

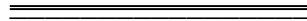
**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Enforcing and Prosecuting Animal Cruelty in Texas



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



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July 2012**

ABSTRACT

There have been changes made to the animal cruelty laws (Smith, 2011a: Smith, 2011b) in Texas (Texas Penal Code, 2011). This stems from legislative bodies nationwide closely reviewing animal cruelty laws and their existing penalties and later imposing felony legislation (Otto, 2005). Texas joined this trend in 2007 after the fatal dog attack of 76-year-old Lillian Stiles (Spears, 2007). At the time of this case, there were no state laws in Texas that expressly concentrated on canine-inflicted homicides.

This paper will describe the how the changes in law has affected the enforcement and prosecution of animal cruelty cases in Harris County, Texas. The use of textbooks, journals, and peer-reviewed literature will assist providing factors that facilitate in enforcing and prosecuting animal cruelty laws. Additionally, the introduction of new laws created in the 82nd Legislative session may offer a better understanding of the laws to assist enforcing and prosecuting animal abuse cases. This paper will conclude in providing additional gateway crimes associated with animal abuse to aide leaders in executing effective strategies for change.

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INTRODUCTION

On November 25, 2005, Lillian Stiles suffered a fatal attack by her neighbor Jose Hernandez's six Pit Bull and Rottweiler mix dogs. Stiles' family and other witnesses reported that her body was mutilated beyond the point of recognition. Hernandez was indicted by a grand jury for criminally negligent homicide, but he was later found not guilty in a jury trial based on an inadequacy in the law. Jurors in the *Texas V. Hernandez* case stated that the district attorney did not prove that Hernandez knew the dogs were dangerous (Spears, 2007).

As a direct result to the Lillian Stiles case, Texas State Representative Dan Gattis proposed House Bill (HB) 1355, which helped remove loopholes in the past law that permitted the owners of dangerous dogs to elude punishment. The 2007 Texas 80th Legislative Session was responsible for imposing stiffer penalties for violations of animal related cases (Smith, 2008). Prior to this legislation, crimes such as *Owner's Failure to Secure Dog Who Attacks* (Texas Health and Safety Code, Section 822.005) carried the criminal penalty of a Class C Misdemeanor for a dog owner. A Class C Misdemeanor is punishable by a fine not to exceed \$500 (Texas Penal Code, Class C Misdemeanor). Additionally, if the dog caused serious bodily injury or death, the owner could be punished by a (a) Class A misdemeanor, punishable by a fine up to \$4,000; (b) up to one year in jail; or (c) both (Texas Penal Code, Class A Misdemeanor). House Bill 1355 increased the penalty for Texas Health and Safety Code (THS) Section 822.005 up to a 2nd Degree Felony (Texas Penal Code, 2nd Degree Felony) with a penalty ranging up to 20 years imprisonment for a dog attack that cause the death of a person (*Owner's Failure to Secure Dog Who Attacks*, THS, Section 822.005). Statutory changes in the

law such as HB 1355 is no cure all to animal cruelty cases and does not ensure that offenders will be charged, prosecuted, and receive maximum punishment for animal related cases.

In 2009, Harris County District Attorney Patricia R. Lykos created the Animal Cruelty Section specifically for prosecuting offenders who fight dogs and commit crimes connected with the inhumane treatment of animals (Flynn & Smith, 2009; Smith, 2009). With the rise of animal cruelty related arrests growing in Harris County, the necessity to create such a unit was essential to prosecuting and enforcing animal cruelty cases. In 2010, the Harris County District Attorney's Office/Animal Cruelty Section (DAO/ACS) handled 257 cases (Flynn & Smith, 2009; Smith, 2010; Smith & Burkes-Hodge, 2010; Smith, 2011a; Smith, 2011b; Smith, Milligan, & Burkes-Hodge, 2012) which included 43 felonies such as dog fighting, drug possession, and felon in possession of firearm (Smith, 2010; Smith & Burkes-Hodge, 2010; Smith, 2011a; Smith, 2011b; Smith, Milligan, & Burkes-Hodge, 2012). There were also 214 misdemeanor cases prosecuted, which included criminal mischief, theft, animal cruelty to livestock animals, and public lewdness (Smith, 2010; Smith & Burkes-Hodge, 2010; Smith, 2011a; Smith, 2011b; Smith, Milligan, & Burkes-Hodge, 2012). According to Smith (2011a), there were 130 animal cruelty cases prosecuted and 23 other crimes that stemmed from the cruelty cases (Cook & Flynn, 2011; Flynn & Smith, 2009; Smith, 2010; Smith & Burkes-Hodge, 2010; Smith, 2011a; Smith, 2011b; Smith, Milligan, & Burkes-Hodge, 2012).

Considering the importance of animal abuse and its potential to lead to other violent crimes, law enforcement and prosecutors' awareness to the severity of such cases is necessary. According to *United States v. Stevens* (2010), "If society fails to

prevent adults from engaging in this behavior, they may become so desensitized to the suffering of these beings that they lose the ability to empathize with the suffering of humans” (p. 18). In an effort to effectively prosecute and enforce animal cruelty laws in Harris County, Texas prosecutory and law enforcement agencies must address how animal cruelty cases are handled. The innovative new laws created in the 80th (2007) and 82nd (2011) Legislative session should be supported because it may contribute to strengthening existing laws related to the abuse and mistreatment of animals.

POSITION

The problem is how Texas law enforcement officers and prosecutors properly enforce and prosecute the new animal cruelty laws with a variety of increasingly growing penalties. Prior to the 80th Legislative Session of 2009, the maximum penalty for animal related offenses was a State Jail Felony—confinement in a state jail facility from 180 days to two years and a possible fine no more than \$10,000 (Texas Penal Code, State Jail Felony). In less than a five year period, animal cruelty laws have increasingly made advancements toward stiffer penalties. Crimes that imposed fine only can now get an offender 20 years imprisonment. Although prosecutors must still consider legal factors such as type of offense, the amount of evidence and the defendant’s criminal history when making decisions on charge and bond amount, these factors will not impact the seriousness of the cruelty cases. Law enforcement officers and prosecutors are still expected to handle animal related cases like human cases.

In general, law enforcement officers and prosecutors can be considered the gatekeepers of justice. Animal cruelty cases land in the judicial system by a law enforcement officer’s discretion and decision to make an arrest. At that time, a

prosecutor decides if the animal related case is legitimate by assessing if it meets the elements of an animal abuse case and then files charges. Both law enforcement officers and prosecutors' discretion are equally as important in identifying animal abuse cases. According to Kordzek (2010), although there are recent studies examining the features that control the decision-making process of prosecutors, this position supports using animal abuse cases as a framework to guide in other cases.

The link between animal cruelty and domestic violence is a well-known fact in the community (Onyskiw, 2007). In the middle 1970s, the Federal Bureau of Investigations (FBI) first recognized a relationship between human and animal violence when examining serial killers (Ramsey, 2005.) Instinctive reasons in the theory are if a person cruelly and intentionally causes a blameless animal to be harmed, these are factors that point to the lack of empathy, disrespect for social restraint, and a tendency toward aggression (Livingston, 2001). The violence graduation hypothesis and the deviance generalization hypothesis are two basic assumptions that have grown to explain the connection between animal abuse and other criminal activity. These theories are said to be the predictions of future crime and can identify criminal behavior in offenders (Sherman, Farrington, Welsh, & MacKenzie, 2002; Smith, 2011a; Smith, 2011b). The animal welfare community often compares the rights desired for animals and the rights afforded to newborn babies and adult human beings who are mentally incompetent and corporations. Cupp (2009) argued that legal and societal changes concerning animals are best built-in to social contract—contractualist—notions than to the establishment of new rights.

COUNTER POSITION

The increase of animal cruelty legislation is accompanied with its critics of those who debate about what defines an animal. Regardless of the extraordinary advancements made in the legislative process, animal cruelty legislation still remains the subject of much debate. A lot of criticism surrounds the ambiguity of the definitions and exclusions in some statutes (Kordzek, 2010). According to Kordzek (2010), the definitions of an animal differ from state to state, which limits legal protection for animals in a number of states. There are many states that include all animals in the law, making anti-cruelty statutes applicable to every “dumb” creature. According to Livingston (2001), an aspect of defining an animal is if it has vertebrates, which then legally affords the animal the right to be classified as a domestic animal and therefore receive protected under the law.

In Western civilization, animals are considered but human well-being takes priority. Garner (2010) suggested that there is a flaw in previous arguments of this morally accepted view on animal welfare position. This moral orthodoxy does not take into consideration that some animals, along with some humans, are so-called ‘marginal’ humans and lack personhood. To a greater extent, animals do not have a concern in sovereignty, independence, or liberty for its own purpose. Furthermore, animals do not have any interest in sustained life as human beings do; therefore, there is little explanation for the animal welfare argument on an animal’s suffering. Garner (2010) recommended that the implementation of a ‘sentiency position’, whereby animals have no right to suffer, has drastic propositions for the manner in which animals are cared.

This implementation elevates severe types of animal agriculture and scientific measures that impose suffering as morally unlawful.

An additional counter-position is the decision-making process of the prosecutor handling the case. Albonetti (1986) asserted that the development of criminalization by investigating case knowledge that influences prosecuting attorneys' choice to continue to prosecute defendants after grand jury indictments on felony cases. According to Albonetti (1986), organizational decision makers involved in people-processing activities, such as prosecuting attorneys, are met with doubt rising from a failure to independently control all players involved in the change process. Prosecutors depend on a self-made set of decision-making standards when screening cases. When prosecutors endeavor to use a "bounded rationality" on the application of discretion, prosecutorial values can be applicable to screen whether the probability of achieving a jury trial conviction is likely. This judiciousness is one perceptible to concern for successful dealing with victims and witnesses.

The implementation of prosecutorial judgment to proceed with filing charges was studied to investigate the relationship between sources of uncertainty in decision making and choice to start the criminalization procedure (Albonetti, 1987). Organizational theory leaning toward indecision prevention gives the point of view directing the investigation. According to Albonetti (1987), if the maximum likelihood procedure gives an approximation, the total consequence on the likelihood of prosecution of a set of variables determining doubt rising in the background of prosecutorial concern for getting a jury trial conviction.

In further defense of the advance of anti-cruelty laws, the social ramifications must be considered when dealing with animal abuse cases. Hensley, Tallichet, and Dutkiewicz (2012) stated that there are a small amount of studies that have investigated the detailed social circumstances that causes animal cruelty to be a learned act. The authors sought to duplicate results of the Hensley, Tallichet, and Dutkiewicz (2012) research that examined the possibility for the beginning and return of childhood animal abuse to develop into learned conduct. The results of the study were concerned particularly with the relationship of demographic uniqueness and childhood knowledge with observing animal cruelty. The collection of data was taken from 180 inmates housed in both a medium and maximum security prisons in a southern part of the United States. The discoveries in this study showed those youth who first witnessed animal cruelty primarily hurt or killed animals at a much younger age than respondents who had witnessed the abuse committed by a family member. The latter respondents who hurt or killed animals were recidivist of animal cruelty but were much older when they first committed an act of animal abuse.

Shapiro and DeMello (2010) spoke to the growing interest for human-animal studies (HAS). In the last 20 years, there has been a growing popularity in the United States and other countries such as Europe, Australia, New Zealand, and Canada. Shapiro and DeMello (2010) studied the development in the animal human relation field, the rising popularity of therapy programs assisted by animals, the increase of innovative areas of study such as transspecies psychology and critical animal studies, and the significance of animal welfare science.

Attention to the constant problems in the field, includes (a) the traditional customs of universities; (b) the interdisciplinary nature—the characteristics of a combination of two or more academic disciplines or fields of study in the animal human field; (c) the present economic predicament; and (d) common anthropocentrism—regarding humans as the central element of the universe within academia. Shapiro and DeMello (2010) concluded this by stating the apprehension between the academic role and the role of animal supporter and offered some suggestions on how (HAS) could continue to expand.

CONCLUSION

In the last 10 years, animal legislation has been on the rise and has been created to punish offenders who intentionally cause harm or death to animals. Not until the middle of the 1990s did almost all of states have misdemeanor punishments for an animal abuse case. In Texas, legislative changes over the last five have led to stiffer penalties for people who deliberately commit animal abuse cases. Because legislators are affected by the political culture, the political ideology varies from state to state. According to Elazar (1984), political culture is a state's shared thoughts and attitudes regarding the responsibility of government. In many states, animal cruelty laws are likely to be the good.

In an effort to effectively prosecute and enforce animal cruelty laws in Harris County, Texas prosecutory and law enforcement agencies must address how animal cruelty cases are handled. The use of better training of the new laws and its link to more serious crimes can be implemented into an effective action plan. Using the training on the new laws created in 2011, the 82nd Legislative session may contribute to

strengthening law enforcement and prosecutors' existing knowledge of the laws related to animal cruelty. Additionally, when considering an action plan, factors presented in recent research spoke to the increase of the social, behavioral, psychological, and developmental links with animal cruelty. By using a self-report method, Henry (2006) conducted a study that used a sample of 286 college students to investigate the associations between empathy, family environment, attitudes toward animals and participation in animal abuse. The students' scores on the Attitudes Toward the Treatment of Animals Scale (ATCAS) were considerably related with scores presented on the Interpersonal Reactivity Index (IRI), which measured empathy. Henry's research (2006) also discussed the future roles of pain and fantasy in the beginning of animal abuse. The study concluded that the consequence of sexual abuse on animal mistreatment was separate and contains each difference in empathy and feelings toward animals. It is recommended that prior to working with animal abuse cases, a modified version of the ATCAS can be given to officers and prosecutors to assess their commitment to enforcing and prosecuting animal abuse cases.

Although animal cruelty laws are progressively changing, law enforcement officers and prosecutors must stay abreast on the new laws. According to Smith (2011a), the increase in laws for animals has changed the way defendants are prosecuted for violations of animal laws in Texas. The legal system has afforded prosecutors to be very creative with the laws, and more is being done to protect animals and children (Smith, 2012).

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