

From: Claudine Wilkins, Esq.

Does this law allow for the "forfeiture" of an animal that has been subject to cruelty or neglect prior to trial? Yes or No. If you believe it allows for forfeiture, please explain how and what course the impounding agency has.

The whole concept of not having animal victims of crime languishing in impound for months and months while waiting for trial of a potential criminal case was the moving force behind the Title 4 part of the Animal Protection Act of 2000. However, since it was drafted by a prosecutor, there was also extreme sensitivity to the idea that the prosecutor in a criminal case has to have the power to maintain control of his/her evidence.

Assuming that an animal is properly impounded pursuant to the procedures outlined in Title 4 (which is a big "if"....in my experience, most animal control officers are not even remotely following the requirements for vet inspection and notice to the owner), then the impounding agency has the following options for disposing of the animal:

Option A (Return to owner under consent order): Under 4-11-9.3 (c), the agency impounding an animal other than an animal which would be considered an "object or instrumentality of a crime" can return the animal to the owner under a consent order (unless the owner has been previously convicted of cruelty in a criminal case or found to have not imparted humane care in an administrative hearing). This is a unilateral decision that can be made by the impounding agency UNLESS the animal was an object or instrumentality of a crime. If the animal was an object/instrumentality of a crime, then the animal cannot be returned to the owner under a consent order without the prosecutor's approval and a disposal order from the court having jurisdiction over the criminal case. The prosecutor has to maintain control of his/her evidence.

Option B (Court order for disposal of animal which was object/instrumentality of a crime): An agency having custody of an "object/instrumentality of a crime animal" may, again with the approval of the prosecutor, apply to the court that has the criminal case for an order allowing disposal of the animal prior to trial of the criminal case (4-11-9.3(d)). As far as procedure, I would assume that the prosecutor would be the one to draft the application for the disposal order, since (s)he has to approve the process, and the order has to be signed by the court that has jurisdiction over the criminal case. Again, we think of the animal as "evidence" – and like in any other case, the prosecutor has to maintain control of the evidence and also the judge needs to have a say-so in how this "evidence" is disposed of. We could imagine a situation where the prosecutor might be ok with having the animal disposed of, but the defendant has an expert that needs to examine the animal. Therefore, the court has the final say-so.

Option C (Hearing): If a consent order isn't entered, and owner still wants the animal back, (s)he has to request his/her hearing, and follow the procedures for

that. If the hearing officer finds the impound was improper, then (s)he enters an order that the owner gets the animal back. If the hearing officer finds that the impound was proper, then the hearing officer can give the animal back to the owner (again assuming no prior cruelty/inhumane findings) or may order the impounding agency to dispose of the animal according to 4-11-9.6. This hearing procedure does not apply to an “object/instrumentality of a crime animal.” An “OIC animal” cannot be returned to the owner or disposed of without the prosecutor’s approval. This would prevent the prosecutor from potentially losing his/her evidence due to a lame decision by some hearing officer.

So to answer your question, yes....I think that where an animal has been the object of cruelty or the instrumentality of fighting, the impounding agency can, with the prosecutor’s approval, apply for a court order allowing the disposal of the animal, by either return to the owner (we could imagine a situation where the owner was not the perpetrator of the crime against the animal, and in that situation, owner and animal probably need to be reunited ASAP), or disposed of according to 4-11-9.6, prior to trial.

GEORGIA LAW GOVERNING SEIZURE & IMPOUND- RELATES TO ANIMAL CRUELTY

4-11-9.2.

(a) At any time there is probable cause to believe that a violation of this article or any rule or regulation adopted pursuant this article has occurred, the Commissioner, his or her designated agent, or an animal control officer who is an employee of state or local government may apply to the appropriate court in the county in which the animal is located for an inspection warrant under the provisions of Code Section 2-2-11.

(b) Any sheriff, deputy sheriff, or other peace officer shall have the authority to enforce the provisions of this article and Code Sections 16-12-4 and 16-12-37.

(c) The Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer is authorized to impound **any** animal:

- (1) That has not received humane care;
- (2) That has been subjected to cruelty in violation of Code Section 16-12-4;
- (3) That is used or intended for use in any violation of Code Section 16-12-37; or

(4) If it is determined that a consent order or other order concerning the treatment of animals issued pursuant to this article is being violated.

(d) Prior to an animal being impounded pursuant to paragraph (1), (2), or (3) of subsection (c) of this Code section, a licensed accredited veterinarian approved by the Commissioner or a veterinarian employed by a state or federal government and approved by the Commissioner, shall, at the request of the Commissioner, his or her designee, an animal control officer, a sheriff, a deputy sheriff, or other peace officer, examine and determine the condition or treatment of the animal.

(e) The provisions of this Code section and Code Sections 4-11-9.3 through 4-11-9.6 shall not apply to scientific experiments or investigations conducted by or at an accredited college or university in this state or research facility registered with the Commissioner or the United States Department of Agriculture

4-11-9.3.

(a) It shall be the duty of any person impounding an animal under Code Section 4-11-9.2 to make reasonable and proper arrangements to provide the impounded animal with humane care and adequate and necessary veterinary services. Such arrangements may include, but shall not be limited to, providing shelter and care for the animal at any state, federal, county, municipal, or governmental facility or shelter; contracting with a private individual, partnership, corporation, association, or other entity to provide humane care and adequate and necessary veterinary services for a reasonable fee; or allowing a private individual, partnership, corporation, association, or other entity to provide humane care and adequate and necessary veterinary services as a volunteer and at no cost.

(b) Any person impounding an animal under this article or providing care for an impounded animal shall have a lien on such animal for the reasonable costs of caring for such animal. Such lien may be foreclosed in any court that is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts. (c) Any person impounding an animal under this article is authorized to return the animal to its owner, upon payment by the owner of all costs of impoundment and care and upon the entry of a consent order, unless such owner was, in a prior administrative or legal action in this state or any other state, found to have failed to provide humane care to an animal, committed cruelty to animals, or engaged in dog fighting in violation of the laws of this state or of the United States or any of the several states. Such consent order shall provide conditions relating to the care and treatment of such animal, including, but not limited to, the following, that: (1) Such animal will be given humane care and adequate and necessary veterinary services; (2) Such animal will not be subjected to cruelty; and (3) The owner will comply with this article. (d) The provisions of subsection (c) of this Code section shall not apply to an animal that was an object or instrumentality of a crime nor shall any such animal be returned to the owner without the approval of the prosecuting attorney. An agency having custody of an

animal that was seized as an object or instrumentality of a crime may, with the consent of the prosecuting attorney, apply to the court having jurisdiction over the offense for an order authorizing such agency to dispose of the animal prior to trial of the criminal case as provided by law.

Although motions are not necessary and an oral hearing would suffice, if a prosecutor wanted to submit a motion, he could:

The "impounding agency" can submit a Motion to the court having jurisdiction in the criminal case for an animal that was the "object/instrumentality of a crime animal (referred herein as OIC animal). That motion would be called something like:

1) MOTION AUTHORIZING BLANK COUNTY ANIMAL CONTROL TO DISPOSE OF ANIMAL PURSUANT TO O.C.G.A. § 4-11-9.3 (d)

2) The motion could be (but not necessary) be filed with a "Brief in Support of Motion" mentioning crucial factors like:

- 1) Prosecutor has sufficient documentation and photo/video of animal, therefore, does not need to keep the animal;
- 2) animal may stay in cage for an unreasonable amount of time (we have seen cases take more than 2 years);
- 3) animal will go "cage crazy" (of course we would use the medical terminology to explain the psychological phenomenon known as cage crazy. There is plenty out there on this subject);
- 5) animal may lose its ability to be rehabilitated (cage crazy) for possible adoption in the future;
- 6) animal's care and boarding will be paid by the taxpayers (granted, title 4 seizure makes it so the defendant has to cover the cost, but in reality it is doubtful that the perpetrator would have the money to cover the cost of care (which could be for months or years in some cruelty cases) *and* pay a fine.
- 7) animal will be occupying a "cage" which is primarily used for adoption purposes. Thus, the shelter will not only lose that cage, but it may affect the numbers in euthanasia (euthanasia numbers are a big deal to shelter managers for public opinion and to their commissioners for funding);
- 8) if the criminal case involves numerous animals (as in the case of hoarders, dog fighting ring, breeders, etc.), The shelter's cages could potentially be used to board

OIC animals in many cages for a very long time and disrupt the shelter's purpose of adopting animals. In the case for fighting dogs, they must be kept separated;
9) animal kept in cage will only prolong animal's suffering, it is inhumane. This is a victim as well as evidence.

10) Shelter virus outbreaks are common, and the animal waiting for trial could be affected by any shelter virus outbreak.

I'm sure we could think of a few more.

3) Lastly , the Motion could, but does not have to, include an affidavit (or consent form) from the Prosecuting attorney establishing their approval for disposal of animal base on X,Y,Z., or prosecutor can orally give consent. Some judges may accept the petitioner's word based on the close relationships as to prosecutor's consent.