Animal Legal Defense Fund Position Statement
Sentencing for Animal Cruelty Crimes

Introduction

Founded in 1979, the Animal Legal Defense Fund is a national nonprofit organization dedicated to protecting the lives and advancing the interests of animals through the legal system.¹ In all areas of our work, we strive to embody our core values: compassion, commitment, integrity, innovation, and balance.

Our Criminal Justice Program attorneys work to ensure just outcomes in animal cruelty cases, collaborating with criminal justice professionals including prosecutors, law enforcement, judges, veterinarians, and courtroom advocates.² In this work, our primary goal is to seek justice on behalf of animal victims, and to prevent future cruelty. Sentencing in criminal cases is therefore a critical part of what we do. The Animal Legal Defense Fund advocates for sentences in animal cruelty cases that hold the perpetrator responsible, acknowledge the animal victim’s experience of being cruelly treated (including physical and emotional suffering), and prevent future crimes.

The Animal Legal Defense Fund recognizes that no two animal cruelty cases are the same. In every cruelty case, as with any criminal case, there will be varying factors which will affect sentencing. The purpose of this position statement is not to create a one-size-fits-all formulation for animal cruelty sentencing; but rather to clarify our position on various tools courts may use to achieve the best outcomes. Factors which might impact sentencing include, but are not limited to: whether the cruelty caused serious injury or death; the number of victims; whether the cruelty was done negligently or maliciously; whether there was any sexual assault; the use of a deadly weapon; and whether the perpetrator was suffering from mental illness. An effective criminal sentence will acknowledge all of these factors and will consider how the sentence will fulfill the following purposes of criminal accountability: incapacitation, denunciation, rehabilitation, restitution, and deterrence.

A Note on Animals’ Status in Criminal Law

Our criminal justice system generally ranks crimes by their perceived severity, ascribing the

¹ For more information, visit www.aldf.org/about-us/
² For more information, visit https://aldf.org/how_we_work/criminal-justice/
harshest sentences to those crimes which society has deemed most reprehensible. Therefore
the sentences for harming an animal should be at least as punitive as those in place to protect
inanimate objects, as animals are living, sentient beings who deserve better protection than
non-sentient property. Relatedly, although animals are technically considered “property” in all
50 states, every state recognizes animals as more than property by protecting them through
cruelty laws, regardless of ownership. Therefore, the Animal Legal Defense Fund believes the
severity of the sentence should not be determined by the animal’s monetary value as property,
but should instead turn on factors such as the perpetrator’s mental state and prior criminal
history, and the degree to which the animal suffered—just as with any other violent crime
against a victim.

Animals as crime victims

Despite animals’ current legal status as property, they are also too often victims of criminal
animal cruelty. Although animal cruelty laws originated with the purpose to protect personal
property and society’s morality, over the past century they have evolved to primarily protect
animals as individuals from unnecessary pain, suffering, and death. Under today’s cruelty laws,
animal owners may be victims if their animals are harmed by another person. However, often
owners themselves are the perpetrators of the cruelty; and yet those owners may still be
prosecuted for inflicting harm. Therefore the primary victims in cruelty cases are not the
animals’ owners, but the animals themselves. Some may argue that the victim of animal cruelty
is society as a whole who suffer a moral or aesthetic harm. While this may be true, even animal
cruelty which occurs in private, away from the eyes of the public and undiscovered by most, is

3 Luis E. Chiesa, Why Is It A Crime to Stomp on A Goldfish?—Harm, Victimhood and the Structure of Anti-Cruelty
Offenses, 78 Miss. L. J. 1, 32, 37, 41, 45-46 (2008), finding that original purposes for animal cruelty statutes are no
longer coherent with the modern intent to protect animals as victims of cruelty: 1) the purpose of protecting
property is negated by the fact that owners of animals can be prosecuted for cruel treatment of their own animals,
2) the purpose of protecting the emotional harm toward humans close to the animal is negated by the fact that
animal cruelty laws now cover a myriad of animals beyond companion animals, including strays that do not have
bonds with any humans, 3) the purpose of protecting against future harm to humans, due to findings that
perpetrators of animal cruelty can be more likely to commit interpersonal violence, is negated by the fact that
future harm does not always transpire. Additionally, cruelty statutes widely include negligent acts that lack a
correlation to future violent actions, and 4) the purpose of protecting against immorality creates a victimless crime
that violates the harm principle and cannot be the singular justification for criminalization.
4 See also State v. Nix, 355 Or. 777, 790 (Or. 2014), vacated on procedural grounds, 356 Or. 768 (Or. 2015),
reasoning adopted in State v. Hess, 273 Or. App. 26 (Or. Ct. App. 2015), review denied, 358 Or. 529 (Or. 2016),
finding that animals are victims under the animal cruelty statute: “In each instance, the offense is committed
against ‘an animal,’ and the relative seriousness of the offense is gauged in accordance with the relative degree of
harm to or suffering of that animal.”
5 Note the Animal Legal Defense Fund typically uses term “guardian” to describe a person who has custody or
control of an animal, because it is a more apt term than “owner,” given that animals already do have legal rights
above and beyond those afforded to inanimate property. However, in this context, we are speaking specifically
about animals’ legal status as property and why that status affords certain rights to whomever has a property
interest in that animal, which is why we use the term “owner.”
still a violation of the law. Therefore although society as a whole, like animal owners, may be the victims of animal cruelty, animal protection laws are designed and intended to primarily protect potential animal victims.

The Link

When considering sentencing for animal cruelty, it is important for courts to bear in mind the dynamics linking cruelty and other antisocial and violent behaviors. There is a direct link between animal cruelty and domestic violence, child abuse, elder abuse, and other crimes. Therefore courts must consider how a sentence for animal cruelty may affect all members of the household and community—both human and animal alike. The Animal Legal Defense Fund encourages sentencing courts to be aware of these dynamics, and when circumstances dictate to craft sentences that respond to the crime in context.

Incarceration

The Animal Legal Defense Fund recognizes that the United States is facing a crisis of mass-incarceration which is supported by—and contributes to—institutional biases based on race, socioeconomic status, and other factors. We also recognize that incarceration has a valid place as one of several justice system tools for addressing animal cruelty.

Courts may sentence animal abusers to jail or prison time for a variety of reasons. First and foremost, incarceration serves a community safety purpose—it removes offenders from society for a period of time during which they are prevented from harming others, including animals, which can be especially important in cases of known recidivism. Second, incarceration may act as a deterrent, dissuading would-be offenders from committing crimes. Third, incarceration

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7 Nix supra note 4.
9 Note the following sections on various sentencing tools are not discussed in any particular order or priority. We address incarceration first because it is one of the most divisive issues, and because it is the sentencing tool most commonly associated with the criminal justice system.
12 See generally Raymond Paternoster, How Much Do We Really Know About Criminal Deterrence, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 100, no. 765 (2010) at
can serve as an opportunity to provide convicted offenders access to resources for rehabilitation\textsuperscript{13} to minimize risk of recidivism.\textsuperscript{14}

More broadly, incarceration for animal cruelty crimes serves as a deeper acknowledgement of the severity of this crime.\textsuperscript{15} Animal cruelty has historically resulted in little, if any, incarceration for convicted offenders. Even though many state animal cruelty statutes have maximum sentences of several years’ imprisonment, the reality is that the vast majority of cases are settled with plea deals, and offenders are rarely sentenced to more than days or months behind bars for animal cruelty offenses. This reality is beginning to shift as society’s understanding of animal sentience develops, recognizing that animals are individuals worthy of protection and justice in their own right.\textsuperscript{16} Courts and legislatures have, in turn, responded by increasing penalties for animal cruelty crimes as a way of acknowledging that animal abuse is a violent crime.\textsuperscript{17}

For these reasons, the Animal Legal Defense Fund supports the imposition of carceral sentences, when applied thoughtfully and fairly, in animal cruelty cases.

\textit{Fines}

Most animal cruelty offenses carry the possibility of criminal fines. Often such fines are allocated to local humane societies and used to provide much-needed services, such as low-cost spay and neuters for companion animals in the community.\textsuperscript{18} In a few states, criminal fines

\begin{itemize}
\item \url{https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=7363&context=jclc} (describing the history of deterrence theory and its evolution. Paternoster cautions against ascribing too much credence to deterrence theory, as modern studies have found that issues of deterrence are extremely complex, but does acknowledge that certainty of punishment—particularly when perceived as such—can act as a “modest” deterrent.)
\item \textsuperscript{13} \textit{Note}, there are few, if any, resources specifically for the rehabilitation of incarcerated animal cruelty offenders. Such specificity is likely not necessary, because—as will be discussed further in other sections of this statement—there are many different possible motivations and root causes of animal cruelty, including substance abuse, anger management issues, lack of empathy, etc. None of these underlying issues are exclusive to animal cruelty crimes, and programs and resources already exist to address such issues.
\item \textsuperscript{14} 72 C.J.S. Prisons § 57, \textit{But note}, depending on the jurisdiction, jails and prisons may not provide adequate (or even \textit{any}) rehabilitative services and programing. If adequate resources are not assigned to assure rehabilitation and promote accountability, the offender may well emerge from incarceration even more likely to reoffend. The Animal Legal Defense Fund therefore strongly supports prison and jail programs focused on rehabilitation in order to help break those cycles of violence.
\item \textsuperscript{15} Arnold Arluke & Randy Lockwood, \textit{Guest Editors’ Introduction: Understanding Cruelty to Animals,} \textit{SOCIETY AND ANIMALS} Vol. 15 No. 3, 183, 190 (1997).
\item \textsuperscript{18} See e.g. \textit{TENN. CODE ANN.} § 39-14-210; \textit{HRS} § 706-646
\end{itemize}
for animal cruelty convictions are paid into a fund which is then used to care for seized animals in other cases or the prosecution of other abusers.¹⁹ In addition to assisting with the sometimes exorbitant costs associated with caring for seized animals, fines for cruelty offenses (just like fines for any other crime) can serve as a deterrent for future offenses.²⁰ This is particularly true for financially-motivated abusers, such as puppy mill breeders, industrial agriculture corporations, and some animal fighters. If the risk of criminal fine is substantial enough, it may simply outweigh the potential profit gained from animal exploitation. Finally, as with incarceration, criminal fines also serve as recognition of the severity of animal cruelty offenses. Criminal fines are a punitive measure, serving both as a public condemnation of animal cruelty and as a way of impressing upon the offender the antisocial and delinquent nature of his or her actions.

The Animal Legal Defense Fund therefore generally supports the utilization of criminal fines for sentencing in animal cruelty cases. However, there may be some cases in which criminal fines are counterproductive, negatively affecting the defendant’s financial situation and impeding the ability to improve their life course and future treatment of animals.

**Restitution**

When a defendant’s animals are seized, they are placed in the custody of a caregiving agency until the animals are surrendered, ordered forfeited, euthanized, or returned to their owner. During that time, the caregiving agency is typically responsible for paying the costs of the animals’ food, water, shelter, and medical care.²¹ In most states, upon sentencing for animal cruelty the court may require the defendant to reimburse the caregiving agency for its costs. This is not a punitive measure—it is purely remedial.²² Therefore restitution is not a punishment for animal cruelty, even though it may be ordered at sentencing and may serve as a deterrent for future crimes (insofar as it prevents defendants from forcing others to pay the literal cost of their crimes). The Animal Legal Defense Fund supports mandatory restitution in

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¹⁹ See e.g. DEL. CODE ANN. tit. 16, § 3033F; WASH. REV. CODE § 16.52.200; WYO. STAT. ANN. § 6-3-203
²⁰ Anne Morrison Piehl & Geoffrey Williams, *Institutional Requirements for Effective Imposition of Fines*, Controlling Crime: Strategies and Tradeoffs, 113 (2011) at [https://www.nber.org/chapters/c12082.pdf](https://www.nber.org/chapters/c12082.pdf) (“In summary, fines can be powerfully deterrent for a wide range of possible crimes and potential offender situations. However, for every crime there will be some potential offenders for whom the threat of a fine will simply not be credible or threatening.”)
²² State v. Tarnavsky, 84 Wash. App. 1056 (Washington Appellate 1996) (finding that bond-or-forfeit schemes requiring the defendant to post a security for costs of care for forfeit the animal are remedial and not punitive); see also State v. Branstetter, 181 Or. App. 57 (Oregon Appellate 2002) (finding that bond-or-forfeit schemes do not violate the excessive fines provision of the 8th Amendment.) *Note* although both of these cases concern an order to provide costs of care before the defendant is convicted of criminal charges, the same logic dictates that restitution ordered as part of sentencing would likewise be remedial rather than punitive. Additionally, the fact that restitution for costs of care may be ordered before conviction and, in many states, regardless of conviction, further supports the assertion that restitution is not punitive.
animal cruelty cases to ensure that animal cruelty prosecutions are not cost-prohibitive, and to ensure rehabilitation for victimized animals.

In cases where the offender harms or kills an animal belonging to another person, the Animal Legal Defense Fund supports court-ordered restitution to the animal’s guardian. The guardian of a victimized animal might expend hundreds, even thousands, of dollars on veterinary or other care to rehabilitate the animal. Such costs ought to be borne by the perpetrator who still owns the animal and therefore is still financially responsible for any needed care. Finally, in cases in which the animal will require long-term medical care as a result of the offender’s actions, the defendant ought to bear that future cost. Such forward-looking damages are more appropriately recovered in a civil action, but may be considered in criminal sentencing.

Forfeiture and possession bans

Forfeiture and possession bans are two of the most effective ways to prevent recidivism in animal abuse cases. The Animal Legal Defense Fund supports mandatory post-conviction forfeiture of cruelly treated animals. When a defendant is convicted of animal cruelty, the victimized animal should not be returned to the individual. Every effort should be made to rehabilitate and rehome the animal, ensuring that the animal does not suffer further abuse.

The Animal Legal Defense Fund also supports mandatory possession and ownership bans for those convicted of animal cruelty. As of January 2019, 36 states either explicitly permit or require the court to limit future contact with animals as a part of sentencing. As is further explained in the following section, even absent such an authorizing statute, courts are generally given broad authority to implement possession bans as part of probation or conditional suspended sentences. Possession bans typically prohibit a convicted offender from owning, possessing, or residing in a household with an animal for a period of time—often five years following a misdemeanor conviction, and fifteen years following a felony conviction. Animal contact is a privilege, not a right, and requires compliance with the minimum standards of care set forth under animal cruelty laws. Therefore those who violate animal protection laws have forfeited that privilege, and ought to be prohibited from owning or possessing animals for a length of time determined by statute or by the court.

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24 See e.g. DEL. CODE ANN. tit. 11, § 1325; OR. REV. STAT. § 167.332; R.I. GEN. LAWS § 4-1-40; W. VA. CODE § 61-8-19.
25 Some states have procedures which could allow a convicted offender to petition the court in order to regain this privilege (See e.g. Cal. Penal Code § 597.9). These provisions provide flexibility allowing judges to exercise discretion and consider each case individually. However, the Animal Legal Defense Fund does not support petitions which reinstate guardianship rights based on a showing of economic hardship (e.g. statutes which would permit a person who raises farm animals and is convicted of cruelty to escape a possession ban because he or she can demonstrate a loss of income).
Probation and Conditional Suspended Sentences

Probation and conditional suspended sentences are similar in that they both impose certain conditions on convicted offenders; however probationary sentences allow authorities to more closely monitor offenders to ensure compliance with those conditions. Depending on the facts of the case, either may be appropriate for an animal cruelty offense. Conditions of probation or suspended sentences may contain requirements preventing the offender from treating animals cruelly, or from owning or possessing animals at all. The conditions may also require the offender to perform community service or undergo some form of intervention, such as humane education, anger management, or psychological treatment. All of these measures, depending on the offender and the facts of the case, may be productive ways of addressing the root causes of animal cruelty and may prevent future offenses. Therefore the Animal Legal Defense Fund supports the imposition of probation and conditional suspended sentences in some criminal cases, provided that the conditions are comprehensive and thoughtfully instituted, and are rigorously enforced.

Community service

The Animal Legal Defense Fund generally supports the imposition of community service, particularly as a condition of probation or a suspended sentence, as it may serve as an appropriate sentence for some animal cruelty crimes. However, the Animal Legal Defense Fund strongly cautions against sentencing an animal abuser to perform community service at an animal shelter, humane society, or other organization which permits or requires unsupervised contact with animals. Doing so could provide a convicted offender with a new pool of potential victims, and could endanger the health and wellbeing of animals at that organization.

Humane education and Animal Care Education

The terms “humane education” and “animal care education” are often conflated. Generally speaking, “humane education” refers to teaching programs designed to foster compassion and respect for humans, animals, and the environment. Humane education focuses on creative and

26 21A Am. Jur. 2d Criminal Law § 817 (“The law also distinguishes the suspension of a sentence from the imposition of probation. Both probation and suspension of sentence involve the trial court’s discretionary, and conditional, release of a convict from the service of a sentence within the penal system. However, a probated sentence is served under the supervision of probation officers whereas a suspended sentence is served without such supervision but on such legal terms and conditions as are required by the sentencing judge.”)

27 Model Penal Code § 301.1. Conditions of Suspension or Probation., (Establishing that “(1) When the Court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this Section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so. (2) The Court, as a condition of its order, may require the defendant: ... (l) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.”)

28 Id.
critical thinking, equipping students with the tools necessary to make compassionate choices. Research suggests that employing such courses proactively—such as engaging juveniles before they commit offenses—may increase empathy and pro-social behaviors. However, there has been little research on whether these courses are effective means of intervention after a juvenile has already committed animal cruelty. Furthermore, such courses are not widely available, and those which are established have widely varying curricula. Therefore more research into best methods and standardization of those methods is necessary.

“Animal care education,” on the other hand, refers to teaching programs designed to impart technical knowledge about what level and type of care animals need to maintain health and wellbeing, as well as appropriate and responsible ways of interacting with animals. These courses may include information on understanding animal communication (particularly expressions of fear, discomfort or pain), best practices for training animals, and species-specific maintenance needs. If the animal cruelty in question stemmed from an ignorance of how to properly care for or interact with animals, animal care education may be a suitable solution. However, as with humane education, there has not been extensive research conducted on the effectiveness of animal care education courses and their role in reducing recidivism.

Therefore the Animal Legal Defense Fund cautiously supports sentencing to humane education in cases involving juveniles, as well as animal care education for cases of relatively minor animal abuse or neglect stemming from ignorance. The Animal Legal Defense Fund furthermore hopes that future research will shed more light on the efficacy of humane education and animal care education, and the best practices for standardized, successful intervention.

**Psychological evaluation and treatment**

Psychological evaluation and treatment is an important component of rehabilitation for many animal cruelty offenders, and has been shown to reduce rates of recidivism. The Animal Legal Defense Fund therefore supports mandatory psychological evaluation for animal cruelty offenders, particularly juveniles, animal hoarders, and perpetrators of aggravated animal cruelty.

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cruelty.\textsuperscript{32} The Animal Legal Defense Fund further supports court-ordered psychological treatment if the evaluation and other relevant surrounding factors suggest such treatment would be advisable.

Evaluation of an animal abuser can be informative because the type of intervention and the effectiveness of psychological treatment will vary from case to case. For example, certain animal hoarders are motivated by a compulsive need to accumulate or retain animals, which can, to a certain degree, be treated with psychological counseling.\textsuperscript{33} Contrastingly, puppy mill breeders tend to be motivated by financial gain (albeit fueled by a lack of empathy), which is a motivation less amenable to psychological intervention.\textsuperscript{34} Both of these cases might result in the mass-neglect of dozens of animals and appear factually similar, but the type and utility of psychological counseling will differ significantly.

Recently policymakers have begun exploring the possibility of providing or requiring offense-specific treatment for animal abuse cases. Because there are so many different forms of animal abuse and motivations for cruelty, such treatment plans would need to be multifaceted enough to adapt to each case. There have not been enough clinical studies to determine whether offense-specific treatment is preferable for addressing for animal cruelty. However, many of the issues underlying animal cruelty can be traced back to issues which are commonly addressed by clinicians—such as compulsive behaviors or lack of empathy. Therefore while offense-specific programs may be useful, they are likely not strictly necessary for jurisdictions looking to implement mandatory psychological evaluation and treatment.\textsuperscript{35}

\textit{Other Forms of Intervention and Diversion Programs}

Upon evaluation, it may become clear that the defendant may benefit from a diversion program to address an underlying issue. For example, many animal cruelty crimes—as with many crimes in general—occur while the perpetrator is under the influence of drugs or alcohol.\textsuperscript{36} A rehabilitation program to treat substance abuse or addiction may prevent future offenses. Similarly, in cases related to domestic violence or resulting from a lack of control, the defendant may benefit from domestic violence or anger management intervention programs.\textsuperscript{37}

\textsuperscript{34} Id. \textit{Note}, Patronek and Nathanson distinguish three types of hoarders, “the overwhelmed caregiver,” “the rescue hoarder,” and “the exploitive hoarder.” Operators of a puppy mill would fall within the third category, which they identify as the “most difficult or problematic type to deal with.”
\textsuperscript{36} Michael G. Vaughn et al., \textit{Correlates of Cruelty to Animals in the United States: Results from the National Epidemiologic Survey on Alcohol and Related Conditions}, J. Psychiatr Res. (Oct. 2009) at \url{https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2792040/}.
\textsuperscript{37} Gupta, \textit{supra} note 33.
These interventions can treat root issues underlying animal cruelty crimes, and therefore may provide more sustainable solutions to prevent reoffending.

Although diversion programs can be useful tools to assist with rehabilitation, in cases involving adults who have committed felonies and other serious crimes, the Animal Legal Defense Fund does not support sentencing to diversion programs without any other punitive measures. Furthermore, the implementation of diversion programs should always be at judicial discretion, when the sentencing judge determines such a program would be appropriate and effective in a specific case. Therefore the Animal Legal Defense Fund does not support legislation mandating the use of diversion programs, even for low-level offenses.

As stated previously, the Animal Legal Defense Fund supports primarily rehabilitative efforts in juvenile cases. Therefore diversion programs, when coupled with mental health evaluations and, if necessary, treatment, may be appropriate solutions in cases concerning juvenile offenders.

**Conclusion**

No two animal abuse cases are identical; each will require an individual assessment to determine the most just and effective sentencing. The most important considerations are that time and attention are given to each prosecution of animal cruelty, that the offenses are taken seriously, and that animals are protected from future cruelty. The Animal Legal Defense Fund continues to consider new proposed criminal justice reforms as they might affect cruelty cases and our ability to best protect and get justice for animal victims.