

ANIMAL
RESCUE
LEAGUE
of BOSTON



The Honorable Patti B. Saris
Chair
United States Sentencing Commission
One Columbus Circle NW, Suite 2-500
Washington, D.C. 20002

In Re: Animal Fighting Guidelines Proposed Amendments

Dear Chief Judge Saris:

The Animal Rescue League of Boston (“ARL”) would like to thank you and the United States Sentencing Commission (“Commission”) for proposing the amendment to revise the penalties for animal fighting offenses currently found at U.S.S.G. § 2E3.1(a)(1). The Commission’s attention to these issues reflects sensitivity to the public’s concern about the continuing need to combat this abhorrent form of cruelty. It also addresses the need for the judiciary to have the ability to fashion meaningful and individualized sentences that will punish the current offender and deter future potential offenders.

As set forth herein, the ARL urges the Commission to increase the base offense level “(BOL)” to Level 16 under §2E3.1(a)(1). We urge the Commission to consider and add specific aggravating factors which would increase the BOL by 2 additional levels for each factor. We urge the Commission to consider additional language and guidance under the upward departure provision for those factors that are not readily quantifiable.

Additionally, we urge the Commission to increase the BOL at §2E3.1(3) to Level 10 for the crime of bringing a child to an animal fight.

Finally, we recommend that the Commission specify that multiple counts involving animal fighting ventures should *not* be grouped together. Other violent crimes involving vulnerable victims are excluded from grouping requirements. *See* U.S.S.G. §3D1.2(d). We believe that animal fighting venture counts -- particularly where those counts that represent a particular fight or venue -- should also be excluded from the grouping requirements.

As basis for our recommendations, we have provided comments on the issues pursuant to the Commission’s request. We respectfully submit our comments as follows:

1. How prevalent are the offenses and do the guidelines adequately address those offenses?

One need only look at the history of animal fighting in the United States – which began in colonial times and continues hundreds of years later despite nationwide opposition -- to

understand its insidious nature and the need for constant and continuous vigilance in order to eradicate this behavior. Although animal fighting has now been declared a felony in all fifty states, there is a clear need for federal oversight due to the ever-expanding nature of criminal behavior associated with animal fighting and the ability of persons involved in such activity to arrange for fights in multiple venues that involve more than one jurisdiction.

The prevalence of animal fighting remains undiminished despite the increased maximum sentence imposed in 2007. Since that change, there have been numerous animal fighting enterprises uncovered by law enforcement including the two largest busts of such operations in the United States.¹ In July of 2009, the largest dog fighting enterprise ever taken down in the United States resulted in numerous arrests in an eight-state operation centered in Missouri. More than 500 dogs were seized.

This case – as well as several others -- illustrates the fact that the current guidelines did not adequately address the crimes. At the sentencing hearing in 2014 for several of the defendants arrested in the July 2009 case in the Middle District of Alabama, U.S. District Court Judge Keith Watkins called [one of the defendant's] actions extremely cruel and noted that the sentencing guidelines then in place were “wholly inadequate” for the number of dogs brutalized by the defendant in question. In his remarks, Judge Watkins also echoed the frustration of other judges, including U.S. District Court Judge Terrence Boyle in the Eastern District of North Carolina, who, in a similar case, was shocked that the guidelines would be 0 to 6 months for such behavior. Judge Boyle gave the defendant the maximum five year sentence after finding a basis for an upward departure.

Here in Massachusetts, ARL's law enforcement department and its shelters have seen the effects of animal fighting continuing to this day. On March 12, 2016, ARL law enforcement responded to a request by a local police department who arrested 24 people on charges of animal cruelty relating to a cockfighting ring. Eighteen birds were seized and five were so badly injured that they had to be euthanized. Evidence of the use of artificial plastic spurs --(referred to as *gaffs* or knives) – was located. This type of case underscores not only the cruelty to animals but the threat to public health and safety caused by such ventures. The birds may have been transported or imported illegally into Massachusetts and may still have to be screened for any potential diseases including avian influenza, mycoplasma gallisepticum, mycoplasma synoviae, mycoplasma meleagridis and Salmonella enteritidis. *See* <http://www.mass.gov/eea/agencies/agr/animal-health/poultry/>. *See also* USDA Biosecurity Guide at www.aphis.usda.gov.

Currently, ARL is sheltering a young pit bull terrier type who was brought into an area veterinary hospital in December of 2015. We have attached a picture of the dog while he was

¹ Other recent cases: In August of 2013, more than a dozen people were arrested in Alabama, Georgia, Mississippi and Texas. 367 dogs were seized along with \$500,000 in cash, firearms and drugs.

In April of 2014, a targeted drug raid in Paterson, New Jersey resulted in the discovery of a large dog-fighting ring in a city home. Of the 21 dogs seized, 18 were puppies. Four dead dogs were also found on the property along with a handgun and \$12,000 worth of crack cocaine and marijuana.

undergoing treatment. *See Attachment A.* When the dog was initially brought in, he was unable to walk, in shock, and deathly ill from severe dog bite wounds. It is the opinion of the treating veterinarian that the dozens of dog bites located on the dog's back as well as both ears, neck, right chest, both elbows and the right hind leg above the hock (ankle) could only have come from a dog fighting situation. Without the extensive emergency care he received, this young dog would have died from these injuries and the subsequent shock and infection.

2. How should the Commission revise the Guidelines to provide appropriate penalties in such cases?

We believe there are several steps to be considered by the Commission with respect to revision of the guidelines. The first step is to increase the BOL for the animal fighting ventures.

The current BOL of 10 with a reduction of 2 levels for acceptance of responsibility provides for a sentencing range of 0 to 6 months for a defendant in Criminal History Category I. That range is simply too low to address the severity of the offenses as illustrated by the cases to which we have referred. An increase of the BOL to Level 16 would, at a minimum and on a plea, provide for a guideline range of at least 12 to 18 months.

With respect to the newly added crime of causing a child under the age of 16 to attend an animal fighting venture, we believe that BOL Level 10 would be an appropriate starting point for sentencing.

3. What, if any aggravating and mitigating factors are involved in these offenses that the guidelines should take into account?

The second step is to consider other ways to provide appropriate penalties that reflect the individual behavior of a defendant. We believe that there should be (1) the addition of specific aggravating factors and (2) a more informative commentary for the upward departure section.

We believe there should be an aggravating factor which adds 2 levels to the BOL if firearms were possessed by the defendant and an additional 1 point (for a total of 3) if it appears that firearms were used to kill animals. We believe this is worthy of an aggravating factor because firearms, while not necessarily present in every case, obviously pose a clear danger to the animals, the participants, the spectators, the community, and to law enforcement when possessed by and/or used by the defendant(s).

We also urge the Commission to consider a 2 level increase for the aggravating factor of illegally possessed drugs. Again, while not necessarily present in every case, the possession of use of illegal drugs, both for humans and for animals, represents a danger not currently contemplated by the current guideline scheme.²

² "Dogs are given vitamins, supplements and drugs to condition them for or to incite them to fight. Commonly utilized vitamins, supplements, and drugs include: iron/liver extract; vitamin B-12; Provim; Magnum supplement; hormones (testosterone, Propionate, Repotest, Probolic Oil); weight-gain supplements; creatine monohydrate; speed; steroids (Winstrol V, Dinabol,

A third aggravating factor would use a graduated scale of additional levels depending on the number of dogs used for fighting. For example, if it is determined that 5 to 10 animals were used, possessed, breed, trained, sold, delivered, received or transported for use in animal fighting ventures, the court could impose a 2 level increase. Larger numbers of animals could result in higher levels.

The Commission has inquired as to whether or not the fact that a defendant is in the business of breeding, selling, buying, possessing, training, transporting, delivering, or receiving animals for use in animal fighting ventures should provide an enhancement. Given that this proposal specifically tracks the language of the prohibited conduct at 7 U.S.C. §2156(b), a further enhancement using this language appears to be superfluous.

4. Should the Commission provide enhancements, rather than departure provision, for these factors? If so, what penalty should be provided?

We urge the Commission to consider both enhancements as well as an upward departure provision. As currently written, the guidelines do not speak to many of the characteristics found in animal fighting ventures. For example, there is no mention of the number of fights or the level of intensity involved in the fights. Both of these factors may be found in the evidence but not necessarily easily determined by number.

“Extraordinary cruelty” and “exceptional scale” are the terms currently mentioned the upward departure commentary. ARL believes it may be helpful to provide judges with more specific examples so that the sentencing judge has the full picture of what is involved in an animal fighting venture. The examples could refer to the deliberate killing and/or maiming of animals; the use of instrumentalities to inflict pain and suffering such as electronic collars or spurs; the failure to provide adequate food, shelter and medical care; the nature and intensity of the fights (there is evidence in many cases that fights may last one to two hours) and multiple fights in multiple locations (if the Commission does not wish to use the non-grouping method).

Thank you for your consideration of this matter and we appreciate this opportunity to be heard.

Very truly yours,

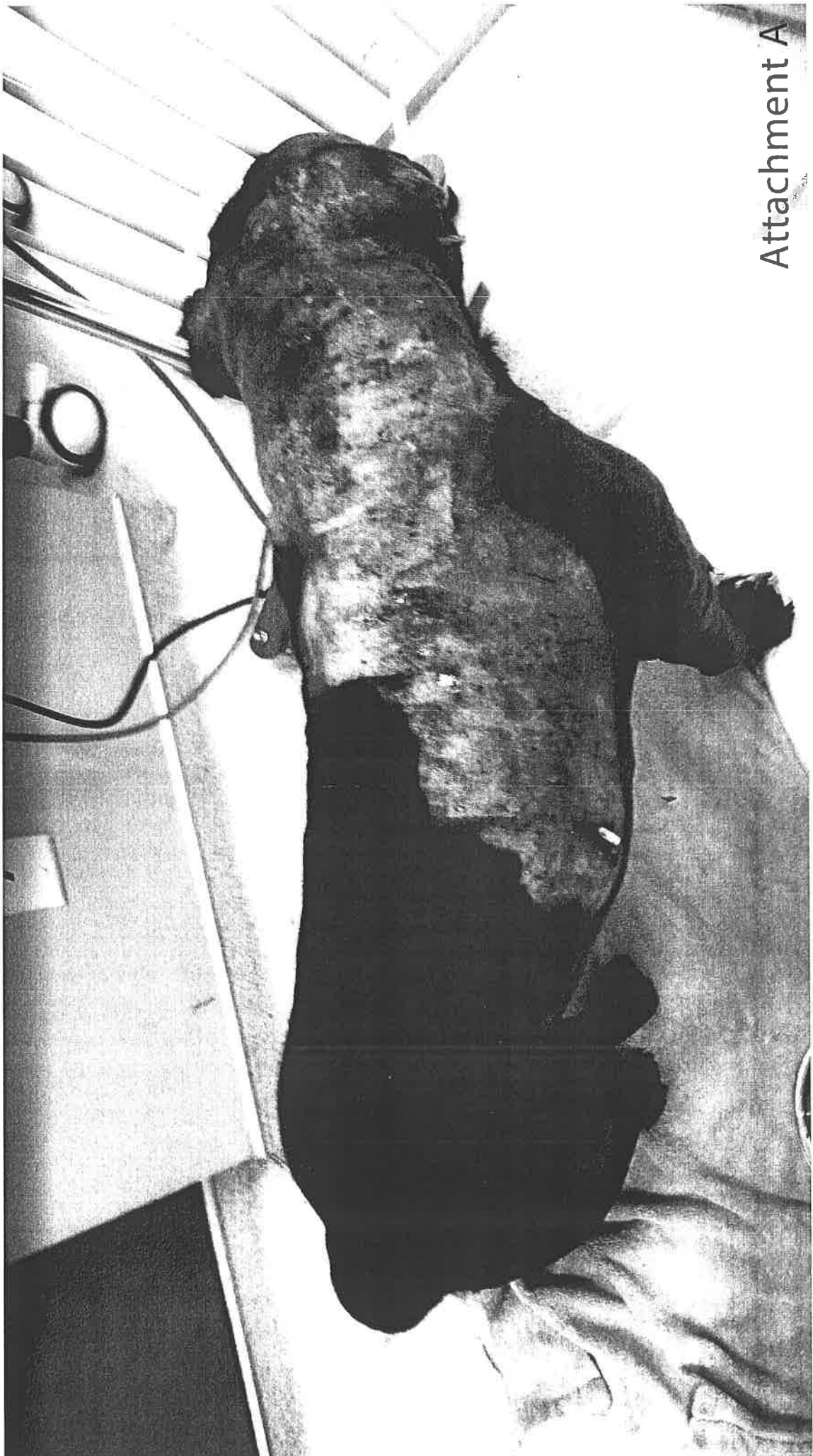


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Equipose); and cocaine.” Hanna Gibson, Detailed Discussion of Dog Fighting, Animal Legal and Historical Center, Michigan State University College of Law (2005), <http://www.animallaw.info/article/detailed-discussion-dog-fighting>.



Attachment A