

Animal Abuse: Crimes and Concerns

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In El Paso, Texas in 2009, a Fort Bliss Soldier and his wife adopted two dogs. Two weeks later, one was dead and the other—a puppy—had suffered a severely broken leg.¹ Recently at Fort Bragg, a Soldier allegedly took two dogs and slit their throats with a knife. He reportedly faces felony charges of stealing dogs, possession of stolen property and animal cruelty. Authorities reported that the Soldier had previously been charged with domestic violence.² These are only a couple of examples of cases of animal abuse within the military, which have garnered the attention and concern of the public.

For anyone who has researched the link between animal abuse and future violent crimes against humans, it is clear these cases present serious implications—even beyond the abuse to the animals involved.³ Perhaps that is why the Federal Bureau of Investigations (FBI) recently decided to include animal cruelty crimes within the Uniform Crime Report-National Incident Based Reporting System. This decision, which goes into effect in 2016, is a significant departure from the prior system which placed animal cruelty crimes under a general “all other offenses” category.⁴ Under this new category, animal cruelty crimes will be considered a crime against society.⁵ This serves as serious recognition of the importance of addressing these crimes. Likewise, state laws provide significant consequences for crimes against animals, as all fifty states now provide felony provisions for animal abuse.⁶

The Department of Defense (DoD) is also in the process of addressing this issue. Currently, there is no specific

provision under the Uniform Code of Military Justice (UCMJ) to address animal abuse crimes. It is an offense to abuse a *public* animal under Article 134, but not a private or stray animal.⁷ This narrow provision leaves most animals without specific protection under the UCMJ.⁸ Article 134, UCMJ is a catch-all provision that is commonly used to address offenses not specifically listed in the Code:

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.⁹

Arguably, an accused may be charged under all three clauses of Article 134. Clause one permits charges for animal abuse as a disorder or neglect to the prejudice of good order and discipline in the armed forces; clause two permits charges as an offense that brings discredit upon the armed forces; and clause three permits assimilation of noncapital offenses under state law for crimes not covered by the UCMJ that happen on an installation within the United States.¹⁰ Animal cases might also be charged under Article 133—Conduct Unbecoming an Officer and Gentleman.¹¹ Further, animal cruelty can be

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¹ Chris Roberts, *Fort Bliss MP Dismissed Over Cruelty to 2 dogs*, EL PASO TIMES (June 19, 2009), http://www.elpasotimes.com/military/ci_12625379.

² The Associated Press, *Fort Bragg Soldier Charged with Taking Owner's Dogs, Cutting Throats*, ARMY TIMES (May 7, 2015), <http://www.armytimes.com/story/military/crime/2015/05/07/fort-bragg-soldier-charged-with-taking-owners-dogs-cutting-throats/70972876/>.

³ See Sherry Ramsey et al., *Protecting Domestic Violence Victims by Protecting Their Pets*, JUVENILE AND FAMILY JUSTICE TODAY, Spring

2010, at 16-20, http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html?referrer=http://search.aol.com/aol/search?enabled_terms=&q=studies%20that%20demonstrate%20strong%20link%20animal%20cruelty%20humane%20violence

⁴ U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION UNIFORM CRIME REPORTING PROGRAM NATIONAL INCIDENT-BASED REPORTING SYSTEM USER MANUAL 48 (2013), <http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs-user-manual>.

⁵ *Id.*

⁶ *Animal Protection Laws of the United States and Canada*, ANIMAL LEGAL DEFENSE FUND, www.aldf.org/resources/advocating-for-animals/animal-protection-laws-of-the-united-states-and-canada/ (last visited July 8, 2016).

⁷ MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 61 (2012) [hereinafter MCM] (emphasis added).

⁸ *Id.*

⁹ See 10 U.S.C. § 934 (2012).

¹⁰ UCMJ art. 134 (2012).

¹¹ *Id.* art 133.

charged as an Article 92 violation if it violates a local animal abuse ordinance or regulation if the offense happened on post.

Article 92 text states the following:

Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.¹²

All of these provisions provide a means to charge these crimes, but without a clear and consistent charge within the UCMJ, it is hard to consistently charge and prosecute crimes against animals.

The Federal Assimilative Crimes Act (18 U.S.C. § 13), is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law—which includes the UCMJ—has not defined an applicable offense for the misconduct committed.¹³ For example, if a person committed an act on a military installation in the United States at a certain location over which the United States had exclusive or concurrent jurisdiction, and the offense is not specifically defined by federal law (including the UCMJ), that person could be punished for that act by a court-martial if it was a violation of a non-capital offense under the law of the State where the military installation was located.¹⁴

State laws represent how animal abuse crimes can be most effectively charged to appropriately prosecute military personnel in the United States. However, as noted in the in a 2009 congressional report on military justice (The Cox

Commission report) there exists a loophole when animal abuse happens outside of the United States.¹⁵ In the report and in a separate letter to the DoD committee on military justice, Committee Chair Walter T. Cox III noted this loophole stating that there was “not an adequate mechanism for holding these servicemembers criminally accountable when they abuse or abandon these non-public animals.”¹⁶ The report further states, “The Commission believes that this loophole should be closed and has submitted a letter to the Department of Defense asking that appropriate action be taken to address this problem.”¹⁷

As a result of the attention to this problem, there is a pending executive order (EO) that would finally add animal abuse crimes to the UCMJ. The pending EO would retitle the current 134 offense from “Abusing public animal” to simply “Animal Abuse.” If signed by the President, there would be two types of charges under this new offense: 1) for abusing, neglecting, or abandoning an animal; or 2) for engaging in a sexual act with an animal.¹⁸ The newly-worded offense would put the UCMJ in line with state animal cruelty laws and provide consistency in charging these crimes on military installations around this country as well as around the world.

These crimes are of particular importance considering the substantial amount of research that confirms the strong link between animal abuse and human violence. The FBI has recognized this connection since the 1970s when bureau analysis of the life histories of imprisoned serial killers suggested that many had also killed or tortured animals.¹⁹ In 1988, an FBI study revealed that animal cruelty could be an early warning sign of a serial murderer.²⁰ Likewise, animal abuse has long been recognized as a red flag in family violence as well as a possible warning sign of future human aggression.²¹ Specifically, research has revealed consistent patterns of animal cruelty among perpetrators of common forms of family violence, including child abuse, spouse abuse, and elder abuse. A national survey of battered women’s shelters determined that 85% of shelters indicated that women seeking shelter at safe houses talked about incidents of pet abuse,²² and additional studies have found that as many as 71% of battered women reported that their pets had been threatened, harmed, or killed by their partners.²³ Animal

¹² 10 U.S.C. § 892 (2012).

¹³ MCM, *supra* note 7, pt. IV, ¶ 60(c)(4)(c)(ii); *Id.* R.C.M. 201(d).

¹⁴ *Id.*

¹⁵ See NATIONAL INSTITUTE OF MILITARY JUSTICE ET AL., REPORT OF THE COMMISSION ON MILITARY JUSTICE 4-5 (October 2009), <http://www.caaflog.com/wp-content/uploads/Report-of-the-Commission-on-Military-Justice-2009.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Manual for Courts-Martial; Proposed Amendments, 77 Fed. Reg. 64,853 (Oct. 23, 2012), <https://www.federalregister.gov/articles/2012/10/23/2012-25852/manual-for-courts-martial-proposed-amendments#h-9>.

¹⁹ See ROBERT K. RESSLER ET AL., SEXUAL HOMICIDE: PATTERNS AND MOTIVES (1988).

²⁰ *Id.*

²¹ M. Muscari, *Juvenile Animal Abuse: Practice and Policy Implications for PNPs*, 18 J. OF PEDIATRIC HEALTH CARE 18, 15 (2004).

²² Frank A. Ascione et al., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women who are Battered*, 5 SOCIETY AND ANIMALS 205, 205-18 (1997); see also Marti T. Loring & Tamara A. Bolden-Hines *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered* 4 J. OF EMOTIONAL ABUSE 27 (2004).

²³ See Flynn, *Battered Women and Their Animal Companions: Symbolic Interaction Between Human and Nonhuman Animals*, 8 SOCIETY & ANIMALS 102, 102-13 (2000); see generally Loring & Bolden-Hines, *supra* note 20.

abusers are five times more likely to commit violent crimes against people, four times more likely to commit property crimes, and three times more likely to have drug or disorderly conduct offenses.²⁴

Further troubling is another study that examined a sample of 44,202 adult males evaluated for sexual misconduct.²⁵ That study found that bestiality was the single largest risk factor and strongest predictor of increased risk for committing child sexual abuse.²⁶ These and many more disturbing studies demonstrate that animal abuse is not only a threat to the animals subjected to this cruelty but also to the humans who live, work or engage with the perpetrators of these crimes.

Accordingly, it is important for judge advocates (JA) to treat cases of animal abuse seriously and until a specific crime of animal abuse is added to the UCMJ, to use existing state laws when available. When assimilation of state law is unavailable, JAs should use the best provisions under the UCMJ, as previously discussed, to prosecute these cases. Likewise, it is important to consider other crimes that might be applicable, in addition to the animal abuse. For example, there could also be violations of larceny, burglary, false official statements or other crimes associated with the incident. Treat animal abuse cases like any other case and charge all applicable crimes in order to present your strongest case. As animals are considered property, it is also important to ensure that the animal is forfeited and not returned to the abuser and if possible to prevent any further ownership of new animals that could be subject to abuse.

In domestic and family violence situations or other cases where there are vulnerable victims at risk, it is important to be aware of potential crimes or threats against the animals in the home. Asking a victim targeted questions about animal abuse might allow for additional charges to be filed as well as provide protection for the non-human victims in the family. Understanding and addressing these concerns may also prevent a domestic violence victim from being manipulated by threats or acts of abuse to a beloved animal, which could result in the victim staying in a dangerous situation in order to protect the animal. This concern is common in domestic violence cases and is being addressed by state laws that allow a victim to add family animals to a domestic violence protection order.²⁷ As we learned during Hurricane Katrina, people will often stay in a dangerous situation to protect a beloved animal.²⁸ Consequently, it is worthwhile to consider

these issues when dealing with any case of interpersonal violence.

Animal cruelty is a serious crime. As research indicates, there are broad implications and incentives, not only within the home but for the military community to devote resources towards actively enforcing and aggressively adjudicating these crimes. Proactively identifying and responding to these offenses is an important way to prevent future violence—not only against animals, but also against humans. Accordingly, the pending Executive Order to add animal abuse to the UCMJ is an important step to effectuate that goal.

²⁴ See CRUELTY TO ANIMALS AND OTHER CRIMES, A STUDY BY THE MSPCA AND NORTHEASTERN UNIVERSITY 8 (1997), <http://www.mspca.org/programs/cruelty-prevention/animal-cruelty-information/cruelty-to-animals-and-other-crimes.pdf>; see also A. Arluke, J. Levin, C. Luke, & F. Ascione, *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, JOURNAL OF INTERPERSONAL VIOLENCE, 14(9) at 963-75 (1999).

²⁵ See G.G. Able, Presentation at the California Coalition on Sexual Offending 11th Annual Training Conference, Emerging Perspectives on Sexual Abuse Management: What can 44,000 men and 12,000 boys with

sexual behavior problems teach us about preventing sexual abuse? (May 16, 2008).

²⁶ *Id.*

²⁷ See National Council of Juvenile and Family Court Judges, JUVENILE & FAMILY JUSTICE TODAY (spring 2010), http://my.ncjfcj.org/resource/publications/Today/spring2010_web.pdf

²⁸ See, e.g., Julia Ray, 'Guardian Angels' Swoop Down from Above to Save Lives, AIR FORCE SPECIAL OPERATIONS COMMAND (Nov. 3, 2005), <http://www.afsoc.af.mil/News/ArticleDisplay/tabid/5003/Article/163560/guardian-angels-swoop-down-from-above-to-save-lives.aspx>.