Search, Seizure, and Impound in Georgia Animal Cruelty and Fighting Investigations

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Introduction

The Georgia General Assembly passed the Animal Protection Act of 2000 literally in the final minutes of the 2000 session, on March 22, 2000. It was signed into law by Governor Roy Barnes on April 27, 2000, with an effective date of May 1, 2000. The Act was one of the most hotly-debated in recent Georgia history, and its passage was the result of years of concerted effort by animal welfare advocates throughout the state. In addition to creating the new crime of Aggravated Cruelty to Animals [O.C.G.A. 16-12-4 (c)], which requires felony punishment for certain acts of animal abuse, the Animal Protection Act also added to Title 4 of the Georgia Code sweeping new provisions increasing the ability of Georgia Department of Agriculture agents, animal control officers, and law enforcement officers to not only rescue, but subsequently protect animals which have been subjected to neglect, cruelty, or fighting from their abusers, independently of any criminal case which might be pursued.[1]

However, as animal welfare advocates throughout the state are now beginning to realize, the passage of the Animal Protection Act was only the beginning of the effort to involve the Georgia criminal justice system in a meaningful way in the reasonable protection of animals from abuse and neglect. In much the same way as law enforcement officers, case workers, and prosecutors throughout the state had to educate themselves on the most effective techniques and strategies for the investigation and prosecution of child abuse cases in the early 1980s, we are now faced with a similar challenge of education for those interested in the investigation and prosecution of animal abuse cases.

[1]A note on the Animal Protection Act of 2000, including a fairly detailed legislative history and a survey of its provisions, can be found at 17 Ga. St. U.L. Rev. 12 (2000).

Special Challenges in Animal Cruelty/Fighting Cases

Successful prosecution depends on successful investigation. Animal abuse cases may rate low on the priority list of over-taxed prosecutors' offices. Animal abuse cases may also rate low in appeal to the interest or "outrage" of some fact-finders, both judge and jury. Simply put, a successful prosecution of an animal abuse case can be an uphill climb even if the investigation is nearly perfect, and the evidence overwhelming. Where the evidence is weak because of sloppy or incomplete investigation, where the true facts are not preserved because of poor documentation and forensic procedures, and where the admissibility of evidence is in question due to questionable search/seizure practices by investigators, the challenges to the success of the case may well become insurmountable.

Where the prosecution challenges are already so great, it would obviously be desirable to have the most well-schooled and experienced criminal investigators available to work these cases, but equally obviously, this is frequently not the case. Where law enforcement is involved at all, the entire investigation is often performed by patrol officers who may have had little training or experience in even general criminal investigations, much less specialized knowledge or experience in dealing with animal abuse cases. Much more often, of course, these cases are investigated by non-law enforcement personnel - animal control officers or Department of Agriculture officials - who may have a great deal of experience dealing with animal cases, but have not had even that limited degree of education on criminal investigation and search/seizure law that is presented in mandate training for peace officers.

As a practical matter, an additional challenge is presented by the very location of the animal impound and protection statutes within the Georgia Code. Much of the applicable

law is contained within Title 4, not in Title 16 (Crimes and Offenses), Title 17 (Criminal Procedure), or Title 40 (Motor Vehicles and Traffic) -- the titles of the Code on which law enforcement officers are typically trained. Indeed, even many prosecutors have yet to become aware of the Title 4 provisions relating to animal impound and disposal, which can have a profound effect on the outcome of their prosecutions in animal cruelty or fighting cases.

Where animal cruelty cases are investigated thoroughly and correctly, including proper application of the legal and procedural requirements of either 4th Amendment search and seizure or the statutory impound procedures provided especially for animal victims in Title 4 of the Georgia Code, the chances for successful prosecution rise considerably. Therefore, the purpose of this paper is two-fold: (1) to review and highlight general concepts of constitutional and statutory search and seizure law which would be helpful to the officer in the field, to a new prosecutor, or to attorneys who do not commonly practice in the criminal field, and (2) to review and highlight those Title 4 provisions of the Animal Protection Act of 2000 with which all individuals involved in the investigation or prosecution of animal cruelty or fighting cases need to be familiar. It is by no means intended to be an exhaustive study of either topic, as to attempt such would be beyond the scope of the time allotted in this seminar.

General Search and Seizure Concepts

We begin at the beginning - with the search and seizure provisions contained within the Bill of Rights of both the U.S. and Georgia Constitutions:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported*

> *by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*
>
> Constitution of the United States
> Amendment IV

> *The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized.*
>
> Constitution of Georgia
> Article I, Section I, Paragraph XIII

The development of the body of search and seizure law by which investigative action in animal cruelty cases, as well as other criminal cases, is regulated centers around the judicial interpretation of the language used at certain "pressure points" within these constitutional provisions. The U.S. Supreme Court is the final arbiter of meaning within the U.S. Constitution. The Georgia Supreme Court is the final arbiter of meaning within the Constitution of Georgia. Generally, where the language of a Georgia Constitutional provision mirrors that of the U.S. Constitution, Georgia courts will rely upon and follow the interpretation set forth by the U.S. Supreme Court. Therefore, we will use the term "4th Amendment" to inclusively reference the protections afforded by both the 4th Amendment of the U.S. Constitution and Article I, Section I, Paragraph XIII of the Constitution of Georgia.

The 4th Amendment is a limitation on *government* action. Law enforcement agents, civilian employees of law enforcement agencies, government lawyers and their staffs, animal control officers, or inspectors employed by a government agency (whether federal, state, county, or municipal) are government agents and their actions are controlled by the 4th Amendment. In certain circumstances, even private citizens acting at the behest of or

under the direction of a law enforcement or other government official might be considered to be an *agent* of the government, and in these situations 4th Amendment limitations on the agent's actions apply.

Where government agents violate 4th Amendment provisions, a number of bad things can happen:

- Evidence seized can be subject to the *exclusionary rule* which means that the fact-finder cannot consider it in deciding on the defendant's guilt or innocence.
- Where the case cannot be prosecuted, the agent can be sued civilly for false arrest and/or malicious prosecution.
- Where the case cannot be prosecuted, there is the specter of federal 1983 (civil rights) action against the government agent.
- In certain circumstances, the government agent might also be deemed to have committed a crime under Georgia or federal law.

As stated hereinabove, actions by private citizens are not subject to 4th Amendment scrutiny, and where evidence is discovered and/or seized *purely* as a result of private action and brought to law enforcement, the exclusionary rule cannot be applied. However, this is by no means a suggestion that private action undertaken to investigate a possible criminal violation is without risk. Irrespective of the best of humane motivations, non-government personnel entering onto private premises and performing searches and/or seizures also run the risk of having a number of bad things happen:

- Potential criminal prosecution for offenses such as criminal trespass, criminal damage, burglary, and/or theft.
- Possible civil liability

- Personal safety risks
- Although evidence seized might not be subject to the 4th Amendment exclusionary rule, issues regarding its collection, handling, or preservation might make it suspect or unusable for other reasons.

Criminal investigators should not turn away evidence brought to their attention as a result of private action, but private citizens are encouraged to leave law enforcement action to law enforcement professionals.

4th Amendment and Animal Cruelty/Fighting Investigations

The purpose of this section is to review and highlight a few areas of 4th Amendment law which may have particular applicability to animal cruelty/fighting investigations. It is by no means intended to be an exhaustive survey of 4th Amendment law, as such would be beyond the scope of this paper. The determination of the propriety of search and seizure actions by officers in the field is judged on a case-by-case basis under the guidance of certain broad principles set out by the courts. Much depends on officer and prosecutor abilities to artfully explain the officer's correct actions by fitting them into the proper legal "cubbyholes" by describing them in terms of the most correctly-applicable legal theory. Determinations regarding the propriety of government search/seizure actions are always fact-sensitive, and further, 4th Amendment principles are fluid and subject to change. Field officers are strongly encouraged to contact prosecutors in their jurisdiction *before* risking an "iffy" search/seizure action.

The 4th Amendment, as enacted, has two clauses. In the first or "reasonableness" clause, we learn what the 4th Amendment protects, and what government actions are prohibited. The reasonableness clause might be considered to contain two major interpretational pressure points: the phrase "searches and seizures" and the phrase "unreasonable." In order for government action to be held to violate the first clause, it must have actually constituted a search (or seizure), and it must have been unreasonable, and it would have to have been directed against a citizen's person, house, papers or effects - as all of these phrases have been interpreted by the courts. In the second, or "warrants" clause, we learn what requirements the government must meet in order to obtain a valid search warrant (court order) to search a location and seize evidence. The warrants clause also contains certain terms that might be considered interpretational pressure points: the phrase "probable cause", and the phrase "particularly describing the place or places to be searched and the persons or things to be seized."

Katz and Dogs (and Other Animals)

A "search" occurs whenever there is a government invasion of a protected area - that is, an area where there is a "reasonable expectation of privacy." This definition was set out by the U.S. Supreme Court in *Katz v. United States,* 389 U.S. 347, 88 S.Ct 507, 19 L.Ed.2d 576 (1967). In that case, the court adopted a two-part test to determine or define protected areas: First, a person must demonstrate an actual, subjective expectation of privacy in the area, and second, this expectation must be one which society (i.e., the court) is prepared to accept as being reasonable. A "seizure" occurs when there is a government interference with a person's property interest in the item, or in the case of a person, when there is

government interference with the person's freedom of movement. "Protected areas" include:

- An individual's person (body);
- An individual's house (which may include not only a traditional house, but also apartments, hotel rooms, garages, business offices, and warehouses); and
- Personal papers, and effects (which may include vehicles).

The term "house" has been held to include the "curtilage", an area which might generally be viewed as the "yard" of the home, whether or not it is fenced, and also includes outbuildings or vehicles located therein [*United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987)]. In determining whether an area is or is not curtilage, the courts consider these factors:

- Proximity to the home
- Whether area is inside an enclosure
- Nature of the use to which the area is put
- Steps taken by the resident to protect from view of passers-by

In the animal cruelty/fighting context, this means that abused animals or other evidence of animal abuse or fighting hidden on a defendant's person, or located within his/her home, or among his private papers or effects cannot be searched for - or seized - except with a search or inspection warrant, or under certain other narrowly defined circumstances (exceptions to the warrant requirement). This stricture applies not only to sworn law enforcement officers, but to all government officials, *including local animal control officers*. As a practical matter, this writer has found that non-peace- officer animal

welfare officers often labor under some confusion about their power to invade protected areas and rescue animals. This may well stem from a lack of training, coupled with the fact that the majority of cases these officers work result in, at most, the issuance of a citation for an ordinance violation, or prosecution for a misdemeanor. Where this is the case, a defendant (who may well be saving the expense of hiring an attorney by representing himself at this level of the criminal justice system) will often not contest the legitimacy of the search and seizure - either because of ignorance of his rights, or because it is more trouble and/or more costly than just paying the fine. However, where *felony* charges are made, the stakes are raised considerably and the search/seizure issues will more likely be litigated. Therefore, it is absolutely necessary that *all* government employees investigating possible criminal animal cruelty or fighting violations learn and strictly follow constitutional requirements as a matter of regular practice. When in doubt, the safest course is always to obtain a warrant before searching for and seizing evidence.

Open Fields and Open View

Two situations which might commonly face the field officer investigating animal cruelty cases bear special mention: open fields and open view.

In *Hester v. United States*, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924) the U.S. Supreme Court held that the Fourth Amendment did not protect "open fields" and that, therefore, police searches in such areas as pastures, wooded areas, open water, and vacant lots need not comply with the requirements of warrants and probable cause. *Hester* was decided pre-*Katz*, and the Court's announcement in *Katz* that the 4th Amendment protects "people not places" initially cast some doubt on the vitality of the open fields principle. This doubt was resolved in *Oliver v. United States,* 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214

(1984). Invoking the *Hester* court's reliance on the literal wording of the 4th Amendment (open fields are not "effects") and distinguishing *Katz*, the Court ruled that the open fields exception applies even to fields that are fenced and posted. "[A]n individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." Georgia courts recognize the "open fields" doctrine.[2] Open fields may be entered and searched by government agents and evidence found therein seized, without a warrant, because open fields do not enjoy 4th Amendment protection. This rule applies even where the land is posted with no trespassing signs [*Manley v. State*, 217 Ga.App. 556, 458 S.E.2d 179 (1995)], and in at least one case, Georgia courts have held that it applied to an unoccupied abandoned house and its curtilage [*Olson v. State*, 166 Ga.App. 104, 303 S.E.2d 309 (1983), *cert. denied*, 467 U.S. 1209, 104 S.Ct. 2597, 81 L.Ed.2d 354].

Similar, but not exactly identical to, the "open fields" doctrine is a situation which may be termed "open view." "Open view" occurs when a government agent located at a non-intrusive vantage point (for instance, standing on the sidewalk in front of a house and looking into the yard through a chain-link fence) views something which is knowingly exposed to the general public (for instance, a marijuana plant growing in a pot on the porch, or an obviously starving and dehydrated dog chained to a tree in the front yard). In this situation, the courts have held that there is no 4th Amendment implication, because there is no search. The government agent, by merely looking at, or listening to, that which anyone could see, has not invaded an area where there is a reasonable expectation of

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[2]*Giddens v. State*, 156 Ga.App. 258, 274 S.E.2d 595 (1980), *cert.denied*, 450 U.S. 1026, 101 S.Ct. 1733, 68 L.Ed.2d 220 (1981).

privacy [see *Katz*, supra, and *Harris v. United States*, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067 (1968); also *Cox v. State*, 160 Ga.App. 199, 286 S.E.2d 482 (1981)] . In deciding what might be considered a non-intrusive vantage point, officers can apply the "mailman test": If they are in an area where a mailman, a UPS deliveryman, or a door-to-door salesman might reasonably go, the officer is probably on safe ground.[3] However it is important to understand that while the "open view" doctrine gives the officer the right to *observe* or *view* items or evidence without violating the search provisions of the 4th Amendment, it does not necessarily follow that the officer is then entitled to enter into the protected area and *seize* the evidence he has seen. The better practice in this situation is for the officer to secure the location and then obtain a search warrant or impoundment warrant before seizing any evidence, including an animal.

Consent Searches

A valid consent allows for a legal search without a warrant, but officers seeking to rely on consent as a basis for their search need to be aware of the factors courts use in determining the validity of any consent.

A consent is deemed valid if it is freely and voluntarily given. Where the government is relying on a claim of consent to support a search, the government has the burden of proving that the consent was in fact freely and voluntarily given. In deciding the issue, a

[3]*Galloway v. State*, 178 Ga.App. 31, 342 S.E.2d 473 (1986); *Jenkins v. State*, 223 Ga.App. 486, 477 S.E.2d 910 (1996).

court will apply a "totality of the circumstances" test,[4] and may look at the following considerations, among others:

- Strength and credibility of the evidence establishing the fact that consent was given (oral v. written, multiple witnesses v. officer's word against defendant's work)
- Coerciveness of the circumstances under which the consent was given (show of force, trickery,[5] threats, explanations of officer's possible course of action if consent is refused[6])
- Capacity of the defendant to understand (age, education, sobriety)
- Whether defendant was advised of his right to refuse to consent[7]
- Precise language used by officer in requesting consent[8]

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[4]*Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *Allen v. State*, 200 Ga. App. 326; 408 S.E.2d 127 (1991); *Wilson v. State*, 210 Ga.App. 886, 437 S.E.2d 867 (1993).

[5]See *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), where officers represented to a defendant (apparently falsely) that they had a warrant; consent was held to be invalid.

[6]See *Murphy v. State*, 230 Ga.App. 365, 496 S.E.2d 512 (1998) where the Georgia Court of Appeals held that when an officer represents to an accused that a search warrant will be obtained if consent is refused, and the officer does not in fact have probable cause to obtain a search warrant, then the consent is invalid.

[7]It is not legally necessary to affirmatively inform a defendant that he has a right to refuse to consent to a search. However, courts generally consider such an action by officers with great approval in determining whether the consent was free and voluntary under all the circumstances. See *Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed2d 389 (1991) and *United States v. Mendenhall*, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980).

[8]See *State v. Diaz*, 191 Ga.App. 830, 383 S.E.2d 195 (1989): Officer asked if he could "look inside" defendant's van, and when defendant consented, officer performed a full search, including the inside of containers contained in the van. The Court of Appeals held that the search exceeded the scope of the consent. It is not necessary that an officer reveal to a defendant what he hopes to find as a result of the search, but when asking for consent to search, it is most advisable for officers to avoid being coy about

- Precise language used by defendant in granting consent (qualifications)

It is important that the officer seeking consent establish that the individual being asked actually has authority to consent to a search of the premises. Consent may be withdrawn at any time.

Inventory of Items Seized During Warrantless Search

O.C.G.A. §17-5-2 requires that an inventory of all instruments, articles, or things seized in a search without a search warrant shall be given to the person arrested and a copy thereof delivered to the judicial officer before whom the person arrested is taken. This code section further requires that if the person arrested is released without a charge being preferred against him, then instruments, articles, or things seized, other than contraband or stolen property, shall be returned to him upon release.

Search Warrants - General Considerations

The 4th Amendment (and Article I, Section I, Paragraph XIII of the Constitution of Georgia) set out the general constitutional requirements for the validity of a search warrant. In addition, Georgia has statutory provisions regarding the issuance and service of search warrants which are found at O.C.G.A. §17-5-20 through §17-5-27. Reading the constitutional requirements and the statutory requirements together, we find that:

- Warrant must be based on probable cause to believe that a crime has been committed or is being committed, and that certain evidence is concealed in a certain location;

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what they are seeking to do. Officers should ask "for consent to search your ____", filling in the blank with a description of the specific area or areas the officer wishes to search.

- The evidence establishing probable cause must be given under oath or affirmation; and
- The place to be searched and items sought must be described with particularity.

O.C.G.A. §17-5-20 provides that only sworn law enforcement officers or state officials charged with the duty of enforcing the criminal laws may apply for search warrants. A search warrant may be signed by "any judicial officer authorized to hold a court of inquiry" [O.C.G.A. §17-5-21].

In applying for a search warrant, the officer should put together a package, which must contain all of these three elements:

- An application
- An affidavit
- A warrant

The use of forms, especially computer/word processor forms, for these papers is, in this writer's opinion, both a blessing and a curse. While the use of a form may save drafting time and prevent errors of omission, it is all too easy to forget the essential steps of adjusting the form to the needs of the particular case, and of proof-reading the finished product before submitting it to the court for consideration. Careful attention to detail in this regard will help keep the subsequent attention in the case focused on the guilt or innocence of the defendant, where it belongs, and not the writing skills of the officer! Few experiences are more frustrating for investigators or prosecutors than having evidence suppressed due to mistakes made in the drafting of a search warrant.

Establishing Probable Cause

As stated above, in order for a search warrant to issue, the officer seeking the warrant must be prepared to present evidence to establish *probable cause* to believe that a crime has been or is being committed, and that certain evidence is concealed in a certain place. This evidence may be presented in the form of a written affidavit, which is then signed by the officer in the presence of the court after the court places the officer under oath, or by oral testimony given by the officer to the court under oath, or by a combination of the these. While oral testimony is legally acceptable, the better practice is to include all pertinent information in the written affidavit. The written affidavit then establishes conclusively what evidence was and was not before the court before it signed the warrant. Where oral testimony is given to supplement the affidavit, the fact that oral testimony was given and considered by the court should be noted on the warrant.

The evidence establishing probable cause may be based on the first-hand knowledge of the affiant officer, or on hearsay (i.e., statements made to the affiant by persons other than the affiant), or a combination of both. First-hand knowledge of the affiant officer would be comprised of observations made by the affiant officer personally and possibly conclusions drawn from those observations based on the officer's training and experience. For instance, an officer called to a veterinarian's office to examine a pit bull dog which the vet suspected had been subjected to fighting could describe in her affidavit the specific injuries she saw and what those injuries meant to her based on her training and experience. The direct testimony of a sworn law enforcement officer concerning his first-hand knowledge is presumed to be reliable. Hearsay statements might consist of statements

made by other law enforcement officers or animal welfare workers, confidential informants, concerned citizens, anonymous tipsters, and other sources. Where evidence consists of hearsay, the basis for its reliability must be established - in other words, the affidavit must not only set out the contents of the third-party statement, it must also set out sufficient factors to enable a reasonable court to find that the information was reliable.

Where the hearsay information comes from the first-hand knowledge of another law enforcement officer, its reliability is presumed, and this rule will probably hold true where the information comes from other government officials (such as animal control officers or Department of Agriculture inspectors) even if they are not peace officers - again, as long as the information related is in that third party's first-hand knowledge.

Where the hearsay information is coming from a non-law enforcement source, the court will judge the credibility of that information based on a "totality of the circumstances" test. Although the U.S. Supreme Court and Georgia courts adopted the totality of the circumstances test in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) and *State v. Stephens*, 252 Ga. 181, 311 S.E.2d 823 (1984), the courts, in determining whether this test has been met, will often fall back on a consideration of a prior test, the so-called "Aguilar-Spinelli"[9] or "two-prong" test. Therefore, where the officer does have reliability factors which meet both prongs of the Aguilar-Spinelli test, it is advisable to include them in the affidavit. The two prongs of the Aguilar-Spinelli test provided that the officer must make a showing of both the veracity of the informant and the basis of the

[9]Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969).

informant's information - or, to put it another way, the officer must show (a) why the court should believe what the informant says; and also (b) how the informant got its information.

Another factor which must be considered in determining whether probable cause can be established is the concept of "staleness." Simply put, it is not enough for the affiant to present evidence that the items sought were at the particular location at some point in the past. The affiant must establish, with reasonable certainty, that the items sought will be found in that location *now*. Therefore, the timing of the information (both when the observation was made, and when it was related to the affiant, if it was related by a third party) must be set out in the affidavit. Although 72 hours seems to have become the law enforcement standard for reasonably current information, this is not a hard and fast rule. Staleness or currency of the information may depend to a large degree on the type of evidence being sought.

Describing with Particularity

"General warrants" are prohibited.[10] Both constitutional and Georgia statutory standards require that the warrant describe with specificity both (a) the location to be searched and (b) the evidence sought.

Describing the location involves including within both the application and the warrant a physical description of the venue for the search, whether it be a structure or some other type of place, sufficient to distinguish it from any other location. Methods of description might include some or all of the following:

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[10]See *Stanford v. Texas*, 379 U.S. 476, 85 S.Ct. 506, 13 L.Ed.2d 431 (1965); *State v. Cochran*, 135 Ga.App. 47, 217 S.E.2d 181 (1975)

- The street address
- A physical description of the structure
- A photograph of the location
- A diagram or map showing the location
- A narrative statement of directions from some specific known location (for instance, the courthouse in a particular county) to the location to be searched

Describing the evidence sought means listing the particular types of items investigators are seeking to find and seize, and may include (in the animal cruelty or fighting context) specific animals or types of animals, training materials or tools used for fighting, records of fights and proceeds therefrom, devices used for cruelty or torture, enclosures, animal carcasses, trophy items, photographs, videotapes, etc.

Writing the Affidavit

Below are a few stylistic and content suggestions for writing the search warrant affidavit:

- Write in first person, active voice.
- Describe events in the investigation in chronological order.
- Include all information unless there is a specific reason to omit something.
- Begin with identity of affiant:
    - Name
    - Agency

    - Experience
    - Special training
- Set out personal knowledge of affiant:
    - How/when did you discover the information?
    - What did you discover?
- Set out information from other sources:
    - Include reliability factors for each source.
    - When was information obtained by affiant from source?
    - When did source obtain the information?
    - What does the source report?
    - How did the source obtain this information?
- Set out conclusions to be drawn from the information:
    - Affiant can express opinions based on experience.
    - Set out crime affiant believes is being or has been committed.
    - Set out evidence sought.

Getting the Search Warrant Signed and Handling the Paper Flow

Although it is the court's responsibility to make sure that all procedures in obtaining a search warrant are correctly followed, it is of great assistance if the affiant/applicant will take the responsibility of double-checking to make sure proper procedures are followed:

- Present all three parts of the package: application, affidavit, warrant with return.
- Officer should be sure (s)he knows the correct date - this is especially easy to mistake in the hours immediately around midnight.
- Be sure oath administered before signing the affidavit, and ensure that court signs and correctly dates the oath.
- Where oral testimony is given, make sure that fact is noted on the warrant.
- Where oral testimony is not given, make sure that fact is noted on the warrant.
- Be sure the court signs and correctly dates both the oath on the affidavit *and* the warrant.
- Be sure that time on the warrant is correctly noted; this is especially easy to mistake in the hours immediately after midnight.

Once the warrant is signed, the officer should make two complete copies of the package, and handle the original and two copies as follows:

- Original application and affidavit should stay with the court.
- Original warrant, copy of the warrant, and two return forms should go with case agent to the venue of the search.
- Officer retains the other complete set of copies for his case file. It is generally a good idea to leave this set at the office, to prevent the application/affidavit from being inadvertently left at the scene.

- Copy of warrant and one completed return (inventory) should be left at scene when warrant is served.
- Original warrant and another completed duplicate original return (inventory) is retained by officer.
- After warrant served, officer makes a copy of signed application & affidavit, signed warrant, and completed return to forward to prosecutor.
- Officer makes copy of completed return for his own file.
- Officer returns original warrant and completed return to the issuing court.

Executing the Search Warrant

Although a detailed discussion of search warrant execution procedures is, again, beyond the scope of this paper, the following minimum requirements must be met:

- The search warrant must be executed within ten days, or returned unserved.
- A copy of the warrant and a copy (or duplicate original) inventory of items seized must be left at the scene.
- The original warrant and original inventory of items seized must be returned to the issuing court within a reasonable time.

The following practical considerations are of great assistance in the subsequent prosecution of the case:

- Appoint a designated case agent.
- Search team members can search anywhere that any particularly described object of the search might be concealed.

- Search team members should leave evidence where it is discovered until case agent can be called to location to observe and document.
- Each search team member should write a report of what (s)he personally did and observed.
- Photographs are invaluable, especially where both close-ups and "orientation" shots are included.
- Video-tape is also valuable (but either turn off the audio or make sure search team members are aware that audio is being recorded).
- A detailed diagram of the scene, including locations of evidence and persons (if possible) when entry was made, is extremely valuable.

A prosecuting attorney may be present at the time of the execution of a search warrant as long as (s)he is merely an observer, not participating in the search [*Kelley v. State*, 169 Ga. App. 917, 315 S.E.2d 916 (1984)]. However, officers cannot bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home is not in aid of the execution of the warrant [*Wilson v. Layne*, 526 U.S. 603, 119 S.Ct. 1693, 142 L.Ed.2d 818 (1999)].

The Plain View Doctrine

The *plain view doctrine* is a *seizure* theory - it allows an officer to make a warrantless seizure of obviously incriminating items that (s)he comes upon while otherwise involved in a lawful entry or search. It is premised on this idea: Once such an item has been spotted "in plain view" of the officer, while the officer is engaged in an activity (s)he is already authorized to perform, insistence on a warrant simply to enable its seizure is

nothing more than an inconvenience which offers no further protection to the individual's rights.[11] Therefore, if an officer searching a house pursuant to a search warrant for cocaine discovers dog fighting records and photographs of dog fights, he would be entitled to seize those items, even though the search warrant did not originally authorize the officer to search for dog fighting records and photographs of dog fights.

The three requirements for a lawful plain view seizure are:

- The government officer's original intrusion must be lawful (the officer is located in a place where (s)he had a right to be, either because of a search/inspection warrant, a consent, or some other legal basis);
- The item is spotted while the officer is confining his/her activities to the permissible scope of that intrusion; and
- It is immediately apparent that the item is contraband or criminal evidence, with no further examination or search being necessary to determine this nature of the item.[12]

Title 4 Animal Protection Generally

Prior to the Animal Protection Act of 2000, [Ga. L. 2000, p. 754 *et. seq.*] the Title 4 power to inspect so-called "licensed facilities" such as pet dealers, kennels, stables, and animal shelters was vested only in Department of Agriculture personnel. Therefore, where there were concerns about the welfare of animals located in "licensed facilities" and

[11]See *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

[12]See *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); *Nichols v. State*, 210 Ga.App. 134, 435 S.E.2d 502 (1993).

Department of Agriculture personnel were unavailable to perform the inspections, the concerns could only be investigated by utilizing traditional criminal investigative techniques like search warrants. Since search warrants can be obtained only by peace officers, animal control officers were left without any ability to investigate such concerns on their own, even in cases where probable cause clearly existed to believe that animals were being subjected to a lack of humane treatment, cruelty, or fighting in the facility. If law enforcement personnel and resources were not available to devote to "animal cases" the cases might well go un-investigated, because the animal control officers willing and able to do the investigation were unable to act independently. Even where law enforcement became involved, animals seized pursuant to search warrants were necessarily treated as any other item of physical property seized as evidence. This meant that the animals had to remain in the actual physical custody and control of the seizing agency (generally in a county or municipal pound) until after the criminal case was disposed of, a process which could take a number of months or even years. The cost of maintaining the animals during this time period (vet care, food, lodging) would be bourne by the pound, and could mount into the thousands of dollar per animal. Further, the animal's ultimate fate at the end of the criminal case was governed by no legal standards other than property law, or the possible sentencing order of an enlightened and conscientious judge in the event of a conviction.

The Animal Protection Act of 2000 substantially amended the already-existing Animal Protection provisions contained within Title 4, Chapter 11 of the Official Code of Georgia to provide peace officers and animal control officers, as well as Department of Agriculture personnel, with the ability to rescue and protect animals which have not

received humane care [as this term is defined in O.C.G.A. §4-11-2(4)], or have been subjected to either animal cruelty in violation of O.C.G.A. §16-12-4 or dog fighting in violation of O.C.G.A. §16-12-37. Among the remarkable aspects of these new statutory rescue and protection powers is that they are based on statutory authority independent of any criminal action, and may be utilized either in addition to, or instead of, a criminal action.

As an aside, Title 4 of the Georgia Code contains a number of pertinent animal-related provisions, not just those that were added/amended by the Animal Protection Act of 2000. Any individual involved in animal welfare work from a legal, administrative, law enforcement, or animal control standpoint should take the time to be thoroughly familiar with these provisions, as well as those contained in Title 16 (Crimes and Offenses) and local ordinances.

Title 4 Inspection Warrants

The first substantial new Title 4 power granted by the Animal Protection Act of 2000 was the ability for the Commissioner of Agriculture or his agents *and animal control officers* to apply for an *inspection warrant* for the purpose of investigating Title 4, Article 1 violations. This is set out in O.C.G.A. §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." O.C.G.A. § 2-2-11 reads as follows:

"Whenever the Constitution or laws of the United States or the State of Georgia require the issuance of a warrant to make an inspection under any law administered by the Commissioner of Agriculture or the Department of Agriculture, the procedure set forth in paragraphs (1) through (7) of this Code section shall be employed.

(1) The Commissioner or any person authorized to make inspections for the Commissioner shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

(2) An inspection warrant shall be issued only upon cause and when supported by an affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is to be made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(3) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

(4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M. and 6:00 P.M. of any day or at any time during operating or regular business hours. An inspection should not be performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry where facts are shown which are sufficient to create a reasonable suspicion of a violation of this title or any other law administered by the Commissioner or the department, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous

> warrant have been unsuccessful. Where prior consent has been sought and refused and a warrant has been issued, the warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle to be inspected.
>
> (5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this Code section. Any person violating this paragraph shall be guilty of a misdemeanor.
>
> (6) Under this Code section, an inspection warrant is an order, in writing, signed by a judicial officer, directed to the Commissioner or any person authorized to make inspections for the Commissioner, and commanding him or her to conduct any inspection required or authorized by this title or any other law administered by the Commissioner or the department or regulations promulgated pursuant to this title or any other law administered by the Commissioner or the department.
>
> (7) Nothing in this Code section shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or a permit issued under this title or any other law administered by the Commissioner or the department."

O.C.G.A. §4-11-9.2(a), therefore, provides local animal control officers with the ability to investigate, by obtaining and serving an inspection warrant, situations where probable cause exists to believe that *violations of Title 4, Chapter 11, Article 1* have occurred or are occurring. Potential inspection warrant applicants should be aware, however, that Title 4, Chapter 11, Article 1 applies only to facilities such as animal shelters, kennels, stables, and pet dealerships (i.e., facilities which are required to be licensed by the Department of Agriculture in order to operate). Title 4, Chapter 11, Article 1 does *not* apply to private individuals. However the threshold definitions for what it takes to be designated as a "pet dealership" and therefore "fall under" this Article is actually fairly low, so this provision does grant animal control officers a substantial increase in their investigatory powers.

O.C.G.A. §4-11-9.2(b) grants sheriffs, deputy sheriffs, and other peace officers, to enforce the provisions of Title 4, Chapter 11, Article 1, as well as O.C.G.A. §16-12-4 (animal cruelty) and O.C.G.A. §16-12-37 (dog fighting). Obviously sheriffs, deputies, and other peace officers already had the power to enforce provisions of Title 16, but the additional language of §4-11-9.2(b) clears the way for law enforcement officers to go along with Agriculture inspectors and/or animal control officers on *inspections* which would normally not be a part of the peace officer's duties.

The probable cause standard required to obtain an inspection warrant is the same as the probable cause standard required to obtain a search warrant, and the supporting affidavit should be prepared in a similar fashion.

Title 4 Impoundment Authority

O.C.G.A. §4-11-9.2 also grants the ability for certain individuals to impound animals under circumstances. Individuals who may perform a Title 4 impound are:

- The Commissioner of Agriculture or his/her designated agent
- An animal control officer[13] who is an employee of state or local government
- A sheriff or deputy sheriff
- Other peace officers

Any animal may be impounded under these circumstances:

[13] *Animal control officer* is defined for Title 4 purposes as "an individual authorized by local law or by the governing authority of a county or municipality to carry out the duties imposed by this article or imposed by local ordinance" O.C.G.A. §4-11-2(1.1)

- The animal has not received humane care[14]; or
- The animal has been subjected to cruelty in violation of O.C.G.A. §16-12-4; or
- The animal is used *or intended for use* in any violation of O.C.G.A. §16-12-37 (dog fighting); or
- There is a violation of a previously-issued Title 4 consent order or other order concerning the treatment of animals.

Where the impoundment is being performed for any of the above reasons *other* than a violation of a consent or other order, there is a requirement that "a licensed accredited veterinarian who has been either (a) approved by the Commissioner of Agriculture, or (b) employed by a state or federal government and approved by the Commissioner of Agriculture" examine the animal and determine the condition or treatment of the animal *prior* to the impound. This veterinary inspection requirement is found in subsection (d) of O.C.G.A. §4-11-9.2(d).

[14] *Humane care* is defined for Title 4 purposes in O.C.G.A. §4-11-2(4): "'Humane care' of animals means, but is not limited to, the provision of adequate heat, ventilation, sanitary shelter, and wholesome and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed." *Adequate food and water* is defined for Title 4 purposes in O.C.G.A. §4-11-2(1) as "food and water which is sufficient in an amount and appropriate for the particular type of animal to prevent starvation, dehydration, or a significant risk to the animal's health from a lack of food or water." In addition, the Georgia Department of Agriculture's rules and regulations promulgated pursuant to its statutory authority add additional specific definitions and illumination of the concept of "humane care." Animal welfare workers are encouraged to become familiar with these rules, which may be found in printable form (Adobe .pdf format) on the Animal Protection Division page of the Department of Agriculture's website at *www.agr.georgia.gov*

Title 4 Impoundment Procedures and Care of Impounded Animals

It should be noted at this juncture that a Title 4 impoundment is, in this writer's opinion, to be considered as a legal basis for the physical *seizure* and holding of an animal, an alternative to the traditional legal basis which would be seizing and holding the animal as a physical (albeit animate) item of evidence. This being said, it would appear that the official seeking to perform an impound must have some independent authority to make entry into a constitutionally protected area, if such is necessary, in order to perform the impound.

In addition to the aforementioned veterinary inspection which must be performed *prior* to the impoundment of an animal, it is the statutory duty of a person impounding an animal to provide notification to the owner of the animal (which may or may not be the same person from whose custody the animal was seized). The statutory notice requirements are set out in O.C.G.A. §4-11-9.4:

> § 4-11-9.4. Notification of owner; custody of animal
>
> (a) It shall be the duty of any person impounding an animal under this article to notify the owner of such animal immediately upon impoundment. Such notice shall state the name and business address of the person impounding the animal, the name and address of the state or local government agency having custody of the animal, a description of the animal, the reason why the animal was impounded, and a statement of the time limits for the owner to respond and request a hearing as provided in Code Section 4-11-9.5. The notice shall be provided by personal service or by registered mail, certified mail, or statutory overnight delivery sent to the last known address of the owner. Service of the notice which complies with subsection (b) of Code Section 9-11-5[15] shall in all cases be sufficient. If the owner of such animal is

[15]O.C.G.A. § 9-11-5. Service and filing of pleadings subsequent to the original complaint and other papers

unknown or cannot be found, service of the notice on the owner shall be made by posting the notice in a conspicuous place at the location where the animal was impounded and by publishing a notice once in a newspaper of general circulation in the county where the animal was impounded.

(b) An animal impounded pursuant to this article is deemed to be in the custody of the state or local government agency responsible for enforcement of this article within said county or municipality.

(a) *Service -- When required.* Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided by subsection (b) of this Code section.

(b) *Same -- How made.* Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(c) *Same -- Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) *Filing.* All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.

(e) *"Filing with the court" defined.* The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Once an animal is impounded and proper notice has been given, decisions and arrangements concerning proper care of the animal have to be made. O.C.G.A. §4-11-9.3(a) provides that an animal must be given humane care [again, as defined in O.C.G.A. §4-11-2(4)] and adequate and necessary veterinary services. An impounded animal may be:

- Temporarily sheltered at any state, federal, county, municipal, or governmental facility or shelter [O.C.G.A. §4-11-9.3(a)]; or
- Temporarily sheltered by or fostered with a private individual, partnership, corporation, association, or other entity, which may provide these temporary services for the impounding agency on a contract basis [O.C.G.A. §4-11-9.3(a); or
- Temporarily sheltered by or fostered with a private individual, partnership, corporation, association, or other entity, which may provide these temporary services as a volunteer [O.C.G.A. §4-11-9.3(a)]; or
- Returned to the owner (at the option of the impounding agency) under a consent agreement providing that:
    - The owner pay for the costs of the impound; and
    - The owner provide humane care and adequate and necessary veterinary services; and
    - The owner will not subject the animal to animal cruelty; and
    - The owner will comply with Article 4, Chapter 11, Article 1; and

- Any other agreed-upon conditions will be met [O.C.G.A. §4-11-9.3(c); or

- Where the animal is the object or instrumentality of a crime, the animal may be made the subject of a court order authorizing disposal of the animal prior to the criminal case [O.C.G.A. §4-11-9.3(d)].

In this writer's opinion, the subsection (a) "options" for fostering the animal outside of government custody while awaiting the outcome of the impound only apply where there has been a proper Title 4 impound of the animal. Simply put, in order to invoke the statutory provisions of Title 4, Chapter 11, Article 1, one has to "get in under" these provisions by following the procedures set out in the article. Where these procedures are not followed, (that is, where the animal is seized pursuant to a search warrant or consent - or worse, where it is seized with no authority whatsoever) it would appear that the custody of the animal would be governed by the same property and criminal procedure rules which govern other items of evidence which have been either seized legally by the government, or illegally seized. An item seized legally by the government must be maintained by the government. An item seized illegally by the government must be returned to its owner. Of course, this discussion assumes that the impounding agency is proceeding in the most adversarial posture possible. Certainly it is always possible for an owner to *consent* to his animal being "fostered out" while the ultimate determination of where the animal will end up is being made, even if the animal was not impounded pursuant to Title 4. Certainly a fostering situation would almost always be preferable to the animal being stuck in a small

shelter or impound cage. However, if such consent is sought and granted, it should be spelled out in detail in a written agreement.

The subsection (c) option (allowing the impounding agency to return an animal to an owner who enters into a consent agreement), is only available under certain circumstances. Under subsection (c), the animal cannot be returned under a consent agreement if the owner has ever in the past been the subject of a legal or administrative proceeding where (s)he was found to have failed to provide humane care, committed animal cruelty, or engaged in dog fighting. Subsection (d) of O.C.G.A. §4-11-9.3 imposes the further restriction that where an animal was "an object or instrumentality of a crime" the subsection (c) option to return the animal to the owner under a consent order is not available, and that the prosecuting attorney must approve any arrangement to return the animal to the owner.

O.C.G.A. §4-11-9.3(d) allows an impounding agency which has custody of an animal which was seized as the object or instrumentality of a crime to apply to the court having jurisdiction over the offense for an immediate disposal order, with the consent of the prosecuting attorney.

Finally, O.C.G.A. §4-11-9.3(b) provides that a person impounding an animal pursuant to Title 4, or providing care for such an animal, has a lien on the animal for the reasonable costs of the care. This lien may be foreclosed in a magistrate court, provided that the amount doesn't exceed the jurisdictional limits of the magistrate court[16], or in any court that is competent to hear civil cases.

[16] O.C.G.A. §15-10-2(5) provides that the jurisdictional limit of the magistrate court is $15,000.00.

Title 4 Impoundment Hearing and Disposal of Impounded Animals

O.C.G.A. §4-11-9.5 sets out the procedures by which the owner of an impounded animal may receive a hearing regarding the legality of the impound.

To step backward for a moment, O.C.G.A. §4-11-9.4 provides for notice of impoundment by service (personal, registered or certified mail, statutory overnight delivery) if the owner is known and by posting and publication if the owner is not known.

Where the owner is known and service in person or by mail or overnight delivery is perfected, certain things must happen within a five-day period from the date the notice is served on the owner:

- If the owner wants a hearing on the legality of the impound, (s)he must request it in writing within five business days [O.C.G.A. §4-11-9.5(b)(1)].
- If the impounding agency offers to return the animal under a consent order and the owner refuses to sign the consent order, the owner may request a hearing within five business days of the date of service of the impound notice [O.C.G.A. §4-11-9.5(b)(1)].

Where the owner is not known, and service is perfected by posting and publication, the owner has thirty days from the date of publication to request a hearing in writing. In either event, the request for a hearing must be in writing and served upon the government agency having custody of the animal.

If the owner fails to respond to the notice of impound within the appropriate time period, the right to a hearing is waived, and the animal may be disposed of pursuant to the provisions of O.C.G.A. §4-11-9.6.

If the owner does make a proper request for a hearing, O.C.G.A. §4-11-9.5(b)(2) requires that the government agency having custody of the animal must hold a hearing within 30 days of receiving the written request from the owner. The hearing must be held in accordance with the procedures set forth in the Georgia Administrative Procedure Act (O.C.G.A. Title 50, Chapter 13). The hearing should be conducted:

- By a local hearing body if such has been designated by local statute or ordinance;
- By the Commissioner of Agriculture or his designee if the animal is being held by the Commissioner of Agriculture;
- By the Office of State Administrative Hearings in all other cases.

The hearing must be recorded and a record of the hearing maintained by the hearing officer, and the scope of the hearing is limited to the issue of whether the impound of the animal was authorized under O.C.G.A. §4-11-9.2(c). The hearing officer must issue his decision within five business days after the hearing [O.C.G.A. §4-11-9.5(b)(4)].

If the hearing officer finds that the animal was not properly impounded, the animal must be returned to the owner and the costs of caring for the animal must be paid by the impounding agency [O.C.G.A. §4-11-9.5(b)(5)]. If the hearing officer finds that the animal was properly impounded, he may recommend one of the following dispositions:

- The government agency with custody of the animal disposes of it in accordance with O.C.G.A. §4-11-9.6 [O.C.G.A. §4-11-9.5(b)(6)(A)]; or
- The animal be returned to the owner under written conditions that:
    - The owner pay for the costs of the impound; and
    - The owner provide humane care and adequate and necessary veterinary services; and
    - The owner will not subject the animal to animal cruelty; and
    - The owner will comply with Article 4, Chapter 11, Article 1; and
    - Any other conditions the hearing officer recommends will be met [O.C.G.A. §4-11-9.5(b)(6)(B)].

In a parallel to the O.C.G.A. §4-11-9.3 consent order provisions, we see that the hearing officer's ability to recommend the "return to owner" option under O.C.G.A. §4-11-9.5(b)(6)(B) is not available if the owner has ever in the past been the subject of a legal or administrative proceeding where (s)he was found to have failed to provide humane care, committed animal cruelty, or engaged in dog fighting, and no animal that was the object or instrumentality of a crime can be returned to an owner without the approval of the prosecuting attorney [O.C.G.A. §4-11-9.5(c)].

O.C.G.A. §4-11-9.6 provides for the methods by which the government agency having control of an impounded animal may dispose of it:

§ 4-11-9.6. Disposal of impounded animal

(a) The government agency having custody of an animal impounded pursuant to this article which is not returned to the owner as provided in Code Sections

4-11-9.3 and 4-11-9.5 may dispose of the animal through sale by any commercially feasible means, at a public auction or by sealed bids, or, if in the opinion of a licensed accredited veterinarian or a veterinarian employed by a state or federal government and approved by the Commissioner such animal has a temperament or condition such that euthanasia is the only reasonable course of action, by humanely disposing of the animal.

(b) Any proceeds from the sale of such animal shall be used first to pay the costs associated with the impoundment, including, but not limited to, removal of the animal from the premises, shelter and care of the animal, notice, hearing, and disposition of the animal. Any funds remaining shall:

(1) If the owner is unknown or cannot be found, be paid into the state treasury if the animal was impounded by the Commissioner or his or her designated agent or into the treasury of the local government if the animal was impounded by the sheriff, a deputy sheriff, another law enforcement officer, or an animal control officer; or

(2) If the owner is known, be paid to the owner.

(c) The government agency responsible for conducting the sale shall keep a record of all sales, disbursements, and distributions made under this article.

Concluding Thoughts on Title 4 Impound Procedures

We are now six years out from the passage of the Animal Protection Act of 2000, and much work remains to be done on improving both our understanding and compliance with the animal impound provisions of Title 4, Chapter 11, Article. 1. Since relatively few impounds have been performed in strict compliance with these provisions and none, to this writer's knowledge, have actually been litigated, we are still without any substantial precedent in the form of case law to guide us as we attempt to interpret and apply these provisions. Until more time has passed, and precedent has been established, we can only make our most reasonable effort to follow these statutory provisions.

It is sometimes said that "bad facts make bad law." Animal welfare professionals, law enforcement officers, and attorneys are encouraged, therefore, to avoid "pushing the envelope" regarding any interpretational gray areas which might be perceived in the

statutory provisions as they currently exist. The impound provisions should, in this writer's opinion, be utilized in an energetic, yet conservative fashion to rescue and protect those animals whose welfare truly is threatened, but above all we must work together to avoid any appearance of governmental over-reaching or unfairness. We must be bold, but we must also do justice.

In this regard, there are a few arguments which might be reasonably advanced, and they are offered here for the reader's consideration, and possible use should the appropriate factual situation arise:

- Where an animal has been seized, and is in the custody of a government agency on some legal basis other than a pure Title 4 impound (for instance, where the animal is seized as evidence pursuant to a search warrant), it would seem reasonable that the government agency could arrange for a veterinary inspection soon after the seizure and then serve the notice of impound upon the owner, and proceed with a Title 4 impound procedure even though the animal is already in government custody.

- O.C.G.A. §4-11-9.3(d) and O.C.G.A. §4-11-9.5(c) contain identical language, as noted hereinabove, which provides that the "return to owner under an order to do better" provisions of the two respective code sections "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." In addition, however, O.C.G.A. §4-11-9.3(d) contains this language: "An agency having custody of an animal *that was seized as an*

object or instrumentality of a crime [emphasis added] 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." A reasoned argument could be made that this second provision of O.C.G.A. §4-11-9.3(d) refers to *any* animal seized as an object or instrumentality of a crime, whether impounded pursuant to Title 4, seized as evidence, or obtained by consent and later determined or discovered to have been the object of a crime.

Appendix A - Online Resources for Animal Welfare Information

1. Free, searchable access to the entire Official Code of Georgia can be found on the Georgia General Assembly website: www.legis.state.ga.us

2. The Georgia Department of Agriculture website, which contains information regarding the Georgia's animal welfare laws, as well as the Department regulations promulgated pursuant thereto, can be found at: www.agr.ga.gov

3. A wealth of information about federal animal protection laws and regulations, as well as laws of other states, pending animal welfare legislation, and animal welfare issues like animal fighting, and the animal abuse/humane violence connection, can be found at the Humane Society of the United States website: www.hsus.org

4. Federal animal welfare legislation and regulations enforced by the U.S. Department of Agriculture can be found at: www.usda.gov

5. Practical information regarding the history and passage of the Animal Protection Act, and printable resources on how to identify and report animal cruelty can be found at the Humane Association of Georgia website: www.humaneassociationofgeorgia.org

Appendix B - Relevant Code Sections

(All citations are to the Official Code of Georgia Annotated)

Title 16 (Crimes and Offenses) Provisions

§ 16-12-4. Cruelty to animals

(a) As used in this Code section, the term:

(1) "Animal" shall not include any fish nor shall such term include any pest that might be exterminated or removed from a business, residence, or other structure.

(2) "Conviction" shall include pleas of guilty or nolo contendere or probation as a first offender pursuant to Article 3 of Chapter 8 of Title 42 and any conviction, plea of guilty or nolo contendere, or probation as a first offender for an offense under the laws of the United States or any of the several states that would constitute a violation of this Code section if committed in this state.

(3) "Willful neglect" means the intentional withholding of food and water required by an animal to prevent starvation or dehydration.

(b) A person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect. Any person convicted of a violation of this subsection shall be guilty of a misdemeanor; provided, however, that:

(1) Any person who is convicted of a second or subsequent violation of this subsection shall be punished by imprisonment not to exceed 12 months, a fine not to exceed $5,000.00, or both; and

(2) Any person who is convicted of a second or subsequent violation of this subsection which results in the death of an animal shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished by imprisonment for not less than three months nor more than 12 months, a fine not to exceed $10,000.00, or both, which punishment shall not be suspended, probated, or withheld.

(c) A person commits the offense of aggravated cruelty to animals when he or she knowingly and maliciously causes death or physical harm to an animal by rendering a part of such animal's body useless or by seriously disfiguring such animal. A person convicted of the offense of aggravated cruelty to animals shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $15,000.00, or both, provided that any person who is convicted of a second or subsequent violation of this subsection shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed the amount provided by Code Section 17-10-8[17], or both.

(d) Before sentencing a defendant for any conviction under this Code section, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender.

(e) The provisions of this Code section shall not be construed as prohibiting conduct which is otherwise permitted under the laws of this state or of the United States, including, but not limited to, agricultural, animal husbandry, butchering, food processing, marketing,

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[17] **§ 17-10-8. Requirement of payment of fine as condition precedent to probation; rebate or refund of fine upon revocation of probation**
In any case where the judge may, by any law so authorizing, place on probation a person convicted of a felony, the judge may in his discretion impose a fine on the person so convicted as a condition to such probation. The fine shall not exceed $100,000.00 or the amount of the maximum fine which may be imposed for conviction of such a felony, whichever is greater. In any case where probation is revoked, the defendant shall not be entitled to any rebate or refund of any part of the fine so paid.

scientific, research, medical, zoological, exhibition, competitive, hunting, trapping, fishing, wildlife management, or pest control practices or the authorized practice of veterinary medicine nor to limit in any way the authority or duty of the Department of Agriculture, Department of Natural Resources, any county board of health, any law enforcement officer, dog, animal, or rabies control officer, humane society, veterinarian, or private landowner protecting his or her property.

(f)(1) Nothing in this Code section shall be construed as prohibiting a person from:

(A) Defending his or her person or property, or the person or property of another, from injury or damage being caused by an animal; or

(B) Injuring or killing an animal reasonably believed to constitute a threat for injury or damage to any property, livestock, or poultry.

(2) The method used to injure or kill such animal shall be designed to be as humane as is possible under the circumstances. A person who humanely injures or kills an animal under the circumstances indicated in this subsection shall incur no civil or criminal liability for such injury or death.

§ 16-12-37. Dogfighting

(a) A person commits the offense of dogfighting when he causes or allows a dog to fight another dog for sport or gaming purposes or maintains or operates any event at which dogs are allowed or encouraged to fight one another.

(b) A person convicted of the offense of dogfighting shall be punished by a mandatory fine of $5,000.00 or by a mandatory fine of $5,000.00 and imprisonment for not less than one year nor more than five years.

§ 16-11-107. Destroying or injuring police dog or police horse

(a) As used in this Code section, the term:

(1) "Accelerant detection dog" means a dog trained to detect hydrocarbon substances.

(2) "Bomb detection dog" means a dog trained to locate bombs or explosives by scent.

(3) "Firearms detection dog" means a dog trained to locate firearms by scent.

(4) "Narcotic detection dog" means a dog trained to locate narcotics by scent.

(5) "Narcotics" means any controlled substance as defined in paragraph (4) of Code Section 16-13-21 and shall include marijuana as defined by paragraph (16) of Code Section 16-13-21.

(6) "Patrol dog" means a dog trained to protect a peace officer and to apprehend or hold without excessive force a person in violation of the criminal statutes of this state.

(7) "Police dog" means a bomb detection dog, a firearms detection dog, a narcotic detection dog, a patrol dog, an accelerant detection dog, or a tracking dog used by a law enforcement agency. "Police dog" also means a search and rescue dog.

(8) "Police horse" means a horse trained to transport, carry, or be ridden by a law enforcement officer and used by a law enforcement agency.

(8.1) "Search and rescue dog" means any dog that is owned or the services of which are employed by a fire department or the state fire marshal for the principal purpose of aiding in the detection of missing persons, including but not limited to persons who are lost, who are trapped under debris as a result of a natural or manmade disaster, or who are drowning victims.

(9) "Tracking dog" means a dog trained to track and find a missing person, escaped inmate, or fleeing felon.

(b) Any person who knowingly and intentionally destroys or causes serious or debilitating

physical injury to a police dog or police horse, knowing said dog to be a police dog or said horse to be a police horse, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years, or a fine not to exceed $10,000.00, or both. This subsection shall not apply to the destruction of a police dog or police horse for humane purposes.

§ 16-10-24. Obstructing or hindering law enforcement officers

(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful discharge of his official duties is guilty of a misdemeanor.

(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation supervisor, parole supervisor, or conservation ranger in the lawful discharge of his official duties by offering or doing violence to the person of such officer or legally authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

Title 4 (Animals) Provisions

Chapter 1 - General Provisions

§ 4-1-6. Obstruction, interference, or hinderance of duties

It shall be unlawful for any person to obstruct, interfere, or hinder the Commissioner, his or her designated agents and employees, an animal control officer, or a dog control officer in the lawful discharge of his or her official duties pursuant to this title. Any person

convicted of a violation of this Code section shall be punished as provided in subsection (b) of Code Section 16-10-24.

Chapter 11, Article 1 - Animal Protection

§ 4-11-1. Short title

This article shall be known and may be cited as the "Georgia Animal Protection Act."

§ 4-11-2. Definitions

As used in this article, the term:

(1) "Adequate food and water" means food and water which is sufficient in an amount and appropriate for the particular type of animal to prevent starvation, dehydration, or a significant risk to the animal's health from a lack of food or water.

(1.1) "Animal control officer" means an individual authorized by local law or by the governing authority of a county or municipality to carry out the duties imposed by this article or imposed by local ordinance.

(2) "Animal shelter" means any facility operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

(3) "Equine" means any member of the Equidae species, including horses, mules, and asses.

(4) "Humane care" of animals means, but is not limited to, the provision of adequate heat, ventilation, sanitary shelter, and wholesome and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed.

(5) "Kennel" means any establishment, other than an animal shelter, where dogs or cats are maintained for boarding, holding, training, or similar purposes for a fee or compensation.

(6) "Person" means any person, firm, corporation, partnership, association, or other legal entity, any public or private institution, the State of Georgia, or any county, municipal corporation, or political subdivision of the state.

(7) "Pet dealer" or "pet dealership" means any person who sells, offers to sell, exchanges, or offers for adoption dogs, cats, birds, fish, reptiles, or other animals customarily obtained as pets in this state. However, a person who sells only animals that he or she has produced and raised, not to exceed 30 animals a year, shall not be considered a pet dealer under this article unless such person is licensed for a business by a local government or has a Georgia sales tax number. The Commissioner may with respect to any breed of animals decrease the 30 animal per year exception in the foregoing sentence to a lesser number of any animals for any species that is commonly bred and sold for commercial purposes in lesser quantities. Operation of a veterinary hospital or clinic by a licensed veterinarian shall not constitute the veterinarian as a pet dealer, kennel, or stable under this article.

(8) "Secretary of Agriculture" means the secretary of the United States Department of Agriculture.

(9) "Stable" means any building, structure, pasture, or other enclosure where equines are maintained for boarding, holding, training, breeding, riding, pulling vehicles, or other similar purposes and a fee is charged for maintaining such equines or for the use of such equines.

§ 4-11-3. Licenses for pet dealers and kennel, stable, or animal shelter operators; requirement; issuance; application

(a) It shall be unlawful for any person to act as a pet dealer or operate a kennel, stable, or animal shelter unless such person has a valid license issued by the Commissioner of Agriculture. Any person acting without a license in violation of this subsection shall be guilty of a misdemeanor.

(b) The Commissioner shall license pet dealers and kennel, stable, and animal shelter operators under the applicable provisions of Chapter 5 of Title 2, the "Department of Agriculture Registration, License, and Permit Act."

(c) Licenses shall be issued for a period of one year and shall be annually renewable. The Commissioner may establish separate classes of licenses, including wholesale and retail licenses. The Commissioner shall fix fees for licenses so that the revenue derived from licenses shall approximate the total direct cost of administering this article. The Commissioner may establish different fees for the different classes of licenses established, but the annual fee for any such license shall be at least $25.00 but shall not exceed $200.00.

(d) Applications for licenses shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

(1) The name of the applicant;

(2) The business address of the applicant;

(3) The complete telephone number of the applicant;

(4) The location of the pet dealership, kennel, stable, or animal shelter;

(5) The type of ownership of the pet dealership, kennel, stable, or animal shelter; and

(6) The name of the owner or, if a partnership, firm, corporation, or other entity, the name

of the partners or stockholders.

(e) Notwithstanding the provisions of subsection (c) of this Code section, the license fees fixed pursuant to subsection (c) of this Code section shall be increased by 100 percent for the renewal of any license which is not renewed within ten days following the expiration date of the license or for the issuance of a new license to any person who has failed to apply for a license within ten days following the date on which written notice of the need for such license has been given to such person by the Commissioner or his authorized representative.

§ 4-11-4. Display of licenses

A license must be prominently displayed at each place of business of a pet dealer and at each kennel, stable, and animal shelter in this state.

§ 4-11-9. Inspections

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.

§ 4-11-9.1. Quarantine of animal, premises, or any area by Commissioner

(a) In the control, suppression, prevention, and eradication of animal diseases, the Commissioner or any duly authorized representative acting under his authority is authorized and required to quarantine an animal, premises, or any area when he shall determine that animals in such place or places are infected with a contagious or infectious disease, that the unsanitary condition of such place or places might cause the spread of such

disease, that the animal has or has been exposed to any contagious or infectious disease, or that the owner or occupant of such place or places is not observing sanitary practices prescribed under the authority of this article or any other law of this state.

(b) The Commissioner or his duly authorized representative is authorized to issue and enforce written or printed stop sale, stop use, or stop movement orders to the owners or custodians of any animals, ordering them to hold such animals at a designated place, when the Commissioner or his duly authorized representative finds such animals:

(1) To be infected with or to have been exposed to any contagious or infectious disease;

(2) To be held by a person who is required to be licensed under this article and whose license has expired;

(3) To be held by a person who is required to be licensed under this article and who has failed to obtain a license within ten days of the date on which written notice of need to obtain a license was given to such person by the Commissioner or his authorized representative; or

(4) To have been held in violation of this article,

until the law has been complied with and such animals have been released, in writing, by the Commissioner or the violations have been otherwise legally disposed of by written authority.

(c) It shall be unlawful for any person to sell, use, or move any animal in violation of any quarantine or stop sale, stop use, or stop removal order issued under this Code section.

§ 4-11-9.2. Inspections; impoundment of animals; exceptions

(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.

(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. Caring for an impounded animal

(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.

§ 4-11-9.4. Notification of owner; custody of animal

(a) It shall be the duty of any person impounding an animal under this article to notify the owner of such animal immediately upon impoundment. Such notice shall state the name and business address of the person impounding the animal, the name and address of the state or local government agency having custody of the animal, a description of the animal, the reason why the animal was impounded, and a statement of the time limits for the owner to respond and request a hearing as provided in Code Section 4-11-9.5. The notice shall be provided by personal service or by registered mail, certified mail, or statutory overnight delivery[18] sent to the last known address of the owner. Service of the notice which complies

[18]**§ 9-10-12. Certified mail equivalent to registered mail; sufficient compliance for notice by statutory overnight delivery**

(a) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice shall be

with subsection (b) of Code Section 9-11-5[19] shall in all cases be sufficient. If the owner of

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given by "registered mail," the notice may be given by "certified mail."
(b) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice may be given by "statutory overnight delivery," it shall be sufficient compliance if:
(1) Such notice is delivered through the United States Postal Service or through a commercial firm which is regularly engaged in the business of document delivery or document and package delivery;
(2) The terms of the sender's engagement of the services of the United States Postal Service or commercial firm call for the document to be delivered not later than the next business day following the day on which it is received for delivery by the United States Postal Service or the commercial firm; and
(3) The sender receives from the United States Postal Service or the commercial firm a receipt acknowledging receipt of the document which receipt is signed by the addressee or an agent of the addressee.

[19]**§ 9-11-5. Service and filing of pleadings subsequent to the original complaint and other papers**

(a) *Service -- When required.* Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided by subsection (b) of this Code section.
(b) *Same -- How made.* Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.
(c) *Same -- Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.
(d) *Filing.* All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.
(e) *"Filing with the court" defined.* The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

such animal is unknown or cannot be found, service of the notice on the owner shall be made by posting the notice in a conspicuous place at the location where the animal was impounded and by publishing a notice once in a newspaper of general circulation in the county where the animal was impounded.

(b) An animal impounded pursuant to this article is deemed to be in the custody of the state or local government agency responsible for enforcement of this article within said county or municipality.

§ 4-11-9.5. Failure to respond; right to hearing; care; crime exception

(a) If the owner of an animal impounded pursuant to this article fails to respond in writing within five business days of the date the notice of impoundment was served, or, if the owner is unknown or could not be found within 30 days of publication of the notice of impoundment, the impounded animal may be disposed of pursuant to Code Section 4-11-9.6.

(b)(1) If the owner of an animal impounded pursuant to this article refuses to enter into a consent agreement with the government agency having custody of the animal that such animal will be given humane care and adequate and necessary veterinary care, the owner may request, in writing, a hearing within five business days of the date the notice of impoundment was served on such owner, or, if the owner is unknown or could not be found, within 30 days of the date of publication of the notice of impoundment. Such request for hearing shall be served upon the government agency having custody of the animal. If no hearing is requested within the time limits specified in this paragraph and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the owner, the right to a hearing shall have been waived.

(2) Within 30 days after receiving a written request for a hearing, the government agency

having custody of the animal shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If the animal is in the custody of an agency of local government which has, by local law or ordinance, established a procedure for hearing such matters, the body designated in such local law or ordinance shall conduct the hearing required by this Code section. If the local government does not have a hearing procedure, the government agency having custody of the animal may refer the matter to the Office of State Administrative Hearings. If the animal is in the custody of the Department of Agriculture, the Commissioner or his or her designee shall conduct the hearing. The hearing shall be public and all testimony shall be received under oath. A record of the proceedings at such hearing shall be made and maintained by the hearing officer as provided in Code Section 50-13-13.

(3) The scope of the hearing shall be limited to whether the impounding of the animal was authorized by subsection (c) of Code Section 4-11-9.2.

(4) The hearing officer shall, within five business days after such hearing, forward a decision to the person who impounded the animal and the government agency having custody of the animal.

(5) If the hearing officer finds that the animal was improperly impounded, the animal shall be returned to the owner and the cost incurred in providing reasonable care and treatment for the animal from the date of impoundment to the date of the order shall be paid by the impounding agency.

(6) If the hearing officer finds that the animal was lawfully impounded, the hearing officer may:

(A) Recommend that the government agency having custody of the animal dispose of the

animal as provided in Code Section 4-11-9.6; or

(B) Unless, in a prior administrative or legal action in this state or any other state, the owner has been 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, recommend conditions under which the animal may, upon payment by the owner of all costs of impoundment and care, be returned to the owner. Such conditions shall be reduced to writing and served upon the owner and the government agency having custody of the animal. Such conditions may include, but are not limited to, the following, that:

(i) Such animal will be given humane care and adequate and necessary veterinary services;

(ii) Such animal will not be subjected to mistreatment; and

(iii) The owner will comply with this article.

(c) The provisions 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 or disposed of without the approval of the prosecuting attorney.

§ 4-11-10. Unlawful acts by licensed persons

It shall be unlawful for any person licensed under this article or any person employed by a person licensed under this article or under such person's supervision or control to:

(1) Commit a violation of Code Section 16-12-4, relating to cruelty to animals;

(2) Fail to keep the pet dealership premises, animal shelter, kennel, or stable in a good state of repair, in a clean and sanitary condition, adequately ventilated, or disinfected when needed;

(3) Fail to provide humane care for any animal; or

(4) Fail to take reasonable care to release for sale, trade, or adoption only those animals that appear to be free of disease, injuries, or abnormalities.

§ 4-11-13. Animals raised, kept, or maintained for human consumption

The provisions of this article shall not apply to any person who raises, keeps, or maintains animals solely for the purposes of human consumption.

§ 4-11-15. Injunctions and restraining orders

In addition to the remedies provided in this article or elsewhere in the laws of this state and notwithstanding the existence of an adequate remedy at law, the Commissioner or, where authorized by the local governing authority, the city or county attorney is authorized to apply to the superior court for an injunction or restraining order. The court shall for good cause shown grant a temporary or permanent injunction or an ex parte or restraining order, restraining or enjoining any person, partnership, firm, corporation, or other entity from violating and continuing to violate this article, any rules and regulations promulgated under this article, Code Section 16-12-4, or Code Section 16-12-37. Such injunction or restraining order shall be issued without bond and may be granted notwithstanding the fact that the violation constitutes a criminal act and notwithstanding the pendency of any criminal prosecution for the same violation.

§ 4-11-15.1. Abandonment of domesticated animal

Notwithstanding the provisions of Code Section 4-11-13, it shall be unlawful for any person knowingly and intentionally to abandon any domesticated animal upon any public or private property or public right of way. This Code section shall not be construed as amending or otherwise affecting the provisions of Chapter 3 of this title, relating to livestock running at large or straying.

§ 4-11-16. Penalties

(a) Except as otherwise provided in Code Section 16-12-4 or 16-12-37, any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punished as provided in Code Section 17-10-3; provided, however, that if such offense is committed by a corporation, such corporation shall be punished by a fine not to exceed $1,000.00 for each such violation, community service of not less than 200 hours nor more than 500 hours, or both.

(b) Each violation of this article shall constitute a separate offense.

§ 4-11-17. Filing a report regarding animal cruelty; immunity

(a) Notwithstanding Code Section 24-9-29 or any other provision of law to the contrary, any licensed accredited veterinarian or veterinary technician having reasonable cause to believe that an animal has been subjected to animal cruelty in violation of Code Section 16-12-4 or dog fighting in violation of Code Section 16-12-37 may make or cause to be made a report of such violation to the Commissioner, his or her designee, an animal control officer, a law enforcement agency, or a prosecuting attorney and may appear and testify in any judicial or administrative proceeding concerning the care of an animal.

(b) Any person participating in the making of a report pursuant to this Code section or participating in any administrative or judicial proceeding pursuant to this article or Title 16 shall, in so doing, be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith.

Chapter 13 - Humane Care for Equines

§ 4-13-1. Short title

This chapter shall be known and may be cited as the "Humane Care for Equines Act."

§ 4-13-2. Definitions

As used in this chapter, the term:

(1) "Adequate food and water" means food and water which is sufficient in amount and appropriate for the particular type of equine to prevent starvation, dehydration, or a significant risk to the equine's health from a lack of food or water.

(2) "Equine" means any member of the Equidae species, including horses, mules, and asses.

(3) "Humane care" means, but is not limited to, the provision of adequate food and water consistent with the normal requirements and feeding habits of the equine's size, species, and breed.

(4) "Owner" means any person owning, having possession or custody of, or in charge of an equine.

(5) "Person" means any person, firm, corporation, partnership, association, or other legal entity; any public or private institution; the State of Georgia; or any county, municipal corporation, or political subdivision of the state.

§ 4-13-3. Prohibited acts

It shall be unlawful for the owner of any equine:

(1) To commit a violation of Code Section 16-12-4, relating to cruelty to animals, which involves an equine owned by, possessed by, or in the custody or control of such person;

(2) To fail to provide adequate food and water to such equine;

(3) To fail to provide humane care for such equine;

(4) To unnecessarily overload, overdrive, torment, or beat any equine or to cause the death

of any equine in a cruel or inhumane manner; or

(5) To interfere with or hinder the Commissioner or his designated agent or any sheriff, deputy sheriff, or other law enforcement officer in carrying out his duties under this chapter.

§ 4-13-4. Inspection warrants; impoundment authorized; examination

(a) At any time there is cause to believe that a violation of Code Section 4-13-3 has occurred, the Commissioner of Agriculture or his designated agent may apply to the appropriate court in the county in which the equine is located for an inspection warrant under the provisions of Code Section 2-2-11 or any sheriff, deputy sheriff, or other law enforcement officer may apply for a search warrant for the purpose of inspecting any equine found on such property to determine if a violation of Code Section 4-13-3 has occurred.

(b) The Commissioner or his designated agent or any sheriff, deputy sheriff, or other law enforcement officer is authorized to impound any equine which has not been furnished with adequate food and water, which has not received humane care, or which has been subjected to cruelty in violation of Code Section 4-13-3. Such determination as to the condition or treatment of the equine shall be made by a licensed veterinarian employed by the state or federal government following an examination conducted at the request of the Commissioner or his designated agent or any sheriff, deputy sheriff, or other law enforcement officer.

§ 4-13-5. Duty to care for impounded equines; lien; return to owner

(a) It shall be the duty of any person designated for impounding an equine under Code Section 4-13-4 to make reasonable and proper arrangements to provide the impounded equine with adequate and necessary shelter, food, water, veterinary services, and humane

care and to take such actions as to ensure the survival of the equine or the humane euthanasia of the equine and disposal thereof if such actions are necessary. Such arrangements may include, but shall not be limited to, providing shelter and care for the equine at any state, federal, county, municipal, or governmental facility or shelter, contracting with a private individual, partnership, corporation, association, or other entity to provide shelter, food, water, veterinary services, and humane care for a reasonable fee, or allowing a private individual, partnership, corporation, association, or other entity to provide shelter, food, water, veterinary services, and humane care as a volunteer and at no cost. Any person impounding an equine under this chapter or providing care for an impounded equine shall have a lien on such equine for the reasonable costs of caring for such equine.

(b) The lien acquired under subsection (a) of this Code section may be foreclosed in any court which 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 equine under this chapter is authorized to return the equine to its owner upon payment by the owner of all costs of impoundment and care and upon the entry of a consent order or receiving written assurances:

(1) That such equine will be given humane care, adequate food and water, adequate shelter, and veterinary services;

(2) That such equine will not be subjected to cruelty; and

(3) That the owner will comply with this chapter.

§ 4-13-6. Notice of impoundment

It shall be the duty of any person impounding an equine under this chapter to notify the owner of such equine immediately upon impoundment. Such notice shall state the name and address of the person impounding the equine, the location where the equine is being held, and a description of the equine. If the owner of such equine is unknown or cannot be found, service of the notice on the owner shall be obtained by publishing a notice once in a newspaper of general circulation where the equine is impounded.

§ 4-13-7. Disposal of equine by sale or euthanasia

If the owner of the equine cannot be found, if the owner refuses to enter into a consent order or to provide a written assurance that such equine will be given humane care and adequate food, water, shelter, and veterinary care, or if the owner fails to comply with this chapter after having entered into a consent order or having given a written assurance on a previous occasion, the Commissioner or his designated agent, the sheriff, any deputy sheriff, or any other law enforcement officer may dispose of the equine through sale at a public auction or by sealed bids or, if such equine is in a physical condition such that euthanasia is the only reasonable course of action, by humanely disposing of the equine. Prior to disposing of an equine through sale or euthanasia, the Commissioner or his designated agent, the sheriff, any deputy sheriff, or any other law enforcement officer shall make a reasonable effort to locate the owner and, if the owner cannot be located after reasonable effort, the sale or euthanasia may proceed. Any proceeds from the sale of such equine shall be used first to pay the costs of care given the equine and any funds remaining shall be paid into the state treasury if the equine was impounded by the Commissioner or

his designated agent or into the county treasury if the equine was impounded by the sheriff, a deputy sheriff, or other law enforcement officer.

§ 4-13-8. Injunctive relief

In addition to the remedies provided in this chapter or elsewhere in the laws of this state and notwithstanding the existence of an adequate remedy at law, the Commissioner is authorized to apply to the superior courts for an injunction or restraining order. Such courts shall have jurisdiction and for good cause shown shall grant a temporary or permanent injunction or an ex parte or restraining order restraining or enjoining any person, partnership, firm, corporation, or other entity from violating and continuing to violate this chapter or any rules and regulations promulgated under this chapter. Such injunction or restraining order shall be issued without bond and may be granted notwithstanding the fact that the violation constitutes a criminal act and notwithstanding the pendency of any criminal prosecution for the same violation.

§ 4-13-9. Rules and regulations

The Commissioner is authorized to promulgate and adopt rules and regulations necessary or appropriate to carry out this chapter.

§ 4-13-10. Penalty for violation of chapter

Except as otherwise provided in Code Section 16-12-4 or 16-12-37, any person, partnership, firm, corporation, or other entity violating any of the provisions of this chapter shall be guilty of a misdemeanor.