities. You will encounter people who treat their animals like four-legged children (including taking them to day care and play dates with other animal friends), to people who treat their animals like disposable property. You will encounter colleagues, judges and community members who also have a wide range of opinions about animals. It is important to follow the law and pursue these cases based on a proper investigation and the evidence at hand regardless of individual opinions you encounter.
- *Understanding that consistency in animal abuse cases is important.* It is important for investigative agencies and prosecutor's offices to set a policy on the handling of animal abuse cases so that cases are handled consistently. With the wide range of opinions on animals, one investigator or prosecutor may take these crimes very seriously and prepare the case professionally and appropriately, whereas another may not understand the importance of taking animal abuse seriously, may not understand the laws, and may be dismissive about the case. Like any other crime, this will send a conflicting message to your community. In recent years, we have seen prosecutor's offices designating one prosecutor to handle all animal abuse cases. Or if the caseload is extensive, setting up an animal abuse unit. This ensures that investigators and prosecutor handling these cases are fully trained in the nuances of the law and the special types of veterinary and forensic evidence encountered so that they can respond appropriately and handle the cases consistently.
- *Understanding that working with your community and animal protection groups will result in better cases and safer communities.* When your community is faced with a large-scale seizure, this is an opportunity to engage your community and animal protection organizations who can help. This can be in the form of trained animal protection professionals assisting investigators with the seizure, setting up sheltering for the seized animals, providing care to the animals, assisting with temperament testing of the animals (especially dogs from a dog fighting enterprise, puppy mill or animal hoarding victims), re-homing the animals through adoption and placement events, and financially supporting the care of the animals during the pendency of the case. No investigator or prosecutor should hesitate in charging an offender and seizing animals out of financial concern. Resources are available.
- *Understanding that the media may take great interest even in the most basic animal abuse case.* With the continuing growth of social media, cases of animal abuse and neglect are now widely publicized and often garner the attention of the entire country and the world. Media stories about animals in harm's way are popular.

- *Understanding that how your agency and you as the investigator or prosecutor publicly respond to the case can have wide spread ramifications.* If you or your agency respond to an animal abuse complaint in an uncaring manner, unprofessionally, or with lack of action, this can result in a reputation that may follow you for years. In cases involving serious crime, including animal abuse, communities remember how investigators and prosecutors have handled the case. For agencies whose leader is elected (like the Sheriff or the District Attorney), your actions and your agency's response can directly affect their position. Investigators and prosecutors are public servants who are sworn to protect their community. Animals of all species are an integral part of every community. Your response to the abuse of animals should not only be in accordance with the laws of your state and community, but should also be in accordance with your professional and ethical standards.



# INVESTIGATING ANIMAL ABUSE

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In 2010, the ASPCA conducted a survey of law enforcement professionals that showed that “only 19 percent of law enforcement officers stated they received formal animal cruelty training. Forty-one percent said they are familiar with animal cruelty laws in their jurisdiction, but fewer—30 percent—admitted being familiar with the penalties. The study, taken from a nationwide sample of law enforcement professionals in the U.S., also defines the three major obstacles that law enforcement professionals face in responding to animal abuse cases:

- animal cruelty cases are considered a low priority by leadership;
- law enforcement lacks staff with special knowledge in animal cruelty cases;
- no facilities exist for long-term impoundment of animals kept as evidence.”<sup>52</sup>

## Response to Complaint

It is important to have a professional and courteous response to all complaints of animal abuse. When a caring citizen takes the time to make a report, they should be treated professionally. If the initial facts of the report do not warrant an investigation, it is important to clearly convey why an investigation cannot occur. Explaining the law and its limitations will help to educate the caller. A dismissive or rude response will only infuriate the caller and could subsequently result in animals in harm’s way not being brought to the attention of the investigative agency. If an investigation ensues, it is important to advise the caller of their responsibility as the complainant (will their name be placed into the report, can they report anonymously, will they be interviewed by an investigator, will they need to come to court, etc.). Some people may wish to make an anonymous report out of concern for their safety if the offender is a neighbor. It is important to convey to that individual that an investigation may not help the animal(s) if there are no witnesses for the prosecution. Since animal abuse laws and procedures can be confusing even for investigators and prosecutors, it is important to help citizen callers understand the process. This will make them more cooperative with the process and may result in better evidence for the case.

## Early Coordination

When investigators receive a serious complaint or a potential large-scale seizure, work with your prosecutor early on. The prosecutor can assist with search warrants and outlining what evidence is needed to put together a strong case. It is also important to work with animal protection agencies in your community, in your state or nationally. These agencies are experienced in these cases and often have staff that are former investigators and prosecutors. A team approach to a serious situation or large-scale seizure can result in a smoother process and better case in the end. It is helpful to have agreements already in place that allow investigators and prosecutors work together consistently to understand legal issues, changes in the law, and establish procedures on handling cases. The work in advance will save time during the actual progression of a case.

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<sup>52</sup> Summary of survey available at <http://www.aspc.org/Pressroom/press-releases/121510.aspx>.

### Search Warrants and Warrantless Seizures

The Fourth Amendment to the United States Constitution ensures that all citizens are protected from unreasonable search and seizure. When animals are being abused and neglected, you must either (1) obtain consent (in writing) from the property owner (which may not necessarily be the owner of the animals) to enter the property for purposes of investigating, or (2) work with your prosecutor to obtain a search warrant approved by a judge. It should always been the goal of any law enforcement agency to acquire evidence of animal abuse via a duly authorized search warrant. Use of a search warrant over the application of an exception to the warrant requirement creates a number of substantial procedural advantages, most notable being that the search and seizure are presumptively valid and the defendant has the burden to prove otherwise.

The exigent circumstance exception to the search warrant requirement may apply to animal abuse situations. There is an evolving body of case law, building on prior case law, that the emergency exception applies to animals. “Although animals may properly be viewed as property in other contexts such as larceny or conversion \* \* \* warrantless intervention may be necessary precisely because animals suffer: they feel pain, cold, hunger and thirst. Computers and televisions do not. The scope of the emergency exception to save the life of an animal may not be co-terminous with the scope of the exception to save a human life, but what is at stake is unquestionably a life.”<sup>53</sup>

There are two circumstances where a warrant may not be required and will require a case-by-case analysis: “pure emergency” and “probable cause and exigent circumstance”. The “pure emergency” involves a law enforcement officer acting solely to save the life of an animal that is not part of an investigative or law enforcement activity.<sup>54</sup> This could be a police officer who sees an animal suffering in a hot car, breaks the car window and seizes the animal to save its life. The “probable cause and exigent circumstance” exception states that there is probable cause to believe a crime has been committed and exigent circumstances exist that require immediate action in lieu of securing a search warrant.<sup>55</sup> Sometimes both exceptions can apply in the same situation.<sup>56</sup> This situation is being argued in the Massachusetts Supreme Court in the 2013 appeal in *Massachusetts vs. Duncan*. So in the example above, although the officer intervenes solely to save the animal, inherent in the situation is probable cause that a criminal offense has occurred. At this time there appears to be no distinction in the animal context between what constitutes exigent circumstances for purposes of probable cause, and exigent circumstances exception. The *Duncan* decision may help to clarify this issue.

53 Brief for Animal Legal Defense Fund, Animal Rescue League of Boston, National District Attorneys Association, and Association of Prosecuting Attorneys at 21-22, as Amici Curiae Supporting Plaintiff/Appellant, *Commonwealth of Massachusetts v. Duncan*, SJC-11373 (Supreme Judicial Court for the Commonwealth of Massachusetts).

54 See in general, *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Tuck v. United States*, 477 A.2d 1115, 1120 (D.C. 1984).

55 *State v. Stone*, 92 P.3d 1178, 1183-84 (Mont. 2004); *Davis v. State*, 907 N.E.2d 1043, 1050 (Ind. Ct. App. 2009); *People v. Rogers*, 708 N.Y.S.2d 795, 797 (N.Y. App. Div. 2000); *State v. Bauer*, 379 N.W.2d 895, 899 (Wisc. Ct. App. 1985), rev. denied, 388 N.W.2d 185 (Wis. 1986); *Hegarty v. Addison Cnty. Humane Soc’y*, 848 A.2d 1139, 1142-45 (Vt. 2004); *Brinkley v. Cnty. of Flagler*, 769 So.2d 468, 471-72 (Fla. Dist. Ct. App. 2000); *Morgan v. State*, 645 S.E.2d 745, 747, 749-50 (Ga. Ct. App. 2007); *People v. Thornton*, 676 N.E.2d 1024, 1028 (Ill. App. Ct. 1997); *State v. Berry*, 92 S.W.3d 823, 830 (Mo. Ct. App. 2003); *Pine v. State*, 889 S.W.2d 625, 632 (Tex. Ct. App. 1994).

56 *Massachusetts v. Ortiz*, 435 Mass. 569 (2002).

The burden is on the prosecution to show that an objective and reasonable person would have concluded that the life of the animal was in peril. Amici Curiae parties in the *Duncan* case outlined these factors to look at when determining whether the warrantless seizure of the animal was reasonable:

- The condition of the animal was caused by a human in violation of anti-cruelty laws;
- The species of the animal (i.e., a dog dying on the end of a chain in a backyard without sufficient shelter, food and water is different than a worm on a hot backyard patio);
- Whether the animal is located inside of the home (where more privacy exists) or outside of the home;
- A combination of evidence to demonstrate that the animal is in peril (i.e., a dog chained in the backyard combined with the dog showing no movement);
- Whether property damage will occur in order to save the animal (the less damage, the lesser scrutiny should be applied to the warrantless seizure);
- Is there time to seek a warrant or is the animal in immediate peril of death or serious injury; and
- Were reasonable efforts made to contact the owner to obtain consent to help the animal.

While the *Duncan* court has not ruled on this case as of the publishing of this guidebook, the arguments proposed to the court are instructive for how investigators and prosecutors should argue that a warrantless seizure of an animal in peril was required. The outcome in *Duncan* notwithstanding, there is compelling authority from several states supporting the warrantless rescue of suffering animals in cases of exigency. See, *People v. Chung*, 110 Cal. Rptr. 3d 253, 258 n.8 (Cal. Ct. App. 2010), rev. denied, 250 P.3d 179 (Cal. 2011).

### Gathering evidence

Treat each animal abuse case like a homicide because you will not have a victim to testify. Therefore, gathering evidence in a manner like a homicide case is crucial to your success. It is often stated that investigations and preparing cases for prosecution are limited by time constraints and burdensome caseloads. However, when you invest time into investigating and preparing a case for trial you should do so with the attitude to leave *no stone unturned*. This is important not only as part of your oath to enforce the laws of your state and jurisdiction, but is important so that you are not unnecessarily caught off guard by defense counsel who may dedicate time and resources to mounting a strong defense. Being ill prepared with evidence and presenting an inadequately documented case at trial may result in a not guilty verdict, a waste of taxpayer money and time, and set free an animal abuser. Therefore, it is important to properly gather evidence in all cases, no matter how slight or significant.

Dependent on the circumstances, a typical investigation should involve:

- Photographing and/or videotaping the entire crime scene
- Location (inside and outside)
- All animals as they were found
- People in the vicinity
- Detailed photographs and/or video footage of the animal victim(s) showing injuries, physical, and behavioral conditions (each animal should be handled individually)

*Continued*

- Calling for animal crime scene processing
- Calling for a veterinarian (preferably a forensic veterinarian) to come to the scene during evidence collection
- Seizing appropriate items at the scene, including the deceased bodies of animal victims and buried or burned animal remains
- Documenting food and water bowls (or lack thereof)
- Documenting housing conditions (e.g., if processing a hoarding scene, place a white towel at the home's entrance and then collect and bag it afterwards so that the filth can be shown to the jury)
- Interviews
- Always attempt to interview the suspect and obtain a tape recorded or written statement as soon as possible
- Interview other residents, eye witnesses and the reporting witness at the crime scene and lock in statements early
- Interview any veterinarian who has had contact with the animal victim(s) and obtain records (or document lack of records and veterinary care)
- Documenting animal condition while in care
- If an animal is seized with injuries or emaciated, document the animal's improvement over time to defeat anticipated defenses. Sample forms for documentation of the condition of animals seized in cruelty cases are available at ASPCAPro.org.

A prosecutor's case is only as good as the investigator's work. If items are left behind or additional information is needed, go back and seek the evidence. As with many crimes, animal abuse cases are frequently based largely on circumstantial evidence. While some prosecutors will not pursue a circumstantial evidence case, those cases go forward every day across this country and many result in a guilty verdict or plea. Do not shy away from a circumstantial case. Sometimes a circumstantial case is better than an eyewitness case. While judges may dislike taking up valuable court and trial docket time with a circumstantial evidence case, your job as a prosecutor and investigator is to enforce the laws, and the judge's job is to ensure fairness in the proceedings.

### Seizure and Holding of Animal Victims

Animal abuse cases differ from all other prosecutions in that the primary "evidence" in the case is often a living creature that must be housed, fed and cared for—sometimes for long periods. All states have provisions within their animal abuse laws providing for the seizure of animals being cruelly treated or neglected.<sup>57</sup> In some states, humane agents may remove *neglected* animals, but only a law enforcement officer may remove *abused* animals. Some states require that a veterinarian be consulted to determine if seizure is in the best interests of the animals. Such input is desirable even when not specifically required by law. Such seizures can place an enormous burden on the responding agencies.

An animal hoarding situation, "puppy mill" or animal fighting investigation may involve dozens to hundreds of animals needing immediate and long-term care. Fighting dogs and roosters can require special housing for

<sup>57</sup> See, Bernstein, *supra*, at 10686-10689.



the protection of the animals. Cases may also involve exotic animals or wildlife with special dietary, housing and veterinary needs. The special requirements for animal care in animal abuse cases demand that these cases be moved as quickly as possible through the system. Prolonging proceedings is problematic for all concerned. The animals can suffer additional stress, disease or harm from improper or prolonged confinement.

In some cases, animals cannot receive needed medical treatment without the owner's consent or willingness to surrender ownership, which may be withheld. Any jurisdiction that follows such a rule has basically codified neglect and the vigilant prosecutor confronting this issue should immediately file a motion with the trial court to secure an order authorizing necessary care. The responding agency can accumulate huge costs in providing long-term housing and care for animals that are likely to be returned, adopted or euthanized at the conclusion of proceedings. Several options may be available to minimize some of the costs and delays associated with prosecuting an animal abuse case:

### **Release of Animals for Placement (Evidence Holds and Pre-Conviction Transfers of Ownership)**

In cases where the victim animals are owned by the defendant, investigators and prosecutors should work to obtain defendant's relinquishment of the seized animals for eventual adoption, placement or humane euthanasia of those who are deemed untreatably ill and suffering or too dangerous after behavior assessment. Prosecutors must be cognizant that the community will be monitoring the disposition of the abused and neglected animals. Summarily euthanizing animals that otherwise are adoptable or appropriate for some form of safe placement can negatively impact the selection of a fair jury. Citizens and potential jurors will criticize seizing animals from abusive environments when the end result of the government is to euthanize them. Therefore it is important for prosecutors and investigators to work with animal protection partners to provide behavioral assessments, rehabilitation and put forth efforts to place the animals. It is also important to do this while the case is pending, if allowed under state law, so that the animals do not languish in a shelter setting.

Managing the relationships between law enforcement, the shelter(s) and foster care providers is absolutely key; express written agreements need to be in place that clearly define roles and avoid disputes later in the life of the case. Further, it is important to understand the substantial difference between an evidence hold that prevents the return of seized animals and other quasi-civil possessory issues related to transferring ownership (e.g., liens, costs of care bonding and forfeiture proceedings). It is often the case that the prosecutor can waive the evidence hold on the surviving animals, but the seizing agency will have a legal right to retain possession to secure clean title to the victim animals who can then be placed in new, caring homes.

### **Voluntary Surrender**

Owners of animals should be asked to voluntarily surrender ownership of the animals to an animal control or humane organization either in the best interest of the animals or as part of an initial plea agreement. To avoid future complaints that this surrender was granted under duress, this usually should not be done in the emotional environment of the initial seizure or arrest and should be arranged with the participation of defendant's counsel. Voluntary surrender offers the best opportunity for meeting the immediate needs of the animals without compromising their value as evidence in the prosecution.

### **Declaration of Animals as Abandoned**

In cases where animals have been left without proper care and the owner is not in residence, many states allow for the consideration of such animals as abandoned and subject to immediate seizure by appropriate humane, animal control or agricultural authorities. Animals whose owners do not appear at hearings scheduled to determine disposition may also be considered abandoned in many states. Also, if a defendant asserts the defense that the animals are not his/hers, have that formally declared in court or in writing, and unless additional ownership information is available, proceed to forfeit the animals as abandoned.

### **Impound on Premises**

When an animal abuse case involves a large number of animals for which there is no suitable site to hold them, it may be appropriate to arrange for an impound on the defendant's premises with provisions for local authorities to provide for feeding, care and medical attention. If animals are to be held in this way, it is important to carefully document each individual animal and, when feasible, to require that each animal be provided with permanent identification (e.g. microchip) to prevent the removal or replacement of seized animals. In the case of animals of high value or at high risk for theft (e.g. fighting dogs), it may be necessary to have full-time law enforcement presence at the scene until the court allows another disposition.

### **Bonding/Cost of Care Provisions**

When animals are not immediately surrendered and local authorities must provide care to maintain them until final disposition, if allowed by law, request the court to require defendants to post a bond or security that is intended to compensate agencies providing care and to prevent the adoption or euthanasia of the animal while the case is being prosecuted. Most states have provisions that either require or allow for such a procedure within their cruelty laws. For those that do not, there is still the option of seeking a court order requiring such a bond in the interests of both the owner and the caretakers of the animals. Usually such bonds are based on a reasonable cost of care per animal per day, payable in advance on a month-by-month basis with failure to comply resulting in forfeiture of the animals. Some states consider costs of care and treatment as a lien on the animal(s) that have been seized, however it is often very difficult for agencies to recover these costs after the disposition of the case.

### **Lien Perfection and Foreclosure**

Several state statutes expressly create a possessory chattel lien to secure the costs of caring for victim animals (e.g., Or. Rev. Stat. §87.159). These liens are subject enforcement and collection via foreclosure and the diligent prosecutor will fully investigate state law to assess the viability of this remedy in their state.

### **Quantum Meruit/Implied Contract/Unjust Enrichment**

As a fallback position, the seizing agency may have a viable civil claim against the defendant/owner of victim animals for unjust enrichment on the following theory: the defendant has a statutory duty to provide minimum care for the victim animals, the defendant has failed to fulfill that duty resulting

in seizure of the victim animals by law enforcement, and the seizing law enforcement agency is required to provide minimum care for the animals still owned by the defendant and that results in the defendant being unjustly enriched. ALDF has successfully litigated a number of these lawsuits and will provide free assistance with such a case.

### **Disposition of Deceased Animals**

Animals that are believed to have died as a result of abuse should be handled with as much care as other evidence of a crime. Most animal abuse investigators are trained to thoroughly document and photograph the condition of any live animal and animal remains found at a suspected crime scene. Whenever possible, animals should then be removed to an appropriate laboratory or veterinary facility for forensic necropsy (postmortem examination) by a veterinary pathologist. It may be necessary to conduct large animal necropsies in the field, with samples taken for more detailed clinical analysis in the laboratory. In cases involving many dead animals, it may not be necessary to perform detailed necropsies on all animals, but the remains of each animal should be documented and photographed and representative samples should be removed for more detailed analysis. Some veterinarians or animal control officers may feel that remains are too decomposed to be of forensic value, but even skeletal remains can be significant in proving starvation, poisoning, abuse or inhumane killing.



## PREPARING THE ANIMAL ABUSE CASE FOR PROSECUTION

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### Charging Decisions

As mentioned previously, animal abuse often occurs alongside a variety of other serious property and interpersonal crimes. It is important to bring all charges together in one complaint so that the trier of fact has a full picture of the circumstances. It is also important to charge a separate count for each animal that is proven victimized. When reviewing a request for charges, do not hesitate to send the case back to the investigator to request additional information and evidence to support the issuance of all charges, including animal abuse. Other issues a prosecutor must evaluate include specifically identifying each animal as a separate victim; charging conduct as part of separate criminal episodes to avoid merger issues and with an eye toward both preventing expungement and securing consecutive sentences.

Most laws do not limit the application of animal abuse laws to incidents involving valuable or even owned animals. A brutal act against a stray cat or a wild duck at a public pond may be just as prosecutable as the torture of a neighbor's pet dog. To understand why it is important to charge and prosecute cases involving un-owned animals, see NCPAA's *Tales of Justice* newsletter entitled "*The Hierarchy of Anti-Cruelty Laws: Prosecuting the Abuse of Stray and Feral Cats.*"<sup>58</sup>

The evidence for animal abuse may be more definitive than that for other crimes and successful prosecution of those charges may carry the same or greater consequences than other potential charges. For example, where the more serious crime involves a recanting victim of physical abuse, the co-occurring animal abuse charge may be the only viable pathway to conviction. In some cases, a plea to animal abuse of any degree and a disposition may be the most realistic option to protect the abused animal, human victim and the public. In cases of juvenile offenders, conviction for an animal abuse offense that co-occurs with other offenses may offer the prospect for a long-term period of probation that will allow the best opportunity for monitoring the offender's progress.

### Charging Enhancements

Most state animal abuse laws reserve felony-level charges to dogfighting, cockfighting and "aggravated" cases that involve intentionally, knowingly or maliciously torturing, tormenting, beating or cruelly neglecting an animal. However, other considerations may elevate the level of the offense, such as prior offenses or acts done to threaten or intimidate others, including cruelty committed in the presence of a child. Be sure that you are aware of the most recent provisions of the laws in your jurisdiction, since the definitions of those acts covered by the felony provisions are frequently revised. Too commonly overlooked are issues with the use of a firearm or a dangerous weapon. These generic enhancements are commonly applicable in animal abuse cases as well. For example, in Oregon, if an offender uses a firearm to kill his neighbor's dog in an act of aggravated animal abuse, Or. Rev. Stat. §161.610 calls for a five-year minimum prison sentence.

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<sup>58</sup> Allie Phillips, *The Hierarchy of Anti-Cruelty Laws: Prosecuting the Abuse of Stray and Feral Cats*, in *TALES OF JUSTICE* 3(3) (2013), available at [http://www.ndaa.org/animal\\_abuse\\_newsletter\\_mailinglist.html](http://www.ndaa.org/animal_abuse_newsletter_mailinglist.html).

Some prosecutors may be inclined to undercharge perpetrators of animal cruelty, thinking that the acts involved may not meet a statutory definition such as torture. However, veterinarians and other expert witnesses may provide testimony that certain acts, such as intentionally starving or drowning an animal, can cause slow and painful death and thus could meet the definition of torture required for a felony charge. Prosecutors may also feel that the facts of the case may not meet a standard that requires a degree of intent to cause harm, but often it can be demonstrated that the suffering and harm to the animal was the result of willful behavior with clearly foreseeable consequences for the animal, such as abandoning a chained animal in a remote location. It is not unusual for a court to apply concepts from laws written more than a century ago, sometimes using standards such as willful or wanton killing that have been replaced by broader concepts such as *needlessly* killing. Judges may not be aware of current precedent and may rely on outdated cases and interpretations, so you should clarify the most recent standards for all triers of fact.

Community outrage at an egregious act of animal cruelty may generate calls for charges that are not justified by the facts of the case or the provisions of existing laws. As addressed in a later section, it is important to charge according to the facts presented. At the same time, it is important to make a special effort to educate responding officers and the public to what is needed to prove the case, and to the limitations of the applicable laws. In some cases it may be possible to legitimately apply non-animal abuse laws that could carry more serious consequences. For example, several cases of animals set on fire have been charged as felony arson in states with only misdemeanor animal abuse laws available at the time. Knowing the violence and psychopathology behind some extreme acts of animal cruelty, and that many laws carry low penalties, it is important consider all appropriate charges that can be brought to serve justice and ensure that the offender, if found guilty, receives the appropriate level of punishment to fit the crime.

### Federal Charges

It was previously noted that the federal Animal Welfare Act specifically addresses interstate activities involving dogfighting and cockfighting, but that state laws usually carry significantly greater penalties. Some animal abuse cases may involve actions that violate other federal laws including the Humane Slaughter Act, the Endangered Species Act, the Wild Bird Conservation Act, the Bald and Golden Eagle Protection Act, the Marine Mammal Protection Act and the Wild Horses and Burros Act. Some animal poisoning cases may include violations of the Federal Insecticide, Fungicide, and Rodenticide Act. Cases that could involve the application of federal charges are likely to also include state animal abuse violations and may require close coordination of actions with federal prosecutors. The crush video industry is also subject federal jurisdiction under 18 USC §48.

There has also been a surge of videos/photographs uploaded to and promoted on the Internet and social media sites (such as YouTube and Facebook) that depict individuals harming animals. These cases can be difficult to investigate and prosecute due to the online nature of the crimes and will most often require a report to federal authorities, such as the Federal Bureau of Investigations and the National White Collar Crime Center.

When you are responsible for investigating and prosecuting animal abuse cases, it is important to identify and collaborate with federal agencies because of the invariable cross-over of some animal abuse crimes.

### **Which Victims to Charge?**

Many cases of animal abuse involve multiple animal victims, particularly cases of severe neglect or organized activity such as dogfighting. Some prosecutors may choose to base charges only on the most egregious and easily proven instances of abuse. In some cases multiple counts may be filed using each instance of abuse as a distinct offense. In other cases, the existence of multiple victims alone may elevate the level of the offense. *Oregon v. Nix*, 251 Or. App. 449, 283 P.3d 442 (2012) addressed whether individual animals are “victims” for purposes of charging and conviction. The court held that merging all animal victims into one count for sentencing, contrary to convictions on individual counts related to each animal, was error and each animal victim could be listed in separate counts. The Ohio Court of Appeals reached a similar conclusion in *State v. Helmbright*, 2013 Ohio 1143.

In recent years, states have begun to pass laws that enhance the penalty based on the number of victims. For example, Michigan amended Mich. Comp. Law §750.50, its neglect law, in 2008 to assess different maximum penalties based on the number of animals involved. For example, the base penalty is a 93-day misdemeanor if one animal was involved, a one-year misdemeanor if two–three animals were involved, a two-year felony if four–ten animals were involved (or there is a prior conviction), and if the incident involved 10 or more animals (or there are two or more prior convictions), the penalty increases to four years.

If multiple animals are involved and the defendant has not voluntarily surrendered all of the animals that have been affected, failure to charge on each animal may result in having many animals left with or returned to the defendant. When animals are seized pursuant to a search warrant, the warrant should explicitly cover animals “born or unborn” to include animals that are born to pregnant animals being held following the seizure. As part of a plea agreement, it is important to require the defendant to surrender custody of all animals (whether contained in a charge or not). If a plea agreement cannot be reached, it is important to include all of the affected animals in the charges so that upon conviction none of the animals will be left out and returned to the defendant.

It is also important to document the presence of healthy and well-cared-for animals found at the scene of an animal abuse case. Although such animals are likely to not be seized as evidence or to be returned following medical assessment, their presence at the scene does not undermine charges of abuse. To the contrary, the fact that a suspect has some animals receiving adequate care establishes their knowledge of what is required to keep animals healthy and supports the argument that the poor condition of other animals at the scene is the result of willful actions.

### **Building the Case**

Even though animals are deemed property in all states, a successful animal abuse prosecution often parallels an interpersonal violence or sexual assault case more closely than a prosecution for a property crime. Figure 9 provides a general checklist for developing an animal abuse prosecution. Since animal abuse laws are evolving rapidly, it is important to review the most recent versions of the statutes for updates. In some cases, other relevant statutes may be found outside of the criminal code, such as in agriculture and market laws, fish and wildlife regulations, or public health codes.



The primary evidence for the prosecution of most animal abuse cases will be the records and evidence compiled by investigators involved in the initial response to the complaint and medical documentation of the condition of any animals (alive or dead) found at the scene. Humane investigators are increasingly receiving good training on appropriate investigative techniques. These reports should include thorough documentation of the complaint, photographic and/or video documentation of the conditions found, inventories of other relevant evidence that may have been seized, reports of any eyewitness testimony and other relevant case data such as weather information in cases of extreme neglect or exposure.

Figure 9

### Sample Workup Checklist for an Animal Abuse Prosecution

- Review state animal abuse laws and related regulations for recent changes that may apply
- Assess whether federal laws have been violated
- Investigate complaint circumstances
- Investigate the possible existence of similar acts or transactions which may be admissible under Rules of Evidence (Rule 404(b))
- Interview responding officer(s) and humane agent(s)
- Was the animal owner interviewed? If not, ask investigators to seek consent to an interview.
- Review photos/videos of scene and animal(s)
- Inspect physical evidence if applicable (e.g. dogfight paraphernalia)
- Visit scene if applicable (particularly recommended in cases involving many animals)
- Meet the animal survivors
- Review medical records/necropsy reports of victims (including photos)
- Review short and long-term options for housing animals in case
- Meet with veterinary and other expert witnesses
- Meet with lay and eye witnesses
- Determine what additional evidence or documentation is needed
- Review treatment and other service options that may be applicable for offender

### Meet your Animal Victim

Meeting the animal survivors is something that is not frequently done in an animal abuse case. However, animal abuse cases should be prepared just like other victim-based cases. Would you prepare for and go to trial without meeting your child victim? Of course not. While you may initially hesitate meeting your animal victim (particularly if they are housed at an animal shelter and you are unfamiliar with an animal shelter setting), once you meet your animal victim(s), it will give you a new (or renewed) vigor in pursuing your case. On her first animal abuse case, one of the co-authors met with her animal victim at the shelter. Although she had previously adopted from this shelter, she had never been into the isolation ward where animal victims were kept. Not only did this visit increase her dedication to obtain a guilty verdict so that the animal victim could be surrendered and rehomed, but it also resulted in her volunteering at the shelter and co-founding a nonprofit at the shelter to help care for and rehome homeless, abused and neglected animals. You should never go to trial without meeting your animal victim survivors.

### Pre-Trial Motions

Depending on the facts of your case and the charges brought, there are a number of pre-trial motions that can and should be brought. Some of the motions to consider are:

- **Possession ban as a condition of release/bond**= Know your specific state law on setting the terms of the defendant's release/bond. Most state laws can readily be construed to support the state's motion to set a pre-trial condition of release preventing the defendant from owning, possessing, harboring or caring for an animal(s) while the criminal case is pending.
- **Motion to post bond for cost of care** = Defendants will often try to avoid responsibility for the abuse of an animal by claiming that it was not theirs. You can reveal this defense early on by filing a motion requiring the defendant to post a bond for the cost of care of the animals and if the defendant denies ownership, then ask the court to deem the animals as abandoned which will then allow your housing shelter agency to release them for adoption or placement.
- **Motion for forfeiture of the seized animals** = All states have forfeiture laws addressing seized animals.<sup>59</sup> While most states place the procedures for forfeiting a seized animal within the civil code of procedure, this is an important motion for the prosecution to file. Your specific state statute will tell you the earliest date that you can file this motion. It is falsely believed among investigators and prosecutors that seized animals are evidence and cannot be forfeited and re-homed/placed until the conclusion of the case. Unless your state law specifically says that, this notion is untrue. Animals are live evidence and the evidence that they contain will begin to heal and disappear as soon as they are in a safe and healthy location. Therefore, holding seized animals for months and often years until the conclusion of a case is, on its own, a cruel practice for the animals and over-burdensome to the shelters that care for the animals. So it is essential that you understand all aspects of your state forfeiture law and seek to forfeit the animals on the first day allowed by law. Also remember to include surrender of all seized animals, and those born and unborn from the seized animal, during plea negotiations.
- **Crawford-type motion** = You may need to file this motion, based on the Crawford v. Washington case, to admit statements and/or documents from any unavailable or non-testifying witnesses (such as an out-of-state DNA analysis expert).
- **Motion to introduce photographs and videotapes of the crime scene and animal victims**= Defense attorneys will likely object strenuously to showing photographs and videotapes of the crime scene and/or animal victims because they may inflame the jury against the defendant. Be prepared to file a pre-trial motion to admit all photos and videotapes as *res gestae* evidence of the crime charged. If the judge seems inclined to exclude any essential photos or videos, one option that can be offered is to place a black patch over the eyes and/or face of the animal(s) (unless the eyes and/or face are injured as part of the offense). Doing this may help in making the photos "less inflammatory."
- **Notice of Intent to Introduce Evidence of Other Acts and Transactions under Rule of Evidence 404(b)** = This motion can be filed to prove absence of mistake, intent, motive and related "rule 404b" matters. Investigators need to gather the defendant's past history of abusive acts and prosecutors should review those incidents and, if warranted, file a pre-trial motion to secure a ruling as to the admissibility of the defendant's prior misconduct. Failure to raise the issue pre-trial commonly results in the state having no appeal option should the court commit error during the trial.

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<sup>59</sup> See footnote 57.

### **Pet Protective Orders**

As of 2013, twenty-two states and Puerto Rico<sup>60</sup> have passed “pet protective order” laws that now include pets on domestic violence protection orders. You should determine during the investigation of the case as to whether the animal victim was protected under a court order. Asking the non-offending owner or checking court records will help to uncover this potential evidence. Evidence of a pet protective order could be instrumental to your case, especially if it involves family violence that included animal abuse, because it will demonstrate prior threats or harm to the animal victim or other animals that could bolster certain elements of the crime(s) charged.

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<sup>60</sup> Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oklahoma, Oregon, Puerto Rico Tennessee, Texas, Vermont, Washington, and West Virginia.

## PLEA AGREEMENTS

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When discussing a resolution to a case with a guilty plea, there are six critical considerations to keep in mind:

- (1) do not agree to a *nolo contendere* (no contest) plea to any charge involving animal abuse;
- (2) do not summarily reduce or dismiss animal abuse charges in lieu of a guilty plea to a more serious non-animal charge (unless there is no other option);
- (3) do not agree to community service with animals;
- (4) do not allow the defendant to own or possess any animals, especially returning those animals suspected of being abused or in harm's way;
- (5) do request a psychological evaluation and appropriate court-ordered treatment; and
- (6) do document and prove the costs of care that all parties have incurred during the pendency of the case, making sure to differentiate between statutorily authorized costs of care in animal abuse cases and traditional "restitution."

*First*, as will be discussed further on, getting an animal abuser the appropriate therapeutic treatment is essential to reducing recidivism and keeping communities safe. Treatment is only as successful as the offender who can admit his/her conduct in harming the animal(s). Therefore, a no contest plea allows a defendant to continue their denial in their conduct and will frustrate any therapeutic intervention from being successful. A no contest plea is only good for getting a conviction on the defendant's record and nothing else. So avoid no contest pleas at all costs.

*Second*, animal abuse charges should not be reduced or dismissed as part of a plea agreement, absent serious evidentiary issues. A guilty plea to any animal abuse charge can trigger special statutory sanctions, enhanced future penalties, and requirements from the court during probation, including specialized animal abuse treatment, ban on possessing animals, etc. For example, if your case involves the sexual abuse of a child in addition to killing the family cat in order to gain silence and compliance from the child victim, obviously the sexual abuse charge will carry a larger penalty upon conviction. Do not be quick to dismiss the animal abuse charge because doing so will strip that information from the defendant's record (thus leaving future prosecutors in the dark about the animal abuse) and will prevent the court from ordering treatment for the animal abuse (which is likely to have different provisions than the treatment for sexually abusing a young child).

*Third*, do not ever recommend or agree to a defendant performing community service at an animal shelter or around animals. Some jurisdictions allow jail inmates to work off their jail housing fees and/or community service requirements in an animal shelter. This may be acceptable for someone convicted of petty theft; but is not appropriate for anyone convicted of an assaultive crime, especially against animals. Remember, you would not place a pedophile at a day-care center or a rapist at a rape counseling center; likewise, animal abusers should not be near animals unsupervised.

*Fourth*, do not agree to return abused animals to a defendant who pleads guilty to animal abuse unless the facts involve some forms of acute neglect and the situation involved an uneducated or financially challenged defendant, rather than a defendant who acted with cruel intention. In fact, several states, by operation of law, provide that a convicted animal abuser is precluded from possessing animals (e.g., ORS 167.332 and Cal. Pen. Code § 597.9). For example, many believe that animal hoarders should have all of their animals removed from their care. Some are reluctant to remove all animals from a hoarder. Allowing a small number of spayed/neutered pets to remain provides strong justification for routine monitoring and reasonable unannounced inspections to check on these animals and look for evidence that any additional animals have been acquired in violation of court orders. When a hoarding defendant understands that his/her ability to have one or two of their favorite pets returned is conditioned upon accumulating no additional animals and providing appropriate care, it gives the defendant an incentive in complying with the terms of probation. However, for cases that involve facts of intentional cruelty, the prosecutor should make the plea agreement contingent upon the surrender of all animals in the defendant's care (regardless of whether only some were abused), including born and unborn animals, and placing an additional condition that the defendant not own, possess or be near animals for the term of probation. If your state does not have a law in this regard, you can still require it in the plea agreement. For a listing of state laws on the banishment of pet ownership, check out the Pet-Abuse.com website.<sup>61</sup>

*Fifth*, do require that the defendant undergo a court-ordered psychological evaluation *prior* to entering a guilty plea. The findings from the evaluation may change how you negotiate a plea for a defendant. Then ensure that the court orders the appropriate treatment. The psychological evaluation should be tailored to the facts of your case. For example, your case may be motivated by domestic violence, or it may be sexual in nature.

*Sixth*, get an express agreement on the defendant's willingness and ability to pay for costs of care. Do not fall into the "restitution" trap where the court may only have authority to award "restitution" for the criminal counts admitted to as part of the plea (or proven at trial).

Plea negotiations happen on most cases due to the sheer number of cases and limited court time. Be smart in negotiating the animal abuse case, or cases where animal abuse co-occurs with other charges. If you summarily dismiss the animal abuse charge(s), you will be missing an opportunity to get the defendant the appropriate treatment to prevent future violence. And always bear in mind that in some cases a lengthy term of incarceration is the appropriate sanction.

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61 Available at [http://www.pet-abuse.com/pages/cruelty\\_laws.php](http://www.pet-abuse.com/pages/cruelty_laws.php).

# TAKING THE ANIMAL ABUSE CASE TO TRIAL

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## Mindset

Taking an animal abuse case to trial can be difficult because of the overwhelming helplessness of animal victims at the hands of humans and the emotions that it may cause. It is important to fix your mind set on being the best possible prosecutor for each animal victim. Every prosecutor took an oath to uphold the laws of their jurisdiction. Some prosecutors may believe that they do not have the time or resources available to properly prepare an animal abuse case for trial; some may not like animals. These are excuses and could be an ethical violation of your oath. Legal, strategic and forensic assistance in case preparation is available from several organizations listed in the Resources section of this guide, including the NDAA National Center for the Prosecution of Animal Abuse, the Legal Advocacy program of the ASPCA, the Animal Legal Defense Fund and the Humane Society of the United States.

Given our understanding how animal abuse co-occurs with other violent crimes and erodes the safety of a community, your animal abuse cases should take as high of a priority as any other violent crimes. You never know what you are *preventing* by pursuing an animal abuse case to trial.

For many of us who started prosecuting before 2000, there were few, if any, animal law courses or opportunities for animal law internships while in law school. We were not trained how to handle these sensitive and highly emotionally charged cases. It is important to have the mindset of continuing education, not because your state may require it, but because it will make you a better prosecutor. NCPAA has free newsletters, free monthly webinars (including past recorded webinars), and free technical assistance to help you understand the nuances of animal abuse and prepare the best case for trial.

As with other crimes, you should always meet with the animal survivor(s) if still alive. If meeting the survivor(s) does not instill a sense of responsibility in taking a case to trial, then you should request to have the case reassigned to a prosecutor who can give it the attention required. There is no shame in being more passionate about some cases over others and requesting a reassignment if possible; there is only shame in allowing yourself to pursue a case to trial when you are ill equipped.

## Anticipating Defenses

If you can go into the courtroom with evidence, witness testimony, case law and arguments in anticipation of defenses, your trial will run smoother, with less stress and with a greater likelihood of success. If you are in a state where the defendant must disclose his/her defense(s) before trial, it is important for your investigator to check out each defense. You either need to prove the defense and let an innocent person go, or disprove the defense so that you can convict them at trial.<sup>62</sup>

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<sup>62</sup> NCPAA has a free recorded webinar available, presented by Diane Balkin (former Denver Deputy District Attorney and contract attorney with the Animal Legal Defense Fund) on this topic. Visit [http://www.ndaa.org/animal\\_abuse\\_archived\\_webinars.html](http://www.ndaa.org/animal_abuse_archived_webinars.html) to register for access.

These are some of the more common defenses that you may encounter on an animal abuse case:

- *It wasn't my animal*

Ownership of the animal is often not an element of the offense. But this is a great defense for having the court declare the animal victims as abandoned. However, it can be a tricky defense to convicting the person charged when they point the finger at someone else who had equal access to the animal. The evidence you should aim to have admitted at trial would be (1) relevant statutory definitions of what constitutes owning, harboring or otherwise having responsibility for an animal in your jurisdiction, (2) veterinary records in the defendant's name, (3) evidence showing who lived on the defendant's property to show that the defendant was the only or primary caretaker; (4) adoption or purchase records in the defendant's name, including purchase of pet food and supplies and veterinary services.

- *Someone else did it!*

Common sense is your greatest ally on this defense. Locate and admit evidence of who was around the animal during the time frame of the abuse, the relationship of the defendant and others to the animal (i.e., the defendant resented/hated the animal whereas others in the home loved and cared for the animal), evidence of prior verbal threats, or even a bragging confession to another. Forensic evidence specifically linking the defendant or his/her residence to the animal victim (e.g. fur, blood, DNA) can help counter this defense.

- *It was a "mercy killing"*

The "Old Yeller" defense is common in states where the law allows the "humane" killing of one's own animals. In some states the killing must also be "justified" (e.g. animal was sick, aged or had attacked someone). However, the methods used (e.g. drowning, blunt force trauma, multiple gunshot, poisoning, suffocation) may fall outside of the guidelines of your state statute and the American Veterinary Medical Association<sup>63</sup> recommendations, and thus can be challenged as being an inhumane killing, particularly if there is veterinary or other evidence that the animal was not killed quickly and painlessly. Do not assume that a practice that has been common in the past (e.g. drowning) meets contemporary societal and veterinary standards for humane killing.

- *Defense of self/property*

When a defendant claims to have hurt or killed an animal out of self-defense, defense of another, or defense of property, you will want to admit evidence of the animal's past behavior (typically through the owner of the animal), testimony of others who knew the animal's behavior, and/or evidence of anything the defendant did to have provoked the animal. For example, if the defendant was hitting a family member and the family dog came to the rescue, bit the defendant to get him/her to stop, and the defendant hurt or killed the dog, admitting evidence of the entire situation in addition to expert testimony from an animal behaviorist will help to dispel this defense. When called for, you will also want to introduce evidence that the animal was on his/her property and that the defendant trespassed, or that the defendant had the ability to retreat to safety without harming/killing the animal. In a shooting situation, you may also introduce forensic or ballistics evidence of where the animal was shot to demonstrate whether the animal was aggressing or retreating. If the defendant went back into his/her home to retrieve a gun, then that evidence will work against this defense.

63 AVMA Guidelines Euthanasia for the Euthanasia of Animals: 2013 Edition. Schaumburg, Illinois: American Veterinary Medical Association.



- *It didn't happen or I didn't do it!*

This can occur when there is no injury, no animal body or no weapon. These may be circumstantial evidence cases unless you have an eye witness or photographic/videotaped evidence of the commission of the crime. So like most other trials, you need to piece together the evidence into a clear picture for the jury to understand that the defendant is the responsible offender. Admit other evidence to show the harm, including any injuries to the defendant (bite marks, scratches).

- *I was drunk/high*

Check your state law because voluntary intoxication is typically not a defense to criminal conduct.

- *I was disciplining or training the animal*

You would be wise to call an expert in dog training to show that the actions of the defendant were beyond any recognized discipline or training method. If the defendant had prior warnings from animal control about excessive “discipline” and still continued in their conduct, this will help to show intentional conduct by the defendant.

- *The animal had an accident*

The defendant may claim the animal was hit by a car, fell off of a high level (bookshelf, stairs, etc.) and broke its leg, or inadvertently got into some poison. There is a wealth of information to aid veterinarians and others to distinguish between accidental and non-accidental injury, with well-established guidelines on situations that should raise suspicions of abuse.<sup>64</sup> The conduct of the defendant immediately after the injury will be telling as to whether it truly was an accident or whether it was caused by the defendant. Obtain a time line of when the harm occurred from your veterinary expert and compare it to when (or if) the defendant sought medical care for the animal as it will be critical to defeating this defense. Also, your veterinary expert will be able to determine if some injuries are consistent with self-injury or injury caused by another. Be sure to ask the veterinarian if they documented that the defendant had any obvious injuries because this may show that the animal fought back or any past healing injuries.

- *Couldn't afford vet care*

- This is where you can demonstrate the resources in your community that would have been available to the defendant at low or subsidized cost (such as spaying and neutering, vaccinations). You can also admit evidence that the relinquishment of the animal(s) to the local shelter is always an option to avoid abuse or neglect. In addition, many veterinary clinics are willing to negotiate special extended payment plans to accommodate clients with limited resources.

- *The animal is a picky eater.*

If the defendant claims that their pet was a picky eater and that is why they are malnourished it is important for a veterinary exam to rule out medical problems that might result in failure to maintain weight. The feeding habits of the animal after being seized should be documented closely. Humane agencies often make a video recording of the first time a seized animal is offered food or water to document its response. In addition, data from weekly weighing that show a consistent weight gain with proper access to food can defeat such claims.

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64 L. Sinclair, M. Merck & R. Lockwood, R., *Forensic Investigation of Animal Cruelty: A Guide for Veterinary and Law Enforcement Professionals*. Washington, DC: Humane Society of the United States (2006); J. Cooper & M. Cooper, *INTRODUCTION TO VETERINARY AND COMPARATIVE FORENSIC MEDICINE* (Wiley-Blackwell Publications, 2008); R. Munro & H.M.C. Munro, *ANIMAL ABUSE AND UNLAWFUL KILLING: FORENSIC VETERINARY PATHOLOGY*, (Elsevier/Saunders, 2008); P. Arkow, L. Boyden & E. Patterson-Kane, *PRACTICAL GUIDANCE FOR THE EFFECTIVE RESPONSE BY VETERINARIANS TO SUSPECTED ANIMAL CRUELTY, ABUSE AND NEGLECT* (American Veterinary Medical Association, 2011); M. Merck, *VETERINARY FORENSICS: ANIMAL CRUELTY INVESTIGATIONS 2<sup>ND</sup> EDITION*, (Wiley-Blackwell, 2011).

- *I am a rescuer and the animal just recently came in this way. I have not had time to address its illness or injury.*

Refuting this defense may require other evidence regarding how long an animal has been in the defendant's care. Usually fraudulent or poorly run rescue groups have no documentation available regarding animal intakes. Evidence that an animal has been at the facility for some time may include testimony from concerned staff or volunteers, testimony from individuals or organizations who may have originally surrendered the animal, or physical evidence such as the accumulation of feces in an unclean cage.

- *I am an animal hospice provider and these animals are dying from other causes.*

Some rescue hoarders will claim that the animals in their care were already diagnosed with a fatal disease and they simply allowed the animals to live out their lives in their care. There are established veterinary medical standards for animal hospice care.<sup>65</sup> The difference between a hoarder and a true hospice caregiver is that the hospice caregiver does not deny veterinary care or food, and they provide a clean and safe environment for the animal. For the animals, it is important to obtain prior documentation of the claimed "fatal" disease. If no documentation can be provided, an examination of the surviving or deceased animal(s) can determine whether the animal(s) truly had a fatal disease.

- *Attacking evidence (or lack thereof)*

This is commonly an attack on not having forensic evidence. While some may dub this the *CSI effect*, studies have shown that jurors who watch CSI shows are not more likely to demand CSI-type evidence or return a not guilty verdict in the absence of such evidence. One study found that "CSI watching had no direct effect on jurors' decisions, and it had an indirect effect on conviction in the case of circumstantial evidence only as it raised expectations about scientific evidence."<sup>66</sup> For hundreds of years, and even today, there are cases prosecuted successfully without forensic evidence. You can deal with this during jury selection and in your opening statement to diffuse up front that you will not have forensic evidence and you do not need it to prove the guilt of the defendant. You can put on a good old-fashioned case!

- *I did the best I could*

You can defeat this defense similar to the "couldn't afford vet care" defense. Whether the defendant had limited financial resources, lack of Internet service to find help, or just did not know where to turn, when appropriate you can always present evidence of the resources in your community. If the defendant receives the newspaper each day, introduce articles or advertisements about free or subsidized veterinary services, or about the local animal shelter.

- *The nicely-dressed and apologetic defendant*

This can be a big challenge that can sway a jury into believing that the defendant is really a good person and just made a mistake or was not knowledgeable. Make sure that your investigators take photos of everyone at the crime scene so that you can introduce a photo of the defendant at that time. It is your job to present all of the facts *at the time of the crime* so that the jury understands

65 International Association of Animal Hospice and Palliative Care, <http://www.iaahpc.org>.

66 Young S. Kim, Gregg Barak & Donald E. Shelton, *Examining the "CSI-effect" in the cases of circumstantial evidence and eyewitness testimony: Multivariate and path analyses*, 37 JOURNAL OF CRIMINAL JUSTICE 452-460 (2009), available at: [http://works.bepress.com/donald\\_shelton/13](http://works.bepress.com/donald_shelton/13). See also, Janne A. Holingren and Judith Fordham, *The CSI Effect and the Canadian and the Australian Jury*, 56(S1) JOURNAL OF FORENSIC SCIENCES S63-S71 (2011).

the full picture. So if your defendant is neatly dressed for court, present the real picture at the time of the crime. If the defendant is apologetic, claiming ignorance or while crying says “I just did something stupid and it will never happen again,” be prepared to potentially admit other prior misconduct. If you have evidence of prior misconduct towards animals, this may be your opportunity, through Rule of Evidence 404B or another equivalent, to bring in prior “bad acts” by the defendant towards animals to pierce this defense.

### **Meet with your Investigator, Witnesses and attending Veterinarian**

Take the time to meet with your investigator(s), key witnesses and veterinarian before trial. You may learn relevant history of the defendant that may not be contained in the incident reports that can help you prepare for your case. It is also a good time to make sure that witnesses are fully prepared for direct and cross examination, that they are available on the date of trial (and if not it will give you time to request a continuance) and that you answer any questions or concerns that they have about testifying. In meeting with the veterinarian, learn their terminology so that you can ask layman questions to the veterinarian during trial that the jury will understand. And also educate your veterinarian to speak in a manner that the jury will understand. The key role of veterinary testimony is reviewed in Figure 10.

### **Theme and Theory of Case**

NDAA trains prosecutors in its various trial advocacy courses on best practices when presenting your case to the jury. One of the key components of a successful prosecution is to have a clear theme and theory of the case. The *theme* of your case is woven throughout opening statement, testimony and closing argument. It may be as follows: “This is a case about betrayal of trust. It’s about the defendant who took Lucy, an eight-pound cat with a loving disposition, into her home and into her care, only to then beat her within an inch of her life. Lucy had been abandoned outdoors, betrayed by her first owner, only to be betrayed a second time in the hands of this defendant.” The *theory* of the case is where you clearly detail how the beating occurred with the evidence that you have.

In every case, it is important to create a theme and a theory that will then help you to convey a consistent message to the jury. When jury selection, opening statement, direct examination, cross examination and closing arguments are all over the board with no consistency, this can cause confusion for the jury in deciphering the facts and applying them to the law. Clear, consistent theme and theory woven throughout the presentation of your case will help you organize and present an effective case, thus making the decision clear for the jury.

### **Jury Selection**

Selecting a fair jury on an animal abuse case will be specifically tied to the facts of your case. Here are some basic suggestions to consider when selecting a jury:

- Harm to a companion animal = you will want to know which potential jurors have or had have a companion animal in their care; how does they feel about their companion animal; how they feel about laws that protect companion animals (are the laws sufficient, not sufficient, too extreme); whether they have an opinion on whether a companion animal can feel pain (this is important for a torture case).

- Harm to a specific species or breed = you will want to determine if a potential juror has a bias for or against a specific species or breed. For example, how does the potential juror feel about cats, pit bull type dogs, wildlife, etc.?
- Harm to livestock or horse = you will want to know which jurors have or had have a horse or livestock in their care; you will want to identify any farmers in the jury panel to specifically learn whether they feel that laws should protect livestock from harm (whether occurring on the farm in violation of standard husbandry practices or by an outside intruder); how the potential juror feels about laws that protect horses and livestock from abuse even though some livestock and horses may be slaughtered for food (i.e., does this hypocrisy in the treatment of animals and the law cause them to not want to enforce abuse laws).
- Harm to wildlife, stray or feral animal = you will want to know if the potential jurors feel it is appropriate for laws to protect animals who are “unowned”; whether they feel it is appropriate under the law to prosecute someone for harming an “unowned” animal; whether they believe that wildlife, stray or feral animals can feel harm and pain similar to a companion animal.

When selecting a juror, it is a good practice to put yourself in the position of being a juror with the opposite attitude that you want on your case (i.e., they hate all animals and see no problem in harming, torturing or killing them) and then determine what questions need to be asked to get this juror to disclose their true opinion. This “devil’s advocate” mindset will greatly benefit you as you select jurors on animal abuse and other sensitive cases.<sup>67</sup>

### Visual Presentation

We live in a visual world and jurors may expect you to use technology in the courtroom to present your case. The use of Power Point is more common for opening statements, closing arguments, and to display physical evidence on a large screen or on small individual screens for each juror. The Elmo machine is also a piece of equipment where you can place evidence and documents for display to the jury, judge and spectators in the courtroom. If technology is not present in your courtrooms and if your agency does not have computer equipment for a technological presentation, you can always create visuals with poster boards that contain the elements of the crime, enlarged photos of the animal victim(s), and a bullet-point listing of the evidence in relation to each element of the crime you need to prove. These visuals can break up the monotony of a trial and can be beneficial for those people who are visual learners. For every case, no matter how small or large, it is important to have some visuals for the jury. It can even simply be of your investigator or the non-offending owner of the animal holding up a photo of what the animal looked like before the abuse and (if still alive) what they looked like after the abuse. Visuals are powerful tools in the courtroom.

### Expert Witnesses: Veterinary Testimony

Reports and testimony from veterinarians and veterinary technicians who have attended to the animals involved in an abuse case are often the key to telling the story of an animal that has been injured or killed through abuse. Such testimony can address key issues raised in most abuse cases, as outlined in Figure 10. Veterinarians are among the most respected members of the community and their testimony as

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<sup>67</sup> Animal Legal Defense Fund, in partnership with Richard Matthews, a renowned jury consultant, has developed extensive materials in support of prosecutors on this important issue.

both direct and expert witnesses can be particularly compelling. Veterinary technicians can also provide valuable testimony regarding the behavior and temperament of the animal victim(s) in their care, which may help to diffuse some defenses especially as they relate to an animal being a picky eater (and looking malnourished) or being aggressive. Veterinary professionals can also provide a well-supported, objective community standard for what is considered reasonable and prudent care.

Figure 10

### **Veterinary Professional Roles**

- Documenting the physical condition of all animals associated with an abuse case and documenting changes in their condition in response to care and treatment;
- Commenting on reasonably prudent actions and standards of care that could have been taken to prevent disease, injury or death including basic vaccinations and other preventative care;
- In the case of deceased animals, determining the cause of death, sequence of injuries and timing of pre-mortem or post-mortem wounds;
- Offering expert opinion to distinguish between death and injury resulting from human vs. non-human causes (e.g. predation) or intentional vs. accidental injury;
- Identifying and preserving physical evidence that may link the injuries to a particular suspect (e.g. projectiles, ligatures, trace evidence); and
- Offering opinions regarding the speed of unconsciousness or death, and degree of suffering to evaluate whether the death or killing was humane.

It is important to document not only the medical condition of animals at the time of the initial investigation, but also the temperament, recovery and/or deterioration of animals over time. The relatively rapid transition of a dog from a “bag of bones” to fully fleshed out animal with a healthy coat is strong testimony to the fact that all it took was basic care to have a healthy animal.

Defendants may call their own veterinarians as witnesses to document prior care, but such testimony can provide sharp contrast to the conditions underlying the abuse charges and may actually strengthen the prosecution’s case. Contact NCPAA for assistance in cross-examining a defense expert and obtaining any available impeachable documentation on a defense expert witness.

### **Other Expert Testimony**

Special circumstances may necessitate employing other professionals with expertise in animal care to help clarify events that transpired or call defense theories into question. This might include veterinary specialists such as pathologists or toxicologists. It may also include veterinary behaviorists or certified applied animal behaviorists to address behavioral issues, or a “Link” expert to explain the research supporting the co-occurrence of crimes against animals and people (this is often more relevant at the time of sentencing). Some animal abuse cases have used other scientific experts including DNA specialists, ballistics experts and psychologists. Cases involving livestock abuse may benefit from having industry-

specific animal husbandry experts who can address issues regarding commonly accepted practices that may have been violated or ignored.

The prosecution of an animal abuse case may also involve participation of professionals from agencies other than law enforcement or animal care that may have had to become involved in the response to the animal related complaint. This may include mental health professionals, child protective services, adult protective services, domestic violence responders, healthcare workers, and sanitation and fire professionals. These professionals may provide added insight into the conditions found at the scene and their impact on people as well as animals exposed to these conditions. Lastly, you should consider an expert psychologist or therapist who can inform the court about treatment options for the offender and the need for treatment.

### **Other Community Witnesses**

Neighbors and other community members often know more about how someone is treating his or her animals than they do about the person. Testimony regarding a history of public mistreatment may be important in establishing a pattern of intentional cruelty. Other community members may have had an opportunity to observe the behavior and treatment of the animals in question, including letter carriers, other delivery personnel, utility workers, pet sitters, groomers and others. Make sure that these individuals are interviewed by investigators and are prepared to testify in court, even if it involves testifying against a neighbor.

### **Animal Victim in Court**

There are laws in place that allow all human victims an opportunity to be in court, whether to testify or to observe the proceedings. Yet, there are no state laws specifically addressing animal victims being in court. This is likely due to the fact that animals would not understand what is occurring. However, does this mean that you should preclude animal victims from coming to court with their non-offending owner when appropriate?

You will want to weigh the pros and cons of making a request to have your animal victim in court and whether it will help or hinder your case. It is advisable to request the court for permission to have the animal victim appear in court since bringing an animal to court is an unusual request. While there are no victim's rights laws for animals and animals are deemed "property" under the law and sentencing guidelines, animals are protected by law from being victimized and you could argue this distinction. If you plan to offer the animal victim as "evidence" by showing the animal to the jury, then a pre-trial motion outlining the request would be important.

In a different measure, Rhode Island now has a statute that allows the court to appoint the state veterinarian or designee to act as an advocate to "make recommendations to any court before which the custody or wellbeing of an animal is at issue." R.I. Gen. Laws §4-1-31.



## SENTENCING OPTIONS

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In the prior section on Plea Agreements, various options were discussed that should be included as part of a guilty plea. Upon a guilty conviction by the trier of fact, there are certain sentencing conditions that prosecutors should request and/or make known to the probation agent preparing a pre-sentence report. Even if your state does not have a specific law allowing for these options, you can certainly make the request of the judge.

### **Incarceration**

The dangerousness assessment factors mentioned in Figure 3 can be helpful in addressing the types of offenses requiring particular attention for the protection of the community. The penalties for a state law conviction of animal abuse can range from no jail time up to a 10 year maximum sentence. Current felony animal cruelty provisions allow for jail or prison sentences ranging from six months to ten years. Since serious and violent animal cruelty offenses are often associated with other crimes, judges have increasingly been instituting maximum sentences in instances of repeated, violent or severe animal cruelty. In cases involving juvenile or non-habitual offenders, most courts have recognized the value of some jail time as an important part of the balanced approach to holding perpetrators accountable. Such sentences are then usually blended with a substantial period of probation supervision to allow for treatment and rehabilitation.

### **Probation**

For any defendant receiving a sentence other than prison, it is important to place the defendant on probation to allow for oversight and reduce the chances of recidivism. A maximum term of probation will also allow for other sentencing options listed below. Much of the concern about animal abuse cases centers on what these actions may tell us about the capacity of the offender to engage in future violent acts against people and property. For this reason, probation of the longest possible duration can be one of the most desirable outcomes in such a case.

### **Banning ownership/possession of animals**

Conviction on animal abuse charges implies an inherent inability to provide appropriate care to animals in the future. Fourteen states have specific provisions to allow for a judge to ban a defendant from owning or possessing animals.<sup>68</sup> As part of this request, it is important to request that all affected animals (including born and unborn animals) be forfeited to an animal protection organization for rehoming and placement. Typically the ban is for the term of probation. It is also important to request that probation agents be permitted to make unannounced home visits as a term of probation to ensure that this provision is enforced.

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<sup>68</sup> Colorado, Delaware, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, New York, Tennessee, Vermont, Virginia, West Virginia and Wyoming. Listing available at [http://www.pet-abuse.com/pages/cruelty\\_laws.php](http://www.pet-abuse.com/pages/cruelty_laws.php).



In severe neglect or animal hoarding cases the courts have often been reluctant to remove all animals from the care of the offender. If the defendant is allowed to keep animals following conviction, the numbers should be consistent with local limits and with the individual's demonstrated capacity to provide care. In addition, sentencing should include provisions for reasonable monitoring of compliance with these limits by animal care and control or other authorities.

### **Limits on Employment**

Some states restrict those convicted of animal abuse from employment in professions involving direct contact with or responsibility for animals, including positions in animal care and control. Whether your state has a law in this regard or not, and depending on the nature of the defendant's actions, you may want to make this request at the time of sentencing. This would also be consistent with requesting that the defendant not possess, own or be around animals.

### **Court-ordered evaluation and counseling**

If the defendant was not ordered pre-conviction to undergo a psychological evaluation, the prosecutor should request at the time of conviction and before sentencing that it occur. Dependent upon the findings in the evaluation, the prosecutor should be prepared to ask for specialized and appropriate counseling for every defendant convicted of animal abuse (regardless of the factual circumstances). Whether the facts involved the torture and killing of animals or allowing a dog tethered to a chain outdoors to become malnourished, individuals who harm animals are in need of some treatment to avoid recidivism.

Since animal abuse takes many different forms, with a variety of different underlying motives and processes, no "one size fits all" program is appropriate for all offenders. However, there are standardized approaches for dealing with many types of offenders. One treatment program that is specifically designed for animal abusers, both adult and child, is the AniCare Program.<sup>69</sup> AniCare is an empathy-based treatment program. "The AniCare program uses a cognitive-behavioral approach with direct interventions emphasizing the client's need to acknowledge accountability for his or her behavior (much like the approach used with spouse batterers). It involves both assessment and treatment, using exercises that clinicians use to suggest specific interventions for the particular client. It addresses seven major concepts: accountability, respect/freedom, reciprocity, accommodation, empathy, attachment and nurturance."<sup>70</sup> Animals & Society Institute (see resource list) oversees the AniCare program and can advise you as to whether any AniCare providers are available in your jurisdiction. Several other organizations, including the ASPCA and the National Link Coalition, can assist mental health professionals involved in court-ordered assessment or treatment of animal abuse offenders in identifying assessment tools and other resources that can be helpful in working with such clients.

Currently 26 states have laws addressing court-ordered psychological evaluations and 32 states have laws for court-ordered treatment for convicted animal abusers.<sup>71</sup> Whether a state has a law in place or not, a prosecutor should request psychological assessment and treatment and be prepared to recommend specific

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<sup>69</sup> You can learn about AniCare at <http://www.animalsandsociety.org/pages/anicare>.

<sup>70</sup> Id.

<sup>71</sup> List of state laws is available at [http://www.ndaa.org/animal\\_abuse\\_resources.html](http://www.ndaa.org/animal_abuse_resources.html).

community treatment programs relevant to animal abusers (and avoid the catchall “anger management” treatment unless warranted). A prosecutor may also want to enlist the services of an expert psychologist or therapist who can discuss the importance of treatment at the time of sentencing.

### **Community Service**

If the court orders community service, it is important to have the court order specifically state that community service shall not involve animals. Too many well-intentioned prosecutors have requested or allowed a judge to order community service at an animal shelter under the misguided belief that working with animals will encourage empathy and reduce the chances of recidivism. This is not true. Anyone convicted of a violent crime or animal abuse should never be allowed to work around animals unless it is part of a structured and supervised animal-assisted intervention program.

### **Cost of Care by Statute or Restitution**

With most animal abuse cases, there will be financial costs for the care and veterinary treatment of the living animal(s) or for the expense of processing the deceased animal(s). Since some of the assisting agencies will be governmental-funded animal shelters or nonprofit animal protection organizations, it will be important for them to be reimbursed for the cost of services. Before proceeding to sentencing, be sure to ask each agency for a detailed accounting of the costs of care and services provided and then seek reimbursement for all costs. Use caution when dealing with the traditional restitution model, where a failure to secure an agreement for all costs can result in the defendant only being required to pay for the counts subject to the plea agreement.

### **License Revocation**

If the defendant has a license for a boarding facility, to breed animals, or any other venture that involves the care of animals, you will want to consider requesting the court to revoke the license of the defendant. You may also need to pursue administrative remedies with the appropriate licensing agency to have the license revoked.

### **Victim Impact Statements**

Crime victims are allowed to give a victim impact statement (verbally or in writing) to the court at the time of sentencing. This same right should apply to the owner(s) of the animal victim(s). The non-offending owner of the animal should be afforded the opportunity to provide a victim impact statement, regardless of how your state labels crimes against animals. In some cases veterinary or shelter staff that have provided extensive care and rehabilitation for animal victims of abuse have been permitted to make statements at sentencing. This can help demonstrate the level of community involvement with and concern for the animal victims of crime. A prosecutor should vigorously advocate for this in every case where there is an owner. If there is no owner to come forward and provide a victim impact statement, it is incumbent upon the prosecutor to be that voice at the time of sentencing. For additional information on victim impact statements, please visit the Animal Legal Defense Fund website.<sup>72</sup>

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<sup>72</sup> *Victim Impact Statements in Cases of Animal Cruelty*, available at <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/victim-impact-statements-in-cases-of-animal-cruelty/>.



# JUVENILE OFFENDERS IN ANIMAL ABUSE CASES

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## The Role of the Juvenile Prosecutor

“Acts of animal cruelty committed by children challenge our prosecutorial ability to maintain the balance of the prosecutorial dichotomy necessary to be effective professionals. Children are supposed to love animals, to have a special bond with them. However the sad reality is that approximately thirty percent of intentional animal cruelty cases are committed by juvenile or young-adult offenders.<sup>73</sup> It makes us wonder what broke that bond?”<sup>74</sup> These words by Jennifer Rallo, an Assistant State’s Attorney for the City of Baltimore in Maryland, sets the stage for what may be some of the most challenging cases for a prosecutor. Ms. Rallo, who specializes in the prosecution of violent juvenile offenders and is also a member of the Mayor of Baltimore City’s Anti-Animal Abuse Commission, outlined in her 2013 article *Prosecuting the Youthful Offender*, that the prosecutor’s role in handling a juvenile incident of animal abuse is far different than in adult court. She outlined that in addition to the traditional role of public safety, proving the crime and holding the offender accountable, there is the additional role of assessing rehabilitative possibilities for the juvenile. She explains, “[w]hen a child has committed an act of animal cruelty the case must be taken very seriously by prosecutors, no exceptions. The presence of animal cruelty within a juvenile’s history is a significant finding.”<sup>75</sup>

The balanced approach to juvenile justice aims to address three primary concerns: (1) holding juvenile offenders accountable for their actions, (2) enhancing community safety, and (3) developing the offender’s competencies to become a contributing member of society. The outcome of the prosecution of a juvenile animal abuser should add a fourth concern to this list: (4) providing for the interests of the animal(s) involved and other animals that may be affected. Animal abuse committed by juvenile offenders will raise an even higher degree of scrutiny by the general public. Whatever the final outcome of a case, it is likely to be criticized by some as the proverbial “slap on the wrist” particularly if this is the juvenile’s first offense or if sentencing guidelines provide for relatively limited punishment. Prosecutors should attempt to clearly communicate the realistic limitations of the juvenile justice system as it relates to the case at hand, and their commitment to addressing the concerns of the balanced approach to the fullest extent possible.

## What the Research Reveals About Child and Youthful Offenders

Most people can agree that we are not born to be abusive towards to animals; it is a learned behavior. Several studies have shown that when children are exposed to violence (whether violence towards humans or animals), they have a greater likelihood of becoming a violent offender (either towards humans or animals).

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73 Randall Lockwood, ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE, 33. (American Prosecutors Research Institute, July 2006).

74 Jennifer Rallo, *Prosecuting the Youthful Offender*, 3(2) TALES OF JUSTICE 1 (2013), available at [http://www.ndaa.org/animal\\_abuse\\_newsletter\\_mailinglist.html](http://www.ndaa.org/animal_abuse_newsletter_mailinglist.html).

75 *Id.*, 2.

- A 2009 study showed that children who witnessed animal abuse were more than eight times more likely to become a violent offender, and witnessing animal cruelty was *the* biggest predictor of later violence by the child.<sup>76</sup>
- A 10-year study of at-risk children showed that those who were classified at age 6-12 as cruel to animals were more than twice as likely as others in the study to be subsequently referred to juvenile authorities for a violent offense. Of those reported to be both cruel to animals and fire setters, 83% had later involvement in violent offenses.<sup>77</sup>
- A 2007 study of families at five Utah domestic violence shelters showed that of the 66.7% of the shelter children who observed animal abuse, 37.5% of them had harmed or killed their pets.<sup>78</sup>
- A 1998-2005 study found that frequent use of spanking of three-year-olds was associated with higher levels of child aggression when the child was five, including temper tantrums and lashing out physically against other people and animals.<sup>79</sup>
- Children who are physically punished more frequently before adolescence are more likely to abuse animals.<sup>80</sup>
- Children exposed to domestic violence were 2.95 times more likely to engage in animal cruelty.<sup>81</sup>
- And 36.8% of boys and 29.4% of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse their family pet.<sup>82</sup>

In her article, Jennifer Rallo shares:

“In 1963 J.M. MacDonald published, “The Threat to Kill” in the American Journal of Psychiatry describing how his studies had identified the presence of three behavioral characteristics in childhood: animal cruelty, fire setting, and enuresis (bed wetting) as indicators of future violence.<sup>83</sup> This triad has been widely established as indicia that juvenile prosecutors should look for when screening delinquent youth for those in need of more extensive treatment and services. As further evidence of the connection, examinations of the childhoods of serial killers, such as Jeffrey Dahmer, Albert DeSalvo, and Carroll Edward Cole, revealed that many had engaged in childhood acts of animal cruelty. A similar examination of mass school shooters also revealed many had begun by

76 DeGue & DeLillo, *supra* at 1050.

77 K.D. Becker, V.M. Herrera, L.A. McCloskey & J. Stuewig, *A Study of Firesetting and Animal Cruelty in Children: Family Influences and Adolescent Outcomes*, 43 (7) J.A.M.ACAD. CHILD ADOL. PSYCHIATRY 905 (2004).

78 Ascione, Weber, Thompson, Heath, Maruyama & Hayashi, *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13(4) VIOLENCE AGAINST WOMEN 354-73 (2007).

79 C.A. Taylor, J.A. Manganello, S.J. Lee & J.C. Rice, J.C., *Mothers' spanking of 3-year-old children and subsequent risk of children's aggressive behavior*, 125(5) PEDIATRICS 1057-1065 (2010).

80 C.P. Flynn, *Animal abuse in childhood and later support for interpersonal violence in families*, 7 SOCIETY AND ANIMALS 161-172 (1999).

81 Currie, *Animal Cruelty by Children Exposed to Domestic Violence*, 30 CHILD ABUSE & NEGLECT 425-35 (2006).

82 F. R. Ascione, *CHILDREN & ANIMALS: EXPLORING THE ROOTS OF KINDNESS & CRUELTY* 137 (West Lafayette, IN: Purdue University Press 2005).

83 Linda Merz-Perez & Kathleen Heide, *ANIMAL CRUELTY: A PATHWAY TO VIOLENCE AGAINST PEOPLE* 6 (Alta Mira Press 2004).

harming animals. For example, Luke Woodham who murdered his mother and two students wrote gleefully in his diary about how he had killed his own dog with friends by beating her, setting her on fire, and then throwing her in a pond.<sup>84</sup> The common thread appears to be that these violent individuals enjoyed torturing animals as children.

Contemporary consideration of the “MacDonald triad,” or “triad of sociopathy,” puts less emphasis on the presence of the acts themselves as indictors standing alone. Instead the presence of the triad is seen as an indicator of children who are in stressful environments and have developed maladaptive behaviors as a result. Psychological research has shown that thirty percent of children who have been the victims of abuse or witnessed domestic violence have gone on to perform acts of animal cruelty on their pets.<sup>85</sup> Neuropsychological research is also revealing that a childhood lack of empathy is often an inherited quality with an eighty percent probability of being inherited from a carrier parent. Brain scans of children who inherited the trait showed distinct differences from the brain scans of children with normal levels of empathy.<sup>86</sup> Societal inhibitors guide the behavior of individuals lacking in empathy to conform to social norms. Researchers also believe that with early treatment and cognitive therapy, sociopathic children’s brains can be re-wired so that they will be able to experience greater empathy and no longer be at risk for future violence.<sup>87</sup>”

### Charging the Juvenile Offender

“When a child is accused of harming an animal, dismissing the charges or allowing the child to admit to a non-animal abuse offense is not in the best interests of the community or the child offender. These are cases where a solid stance is necessary.”<sup>88</sup> Juveniles are more likely to be charged with intentional cruelty and torture, rather than neglect. The juvenile case requires a strategic coordination between investigators and prosecutors. It is important for all investigators, not just those charged with handling animal abuse cases, to understand that when a young offender has been identified as harming an animal, transporting the youth to a hospital for psychiatric treatment rather than processing the case as a crime can result in the youth not receiving the long-term treatment and intervention needed.

These are also not the cases where you are “too busy” to follow through on a thorough investigation and preparation for trial. While the public may clamor for a speedy investigation and instant charging of the youth, it is important to have all of the evidence and for the prosecutor to make a careful decision on what is in the best interests in the community, the juvenile offender, and the animal victim.

Charging and related decisions should be based on the nature of the offense, the availability of alternative approaches and the community resources for dealing with young offenders. Since cruelty can be indicative of ongoing family violence, juvenile or family court may be the most appropriate venue to assess the family

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<sup>84</sup> *Id.* at 32-33.

<sup>85</sup> Joni E. Johnston, *Children Who are Cruel to Animals: When to Worry*, PSYCHOLOGY TODAY, April 27, 2011.

<sup>86</sup> Jennifer Kahn, *Can you Call a 9-Year-Old a Psychopath?* NEW YORK TIMES MAGAZINE, May 11, 2012.

<sup>87</sup> *Id.*

<sup>88</sup> Rallo, *supra*, at 3.

dynamics and provide an overall treatment plan. Acts of cruelty committed by a very young offender may often indicate a family in need of services or an offender requiring special mental health assessment and intervention.

Currently, no states have provisions for automatic waiver and transfer from juvenile to adult court of even the most violent, repeated or egregious of acts of animal cruelty. However, review of the nature of the offense with respect to dangerousness assessment may be relevant to making a transfer determination. In non-animal juvenile cases (which may be instructive in animal abuse cases), the suggested factors in considering a waiver include:<sup>89</sup>

- The seriousness of offense to the community and whether protection of the community requires a waiver.
- Whether the offense was committed in an aggressive, violent, premeditated or willful manner.
- The interpersonal nature of the crime. Courts traditionally give greater weight to acts against persons rather than property, but animals should be considered as a special category of “sentient” property for purpose of waiver.

### **Disposition for the Juvenile Offender**

Unlike adult court, the job of a juvenile prosecutor will continue past disposition and into frequent status hearings between the juvenile offender and the court. This is a golden opportunity for prosecutors to ensure that the juvenile is complying with all terms of probation and receiving the appropriate therapeutic treatment. As previously mentioned in the Plea Agreements and Sentencing sections, the prosecutor will want to seek certain sanctions and probationary provisions, such as:

- Psychological evaluation and specialized treatment addressing the abuse of animals and re-engaging empathy;
- Ensuring that the juvenile does not have access to any animals, which may involve speaking the family about placing family pets with other relatives, friends, co-workers or relinquish the pet(s) to the local shelter for adoption; and
- Humane education programs.

Rehabilitation and active efforts to prevent recidivism of harm towards animals and/or progression of harm towards people is critical for a juvenile animal abuser. Ensuring that the youth receives the proper treatment balanced with the appropriate punishment to deter future violence is the best way to avoid the juvenile becoming an adult offender.

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<sup>89</sup> NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES (National Council of Juvenile and Family Court Judges, 2006).



## HANDLING COMMUNITY RESPONSE TO ANIMAL ABUSE: YOUR NEW REALITY

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You will encounter more community interest, public outrage, social media activity, emails, phone calls and possibly picketing on your animal abuse cases than any other case that lands on your desk. Why? It is because animals are truly the most innocent victim. They cannot call 911, report a crime, take themselves for medical care, seek therapy, or testify in court. Their only voice for justice will be as good as the investigator on their case and the strength of the prosecutor in the courtroom.

If the prosecutor and/or investigator handling the case are not strong on behalf of the animal victim, your community will be that voice. Communities embrace abused animals, whether alive or deceased, and will loudly advocate for justice. Before “the link” became widely recognized by law enforcement and mental health professionals, the general public accepted the idea that someone who harms an animal may be on their way to harming humans. When a community becomes involved, this can impact your case. Therefore, it is important to understand how these varying groups of passionate people work and how you can work with them for a positive end result.

### *Animal Advocate viewpoint*

- Their primary focus is on the animal victim; they want the animal to be rescued, healed of its physical and emotional injuries, and then rehomed in a safe place.
- They will donate to help care for the seized animals, to provide foster care, and offer other direct services for the animal(s).
- They also want to help you catch the offender and ensure that justice is served.
- They can be very helpful in disseminating “wanted” information (by foot or by social media) to catch an animal abuser and may contribute to reward funds or respond to information distributed by Crimestoppers or similar groups
- They may have a perception that prosecutors and investigators do not properly handle animal abuse cases and will second-guess and critique your actions without having all of the knowledge that you have about your case or a good understanding of the rules of evidence
- A few may take the law into their own hands if they believe that investigators and prosecutors are responding inappropriately (i.e., rescue an animal from a situation without legal authority or while an investigation is pending).
- If they feel that the case is being handled improperly or that information is being withheld, they will publicly complain to get action. This could be a campaign asking people to phone or email you, an online petition seeking justice for the animal or seeking your removal from office, picketing outside of your office, or showing up in court.
- These are well-intentioned individuals who deeply care about animals who are frustrated when they see inaction, lack of transparency, and decisions made that seem contrary to seeking justice. The best way to utilize these individuals is to educate them on the boundaries of the law, ask them to help when appropriate, and, when ethically allowed, be transparent about the case.

### *Community viewpoint*

- Your community is filled with people who love their pets and when they hear about an animal abuse situation, they will want to help. Call upon your community to:
  - Ask for help in locating an offender;
  - Ask for donations (money and items) to help care for seized animals;
  - Ask for foster homes to come forward to care for the animals to alleviate overcrowding at the animal shelter; and
  - Ask for adopters for the animals.
- Their focus is mostly balanced on the well-being of the animal victim(s), holding the offender accountable, and public safety.
- They have a perception that prosecutors and investigators may have limited resources to properly handle animal abuse cases and would like to help.
- They are likely to sign (not initiate) a petition seeking justice and may attend a rally or public gathering.

### *Media viewpoint*

- The media knows that animal abuse cases are high profile media stories. Animals and crime are big news.
- The media will look for a mistake in the investigation and prosecution, and complaints from community members, because that makes news.
- A reporter may be tipped off about a pending or breaking case, so getting a statement prepared early on will be a great way to control the information shared publicly about your case.
- Utilize the media to share information about reward money for locating the offender(s), to educate people about the consequences of abusing animals, to warn people about certain conduct such as leaving a dog in a hot car, and to share heart-warming stories of rescue and recovery of abused animals who finally find a loving home.
- They will not hesitate to expose inaction or an improper investigation or prosecution.

### *Social media impact*

Social media sites are where people now congregate, get news stories, and share information. Whether you engage in social media or not, chances are your case will make its rounds through social media. Animal interest stories, including stories of animal abuse, overwhelmingly go viral on social media. The instantaneous nature of much social media means that there is strong likelihood that much of the information being disseminated is incorrect or incomplete. Engagement amongst users on social media sites, and the likelihood of sharing stories (which can make the story go viral), overwhelmingly occurs on animal-related stories. So you will want to peruse social media sites frequently in case your particular case is being discussed. This could impact the selection of a fair jury and you will want to know if false or incorrect information is being disseminated. Animal protection organizations working with law enforcement on a case must have a strong policy prohibiting dissemination of any activity about a case in progress without specific permission from the Public Information Officer of the lead agency in the case.

Here are some suggestions for handling social media and the public perception of your case:

- Understand, don't dismiss, the view point of those advocating for justice for the animal victim(s). This will give you great insight into your potential jury.

- Prepare to have packed courtrooms of interested citizens, including the possibility of formal “court watch” participants.
- Be open to speaking with concerned citizens and advocates to explain the boundaries and limitations of the law and/or any other information that you can ethically share to help them understand and support you on handling the case.
- Set up Google alerts on yourself so that you know if stories or social media pages are commenting about you or your case. This will help you to identify any issues while selecting a jury.
- Be very careful about what you say on your private social media pages because your friends could share your comments and make them public. This could impact you in selecting a jury.
- Understand that the creation of better laws is being driven by communities and caring citizens who are vocal and advocate to legislatures and during court cases.
- Educate the community that vigilante justice will only seek to distract efforts from the real victims and could actually harm animal victims.
- Understand that animal advocates are coordinated and connected on social media. They can be helpful in your cases, or can be your worst nightmare. How you interact with them will determine how they interact with you.

### *Breaking down silos*

Handling animal abuse cases should not happen in a vacuum. Collaborating is essential to a successful outcome. Here are some things to consider:

- Get the right people on the bus. If you are assigned to handle animal abuse cases and do not have a desire to work on them, ask to be reassigned and for another coworker to take over. Not everyone is cut out to handle animal abuse cases and it is okay to ask for reassignment.
- Prosecutors and investigators should work together early on so that expectations are clear and lines of communication are open during an investigation.
- Make sure that everyone on the team is trained in the proper handling of animal abuse cases and is outwardly professional in their dealings, especially with the public. The easiest way to cause suspicion and the spread of misinformation about your case is to be rude to a concerned citizen.
- Do not be afraid to ask for help. For many career prosecutors, animal abuse classes were not available during law school.
- Involve the community and educate on animal care issues (i.e., preventing pets in hot cars, looking out for abandoned and neglected animals in backyards, etc.).
- Avoid automatic euthanasia of animals seized, especially in a large-scale investigation. Find the resources through local, state or national animal protection organizations to assess, test and treat the animals so that most, or all, can be rehomed or placed in safe settings. If you euthanize a large number of abused animals, you will have to answer that to a jury who may not see that action as any different than what the defendant is alleged to have done.
- Ensure that in every step of the process, your four-legged victims are protected like two-legged victims.



## OVERCOMING VICARIOUS TRAUMA, COMPASSION FATIGUE AND BURNOUT

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Many investigators, prosecutors and shelter workers who work on animal abuse cases and with animal abuse victims will experience vicarious trauma, compassion fatigue and burnout. Vicarious trauma involves the empathetic engagement with traumatic experiences and taking on the trauma suffered by another. Compassion fatigue is a type of emotional exhaustion from observing suffering and trauma. It comes from a source of caring and feeling helpless when things do not go as planned. It is common for animal shelter workers and others who help abused animals to suffer from compassion fatigue at some time. Burnout, on the other hand, can result from any form of constant stress, not necessarily related to caring for others, including animals.

The nature of working with our most helpless victims can cause vicarious trauma, compassion fatigue and burnout even in the most solid people. This does not mean that you are weak; it means that you are human. Many prosecutors and investigators tune out as soon as a “soft” topic like vicarious trauma, compassion fatigue and burnout is mentioned, but it is vitally important that you read this section. If you do not take care of yourself, it will negatively impact your work and the outcome of your cases.

Vicarious trauma, compassion fatigue and burnout can occur in several ways: (1) through seeing the devastating harm that humans can cause to animals; (2) dealing with some of the most disturbed criminals in the system, (3) being told by supervisors, judges, defense attorneys and other individuals that pursuing animal abuse cases is a waste of time, (4) dealing with insensitive co-workers and other individuals who mock you for your desire to help, (5) handling disappointing jury verdicts and slap-on-the-wrist sentences from judges, (6) dealing with the public who will scrutinize your every move, and (7) from your own inner voice telling you to keep helping even when your heart is breaking.

Some symptoms of vicarious trauma, compassion fatigue and burnout include helplessness, feeling like a failure in being able to protect your community, sleeplessness, anxiety, panic attacks, exhaustion and fatigue, depression, hopelessness, digestive issues, physical aches and pains, and headaches.

What can you do to address these traumas so that you avoid burnout? Here are some recommended steps to take:

- Do not berate yourself when you become upset over how animals are maltreated; recognize that you are in a great position of power to take action, protect the victims, punish the offenders, and at the end of the day know that you contributed positively to your community.
- Do not engage in addictive behavior to soothe the trauma.
- Engage in activities that make you feel good, such as exercising, dancing, writing, painting, etc. At the end of the day, be sure to reward yourself with an activity that makes you feel better.
- Celebrate each successful case, and learn from the cases where you received an adverse outcome.
- Keep a scrapbook of photos or articles regarding your successful cases. During dark days, it is soothing to look back on the faces of all the animals that are now safe because of you and your investigative team.

- When you work to help animals, people will naturally want to talk to you about your work that can become overwhelming at times. Make sure that you designate time frequently that is “non-animal” time. Be sure to have other hobbies that do not involve your work with animals. You need to take a break every now and then to rejuvenate. Be diligent in maintaining a healthy boundary so that you can be effective for the animals.
- Surround yourself with positive people. Negative and toxic people will bring down your energy and make it difficult to handle the strong emotions that may arise in handling these cases.
- Seek the help of a professional counselor if feelings of despair about the animals are overwhelming. It takes a courageous person to ask for help, so do not feel embarrassed to receive guidance. Have a support system of friends, family and colleagues that you can talk to when a situation becomes difficult. Do not keep your feelings bottled up inside.

For additional information on compassion fatigue involving animals, check out *Compassion Fatigue in the Animal Care Community* by Charles Figley and Robert Roop and *Defending the Defenseless: A Guide to Protecting and Advocating for Pets* (2011) written by co-author Allie Phillips which has a chapter dedicated to this issue.

## RESOURCES

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### **NDAA's National Center for Prosecution of Animal Abuse**

[http://www.ndaa.org/animal\\_abuse\\_home.html](http://www.ndaa.org/animal_abuse_home.html)

NCPPA is a resource for prosecutors, law enforcement and allied professionals. We offer free monthly live webinars, access to past recorded webinars, online newsletter, technical assistance, and access to our expert advisory group.

### **American Society for the Prevention of Cruelty to Animals**

[www.aspcapro.org](http://www.aspcapro.org) and [www.aspcapro.org](http://www.aspcapro.org)

Founded in 1866, the ASPCA was the first humane organization in the Western Hemisphere. Its mission is to provide effective means for the prevention of cruelty to animals throughout the United States. The ASPCA provides national leadership in cruelty prevention. The ASPCA provides current information on animal laws; training for prosecutors, police officers and others in law enforcement; veterinary forensic training and consultations; behavioral assessment and rehabilitation of animal victims, expert witness testimony and other assistance to prosecutors and law enforcement agencies.

### **Animal Legal Defense Fund**

[www.aldf.org](http://www.aldf.org)

Through its Criminal Law Division, ALDF works with prosecutors and enforcement agencies to ensure that state criminal anti-cruelty statutes are vigorously enforced, and that those convicted of abuse, cruelty and neglect receive appropriate sentences. ALDF also awards monetary grants to assist attorneys with worthy animal-related cases.

### **Animals & Society Institute**

[www.animalsandsociety.org](http://www.animalsandsociety.org)

The Animals and Society Institute provides training for mental health professionals on the assessment and treatment of animal abusers using the Anicare and Anicare Child programs. It also maintains a directory of professionals trained in evaluating and treating those convicted of animal cruelty.

### **Community Oriented Policing Services, U.S. Department of Justice**

[www.cops.usdoj.gov](http://www.cops.usdoj.gov)

The COPS office provides several resources related to the investigation and prosecution of animal cruelty. They have provided support for the development of the *Dogfighting Toolkit for Law Enforcement: Addressing Dogfighting in Your Community* in cooperation with the ASPCA. The Toolkit includes a Prosecutor's Guide to Prosecuting Dogfighting.



### **Michigan State University College of Law/Animal Legal & Historical Center**

[www.Animallaw.info](http://www.Animallaw.info)

This site maintains an extensive directory of full text cases (US, Historical and UK) and U.S. statutes fully available on the site. Also provides detailed reviews of legal background on dozens of animal-law related topics and full-text of many relevant law review articles.

### **National Link Coalition**

[nationallinkcoalition.org](http://nationallinkcoalition.org)

Led by a *steering committee* of nationally-renowned experts in the prevention of all forms of family violence, the National Link Coalition is an informal, multidisciplinary collaborative network of individuals and organizations in human services and animal welfare who address the intersections between animal abuse, domestic violence, child maltreatment, and elder abuse through research, public policy, programming and community awareness. The National Link Coalition provides many resources on the connection between animal cruelty and interpersonal violence, including an extensive bibliography of research on the subject and a monthly newsletter.

### **Pet Abuse.com**

[www.Pet-abuse.com](http://www.Pet-abuse.com)

Pet-Abuse.com maintains a database of thousands of cases of animal abuse and neglect with comprehensive tracking of case prosecutions and outcomes. It is a valuable resource for prosecutors wishing to quickly identify animal cruelty cases that have been investigated and/or prosecuted in their state.

### **Sheltering Animals & Families Together (SAF-T)**

[www.animalsandfamilies.org](http://www.animalsandfamilies.org)

SAF-T is the first and only global initiative providing guidance to family violence shelters on how they can welcome families with pets. The extensive SAF-T Start-Up Manual details how to create this program and safe lives.

### **The Humane Society of the United States**

[www.humanesociety.org](http://www.humanesociety.org)

The HSUS is the nation's largest animal protection organization. HSUS provides rewards in animal cruelty cases, information on current and pending animal protection legislation and specialized training and assistance in the investigation of dogfighting and cockfighting.

### **United States Department of Agriculture**

[http://www.aphis.usda.gov/publications/animal\\_welfare/2011/dogfighting.pdf](http://www.aphis.usda.gov/publications/animal_welfare/2011/dogfighting.pdf)

USDA's Animal and Plant Health Inspection Service (APHIS) and Office of Inspector General (OIG) work with state and local authorities to investigate and enforce federal and state laws against animal fighting.

### **University of Florida/ASPCA Forensic Veterinary Sciences Program**

<http://forensics.med.ufl.edu/>

The partnership between ASPCA and the University of Florida offers graduate level instruction in Veterinary Forensic Sciences including a Certificate Program and a Masters degree program specifically focusing on the application of veterinary medicine and modern forensic techniques to the investigation and prosecution of animal cruelty.

## About the National District Attorneys Association

The National District Attorneys Association is the oldest and largest professional organization representing criminal prosecutors in the world. Its members come from the offices of district attorneys, state's attorneys, attorneys general, and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States. Its purposes are:

- to foster and maintain the honor and integrity of the prosecuting attorneys of the United States in both large and small jurisdictions by whatever title such attorneys may be known;
- to improve and to facilitate the administration of justice in the United States;
- to promote the study of the law and legal research, the diffusion of knowledge and the continuing education of prosecuting attorneys, lawyers, law enforcement personnel, and other members of the interested public by various means including, but not limited to, arranging conferences and fostering periodic meetings for the discussion and solution of legal problems affecting the public interest in the administration of justice;
- to cause to be published and to distribute articles, reports, monographs, and other literary works on legal subjects or other related subjects;
- to provide to state and local prosecutors the knowledge, skills and support to ensure that justice is done and the public safety and rights of all are safeguarded.

To become a member of NDAA, please visit [www.ndaa.org](http://www.ndaa.org).

## About the National Center for Prosecution of Animal Abuse

The National Center for Prosecution of Animal Abuse (NCPAA) is a program of the National District Attorneys Association (NDAA), created in partnership with the American Society for the Prevention of Cruelty to Animals (ASPCA) and Animal Legal Defense Fund (ALDF) to educate and train prosecutors and allied professionals on the effective handling of animal cruelty and neglect cases, including cases involving the co-occurrence of animal abuse and violence to people. NDAA desires to bring greater awareness to the often misunderstood nature of animal maltreatment and how it can interconnect with family violence and contribute to lethality issues for victims of interpersonal violence. With growing awareness by the public to recognize and report animal abuse, combined with increased attention by the media, prosecuting attorneys need the resources to properly address incidents of animal abuse in their community and properly hold offenders accountable.

### **Mission Statement**

The mission of NCPAA is to always act in the best interests of animals; to create an environment in the criminal justice community where animal protection laws are fully enforced; to create understanding that when animals are safe from harm, communities are safer; to provide the resources, tools and support to prosecutors and allied professionals in the pursuit of those who harm animals; to collaborate with others so that the most updated and innovative information is available and accessible; to deliver training and technical assistance in a professional and ethical manner; and to remember that our victims are voiceless and deserve an impassioned and knowledgeable prosecutor pursuing justice in their name.

## About the American Society for the Prevention of Cruelty to Animals

Founded in 1866, the ASPCA® (The American Society for the Prevention of Cruelty to Animals®) is the first animal welfare organization in North America and serves as the nation's leading voice for animals. More than two million supporters strong, the ASPCA's mission is to provide effective means for the prevention of cruelty to animals throughout the United States. As a 501(c)(3) not-for-profit corporation, the ASPCA is a national leader in the areas of anti-cruelty, community outreach and animal health services. For more information visit [ASPCA.org](http://ASPCA.org).





[www.ndaa.org](http://www.ndaa.org)



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