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# ANIMAL AS EVIDENCE TOOLKIT<sup>©</sup>

## PART I

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### BACKGROUND

American society is growing more sensitive to the inhumane treatment of animals, and most people agree that unjustified cruelty to animals should be punished. However, due process laws and rules of evidence procedures may hinder the immediate taking of an abused animal from an owner or from an owner's property. Animals are legally classified as property in the U.S. which requires that prosecutors, animal control officers and animal rescuers follow due process laws and the rules of evidence concerning the taking of property in their respective State.

In Georgia, property is defined as "Realty and personalty which is actually owned" (O.C.G.A. §44-1-1). The term "personalty" or personal estate means all property which is movable in nature, has inherent value or is representative of value, and is not otherwise defined as realty" (O.C.G.A. §44-1-3(a)).

"Property rights may exist in all animals, birds, and fish. To constitute property in those which are wild by nature as distinguished from domestic animals, they must be in the actual possession, custody, or control of the party claiming a property interest. Possession, custody, or control of wild animals may be obtained by taming or domesticating them, by confining them within restricted limits, or by killing or capturing them" (O.C.G.A. §44-1-8(a)).

In the great majority of states, even before its owner is convicted of an animal cruelty charge, statutes may explicitly authorize law enforcement agencies or their representatives to seize, impound, or remove any abused or neglected animal from an owner's possession. Some of these statutes permit seizure if mistreatment is observed by an officer with authority to seize the animal. Others require a warrant for the seizure, or permit the seizure only when the person in charge of the animal is arrested for animal cruelty.

In Georgia, O.C.G.A. § 4-11-9.2(c) states "The Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer is authorized to impound any animal: (1) That has not received humane care; (2) That has been subjected to cruelty in violation of Code Section 16-12-4; (3) That is used or intended for use in any violation of Code

Section 16-12-37; or (4) If it is determined that a consent order or other order concerning the treatment of animals issued pursuant to this article is being violated." Before the animal can be impounded, "a licensed accredited veterinarian approved by the Commissioner or a veterinarian employed by a state or federal government and approved by the Commissioner, shall, at the request of the Commissioner, his or her designee, an animal control officer, a sheriff, a deputy sheriff, or other peace officer, examine and determine the condition or treatment of the animal" which then may be used as evidence at a due process hearing (O.C.G.A. § 4-11-9.2(d)).

In *Parratt v. Taylor*, (451 U.S. 527 (1981)), the Supreme Court held that procedural due process is not violated when a person, without a prior notice or hearing, is deprived of property by the "random and unauthorized act" of a state employee, if a remedy is available after the deprivation.



In the case of impoundment of an animal, the Due Process Clause of the Fourteenth Amendment is not violated when a state employee intentionally deprives an individual of property, provided that the state makes available a meaningful post-deprivation remedy. (*Hudson v. Palmer*, 468 U.S. 517, 533 (1984)). Georgia provides at least two potential post-deprivation remedies. (See O.C.G.A. §§ 51-10-(1-6) (providing cause of action for injuries to property); and O.C.G.A. §§ 28-5-(80-86) (providing for a claim against the state or any of its agencies for deprivation of property)).

### **PROBLEMS WITH ANIMALS AS EVIDENCE**

In most states, an animal is considered personal property. However, an animal is not like most property that is confiscated in criminal proceedings. An inanimate object remains in the same condition it was on the day of seizure as on the day of trial. Animal cruelty cases differ from all other prosecutions in that the primary “evidence” in the case is a living creature that must be housed, fed and cared for, sometimes for long periods. Prolonged stays in a shelter for a sick, neglected and abused animal either end with the animal being revived and rehabilitated, or with the animal failing to thrive and being euthanized. Animals can suffer additional stress, disease or harm from improper or prolonged confinement in an animal shelter.

Either way, arguments that the “evidence” has deteriorated or has miraculously recovered poses problems for prosecutors trying to prove criminal abuse by the owner. Extended shelter stays of impounded animals can be avoided by conducting prompt dispositional hearings of seized animals in accordance with the due process rights of the animal’s owner. Rules concerning evidence, however, pose a different set of challenges when trying to prove an animal cruelty case depending on which state the animal may reside.

### **PROVING THE CASE**

To prove an animal abuse case, evidence must prove that a crime was committed and that the defendant was the one who committed the crime. Animal cruelty and neglect cases can be some of the most complex cases that investigators and prosecutors handle.

Some of the reasons include:

- (1) There is no victim to give a statement or testify;
- (2) Proving intent requires the gathering and arguing of circumstantial evidence;
- (3) Scientific and forensic evidence is often required to prove the manner and cause of injuries and/or death;
- (4) Large-scale seizure of animals (from an animal fighting enterprise, puppy mill, or hoarding situation) results in financial burdens on communities that may be required to house the animals as evidence;
- (5) Opinions regarding animals and the laws that protect them can be difficult to address in jury trials; **and**
- (6) Community response to animal abuse cases is often strong resulting in an outpouring of support (or criticism) to investigators and prosecutors who are confined by the laws protecting animals (taken from “Difficulties with Animal Abuse Cases” at [http://www.ndaa.org/animal\\_cruelty.html](http://www.ndaa.org/animal_cruelty.html)).

Direct evidence of animal abuse is often lacking because animal abusers typically commit their acts of violence within the privacy of their own homes, ensuring that there are no witnesses to the abuse. Thus, there is usually only indirect or circumstantial evidence in the form of medical testimony, law enforcement officer’s reports, animal control testimony, proof of prior abuse or neglect of other animals, and hearsay statements. This evidence, even when admitted, is often not enough to prove beyond a reasonable doubt that the injury was intentional and caused by the accused. There are many challenges in admitting much of this evidence.

A successful animal cruelty prosecution often closely parallels a violence or sexual assault case more than a prosecution for a property crime. Successful prosecution of crimes against animals often requires specialized



knowledge not only of the relevant laws, but also of veterinary medicine, veterinary forensics, animal care and the practices used in organized crimes against animals such as dogfighting and cockfighting. Animal care and control agencies, Humane Societies, Societies for the Prevention of Cruelty to Animals (SPCAs) and veterinary associations can be important allies to prosecutors in successfully pursuing animal cruelty cases.

Animals cannot generally be brought into the court room, and even if they could, their physical condition most likely will have improved by time the case goes to court. One of the best pieces of evidence that one can use to document animal cruelty and neglect is photographic evidence. It is critical that a judge or jury see the poor condition the animals were in on the day they were seized to convey the extreme suffering, emaciation, starvation, injuries, filthy conditions, and overall lack of care the animal endured.

The primary evidence for the prosecution of most animal cruelty cases will be the records and evidence compiled by the cruelty investigators, police officers or their agents involved in the initial response to the complaint. Investigators who have received in-depth training on appropriate investigative techniques most likely will include thorough photographic and/or video documentation of the conditions found, inventories of other relevant evidence that may have been seized, reports of any eyewitness testimony, and any other relevant case data such as weather information in cases of extreme neglect.

Another challenge is to justify admission of animal abuse evidence into one of the exceptions of Federal Rules of Evidence. The Federal Rules of Evidence, particularly Rule 404(b), and similar state rules, prevent the admission of character evidence or evidence of prior bad acts to show the likelihood that the defendant committed the crime in question. (See *Animals as Evidence – Part II*).

Propensity evidence can be introduced when the evidence “serves both a proper and relevant purpose for admission, and is more probative than prejudicial” (*United States v. Naranjo*, 710 F.2d 1465, 1467 (10th Cir. 1983)). FRE 404(b) allows admission of prior bad acts in order to show “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

Once the defendant brings his character into the case, the prosecution may then bring in prior bad acts evidence in rebuttal. Collecting the facts as to a defendant’s prior criminal history is an important step in the charging process. The record may be used to evaluate whether the new crime can be charged as an aggravated case, to show absence of mistake or accident, and to ensure the correct application of a state’s felony sentencing guidelines. Proof of severe injury, suffering, or confirmation that a body part was impaired or disfigured are often necessary to elevate a misdemeanor to a felony offense.

The effective prosecution of an animal abuse case has many benefits for a community. It can provide a compassionate response to animals at risk as well as a strong deterrent to the perpetrator to not harm other animals. It can provide an added tool for the protection of those who are victims of family violence which is many times connected to animal abuse cases.

It can provide an opportunity for prosecutors to develop new, strong and helpful allies in the protection of their communities. Finally, it can help a community become a safer and more humane place to live for both its human and animal inhabitants.



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*Credit to Kaye Klapper*

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