

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

ASSOCIATION OF PROSECUTING ATTORNEYS QUARTERLY NEWSLETTER | SPRING 2010 VOLUME 2 ISSUE 1

2010 HAS ALREADY BEEN AN exciting and successful year for the Association of Prosecuting Attorneys and our animal cruelty and fighting program. At the close of 2009, we introduced our quarterly newsletter, *Lex Canis*. With this second issue, we can report that the program has expanded its website, which now includes our database containing pleadings, motions, and other documents relating to animal cruelty and fighting prosecutions.

Kicking off the New Year, in January the APA also convened the Animal Cruelty Advisory Council (ACAC) and had its first meeting at the Animal Welfare Institute's offices in Washington, D.C. Prosecutors and other experts in the field of animal welfare discussed upcoming initiatives, trainings, and publications in the field of animal cruelty and fighting. The Council is chaired by K. Michelle Welch, Assistant Attorney General with the Office of the Attorney General in Richmond, VA, and vice-chaired by Nancy Blaney, Senior Policy Advisor for the Animal Welfare Institute. I also sit on the ACAC along with Donald Cocek, Assistant City Attorney, Los Angeles City Attorney's Office; Gillian Deegan, Assistant Commonwealth's Attorney, Botetourt County VA; Ethan Eddy, DOJ Trial Attorney, Environment and Natural Resources Division, Wildlife and Marine Resources; J.P. Goodwin, Manager, Animal Fighting Issues, Humane Society of the United States (HSUS); Maya Gupta, Ph.D., President, Board of Directors, Ahimsa House; Tio Hardiman, Chicago End Dogfighting, HSUS; Scott Heiser, Senior Attorney, Criminal Justice Programs Director, Animal Legal Defense Fund; Tia Hoffer, Critical Incident Response Group, FBI Academy; Laura Janssen, Senior Assistant District Attorney, Animal Cruelty Unit, Fulton County (GA) D.A.; Randall Lockwood, Senior Vice-President,



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Forensic Sciences and Anti-Cruelty Projects, ASPCA; Dana Miller, D.V.M.; Allie Phillips, Vice-President of Public Policy, American Humane Association; Sherry Ramsey, Manager, Animal Cruelty Prosecutions, HSUS; Mary Lou Randour, Ph.D., Department of Animal-Human Relations, HSUS; Joan Schaffner, Associate Professor of Law, Director, Animal Law Program, George Washington Law School; and Amy Slameka, Assistant Prosecuting Attorney, Wayne County (MI) Prosecutor's Office.

We are also creating a prosecutor's listserv for animal cruelty and animal fighting issues. This will provide a forum for prosecutors and other practitioners to exchange ideas and information,

as well as a tool for APA to communicate with its members. Information on how to join the listserv will be available on the program website page once it is active. The Association also provides on-site technical assistance with animal cruelty and fighting prosecution. If you would like to inquire about technical assistance for your organization or office, please contact me or visit our website. In addition to training provided through technical assistance visits, APA is organizing its national conference, with current planning centered on October in Denver. We are looking forward to providing this training opportunity and will be sending out more details in the months to come.

APA is continuing our outreach efforts to combat animal cruelty and fighting. Please visit our website at www.APAINc.org for more information or contact me at David.LaBahn@apainc.org for case assistance inquiries or issues you would like to see addressed in future trainings or publications.

Our thanks to Sherry Ramsey for contributing this issue's main article and to the Animal Welfare Institute for its ongoing assistance.

-David LaBahn, President and CEO, APA

ENFORCING STATE ANIMAL CRUELTY LAWS:

INTERPRETING THE LAWS TO OBTAIN SUCCESSFUL PROSECUTIONS

By Sherry Ramsey, Esq.

PART 1

In 1828, New York became the first state to enact animal protection laws. However, prior to that, in 1641 the Puritans of Massachusetts Bay Colony passed "The Bodies of Liberties," which forbade cruelty to animals. [See *Animals and Their Legal Rights: A Survey of American Laws from 1641 to 1990*, Animal Welfare Institute, Washington, D.C., (1990).] From those first attempts to use the law to prevent animal cruelty, there have been many changes and improvements to those laws. And now every state has general animal cruelty laws as well as felony laws against dog fighting. Most state laws provide at least some protection to all animals, although there are those that provide little protection for noncompanion animals. Yet, even with all the improvements to the laws, there can be no meaningful protection for animals without aggressive and informed enforcement and prosecution.



GRANT ALEKSANDER

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ENFORCEMENT PROBLEMS

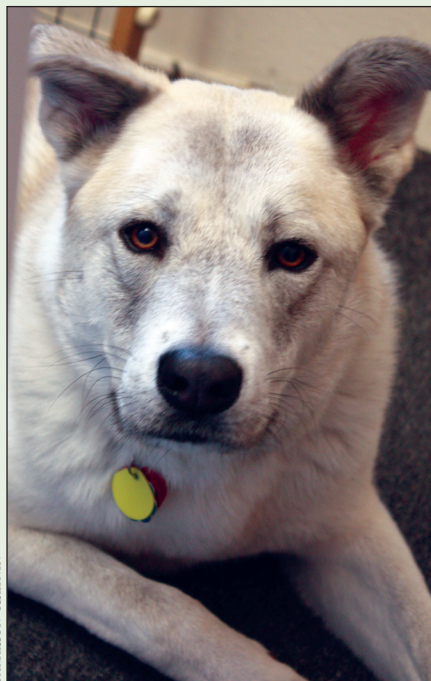
In most states, myriad agencies have enforcement jurisdiction over their cruelty laws, which can pose an obstacle to effective enforcement. Although every state is different, many use a combination of police, animal control officers, SPCA officers, or other humane officers to respond to calls and sign complaints. Although all of these agencies serve a good and useful purpose in enforcing cruelty statutes and providing animal care, a typical problem arises when witnesses to cruelty crimes get shuffled from agency

to agency when trying to report a crime. Often police will direct a caller to animal control, where the caller might find only a recording advising them to call the police. Some police might even tell callers they do not handle animal complaints even though most, if not all, states require police 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 such do not provide 24-hour on-call personnel. Therefore, the role of the police in animal cruelty enforcement is vital. Although it is helpful, if not essential, to have all of these various agencies with their expertise responding to or helping with cruelty complaints, it is problematic when there is no integrated plan to ensure that reports of cruelty and the follow-up investigations of these crimes are handled promptly and consistently.

While many people believe police officers are just not willing to respond to animal cruelty crimes, any lack of response is more likely due to a lack of training in the procedures and laws. In fact, most police officers understand the importance of enforcing animal cruelty laws. However, because of lack of training in the cruelty laws and animal care considerations, police may feel unqualified or ill prepared for these situations. 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 makes these laws even less familiar to law enforcement but also may send an incorrect message that they are less serious than other crimes.

PROSECUTOR PROBLEMS

Prosecuting animal cruelty crimes can likewise present special problems



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for prosecutors. A lack of specialized training, as well as unfamiliarity with the laws, can hamper a successful case. Most prosecutors understand the violent nature of animal cruelty crimes; nonetheless, at times they may regard such crimes as less important and may downgrade or even dismiss charges or allow cruelty cases to end up in pretrial intervention programs. Pretrial intervention often results in the ultimate dismissal of the charges usually without a record of the crime. However, pretrial intervention programs generally require the crime to be “non-violent” and/or “victimless.” But animal abuse is a violent crime and it certainly involves victims,

whether they are the animals themselves or their human caregivers. Further, given the strong correlation between animal abuse and future violence, a record of this crime is necessary to serve as a red flag to judges, prosecutors, police, probation officers as well as other agencies that may be involved in overseeing the defendant or helping a victim, such as domestic violence agencies or counselors and doctors. Therefore, charges of animal cruelty should seldom if ever be eligible for pretrial intervention, nor should they be dismissed as part of a plea agreement in which the defendant pleads guilty to something other than animal cruelty.

Prosecutors can also face challenges in interpreting the laws. The specific cruelty laws are usually clear enough; however, prior to proving those cruelty elements, there are often other fundamental points that must be understood. With some animals getting more protection than others and with actual exemptions to certain laws, correctly interpreting those aspects of the laws for the court may be the most important argument to make in winning the case. Further confusion can arise from the numerous state and federal regulations that involve certain animals. Therefore, there are some key questions to ask: First, how does your state define “animal”? Second, are there exemptions for certain practices or specific animals? Are those exemptions blanket or are there qualifying terms that must be satisfied? Understanding the answers to these questions is imperative to correctly interpreting the laws. For example, the definition of “animal” is the most important thing is determining which animals are covered under the code. If the definition includes all animals, then they are all covered at least to some extent after taking into account any applicable exemptions under the statute.

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DEALING WITH EXEMPTIONS AND REGULATIONS

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 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 many states the definition of animal is broad enough to include all animals; therefore, all animals are covered under the cruelty laws. However, many states exempt legal hunting as laid 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. Since they are not per se exempted from the cruelty laws because they are not hunting legally, they become subject to criminal cruelty charges under the statutes.

However, they may also be subject to hunting violations as well. Unfortunately, there is often confusion as to whether both can be charged. Clearly, there can be circumstances when both criminal violations and regulatory violations are present. For example, someone illegally hunting with an illegal weapon could be charged under both criminal weapons violations as well as hunting violations. Both violations are appropriately charged. Likewise, since the hunting violations do not represent the cruel act to the animal but

rather a violation of state hunting regulations, there is no reason that charges under both the hunting regulations and the cruelty law would not be appropriate under the law. A recent case where defendants cruelly killed deer and left them to suffer and die was appropriately charged as cruelty to animals even though defendants argued they were hunting. They were ultimately charged with both cruelty to animals and hunting violations.

Correctly interpreting the laws to ensure that animals are fully protected is essential to ensuring that justice is served. Likewise, understanding how statutes and regulations can intersect yet work independently ensures that criminals are held fully accountable.

For more information on this subject, or to contact Ms. Ramsey, please go to www.humanesociety.org/justice

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MISSION

Support and Enhance the Effectiveness of Prosecutors
in Their Efforts to Create Safer Communities.

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BREAKING NEWS

CALIFORNIA STATE SENATE Majority Leader Dean Florenz introduced a bill to establish an online registry of animal abusers. If Senate Bill 1277 becomes law, persons convicted of felony animal abuse will have to register with the police; that information would be posted online, along with a description of their offenses. APA Animal Cruelty Advisory Council member Gillian Deegan, an assistant commonwealth's attorney in Botetourt County, Virginia, supports the proposal. She was quoted in the New York Times (Feb. 21, 2010) as saying that "such a registry could also be valuable in tracking people who run puppy mills and animal-fighting rings, as well as hoarders. A lot of times these people will just pick up and move...if they get caught. It would definitely help on those types of cases where people jump around." TIME magazine ran an article on this proposal. (<http://www.time.com/time/nation/article/0,8599,1969346,00.html>)

RECENTLY, WEST VIRGINIA AND MINNESOTA became the 14th and 15th states, respectively, to pass laws allowing the inclusion of family pets in domestic violence protection orders, and the New York Times published an article that highlights the link between domestic violence, child abuse, and animal abuse. (<http://www.nytimes.com/2010/03/18/us/18animal.html?ref=todayspaper>)

A MAN FROM BRUNSWICK, MD, who threw a dog off a bridge in retaliation for being asked to leave the dog's owners' driveway, has pleaded guilty to aggravated animal cruelty, a felony, and theft under \$500. He faces up to 4-and-half years in prison and a \$5,500 fine. He will be sentenced in June. The prosecutor in the case, Assistant State's Attorney Colleen Swanson, has said the state will request jail time plus anger management and restitution.