

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

ASSOCIATION OF PROSECUTING ATTORNEYS QUARTERLY NEWSLETTER | WINTER 2011/12 VOLUME 3 ISSUE 4

WELCOME TO THE WINTER 2011/12 ISSUE of *Lex Canis*, APA's quarterly newsletter dedicated to reducing suffering and violence whether it is animal or human. I hope that everyone had a safe and happy holiday season and would again like to thank all of our supporters who contributed to the noteworthy achievements of last year. With your continued support, we at APA look forward to another successful and productive year.

This year has already gotten off to a busy start as we hosted the APA/BJA Animal Cruelty Advisory Council (ACAC) Meeting on January 19-20, 2012, in Washington, D.C. This two-day roundtable brought together our ACAC members along with guests from supporting organizations, including the Maryland Department of Agriculture; the USDOJ-COPS Office; *AEquitas: The Prosecutor's Resource on Violence Against Women* (www.AEquitasResource.org); and the National Coalition Against Domestic Violence (NCADV; www.ncadv.org).



SHERRY RAMSEY/HSUS

Members of the Animal Cruelty Advisory Council and guests met in January in Washington, D.C.

The roundtable discussion featured an overview of the current activities and ongoing projects of the many ACAC members, a review of individual member initiatives, and overall planning for our training and technical assistance activities in 2012/13.

I would like to thank the ACAC and everyone who attended this meeting for a productive and invigorating discussion. We certainly look forward to developing and expanding many of the great ideas and initiatives resulting from this meeting.

Furthermore, the ACAC will continue to focus on the planning and objectives for the 3rd National Conference on Prosecuting Animal Cruelty and Preserving

Community Safety, tentatively scheduled for October in Los Angeles, CA. We encourage you to mark your calendars and prepare to join us for this worthwhile event! The sessions over two-and-a-half days will be open to all members of law enforcement, related disciplines, and nonprofit organizations with an interest in animal cruelty and animal fighting crimes. This BJA-funded conference has already received commitments from the Animal Legal Defense Fund (ALDF) and Animal Welfare Institute (AWI). As with our preceding two successful national conferences, I expect this third one to assist all attendees in their efforts to hold animal abusers fully accountable for their actions.

In other exciting news, our "Final Fridays" webinar series has returned and the first animal-related webinar will premiere on February 24, 2012, from 3PM-4PM EST. The topic of "Puppy mills" will be presented by Gillian Deegan, Assistant Commonwealth's Attorney for Botetourt County, VA. The webinar will focus on prosecuting puppy mill operators for animal cruelty and related crimes. As we continue to finalize the Final Fridays schedule for 2012, please contact me at David.LaBahn@APAINc.org if you would like to see a particular animal crime related issue covered in an upcoming webinar. Webinar registration information can be found on page 8.

Gillian's webinar will be an excellent complement to our main article in this issue, written by our first "repeat" author, Sherry Ramsey, Esq., Director, Animal Cruelty Prosecutions, Humane Society of the United States. As you read her article on puppy mills, it brings into focus what a growing national problem this is and the burden it places on local resources.

As always, special thanks to Nancy Blaney and Alexandra Alberg at AWI for their continued support and work on *Lex Canis*. As we plan for an exciting 2012, we at APA remain committed to combating animal cruelty and animal fighting and providing you with the best tools and resources to do the same. We encourage you to visit our website at www.APAINc.org, follow us on Twitter at @APAINc, and become a fan on Facebook.

-David LaBahn, President and CEO, APA

PROSECUTING PUPPY MILL AND OTHER LARGE VOLUME CRUELTY CASES

by Sherry Ramsey, Esq.

It is estimated that between 2 and 4 million puppy mill puppies are sold each year in the United States (http://www.humanesociety.org/news/press_releases/2011/09/pet_store_chains_puppy_pledge_091511.html). There are many problems associated with these large scale breeding facilities which can result in criminal violations of the state cruelty laws. Documented puppy mill conditions include over-breeding, inbreeding, minimal veterinary care, poor quality food and shelter, crowded cages, lack of socialization, and often extreme neglect. Dogs kept for breeding in puppy mills suffer for years in continuous confinement, often in harsh wire cages that cause injuries. They are bred as often as possible to maximize profits and are often destroyed or discarded once they can no longer produce puppies.

Pet stores and online sellers may use attractive websites and confusing language to prevent consumers from knowing they are purchasing dogs from puppy mills. Further, given the extraordinary numbers of dogs bred in these factory-like facilities, puppy mills greatly contribute to the pet overpopulation problem, which results in millions of adoptable dogs being euthanized in shelters every year at a huge cost to local municipalities and taxpayers. Additionally, when criminal cases are brought against these large-scale breeding facilities, the costs to municipalities and humane organizations charged with providing care for enormous numbers of seized animals pending disposition can be extensive. As a result, over the past few years, approximately 20 states have passed laws to crack down on puppy mills and large-scale breeders.

It is also important to note that federal law requires people who breed dogs for sale at the wholesale level and supply them to pet stores, brokers, or research facilities to be licensed with the U.S. Department of Agriculture (USDA) and subject to inspections by the USDA Animal Care program under the Animal and Plant Health Inspection Service (APHIS), as authorized pursuant to the Animal Welfare Act (AWA). However, this federal law and its regulations are limited in scope and specifically exempt most retail pet stores and others who sell dogs directly to the public. (See *APHIS Fact Sheet*, http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_animal_dealers.pdf) In addition, even for the facilities covered under the federal law, USDA inspections are also limited and the animal care standards are self-described as “minimum”:

Regulated individuals and businesses are encouraged to provide care that exceeds the specified minimum standards, and States have the authority to impose higher standards of care than those specified in the AWA. *Id.*

Likewise, these federal regulations are rarely criminal in nature (except for certain sections of the AWA, such as those related to animal fighting and fraudulent records pertaining to the acquisition and disposition of animals. *Id.*) Accordingly, the penalties for most violations usually consist of mere fines or suspensions:

If an inspection reveals deficiencies in meeting AWA standards, the inspector instructs the facility operator to correct the problems within a given timeframe. If deficiencies remain uncorrected, the inspector documents the problems and considers enforcement action. In cases where the violations are relatively minor, a licensee may be required to pay a smaller penalty or make specific improvements to facilities and the care provided to animals. In cases of serious or chronic violations, penalties may include more substantial fines, cease-and-desist orders, and license revocations or suspensions. *Id.*

Importantly, these federal regulations are not meant to supersede state animal cruelty statutes and, in fact, APHIS contemplates that the states will provide additional protections for animals under their own regulations and laws:

The Federal standards are limited to the authority granted by the AWA. However, States have the authority to create and enforce their own regulations which may exceed those standards; most State and local governments also have their own laws that protect animals. *Id.*

Accordingly, crimes of animal abuse and neglect are appropriately charged and prosecuted under the cruelty laws within each state, whether or not the animals at issue are part of a federally licensed breeding facility. Likewise, specific state regulations targeting puppy mills should, in most cases, be used to supplement state cruelty laws and not supersede them. The general cruelty laws within each state offer appropriate charges for these types of crimes and provide stronger penalties.

THE CRIMES

Most crimes associated with puppy mills, large-scale breeders, or hoarding cases deal with extreme neglect or lack of basic care. Depending on how your state cruelty laws are worded, the charges may be felony charges, misdemeanor charges, or both. The severity of the neglect may also dictate the level of the crime in some states. Many state misdemeanor neglect provisions contain “failure to provide” sections within the cruelty statute. For example, failure to provide shelter may be applicable in puppy mill cases. Likewise, other “failure to provide” type charges might also be applicable and may represent additional charges.

Other general sections might include language such as “inflicting unnecessary cruelty upon an animal” or “torturing an animal.” These general cruelty provisions can be useful in charging puppy mill or other high-volume cruelty cases because of the various types of general abuse present. Long-term neglect, as confirmed by a veterinarian, could be deemed “torture” to provide for a felony charge under some state laws depending on the definition and drafting of the statute.

As is often the case with animal cruelty laws, much of this broad statutory language may be viewed as subjective. However, because of the extreme cruelty in most of these high volume cases, successful prosecutions can be made with properly presented evidence. Photographs and expert evidence provided by a veterinarian or other witnesses regarding the animals’ suffering and long-term neglect can be key to securing a conviction. Certain injuries could indicate deliberate acts of abuse as demonstrated by the evidence and may allow for upgraded charges depending on your state laws.

DOGS ARE DOGS UNDER THE LAW

Puppy mill dogs are “dogs” or “companion animals” under state cruelty laws and as such are entitled to the same protections as other companion animals. Each cruelly treated dog should result in a separate cruelty charge. If there are heightened penalties for companion animals, these laws apply to all dogs including breeder or puppy mill dogs. Generally, state laws require the same standard of care for puppy mill dogs as for any other dog.

Even if your state has special regulations or statutes to protect puppy mill or breeder dogs, those laws or regulations should not circumvent statutory animal cruelty laws, which are typically more punitive. A defendant may be in violation of a state law or regulation pertaining to breeding facilities as well as a state cruelty law and should be charged accordingly. In many cases, both charges can be applicable.



SEIZURE OF ANIMALS: IMPORTANT CONSIDERATIONS

When animals are in danger and cruelty is present, law enforcement should seize all animals in order to provide appropriate veterinary care, to protect the animals from further cruelty, as well as to preserve and document the evidence of the crime. There are several ways that animals, which are considered property in all states, can be legally seized. Some examples include:

- Pursuant to a valid warrant.
- Through a voluntary surrender.
- When animals are abandoned.
- As evidence of a crime if criminal charges are filed.
- When there is a specific state law that allows for it.
- In some cases, under the doctrine of exigent circumstances.

Problems often arise if animals are seized without properly documenting the legal justification for the seizure. Likewise, a seizure is problematic if no actual charges are filed. Generally, if animals are taken, charges should be filed to substantiate the reason for the seizure. Alternatively, if charges are filed, animals should be seized or at a minimum temporarily impounded on the property as a result of the cruelty charges. If not, the defense will likely argue that the conditions did not rise to the level of a crime; otherwise, how could law enforcement have left the animals in a cruel and criminal situation?

VOLUNTARY SURRENDER

If there is a voluntary surrender of animals, it is important to provide the defendant with a form to sign to ensure you can prove that the surrender was voluntary. Additionally, all information related to the surrender should be included in the law enforcement report. A standard form should be provided for law enforcement to have on hand when needed.

In emergency large-scale raids, animals may need to be temporarily impounded on the property pending arrangements with organizations (such as the Humane Society of the United States or local shelters) to help house and care for these animals pending

trial. In many states, cost-of-care bond laws can provide financial relief to local governments in funding these services or may help precipitate a voluntary surrender of the animals.

EXIGENT CIRCUMSTANCES

More and more state courts have applied the exigent circumstances exception to the warrant requirement as applicable to animals in cruelty cases. As with any other case, it is important to provide support for this exception within law enforcement reports. Providing

case law to the court on this issue can serve to bolster your argument if a suppression motion is filed. Likewise, other exceptions to the warrant rule may also be useful, such as the plain view doctrine or the inevitable discovery doctrine. The Association of Prosecuting Attorneys has a brief bank available to members with examples of successful applications of these exceptions to the warrant rule, as well as other resources for prosecutors.

PROPERLY DOCUMENTING THE ABUSE

It is important to preserve the evidence of abuse and to fully document it. Photographs and video taken at the scene, showing the animals and their environment, are very helpful if not essential in proving that the cruelty was present when the

animals were seized from the defendant's premises. Reports should document not only the visual signs of cruelty but also the sounds and smells present at the scene. Dead animals should also be photographed and immediately taken to a veterinarian for a necropsy.

Each animal should be photographed and assigned a name or number to document the animal's condition. The pictures should also be referenced within the law enforcement report. The photographer's name should be included in all reports in order to allow for authentication of any picture presented at trial.

Before and after pictures of the animals can provide some of the best evidence of abuse. Follow-up pictures of the animals once they have received necessary care can often facilitate a plea or provide further evidence of abuse at trial, as well as to refute the defendant's claim of the animals' condition.



APPROPRIATELY CHARGING

Appropriately applying the state cruelty laws to charge each defendant and crime is an important part of each case. Each abused animal should constitute a separate crime and in some cases may provide more than one charge per animal depending on how the cruelty provisions are set out within your state code. Likewise, non-cruelty charges, such as health code, local ordinance violations, and other penal code violations should also be contemplated.

It is important to review your state statutes to determine if additional individuals involved in the enterprise should be charged with cruelty under provisions that criminalize “procurement” or “setting a foot” type behavior. These kinds of charges may be applicable to those not actively involved in the day-to-day operations or care of the animals, but who are nonetheless parties to the crimes as established by the evidence.

EXPERT WITNESSES

It is usually necessary to work with a veterinarian to provide expert evidence to prove cruelty. Initial examinations should include body condition scoring, a physical care scale, a neglect analysis, and, often of particular concern in puppy mill cases, examinations of the teeth and feet. Further tests may include blood work, urinalysis, and radiographs. Performing necropsies and other specific tests on any dead animals can provide important evidence to prove cruelty.

Conclusions from the veterinarian on survival periods, estimated time of death, primary and contributory causes of death or injury, causes of chronic conditions, and additional conclusions regarding the pain or suffering of the animal will be helpful in proving your case. Since some injuries may not be visible until matted fur is removed, veterinarians should include pictures and video of the examinations, wounds, or other evidence of abuse if possible.

It is also important to prepare your veterinarian to testify at trial since most veterinarians typically receive no such training. It can be very helpful to establish a relationship with a local veterinarian so that she will come to understand what is needed for trial and can be available and on call in emergencies. Your veterinarian should be treated as any other expert witness for trial. (The Humane Society Veterinary Medical Association may be able to provide additional support and resources. For more information, go to: <http://www.hsvma.org>.)

If specific forensic tests are required, contact your state lab to ask if it can conduct the needed tests. If not, there are several university labs that can conduct various animal tests and analysis, including University of California at Davis, Michigan State, and Cornell.

YOUR CASE AND THE COURT

It is important to make the judge aware of animals languishing in cages awaiting the conclusion of the case and of the associated costs. Judges may not be familiar with these cases and therefore may not understand that animals should be a consideration when it comes to granting long delays and numerous adjournments. If your state has a cost-of-care bond provision within the cruelty laws, it should be implemented to ensure that the defendant has an incentive to allow the case to proceed on schedule and to ensure that the animals are not forced to suffer further while a case drags on with unnecessary delays.

SENTENCING CONSIDERATIONS

A main component in any sentencing agreement should be forfeiture of all animals in the defendant’s care or custody, as well as a bar on future care, custody, or ownership of animals for as long as the



degree of the crime or the law will allow. Further, any animals seized should ultimately be forfeited to a shelter or rescue group for adoption. They should not be sold to benefit the abuser or the municipality; that could subject animals who have already suffered abuse to additional uncertainty and possible placement in a similar breeding facility where they could face continued cruel treatment.

The bar on future ownership of animals is an important argument for the prosecution to make in order to prevent a defendant from simply starting anew. Some states have recognized the importance of this and have enacted or are considering laws to allow for extensive or even permanent bars. If a court refuses to order complete forfeiture of all of the animals, a secondary request should include an order to mandate cooperation in regular unannounced inspections by animal control officers or a humane agency to ensure remaining animals are receiving adequate care.

EDUCATION

Law enforcement and humane officer training is important to ensure that these cases are handled correctly and to prevent any animal from being returned to an abuser due to improper handling of the case. Likewise, prosecutor training is also important to ensure successful prosecutions.

The Association of Prosecuting Attorneys (www.APAInc.org) and the Humane Society of the United States (www.humanesociety.org/justice) offer training for law enforcement officers and prosecutors on all aspects of animal cruelty enforcement and prosecution. For additional information on puppy mills, go to: http://www.humanesociety.org/issues/puppy_mills/



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BREAKING NEWS

CHICAGO'S LARGEST DOG FIGHTING CASE to date has ended with Judge Brian K. Flaherty handing down a conviction on 34 counts of aggravated animal cruelty and 28 counts of owning, breeding, or training fighting dogs. He imposed a sentence of three years in prison on each count, to be served concurrently, to be followed by one year of supervised release. In 2007, Kevin Taylor's home was raided and 37 dogs were confiscated. According to one report (http://articles.chicagotribune.com/2011-12-14/news/chi-south-holland-man-gets-3-years-for-dog-fighting-20111214_1_south-holland-man-caucasian-orcharka-scars-and-unhealed-wounds), "most of the dogs were housed without water or food in plastic kennels stacked in a dark, unventilated barn. Many dogs were covered in feces and urine, and a number bore scars and unhealed wounds typically found on fighting dogs." Authorities also found treadmills and amphetamines. That was a bad year for Mr. Taylor; also in 2007 he was convicted of attending a dog fight.

THE COINCIDENCE OF VOLUNTEER RESCUERS being present when police brought the dogs from the above case to Chicago Animal Care and Control (ACC) led not only to the dogs' placement with rescue groups, but also to the creation of the Court Case Dog Program. Thanks to this collaborative effort between ACC and Safe Humane Chicago, dogs who are the victims of cruelty and fighting cases in Cook County, who previously could have languished in cages as cases dragged on (the above case took 4 years!) and were routinely euthanized after being relinquished or after their owners' conviction, now have a chance at new, better lives. Because of the abuse to which they have been subjected, these dogs may have special socialization needs, and each is assessed individually. According to the program's webpage (<http://www.safehumanechicago.org/Evidence-Dog-Program>), "[d]og trainers and volunteers work as a team with rescue and animal welfare groups, foster homes, adopters, donors and others to help these dogs find and keep loving homes. The program offers needed resources for these dogs, their caregivers and adopters, including a protocol of socialization, training and enrichment to meet each dog's individual needs; time with trainers and volunteers while at Chicago ACC; and free training and behavioral assessments once they leave Chicago ACC."

NEW JERSEY joins the ranks of 21 other states (which include the District of Columbia and Puerto Rico) with laws specifically allowing inclusion of pets in domestic violence restraining orders. (www.avionline.org/safehavens) Governor Christie signed the legislation (A1633/S540) on January 17, 2012. According to the statements explaining the floor amendments, the new law differs from the introduced bills in some respects, most notably by covering not only final restraining orders, but also "temporary restraining orders,



Teddy, shown here with one of his loving owners, was rescued by the ACC and Safe Humane Chicago in 2010

orders issued by the court when defendants are released on bail, and conditions of sentence when a defendant is found guilty of a crime or offense involving domestic violence." It also deletes "a provision... that would have authorized the court to bar the defendant from coming within a specified distance of specified locations where the animal is regularly found."

ALBANY COUNTY, NEW YORK, became the third jurisdiction in the country (the others being Suffolk and Rockland counties, also in New York) to establish an animal abuser registry. According to a report by the Animal Legal Defense Fund:

- The new Albany law applies to misdemeanor and felony convictions for animal cruelty, animal fighting, sexual abuse of an animal, and harming service or police animals.
- Offenders may remain on the registry for 10 years following a first offense and for life following subsequent offenses.
- Failure to register constitutes a misdemeanor and is punishable by up to a year in jail and a fine of up to \$1,000.
- Anyone who sells or adopts an animal to a registered animal abuser may be subject to a fine of up to \$5,000.

Moreover, legislation (A1506) has been introduced in the New York Assembly to establish a statewide registry of persons convicted of animal cruelty or animal fighting.

A member of the Florida State Senate is responding to a highly publicized act of cruelty in that state with similar legislation. Senator Mike Fasano has introduced SB 618 to establish a statewide animal abuse registry. He is calling his bill "Dexter's Law" in memory of one kitten who survived a vicious beating in a park by two young boys and their mother; another kitten died at the scene. Dexter sustained severe injuries but appeared to be recovering when he took a turn for the worse and had to be euthanized. The mother, Wilana Joanel Frazier, awaits trial on charges of felony animal cruelty and contributing to the delinquency of a minor.



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UPDATE

U.S. Senators Richard Blumenthal (D-CT), Mark Kirk (R-IL), Maria Cantwell (D-WA), and Scott Brown (R-MA) have introduced S. 1947, a companion measure to H.R. 2492, the Animal Fighting Spectator Act. (See *Lex Canis Fall 2011*.)

REMINDER

Webinar on Puppy Mills Friday, February 24

Please join us for the Final Fridays webinar, “Puppy Mill Investigations and Prosecutions,” on February 24, 2012, from 3:00-4:00 P.M. EST. This month’s webinar training will cover “puppy mills” or unlawful large-volume dog breeders, what they are, how to develop and initiate an investigation and gather and preserve evidence, the types of injuries common to animals recovered from “puppy mills,” and how to work with veterinarians before and during the prosecution. Gillian Deegan, Assistant Commonwealth’s Attorney from Botetourt County, Virginia, will be presenting. APA has applied for one credit of continuing legal education certification for this training. All prosecutors, members of law enforcement, advocates, and criminal justice partners are encouraged to attend.

Reserve your Webinar “seat” now at:

<https://www3.gotomeeting.com/register/187475654>

MISSION

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

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