

1 Ingrid A. Rosenquist (# 09-15466)  
2 **DEPUTY YELLOWSTONE COUNTY ATTORNEY**  
3 P.O. Box 35025  
4 Room 701, Courthouse  
5 Billings, MT 59107-5025  
6 Telephone 406/256-2870  
7 Attorney for Plaintiff

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8 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

9	STATE OF MONTANA	Cause No. DC 09-0018
10	Plaintiff,	Judge Susan P. Watters
11	vs.	
12	LINDA KATHERINE KAPSA, Defendant.	<b>STATE'S SENTENCING MEMORANDUM</b>

14 The State respectively submits its Sentencing Memorandum for the Court's consideration.  
15 Pursuant to §§ 45-8-217, 46-18-222, and 46-18-502 M.C.A, the State argues that the Defendant be  
16 sentenced as a Persistent Felony Offender to the Department of Health and Human Services for a  
17 period of 20 years with all of that time suspended. The State further argues that the Defendant be  
18 restricted in her animal ownership to the following numbers: no more than 6 altered dogs, 2  
19 cockatiels, 3 altered cats, 40 chickens, 20 goats, and 8 horses (with restriction on possessing  
20 further horses once those horses currently in her custody become deceased).

21 **ARGUMENT AND RECOMMENDATION**

22 Article II, Section 28 of the Montana Constitution "allows a district court in its discretion to  
23 base a sentence upon the principle of prevention of future crimes." *State v. Beach* (1985), 217  
24 Mont. 132, 153, 705 P.2d 94, 107. The Defendant, if given the opportunity, will commit the  
25 crime of Aggravated Animal Cruelty again unless she is given a sentence that will prevent her from

1 hoarding and neglecting animals.

2 **I. Circumstances of the Offense**

3 The Court is familiar with the facts of this case and the Defendant's conduct. On December  
4 30, 2008, as part of a lawfully executed search warrant the State seized 189 dogs, 27 chickens, 10  
5 cockatiels, and 1 cat. This was the second seizure involving the Defendant's property in a three-  
6 week period. In the previous seizure, 10 dogs and 2 kittens were seized. These numbers do not  
7 include the 24 deceased dogs that were removed from the Defendant's property during the two  
8 seizures nor does it include the numerous deceased animals that were unable to be removed from  
9 the Defendant's property due to being frozen in either a manure pile or to the ground.

10 The majority of seized animals were in extremely poor condition, some with life-threatening  
11 health issues. Authorities found an overwhelming lack of food and water for the animals present  
12 on the Defendant's property as well as a lack of appropriate shelter and veterinary care. All of this  
13 demonstrates the Defendant's complete inability to responsibly breed dogs. It further demonstrates  
14 that she must be limited in the number of animals she can possess.

15 **II. Defendant's History of Animal Hoarding/Cruelty**

16 An animal hoarder has been defined as an individual who accumulates a large number of  
17 animals, who fails to provide the animals with adequate food, water, sanitation, and veterinary  
18 care, and who is in denial about this inability to provide adequate care. Colin Berry, M.S., Gary  
19 Patronek, V.M.D., Ph.D., & Randall Lockwood, Ph.D., *Long-Term Outcomes in Animal Hoarding*  
20 *Cases*, 11 Animal L. Rev. 167, 168 (2005) [hereinafter *Long-Term Outcomes*]. Two features  
21 distinguish animal hoarding from other types of animal cruelty. First, most of the suffering arises  
22 from chronic neglect; second, the perpetrator generally does not intend to harm the animals.  
23 Patronek, G.J., Loar, L., & Nathanson, J.N., *Animal Hoarding: Strategies for Interdisciplinary*  
24 *Interventions to Help People, Animals, and Communities at Risk*, pg. 21, Hoarding of Animals  
25 Research Consortium, available at <http://www.tufts.edu/vet/cfa/hoarding/pubs/AngellReport.pdf>

1 (last visited August 5, 2009). Without a long-term plan and support for the hoarder, the available  
2 evidence indicates that recidivism approaches 100 percent. *Long-Term Outcomes* at 173.

3 From a review of her past history, the Defendant's neglectful and sometimes abusive care of  
4 animals is not an aberration in behavior, an accident, or a one-time event. The Defendant's history  
5 establishes a long-term problem with animal hoarding and the disastrous side effects such behavior  
6 has on the animals in the Defendant's care.

7 A review of the Defendant's criminal history from her Pre-Sentence Report shows a 16-year  
8 history of violations involving animals. The Defendant's last two felony charges involved animals.  
9 In DC 03-114, Tampering with Public Records or Information, the Defendant falsified the date on a  
10 health certificate when shipping a pug puppy to a new home. The falsification came to light when  
11 the puppy purchasers found the puppy to be sick and returned it to the Defendant. In DC 03-836,  
12 Issuing a Bad Check, the Defendant attempted to refund a dissatisfied puppy buyer with a check  
13 drawn on an account with insufficient funds.

14 The Court should also take note of the circumstances involving her 1992 Cruelty to Animals  
15 warning. In 1992, after receiving several complaints from Yellowstone County Child Protective  
16 Services, the Yellowstone County Health Department, and a private citizen, Yellowstone County  
17 Animal Control inspected the Defendant's property and observed over 300 animals on the property  
18 including 90 dogs (shelties and pugs), rabbits, pigeons, sheep, goats, cows, pigs, and horses.

19 *Fleming Aff.* ¶ 3. (See Exhibit 1). During a subsequent visit, the Defendant requested that Animal  
20 Control Officer Fleming take three of her shelties that were in poor health. Those animals were  
21 taken to a veterinarian who examined them and recommended that they be euthanized due to their  
22 poor physical condition. As a result of these two visits to the [Kapsa] property, she was charged  
23 with a misdemeanor Cruelty to Animals count.<sup>1</sup> *Id.* at ¶ 4.

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<sup>1</sup> Prior to 2003, there was no felony animal cruelty statute in Montana, thus only allowing for the filing of misdemeanor charges. In 2003, partially in response to the animal hoarding case of *State v. Lethcoe-Harmon*, the legislature enacted §45-8-217 Aggravated Animal Cruelty.

1 On March 12, 1993, after long negotiations, the Justice Court charge was reduced to a  
2 warning upon the conditions that [Kapsa] reduce the number of animals on her property (15 dogs, 4  
3 horses, and 2 cows), that she find appropriate placements within thirty (30) days for a certain  
4 number of animals, that she improve housing for her remaining animals, and that she obtain a  
5 kennel permit. Between March and early June 1993, several requests and attempts to make  
6 previous, court-authorized inspections of [Kapsa's] property were refused by [Kapsa]. Based on  
7 this, on June 3, 1993, Judge Hernandez issued an order authorizing law enforcement to enter the  
8 Kapsa property and seize any animals in the discretion of Animal Control and remove them from  
9 the property. On June 4, 1993, an inspection of the Defendant's property revealed approximately  
10 169 animals, which animal control directed 108 of those animals to be removed. The Defendant  
11 eventually discharged the case in December 1993. *Id.* at ¶ 6 - 10.

12 Fifteen years later, the Defendant had again accumulated over 300 animals, the majority of  
13 those being dogs. The Defendant has not only continued in the behavior that brought about the  
14 1993 seizure but also continues to blame others for the extreme neglect of these animals.

15 In response to the 1993 seizure, the Defendant filed a civil lawsuit against the county and  
16 numerous other individuals for conversion, trespass, and violation of her constitutional rights. In  
17 that case, the Defendant submitted an affidavit that stated, "...they (John Fleming) had previously  
18 (Fall 1992) brought an extremely contagious disease called Parvo onto the property which resulted  
19 in the death of 28 of my pugs" *Reisdorff Aff.* ¶ 16. (See Exhibit 2). In the PSR report in this case  
20 dated August 4, 2009, the Defendant in her statement states,

21 "In November, when I was gone to get dog food two of my dogs mysteriously  
22 disappeared out of their kennel. I finally found that they had been dumped out about  
23 a mile from my home. One of them was picked up by animal control so I went to  
24 get him. Unfortunately, I obviously picked up parvovirus when I went to get him,  
25 which ended up causing a parvo outbreak in my kennel causing the loss of some of  
my puppies." *Kapsa PSR* at 4.

26 The presence of the Parvovirus on the Defendant's property has been long-standing. The

1 Defendant blames animal control for infecting her property/dogs with Parvovirus every time there  
2 is law enforcement intervention as a rationalization for the number of deceased/sick animals on her  
3 property. Notably, she has never supplied any veterinary records to show that she tried to save any  
4 of these sick animals from dying from this or any other disease.

5 Additionally, in the instant matter, the Defendant argues that she has "continued to be  
6 harassed by my ex-husband, numerous other people driving by, biking by, walking by, etc which  
7 caused my dogs to be so upset that they started fighting causing the death of a few of my dogs." *Id.*  
8 at 4. The Defendant's property is beside a public road. The Defendant seems to believe that all  
9 traffic on the road is contrived to harass her and her animals. Ironically, several individuals  
10 reported to law enforcement that they no longer bike or walk down South 14<sup>th</sup> as they have been  
11 harassed by the Defendant's dogs that will come on the road and chase them. This includes the  
12 Huntley Project Cross-Country team changing their running route so as to avoid the Defendant's  
13 property.

14 The Defendant also states that she was "set up" by the National English Shepherd Club and  
15 other breeders as well as having her advertising pulled due to "bogus" complaints which caused her  
16 to lose puppy sales<sup>2</sup> and "[puppy] sales continued to decline partly due to the economy but greatly  
17 due to breeders defaming me and telling people not to buy dogs from me. This ended up in having  
18 more puppies on hand than I would normally have." *Id.* at 4-5. The State notes that even with  
19 "slumping sales" the Defendant continued to allow her dogs to breed unchecked.

20 When the Defendant's dogs were seized, there were approximately 12 pregnant bitches that  
21 whelped their litters in the first couple months of being in the State's custody. This further shows  
22 that the Defendant is unable to control the breeding of her dogs even when she acknowledges that  
23 her puppy sales have decreased to the point where she was unable to place the puppies already born  
24 let alone ones that had yet to be born at the time of the seizures.

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<sup>2</sup> It should be noted that the two main websites utilized by the Defendant – puppyfind.com and pets4you.com only pulled the Defendant's advertisements after the initial seizure in this matter.

1       For over 15 years, the Defendant has shown not only an inability to appropriately care for  
2 the animals in her custody but has also continued blame others for the lack of care she provided the  
3 animals. She has blamed law enforcement, humane agencies, national breed and rescue  
4 organizations, as well as other breeders. All individuals whose main involvement with the  
5 Defendant is caring for, both physically and financially, the animals she neglected badly enough to  
6 require legal intervention. Without a long-term supervision sentence of (20) twenty years and a  
7 restriction of not only the amount of animals the Defendant can possess as well as a prohibition on  
8 breeding dogs, the Defendant's ability to hoard and neglect animals will continue unabated.

9 **III. Financial Aspects Involved in this Case**

10      **A. Restitution Obligations**

11       Restitution in this case is a complex matter. The actual cost of housing and caring for the  
12 Defendant's animal's for the last eight months exceeds a half a million dollars. This amount is  
13 offset by hundreds of thousands of dollars in donations in the form of volunteer labor, in-kind gifts  
14 and actual cash gifts. The State will present evidence that Yellowstone County has currently  
15 expended \$194,207.90 and has received \$43,370 in cash donations. The State will document the  
16 hours spent by volunteers and will present testimony concerning in-kind donations. The actual cost  
17 of these gifts is difficult to determine; i.e., retail versus wholesale and rate of pay for volunteer  
18 labor. The State will not seek restitution for these gifts, but these gifts should be considered in the  
19 determination of other restitution.

20      **B. Defendant's Financial Ability to Care for Animals**

21       The PSR reports that the Defendant receives \$667 per month in SSI payments bringing an  
22 annual income of \$8004. The Defendant also states that she has utility expenses in the amount of  
23 \$300 per month but gets governmental assistance in the amount of \$600 per month. The  
24 Defendant's financial ability to care for a large number of animals is limited by the amount of  
25 money she currently receives in the form of government subsidy. The Defendant has shown the

1 inability to appropriately care for the number of animals she had, even with income from puppy  
2 sales. Most notably, many of the dogs were extremely ill, and in one instance, needed an  
3 emergency surgery to amputate a leg. The Defendant's financial resources were sufficient to cover  
4 basic needs like dog food, let alone adequate medical attention for the animals in the Defendant's  
5 care.

6 Additionally, the State is aware that the Defendant is receiving hay and perhaps other  
7 livestock feed from relatives to help support her animals, particularly the horses. The Defendant  
8 cannot state that she can afford to care for all the animals she wants if she depends on the charity of  
9 others to feed the animals. The Defendant needs to be able to afford to care for the animals on her  
10 own budget and care for *herself* as well.

11 Based on this, the State believes that the Defendant should be strictly limited in the amount  
12 of animals she is to own as outlined in the plea agreement and that she not be allowed to have  
13 unaltered dogs or cats on her premises or be owned/co-owned by her. The Defendant wants to  
14 have 20 dogs. The Defendant does not have the financial ability to care for 20 dogs in addition to  
15 the other animals the Defendant wishes to keep as part of the plea agreement. At most, the  
16 Defendant should be permitted to own/possess no more than 6 altered dogs. These dogs will give  
17 her the companionship that she needs for her mental health.

18 The Defendant informed the PSR author that she is not interested in breeding animals for a  
19 living any more. *Id.* at 10. Based on this, there is no reason for the Defendant to have intact  
20 dogs/cats and to be limited in the amount of goats, cockatiels, and chickens she possesses. The  
21 Defendant does not have the financial wherewithal to care for a large number of animals and the  
22 Defendant's past behavior shows that if she is allowed an unlimited number of animals and any  
23 unaltered dogs, the number of animals on the Defendant's property will once again soar into the  
24 hundreds.

25 **IV. Defendant's Physical Ability to Care for Animals**

1 The Defendant stated in the PSR that her health is fair but that she suffers from nerve  
2 damage as a result of back surgery that occurred about (6) six years ago which results in back and  
3 leg pain and that she has bad knees. *Id.* at 5. As with the financial considerations this must be  
4 taken into account. The Defendant's physical ability to care for a large number of animals needs  
5 to be addressed. The Defendant is a 59-year-old woman who has nerve damage and bad knees.  
6 Couple these medical issues with the fact that the Defendant resides alone and has to personally  
7 care for all the animals she wants. Allowing her to have more than (6) six altered dogs in  
8 conjunction with the 20 goats, 40 chickens, (8) horses, (3) three altered cats, and (2) two  
9 cockatiels would create a burdensome situation where the overall care of the animals in the  
10 Defendant's possession would suffer.

11        The care for the animals goes beyond just feeding and watering the animals. Excrement  
12    needs to be removed from the pens and those pens have to be kept clean and dry. The dogs need  
13    to be brushed to ensure the horrendous matting that was present on the dogs at the time of the  
14    seizures does not reoccur. Pens will need to be repaired as they age to ensure they do not create a  
15    dangerous situation for the animals on the property. Also, good sense dictates that the horses will  
16    need their hooves trimmed, which if the Defendant is unable to do herself, will cost additional  
17    money. The goats need to be milked and the chickens tended. To allow the Defendant to possess  
18    more than six dogs would create so much additional work that the State believes the Defendant  
19    will be back in court in a short amount of time.

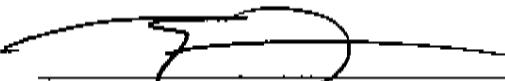
## CONCLUSION

21 The Defendant pled no contest to one count of Aggravated Animal Cruelty as a Persistent  
22 Felony Offender. She continues to lay the blame for the inhumane conditions present on her  
23 property on others. The Defendant's inability to see how her actions, and inactions, created the  
24 abject neglectful conditions her animals lived in do not bode well for rehabilitation. As such, the  
25 State believes that it is imperative that the Defendant be sentenced as a PFO to a 20-year

1 commitment to the Department of Health and Human Services with all that time suspended.

2 Furthermore, the State believes that the Defendant should not be able to possess or own/co-  
3 own no more than (6) six altered companion dogs in addition to 20 goats, 40 chickens, (8) eight  
4 horses, (3) three altered cats, and (2) two cockatiels as outlined in the plea agreement. This 20-  
5 year sentence will help ensure that the Defendant does not mistreat her animals.

6 RESPECTFULLY SUBMITTED this 10 day of August, 2009.

7   
8 Ingrid A. Resenquist  
9 Deputy County Attorney  
10 Yellowstone County, Montana.

11 **CERTIFICATE OF SERVICE**  
12 Yellowstone County Attorney's Office

13 This is to certify that a true and correct copy of the foregoing document was hand delivered,  
14 picked up by courier or sent via U.S. Mail, postage paid, this 10<sup>th</sup> day of August, 2009 to the  
15 following and a courtesy copy was hand delivered to the office of the Honorable Susan P. Watters:

16 Moira M. D'Alton  
17 Office of State Public Defender, Billings Branch  
18 207 North Broadway, Suite 201  
19 Billings, Montana 59103

20   
21 Amy L. Monroe, Legal Assistant