

BACK TO BASICS: “THE LINK” BETWEEN ANIMAL ABUSE AND CHILD ABUSE

THE CHILD ABUSE PROSECUTION PROJECT'S BACK TO BASICS SERIES

The Association of Prosecuting Attorneys' Child Abuse Prosecution Project is pleased to offer its Back-to-Basics Series, a “to-do” list for both new and experienced child abuse prosecutors and their multi-disciplinary teams.

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In the United States, the original organization dedicated to the protection of animals predates the first organization dedicated to the protection of children. Henry Bergh established the American Society for the Prevention of Cruelty to Animals in 1866, followed by the society to protect children in 1875.

- Awareness of this link assists in crime prevention and is instrumental in breaking the cycle of family violence
- It is matter of public safety, human welfare and animal welfare
- Being aware of potential animal abuse often will aid you in the child abuse case
- Prosecuting the animal abuse may net you greater sanctions and added justice for your child victim

Harm to the child:

- Simply witnessing animal abuse is harmful to the child
- Perpetrators often use the animal as leverage to keep the child silent or compliant (relevant to your child abuse case)
- There is a great correlation between animal abuse and neglect and child abuse and neglect including child sex abuse cases

Examples include:

- Case where the perpetrator killed or injured the animal to keep the child silent so he or she could keep sexually molesting the child
- Case where the perpetrator broke down barriers by having sex with different animals then moved onto young children to molest
- Case where the abuser killed a pet kitten in front of the child to gain control over the child who did not ask for permission to bring kitten home

Criminal animal laws protect people from animals and protect animals from people. We protect animals with the same kinds of laws we do for children suffering from abuse. The “Cycle of Violence” includes animal abuse, domestic violence, child abuse and elder abuse.

- When animals are abused, people are at risk
- When people are abused, animals are at risk
- Batterers who also abuse pets are more dangerous than those who do not abuse pets. They use more controlling behaviors and more forms of violence

What constitutes animal abuse?

Just like child abuse, it can be:

- Anything from intentional, to knowingly, to recklessly, to criminal neglect
- An act or omission

A victim animal can never tell you verbally what happened. Because of the notable circumstantial nature of animal abuse cases, they are similar to child abuse cases. The child may or may not be able to tell you what happened. The animal never can tell you.

Please think about the animal abuse portion of your cases and prosecute them with your child abuse case. Think of them as an extension and an enhancement of your case.

Read the Entire Case For:

Weaknesses affecting provability

Likely defenses (and evidence that contradicts or supports them)

Examples of potential defenses include:

Neglect

- Animal was old or sick
- Animal was eating earlier in the day
- Claim to be an animal rescuer and suggested animal came to perpetrator in this condition
- Inability to pay (for food or veterinary care)
- No criminal intent

Intentional Abuse

- It was an “accident”; for example, the animal was hit by a car or fell down the stairs
- Someone else did it
- “I was acting in self-defense against the animal victim”

Determine if the abuser has made any statements regarding the abuse or neglect of the animal or general statements about the animal. Statements may be consistent or inconsistent and may be admissible. Statements may be made online, by telephone, or by text message to the following: friend, family members, law enforcement or veterinarian.

Consulting with a veterinarian or other animal expert is helpful if not essential.

Determine whether you need an expert for any of the following:

- Rule out predation and true accidental injuries or death
- Description and explanation of illness or injury to the animal. What could or could not have been done to prevent or alleviate the condition including failure to seek veterinary care
- Pain and suffering
- Body condition of the animal
- Animal’s environment including proper food, water, shelter, sanitation and air quality
- Animal fighting expert
- Cause of death of the animal (necropsy of the animal)
- Source of DNA in an animal sexual abuse case
- Collection and interpretation of trace evidence such as the use of Blue Star or Luminol for the presence of animal blood
- Bone marrow analysis in starvation cases
- Animal sexual crimes expert
- Animal hoarding or puppy mill expert

Consider Motion Practice

- To allow other crimes, wrongs, or acts evidence under Rule 404(b) (often there are other animal crimes that show a modus operandi, absence of mistake). At least give proper notice and try to put in the evidence; be ready to argue why it is admissible
- *Motions to Suppress*—be ready for them and review the file for issue spotting. Write a Response to preserve your record
- *Motions in Limine*—(1) to prevent re-litigation of adverse rulings in previous motions hearing, (2) to limit use of certain evidence at trial such as alleged violent propensities of certain breeds and (3) to admit hearsay statements for limited permissible purposes
- Pre-conviction forfeiture or Cost of Care motions to provide for the shelter, care and possible forfeiture of impounded animals

Overcoming and Addressing Common Issues

- Use expert testimony
- Use common sense arguments
- Circumstantial evidence is probative evidence
- Condition of the animal is caused by this defendant and defendant is responsible for the condition of the animal whether by act or omission
- Forensic evidence supports other evidence that the abuser is guilty of abusing or neglecting the animal
- Be aware of other underlying issues such as unsympathetic victim (“bully breed”); recanting witness in domestic violence cases; no forensics; and the sympathetic defendant

1 Determine whether you need an expert to prove that injuries were caused by abuse (and not accidental trauma). Identify the expert you will use and obtain a CV and report. Veterinarians may be the key to animal abuse cases. The animal may have been brought to the veterinarian. The Animal Control Officer or Police Officer may have involved the veterinarian before or after investigating the scene. Animals cannot explain what happened to them. The expert will opine whether the injuries are consistent or inconsistent with histories provided by the defendant and law enforcement or animal protection. The veterinarian can assist in ruling out accidental trauma. In neglect cases, the veterinarian can offer an estimate on length of time it would take for an animal to become emaciated, and that the body condition was not caused by an underlying illness. If you have a confession or admission, or even an eyewitness, you may still want to use an expert to refute any attempts by the defense to minimize the statement of eyewitness testimony. The expert can verify the injuries and healing condition of the animal (for instance, the dog just needed to be fed to get to a healthy body condition score).

2 Prepare your case with the expert to explain injuries or death and potential scientific explanations for either. In addition to having the expert testify that the animal's injuries were caused by abuse or neglect rather than natural, accidental or predation, you will need the jury to understand how the injuries occurred and why the defendant's explanations are not true. With an understanding of the mechanism of injury or death, you can easily explain away or refute new theories put forth by the defense and better explain your case to the jury. In animal abuse or neglect cases, the perpetrator is likely to come up with an excuse for the animal's condition (neglect) or how the injuries occurred (intentional abuse). The expert can refute these claims and any recent defenses raised by the alleged perpetrator.

3 Read and review all of the veterinary records including all statements made and histories provided by the alleged perpetrator or other relevant witnesses. Look for any information that could assist in formulating a defense. Often, in animal abuse cases, there may be records or notes instead of an actual report. It is critical to review all the records including any observations, necropsy (animal autopsy) reports, x-rays and scientific tests. Generally, during the animal's hospitalization, veterinarians will document the condition of the animal (including BCS-Body Condition Score) accompanied by treatment they administered to the animal and any information provided by the owners or other witnesses. The perpetrator may be one of these individuals. The veterinarian may also note any suspicious or concerning behavior. These notes can be critical in arguing consciousness of guilt to the jury and explaining the inconsistencies of the defendant's story, as explained above. The perpetrator will make an explanation that may seem plausible at first blush, but the veterinarian can explain why it is not valid because of animal behavior. Use demonstrative evidence to assist in proving your case such as; body condition charts, x-rays, wound diagrams, and of course, photographs. Be sure to note whether the animal was returned to the owner against medical advice or whether the owner refused recommended care.

4 Animal Abuse cases are often proven by circumstantial evidence so it is critical to provide information that tells the story of the animal and establishes that the perpetrator had custody or control over the victim animal during the relevant time period(s). Make sure all other caregivers or potential caregivers of the animal have been identified and interviewed, if at all possible. After determining the timeframe for the injuries from your expert, make sure the investigation includes anyone else who may have cared for the animal during that time period and is eliminated as a possible source for the injuries.

5 If other animals were present in the home when the animal was injured, those animals may be in danger and an attempt should be made to seize them. If the facts and circumstances support it, make sure to show their condition as additional evidence of neglect or to defeat the defense they were fine. Make sure to look for and use officer interviews of family members or roommates that live in the home. These witnesses should be interviewed to determine whether they saw any abuse or mistreatment of the animal. A neighborhood survey may also be in order. If the perpetrator is claiming poverty as a defense, be sure to look for evidence in photos of how many iPhones, flat screen televisions and other electronic luxury items they possess/own.

6 Utilize cell phone and social media technology including pretext calls and recorded jail calls, where possible. In particular, look at text messages to illuminate perpetrator's financial health and outright admissions. Facebook and other social media platforms are often a rich source of information about the perpetrator, the animal, and the witnesses. The offender will communicate with other caregivers and family members. They may test different explanations or try to plead their case. These real-time communications can be critical to rebut a defense of mistake or accident. After the arrest, if the defendant is incarcerated, efforts should be made to obtain and listen to the defendant's calls for admissions, apologies, or additional inconsistent statements.

7 Chart all histories and explanations for injuries provided by the perpetrator and/or caretakers and discuss them with your expert. As the case progresses, perpetrators will "remember" an additional fall or incident that is used to explain the injuries the veterinarian has diagnosed. These inconsistencies can be used as consciousness of guilt at trial and you will need to review them with your expert so they can directly refute them during testimony. The perpetrator may obtain a defense expert to testify and support their explanation.

8 Determine the defense, i.e. arguing that the animal was not abused or that the defendant is not the person who harmed the animal. Obtain notice of any defense expert(s). Research defense expert(s) (such as visiting expert's website or social media pages), inspect their CV, obtain their report and where possible, get notes of prior testimony or transcripts from similar cases. Review these materials with your expert. The defense is really forced to choose between defenses and, if there are a number of caregivers and no admissions, arguing that someone else did it can be easier. Regardless of whether the defense is arguing the science, an expert should be utilized to explain the severity and nature of the injuries and refute accidental causes or condition of the animal.

9 Motion 404(b), or other crimes, wrongs or acts evidence may be admissible to rebut a defense of mistake or accident. They may also be admissible to explain a constellation of injuries (especially if multiple broken bones) that occurred over a period of time and should have been noted by other caretakers but were not reported.

10 Prepare your case (if standard charges do not exist) to explain specific issues at trial such as exclusive custody, consciousness of guilt and 404(b) evidence.