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Animal Cruelty Prosecution

Opportunities for Early
Response to Crime
and Interpersonal Violence

OJJDP Office of Juvenile Justice
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THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS[®]

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Animal Cruelty Prosecution

Opportunities for
Early Response to Crime
and Interpersonal Violence

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TABLE OF CONTENTS

1	Introduction
5	A Brief History of Animal Cruelty Laws
9	Why Prosecute Animal Cruelty Cases?
	<i>Cruelty to Animals is a Crime</i>
	<i>Cruelty to Animals Can Be a Predictor Crime</i>
	<i>Cruelty to Animals Can Be an Indicator Crime</i>
	<i>Cruelty to Animals Destabilizes Communities</i>
	<i>Prosecuting Animal Cruelty is Consistent with the Balanced Approach Model of Juvenile Justice</i>
15	Defining “Cruelty to Animals”
19	Types of Animal Cruelty
	<i>Simple Neglect</i>
	<i>Gross, Willful, Cruel or Malicious Neglect</i>
	<i>Intentional Abuse, Torture</i>
	<i>Animal Hoarding</i>
	<i>Organized Abuse—Dogfighting, Cockfighting</i>
	<i>Ritualistic Abuse</i>
	<i>Animal Sexual Abuse (Bestiality)</i>
25	The Progression of a Cruelty to Animals Case
	<i>Reporting Cruelty</i>
	<i>Seizure/Impound</i>
	<i>Disposition of Deceased Animals</i>
	<i>Charging Decisions</i>
	<i>Building the Cruelty to Animals Case</i>
	<i>Sentencing Requests and Guidelines</i>
43	Conclusion
45	References
49	Appendix

INTRODUCTION

■ In 1997, two teenagers wielding baseball bats broke into an animal shelter in Fairfield, Iowa, killing 17 cats and seriously injuring a dozen more. Their subsequent prosecution attracted worldwide attention, and coverage of the story in *People* magazine drew the most reader mail of any event ever covered except the death of Princess Diana.

That same year, four teens in Kansas City, Kansas, were successfully prosecuted for felony arson for the burning and bludgeoning of a small dog. They had videotaped the event and excerpts from the tape were broadcast worldwide. The prosecutor in the case received over 5,000 letters in support of her pursuit of the case.

In 2001, in San Jose, California, a former telephone repairman who threw a fluffy white dog to its death in traffic was convicted on felony animal cruelty charges and sentenced to three years in jail. The “road rage” case shocked the public. Dog lovers and others donated \$120,000 to find the dog’s killer. His conviction was upheld on appeal.

In 2004, a Charleston, South Carolina, County Circuit Court judge sentenced one of the nation’s largest breeders of fighting dogs to 40 years in prison—10 years for creating a booby trap on his property that led to a surveyor being shot and wounded, and 30 years in prison on six felony counts of criminal animal fighting.

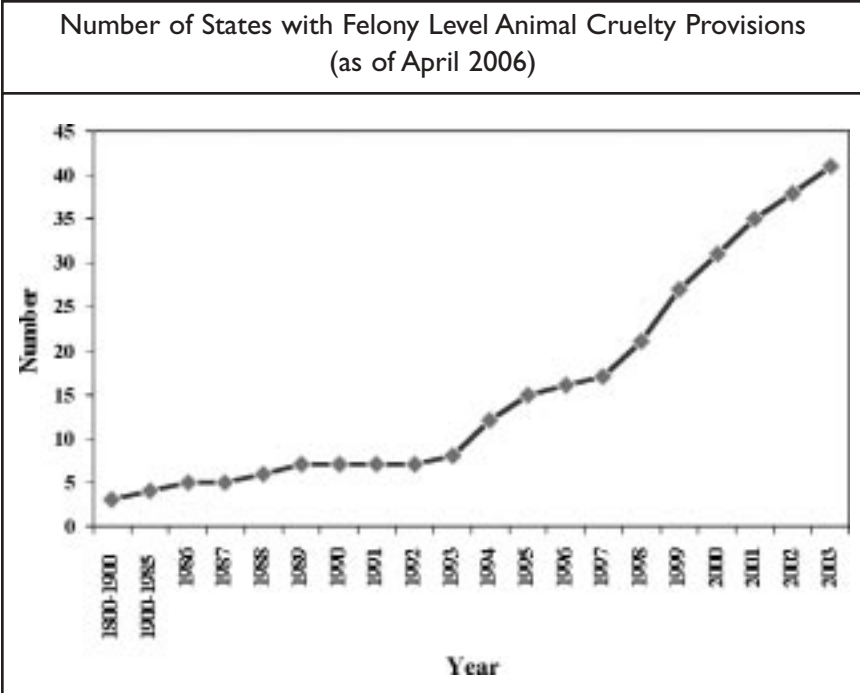
In 2006, a Washington, DC, man became the second person to be sentenced under the District’s new felony animal cruelty law. He shot a female pit bull that was winning a fight with his own dog and threatened to kill anyone who reported it to police. He received a two year sentence.

Animal cruelty investigations and prosecutions have become daily events that attract widespread attention. They generate enormous emotion and interest, yet they can be difficult to pursue. Although some may view these cases as trivial actions against perpetrators of “minor” crimes, there are signs of growing public and professional interest in the prosecution of crimes against animals:

ANIMAL CRUELTY PROSECUTION

- Television shows such as “Animal Precinct,” which highlights the efforts of the Humane Law Enforcement division of The American Society for the Prevention of Cruelty to Animals (ASPCA) in New York City, are extremely popular—leading to numerous spin-offs showcasing similar efforts in Houston, Detroit, Miami, San Francisco and elsewhere.
- There are now approximately 70 law schools that have offered, do offer, or plan to offer animal law courses, reading groups, and/or seminars.
- The American Bar Association (ABA), along with a dozen state bar associations, now have animal law committees. Three additional states are forming such committees and nine animal law committees have been formed by local and county bar associations across the country.
- Prosecutors in many jurisdictions have established task forces to work with a variety of local agencies to specifically address crimes against animals.
- The number of states with felony-level animal cruelty laws has grown dramatically in the last decade (see Figure 1).

Figure 1



Successful prosecution of crimes against animals often requires specialized knowledge not only of the relevant laws, but also of veterinary medicine, veterinary forensics, animal care and the practices used in organized crimes against animals such as dogfighting and cockfighting. Animal care and control agencies, humane societies and Societies for the Prevention of Cruelty to Animals (SPCAs) and veterinary associations can be important allies to prosecutors in successfully pursuing animal cruelty cases. This monograph will serve as an aid to prosecutors seeking resources and services to assist in their efforts to prosecute these crimes.

A BRIEF HISTORY OF ANIMAL CRUELTY LAWS

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.”

More modern animal cruelty laws trace their origins to developments in England. Jeremy Bentham, a prominent barrister, was one of the first legal writers to address animals in the legal system in *Introduction to the Principles of Morals and Legislation* (1781) which served as the foundation for future legislative efforts. In a brief footnote entitled “Interests of the inferior animals improperly neglected in legislation,” he argued that the capacity for suffering is what gives a being the right to legal consideration. The last sentence of the footnote is often used today to summarize the philosophy of animal protection: “The question is not, Can they *reason?* nor, Can they *talk?* but *Can they suffer?*”

In England, the first comprehensive animal protection law was introduced by Richard “Humanity Dick” Martin and passed June 10, 1822. This “Act to Prevent the Cruel and Improper Treatment of Cattle” also protected horses, sheep, cows and mules, providing for fines of up to 5 pounds and up to 3 months in prison for mistreatment of such livestock. The Society for the Prevention of Cruelty to Animals (SPCA) was founded in England in 1824 to ensure that this legislation would be enforced. It funded its own constables and eventually earned the support of the Queen, becoming the Royal SPCA in 1840.

During the same period in the United States, there were scattered cases of criminal prosecution for harm to animals based on charges of malicious mischief, breach of the public peace or theft of property—but none as a distinct crime of cruelty or causing suffering. A few states had laws related to harming animals owned by others, but these were applied only to commercially valuable animals and none viewed harming one’s own animals as a crime.

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.

This was followed by a wave of anti-cruelty laws best represented by New York’s law of 1829 (N.Y. Rev. Stat. tit.6 §26 (1829)):

“Every person who shall maliciously kill, maim or wound any horse, ox or other cattle, or any sheep, belonging to another or shall maliciously and cruelly beat or torture any such animals, whether belonging to himself or another, shall upon conviction, be adjudged guilty of a misdemeanor.”

Most of the laws passed during the next 30 years were motivated by a concern for what such acts of cruelty said about the perpetrator of the deeds and the possibility of future cruel acts against humans. For this reason, even though they dealt with the “property” of animals, these laws were often included within sections related to public morals and decency rather than property. For example, animal cruelty offenses in the New Hampshire code were in the same section as those related to adultery, incest, blasphemy, profane swearing, grave-robbing and tomb desecration. The Minnesota statute was in the same section as that describing the penalties for “attending a dance on the Lord’s Day.”

Animal cruelty laws and their enforcement moved into the modern era largely through the efforts of prominent New York socialite Henry Bergh. He realized that the existing laws did not address acts of serious neglect that he saw so commonly. In 1866, he successfully amended the 1829 law:

“Every person who shall, by his act or neglect, maliciously kill, maim, wound, injure, torture or cruelly beat any horse, mule, ox, cattle, sheep or other animal belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor” (N.Y. Rev. Stat. ch. 682 § 26 (1881))

Inspired by the success of the RSPCA in England, Bergh and his associates founded the American SPCA to promote the enforcement of the new law. A year later, Bergh realized that this law was still inadequate to address the many problems he saw. He succeeded in passing a far more powerful version (N.Y. Rev. Stat. §§ 375.2-.9 (1867)).

The new law was revised to apply to “any living creature,” a major move away from concern only for animals with commercial value and the first step in protecting pets and wildlife from cruelty. The law was applied regardless of ownership of the animal, recognizing that people are capable of cruelty to their own animals. The list of illegal acts was expanded, looking very much like most state anti-cruelty laws today. It included overdriving and overloading, torturing or tormenting, depriving of necessary sustenance, unnecessarily or cruelly beating and needlessly mutilating or killing.

The 1867 New York law made all forms of animal fighting illegal for the first time, including bull, bear, dog and cock fighting as well as the keeping of fighting animals and the management of fights. The law more comprehensively addressed neglect and imposed a duty to provide “sufficient quality of good and wholesome food and water” and empowered any persons to enter premises to provide for these needs. Most significantly, the law gave the ASPCA arrest powers to enforce these provisions. As in England, such authority was essential to successful enforcement since regular police often failed to take the law seriously and, in fact, were frequently involved in organized dogfighting. The law enforcement authority of the ASPCA in New York continues today. Bergh was also appointed a prosecutor in New York so he could argue for the conviction of offenders before a judge, a power that he used frequently and effectively.

Over the next 140 years each state has adapted and revised the basic elements of laws like those in New York to create a complex patchwork of

ANIMAL CRUELTY PROSECUTION

provisions, penalties and exemptions that can be challenging for law enforcement authorities to use effectively to protect animals.

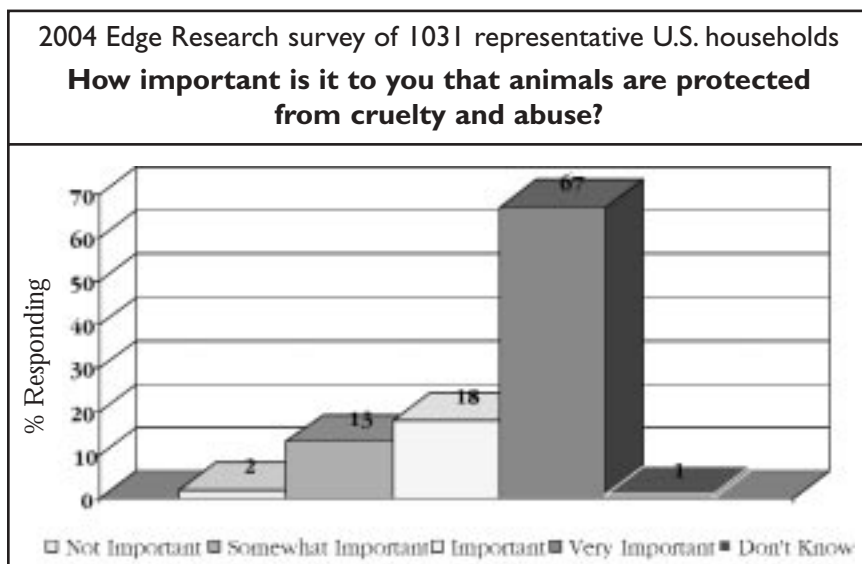
WHY PROSECUTE ANIMAL CRUELTY CASES?

Cruelty to Animals is a Crime.

As noted above, 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, several state attorneys general and many local prosecutors have instituted task forces to specifically address concerns about animal fighting and animal cruelty crimes. 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 cruelty laws as an important priority (see Figure 2).

Figure 2



Cruelty to Animals Can Be a Predictor Crime.

An equally impressive collection of literature substantiates the common sense idea 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. Retrospective studies that look backward at the histories of incarcerated serious and violent offenders often reveal a high incidence of animal cruelty offenses in childhood and adolescence.¹ Likewise, prospective studies that follow the offense record of those with a history of animal abuse tend to show a high rate of future offenses against people and property. 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 firesetters, 83% had later involvement in violent offenses.²

Animal cruelty is also associated with other serious offenses in adults. Figure 3 shows the incidence of arrests for crimes other than animal cruelty during a 10-year window surrounding an arrest for intentional acts of animal abuse. The offense rates of animal abusers were up to five times higher than those seen in non-abusing individuals who were matched on age, gender, race and area of residence. Such studies support the popular notion that perpetrators of animal cruelty are likely to be involved in many and varied offenses. Often the animal cruelty offenses will be among the easiest to prove and may potentially carry some of the most serious consequences for the offender.

¹ An excellent review of this literature is provided in L. MERZ-PEREZ AND K.M. HEIDE, *ANIMAL CRUELTY: PATHWAY TO VIOLENCE AGAINST PEOPLE*. (Altamira Press 2003).

² K.D. Becker, V.M. Herrera, L.A. McCloskey and J. Stuewig, *A Study of Firesetting and Animal Cruelty in Children: Family Influences and Adolescent Outcomes*, 43 (7) *J. AM. ACAD. CHILD. ADOL. PSYCHIATRY* 905 (2004).

Figure 3

Incidence of Crime among 153 Prosecuted Animal Abusers and a Matched Community Control Group (Luke et al., 1997)

Incidence of Crimes in Criminal Record 10 years Pre/Post Animal Cruelty Arrest

CRIME	ANIMAL ABUSERS	CONTROLS
Violent Crime	38%	7%
Property Crime	44%	11%
Drug Crime	37%	11%
Disorder Crime	37%	12%
Any of the Above	70%	22%

Cruelty to Animals Can Be an *Indicator Crime*.

A large and growing body of literature (see References) 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 cruelty 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.

Serious animal *neglect* can also point to a variety of other problems that should be addressed. Recently, 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 rarely likely 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 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 cruelty case.³

The *Model Penal Code*, prepared by the American Law Institute, recognizes this important role of such statutes in defining and protecting community standards. They note that “the object of [anticruelty] statutes seems to have been to prevent outrage to the sensibilities of the community.” (Model Penal Code. Philadelphia: American Law Institute, 1980; § 250.11 cmt. 1.)

Cruelty to Animals Destabilizes Communities.

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 and hundreds or even thousands of dollars and many individuals 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 all parties may be seen as sharing some responsibility. Crimes involving animal cruelty can be seen as a classic example of “broken window” crimes,⁴ 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 cruelty laws is increasingly seen as an important component of community-oriented policing.

³ 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).

⁴ The notion of “broken window” crimes was first introduced in Wilson and Kelling (1982) and expanded by Kelling and Coles (1997). These authors advocated the importance of building confidence in local law enforcement through increased attention to minor crimes such as vandalism, turnstile-jumping, and aggressive panhandling. They do not make specific mention of crimes against animals in their analyses, but it is clear that there is great public concern over animal abuse and neglect and more organized abuses such as dogfighting. Although the “broken window” concept has come under recent criticism (Harcourt, 2001), public response to animal cruelty shows that these crimes are clearly seen as reflecting the general level of lawlessness in a community and the ability of law enforcement to respond. G.L. Kelling and J.Q. Wilson, *Broken Windows*, THE ATLANTIC MONTHLY, March 2004, at 29. G.L. Kelling and C. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (Touchstone 1997). B.E. HARCOURT, ILLUSIONS OF ORDER: THE FALSE PROMISE OF BROKEN WINDOW POLICING (Harvard University Press 2001).

Prosecuting Animal Cruelty is Consistent with the Balanced Approach Model of Juvenile Justice.

Contemporary juvenile justice prosecution emphasizes a Balanced Approach that addresses community safety, offender accountability and competency development.⁵ In the case of juvenile offenders, animal cruelty may be one of the earliest serious offenses to be reported and prosecuted, providing the opportunity for intervention at a stage where it is most likely to have positive long-term effects. Juvenile offenders account for at least 30% of all serious animal abuse cases reported in the media.⁶ Responding to early acts that involve animal cruelty can be an effective tool in identifying offenders who may benefit most from attending to these issues.

Nearly half of all states specifically address the need for psychological assessment and treatment for those convicted of cruelty to animals (Figure 4). Several states specifically mandate such evaluation in cases involving juvenile offenders. This reflects a growing recognition by the mental health community of the significance of animal cruelty as an important diagnostic indicator of conduct disorder and other problems. Animal cruelty was not mentioned in editions of the *Diagnostic and Statistical Manual of Mental Disorders* prior to 1988, but it is now included in the description of conduct disorder in the DSM-IV-TR (2000) under the category of “Aggression to people and animals.”

⁵ CAREN HARP, BRINGING BALANCE TO JUVENILE JUSTICE (American Prosecutors Research Institute, 2002).

⁶ Randy 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).

ANIMAL CRUELTY PROSECUTION

Figure 4

Provisions for psychological assessment and treatment of offenders under state animal cruelty laws	
State	Provisions for Psychological Evaluation and Treatment
Arkansas	“may order”
California	mandatory
Colorado	“may order” on 1 st offense, “shall order” on 2nd
Connecticut	“may order”
Florida	counseling and anger management mandatory in “torture”
Georgia	judge “may require” and “shall consider” counseling
Illinois	“may order”
Indiana	mandatory counseling and treatment
Iowa	“shall order” - mandatory
Maine	“shall order” if juvenile offender, “may order” for adults
Maryland	“may order”
Minnesota	“may order”
Nevada	mandatory for juveniles
New Jersey	mandatory for juveniles
New Mexico	mandatory for juveniles, “may order” for adults
Ohio	“may order”
Oregon	“may order”
Pennsylvania	“may order”
Rhode Island	“may order”
Tennessee	“may order”
Texas	mandatory for juveniles
Utah	mandatory for juveniles
Vermont	“may order”
Virginia	“may order”
Washington	“may order”
West Virginia	“shall order”

DEFINING “CRUELTY TO ANIMALS”

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

Every state law defines “animal” and “animal cruelty” in its own way. 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. Alaska law states that the term “animal” means “a vertebrate living creature not a human being, but does not include fish.” Arizona’s statute refers to “animals and poultry” in all instances. The Delaware Criminal Code is careful to point out that the definition of animal “shall not include fish, crustacea, or molluska.” Missouri excludes many species by applying its cruelty statute only to mammals. Louisiana declares that “fowl shall not be defined as animals,” but goes on to identify birds of the order Psittaciformes (such as parrots, parakeets, and love-birds) and Passeriformes (including canaries, starlings, and sparrows) as “animals,” thereby providing protection for only these specified avian species. Several state laws reserve felony penalties for crimes against companion animals, while others treat only acts against livestock as potential felony offenses. 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 which declares that “No person may treat any animal, whether belonging to the person or another, in a

cruel manner” (Wisconsin Statutes. Crimes. Chapter 951. Crimes against animals. § 951.02. Mistreating animals). 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 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.” (Connecticut General Statutes, Title 53. Crimes Chapter 945. Offenses against humanity and morality. § 53-247 Cruelty to Animals).

In addition to having unique definitions of “animal” and “animal cruelty,” most state animal cruelty 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, pest control, humane euthanasia and rodeos. Some states expressly exempt harming animals belonging to another from their cruelty provisions when the defendant

had permission from the animal’s owner to harm or kill it as long as those actions do not constitute “torture.” (Texas Penal Code 42.09). Other states also exempt from protection of their cruelty laws animals that are stray or unowned unless the maltreatment constitutes “torture.” Several state laws include additional unusual exemptions. For example, Alabama’s cruelty code contains an exemption for “shooting a dog or cat with a BB gun for defecating/urinating on property,” and Indiana’s code contains an exemption for “discipline.”

TYPES OF ANIMAL CRUELTY

Cases involving animal cruelty can fall into several broad categories, each of which may involve different laws and require a different response:

Simple Neglect

Most reported cases of animal cruelty involve failure to provide adequate food, water, shelter or veterinary care to one or a few animals. Usually these are handled by local animal care and control or humane agencies in an effort to educate the offender to provide proper care. If education proves ineffective, action may be taken under local ordinances. 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.

Gross, Willful, Cruel or Malicious 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.

Intentional Abuse, Torture

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.⁷ There is legitimate fear that the individuals involved in violent acts against animals present a danger to the public that must be addressed. Intentional animal abuse is often seen in association with other serious crimes including drug offenses, gang activity, weapons violations, 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.

Animal Hoarding

Animal care and control and law enforcement agencies are reporting a growing number of cases that involve large numbers of animals (often several hundred) kept under extremely poor conditions, often resulting in the death of many animals from disease and starvation. 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.

The prosecution of animal hoarding cases can sometimes be unpopular if the defendant is seen as sympathetic and caring, rather than as someone who has caused substantial suffering to a large number of animals. Animal care and control and veterinary professionals 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.⁸ Many agencies have begun to promote a task force approach to respond to hoarding situations. Such groups involve representatives of all stakeholders in the community, including

⁷ *Id.*

⁸ Berry, *supra* note 3.

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 cruelty 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 cruelty, 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. One state, Illinois, has already passed laws specifically addressing animal hoarding as a unique offense (§ 510 ILCS 70/2.10) and other states are considering similar action.

Organized Abuse—Dogfighting, Cockfighting

“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.

Dogfighting is illegal in all 50 states and the District of Columbia, Puerto Rico and the Virgin Islands. The federal Animal Welfare Act also prohibits the interstate transport of animals for the purposes of fighting. When federal animal fighting laws were initially enacted in 1976, no states made animal fighting a felony. As of 2006, dogfighting is a felony in all states except Idaho and Wyoming, where it is a misdemeanor. In most states the possession of dogs for the purpose of fighting is also a felony offense. Being a spectator at a dogfight is currently a felony in 20 states, a misdemeanor in 28 and legal only in Georgia and Hawaii. In some cases, courts have denied convictions where the defendant was charged for animal cruelty rather than the more specific crime of dogfighting.

Cockfighting is illegal in 48 states and the District of Columbia. It is currently legal in Louisiana and New Mexico, but is prohibited by local ordinance in many counties within those states. As with fighting dogs, interstate transportation or export of cocks for fighting purposes is prohibited under the federal Animal Welfare Act. Cockfighting is a felony in 32 states and the District of Columbia. Forty-one states and the District of Columbia currently prohibit being a spectator at a cockfight. In a growing number of states (in 2006, 10 states) the possession of cockfighting implements is also a crime.

Since existing federal laws dealing with these blood sports are considerably weaker than nearly all state laws, they are rarely applied in such cruelty cases. Federal legislation has been introduced that would bring federal penalties in line with state felony laws and would also prohibit interstate and foreign commerce in knives and gaffs designed for cockfighting.

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.

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 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 (*Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 [1993]), which argued 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.

Animal Sexual Assault (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 through legislative or court action 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, analogous to

other nontraditional sexual orientations, 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 almost always coercive, (2) such practice often causes pain or death for the animal, and (3) animals are unable to consent to or communicate about their abuse.

Prosecutions for animal sexual assault are rare, but they can present unique challenges to prosecutors and often require expert veterinary and psychological testimony. The organizations listed in the Appendix can provide assistance in identifying appropriate experts to assist in such cases.

THE PROGRESSION OF A CRUELTY TO ANIMALS CASE

Reporting Cruelty

When an act of animal cruelty occurs in a community, the city or county government generally assumes initial responsibility for the response. Reports of animal neglect and cruelty are usually investigated by a governmental animal care and control agency. In many areas a private nonprofit humane society or SPCA may be under contract to provide animal control and/or cruelty investigation services. Such organizations often employ specially trained humane agents who have been designated by state or local authority to investigate complaints of animal cruelty. In some cases such agents may have formal law enforcement training and the authority to issue citations or charge individuals with animal-related crimes. In other cases they may not have enforcement authority, but work in concert with regular police and have forged strong relationships with law enforcement and prosecutorial arms of the government to share their special expertise in animal handling and animal cruelty investigation. In areas where there are no special animal-related organizations or resources, cruelty complaints will be the responsibility of the local police or sheriff's office.

In several states the lack of local resources to investigate animal cruelty, or the perception that existing authorities are unresponsive or ineffective, has led to efforts to enact legislation that would enable private citizens to sue for civil injunctive relief in cases of animal cruelty.

Reports of abuse and neglect may also be made by veterinarians or veterinary technicians. Several states mandate that veterinarians report animal cruelty, including suspected dogfighting activity, to the appropriate authorities. Many other states encourage veterinarians to report suspected animal cruelty by granting immunity to those who make good-faith reports to the appropriate agencies. Such reporting is supported by professional veterinary organizations including the American Veterinary Medical Association (AVMA) and the American Animal Hospital Association (AAHA). The AAHA position statement on reporting, revised in 2003, states:

“Since veterinarians have a responsibility to the welfare of animals and the public and can be the first to detect animal abuse in a family, they should take an active role in detecting, preventing and reporting animal abuse. While some states and provinces do not require veterinarians to report animal abuse, the association supports the adoption of laws requiring, under certain circumstances, veterinarians to report suspected cases of animal abuse. Reporting should only be required when client education has failed, when there is no likelihood that client education will be successful, or in situations in which immediate intervention is indicated and only when the law exempts veterinarians from civil and criminal liability for reporting.”⁹

Seizure/Impound

Animal cruelty 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. Nearly all states have provisions within their animal cruelty laws providing for the seizure of animals being cruelly treated or neglected. 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, “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 the protection of the animals. Cruelty cases may also involve exotic animals or wildlife with special dietary, housing and veterinary needs. The special requirements for animal care in animal cruelty 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.

⁹The complete American Animal Hospital Association Policy Statement is available on-line at http://www.aahanet.org/About_aaha/About_Position.html#abuse.

In some cases, animals cannot receive needed medical treatment without the owner's consent or willingness to surrender ownership, which may be withheld. 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 cruelty case:

Voluntary Surrender

Owners of animals that are the subject of an animal cruelty prosecution may 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 a cruelty 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.

Declaration of Unfit Owner

Several states have procedures in place that do not necessitate a criminal prosecution for animal cruelty, but which may find that an owner is unable or unfit to adequately provide for animals and order other animals be seized and enjoin owner from further possession or custody of other animals.

Impound on Premises

When an animal abuse or neglect 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 Provisions

When animals are not immediately surrendered and local authorities must provide care to maintain them until final disposition, it is often desirable 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. About twenty states currently 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 for 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. Most other states consider costs of care and treatment 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.

Disposition of Deceased Animals

Animals that are believed to have died as a result of abuse or neglect should be handled with as much care as other evidence of a crime. Most cruelty 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 (post-mortem 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.

Charging Decisions

As mentioned previously, animal cruelty often occurs alongside a variety of other serious property and interpersonal crimes. It is always advisable to charge the suspect with this offense if there is credible evidence, even if the animal cruelty appears to be a “lesser included” offense of more serious charges. Animal cruelty charges should not be dropped as part of a plea agreement, absent serious evidentiary issues. The evidence for animal abuse or neglect 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 animal cruelty charge may be the only viable conviction. In some cases, a plea to animal cruelty of any degree and a disposition may be the most realistic option to protect the abused animal, domestic violence victim and the public. In cases of juvenile offenders, conviction for an animal cruelty 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.

What Level to Charge

Most state animal cruelty 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 intimi-

date others. Be sure that you are aware of the most recent provisions of the anti-cruelty laws in your jurisdiction, since the definitions of those acts covered by the felony provisions are frequently revised. Figures 5 and 6 identify states that, as of 2006, have felony-level provisions for animal cruelty acts other than dogfighting.

Figure 5

Jurisdictions with Felony Level Animal Abuse Provisions (other than dogfighting) (year first enacted)/ primary statute (as of April 2006)	
<ol style="list-style-type: none"> 1. Alabama (2000) §13A-11-241 2. Arizona (1999) §13-2910 3. California (1988) §597 4. Colorado (2002) §18-9-202 5. Connecticut (1996) §53-247 6. Delaware (1994) §1325 7. Florida (1989) §828.12 8. Georgia (2000) §16-12-4 (b) (c) 9. Illinois (1999) 510 ILCS 10. Indiana (1998) §35-46-3-12 11. Iowa (2000) §717 B.1/B.2 12. Kentucky (2003) §525.135 13. Louisiana (1995) La. R.S. 14:102.1 14. Maine (1999) §17-1031 15. Maryland (2001) §10-606 16. Massachusetts (1804) 272 §77 17. Michigan (1994) 750 §50b 18. Minnesota (2001) §343.21 19. Missouri (1994) §578.012 20. Montana (1993) §45-8-217 21. Nebraska (2002) §28-1009 22. Nevada (1999) §574.100 	<ol style="list-style-type: none"> 23. New Hampshire (1994) RSA 644:8 24. New Jersey (2001) §4:22-17 25. New Mexico (1999) §30-18-1 26. New York (1999) 353-a 55.10 penal 27. North Carolina (1998) §14-360 28. Ohio (2003) §959.13 29. Oklahoma (1887) 21 §1685 30. Oregon (1995) §167.322 31. Pennsylvania (1995) 18 Pa. CS§5511 32. Rhode Island (1896) §4-1-3 33. South Carolina (2000) §47-1-40 34. Tennessee (2002) §39-14-202 35. Texas (1997) §42.09 36. Vermont (1998) 13 VSA§352 37. Virginia (1999) § 3.1-796.122 38. Washington (1994) §16.52.205 39. West Virginia (2003) §61-8-19 40. Wisconsin (1986) §951.18 41. Wyoming (2003) §6-3-203
Territories, Districts & Possessions with Felony Level Animal Abuse Provisions:	
<ol style="list-style-type: none"> 1. District of Columbia (2001) DC code 22-1001 2. Virgin Islands (2005) §181 	

Figure 6

Jurisdictions <i>without</i> Felony Level Animal Abuse Provisions (other than dogfighting)	
1. Alaska	6. Mississippi *
2. Arkansas	7. North Dakota
3. Hawaii	8. South Dakota **
4. Idaho	9. Utah
5. Kansas	
Territories, Districts & Possessions <i>without</i> Felony Animal Abuse Provisions:	
1. American Samoa	3. Guam
2. Northern Marianas	4. Puerto Rico

* Mississippi classifies malicious or mischievous injury to livestock as a felony (Miss. Code Ann. § 97-41-15) as well as animal sexual assault (Miss. Ann. Code §97-29-59).

** South Dakota classifies animal sexual assault as a Class 6 felony, or a Class 5 if there has been a previous sex crime (S.D. Codified Laws §§22-22-42 to 44)

Most states do not limit the application of animal cruelty 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.

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 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 are often not 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. Do not stretch the facts to overcharge and attempt to make a case that isn't there. It may be necessary 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 laws other than animal cruelty codes 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 cruelty laws.

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 cruelty 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 cruelty violations and may require close coordination of actions with federal prosecutors.

The ubiquity of the Internet has led to a new federal law that addresses a specific animal cruelty enterprise that may be applicable to incidents in which a record of an act of cruelty has been made. In 1999, Title 18, Section 48 was added to the U.S. Code making it a federal crime to knowingly create, sell or possess a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain. The term "depiction of animal cruelty" means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured,

wounded, or killed, if such conduct is illegal under federal law *or the law of the state in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the state.* This law was specifically enacted to address the proliferation of Internet sales of “crush videos” in which various small animals were shown being stepped on or otherwise killed. Despite the originally narrow focus, the law was used in 2005 to successfully prosecute a Virginia man charged with selling and mailing videotapes of fighting pit bulls.

Which Victims to Charge On

Many cases of animal cruelty involve multiple animal victims, particularly cases of severe neglect or organized activity such as dogfighting. In some cases multiple counts may be filed using each instance of cruelty as a distinct offense. In other cases, the existence of multiple victims alone may elevate the level of the offense. Some prosecutors may choose to base charges only on the most egregious and easily proven instances of cruelty. If multiple animals are involved and the defendant has not voluntarily surrendered all of the animals that have been affected, failure to charge cruelty on each animal may result in having many animals left with or returned to the defendant.

Defendants will often try to avoid responsibility for the abuse or neglect of an animal by claiming that it was not theirs. Most state laws provide a broad definition of owning, possessing, harboring or caring for an animal that establish a fairly strong duty of care.

Juvenile Offenders in Animal Cruelty Cases

Approximately 30% of intentional animal abuse cases involve juvenile offenders. 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. Acts of cruelty committed by a very young offender may indicate a family in need of services or an offender requiring special mental health assessment and intervention.

As of 2006, 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 threat assessment may be relevant to making a transfer determination. In non-animal juvenile cases, the suggested factors in considering a waiver include:¹⁰

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 property for purpose of waiver.

It is usually not difficult to identify those acts 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 juveniles. However, there are certain characteristics of acts of animal cruelty which are indicative of a need for greater concern. Figure 7 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 currently few formal diversion programs available for juvenile or adult animal cruelty offenders and limited programs specifically addressing the mental health needs of such offenders (see below). Most agencies make an attempt to address even serious animal neglect cases through education and assistance with resources. Cases that can be

¹⁰ 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).

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 7

Major 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. Severity of injury inflicted
4. Use of fire
5. Repetition of injuries on individual victim(s) — e.g. multiple wounds
6. Multiple forms of injury to individual victim(s) — e.g. stabbing <i>and</i> burning
7. Victim was bound or otherwise physically incapacitated
8. Duration of abuse — how prolonged was the act of abuse/torture
9. Act was committed with high risk of detection or observation
10. Other illegal acts were committed at the scene of the animal cruelty
11. Individual was the instigator of an act involving multiple perpetrators
12. Animal cruelty was used to threaten, intimidate or coerce a human victim
13. Animal victim was subjected to mutilation or postmortem dismemberment
14. Animal victim was sexually assaulted or mutilated in genital areas or perpetrator indicated sexual arousal as a consequence of the abuse
15. Perpetrator documented the act of animal abuse through photographs, video or audio recording, or diary entries

Building the Cruelty to Animals Case

A successful cruelty to animals prosecution often parallels an interpersonal violence or sexual assault case more closely than a prosecution for a property crime. Figure 8 provides a general checklist for developing an animal cruelty prosecution. Since animal cruelty 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.

Figure 8

Sample Workup Checklist for an Animal Cruelty Prosecution
<input type="checkbox"/> Review state animal cruelty laws and related regulations for recent changes that may apply
<input type="checkbox"/> Investigate complaint circumstances
<input type="checkbox"/> Review reports from humane investigator/ police
<input type="checkbox"/> Interview responding officer(s) and humane agent(s)
<input type="checkbox"/> Interview animal owner if known/applicable
<input type="checkbox"/> Review photos/videos of scene and animal(s)
<input type="checkbox"/> Inspect physical evidence if applicable (e.g. dogfight paraphernalia)
<input type="checkbox"/> Visit scene if applicable (particularly recommended in cases involving many animals)
<input type="checkbox"/> Review medical records/necropsy reports of victims
<input type="checkbox"/> Review short and long-term options for housing animals in case
<input type="checkbox"/> Interview veterinary and other expert witnesses
<input type="checkbox"/> Review treatment and other service options that may be applicable for offender

The primary evidence for the prosecution of most animal cruelty cases will be the records and evidence compiled by the cruelty investigators, police officers or humane agents involved in the initial response to the complaint. Such 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.

Veterinary Testimony

Reports and testimony from veterinarians and veterinary technicians who have attended to the animals involved in a cruelty case are often the

key to telling the story of an animal that has been injured or killed through abuse or neglect. Such testimony can address key issues raised in most cruelty cases, as outlined in Figure 9. Veterinarians are among the most respected members of the community and their testimony as both direct and expert witnesses can be particularly compelling. Veterinary professionals can also provide a well-supported, objective community standard for what is considered reasonable and prudent care.

Figure 9

Major Roles of Veterinary Professionals in the Prosecution of Animal Cruelty Cases

- Documenting the physical condition of all animals associated with a cruelty 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
- In the case of dead 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).
- 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 recovery 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 cruelty charges and may actually strengthen the prosecution's case.

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. Some animal cruelty cases have used other scientific experts including DNA specialists, ballistics experts and psychologists. Cases involving livestock abuse or neglect 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 cruelty 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.

Other Community Witnesses

Neighbors and other community members may 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 abuse. 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.

Sentencing Requests and Guidelines

The balanced approach to juvenile justice aims to address three primary concerns: (1) holding offenders accountable for their actions, (2) enhancing community safety, and (3) developing the offender's competencies to become a contributing member of society.¹¹ The outcome of the prosecution of an animal cruelty case 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 cruelty cases are given an unusually high 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." 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.

Removal of Animals

Most state anti-cruelty laws contain specific provisions that allow for the removal of animals from an owner convicted of animal cruelty. This is usually the primary concern of agencies investigating and responding to complaints of animal abuse and neglect. This removal may be limited to the animals specifically enumerated in the charges, or may be extended to include all animals possessed by the offender. Usually the animals will be surrendered to the investigating agency for appropriate disposition—either adoption, sale or humane euthanasia. Often the courts impose a lien on such animals that allows any funds generated to be used to compensate agencies for the expense of housing and care, although such agencies rarely receive compensation equaling their costs of caring for the animals. Simply removing only those animals that have been proven to be the subjects of cruelty is usually not a satisfactory outcome for the agencies involved in responding to the situation, or to the general public. Whenever possible, protection should be extended to the greatest number of animals that may be at risk of harm.

¹¹ BRINGING BALANCE, *supra* note 5, at 1.

Limits on Future Ownership/Contact

Conviction on animal cruelty charges implies an inherent inability to provide appropriate care in the future. Most state laws specifically provide for limits on future ownership of other animals for a specified length of time or for the duration of probation. In some cases, these limits apply to the species involved in the cruelty case; in others, it may apply to *any* animals. Some laws extend the prohibition to any contact with certain animals. When these provisions are not specifically outlined in the cruelty law, they should still be considered as part of a sentencing request. 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 cruelty from employment in professions involving direct contact with or responsibility for animals, including positions in animal care and control. If that is a provision, it should be noted in the records of the case.

Restitution

Most states have provisions in the cruelty laws for restitution to agencies or individuals providing housing, care and veterinary services.

Request for such restitution should be made at disposition. Many states have recognized the unique value of companion animals in civil suits over wrongful deaths of animals and have awarded costs for cremation, counseling and even pain and suffering. Some state animal cruelty laws (e.g. Tennessee), specifically allow the trier of fact to award non-economic damages to a person whose animal is injured or killed.

Punishment

Many factors related to the nature of the offense, the offender's history and the resources available within the juvenile justice system will influ-

ence recommendations at disposition. The threat-assessment elements mentioned in Figure 7 can be helpful in addressing the types of offenses requiring particular attention for the protection of the community.

Fines

Existing state anti-cruelty laws allow for fines of up to \$150,000 (Arizona), with most states having provisions for maximum fines of approximately \$10,000, which is within the range of expenses encountered in many animal abuse cases.

Jail/Prison Time

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, courts have increasingly been recommending and receiving maximum sentences in instances of repeated, violent or severe animal abuse. 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.

Probation

Much of the concern about animal cruelty 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. The conditions may include provisions for substance abuse screening, counseling, employment or school attendance and performance. In cases of neglect or animal hoarding, probation should include provisions for monitoring the numbers and condition of any animals left in the individual's care.

Community Service

Community service can be an important component of accountability and may contribute to competency development. In cases of animal cruelty, the court should avoid mandating community service at a local humane society or animal control agency without the expressed interest

and cooperation of the organization. Most animal organizations lack the resources to supervise community service workers in their facilities and are legitimately concerned about exposing animals to such offenders.

Evaluation and Counseling

As outlined in Figure 4, about half of the states address provisions for psychological evaluation and counseling in their animal cruelty laws. Usually this is to be undertaken at the offender's expense. Even when not specifically mandated, such evaluation is usually an appropriate consideration.

Since animal abuse and neglect 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, including the Anicare® models listed in the Appendix, which may be appropriate in some cases. In addition, a growing number of mental health care providers have received training on the psychology of animal abuse and neglect and could be resources for such assessments and treatment.

Other more standardized programs may be appropriate in some instances. Mandated batterer intervention programs may be appropriate for animal cruelty that has occurred in the context of domestic violence. Younger offenders whose behavior might stem from exposure to other family violence can benefit from family therapy. Substance abuse treatment is appropriate for animal cruelty cases that involve drugs or alcohol.

CONCLUSION

Animal cruelty is increasingly viewed as a serious issue by professionals in law enforcement and mental health—as well as by the general public. Animals are part of the majority of American families, and their victimization is of concern to millions. The effective prosecution of animal abuse has many benefits. It can provide an early and timely response to those who are, or who are at risk of becoming, a threat to the safety of others. It can provide an added tool for the protection of those who are victims of family violence. It can provide an opportunity for prosecutors to develop new, strong and helpful allies in the protection of their communities. Finally, it can bring personal satisfaction in developing new skills and new understanding, and in helping build a truly compassionate society.

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APPENDIX

Organizations with Resources on Animal Cruelty for Prosecutors

American Prosecutors Research Institute (APRI)

99 Canal Center Plaza, Suite 510
Alexandria, Virginia 22314
Phone: (703) 549-4253
Fax: (703) 836-3195
www.ndaa.org

APRI is the research, training and technical assistance affiliate of the National District Attorneys Association. Among its services, APRI provides case law information, up-to-date information on legislation, detailed assistance for trial preparation, individualized support for trial presentation and access to experts and presenters. The Jumpstart training for newly assigned juvenile prosecutors features information on animal cruelty prosecution.

The American Society for the Prevention of Cruelty to Animals (ASPCA)

424 East 92nd Street
New York, NY 10128
Phone: (212) 876-7700
Fax: (212) 423-0514
www.aspc.org
E-mail contact: randall@aspc.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 enforces New York's animal cruelty laws and 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; expert witness testimony and other assistance to prosecutors and law enforcement agencies.

Animal Legal Defense Fund (ALDF)

170 E. Cotati Ave.
Cotati, CA 94931
Phone: (707) 795-2533
Fax: (707) 795-7280
www.aldf.org

Through its Anti-Cruelty 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.

The Humane Society of the United States (HSUS)

2100 L Street NW
Washington, DC 20037
Phone: (202) 452-1100
www.hsus.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.

Society & Animals Forum

PO Box 1297
Washington Grove, MD 20880-1297
Phone: (301) 963-4751
www.societyandanimalsforum.org
E-mail contact: kshapiro@societyandanimalsforum.org

The Society & Animals Forum, now part of 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.

Pet-Abuse.com

PO Box 2995

Del Mar CA 92014

Fax: 858-225-0886

www.pet-abuse.com

E-mail contact: info@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.

Michigan State University College of Law

Shaw Lane

East Lansing, MI 48824-1300

www.animallaw.info

E-mail contact: Editor@animallaw.info

This site maintains an extensive directory of over 700 full text cases (US, Historical and UK) and 975 U.S. statutes fully available on the site, with Michigan and California being very comprehensive. Also provide detailed reviews of legal background on about 40 animal-law related topics and full-text of many relevant law review articles.

Rutgers University School of Law

123 Washington Street

Newark, New Jersey 07102

Fax: (973) 353-1445

www.animal-law.org

This site has extensive details about state and federal animal cruelty laws and special reports on a variety of animal law topics including animal sacrifice.



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