

Enforcing Your State Animal Cruelty Laws

By Sherry Ramsey, Esq.



Animal cruelty laws have been on the books for longer than most people realize. It was 1821 when Maine became the first state to enact an animal protection law. But even before that, in 1641 the Puritans of Massachusetts Bay Colony passed “The Bodies of Liberties,” which forbade cruelty to animals [See *David Favre & Vivien Tsang, The Development of Anti-Cruelty Laws During the 1800s, 1993 Det. C.L. Rev. 1 (1993)*, and *Animals and Their Legal Rights: A Survey of American Laws from 1641 to 1990*, Animal Welfare Institute, Washington, D.C., (1990)]. There have been many changes and improvements to those original laws. Today, every state has general animal cruelty laws, as well as laws against animal fighting. All states, with the exception of South Dakota, currently have a general felony animal cruelty law.

This demonstrates just how much society cares about animal welfare. Animal cruelty cases often become high-profile news stories with huge public outcries for justice. People support stronger animal protection laws. Yet even with all the public attention and improvements to the cruelty laws, they are meaningless without aggressive and informed enforcement. That’s where you come in.

Enforcement Problems

In many states, different agencies share enforcement authority regarding animal cruelty laws. Although this can help law enforcement and better protect animals, it can sometimes

cause confusion and problems. Every state is different and many use a combination of police and sheriff’s officers, animal control officers, SPCA officers, or other humane officers to respond to calls and sign complaints. All of these agencies serve a good and useful purpose in enforcing the cruelty statutes and providing animal care, but problems may arise when witnesses to cruelty crimes get shuffled from agency to agency when trying to report a crime. Sometimes law enforcement officers will direct a caller to animal control, where the caller may only hear a recording advising her to call the police. Some officers might even tell callers they do not handle animal complaints -- even though most states require law enforcement to enforce *all* the laws within that state.

This problem can be particularly challenging considering that animal control is seldom a 24-hour service. Likewise, most non-profit humane organizations have limited resources and as a result, may not provide 24-hour, on-call personnel. Further, these agencies may not be trained in the preservation of evidence or other issues that law enforcement officers are trained to understand. Therefore, the role of sheriff and police officers in animal cruelty enforcement is vital.

However, because of the lack of training on the cruelty laws and animal care considerations, officers may feel unqualified or ill-prepared for these situations. Many police academies do not provide any training on enforcing animal cruelty laws, even though all states, but one, have felony cruelty crimes and

every state has a felony dog fighting law. To further exacerbate this problem, in many states the cruelty laws are not even located in the penal code but are housed in agriculture or other sections of the law, which not only make these laws even less familiar to law enforcement, but also may send an incorrect message that they are less serious than other crimes.

However, animal cruelty is a serious and often violent crime that involves victims – whether they are the animals themselves or their human caregivers. Further, given the strong correlation between animal abuse and future violent behavior, preserving a record of these crimes is necessary to serve as a warning to judges, prosecutors, police, probation officers, as well as other agencies involved in overseeing a defendant or helping a victim. Studies by the FBI and others have identified red flags regarding the serious implications animal abuse has for potential violence against humans. For example:

- Animal abusers are five times more likely to commit violent crimes against people
- Animal abusers are four times more likely to commit property crimes
- Animal abusers are three times more likely to have drug or disorderly conduct offenses

[www.mspca.org/programs/crueltyprevention/animalcrueltyinformation/cruelty-to-animals-and-other-crimes.pdf. See also: A. Arluke, J. Levin, C. Luke, and F. Ascione, *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, Journal of Interpersonal Violence, 14(9):963-975 (1999).]

Therefore, charges of animal cruelty should seldom, if ever, be eligible for pretrial intervention programs, nor should they be dismissed as part of a plea agreement in which the defendant pleads guilty to something other than animal cruelty. These crimes should be aggressively enforced, charged and prosecuted in order to fully protect the animals and the community.

For more information on this subject, go to The U.S. Department of Justice website: <https://ojpdiagnosticcenter.org/blog/implications-and-risks-animal-cruelty-and-how-criminal-justice-community-can-help>

Understanding The Laws

Law enforcement officers can also face challenges in interpreting the laws, which can make charging these crimes more difficult. In addition to actual exemptions to certain laws, some animals receive more protection than others, so it is imperative to fully understand your laws in order to successfully enforce them. There are some fundamental points that must be understood in order to correctly charge these crimes as well. Here are some key questions to ask:

How does your state define the word “animal”? Those listed within that definition are most likely the only creatures covered under your state animal cruelty laws.

Are there some animals that get more protection under your state laws? In some states, companion animals are provided greater protection than other animals.

Are there exemptions for certain practices or for any specific animals? If so, are those exemptions blanket exemptions or are there qualifying terms that must be satisfied?

How does your state law differentiate between a misdemeanor and a felony? Some states differentiate by the type of animal (companion animal versus non-companion animal). Some states look to the state of mind of the defendant [malicious intent versus a crime of neglect]. Some states look to the degree of injury to the animal. Much like state assault laws do.

Some states use a combination of all of these factors. Understanding the answers to these questions is imperative to correctly understanding the laws. Review, print, and keep a copy of the animal cruelty and fighting laws on hand so you can refer to them if needed.

Dealing with Exemptions and Regulations

State exemptions to the cruelty laws are usually pretty similar from state to state. For instance, there are often exemptions for legally hunting or for normal food-production practices. Some of these exemptions may be regulated by various state agencies. Dealing with regulations, as well as state statutes, can be confusing. In general, regulations do not trump statutory laws. Accordingly, unless an abusive act against an animal qualifies as an applicable exemption under the code, or the animal in question is specifically not covered under the cruelty laws, the cruel act should be treated as a violation of the cruelty laws. This is true even if specific regulations seem to cover similar acts of abuse as outlined under the cruelty laws. For example, in most states the definition of animal is broad enough to include all animals; therefore, all animals would be protected under the cruelty laws. However, many states exempt legal hunting as set out in their regulations. Someone who is legally and appropriately hunting is thus exempt from the cruelty laws. The question arises when someone is illegally hunting and/or perhaps hunting in a cruel manner. If someone is not, per se, exempted from the cruelty laws because he is hunting illegally or is doing so in a cruel manner, he could then become subject to criminal cruelty charges and hunting violations as well.

Unfortunately, there is often confusion as to whether both can be charged. Clearly, there can be circumstances of obvious cruelty when both criminal violations and regulatory violations are appropriate. This is true for other crimes, as well as

animal cruelty crimes. Consider, for example, someone illegally hunting with an illegal weapon. He could be charged under both criminal weapons violations and hunting violations. Both violations could be appropriate. Likewise with animal cruelty, since the hunting violations do not represent the cruel act to the animal but rather a violation of state hunting regulations, it is reasonable to conclude that charges under both the hunting regulations and the cruelty laws could be appropriate. A Wisconsin case where defendants cruelly killed deer was appropriately charged as cruelty to animals, even though the defendants argued that they were hunting. They were ultimately charged with cruelty to animals *and* cited for hunting violations. The defendants were ultimately convicted of animal cruelty and other violations and sentenced to jail. Accordingly, it is important to review the exemptions in your code to understand their meaning. Most exemptions relate to a specific practice, which is expected to be conducted legally and within the norm of such practices. If that is not the case, there may not be an exemption to the act, and as such you can consider a charge under the animal cruelty laws.

Investigating The Case

As with all cases, it is important to investigate and fully document the crime. Good reports are important to allow the prosecutor to follow up as needed. Pictures are one of the most important and valuable pieces of evidence in cruelty cases. This is for a very obvious reason: your victim cannot testify. Pictures taken of the animals and their surroundings may be enough to prove a case. If at all possible, you should take pictures of the animals before they leave the scene. Show their living conditions as well, especially in neglect cases. If the water and food bowls are empty, photograph those. Photograph anything that shows a cruel living environment for the animal. Note in your report what you see, hear and smell so that if you are called to testify at trial, your testimony will be consistent with your report.

If there are a lot of animals, make sure you differentiate between the animals by assigning a number or name to each and if possible photographing a card with that information alongside the animal. This will help justify each charge of cruelty and make it clear which animal is the focus of each charge. Make sure you mention within your police report that pictures were taken and list everyone who was on the scene at the time of the arrest or seizure. This will help the prosecutor put together a strong case.

Remember that the veterinarian will likely be the expert witness in the case, so make sure that you ask her to fully document and photograph her findings as well. Depending on her specific findings, there may be additional charges. If the animal is dead, the veterinarian should conduct a necropsy to determine how the animal died. Even if an animal has been dead for a long time, the veterinarian may still be able to provide you with important information that will help you prove the charges. Remember, the body of the animal is evidence and should be treated as such.

TIPS: REPORTS:

- Full names and addresses of parties and witnesses
- Description of crime or allegation
- Full description of the animal(s) involved by name, color, size, or number
- Descriptions of all other surroundings such as empty bowls, fowl smells, dangerous conditions, and sounds made by the animals
- Names and badge numbers of all law enforcement officers, ACO's, humane officers and witnesses on the scene
- Take pictures!

PICTURES:

- All pictures should be signed and dated on the back of the pictures, or that information should be contained within the report, noting the person who took the pictures
- The pictures should always be noted in police or humane officer report and turned over in discovery
- Before and after pictures are great evidence. If possible, get pictures after the animal has recovered

VETERINARIAN

- Make sure the vet who examines the animal victim fully documents her findings. Remember that vets are not usually trained in providing reports or testifying at trial so tell them what you need
- Ask for specific findings and conclusions
- Ask for an opinion for the causes of injuries or death, if known
- Ask for pictures of injuries once they are cleaned up
- Ask for a detailed timeline for old and new injuries and scars
- *Necropsy Examination and Findings*

CONCLUSIONS SHOULD INCLUDE:

- Survival period
- *Estimated time of death*
- *Primary cause of morbidity/mortality*
- *Contributory causes of death*
- *Additional conclusions*

Types of Crimes and Charging Them

Most state cruelty laws contain crimes of both commission and omission, and yet these elements are often not adequately defined. Officers who handle these cases would agree that many of the most severe crimes are of extreme neglect, such as failing to provide food, water and shelter, but those may have lighter penalties under some state criminal laws. However, all state cruelty codes include neglect crimes and these often

horrific crimes should be dealt with as seriously as your law allows. Using a *torture* type charge, if your state has one, might allow you to upgrade a neglect charge to a felony for extreme neglect, depending on your specific laws.

When it comes to charging these crimes, you should treat them like any other crime. For example, if a person vandalized 20 different cars or burglarized 20 different homes, you would likely charge 20 counts for those different crimes. The same should be true with regard to animal cruelty. Generally, there should be at least one charge for each animal abused. In some cases, there may be more than one charge that is applicable. For example, if an animal is abused and then abandoned, there might be two separate counts for that one animal, depending on how your state laws are constructed. Consider other applicable charges as you would with any other crime. Crimes that might be applicable depending on the cruelty crime include:

- Burglary
- Weapons
- Trespassing
- Dv/Violation Of Restraining Order
- Arson
- Harassment
- Theft

Treat these crimes like any other crime and charge accordingly. Another factor to keep in mind is that humane officers may be limited to charging only animal cruelty crimes, so you may need to add additional penal code charges as appropriate.

Seizing Animals In Cruelty Cases and Animals as Evidence

When animals are in danger and cruelty is present, animals should be seized in order to provide appropriate care, protection from further harm and continued cruelty, as well as to preserve and document the evidence. There are several ways that animals, which are considered property in every state, can be legally seized.

- They can be seized pursuant to a valid warrant,
- Through a voluntary surrender,
- If the animals have been abandoned,
- Or, as evidence of a crime just - as you would any other evidence of a crime.

In some circumstances, they can be seized under the doctrine of exigent circumstances as well as the plain view doctrine. If an officer observes a crime of animal cruelty in plain view, and he is legally on the property, he can charge the defendant and seize the animal as evidence. Or in emergent cases, many courts have recognized the exigent circumstances seizure of animals when they are in imminent danger without a warrant. When possible, a warrant is of course the best way to ensure that your seizure will be upheld in court if challenged.

Remember that generally if animals are seized, charges should be filed to substantiate the crime and the reason for the seizure. Alternatively, if charges are filed, the animals should be seized, or at a minimum impounded on the property as a result of the charges. If not, you can be sure that the defense will argue that the conditions did not rise to a criminal level of cruelty; otherwise, how could the officers have left the animals in such a cruel and criminal situation?

Although animals are considered property, they are a different and special kind of property. Laws in every state give animals the right *not* to be treated cruelly. Even animals that are not “owned” by someone are protected under our cruelty laws. That is not true of other forms of property. So the property interest that a defendant may have in his animals does not trump the statutory laws to protect them. Therefore as property, animals can be seized like any other property taken to preserve evidence of a crime. However, because they are sentient creatures with laws to protect them, animals must also be protected from continued crimes against them by legally seizing them whenever they are in a cruel situation. Many states have cost of care bond provisions that may help encourage voluntary forfeiture of the animals after the seizure or at least help to expedite the case.

Juvenile Crime

A large percentage of animal cruelty is committed by juveniles. Recognition of the high incidence of animal abuse in the history of many of the most violent juvenile offenders is important to understand. As numerous examples have demonstrated, animal abuse by juveniles should be recognized as a serious threat of future violence and therefore, handled as a serious crime. Many serial killers, including Ted Bundy and David Berkowitz, tortured animals as juveniles. [M. Muscari, *Juvenile Animal Abuse: Practice and Policy Implications for PNPs, Journal of Pediatric Health Care*, 18(1): 15-21 (2004)]. Albert Desalvo, “the Boston Strangler,” reportedly trapped animals in crates and shot them with a bow and arrows. Carroll Cole, the serial killer known as the “Barfly Strangler,” used to choke the family dog unconscious [Phil Chalmers, *Inside the Mind of a Teen Killer*, 140 (Thomas Nelson 2009)]. The list goes on and on.

Of the nine school shootings between 1996 and 1999, approximately half of the shooters had *known* histories of animal cruelty [S. Verlinden, M. Herson, and J. Thomas, *Risk Factors in School Shootings, Clinical Psychology Review*, 29(1): 3-56 (2000) at 44]. This statistic alone should be enough to draw serious concern. Kip Kinkel opened fire in a high school, killing two students and injuring eight others. He also killed both of his parents. Kinkel had reportedly bragged to peers about torturing animals and neighborhood children reported that Kip beheaded cats. (Chuck Green, *Torturing Animals Bodes Ill*, Denver Post, May 24, 1998, at B-01). Likewise, in probably the most well-known school shooting at Columbine

High School in 1999, Eric Harris and Dylan Klebold were also alleged to have engaged in animal mutilation prior to the school murders (Community Policing Dispatch, *Domestic Violence and Animal Abuse: A Multidisciplinary Approach in Illinois*, (Community Oriented Policing Service/U.S. Dept. of Justice, Wash., D.C.), Vol. 3, Issue 3, March 2010, <http://cops.usdoj.gov/html/dispatch/>

March_2010/domestic_violence.htm]. The examples of juveniles starting out with animal abuse and moving on to humans are too numerous to mention here, but there are several books and articles that have detailed them. Accordingly, cruelty cases perpetrated by juveniles should be charged and taken seriously.

To read more on juveniles and crimes of animal cruelty, visit:
my.ncjfcj.org/resource/publications/Today/spring2010_web.pdf

Domestic Violence and Other Family Violence

As we all saw during the tragedy of Hurricane Katrina, many people will not leave their homes without their beloved animals, even when their own lives are at stake. Likewise with domestic violence and other family violence situations, the threat, or use, of violence against family pets may prevent victims from leaving their homes even when they are in danger. These crimes are often violent and horrific acts of cruelty used to manipulate a victim. This author prosecuted a number of domestic abuse cases that included violence against pets, such as setting pets on fire, throwing them off balconies, and beating or killing them in front of children. There are also cases of child abuse and elder abuse where the threat to a beloved pet has been used to intimidate a victim.

Victims of domestic violence in particular are often left in a position of deciding whether to stay in an abusive and often dangerous situation, or to go but leave behind their beloved pets. Victims know that leaving them behind puts their pets at even greater risk of abuse once the human victim is gone. Animals are often used to punish, or take revenge against a victim. In the past twenty years, research has firmly established a significant link between domestic violence and animal abuse. Multiple studies have found that as many as 71 percent of battered women reported that their pets had been threatened, harmed, and or killed by their partners. (Ascione, Weber, & Wood, 1997; Flynn, 2000; Loring & Bolden-Hines, 2004). Up to 48 percent of battered women admitted they delayed leaving a dangerous situation out of concern for their pets' safety. (Faver & Strand, 2003). These high numbers explain why taking this seriously is so important.

States have recognized that including animals in restraining orders is an important tool in protecting domestic violence victims. Many states have passed laws to ensure that victims can include their animals in restraining orders. Numerous

other states have bills pending. Check your state laws to see if your state has such a law.

However, even without a specific provision, a judge may allow the animals to be included in a restraining order if requested, just as he might do with other property. It is important for officers involved in these cases to ask the victim if there are animals in danger so that they can be considered in these orders of protection. In addition, including animals on a restraining order can authorize law enforcement to assist the victim in retrieving a beloved pet left behind at the residence during flight. Absent this protection, victims may attempt to return to the residence alone to retrieve or care for their animals, placing themselves in danger of encountering the abuser. Understanding how to address animal abuse can protect both animals and human victims.

To read more on animal cruelty and domestic violence, please visit:
my.ncjfcj.org/resource/publications/Today/spring2010_web.pdf

Your Role In Sentencing

Stay involved in these cases. Let the prosecutor know that you would like to be informed of any plea discussions or sentencing hearings. Prosecutors, as well as law enforcement, are often not trained in handling these sometimes difficult cases. Be a voice for pushing these cases and for serious sentencing. It is important for prosecutors not to dismiss the cruelty charge in lieu of a different charge. This author often found that defendants were willing to plead to almost anything rather than an animal cruelty charge. Prosecutors may be tempted to allow such a plea, but for the reasons previously discussed, it is necessary to keep those charges on the record as well as to provide justice for the abused animal. Make sure that the prosecutor asks the judge to forfeit the animal at issue and any other animals that the defendant has in his care or custody. Request a bar on future ownership of animals as long as the court or your laws will allow. If that is not a likely result, ask for unannounced inspections to ensure that the animals are being cared for appropriately. Also, you should request restitution to repay shelters or veterinarians who have provided care for the animals pending the disposition of the case. Most importantly push for a serious sentence that includes incarceration and a ban on future animal ownership. Treat animal cruelty cases like the serious and often violent crimes they are. Remember, effective enforcement of the animal cruelty laws is an important component to community safety. 🌟

For more resources go to:

www.humanesociety.org/justice
www.humanesociety.org/lawenforcement