VIII. UPON CONVICTION: A PATH FORWARD

This is the stage I warned you about in my introduction, the time when you may be challenged in a manner that even a murder case would not challenge you. You have victims who have no voices. The only victim impact statement comes from the prosecutor, which is not the same as hearing from a human victim or his family member. But it is important to remember that, although our laws consider animals to be property, they are sentient beings who suffer physically and psychologically. Animal cruelty laws were enacted because society recognizes the capacity of animals to suffer and feel pain. A public policy of animal welfare and protection is the foundation for these laws. While we may focus on the defendant in front of us, we must be mindful of the victims—the animals subjected to horrendous suffering under her care—as well as the possibility of future victims, if the defendant is permitted to acquire new ones.

Consider the possibility of a defendant like Cynthia Gudger with all the history and psychological “baggage” she brings with her. What would you do with and to her? I have now read and heard countless times an adage from various people involved in the world of animal cruelty, “after being placed on probation, an animal hoarder will pick up a stray on the way home

51

from the courthouse.” Therein is the challenge for a judge sentencing an animal hoarder. “Evidence to date suggests that whatever the short-term outcome of the case may be, animal hoarding has a very high recidivism rate.”88 It may be close to one hundred percent, according to commentators.

The research literature is abundant with narratives about animal hoarding. For example, Maria Vaco-Guzman et al. (2005) analyze accounts hoarders gave to neutralize their negative portrayals. The article describes their justifications and excuses to explain and normalize their treatment of animals, including being a victim or Good Samaritan, scapegoating, blaming external events, and self-handicapping – all intended to justify or excuse their acts and avoid stigma. You will likely hear some or all of them from the defendant at sentencing, as well as mitigation arguments from counsel suggesting that the defendant is mentally ill (despite the client’s denial of that). The authors conclude that hoarders’ accounts:

stand in the way of future “recovery” by allowing them to overlook what is often extreme neglect of animals, people, and property. By justifying or excusing their behaviors whenever challenged, hoarders continue to avoid the problems they create. However, authorities and experts who seek to manage these problems would do well to understand hoarders’ logic and thinking. By doing so, they can enhance their dialogue with hoarders and develop more sensitive treatments for them.89

But there is no map for judges leading us to the right path to travel with an animal hoarder. Prosecution is the last resort when all other options have failed. In many cases an animal hoarder defendant has been offered opportunities to avoid this reckoning through cooperation with authorities or a diversion program by the prosecutor. Now you are called upon to enter into

88 Gary Patronek & Jane Nathanson, *Animal Maltreatment: Forensic Mental Health Issues and Evaluations*, 169 (2016).  
89 Maria Vaco-Guzman et al., *Normalizing Passive Cruelty: The Excuses and Justifications of Animal Hoarders*, 18 ANTHROZOÖS, 338 (2005).

page52image51010496

52

a “dialogue” with the defendant and devise a “sensitive” treatment for her. What is your path forward?

1. Criminal Justice Reform/Justice Reinvestment  
I am making an assumption here that incarceration is not the usual outcome in hoarding

cases, even when prosecutors argue for it, as they did recently in Maryland with the case of the one hundred emaciated and fifty dead horses. The prosecutors who specialize in animal cruelty cases whom I have interviewed seem to assume that, if they are successful in obtaining a conviction of a hoarder for animal cruelty, probation is the likely initial outcome, and mental health treatment may be ordered as a condition. The likelihood of probation is based upon the profile of the typical offender who lacks a criminal record, often is elderly, and who clearly is impaired in some way.

Animal cruelty in the form of neglect may not be classified as a “crime of violence” under your state statutes in terms of sentencing guidelines, risk assessments, and parole and probation supervision case management. In addition, the current trend nationally in state criminal justice systems leans toward “Justice Reinvestment,” which translates into a preference for community supervision rather than incarceration for non-violent crimes; early parole; risk assessment and treatment. The Pew Charitable Trusts has supported a Public Safety Performance Project, which it describes as their effort to help “states advance policies and practices in adult juvenile sentencing and corrections that protect public safety, hold offenders

53

accountable, and control corrections costs.” Pew has been a major force across the country in this movement.90

In my state, justice reinvestment legislation was enacted with overwhelming support of the legislature and the governor in 2016. While both incarceration and crime rates had declined over the preceding decade, the cost of the correctional system continued to increase. Changes in law and policy were a reaction to findings that non-violent offender constituted almost 60% of those entering prison each year; 58% of prison admissions were due to probation of parole violations, many for so-called technical violations such as failing a drug test; prisoners were spending 23% longer incarcerated because of a 25% increase in average sentence, and only 35% of those released from prison were parolees, and those paroled served a period well beyond first eligibility date.91

The most significant “reform” in the Maryland legislation constrains sentencing judges in violation of probation proceedings by creating a system of graduated sanctions according to a matrix and imposing limits for incarceration imposed for “technical violations.” Before the statute was passed, a judge possessed unlimited power to impose any portion of a suspended sentence upon a finding of violation of probation. That discretion led to a great disparity in handling of violations of probation. I knew judges on my bench who summarily dispatched every defendant to serve his entire sentence for any violation, regardless of its severity.

90 The Pew Charitable Trusts, *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, (2018) http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/07/35-states-reform-criminal-justice-policies- through-justice-reinvestment; PEW, *To Safely Cut Incarceration States Rethink Responses to Supervision Violations* (2019), http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states- rethink-responses-to-supervision-violations.

91 Maryland Justice Reinvestment Coordinating Council, *Practitioner Guide to SB* 1005, (Jan. 2017) http://www.harcobar.org/site/wp-content/uploads/2017/09/MD-Practitioners-Guide-FINAL.pdf.

page54image50991616

54

Now, if the alleged violation of probation does not involve a new charge or violation of criminal law, violation of a no-contact order, or absconding from supervision, it is a technical violation. The judge is limited by a rebuttable presumption that a sentence for a technical violation may be no more than fifteen days for the first violation, thirty days for the second, forty-five days for the third. The statute confers the right to find that the presumption has been rebutted, and that adhering to those limits would create a risk to public safety, a victim, or a witness. See Attachment 1, a flow chart for an illustration of the arcane procedures our probation agents must follow.

The implications for a judge dealing with an animal hoarder are enormous. Assume a Defendant has been convicted of twenty counts of animal cruelty for deprivation of food and/or veterinary care and has received the maximum sentence under Maryland law of ninety days for each count, consecutive, with the sentence of incarceration suspended—and a period of probation. Assume that as a condition of probation the defendant is banned from possessing any animals during the period of probation, with a provision for random checks of her residence. Before the Justice Reinvestment Act, the judge might well warn the defendant with words such as “if I receive a report from your probation agent that you have any animals in your home, even one cat or one dog, you will be arrested on a violation of probation warrant, and if I find that you violated your probation I can give you eighteen hundred days—five years!” And then the judge could actually do it. Those days are gone. The purpose of the sanctions limitations in our Justice Reinvestment Act is to prevent judges from imposing lengthy jail sentences when other interventions are appropriate, including enhancement of treatment or frequency of supervision.

55

2. Mental health treatment as a condition of probation/first step: a mental health evaluation Before the day of sentencing, you may order a presentence psychiatric evaluation (as it is

called in Maryland), or whatever evaluation is allowed or required under your animal cruelty statute. I believe that it would be helpful to obtain an evaluation by a qualified mental health professional, because as a matter of common experience, there is something wrong with a person who can live in the environment captured by the crime scene photographs and who proclaims the beliefs espoused by rescue hoarders. Whether you categorize it as an attachment disorder, delusional disorder, or some other personality disorder, its expression through a behavior that causes such suffering in so many animals obliges one to seek an evaluation. Again, I am referring only to self-styled rescue hoarders, not exploiter hoarders who are fundamentally anti- social. While the prognosis for treatment is unfavorable, and there are no tested or generally accepted protocols for treating animal hoarders, an evaluation may glean useful information for sentencing. The initial issues are– what kind of evaluation should be ordered and what type of evaluation should a judge expect? Statutes fail to:

distinguish differences between types of maltreatment in terms of what the court wants to know... The statutes thus fail to help us {the evaluators} understand how evaluations of animal neglect offenders might differ from evaluations of animal cruelty offenders.92

The Institute for Human-Animal Connection located in the Graduate School of Social Work at the University of Denver has developed a specialized assessment for animal maltreatment cases, a “Forensic Animal Maltreatment Evaluation” (FAME).93 This effort is almost entirely aspirational, since according to Tedeschi there are few specialized evaluators in Colorado or

92 Lacey Levitt & Thomas Grisso, *Conceptualizing Forensic Animal Maltreatment Evaluations,* in ANIMAL MALTREATMENT, 291 (2016).  
93 Philip Tedeschi, *Methods for Forensic Animal Maltreatment Evaluations*, in ANIMAL MALTREATMENT, at 310 (2016).

page56image51001792

56

across the United States. A well-trained mental health professional should be fully qualified to give you a worthwhile evaluation. Nevertheless, the FAME evaluation instrument is worth considering, and in the best of circumstances an evaluator should possess the following skills and knowledge:

* Understanding of the animal cruelty laws in the particular jurisdiction where the abuse or neglect took place.
* Understanding of the needs of animals and how to recognize their discomfort, suffering, and stress.
* Understanding of the potential legal and disposition outcomes and intervention resources, including what will happen to the animal victim(s) and any other animals in the home.
* Knowledge about child and adult diagnostics and mental health screening and assessment.
* Familiarity with risk assessment methods and related tools, including specialized tools that are emerging for use in animal maltreatment cases.
* Familiarity with risk assessment methods and related tools, including specialized tools that are emerging for use in animal maltreatment cases.
* Understanding of the concept of the connection between animal cruelty and interpersonal violence and related understanding of animal abuse

typologies and causative factors.

* Familiarity with the nature of the human-animal bond.
* Skills for clinical interview with the individual (child or adult) and their

social support network, including their family.94  
For me, acquaintance with the offense, understanding the potential outcomes and intervention resources, knowledge of psychopathology, diagnostic and assessment skills, and skills for clinical interviewing including the defendant and collateral sources would be more than I might hope for in an evaluator.

Tedeschi’s clinic follows a protocol of procedures in conducting a FAME that includes a case file review of the index offense including forensic veterinary findings:

* Review of the animal victim’s veterinary history
* Review of the offender’s criminal history, academic and employment

history, and social and emotional functioning

* Client interview/observation

94 Tedeschi, *supra*, at 314.

page57image50946880

57

* ...Inventory on Animal Related Experiences
* Psychological testing
* Intelligence testing (as needed)
* Trauma assessment
* Diagnostic animal abuse typology consideration
* Animal abuse risk assessment
* Collateral interviews with the offender’s family members, and other

relevant persons

* Assessment of the offender’s family95

Attachment 2 is the form order used in Maryland for a presentence psychiatric evaluation. In an animal cruelty case, I would order the evaluator to give special attention to any or all of these factors: nature of offense; dangerous behavior; prior mental/emotional history; degree to which criminal offense was influenced by mental disability, emotional disturbance of substance abuse, diagnosis of specific problem such as alcoholism, amenability to treatment and availability of treatment, and risk of recidivism with or without treatment. I also can ask the evaluator to address any other concern. I always hope that a skilled forensic evaluator will conduct a thorough interview with the defendant and speak to “collateral sources,” such as family members or others who may be familiar with the defendant, The evaluator should acquaint herself with the facts of the offense and any previous history of hoarding behavior in order to realistically assess the risk of recidivism. If there are any indications of cognitive impairment, I would expect the evaluator, if qualified, to perform psychological testing, and if not, to refer the defendant to a qualified psychologist.

In Baltimore City, I have access to reports prepared by trained forensic psychiatrists and psychologists, and understand that they very likely have received no special education in animal hoarding. An experienced forensic evaluator can diagnose mental disorders and observe personality traits that affect a defendant’s amenability to treatment. An evaluator acquainted

95 *Id.* at 316.

page58image51040576

58

with the evidence produced in court can discern whether the defendant’s beliefs about being a savior of animals border on the delusional, whether the defendant is capable of admitting that he has a problem rather than being fixed in the position that the authorities are conspiring against him, and whether any cognitive issues are of concern, such as signs of dementia. If a referral to Adult Protective Services (APS) is appropriate this should be considered. I do not expect the evaluating psychiatrist or psychologist to recommend a particular modality of treatment, because even if he were inclined, there is no research on the treatment of animal hoarding.96 I assume that the evaluator would recommend psychotherapy for a rescue hoarder.

3. Adopting essential elements of problem-solving courts

You may be familiar with drug treatment courts; as of June 2015 there were three thousands of them across the country.97A mental health court is much more of a rarity. The Justice Center of The Council of State Governments reports that currently there are over 300 mental health courts in the United States, including both adult and juvenile mental health courts.98Tobias (2018). *Fair Justice for Persons with*I I I have mentioned that I preside over the Mental Health Court in the Circuit Court for Baltimore City. I handle all of the Circuit Court’s competency to stand trial issues, pleas of not criminally responsible, and supervise a probation docket. We are a designated Problem-Solving Court under the Maryland Rules. Our clinicians assess defendants for mental illness and

96 Frost et al*., supra* at 890.  
97 National Association of Drug Court Professionals, *Overview of Drug Courts*, NAT’L INST. OF JUST., (2015) http://www.nij.ojp.gov/topics/articles/overview-drug-courts#note1.  
98 Justice Center of the Council of State Governments, *Mental Health Courts*, (2019) http://www.csgjusticecenter.org/mental-health-court-project (locations available at: http://www.samhsa.gov/gains- center/mental-health-treatment-court-locators); if you are not acquainted with the concept, *see* Nicole L. Waters et al, *Mental Health Court Culture: Leaving Your Hat at the Door: Executive Summary*, NAT’L CENTER ST. COURTS, (2009) http://www.cdm16501.contentdm.oclc.org/cdm/ref/collection/spcts/id/210.

page59image51022848

59

recommend treatment plans in the community. Mental health probation agents supervise the defendants, meet them weekly, and monitor compliance with the treatment plans by checking in with the mental health professionals and providers and residential staff if a defendant lives in an RRP (Residential Rehabilitation Program). All of my participants have been diagnosed with at least one serious mental illness that qualifies for treatment in the local public mental health system, including schizophrenia, bipolar disorder, major depression, PTSD, and borderline personality disorder. Almost all of my probationers suffer from “co-occurring” disorders, meaning that they have been diagnosed with more than one condition that requires treatment. Most of them suffer from substance use disorder, which often exacerbates and causes more problems than the symptoms of mental illness. Others suffer from traumatic brain injury or cognitive impairments.

Both substance use disorder and most mental illnesses are chronic conditions. When treatment court judges speak of “problem solving,” we are not suggesting that mental illness is a problem to be solved by court ordered treatment. Schizophrenia may be a “problem” to be addressed by biomedical researchers in searching for cures. Our goal is to assist a person by identifying what his needs are, and then execute the treatment plan. The problems we solve are the day-to-day issues of obtaining the proper level of care for a defendant, insuring that his providers are scheduling timely appointments and addressing his needs, identifying appropriate residential placements, enabling access to health insurance, and helping with problems of daily life that can interfere with a person’s success (our grant includes money for bus tokens).

The practices of the court focus on monitoring and compliance. Probation agents immediately report signs of trouble via email, such as noting a significant change in the defendant’s demeanor or behavior during a weekly visit, and forward incident reports from

60

providers. The agent sends periodic reports to the court team (defense attorney, prosecutor, clinical coordinator, and judge) in anticipation of the defendant’s regularly scheduled court status conference. Attachment 4 provides you with some of the “best practices” and “essential elements” of drug and mental health courts. The status conference is a key element.

Participation in a problem-solving court is entirely voluntary on the part of the defendant; usually it requires a plea of guilty. The court must receive assurance that the defendant is amenable to engaging in mental health treatment. Given that most rescue hoarders believe that they are victims of persecution rather than persons with mental illness, more likely than not they would reject an offer to plead into a mental health court. We are willing to accept defendants who are unconvinced that they are mentally ill as long as they are willing to accept and follow the treatment plan. Animal hoarders typically are treatment resistant so they might be deemed ineligible even if they opted for mental health court as a means to an end—an exit from jail.

That should not discourage you from using the principles and practices of a mental health court to induce compliance with probation conditions. I recommend that with an animal hoarder you adopt the practice of holding regular status conferences with the defendant and probation

61

agent.99 “Attending all scheduled status conferences with the court” must be a special condition of probation. Identify the supervising agent and inform her that she will receive notice of the status hearing, and that you expect a report from her regarding compliance with the conditions of probation, especially engagement in mental health treatment and obeying the ban on possessing animals.

The standard period of probation in my mental health court is three years. I likely will hold scores of status conferences with a single defendant over that period. Initially I see the defendant frequently, at least monthly. If she is doing well, the conference will be brief. I will summarize the probation agent’s report, offer praise and encouragement, and conclude by asking the question “is there anything you wish to talk about today?” The response may be to ask permission to travel to a family reunion out of state, to move from an RRP to a relative’s home, or to close out probation early (which is never granted). Sometimes the response is to thank “The Team,” because in that moment the person is at base line (at her best), and she wants to say, “I’m Blessed.” If a defendant is not doing well, I might see her weekly. The hearing may be

99 Before I started the mental health court, having had the experience of holding status conferences in drug treatment court, I made the decision to schedule status conferences with defendants on standard probation whom I recognized had special needs, vulnerabilities, or who posed a high risk of non-compliance with probation conditions. In connection with the latter, about ten years ago I seemed to be inundated with juveniles charged with gun possession. In Maryland, the applicable statute confers adult jurisdiction on anyone 15 years or older charged with carrying a gun. Many juvenile defendants are unable to convince the adult court to transfer the case to juvenile court. The legislature may have conferred adult jurisdiction on these teenagers so that courts could deal with them more harshly than a juvenile court could. But the outcome almost inevitably was a probationary sentence rather than incarceration. These defendants were kids living in Baltimore City where a teenager may carry a gun in a backpack to school because he feels safer, or a kid caught up in a group in which someone else has a gun, and on impulse, commits a street robbery.

I knew that some probation agents (I hope the minority) are motivated to take the first violation and use it to recommend termination of the probation and execution of the suspended portion of the sentence. I decided that I needed to see these kids to check up on them and to remind them what was at stake. Even the Supreme Court has recognized that teenagers’ brains are not fully developed, and executive function is lacking when compared with mature adults. I asked about their progress in school. I mediated problems with probation agents. I encouraged them, warned them, and even let them know that I cared about their lives.

page62image51238336

62

lengthy. I will review the reports from all sources, inquire as to the reasons for noncompliance, discuss with our team whether there are clinical issues that require the probation agent and court clinician to meet with the defendant and her treatment team, and even call a provider from court with questions. If the non-compliance amounts to a serious violation of probation, the defendant may be served with a VOP charging document. In the most serious instance, she may be taken into custody. If a defendant has decompensated to the point that competency is in question, upon service of VOP charges, I may order a competency evaluation.

Animal hoarders who suffer from attachment disorders might benefit from your seeing them on a regular basis for a brief but humane interaction. Since many suffer from social isolation, contact with an interested, compassionate judge, focused at the same time on their behavior and their wellbeing, can contribute to a better outcome than sticking with old habits – signing a probation order and waiting for the VOP report.

Another reason to bring your probationer into court is that, as with many animal hoarders of advanced age, she may suffer from self-neglect. This may be evident in the defendant’s appearance which may be slovenly; anyone seated near her may notice body odor. As with Mr. T, she may have bugs crawling on her. “Without treatment, it can be expected that the deteriorating effects of physical and mental illness, malnutrition, lack of safe and sanitary conditions, as well as chronic stress and unresolved grief will exacerbate the state of self- neglect.”100

100 Nathanson, *supra* at 319.

page63image51219840

63

A. What kind of treatment should you order?  
If you decide to offer an animal hoarder the opportunity of probation, and order mental

health treatment as a condition of probation, the challenges are obvious. Access to treatment is the first issue. Where is the defendant supposed to go for treatment and from whom? Defendants are expected to make those arrangements and pay for the treatment. Indeed, some state statutes specify that mental health treatment shall be at the defendant’s expense. Perhaps your probation agency maintains referral lists of mental health providers whom a defendant can contact; one hopes they accept Medicaid. One prosecutor, the director of an animal cruelty prosecution unit in the Virginia Attorney General’s Office with many years of experience prosecuting every form of animal cruelty, maintains a list of qualified mental health providers that she provides to defense counsel.101 You can take some responsibility for directing a defendant to treatment by maintaining a list of community mental health clinics in your location or by referring her to your local mental health agency, which may be the county Health Department.

In my experience, going through the steps of making phone calls to providers or working one’s way through the links of websites creates major impediments for a defendant, particularly one who is in denial or who has poor executive functioning, as do many of our defendants. Even if a defendant is motivated to follow through with the process, the next challenge is insurance coverage or access to community health providers who serve low-income defendants. The probation agent may need to assist the defendant by directing him to the appropriate agency.

If you order the defendant to engage in mental health treatment, I have some suggestions. Please do not assume that it can be a program akin to a domestic violence batterers program, a

101 Michelle Welch, *supra*.

page64image51025920

64

parenting class, an alcohol education program for a first time DWI offender, or a Driver Improvement Program. No such program for adults convicted of animal cruelty has been sufficiently tested for efficacy. Forget about Anger Management unless the defendant has been diagnosed with a relevant personality disorder, such as Explosive Personality Disorder, and only if a qualified assessor recommends it. If your defendant is a rescue hoarder she may require long-term mental health treatment with a licensed therapist.

Do not expect that the defendant’s therapist will have any special training or experience in treating animal hoarders. Randall Lockwood, a psychologist with over thirty years at ASPCA, started training mental health professional fifteen years ago. He conducted a series of workshops for mental health providers; half of the material dealt with violent cruelty and half with hoarding. Over the course of a year he trained one hundred providers. He found that each person may have had one animal hoarding case in a career.102 The lack of specialized training or experience should not dissuade you from imposing mental health treatment as a condition of probation.

According to Lockwood, a competent therapist who is conversant with, and capable of diagnosing and treating all varieties of mental disorders, and who is “trauma informed,” should be able to engage with your defendant (whether the defendant is willing to engage with the therapist is another question). In his view the therapist must encourage the defendant to deal with the way she thinks about herself and the world. With animal hoarders their relationship with animals defines the way they see themselves and the world. They need to think of themselves as decent human beings who deserve to live and be respected because they take care of animals.

102 Telephone Interview with Randall Lockwood, Member of Fairfax County Virginia Hoarding Task Force (Sept. 9, 2019).

page65image51138880

65

The legal process may have taken away all of their animals and forbidden the acquisition of others. Imagine losing your identity, your perceived purpose in life. In treating the underlying psychological conditions, whether depression, delusional disorder, trauma, and almost certainly anxiety, the therapist’s task is to assist the defendant in replacing the hoarding behavior with something that preserves her self-worth. This is a daunting task for a therapist. We must hope that our defendants find skilled therapists who can succeed in engaging the defendant in a challenging endeavor. Whether you relish the prospect or not—I propose that you be a part of this process.

Let’s assume you order the defendant to participate in mental health treatment, and to remain in treatment until further order of the court. If you have ordered the defendant to engage in mental health treatment, include in your probation order a condition for the defendant to “execute all necessary releases for the disclosure of mental health evaluation and treatment information to the court, state’s attorney {or district attorney if applicable}, defense counsel, probation agent, and the Department of Health (or whatever state agency delegates the task of performing court-ordered mental health evaluations).”

These releases are necessary because in the first instance the probation agent must take the responsibility for monitoring compliance with mental health treatment and must be free to share mental health treatment information with the court and counsel. The intention is not to request disclosure of confidential communications between the defendant and her providers. The probation agent monitors attendance at appointments scheduled with the frequency recommended by the provider—not the probationer. The agent should ask whether there has been any recommendation for prescribing medication, whether a referral has been made to a

page66image51143488

66

psychiatrist or other mental health professional entitled by law to prescribe psychotropic medications.

The court cannot order a mental health provider to provide information, but the defendant can be required to present the provider with a release, and to request that the provider cooperate by communicating with the agent or by sending some written communication to the court. I had one probationer whose psychiatrist, on her own initiative, sent me a letter prepared for every one of her patient’s court status hearings. I have never seen a provider refuse to give us information for compliance monitoring purposes. In fact, a therapist may recognize that the court team is part of a support system for the treatment provider as well as the defendant, and that the court provides the defendant with motivation to stay in treatment.

You may also order the defendant to take all medications prescribed by a qualified mental health professional while hoping that you are not setting up a battle over whether the defendant must try a course of antipsychotic medication, which is often prescribed for fixed delusional disorder.

You will likely never know what the defendant discusses with her therapist. If the treatment consists of traditional psychotherapy, it is likely to be client-centered. This means that the defendant will control where the conversation goes, although the therapist can raise issues, attempt to direct the conversation, and ask questions. It is possible that the animal hoarding behavior will not be the primary focus of their meetings. You cannot control this. You can only create the milieu for making some change possible.

67

B. AnimalBan  
The next issue for sentencing will be the possibility of an order banning the defendant

from possessing any animals or allowing the possession of a limited number of animals under particular circumstances. This is a matter of state law; in some states it is mandatory. Some statutes prescribe the possible duration of the ban. If you order a ban that extends beyond the period of probation, or if you impose a straight sentence without probation supervision, I am curious about what the enforcement mechanism will be. If contempt, is it civil or criminal? Does the court expect the animal control agency to exercise enforcement powers; if so, under what authority?

Some prosecutors, animal protection advocates, and animal welfare agencies forcefully argue that the court should impose a complete ban on the possession of animals, if possible for life, given the character traits of rescue hoarders and the known recidivism rate. Some believe that just as substance users are forbidden from ingesting any controlled substances, and drunk drivers may not drink a drop of alcohol while on probation, animal hoarders should stay away from animals. A copy of the New York State form order is included as Attachment 2. As you can see, it contemplates a total ban on custody of any animals and provides that a violation may subject the defendant to immediate arrest and prosecution for contempt.

I mentioned the case of Barbara Erickson, the owner of 552 dogs, in Section III above. Her sentencing judge permitted her to have two dogs. When her probation agent made home visits, she noticed one cat, then another cat, in the home. Ms. Erickson offered less than credible explanations. She was called into court for several violations of probation, but it does not seem that the judge ever revoked probation and imposed the suspended portion of the sentence.

68

Opinions about total animal bans are evolving, as suggested by Randy Lockwood. The distress caused by a total ban may be so extreme, some suggest, that it is counterproductive. Some judges permit the possession of a limited number of animals which must be spayed or neutered. I take no position on this issue. Whether the ban is complete or partial, the issue is one of enforcement. Joe Clocker, recently retired head of the Division of Probation, Maryland Department of Public Safety and Community Supervision, suggests that an agent of the local Animal Control Agency and the probation agent work together to monitor compliance with the court’s order.103

I would insist upon random, frequent, unannounced visits by the probation agent accompanied by an animal control agent, with immediate action if animals are present. The animals should be seized immediately pursuant to the terms of the defendant’s animal ban condition, and the agent should deliver a probation violation notice to the court immediately. Presumably the agent would treat this behavior as a “technical violation,” and the statute might dictate that it be treated as an infraction or violation that the agent sanctions. According to the supervision regimen I recommend in the final section of this paper, the defendant would be forced to appear before me at a status hearing, and I would deal with any violation of the animal ban in a manner I believed appropriate, and, of course, lawful under the statute. Depending upon whether this is the first instance, or a repeated one, of violating the ban, I might deliver a stern lecture or impose graduated sanctions. In treatment courts we impose sanctions short of incarceration, such as a courtroom sanction that requires the defendant to appear in court and sit through all or a portion of the day’s proceedings. Obviously, this is uncomfortable and inconvenient, intended to gain the defendant’s attention. I may step up the frequency of status

103 Telephone Interview with Joseph Clocker (Sept. 30, 2019).

page69image51123264

69

conferences to reinforce with the defendant that the court is monitoring her closely and will respond to any violation of conditions. Or if the defendant has repeatedly violated the ban, I might take her into custody for a violation of probation. She would sit in jail for fifteen days and recognize that I am serious about enforcing the ban.

C. Community Service  
Another condition that you may consider imposing if you grant probation is that of

community service. Often defense counsel suggests significant community service hours as an alternative to incarceration. An attorney may propose a particular charitable institution or agency as a place for his client to perform the community service. In animal cruelty cases some judges have been known to order defendants to perform community service at the local animal shelter or other rescue group. If that notion comes up in your case, my advice is to give it no consideration; reject it summarily. To the extent animal hoarding behavior is compulsive or a manifestation of an addictive personality and you are banning the defendant from possessing animals, you are not doing the defendant any favor by ordering her to spend time in a shelter. The likelihood is high that the defendant will walk out of the shelter with a kitten in her pocket. Also, all “shelters” are not alike, and defense counsel may unknowingly suggest that his client perform community service with a “rescue group” that does not provide adequate care for the animals in their custody. You lack the ability to investigate the credentials of such a group.

Moreover, legitimate operators of animal shelters such as local humane societies or an SPCA are horrified by the prospect of a person convicted of any form of animal cruelty volunteering in their shelters. The immediate problem is that the defendant would require constant monitoring, so the “service” amounts to a drain on their resources.

70

D. Restitution and Charitable Contributions  
Finally, at sentencing you may be asked to order the defendant to pay restitution as a

condition of a probation and/or as a separate element of the sentence. This request usually is calculated to include expenses incurred by the seizing agency, such as veterinary costs of euthanasia, treatment for sick animals, and the costs incurred by the agency for the care of the animals pending trial up until the time of any forfeiture, if one was ordered. In Maryland a recent case, *Silver v. State,* 420 Md. 415 (2018), reviewed a sentencing court’s restitution order in a case involving horses. The defendant was convicted of one count of animal cruelty involving a horse that was euthanized. The state had not pursued two other counts that were in the original charging document, but evidence of the condition of two additional horses was introduced at trial. In its restitution order, the judge included the cost of care for two surviving horses. Its authority to include the cost of care was an issue on appeal. The Maryland Court of Appeals held that, unless a defendant enters into an agreement to pay restitution covering additional counts or conduct for which he is not convicted, the court may only order restitution in connection with the offenses of which the defendant is convicted. Thus, there was no authority to order the defendant to pay the costs of care. One can comprehend why the prosecutor may include multiple counts in the charging document in order to preserve the right to seek maximum restitution for veterinary bills and cost of care. Yet even if ordered, the defendant’s ability to pay is usually in doubt, and enforcement of the restitution order will give you another headache at some future hearing.

In lieu of restitution there may be a suggestion that you order a charitable contribution to an animal welfare charitable organization or agency. Check the case law on your authority to do so. In cases unrelated to animal cruelty some appellate courts have ruled that a judge did not

71

abuse his discretion when setting a charitable donation as a condition of probation in attempt to foster reformation of the defendant.104 A Florida court, however, held that a trial court lacked statutory authority to impose a charitable contribution to a named charity, and struck the condition*.105*

In the recent horse case from Maryland mentioned in Section III above, the prosecutor requested that the judge order as restitution the cost of care for the seized horses. The defense attorney’s response was to request the books and records of the agency that took custody of the horses. He argued that the group had used his client’s case for fund-raising, so donations solicited in response should be credited against the cost of care. His client had already surrendered the horses to the agency. Ultimately the prosecutor withdrew the request for restitution of the cost of care. The defendant was ordered to pay $13,000 rather than reimburse the hundreds of thousands of dollars originally claimed, a decision of the judge which constituted one complaint among several by animal advocates.106

page72image51187648

104 *State v. Pieger*, 240 Conn. 639 (1997), 680 A.2d 1001, *People of the State of Colorado, v. Thomas D. Burleigh*, 727 P.2d 873 (1986).  
105 *Randall G. Antosh v. The State of Florida*, 510 So.2d 1158 (1987).  
106 Information obtained on background from a participant in the trial.

72

H. Advocacy Groups  
The horse case offers a good example of public reaction to a notorious case. Not

unexpectedly the judge was criticized for not following the prosecutor’s recommendation for incarceration, and instead imposing the maximum period of probation on the elderly defendant. It was reported that “What the judge did say was that if she thought putting [Pilchard] in jail for one day would make her understand that she did something wrong, she would.”107 A Facebook page created in response to the case includes posts by a number of people who rescued horses seized from the defendant’s farm, all lambasting the judge and the sentence: a “travesty of justice;” “disgraceful no justice for cruelty and animals that die and were starved to death without medical care. Horrible;” “Shameful! She should have to pay back all the Rescue’s that stepped up to help take all of her starving animals! The Judges on these type of cases need to put some BITE into the Sentencing to make sure their Citizens know they will be punished if they abuse and starve animals!” “I can only hope she is not on this earth when the probation ends...She’s proven to be a hoarder and she will hoard again.”108

In an animal hoarder case, there may be a number of disparate advocacy groups. Animal advocates, as in the horse case, want punishment if not vengeance, as do some prosecutors. Advocates may fill your courtroom during the proceedings. The polar opposite may be a cohort of “rescuers” who sympathize with the defendant and complain about the unfairness of the local animal control agency. In the Maryland horse case, allegedly the defendant had offered to

107 Amy Worden, *Pilchard Sentenced; Appy Fest Showcases the Horses She* Starved, PA. EQUESTRIAN, May 2018, http://www.eastcoastequestrian.net/news2019.  
108 *Id.*

page73image51033408

73

surrender the horses to that agency several years before being charged with animal cruelty, and it declined to take them.

Some civil rights and disability rights advocates may take the position that the law criminalizes mental illness, and that the defendant should not have been prosecuted in the first instance. Consider what happened in the Rhode Island legislature in 2017. When considering amendments to its animal cruelty statute to criminalize animal hoarding, legislators ultimately changed the name of the new offense from “animal hoarding” to “hazardous accumulation of animals” in response to opposition of the ALCU, which described the legislation that passed:

As originally introduced, it amended the animal cruelty laws to add “hoarding” to the list of actions subject to that law’s five- year prison sentence and would have further required persons found guilty to undergo a mental evaluation. The ACLU and several mental health organizations voiced their concern...stating in a letter that “hoarding is a psychiatric disorder, and it should be recognized as such, and not as a crime. Mental health treatment is most desirable when the patient cooperates voluntarily; in cases where it is necessary and the individual will not comply, the mental health commitment law remains available. A revised version of the bill, which addressed a few of those concerns but remained opposed by the ACLU, was enacted.109

I trust that, regardless of the length of your judicial tenure, you will adhere to your code of judicial conduct and ignore public clamor from all sides if you are faced with the similar spate of interest groups. We all know that regardless of how you rule in any case you are going to make someone unhappy.

I. Supervision of High-Risk Offenders  
While I endorse the principles and best practices of treatment courts, I recognize that

animal hoarders generally are not amenable to treatment and are at the highest risk of reoffending. They require the most stringent type of supervision, which would not normally be

109 American Civil Liberties Union of Rhode Island, Section on Legislation, *Animal Hoarding (H-5882, S-390) PASSED*, (2017) http://www.riaclu.org/legislation/bill/animal-hoarding-h-5882-s-390.

page74image51336064

74

accorded to an offender convicted of a “non-violent” crime. Consequently, I suggest importing some of the strict supervision practices imposed on a very different offender category—child sex offenders with a diagnosis of pedophilic disorder110—and blending them with the essential elements of a mental health court such as the status conference and frequent visits with the probation agent. I am not equating the offense and harm to the victim of a child sex offence with animal hoarding. I am making a comparison of one type of offender for whom the criminal behavior is an expression of his identity111 with a very different type of offender, whose behavior likewise may manifest a strong link, although revocable, to identity.

Pedophilia is a perversion in our culture and acting on pedophilic impulses is a serious crime, perhaps carrying a penalty of life in prison. In sharp contrast we celebrate love of animals in our culture, but animal hoarding represents a destructive distortion of the human/animal bond and not an act of love. Perhaps supervision of an animal hoarder on probation, in some ways, should be as vigilant as supervision of a Tier One Sex Offender who poses a danger to children.112

In our Division of Parole and Probation, Collaborative Offender Management Enforced Treatment (COMET) agents supervise high-risk sex offenders. The COMET protocol for supervision is very strict. Probationers usually are required to participate in specialized sex

page75image51035520

110 Clinical criteria for diagnosis (based on DSM-5) of pedophilic disorder are:

* Recurrent, intense sexually arousing fantasies, urges, or behaviors involving a prepubescent child or children (usually ≤ 13 years) have been present for ≥ 6 months.
* The person has acted on the urges or is greatly distressed or impaired by the urges and fantasies. The experience of distress about these urges or behaviors is not a requirement for the diagnosis.
* The person is ≥ 16 years and ≥ 5 years older than the child who is the target of the fantasies or behaviors (but excluding an older adolescent who is in an ongoing relationship with a 12- or 13-year-old).

George Brown*, Pedophilic Disorders*, Merck Manual, (2019) http://www.merckmanuals.com/professional.

111 Pedophilia is a sexual orientation; Fred S. Berlin, *Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder*, 42 J. AM. ACAD. PSYCHIATRY L., 404 (2014).  
112 I am not advocating that animal hoarders be subjected to polygraph examinations or that they restricted in using the internet, as sex offenders may be (unless they are violating their probation by using the internet in an attempt to procure animals in violation of the animal ban).

75

offender treatment programs, which are normally group programs. The COMET program is authorized by a statute that provides:

A sexual offender management team: (1) consists of:

(i) a specially trained parole and probation agent; and

(ii) a representative of a sexual offender treatment program or provider; (2) may include:

(i) victim advocates or victim service providers with recognized expertise in sexual abuse and victimization;  
(ii) faith counselors;  
(iii) employment counselors;

(iv) community leaders;  
(v) a polygraph examiner with recognized expertise in sexual offender- specific polygraph examination;  
(vi) a law enforcement officer;  
(vii) an assistant State's Attorney;  
(viii) an assistant public defender; and  
(ix) a foreign or sign language interpreter.113

How would I apply COMET supervision principles to the supervision of an animal hoarder in conjunction with the supportive and therapeutic elements of a mental health court? While you may not have the power to order the frequency of probation visits, since parole and probation departments apply their own criteria for supervision, I would encourage the agent to see the defendant as frequently as possible. The relationship between the agent and the defendant may start out as a hostile one, given the defendant’s belief system. But it is possible for a talented probation agent to engage in a positive, supportive manner with almost any human being.

I would emphasize with the agent that you expect her to conduct frequent, random, and unannounced visits at the defendant’s residence to detect any signs of the presence of animals, including animals themselves or indicia of ownership such as food, litter boxes, and other evidence such as odors. As mentioned, such inspections should be conducted with an animal

113 Md. Code (2001, 2008 Repl. Vol., 2016 Cum. Supp.), § 11-725(b) of the Crim. Pro. Art.

page76image51317952

76

control agent. I suggest that as early as sentencing you bring the animal control agency into a “hoarder management team,” borrowing the practice from COMET supervision. While you may not have the inherent power to order the animal control agency to participate, I would be surprised if the leadership would not be willing to cooperate with the court. After all, your goal is to discourage the defendant from acquiring and possibly hoarding new animals. This is a goal that the agency shares, since they do not relish the prospect of seizing and caring for more neglected animals.

The therapist must also become an ancillary member of the management team, willing to communicate with the probation agent and the court. The therapist should not be treating the defendant in a vacuum. He should know that the treatment is mandated, a condition of probation that the defendant must satisfy in order to preserve her freedom. The therapist should be informed about the facts and circumstances of the offense and all conditions of probation, especially a ban on the possession of animals. He must understand that the court, in consultation with the therapist, determines the duration of treatment, not the defendant, and that regular reports to the probation agent are essential in order to encourage compliance.

Since animal hoarders have little motivation to seek or comply with treatment, as well as pay for services, consistent and substantive communication between the therapist and the parole officer is necessary to monitor compliance and to ultimately confirm that the terms and conditions prescribed by the clinician have been fulfilled in order that the client-counselor relationship can be maintained.114

I mentioned that under the statute creating COMET, a team may include representatives of the community such as a victims organization. That raises the possibility that the probation judge might engage the participation of an animal hoarding task force, if one exists in the community. The task force membership includes animal welfare professionals, human service

114 Gary Patronek & Jane Nathanson, *A Theoretical Perspective to Inform Assessment and Treatment Strategies for Animal Hoarders*. 29 CLIN. PSYCHOL. REV. 274 (2009).

page77image51343168

77

agencies, and other stakeholders dealing with the problem of animal hoarding. Randall Lockwood is a member of the first hoarding task force, created in Fairfax County, Virginia. While normally an overwhelmed caregiver, nor a rescue hoarder, would cooperate with such a group, I raise the possibility of a judge enlisting such a group to participate in a COMET team.115

The task force might assist the judge in referrals to qualified treatment professionals in the community or support the hoarder in meeting certain needs, such as sanitary housing. If the ban on animals is time-limited, and/or the defendant has the court’s permission to own a limited number of animals, the task force could perform the essential task of educating the defendant about the needs of animals and proper animal care The New York ASPCA Cruelty Intervention Advocacy Program has worked with animal hoarders outside of the criminal justice system.116 Perhaps such a program has a place on a team similar to COMET in an animal cruelty case. I suspect that enlisting such a task force to assist with probation supervision has never been attempted, and I foresee complications, such as members of the task force not understanding or not deferring to the court’s ultimate authority. But I also see that animal welfare stakeholders could support the probation agent and the court in encouraging compliance.

Jane Nathanson reports that in 2001 the Humane Society of the United States and the National Center of Elder Abuse conducted a survey of APS supervisors and caseworkers. “More than 92% said that APS workers encountered animal neglect coexisting with a client’s inability to care for him/herself.”117 Based upon your observations and those of the probation agent

115 *See* Gary Patronek et al*., Animal Hoarding, Structuring Interdisciplinary Response to Help People, Animals, and Communities at Risk*, (2009) http://www.vet.tufts.edu/wp-content/uploads/AngellReport.pdf.  
116 American Society for the Prevention of Cruelty to Animals, *New Initiative Allows Humane Law Enforcement Agents to Manage Hoarding Cases & Protect Animals in Jeopardy*, (Jan. 9, 2011) http://www.aspca.org/about- us/press-releases/aspca-cruelty-intervention-advocacy-program-helps-animal-hoarders.

117 Nathanson, *supra* at 309.

page78image51367104

78

making home visits, you may make a referral for a visit by an APS worker. As you know, the standard for competency in guardianship proceedings is entirely different than competency to stand trial in a criminal case. But an APS worker could possibly become a member of your “management team” in dealing with this defendant. This is another opportunity for the defendant to experience a human connection and establish a relationship.

This may seem like a lot of work, and outside of your normal experience with probationers. Consider that you likely will have only one animal hoarder among your probationers; I encourage you to find the time. The potential benefit is the opportunity for intervention before a violation of probation hearing.

79

VII. CONCLUSIONS

If you choose to read any of the publications listed on the HARC website,118 read Colin Berry’s, *Long Term Outcomes in Animal Hoarding Cases*119 and Jane Nathanson’s *Slipping into the Darkness of Comorbid Animal and Self-Neglect.*120 Nathanson is a retired veterinary social worker from Boston. She was in private practice and received referrals from the Animal Rescue League of Boston and the Massachusetts SPCA. I conducted a telephone interview with her, as I did with Lockwood and Patronek, and found the range of her experience to be extraordinary. It includes HARC research, engagement with members of animal law enforcement, and social work in the homes of animal hoarders. She has spent years face-to-face with animal hoarders.

As a veterinary social worker, she has worked with individuals who were court-ordered to obtain treatment and to desist from possessing animals. She found that by and large, the enforcement of court orders was very loose. She emphasized with me the importance of home visits and supportive guidance for animal hoarders. She also confirmed that many of these individuals have cognitive difficulties, particularly with executive functioning and abstract reasoning. As for court-ordered mental health treatment, she referred to it as “armchair counseling.” Even with the provision of documents and photographs (which would be unusual in my experience), the therapist’s knowledge, by necessity, would be limited to the self-disclosures of the involuntary client who may pose resistance to the counseling process. Consequently, the

118 Hoarding of Animals Research Consortium, *Publications for Hoarding of Animals Research Consortium*, http://www.vet.tufts.edu/hoarding/publications-2 (last visited Oct. 18, 2019).  
119 Colin Berry et al., *Long Term Outcomes in Animal Hoarding Cases*, ANIMAL L. REV, LEWIS & CLARK SCHOOL, 2005).  
120 Nathanson, *supra.*

page80image51349568

80

problem with mandated treatment is that it may never reach the issues that are at the root of the disorder.121

In terms of diagnosing animal hoarders, she found attachment disorder to be prevalent among the hoarders with whom she worked. She wrote about her nine years of casework with animal hoarders, from which she concluded that they were different from people who hoarded material objects and that OCD was not the strongest characteristic that she observed.

Her clinical experience has found that animal hoarding is likely related to a complex, multifaceted spectrum of underlying psychological disorders, the most relevant taking into account the interactive relationship between the human and the animals, along with the driving force of excessive caregiving, which has been associated with attachment disorder. In conjunction with this finding, the author’s casework has encountered a prevalence of complicated or traumatic grief, dissociative disorder, addiction, and anxiety related to a state of heightened vulnerability outside of the secure domain that has been created with one’s hoard of animals.122

What I may have labeled delusional disorder she characterized as defensiveness or denial—the tendency to defend against any challenge. “There is nothing wrong here,” she was told. She pointed out that if hoarders are approached in an argumentative, confrontational way, the pushback will take the form of this oppositional defensiveness. She recommended that one respond by taking a mild-mannered educational approach, describing her role as entering the person’s inner sanctum and demonstrating that she cared about the person. For the isolated hoarder, it may be her only relationship with a human being. Nathanson went well beyond the call of duty in performing social work as I know it, all in the interests of modifying a hoarder’s behaviors. She recounted that on one occasion, after much work with a client who could not

121 Telephone interview with Jane Nathanson (Sept. 20, 2019). 122 Nathanson, *supra*, at 317.

page81image51352832

81

force herself to dispose of dead animals, Nathanson convinced the woman to go out into her property in a rural area to bury the cat. Nathanson went out with the woman in the rain, helped her dig a grave and bury the cat—both of them in tears.

When I told Nathanson about my mental health court environment, the relationship I attempted to forge with my probationers, and my notion of “therapeutic jurisprudence,” she strongly approved.123 A court team perhaps can establish a modified version of the relationship that Jane Nathanson established with her clients, with the major difference that the judge has the ultimate power to impose sanctions, including jail (and if the probation agent views a cat, she will report it to the court, the animal control officer will seize it, and the judge will consider a sanction at the next status conference).

You must decide whether you will treat the defendant’s compulsion to possess animals the way you might approach a defendant with substance abuse disorder. You may have accepted the premise that harm reduction and incremental change are part of the recovery process, or compliance, or you may show zero tolerance for violations of the animal ban.124

I do not pretend to know what I would do if I were confronted with Cynthia Gudger in my courtroom. Given her history it is possible that I would conclude that she was beyond any hope of change, and that if I released her into the community, I would be subjecting countless additional animals to lives of suffering. I might impose a maximum sentence along with an animal ban if the statute permitted it, or more likely a split sentence. Yet I know that

123 Telephone Interview with Jane N. Nathanson (Sept. 20, 2019).  
124 Behavioral changes are difficult for everyone, and animal hoarders are particularly resistant to change. There is no established therapeutic intervention which has been studied and proven to be effective in animal hoarding and it is unknown if the techniques involved in treating substance abuse, for example would be effective, although the Motivational Interviewing technique appears promising; Patronek and Nathanson, *supra*.

page82image51368832

82

incarceration is not the ultimate solution to the incredibly complex, seemingly intractable problem of animal hoarding behavior.

I do not have a definitive answer to the question of how to deal with animal hoarders, but

hope that you 1)

2)

3)

4)

5)

have reached these five conclusions:

Animal hoarding behavior is serious, deviant, and anti-social, and animals experience excruciating suffering  
as a direct result of the behavior;

The task of a judge is to focus on modifying behavior. It may be impossible to identify with certainty the psychological causes for the behavior in any individual, but mental health treatment offers the opportunity for the defendant to create a therapeutic, trusting relationship with another human being, motivating the hoarder to consider new ways of thinking about her behavior;

Form a team; an alliance with the probation agent and animal control agency will benefit you as the judge in enhancing prospects for probation compliance, particularly in monitoring a ban on possession of animals;

Status conferences with a defendant serve the interests of everyone involved in the case;

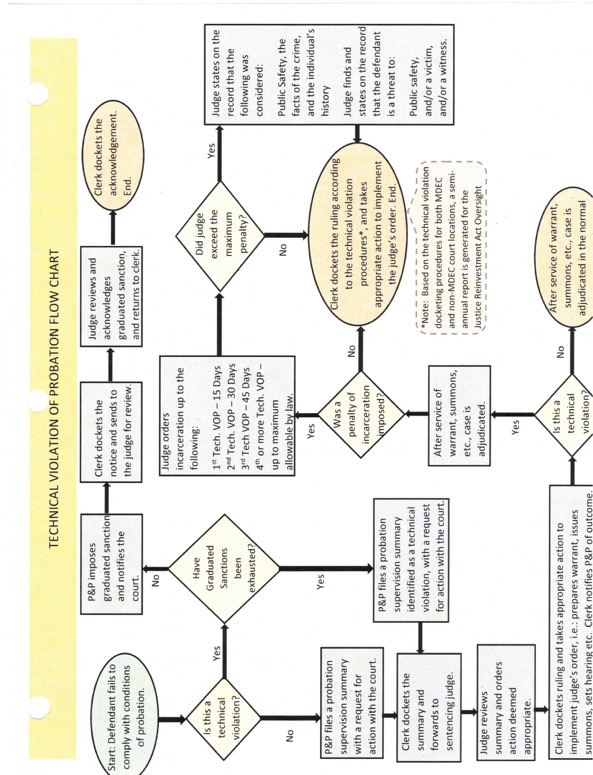
Creating a positive relationship with your defendant, so that she believes you care about her and her life, may contribute to compliance.

No doubt you will draw your own conclusions in handling your case with its unique defendant, facts, and circumstances. I hope that you can envision your own path forward. If you ever wish to discuss your case or anything covered in this paper, I invite you to reach out to me. gale.rasin@mdcourts.gov.

©

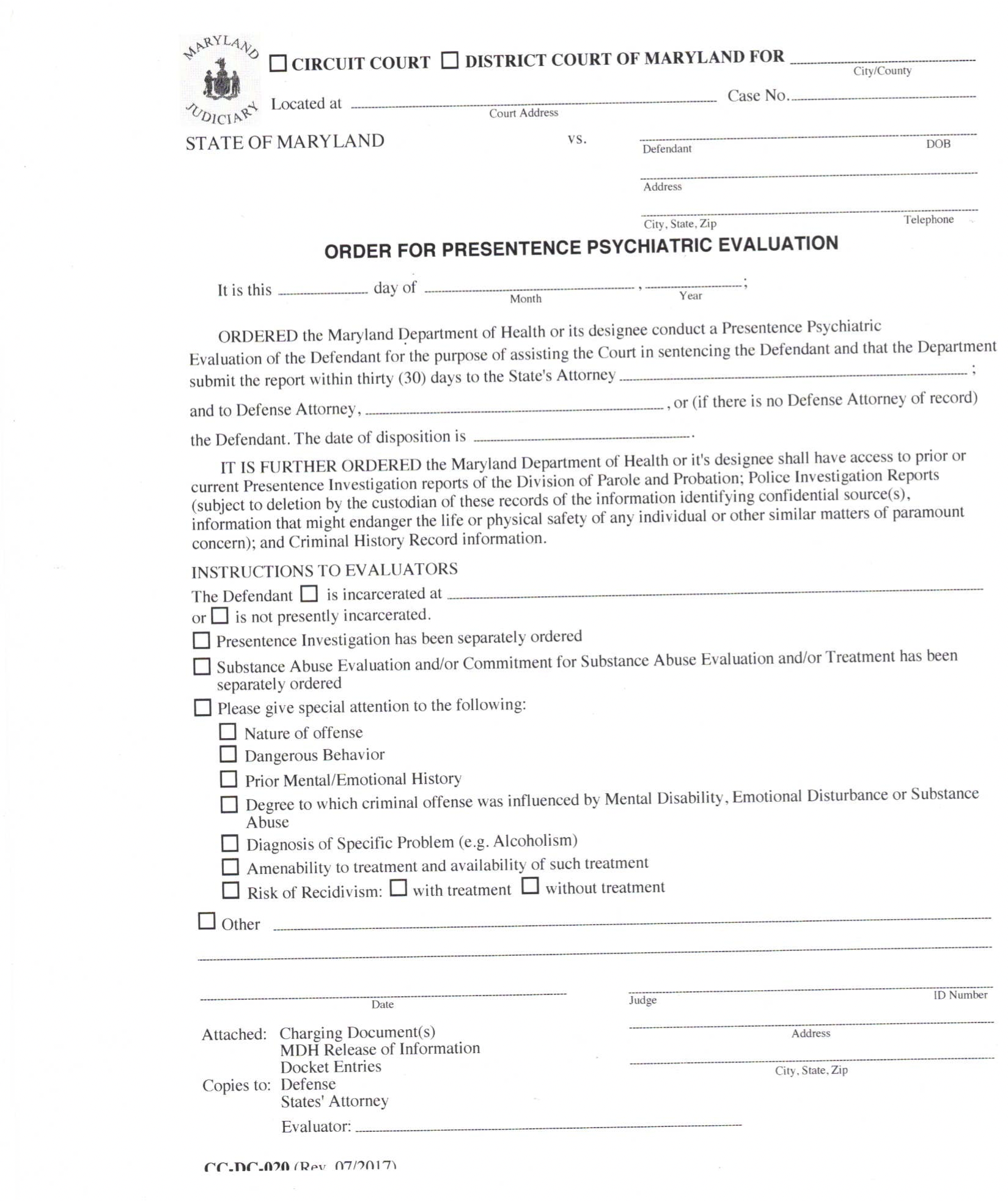
83

Attachment 1: Technical Violation Probation Flow Chart



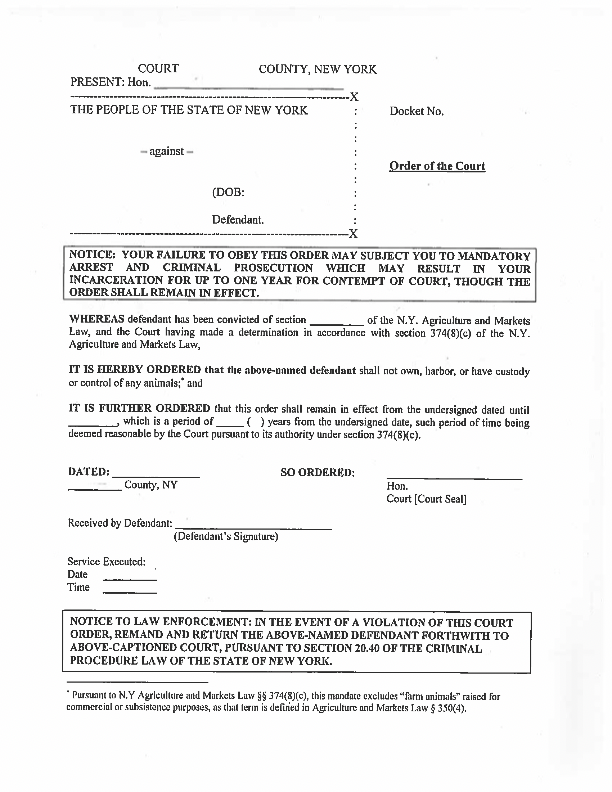
84

Attachment 2: Order for Pre-sentence Psychiatric Evaluation – Maryland Judiciary



85

Attachment 3: Order for Ban on Animals - New York State Courts



86

Attachment 4: Best Practices for Drug Treatment Courts, 2018.

1. Participation in Pre-Court Staff Meetings

The judge regularly attends pre-court staff meetings during which each participant’s progress is reviewed and potential consequences for performance are discussed by the Drug Court team.

1. Frequency of Status Hearings

Participants appear before the judge for status hearings no less frequently than every two

weeks during the first phase of the program.10 The frequency of status hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit

drugs11 and are regularly engaged in treatment. Status hearings are scheduled no less frequently than every four weeks until participants are in the last phase of the program.

1. Length of Court Interactions

The judge spends sufficient time during status hearings to review each participant’s progress in the program. Evidence suggests judges should spend a minimum of approximately three minutes interacting with each participant in court.

1. Judicial Demeanor

The judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other program requirements, and expresses optimism about their abilities to improve their health and behavior. The judge does not humiliate participants or subject them to foul or abusive language. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments [see also Standard IV].

1. Judicial Decision Making

The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant’s legal status or liberty. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant’s legal representative. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.

National Association of Drug Court Professionals, *Adult Drug Court Best Practices,* NAT’L DRUG RESOURCE CENTER, 2018.

87

Attachment 5: Essential Elements of a Mental Health Court.

Status hearings allow mental health courts publicly to reward adherence to conditions of participation, to sanction nonadherence, and to ensure ongoing interaction between the participant and the court team members. These hearings should be frequent at the outset of the program and should decrease as participants progress positively. Mental health courts should use incentives to recognize good behavior and to encourage recovery through further behavior modification. Individual praise and rewards, such as coupons, certificates for completing phases of the program, and decreased frequency of court appearances, are helpful and important incentives. Systematic incentives that track the participants’ progress through distinct phases of the court program are also critical. As participants complete these phases, they receive public recognition. All responses to participants’ behavior, whether positive or negative, should be individualized. Incentives, sanctions, and treatment modifications have clinical implications. They should be imposed with great care and with input from mental health professionals. Courts should have at their disposal a menu of incentives that is at least as broad as the range of available sanctions; incentives for sustained adherence to court conditions, or for situations in which the participant exceeds the expectation of the court team, are particularly important.

Council of State Governments Justice Center Criminal Justice/Mental Health Consensus Project,

*Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*, Bureau of Justice Assistance Office of Justice Programs, Department of Justice 2007) http://www.bja.gov/Publications/MHC\_Essential\_Elements.pdf.

88