



Cost of Animal Care Law Toolkit[©]

By Claudine Wilkins, Founder of Animal Law Source™ and The Animal Protection Society

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GA Cost of Animal Care (COAC) Law for Animals O.C.G.A § 4-11-9.8, Enacted May 2016.

Purpose

To assuage the cost of impounding and housing animals seized as evidence. The law places the financial burden of caring for animal(s) seized in animal cruelty or dog fighting cases to the animal owner during the pendency of a case assuming the owner has not already relinquished his/her rights to the animal(s).

When can you use COAC law?

COAC is used in cases involving cruelty or dog fighting, specifically anyone who violates state laws: O.C.G.A § 4-11-9.2, 16-12-4, or 16-12-37. The law does not limit the amount of animals so it can be used in cases involving only one animal or multi-animal seizures. This law is especially helpful in puppy mill bust, animal hoarding, and animal fighting cases since the cost to care for multi-animal impounds can be exorbitant.

If case is charged under a local ordinance, see other options if COAC cannot be used (scroll down). Consider asking your county attorney and/or your local commissioners or councilmen to include this language in your local ordinance. Assistant from ALS can be provided.

When and where can you file it?

Filing the petition for COAC can be immediately following the impound of animal(s). In other words, the same day if necessary. It can be filed via “petition” in a court of competent jurisdiction to hear civil cases requesting the court to require the owner of the animal or animals to pay into the registry of such court funds in an amount sufficient to secure payment of all anticipated costs of impoundment and care. Once you file, be very aware of the service of notice time constraints.

Notice to Owner: After petition is filed, the service is to be personally served by a sheriff, deputy sheriff, or other sworn peace officer “on the owner”. If owner cannot be personally served, then 30 days after petition was filed has tolled and owner could not be found, within 10 days (days 31 to 41 after petition was filed), officer may post a copy of the petition on the door from where the animal or animals were impounded.



How does it work?

- When a Georgia law enforcement agency or animal shelter takes custody of an animal(s) from a cruelty case that can be charged any of the following: O.C.G.A § 4-11-9.2, 16-12-4, or 16-12-37, the agency may file a petition with the court to request that the defendant be required to pay all anticipated costs of impoundment and care of the animal(s).
- The court shall set a hearing on the petition to determine the cost of care for the animal(s) pending the disposition of the case. The hearing shall be conducted no less than 10 and no more than 15 business days after the court's receipt of return of service of process of the petition to the owner.
- The scope of the hearing shall be limited to whether the impounding of the animal(s) was authorized. Upon such showing, the court shall require payment from the owner of the animal(s) for an amount sufficient to cover all costs of impoundment and care of the animals for 30 days, for a period beginning at the date of impoundment.
- The owner shall be ordered to deposit an amount equal to the original payment every 30 days until the owner relinquishes the animals or until final disposition of the case.
- Upon payment of funds by the owner, the petitioning agency may immediately draw from the funds to pay for costs incurred by the petitioning agency in keeping and caring for the animal(s).
- If the defendant fails to deposit the funds within five business days of the original order, or five business days after each 30 day period, the animal(s) is forfeited to the petitioning agency by operation of law.
- Indigency - Where only one animal is impounded and the owner is able to prove indigency, the court, in its discretion, may reduce or waive the requirement that the owner pay the costs of impoundment and care.
- **Not Guilty?** If the owner is adjudicated not guilty of all charges specified in the petition, such owner may request from the agency that filed the petition a refund of all costs paid by the owner pursuant to such petition.

Other Options - What if you cannot use COAC?

When you cannot use the COAC, what other legal remedies are:

- **Disposal Actions Pertaining to Animals O.C.G.A. § 4-11-9.5 (c) & 4-11-9.3(d)**, o The Animal Protection Act under Title 4 under was amended 2000. Several items were added including the disposal of animals seized as evidenced prior to the trial of defendant. Title of O.C.G.A. § 4-11-9.5 has four distinct components. The fourth, *crime exception*, begins with“the provisions of this Code Sections shall not apply to an animal that was an object or instrumentality of a crime”. The legislature wanted to provide for rescue/impound of animals that were NOT criminal charges to be returned to owner with conditions (e.g. consent order) and to provide for disposal of animals seized as evidence prior to trial so they do not “languish in a cage”. O.C.G.A. § 4-11-9.5 (c) allows the seizing agency to apply to the court and get a disposal order if the court having jurisdiction over the criminal matter deems it appropriate. Disposal actions can occur at any time after seizure with the prosecutor's approval (even prior to trial, prior to arraignment, prior to indictment, etc). A Title 4 disposal action is similar to a civil *in rem* action (the power a court may exercise over property. This is not filed with administrative judges as the statute is clear that it shall be filed with the court that will hear the underlying offense. So, if it is a felony case, the disposal action should be filed Superior court. If it is a state criminal violation, then petition should be filed in state court, and if it is local ordinance violation, then magistrate (or sometime recorder's court depending on how the county's courts are set up).



- **Injunctive Relief**, you can have a civil decision on the ‘property’ but any pet owner may elect to have the case heard under appeal. You can ask for injunctive relief for the pet owner to place in an escrow account bond money sufficient to cover the reasonable care of the animal. You can ask the money to be made available in 30-day increments and can ask the court for procedures to access the money as restitution for boarding and care costs. The down side is an owner can have a hearing and if proven to be indigent, the route may not be successful. They may be bond relief for “property” management during an appellant process is plausible, but further research is needed.

Case law supporting the Cost of Animal Care Bond

Bramblett v. Habersham County., 346 Ga.App. 511, 816 S.E.2d 446 (Ga. App., 2018)
346 Ga.App. 511, 816 S.E.2d 446 June 21, 2018, Reese, Judge.

Teresa and Clarence Bramblett appeal from an order granting a petition for recoupment of costs filed by Habersham County (the "County"), pursuant to OCGA § 4-11-9.8, and a separate order directing the Brambletts, in part, to pay \$69,282.85 into the court registry in connection with the boarding, treatment, and care of 29 dogs that the Brambletts refused to surrender after the County seized over 400 animals from their property. For the reasons set forth, *infra*, we affirm.

The County filed a petition for recoupment of costs in June 2017, alleging that, in April 2017, "over 400 animals were removed from [the Brambletts'] property, [and] the [Brambletts] were each charged with 340 violations of OCGA § 16-12-4 (B) [,] Cruelty to Animals[.]" The petition identified twenty-two dogs that were found living in the Brambletts' home and eight dogs that were found running loose on the property. The Habersham County Department of Animal Care & Control ("HCACC") "impounded all animals on the property[.]" and "[c]harges of neglect were filed on all but one of the animals which ha[d] not been surrendered." Thus, the County sought recoupment of its costs for the care of the 29 animals "directly involved with the cruelty charges" that had not been surrendered (the "subject animals").

After a hearing, at which HCACC director Madison Hawkins testified, the court found that the County was authorized to impound the subject animals and scheduled a second "hearing to consider evidence related solely to the actual costs incurred by the [C]ounty in providing care for the [subject animals]." After again hearing testimony from Hawkins at the second hearing, the court ordered the Brambletts to pay into the court registry \$69,282.85, "an amount sufficient to cover costs of impoundment and care for a period beginning as of the date of impoundment and ending 30 days after the date of the order (\$49[,]903.20 + \$7[,]211.45 + \$3[,]851.00 + \$8[,]317.20 = \$69,282.85)[.]"

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In reaching these figures, the court multiplied the number of days the dogs had been in the County's custody (180) by the number of dogs (29) and the cost per dog per day (\$9.56). The court estimated this daily cost based on the HCACC's annual budgeted expenses and the maximum number of dogs (60) that Hawkins testified could be housed at the shelter. The court found that the County had presented evidence of additional costs of \$7,211.45 incurred in housing the subject animals at a separate facility and of \$3,851 for "provid[ing] cages, air conditioning, maintenance items and heartworm and flea



prevention medicine" for the subject animals. The court further ordered the Bramblets to deposit \$8,317.20, "(an amount equal to the portion of the original amount attributable to the first 30 days after the date of the initial order) every 30 days thereafter until the owner relinquish[ed] his/her right[s] to the animal(s) or until final disposition of this case[.]" The Bramblets appeal.

[T]he interpretation of a statute is a question of law, which is reviewed de novo on appeal. Moreover, when only a question of law is at issue, ... we owe no deference to the trial court's ruling and apply the 'plain legal error' standard of review. In reviewing the statutes at issue in this appeal, we are mindful that in considering the meaning of a statute, our charge as an appellate court is to presume that the General Assembly meant what it said and said what it meant. Toward that end, we must afford the statutory text its plain and ordinary
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meaning, consider the text contextually, read the text in its most natural and reasonable way, as an ordinary speaker of the English language would, and seek to avoid a construction that makes some language mere surplusage. Simply put, when the language of a statute is plain and susceptible of only one natural and reasonable construction, courts must construe the statute accordingly.¹ With these guiding principles in mind, we turn now to the Bramblets' specific claims of error.

1. The Bramblets argue that the trial court erred in granting the County's petition without first demanding that the County provide notice to the Bramblets pursuant to OCGA § 4-11-9.4, which would have allowed the Bramblets the opportunity to request a hearing pursuant to OCGA § 4-11-9.5.

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In 2016, the General Assembly amended the Georgia Animal Protection Act (the "Act")² "to create a process for a petition for recoupment of expenses of impoundment[and] to provide for procedures regarding same[.]"³ To that end, the General Assembly added OCGA § 4-11-9.8, "Recoupment of expenses of impoundment; process."⁴ Section 4-11-9.8 (a) provides:

Any agency impounding one or more animals as part of any investigation of a violation of Code Section 4-11-9.2, 16-12-4, or 16-12-37, or otherwise providing care for one or more animals impounded pursuant to this article, may file a petition in a court of competent jurisdiction to hear civil cases requesting the court to require the owner of the animal or animals to pay into the registry of such court funds in an amount sufficient to secure payment of all anticipated costs of impoundment and care.

Subsections (b) and (c) set forth the required contents of the petition and the manner of service of the petition. Subsection (d) (1) provides in part that the court "shall" set a hearing on the petition between ten and fifteen business days after the court's receipt of return of service of process.

The petition in this case, filed pursuant to OCGA § 4-11-9.8, specifically alleged that the Bramblets "were each charged with 340 violations of OCGA § 16-12-4 (B)" and that "[c]harges of neglect [had been] filed on all but one of the animals which ha[d] not been surrendered." As quoted above, OCGA § 4-11-9.8 (a) specifically allows an agency to file a recoupment petition when the agency is "impounding

one or more animals as part of any investigation of a violation of Code Section 4-11-9.2, 16-12-4, or 16-12-37."

OCGA § 16-12-4 (b) provides:

A person commits the offense of cruelty to animals when he or she:

(1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or omission; or

(2) Having intentionally exercised custody, control, possession, or ownership of an animal, fails to provide to such animal adequate food, water, sanitary conditions, or
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ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition.

The record is clear that the petition sought recoupment of costs under OCGA § 4-11-9.8 (a) as part of an investigation of violations of OCGA § 16-12-4. Thus, the trial court did not err in finding that the procedure set forth in OCGA § 4-11-9.8 applied. In contrast, by the statutes' plain language, the notice provisions of OCGA §§ 4-11-9.4 and 4-11-9.5 only apply when the animal has been impounded "under" or "pursuant to this article" of the Act.⁵

Nothing in the record indicates that the subject animals were seized pursuant to an

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inspection warrant under the Act.⁶ Instead, the County presented evidence at the initial hearing that HCACC director Hawkins, who was a POST-certified peace officer, obtained a search warrant from a magistrate judge for suspected violations of OCGA § 16-12-4 (animal cruelty) at a residential dwelling registered to the Bramblets.

Thus, we conclude that the Bramblets were not entitled to notice pursuant to OCGA § 4-11-9.4 and that the trial court did not err in following the plain language of OCGA § 4-11-9.8.

2. The Bramblets contend further that the trial court erred by "not tak[ing] into account the actual predicted costs of the specific 29 dogs at issue, and instead cho[osing] to utilize a formulaic calculation that was overly broad and imprecise."

OCGA § 4-11-9.8 (d) provides in relevant part:

(2) The scope of the hearing [on an agency's recoupment petition filed under [OCGA] § 4-11-9.8 (a)] shall be limited to whether the impounding of the animal or animals was
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authorized. Upon such a showing, the court shall require payment into the registry of the court of an amount sufficient to cover all costs of impoundment and care, as determined by the court , for a period beginning as of the date of impoundment and ending 30 days after the date of the order. ...

(3) The owner shall be ordered to deposit an amount equal to the portion of the original deposit amount attributable to the first 30 days after the date of the initial order every 30 days thereafter until the owner relinquishes the animal or animals or until final disposition of the animal or animals. ...

(7) Upon the payment of funds into the court registry in accordance with this Code section, the petitioning agency may immediately begin to draw from those funds for payment of the actual costs incurred by the petitioning agency in keeping and caring for the animal or animals from the date of impoundment to the date of the final disposition of the underlying criminal action regarding the owner and the animal or animals.

(8) Upon final disposition of the animal or animals, remaining funds deposited with the clerk of the court shall be refunded to the owner.

(9) In the event that an owner is adjudicated not guilty of all charges specified in a petition filed pursuant to this Code section, such owner may request from the agency that filed the petition a refund of all costs paid by the owner pursuant to such petition. In making any such claim for refund, the procedures provided in Code Section 48-5-380 shall apply.⁷

We conclude that, based on the plain language of OCGA § 4-11-9.8 (d), the trial court did not err to the extent it estimated the County's costs. Subsection (d) (2) does not require the trial court to "analyz[e] the actual costs of housing and impounding the specific 29 dogs at issue,"⁸ as the Brambletts argue, but instead requires "payment into the registry of the court of an amount sufficient to cover all costs of impoundment and care, as determined by the court[.]"⁹ The County can then draw from those funds "for payment of the actual costs

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incurred" under OCGA § 4-11-9.8 (d) (7), subject to the refund provisions of subsections (d) (8) and (d)

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(9). Because the Brambletts have not shown error, we affirm.

Judgment affirmed.

Barnes, P. J., and McMillian, J., concur.



Notes:

1 Callaway Blue Springs v. West Basin Capital , 341 Ga. App. 535, 537 (1), 801 S.E.2d 325 (2017) (punctuation and footnotes omitted).

2 OCGA § 4-11-1 et seq.

3 Ga. L. 2016, p. 178 (caption).

4 See Ga. L. 2016, p. 178, § 6.

5 See OCGA §§ 4-11-9.4 (a) (setting forth notice requirements for "any person impounding an animal under this article "); 4-11-9.5 (b) (1) (providing circumstances under which "the owner of an animal impounded pursuant to this article " can request a hearing) (emphasis supplied).

6 See OCGA §§ 4-11-9 ("The Commissioner or his designated agents are authorized to enter upon any public or private property at any time for the purpose of inspecting the business premises of any pet dealer or any animal shelter, kennel, or stable and the dogs, cats, equines, or other animals housed at such facility to determine if such facility is licensed and for the purpose of enforcing this article and the rules and regulations adopted by the Commissioner pursuant to this article."); 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 to 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.").

7 (Emphasis supplied.)

8 (Emphasis supplied.)

9 (Emphasis supplied.)

----- Bramblett v. Habersham Cnty., 346 Ga.App. 511, 816 S.E.2d 446 (Ga. App., 2018)

For additional questions, please contact: Animal Law Source at info@animallawsource.org. Visit AnimalLawSource.org for a sample petition and order.