

27TH ANNUAL
ANIMAL LAW CONFERENCE

PORTLAND, OREGON
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Oregon Animal Cruelty Prosecution

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Oregon Animal Cruelty DDA



Oregon Animal Cruelty Laws: A Quick Overview



Oregon Animal Cruelty offenses generally break into two categories:

- **Animal Neglect**
 - Failing to provide “minimum care” for an animal in a person’s control or custody.
- **Animal Abuse**
 - Unlawfully and intentionally, knowingly, or recklessly causing injury or death to an animal

Offenses range from Class C Misdemeanors to Class C Felonies.

In Oregon, state criminal law is enforced by District Attorneys

- Each of Oregon’s 36 counties have an elected DA, who is responsible for enforcement of the state criminal code on behalf of the State.
- Counties and cities may have their own local animal codes, enforced by a county or city-level official.



Oregon Animal Cruelty Laws: Selected Timeline

September 2013: Senate Bill 6 becomes law

- Creates felony animal neglect crimes
- Increases penalties for felony animal cruelty offenses
- Creates registration scheme for animal rescue entities
- Establishes “legislative findings”

October 2013: Animal Cruelty DDA position established

July 2015: Oregon State Police commission Oregon Humane Society Agents

June 2017: HB 2732 (Dogs in Hot Cars Bill) goes into effect



Animal Cruelty DDA (AC-DDA) Overview

- Position Basics:
 - Began September 2013, one month after SB 6 went into effect statewide
 - Funding for the position provided by ALDF
 - Position housed in Benton County (Corvallis) District Attorney's Office
 - Position currently funded through 2021
- Practice Areas:
 - Specially prosecutes animal abuse/neglect throughout the State of Oregon
 - Appointed in 21 of 36 Oregon Counties, on over 150 individual cases
 - Assists law enforcement, prosecutors, and others on non-appointed cases
 - Trains lawyers, investigators, animal services, and others
 - Serves as contact for animal cruelty stories in the media



Animal Cruelty Investigation

Common issues

- Witness reluctance
- The “training gap”
- Local code overlap
- Law enforcement/animal services resources
- Disappearing evidence (both before and after investigation)
- Housing for living evidence
- Lack of forensic services on animal cases



Animal Cruelty Investigation

What do we do well and what can we do better?

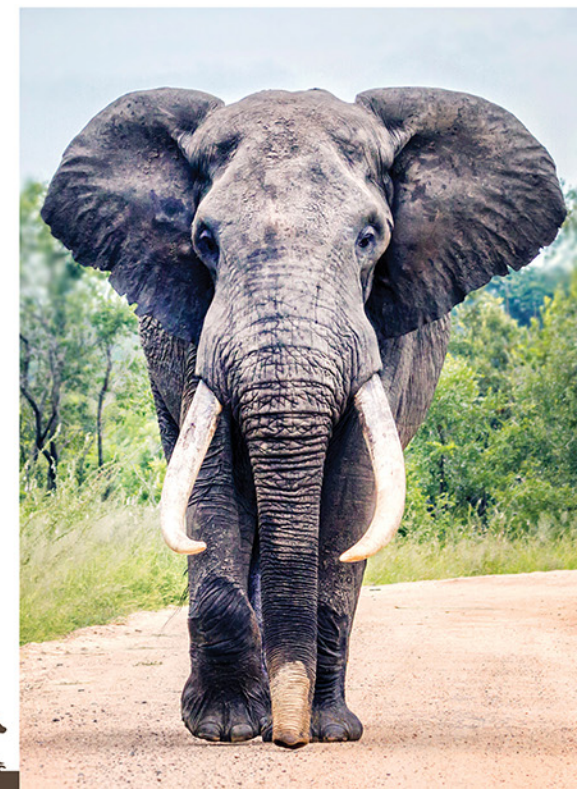
- Raise public awareness of evidentiary requirements on criminal cases.
- Increase/improve training for both law enforcement and animal services.
- Fund positions and training for animal services officers.
- Work with existing forensic labs to improve chain of custody procedures, and ensure they know when they are dealing with a criminal referral.
 - Can police labs help?
- Speak directly to animal rescue/animal welfare groups about how to best report and document crimes.
- Move for pre-trial forfeiture!



Animal Cruelty Prosecution

Oregon prosecutors work hard to ensure that animal cruelty offenses are fully prosecuted. However:

- Animal cruelty is often difficult to prove and (relatively speaking) easy to hide from law enforcement. As a result, for every hundred DUII or domestic violence case with a human victim, they may see one or two animal cases.
- Animal cruelty law is unique and complicated, and updates regularly.
- Oregon prosecutors are busy!
- Judges and the defense bar suffer from these issues as well, slowing the system further.



Animal Cruelty Prosecution

What do we do well / What can we do better?

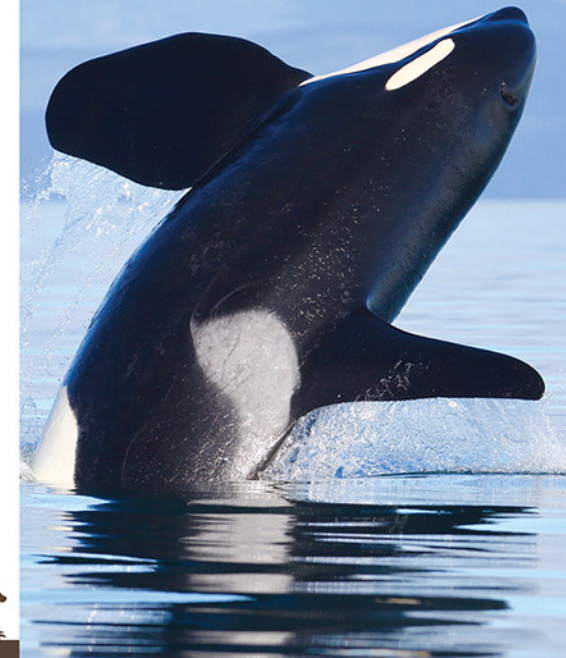
- Create and fund resource prosecutors so offices can adequately cover more complex cases.
- Offer training for prosecutors, defense attorneys, and judges, including “quick guide” training materials.
- Send updates to attorney lists of changes in the laws and caselaw.



Animal Cruelty Prosecution



Animal Abuse		Animal Neglect	
Misdemeanor Elements Animal Abuse 2 (ORS 167.325) (B Misd) 1) Unlawfully and intentionally, knowingly, or recklessly causing physical injury to an animal. Animal Abuse 1 (ORS 167.330) (A Misd) 1) Unlawfully and intentionally, knowingly, or recklessly causing serious physical injury to an animal; or 2) Unlawfully and intentionally, knowingly, or recklessly causing the death of an animal.	Felony Elements Animal Abuse 1 (ORS 167.330) (C Fel) (SGL 6): Misdemeanor Animal Abuse 1 elements PLUS: • Defendant has one or more prior convictions for a DV assault crime or animal abuse; or • The offense was knowingly committed in the immediate presence of a minor. Agg. Animal Abuse (ORS 167.322) (C Fel) (SGL 6): 1) Maliciously killing an animal; or 2) Intentionally or knowingly torturing an animal. ("Torture": An action taken for the primary purpose of inflicting pain.)	Misdemeanor Elements 1) Defendant had custody or control of an animal. 2) Defendant, with criminal negligence, failed to provide minimum care for the animal. 3) (For Animal Neglect 1 only) The lack of minimum care resulted in serious physical injury (see reverse) or death.	Felony Elements Animal Neglect 1 (ORS 167.330) (C Fel) (SGL 6 or 7) Misdemeanor elements PLUS: • 10+ animals neglected in the criminal episode; or • The offense was knowingly committed in the immediate presence of a minor; or • The defendant has one or more prior convictions for animal neglect. Animal Neglect 2 (ORS 167.325) (C Fel) (SGL 6 or 7) Misdemeanor elements PLUS: • 11+ animals neglected in the criminal episode; or • The offense was knowingly committed in the immediate presence of a minor PLUS the defendant has one or more prior DV convictions; or • The defendant has two or more prior convictions for animal neglect.
"Physical Injury" and "Serious Physical Injury" ORS 167.310 (10) and (13) Physical Injury: Physical trauma, impairment of physical condition or substantial pain. ("Physical trauma" is "fractures, cuts, punctures, bruises, burns or other wounds.") -This is broader than the Chapter 161 "physical injury" definition. Serious Physical Injury: A physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ. -Most animal abuse cases cannot be proven without testimony from a licensed veterinarian or other animal care specialist stating that the animal suffered a physical injury or serious physical injury.		"Criminal Negligence" ORS 161.085 (10) Failure to be aware of a substantial and unjustifiable risk that an act (or a failure to act) will cause a particular result. The failure is a gross deviation from the standard of care that a reasonable person would follow. -Unlike for reckless crimes, in a criminal negligence case the State does not need to prove "conscious awareness and disregard" of a risk. Instead, the question is simply: "Did the defendant fail to recognize a risk any reasonable person would have in this situation?"	
Animal Abuse 1 ("cruelly causes death") vs. Aggravated Animal Abuse ("maliciously kills") Maliciously: "Intentionally acting with a depravity of mind and reckless and wanton disregard of life." ORS 167.322 (3) (a) -This is a mental state that the state must prove. Cruelly: Not defined in the ORS. "Cruelly" appears to relate to the manner of killing, contrasted with "humane" methods. State v. Pinard, 255 Or App 417 (2013)		"Minimum Care" ORS 167.310 (9) Care sufficient to preserve the health and well-being of an animal. Emergencies and circumstances beyond the reasonable control of the defendant are excluded. ORS 167.310 (9) (a)-(f) contains a non-exclusive list of what is considered "minimum care." -Most animal neglect cases cannot be proven without testimony from a veterinarian or other animal-related expert stating that the care provided was below minimum care.	
Other Crimes and Common Issues		Pre-Trial Forfeiture	
Animal Abandonment (ORS 167.340) (B Misd) • Intentionally, knowingly, recklessly or with criminal negligence leaving a domestic animal or an equine at a location without providing minimum care.	Prohibition Against Possession (ORS 167.332) (C Misd) After being convicted of an animal cruelty offense, it is against the law for a person to possess certain animals.* The length of the prohibition is: • For a Misdemeanor = 5 years from date of conviction • For a Felony = 15 years from date of conviction These persons are prohibited from possessing: • Domestic animals, and all animals of the same genus against which the crime was committed. If this prohibition applies, it cannot be lifted unless and until the defendant moves for and is granted a waiver by the court. * There is a "commercial livestock operator" exception. See statute.	Requirements (ORS 167.347) 1) The animal was impounded by a police officer under ORS 167.345. 2) The officer had probable cause to believe the animal was being subjected to treatment in violation of one of Oregon's animal cruelty laws. 3) The animal is held by a county animal shelter or another animal care agency. 4) The District Attorney has filed criminal animal cruelty charges.* 5) The seizing county, the animal care agency, or the District Attorney must move for pre-trial forfeiture. Notice must be given to the defendant and any other potential claimants, either personally or by publication. *Charges do not need to be filed for every animal on which forfeiture is sought.	
Sexual Assault of an Animal (ORS 167.333) (C Fel) (SGL 6) 1) Touching or contacting, or causing an object or another person to touch or contact, the mouth, anus or sex organs of an animal or animal carcass; or 2) Causing an animal or animal carcass to touch or contact the mouth, anus or sex organs of a person; 3) For the purpose of arousing or gratifying the sexual desire of a person.	Plea Bargain/Sentencing Considerations Multiple convictions for individual animals do not merge. See, e.g., State v. Hess, 273 Or App 26 (2015). Suggested Probation Conditions -Prohibit defendant from possession of all animals—use definition of "animals" at ORS 167.310 (3). -Affirm the statutory Prohibition Against Possession applies. -Dispossess all animals the defendant owns, especially when continued possession would be unlawful. -Order restitution, per ORS 167.350, for costs incurred in caring for the animal(s).	The Hearing At a hearing on the motion, a judge must make the following findings (movant's burden): 1) Whether (to a probable cause standard) the animal was subjected to treatment in violation of an animal cruelty law. 2) A bond amount for the animal's costs of care from the date of seizure to the expected date of trial.	
Exceptions and Exemptions -Practices of "good animal husbandry" (e.g.: dehorning, docking, and castration) are not Animal Abuse 1 or 2. -ORS 167.335 contains a list of circumstances (e.g.: livestock, fishing, rodeo) which also require proof of "gross negligence."	Expungement -A motion under ORS 137.225 should not be granted to a person still subject to the Prohibition Against Possession.	Voluntary Surrender If properly done, voluntary surrender of an animal removes the need for pre-trial forfeiture. 1) Voluntary surrender can be done at any time, including during the seizure. 2) The surrender should be in writing (consult animal services or the impounding agency for the proper forms). 3) Ensure that the suspect is the sole owner, or that all people with an ownership interest in the animal have otherwise agreed to the surrender. Contact Animal DDA Jake Kamins (jacob.kamins@co.benton.or.us) for a pre-trial forfeiture checklist and sample forfeiture forms.	
Oregon Animal Cruelty DDA Jake Kamins Email: jacob.kamins@co.benton.or.us Phone: (503) 953-2122 Twitter: @AnimalDDA Version 1.0 Edited: May 2019 DO NOT REPRODUCE WITHOUT PERMISSION			



Animal Cruelty Charging and Sentencing



The positive:

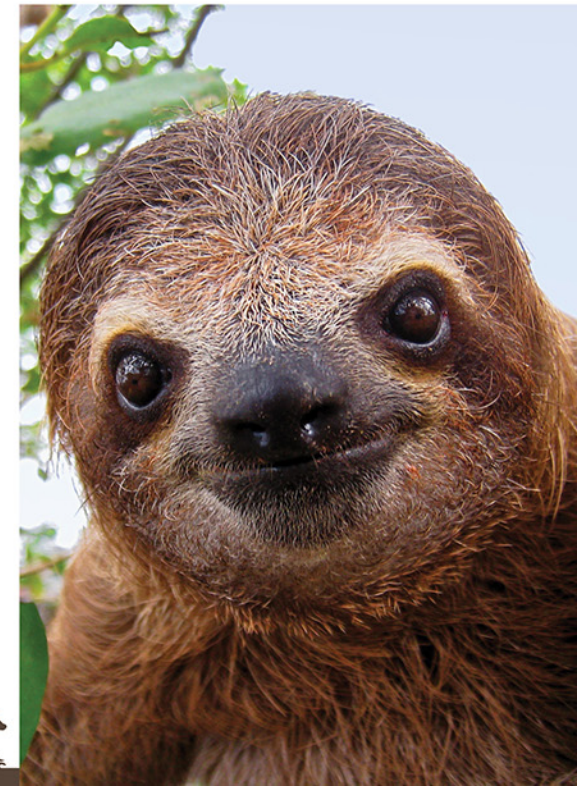
- “Legislative findings” (ORS 167.305) (edited)
 - **Animals are sentient beings capable of experiencing pain, stress and fear.**
 - **Animals should be cared for in ways that minimize pain, stress, fear and suffering.**
 - The suffering of animals can be mitigated by expediting the disposition of abused animals.
 - The suffering of animals at the hands of unlicensed animal rescue organizations can be reduced by requiring such organizations to comply with regulations.
 - Oregon has an interest in facilitating the mitigation of costs of care incurred by agencies and individuals that provide treatment for impounded animals.
 - Agencies that care for animals have an interest in mitigating the costs of the care and treatment. They may mitigate those costs through funding that is separate from, and in addition to, restitution and/or forfeiture bonds.
 - Use of pre-conviction civil remedies is not an affront to the presumption of innocence.



Animal Cruelty Charging and Sentencing

The positive, continued:

- Oregon recognizes animals as “victims” for purposes of sentencing.
- Restitution can be ordered for care of abused/neglected animals through sentencing date (not just “making them whole”).
- Animal cruelty felonies can, with enough aggravating factors or a bad enough criminal history, qualify for substantial prison time.
- Judges do not have the authority to waive statutory possession ban, except in limited circumstances.



Animal Cruelty Charging and Sentencing



Areas of possible improvement:

- The most serious animal cruelty offenses are categorized as Level 7 felonies, meaning it is overwhelmingly likely that even the worst cases are presumptive probation at sentencing, and even the very worst offenders cannot get more than 5 years prison for a single offense.
- Animals cannot get ongoing costs of care related to injury/illness caused by abuse/neglect.
- Judges have complete authority over sentencing (except for statutory possession ban).
- Statutory possession ban is relatively brief, and violation is a low-level offense.
- Few options for mental health treatment directly related to animal crimes.



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