

GEORGIA ANIMAL CRUELTY STATUTES & CASES

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1. Introduction

The following materials include summary information about Georgia animal cruelty statutes and cases. This summary does not address federal laws or local county or municipal ordinances that may deal with animal cruelty.

For those without access to Westlaw or Lexis, complete copies of the cited statutes can be found without cost on various web sites, including <http://www.legis.ga.gov/en-US/default.aspx>. Cited Georgia regulations may be found without cost at <http://rules.sos.state.ga.us/cgi-bin/page.cgi> and other web sites. Georgia appellate court cases since 1997 that are cited may be read in full without cost by searching under FindLaw.com.

2. General Georgia Animal Cruelty Statute-O.C.G.A. § 16-12-4

O.C.G.A. § 16-12-4 is the principal Georgia statute addressing animal cruelty. The current version of O.C.G.A. § 16-12-4 became effective July 1, 2014. It made significant changes to the immediately preceding version. It also differs significantly from predecessor Georgia Animal Cruelty statutes.¹

¹ Because many of the Georgia appellate cases were decided under the former version of O.C.G.A. § 16-12-4 and even earlier animal cruelty laws, it is sometimes important to understand not only the current version of that statute but the former versions as well.

On March 1, 1875, a statute was passed entitled “An act for the prevention of cruelty to animals. Its terms are paraphrased in *Griffith v. State*, 116 Ga. 835, 43 S.E. 251 (1903) as follows:

[a]ny person who should torture, torment, deprive of necessary sustenance, cruelly beat or maltreat, etc., any horse or other animal, should be guilty of a misdemeanor, and punished in a named way.

On October 20, 1879, the Georgia Legislature enacted two new provisions that broadened the acts that were declared to constitute animal cruelty. One of those provisions was Code Annotated 26-7902, formerly Penal Code 1910 § 753, Penal Code 1895, § 703 was enacted. It provided that:

Every person who shall instigate, engage in, or do anything in furtherance of an act of cruelty to a domestic animal shall be punished as for a misdemeanor.

(Emphasis added.) The other provision was Georgia Code Annotated 26-7904, formerly Penal Code 1910 § 755 (Ga. Laws 1922, p. 49), Penal Code 1895, § 105, which provided that:

The word “cruelty” shall be held to include every willful act, omission, or neglect, whereby unjustifiable physical pain, suffering, or death is caused or permitted.

(Emphasis added.) The Court in *Griffith v. State*, 116 Ga. 835, 43 S.E. 251 (1903) noted that the 1879 amendments were “very much broader” in their scope than the 1875 statute.

The current version defines the offenses of simple cruelty to animals and aggravated cruelty to animals. A person commits simple cruelty to animals when he:²

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

A person commits aggravated cruelty to animals when he:³

- (1) Maliciously causes the death of an animal;

In 1968, the Georgia Legislature enacted Georgia Code Annotated 26-2802 (Ga. Laws 1968, p.1249), which provided that:

A person commits a misdemeanor when his act, omission, or neglect causes unjustifiable physical pain, suffering, or death to any living animal.

This is the statute that became O.C.G.A. § 16-12-4 and was amended in 1992. The key provision of the 1992 version read as follows:

A person is guilty of a misdemeanor of cruelty to animals in the second degree when his act, omission, or neglect causes unjustifiable physical pain, suffering, or death to any living animal.

(Emphasis added.)

In 2000, the Georgia Legislature again amended O.C.G.A. § 16-12-4. The amended language provided in key part that:

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.

The amended language also provided, for the first time, a felony or aggravated form of animal cruelty, which was described as follows:

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.

² O.C.G.A. § 16-12-4(b).

³ O.C.G.A. § 16-12-4(d).

- (2) Maliciously causes physical harm to an animal by depriving it of a member of its body, by rendering a part of such animal's body useless, or by seriously disfiguring such animal's body or a member thereof;
- (3) Maliciously tortures an animal by the inflicting of or subjection to severe or prolonged physical pain;
- (4) Maliciously administers poison to an animal, or exposes an animal to any poisonous substance, with the intent that the substance be taken or swallowed by the animal; or
- (5) Having intentionally exercised custody, control, possession, or ownership of an animal, maliciously fails to provide to such animal adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition to the extent that the death of such animal results or a member of its body is rendered useless or is seriously disfigured.

“Malice” as used in defining aggravated cruelty to animals means:⁴

- (A) An actual intent, which may be shown by the circumstances connected to the act, to cause the particular harm produced without justification or excuse; or
- (B) The wanton and willful doing of an act with an awareness of a plain and strong likelihood that a particular harm may result.

A person convicted of simple cruelty to animals is generally guilty of a misdemeanor, but the person will be guilty of a misdemeanor of a high and aggravated nature if he has already been convicted of animal cruelty.⁵ One convicted of aggravated cruelty to animals is generally guilty of a felony to be punished by imprisonment of between one and five years, a fine of no more than \$15,000, or both.⁶ However, a prior adjudication of guilt for aggravated animal cruelty is to be punished by one to ten years imprisonment, a \$100,000 fine, or both.⁷

⁴ O.C.G.A. § 16-12-4(a)(2).

⁵ O.C.G.A. § 16-12-4(c).

⁶ O.C.G.A. § 16-12-4(e).

⁷ O.C.G.A. § 16-12-4(e).

O.C.G.A. § 16-12-4 includes several subparts that significantly limit its application. One is the definition of “animal,” which excludes fish or any “pest” that might be exterminated or removed from a business, residence, or other structure.⁸ “Pest” is not defined in the statute.

Another limiting provision states that O.C.G.A. § 16-12-4 “shall not be construed as prohibiting conduct which is otherwise permitted under the laws of this state or of the United States,....”⁹ In many cases, this means that conduct that is, in fact, cruel, at least from the animal’s perspective, has been legislatively sanctioned. The illustrative, but not exclusive, list of such conduct that is not prohibited includes “agricultural, animal husbandry, butchering, food processing, marketing, scientific research, training, medical, zoological, exhibition, competitive, hunting, trapping, fishing, wildlife management, or pest control practices or the authorized practice of veterinary medicine....”¹⁰ This statute also states that it shall not be construed “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.”¹¹

The statute also permits a person to injure or kill an animal if he “reasonably believes that such act is necessary to defend against an imminent threat of injury or damage to any person, other animal, or property.”¹² Exceptions to this right are listed.¹³ The method used to injure or kill the animal must be “designed to be as humane as is possible under the circumstances.”¹⁴

3. Cases under O.C.G.A. § 16-12-4 and Predecessor Laws

This is a topical reference summary of cases decided under O.C.G.A. § 16-12-4 and predecessor Georgia animal cruelty laws.

Abandonment - can establish cruelty to animals:

Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749 (1981).¹⁵

⁸ O.C.G.A. § 16-12-4(a).

⁹ O.C.G.A. § 16-12-4(g).

¹⁰ O.C.G.A. § 16-12-4(g).

¹¹ O.C.G.A. § 16-12-4(g).

¹² O.C.G.A. § 16-12-4(h)(1).

¹³ O.C.G.A. § 16-12-4(h)(2).

¹⁴ O.C.G.A. § 16-12-4(h)(3).

¹⁵ See also O.C.G.A. § 4-11-15.1, which provides that:

Barking - not sufficient excuse for cruelty to animals:

Motes v. State, 189 Ga. App. 430, 375 S.E. 2d 893 (1988).

Character of Animal - evidence allowed in response to defense of self-defense of person or property:

Defendant having alleged that shooting of animal was necessary due to the dangerous character of the animal at the time of the shooting, evidence that the animal was unusually gentle was competent. *Stonecypher v. State*, 17 Ga. App. 818, 88 S.E. 719 (1916) (prosecution for cruelty to animals was under unidentified former Georgia statute.) See also, *May v. State*, 120 Ga. 497, 48 S.E. 153, 154 (1904) (the Court noted that the “character of the dog as a peaceful and useful member of canine society was abundantly established by those who knew him best in life.”)

Circumstantial Evidence-may be used in O.C.G.A. § 16-12-4 prosecution:

Circumstantial evidence of dogfighting. *Favors v. State*, 326 Ga.App. 373(2), 756 S.E.2d 612 (2014).

A proclivity to kill dogs on defendant’s property was circumstantial evidence that defendant killed dog in this case. *Futch v. State*, 314 Ga. App. 294(4), 723 S.E.2d 714 (2012).

Evidence that dog was tied to house that was deliberately burned by defendants. *Turner v. State*, 275 Ga. 343, 566 S.E. 2d 676 (2002).

Evidence that dogs were being bred for dogfighting. *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001).

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.

(Emphasis added.)

Sound of gun that apparently killed dog was circumstantial evidence. *Fort v. State*, 274 Ga. 518, 558 S.E.2d 1 (2001).

Testimony that defendant held rifle, dog yelped and was found with hole in ear sufficient circumstantial evidence. *Willis v. State*, 201 Ga. App. 182, 410 S.E.2d 377 (1991).

Chickens - can be victims of cruelty to animals:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Chaney v. State, 232 Ga. App. 297, 500 S.E.2d 416 (1998).

Cock Fighting - can be basis for cruelty to animals charge:¹⁶

Chaney v. State, 232 Ga. App. 297, 500 S.E.2d 416 (1998).

Morgan v. State, 195 Ga. App. 52, 392 S.E. 2d 715 (1990).

J.C. Brackett v. State, 142 Ga. App. 601, 236 S.E.2d 689 (1977).

Constitutionality:

The 2000 versions of O.C.G.A. § 16-12-4(b) and (f) (including the words “humane” and “humanely”) was not unconstitutionally vague. *In re C.B.*, 286 Ga. 173(2-3), 686 S.E.2d (2009).

Corporate Criminal Liability - for cruelty to animals:

Military Circle Pet Center No. 94, Inc. v. State, 181 Ga. App. 657, 353 S.E.2d 555 (1987), reversed in part, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Cows - can be victims of cruelty to animals:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

¹⁶ See also, Op. Atty. Gen. No. 03-7, July 25, 2003. Cockfighting constitutes cruelty to animals and is not exempt from prosecution pursuant to subsection (e) thereof as “scientific research” by virtue of the fact that blood or tissue samples are taken from some of the game birds and sent to a laboratory for disease testing.

James v. State, 1 Ga. App. 779, 57 S.E. 959 (1907) (decided under former section 703 of the Penal Code of 1895.)

Dogs - can be victims of cruelty to animals:

Tumlin v. State, 264 Ga. App. 565, 591 S.E.2d 448 (2003).

Nel v. State, 252 Ga. App. 761, 557 S.E.2d 44 (2001).

Fort v. State, 274 Ga. 518, 558 S.E.2d 1 (2001).

Shiflett v. State, 270 Ga. 308, 509 S.E.2d 633 (1998).

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Wilcox v. State, 28 S.E. 981 (1897) (decided under former Section 703 of the Penal Code.)

Dog - in middle of road:

Running over a dog lying in the middle of the road when avoiding the dog could easily have been accomplished is cruelty to animals. *Rudolph v. State*, 27 Ga. App. 588, 110 S.E. 53(1921). (specific former criminal statute not cited by court.)

Dogfighting¹⁷ - evidence of relevant to O.C.G.A. § 16-12-4 charge:

Even when a defendant is not charged with the offense of dogfighting, evidence of it may be relevant to an animal cruelty charge under O.C.G.A. § 16-12-4. *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001).

Felony - cases dealing with felony charges of cruelty to animals:

Turner v. State, 275 Ga. 343, 566 S.E. 2d 676 (2002) (not clear whether misdemeanor or felony charge.)

Ducks - can be victims of cruelty to animals:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

¹⁷ See generally, the cases discussed hereinafter dealing with dogfighting under O.C.G.A. § 16-12-37.

Expert Testimony - miscellaneous:

Humane Society officer's testimony allowed. *Sirmans v. State*, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Veterinarian testimony allowed. *Tiller v. State*, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Veterinarian testimony regarding existence of pain from act of cruelty. *Cox v. State*, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

(Decided under O.C.G.A. § 16-12-37 [dogfighting].) Director of Humane Society of United States regarding manner in which dogfighting is organized and carried out and the connection between gambling and dogfighting. *Barton v. State*, 253 Ga. 478, 322 S.E.2d 54 (1984); *Hargrove v. State*, 253 Ga. 450, 321 S.E.2d 104 (1984).

Food - failure to provide adequate food can establish cruelty to animals:¹⁸

Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Dicta: *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657, 353 S.E.2d 555 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749 (1981).

¹⁸ See also paragraph (1) of O.C.G.A. § 4-11-2, which is the definitional section of the Georgia Animal Protection Act. For purposes of Title 4 of the Code, it provides the following definition:

(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.

Paragraph (4) of that code section provides the following additional definition:

(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.

While these terms are defined solely for purposes of Title 4 of the Code, they can be cited as commonsense definitions pertinent to cases under O.C.G.A. § 16-12-4. Similar definitions appear under O.C.G.A. § 4-13-2, which is part of the Humane Care for Equines Act.

Griffith v. State, 116 Ga. 835, 43 S.E. 251 (1903)(decided under former Penal Code Section 703).

Goats - can be victims of cruelty to animals:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Hogs - can be victims of cruelty to animals:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Harrison v. State, 83 Ga. App. 367, 64 S.E.2d 83 (1951).

Haines v. State, 82 Ga. App. 129, 60 S.E.2d 504 (1950).

Horses - can be victims of cruelty to animals:

Tiller v. State, 218 Ga. App. 418, 461 S.E. 2d 572 (1995).

Griffith v. State, 116 Ga. 835, 43 S.E. 251 (1903) (decided under former Penal Code Section 703).

See also O.C.G.A. § 4-13-1, *et seq.*, which is the “Humane Care for Equines Act.”

Included offenses - examples of offenses that are not:

Cruelty to animals is not included offense of arson. *Motes v. State*, 189 Ga. App. 430, 375 S.E. 2d 893 (1988).

(Decided under O.C.G.A. § 16-12-37 [dogfighting].) Dogfighting count was not included in the commercial gambling count. *Hargrove v. State*, 253 Ga. 450, 321 S.E.2d 104 (1984).

Injunction - right to obtain:

See O.C.G.A. § 4-11-15 for possible right to enjoin violations of O.C.G.A. § 16-12-4.

Intent - not an element of O.C.G.A. § 16-12-4 violations:

O.C.G.A. § 16-12-4 then in effect did not require a showing of intent with regard to "act" and "omission" portions of statute. *Cotton v. State*, 263 Ga. App. 843, 589 S.E.2d 610 (2003). See also, *Savage v. State*, 263 Ga. App. 180, 587 S.E.2d 294 (2003). It should be noted that the Georgia appellate cases cited in *Savage* as support for the conclusion that O.C.G.A. § 16-12-4 does not require a showing of intent were cases decided under the pre-2000 version of that statute, which did not include the felony cruelty subsection. See also *Cox v. State*, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Intent - not an element of particular local ordinances:

Henry County ordinances governing restraint of dogs, public nuisances, and vicious animals are strict liability ordinances and do not require a showing of intent. *Savage v. State*, 263 Ga. App. 180, 587 S.E.2d 294 (2003).

Jury charges - miscellaneous:

Since the conduct proscribed by the animal cruelty statute is defined as "unjustifiable," the trial court did not err in failing to charge, without request, on justification as a defense. *Rushin v. State*, 154 Ga. App. 41, 42-43, 267 S.E.2d 473, 474 (1980).

Living conditions - unsanitary living conditions may constitute animal cruelty:

Evidence that defendant was responsible for care of cows, that he lived over 100 miles away, that cows were not cared for on a regular basis, that cows were confined in a very small pen, that there was no water in their pen on day deputy and agriculture inspector released them from pen, that they were thin and desperate for water, and that they suffered from a lack of water was sufficient to support conviction for cruelty to animals. *Cotton v. State*, 263 Ga. App. 843, 589 S.E.2d 610 (2003).

Leaving animals in unsanitary living conditions may constitute misdemeanor animal cruelty. *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001); *Morgan v. State*, 285 Ga. App. 254, 645 S.E.2d 745 (2007) and *Morgan v. State*, 289 Ga. App. 209, 656 S.E.2d 857 (2008).

Malice - not an element of O.C.G.A. § 16-12-4 violations:

O.C.G.A. § 16-12-4 does not require a showing of intent with regard to "act" and "omission" portions of earlier version of statute. *Cotton v. State*, 263 Ga. App. 843, 589

S.E.2d 610 (2003). See also, *Savage v. State*, 263 Ga. App. 180, 587 S.E.2d 294 (2003). It should be noted that the Georgia appellate cases cited in *Savage* as support for its conclusion that O.C.G.A. § 16-12-4 does not require a showing of malice were cases decided under the pre-2000 version of that statute, which did not include the felony cruelty subsection.

Cox v. State, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Malice - not an element of particular local ordinances:

Henry County ordinances governing restraint of dogs, public nuisances, and vicious animals are strict liability ordinances and do not require a showing of malice. *Savage v. State*, 263 Ga. App. 180, 587 S.E.2d 294 (2003).

Medical care - failure to provide necessary medical care can establish cruelty to animals:

Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Dicta: *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657, 353 S.E.2d 555 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Misdemeanor - cases dealing with misdemeanor charges of cruelty to animals:

Turner v. State, 275 Ga. 343, 566 S.E. 2d 676 (2002) (not clear whether misdemeanor or felony charge.)

Stephens v. State, 247 Ga. App. 719, 545 S.E. 2d 325 (2001).

Motion for Directed Verdict - denial upheld:

Turner v. State, 275 Ga. 343, 566 S.E. 2d 676 (2002);

Nel v. State, 252 Ga. App. 761, 557 S.E.2d 44 (2001).

Motion to Sever Animal Cruelty Charge - denial upheld:

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Mule - can be victims of cruelty to animals:

Tally v. State, 5 Ga. App. 480, 63 SE 543 (1909) (decided under unidentified former version of animal cruelty statute).

Neglect - can take many forms:

Military Circle Pet Center No. 94, Inc. v. State, 181 Ga. App. 657, 658, 353 S.E.2d 555, 557 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Neglect - is sufficient to establish animal cruelty:

Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Military Circle Pet Center No. 94, Inc. v. State, 181 Ga. App. 657, 353 S.E.2d 555 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Other charged offenses-examples of:

Commercial gambling. *Morgan v. State*, 195 Ga. App. 52, 392 S.E. 2d 715 (1990).

Cruelty to animals is not included offense of arson. *Motes v. State*, 189 Ga. App. 430, 375 S.E. 2d 893 (1988).

Deceptive business practices (O.C.G.A. § 16-9-50.) *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657, 353 S.E.2d 555 (1987), reversed in part, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Ownership of animal - not required for prosecution:¹⁹

Ownership of animal that is the victim of animal cruelty is not an element of cruelty to animals. *Favors v. State*, 326 Ga.App. 373(1), 756 S.E.2d 612 (2014).

Ownership of animal that is the victim of animal cruelty is not an element of cruelty to animals. *Tiller v. State*, 218 Ga. App. 418, 461 S.E.2d 572 (1995); *Miller v. State*, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Ownership of land - not required for prosecution:

Ownership of land on which offense occurred is not an element of cruelty to animals. *Tiller v. State*, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Pain - testimony about the existence of:

Veterinarian testimony that deprivation of food and necessary medical care caused pain to animals. *Tiller v. State*, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Veterinarian testimony regarding existence of pain from act of cruelty. *Cox v. State*, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Lay witness testimony that dog was yelping is evidence that dog was in pain. *Cox v. State*, 216 Ga. App. 86, 453 S.E. 2d 471 (1995); *Willis v. State*, 201 Ga. App. 182, 410 S.E.2d 377 (1991).

Participation - is sufficient to establish animal cruelty:

Even though the defendant did not shoot the gun that killed a dog and injured another, the defendant could be convicted of cruelty to animals if he actively participated in the events leading to the shootings. *Rushin v. State*, 154 Ga. App. 41, 267 S.E.2d 473 (1980).

(Decided under O.C.G.A. § 16-12-37 [dogfighting].) Participation on any level, including by planning or financing, paying an admission, providing a location, wagering, or encouraging by applauding or cheering can constitute a violation of O.C.G.A. § 16-12-

¹⁹ The term “owner” has recently fallen into some disfavor because of its tendency to perpetuate the antiquated status of animals as mere “property” owned by someone else, rather than beings with their own rights or a special type of “property”. Some people prefer to use the term “caretaker” or “caregiver” to “owner.” Because Georgia statutes and cases continue to use “owner,” this article reluctantly employs that term.

37. By analogy, such acts, in the context of animal cruelty generally, should constitute a violation of O.C.G.A. § 16-12-4. *Hargrove v. State*, 253 Ga. 450, 321 S.E.2d 104 (1984).

Poetry:

The defendant was convicted of cruelty to animals for abusing an allegedly stubborn working mule. In upholding the conviction, the Court offered the following:

When the sun shines hot in the bottom,
And the mule is beset with the flies,
The hand and the head which guides the poor beast
Should be at once gentle and wise;
The man who trusts his beast to a plow hand-
For negroes and whites, the law is the same-
Is assured that the statutes and law of the land
Forbid that his brute be tortured or maimed.
So where a mule's in sole charge of a driver,
He (no matter what color his skin)
Must show, if that mule should be injured,
That the hurt was not due to his sin.
True, the law holds the driver far bigger
Than a conscienceless mule to be,
Yet the law should avenge with all vigor
All driver's acts of wanton cruelty.

Judge Russell, Georgia Court of Appeals, *Tally v. State*, 5 Ga. App. 480, 63 S.E. 543, 544 (1909).

Probation - trial judge has broad discretion to set conditions of probation:

A trial judge has broad discretion in setting conditions of probation. Denying the defendant the right to own or live with an animal can be an appropriate condition. *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001); *Morgan v. State*, 285 Ga. App. 254, 645 S.E.2d 745 (2007); *but see, Sirmans v. State*, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Purpose of statute - protection of animals themselves, not just property rights of “owners”:

The purpose of cruelty to animal statute is for the protection of animals themselves and not the property rights of “owners.” *Oglesby v. State*, 73 Ga. App. 703, 37 S.E.2d 837 (1946); *Quick v. State*, 62 Ga. App. 551, 8 S.E.2d 733 (1940). (These cases were decided under former Georgia Code § 26-7901, which no longer exists as such. Nevertheless, this case is an appropriate citation for the purpose of anti-cruelty statutes in general.)

Roaming free - allowing dangerous animal to roam free may be “neglect” or “omission” under O.C.G.A. § 16-12-4:

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Roaming at large - civil rather than criminal violation:

Cotton v. State, 263 Ga. App. 843, 589 S.E.2d 610 (2003).

Restitution – based on fair market value of animal:

Futch v. State, 314 Ga. App. 294(13), 723 S.E.2d 714 (2012).²⁰

Search and Seizure:

Morgan v. State, 285 Ga. App. 254, 645 S.E.2d 745 (2007) and *Morgan v. State*, 289 Ga. App. 209, 656 S.E.2d 857 (2008).

Humane Society employees may be subject to constitutional restrictions of search and seizure. *Sirmans v. State*, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Plain view exception to warrant requirement may apply. *Sirmans v. State*, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Seizure should not exceed warrant. *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657, 353 S.E.2d 555 (1987), reversed in part, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

²⁰ See also Section 29 of these materials, which addresses statutory restitution.

Self-defense of person or property - miscellaneous:

Jury issue presented on issue of self defense. *Nel v. State*, 252 Ga. App. 761, 557 S.E.2d 44 (2001).

To justify the “extreme penalty” of killing a dog in defense of self, family, or property, or the person or property of another, such danger must be imminent, and a real or obviously apparent necessity must exist, and the threatened injury could not otherwise have been prevented. *Readd v. State*, 164 Ga. App. 97, 99, 296 S.E.2d 402, 403 (1982).

O.C.G.A. § 4-8-5 is written in the present tense and does not apply to prior acts of injury or damage caused by a dog. *Readd v. State*, 164 Ga. App. 97, 98, 296 S.E.2d 402, 403 (1982). See O.C.G.A. § 4-8-5, which provides in pertinent part that a person may “defend his person or property, or the person or property of another, from injury or damage being caused by a dog.”

Only such force as is necessary may be used to drive off a trespassing animal. *Readd v. State*, 164 Ga. App. 97, 99, 296 S.E.2d 402, 404 (1982).

Actions taken for revenge, rather than for protection, are not justifiable. *Rushin v. State*, 154 Ga. App. 41, 267 S.E.2d 473 (1980).

Self-defense is normally a jury issue. *Rushin v. State*, 154 Ga. App. 41, 267 S.E.2d 473 (1980); *Wilson v. State*, 72 Ga. App. 620, 34 S.E.2d 577 (1945) (decided under former Georgia Code § 26-7902 and 26-7904.)

Defendant having alleged that shooting of animal was necessary due to the dangerous character of the animal at the time of the shooting, evidence that the animal was unusually gentle was competent. *Stonecypher v. State*, 17 Ga. App. 818, 88 S.E. 719 (1916) (prosecution for cruelty to animals was under unidentified former Georgia statute.) See also, *May v. State*, 120 Ga. 497, 48 S.E. 153, 154 (1904) (the Court noted that the “character of the dog as a peaceful and useful member of canine society was abundantly established by those who knew him best in life.”)

Killing dog that frequently killed sheep of defendant may not be animal cruelty, particularly if owner of dog consents. *Miller v. State*, 5 Ga. App. 463, 63 S.E. 571 (1909).

Killing a mule to protect crops not animal cruelty. *Wright v. State*, 30 Ga. 325, 76 Am. Dec. 656, 1860 WL 2146 (Ga.) (1860).

Sentence - miscellaneous:

Trial court lacked authority under facts of case to allow Humane Society to retain the animals for which the defendant was acquitted of cruelty to animals. *Sirmans v. State*, 244 Ga. App. 252, 534 S.E.2d 862 (2000). Contrast this decision with *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001), where the Court of Appeals affirmed the trial court's imposition as a condition of probation that the defendant could not own any dogs. In that case, there was some evidence to suggest the dogs may have been used for dogfighting, although that offense had not been charged.

Commission of act of animal cruelty may be basis for revoking suspended sentence. *Serpenfoot v. State*, 241 Ga. App. 35, 524 S.E.2d 516 (1999).

Trial court was not required to rely on presentence report and a total of two year's incarceration and five years probation along with fines for each count was not cruel and unusual punishment since sentences did not exceed statutory limits. *Smith v. State*, 160 Ga. App. 26, 285 S.E.2d 749 (1981).

Shelter - Lack of can be cruelty to animals:

Griffith v. State, 116 Ga. 835, 43 S.E. 251 (1903) (decided under former Penal Code Section 703).

Similar Incidents - miscellaneous:

May be admissible to show knowledge by defendant of dangerous propensities of dog over which defendant had ownership or custody or control. *Miller v. State*, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Sufficiency of Accusation - cases dealing with challenge to sufficiency of accusation:

Accusation Sufficient:

Ford v. State, 306 Ga. App. 606(1-2), 703 S.E.2d 71 (2010).

Savage v. State, 263 Ga. App. 180, 587 S.E.2d 294 (2003).

Schaff v. State, 275 Ga. App. 642, 621 S.E.2d 595 (2005).

Sirmans v. State, 244 Ga. App. 252, 534 S.E.2d 862 (2000).

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Multiple count convictions for animal cruelty authorized since accusation alleged different facts and/or dates for each count. *Smith v. State*, 160 Ga. App. 26, 285 S.E.2d 749 (1981).

Accusation insufficient:

Military Circle Pet Center No. 94, Inc. v. State, 181 Ga. App. 657, 353 S.E.2d 555 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Sufficiency of Evidence - cases dealing with challenge to sufficiency of evidence:

Evidence Sufficient:

Futch v. State, 314 Ga. App. 294(3), 723 S.E.2d 714 (2012).

Fort v. State, 274 Ga. 518, 558 S.E.2d 1 (2001).

Stephens v. State, 247 Ga. App. 719, 545 S.E. 2d 325 (2001).

Chaney v. State, 232 Ga. App. 297, 500 S.E. 2d 416 (1998).

Cox v. State, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

Willis v. State, 201 Ga. App. 182, 410 S.E.2d 377 (1991).

Morgan v. State, 195 Ga. App. 52, 392 S.E. 2d 715 (1990).

Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909 (1986).

Barton v. State, 253 Ga. 478, 322 S.E.2d 54 (1984)²¹.

²¹ The charges in this case were dogfighting under O.C.G.A. § 16-12-37 and gambling in violation of O.C.G.A. § 16-12-21 (a)(1).

Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749 (1981).

Rushin v. State, 154 Ga. App. 41, 42-43, 267 S.E.2d 473, 474 (1980).

J.C. Brackett v. State, 142 Ga. App. 601, 236 S.E.2d 689 (1977).

Rudolph v. State, 27 Ga. App. 588, 110 S.E. 53(1921).

Evidence insufficient:

Barton v. State, 253 Ga. 478, 322 S.E.2d 54 (1984)²².

Bolton v. State, 107 Ga. App. 883, 131 S.E. 2d 862 (1963).

Wilson v. State, 37 Ga. App. 361, 140 S.E. 779 (1927).

Derresaw v. State, 35 Ga. App. 197 (1926).

Trespassing - miscellaneous:

Mere trespassing is not grounds for killing or injuring an animal. *Harrison v. State*, 83 Ga. App. 367, 64 S.E.2d 83 (1951).

Value - diminished value of animal resulting from cruelty is appropriate evidence:

McKinney v. State, 81 Ga. 164, 9 S.E. 1091 (1889) (decided under former Code Section 4612a.)

Veterinarian testimony - examples of:

Testimony regarding existence of pain from act of cruelty: *Cox v. State*, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Veterinarian testimony that deprivation of food and necessary medical care caused pain to animals. *Tiller v. State*, 218 Ga. App. 418, 461 S.E.2d 572 (1995).

²² The charges in this case were dogfighting under O.C.G.A. § 16-12-37 and gambling in violation of O.C.G.A. § 16-12-21 (a)(1).

Videotape of evidence - allowed as evidence:

Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572 (1995) (videotape allowed even if might inflame jury if it is relevant and proper foundation laid for videotape.)

Void Sentence:

Because maximum sentence under O.C.G.A. § 16-12-4 and O.C.G.A. § 16-12-37(b) (dogfighting) is five years, and court’s final judgment stated that all the sentence on all counts would run concurrently, the court’s sentence of 17 years on 16 counts was void. *Phillip v. The State*, 313 Ga. App. 302(1-6), 721 S.E.2d 214 (2011).

Weather Conditions - adverse weather conditions may constitute animal cruelty:

Leaving animals unprotected in adverse weather conditions may constitute misdemeanor animal cruelty. *Stephens v. State*, 247 Ga. App. 719, 545 S.E. 2d 325 (2001); *Morgan v. State*, 285 Ga. App. 254, 645 S.E.2d 745 (2007) and *Morgan v. State*, 289 Ga. App. 209, 656 S.E.2d 857 (2008).

Water - failure to provide adequate water can establish cruelty to animals:²³

²³ See also paragraph (1) of O.C.G.A. 4-11-2, which is the definitional section of the Georgia Animal Protection Act. For purposes of Title 4 of the Code, it provides the following definition:

(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.

Paragraph (4) of that code section provides the following additional definition:

(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.

While these terms are defined solely for purposes of Title 4 of the Code, they can be cited as commonsense definitions pertinent to cases under O.C.G.A. § 16-12-4. Similar definitions appear under O.C.G.A. § 4-13-2, which is part of the Humane Care for Equines Act.

Dicta: *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657, 353 S.E.2d 555 (1987), rev'd on other grounds, *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248 (1987).

Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749 (1981).

Willfulness - not element of offense:

Cox v. State, 216 Ga. App. 86, 453 S.E. 2d 471 (1995).

Working animal - can be victims of cruelty to animals:

Mule-Tally v. State, 5 Ga. App. 480, 63 SE 543 (1909) (decided under unidentified former version of animal cruelty statute.)

Horse- *Griffith v. State*, 116 Ga. 835, 43 S.E. 251 (1903) (decided under former Penal Code Section 703).

Old work animal who can no longer work should be provided adequate food, water and shelter. *Griffith v. State*, 116 Ga. 835, 43 S.E. 251 (1903) (decided under former Penal Code Section 703).

4. Dogfighting under O.C.G.A. § 16-12-37

O.C.G.A. § 16-12-37 specifically addresses dogfighting. In the wake of the prosecution of former Atlanta Falcon quarterback Michael Vick, it was amended effective May 6, 2008.²⁴

“Dog” as used in this law means any domestic canine. Some violations of this law are felonies; some, misdemeanors.

²⁴ Because some of the Georgia appellate cases were decided under the former version of O.C.G.A. § 16-12-37, it is important to understand not only the current version of that statute but the former versions as well. The former version was enacted in 1982 and modified in 1983. When amended in 2008, it stated that:

(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.

Any person who commits one of the following acts is guilty of a felony:

(1) Owns, possesses, trains, transports, or sells any dog with the intent that such dog shall be engaged in fighting with another dog;

(2) For amusement or gain, causes any dog to fight with another dog or for amusement or gain, causes any dogs to injure each other;

(3) Wagers money or anything of value on the result of such dogfighting;

(4) Knowingly permits any act in violation of paragraph (1) or (2) of this subsection on any premises under the ownership or control of such person or knowingly aids or abets any such act; or

(5) Knowingly promotes or advertises an exhibition of fighting with another dog.

For the first conviction of one of these acts or omissions, the defendant is to be punished by imprisonment of one to five years, a fine of not less than \$5,000.00, or both. The punishment for any additional such conviction is imprisonment of one to ten years, a fine of not less than \$15,000.00, or both. Each felony act or omission is a separate offense.

Any person who is knowingly present only as a spectator at any place for the fighting of dogs is guilty of a misdemeanor of a high and aggravated nature on his first conviction. On a second conviction, such person is guilty of a felony and shall be punished by imprisonment of between one and five years, a fine of not less than \$5,000.00, or both. On a third or subsequent conviction, such person shall be punished by imprisonment of between one and ten years, a fine of not less than \$15,000.00, or both. Again, each act is a separate offense.

The law allows the impounding, under O.C.G.A. §§ 44-11-9.2 through 4-11-9.6 of any dog subject to dogfighting. The law includes a list of activities that are excluded from illegal dogfighting and appear to have nothing to do with dogfighting.

See O.C.G.A. § 4-11-15 (below) for possible ability to enjoin violations of O.C.G.A. § 16-12-37.

5. Cases Under O.C.G.A. § 16-12-37

***Hargrove v. State*, 253 Ga. 450, 321 S.E.2d 104 (1984)**

All three of the defendants were convicted of dogfighting and gambling under O.C.G.A. § 16-12-21. Two were also convicted of commercial gambling under O.C.G.A. § 16-12-37.

On appeal, they argued that O.C.G.A. § 16-12-37 was unconstitutionally vague because of the word “allows” in that statute. The Supreme Court of Georgia rejected that argument. In addressing that argument, the Court made it clear that, while not vague, the term “allows” renders the statute very broad. The breadth of that term is evidenced in the following language from the Court’s opinion:

We construe “allow” as used in the statute to mean any act which contributes to the cause of a dogfight for sport or gaming purposes or furthers the success of the enterprise of a dogfight for sport or gaming purposes. Thus, if a person engages on any level in the planning or financing of the event, including paying an admission, providing a location or wagering on the event, or if a person encourages the event by applauding or cheering, such person violates the statute. The foregoing examples are not, however, intended to exclude other acts which cause the event to occur or contribute to its success.

Id. at 452. (Emphasis added.)

The defendants also argued that the penalty provided for in O.C.G.A. § 16-12-37 is cruel and unusual punishment. The Court also rejected that argument.

Next, the defendants argued that O.C.G.A. § 16-12-37 is unconstitutional on equal protection grounds since, at the time, violations of O.C.G.A. § 16-12-4, which could include cockfighting,²⁵ constituted only a misdemeanor. That argument was also rejected by the Court.

The Court also rejected the defendants’ argument that the evidence was insufficient to establish their guilt.

Finally, the defendants argued that the dogfighting count was included in the commercial gambling count. The Court also disagreed with that argument.

***Barton v. State*, 253 Ga. 478, 322 S.E.2d 54 (1984)**

Four defendants were convicted of dogfighting under O.C.G.A. § 16-12-37 and gambling in violation of O.C.G.A. § 16-12-21 (a)(1).

²⁵ See *Brackett v. State*, 142 Ga. App. 601, 236 S.E.2d 689 (1977).

On appeal, they contended that the testimony by the southeastern regional director of the Humane Society of the United States concerning personal observations he made during the raid on the dogfighting, the manner in which dogfighting is organized and carried out, and the connection between gambling and dogfighting were irrelevant. The Court of Appeals disagreed.

The Court concluded that the evidence was sufficient to convict one of the four defendants of the crimes alleged. That evidence included that the defendant was found several hundred miles from his home shortly after dawn in a remote area where dogfighting and gambling were taking place, that he was standing next to the fighting pit, and had \$899 on his person. The Court concluded, however, that the evidence was insufficient to convict the other three defendants. That evidence included only that certain persons had fled the scene and that these defendants were “brought back” from the surrounding area.

***Moody v. State*, 253 Ga. 456, 320 S.E. 2d 545 (1984)**

Fifty-nine defendants were convicted of violating the dogfighting statute, O.C.G.A. § 16-12-37. The defendants challenged the constitutionality of the statute, arguing that it is overly broad and does not require a showing of intent. The Georgia Supreme Court rejected those arguments, noting that it had previously held in *Hargrove v. State*, 253 G. 450, 321 S.E. 2d 104 (1984) that the statute requires knowing, intentional and consensual involvement in dogfighting.

Significantly, the Supreme Court also rejected the defendants’ contentions that they could not be convicted under the statute since they were mere spectators. According to the Court:

The statute is aimed at those who intentionally participate on any level because without such participation the purpose of dogfighting, i.e., profit or gambling sport would not exist.

Id. at 457.

***Macon Auto Cleaners v. State*, 175 Ga. App. 13, 332 S.E.2d 324 (1985)**

Where vehicle seized by State was used to transport two fighting dogs in violation of O.C.G.A. § 16-12-37 to scene of dog fights, the vehicle could be condemned in accordance with O.C.G.A. § 16-12-32, which deals with gambling.

***Phillip v. The State*, 313 Ga. App. 302(1-6), 721 S.E.2d 214 (2011)**

Because maximum sentence under O.C.G.A. § 16-12-4 and O.C.G.A. § 16-12-37(b) (dogfighting) is five years, and court's final judgment stated that all the sentence on all counts would run concurrently, the court's sentence of 17 years on 16 counts was void.

6. Special Cruelty to Dogs Statute-O.C.G.A. § 4-8-5

Although O.C.G.A § 16-12-4 covers cruelty to dogs as well as other animals, dogs are the sole focus of O.C.G.A. § 4-8-5, formerly Georgia Code Annotated, § 62-2005 (Ga. L. 1969, pp. 831, 833). In most respects, this statute adds little to the coverage of O.C.G.A § 16-12-4, but it should be kept in mind as an alternative or addition to a charge under O.C.G.A § 16-12-4 since its terms are different.

O.C.G.A. § 4-8-5 provides as follows:

(a) No person shall perform a cruel act on any dog; nor shall any person harm, maim, or kill any dog, or attempt to do so, except that a person may:

(1) Defend his person or property, or the person or property of another, from injury or damage being caused by a dog; or

(2) Kill any dog causing injury or damage to any livestock or poultry.

(b) The method used for killing the dog shall be designed to be as humane as is possible under the circumstances. A person who humanely kills a dog under the circumstances indicated in subsection (a) of this Code section shall incur no liability for such death.

(c) This Code section shall not be construed to limit in any way the authority or duty of any law enforcement officer, dog or rabies control officer, humane society, or veterinarian.

(Emphasis added.)

O.C.G.A. § 4-8-7 makes the violation of O.C.G.A. § 4-8-5 a misdemeanor.

Only two Georgia appellate court cases have addressed O.C.G.A. § 4-8-5. *Readd v. State*, 164 Ga. App. 97, 99, 296 S.E.2d 402, 403 (1982); *Spivey v. Eavenson*, 150 Ga. App. 429, 258 S.E.2d 54 (1979) (addressed in the context of a civil suit.)

7. Georgia Animal Protection Act Relating to Pet Dealerships, Animal Shelters, Kennels and Stables

O.C.G.A. § 4-11-1, *et seq.*, is known as the “Georgia Animal Protection Act” (“GAPA”). GAPA addresses animals in pet dealerships, animal shelters, kennels and stables, but also contains some provisions that appear to extend beyond such facilities. GAPA requires that any person acting as a pet dealer or operator of a kennel, stable, or animal shelter have a license from the Georgia Commissioner of Agriculture.²⁶ GAPA does not apply to any person who raises, keeps, or maintains animals solely for the purposes of human consumption,²⁷ except that it prohibits abandonment of domesticated animals on public or private property or public right of way.²⁸

GAPA gives the Commissioner of Agriculture and state and local animal control officers broad rights to inspect the premises of persons required to be licensed under GAPA.²⁹ It also authorizes requests for injunctions and restraining orders to prevent violations of GAPA.³⁰ It further authorizes the Commissioner and state and local animal control officers to impound animals³¹ and establishes procedures relating to impounded animals.³² GAPA requires humane care of impounded animals.³³

Under most circumstances, GAPA mandates the use of sodium pentobarbital, a derivative of it, or a humane equivalent recognized by the American Veterinary Medical Association, as the exclusive substances for euthanizing dogs and cats by animal shelters or other facilities which are operated for the collection and care of stray, neglected, abandoned, or unwanted animals.³⁴ The preferred procedures for injecting a euthanizing drug are also listed.³⁵ GAPA also includes other requirements relating to euthanasia.³⁶ GAPA forbids euthanasia via a gas chamber or similar device.³⁷

²⁶ O.C.G.A. § 4-11-3(a).

²⁷ O.C.G.A. § 4-11-13.

²⁸ O.C.G.A. § 4-11-15. The language of this section appears broad enough to cover all domesticated animals, not just those raised solely for human consumption.

²⁹ O.C.G.A. §§ 4-11-9 and 9.2.

³⁰ O.C.G.A. § 4-11-15.

³¹ O.C.G.A. § 4-11-9.2.

³² O.C.G.A. §§ 4-11-9.4 and 9.5.

³³ O.C.G.A. § 4-11-9.3.

³⁴ O.C.G.A. § 4-11-5.1(a). See also Ga Comp. R. & Regs. 40-13-13-.08.

³⁵ O.C.G.A. § 4-11-5.1(a). See also Ga Comp. R. & Regs. 40-13-13-.08.

³⁶ O.C.G.A. § 4-11-5.1(f)-(g).

³⁷ O.C.G.A. § 4-11-5.1(d).

The operator of an animal shelter or facility operated for the collection and care of stray, neglected, or abandoned animals, is required, within 24 hours or as soon as possible after a dog, cat, or other large animal traditionally kept as a household pet is brought to the facility, to scan for the presence of an identifying microchip through the use of a microchip reader and, if one is found, to make a reasonable effort to contact the owner of the animal.³⁸ Prior to euthanizing such an animal, any such facility shall again scan for the presence of an identifying microchip through the use of a microchip reader.³⁹

It is a crime for any person licensed under GAPPA or employed by or under the supervision of any such person to:⁴⁰

- (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;⁴¹
- (3) Fail to provide humane care⁴² 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.

(Emphasis added.)

Any licensed veterinarian or veterinary technician having reasonable cause to believe that an animal has been subjected to animal cruelty in violation of O.C.G.A. § 16-12-4 or O.C.G.A. §16-12-37 may report the suspected violation to the Commissioner, an animal control officer, law enforcement agency, or prosecuting attorney, and shall be immune from civil or criminal liability for having done so as long as he acted in good faith.⁴³

³⁸ O.C.G.A. § 4-11-5.2(b).

³⁹ O.C.G.A. § 4-11-5.2(b).

⁴⁰ O.C.G.A. § 4-11-10.

⁴¹ See also Ga Comp. R. & Regs. 40-13-13-.01.

⁴² Per 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.” O.C.G.A. § 4-11-2(1) defines “Adequate food and water” 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.”

⁴³ O.C.G.A. § 4-11-17.

A violation of GAPA is normally a misdemeanor, but can be a felony if also covered by O.C.G.A. § 16-12-4 or O.C.G.A. § 16-12-37.⁴⁴ Any city or county may enforce a local ordinance on the subject matters addressed by GAPA that are not in conflict with it.⁴⁵

8. Georgia Farm Animal, Crop, and Research Facilities Protection Act

This act, codified at O.C.G.A. § 4-11-30, appears to be aimed at protecting animal farm and research facilities from those with concerns about the treatment of animals in those facilities. It criminalizes certain actions, such as disrupting those facilities.

9. Abandonment of Dog

O.C.G.A. § 4-8-3 specifically addresses the abandonment of dogs. It provides that:

No person shall release a dog on any property, public or private, with the intention of abandoning the dog.

Pursuant to O.C.G.A. § 4-8-7, the violation of this statute is a misdemeanor, except as provided in O.C.G.A. §§ 16-12-4 and 16-12-37.

10. Humane Care for Equines Act

The “Humane Care for Equines Act” is at O.C.G.A. § 4-13-1, *et seq.* Its key section reads as follows:⁴⁶

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;

⁴⁴ O.C.G.A. § 4-11-16.

⁴⁵ O.C.G.A. § 4-11-18.

⁴⁶ O.C.G.A. § 4-13-3.

(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.

A violation of this provision or other provisions of the Humane Care for Equines Act is a misdemeanor, except as otherwise provided in O.C.G.A. § 16-12-4.⁴⁷

11. Sterilization of Dogs and Cats from Shelters, Control Agencies, and Refuges

Because the failure to sterilize dogs and cats obtained from animal shelters, animal control agencies and animal refuges is recognized as often leading to unwanted strays and to deprivation and death of dogs and cats, the Georgia statute requiring the sterilization of dogs and cats obtained from such facilities is appropriately included among the Georgia statutes addressing animal cruelty.⁴⁸ That statute is at O.C.G.A. § 4-14-1, *et seq.* Its key provision is O.C.G.A. § 4-14-3(a), which provides that:

Any public or private animal shelter, animal control agency operated by a political subdivision of this state, humane society, or public or private animal refuge shall make provisions for the sterilization of all dogs or cats acquired from such shelter, agency, society, or refuge by:

(1) Providing sterilization by a licensed veterinarian before relinquishing custody of the animal; or

(2) Entering into a written agreement with the person acquiring such animal guaranteeing that sterilization will be performed by a licensed veterinarian within 30 days after acquisition of such animal in the case of an adult animal or within 30 days of the sexual maturity of the animal in the case of an immature animal;

provided, however, that the requirements of this Code section shall not apply to any privately owned animal which any such shelter, agency,

⁴⁷ O.C.G.A. § 4-13-10.

⁴⁸ See also, O.C.G.A. § 4-15-1, which requires the Georgia Commissioner of Agriculture to establish a dog and cat reproductive sterilization support program and related educational activities. Regulations relating this program are at Ga Comp. R. & Regs. 40-13-14-.01, *et seq.*

society, or refuge may have in its possession for any reason if the owner of such animal claims or presents evidence that such animal is the property of such person.

11. Restraining Female Dog in Heat

The public policy behind O.C.G.A. § 4-8-6 is the reduction in potentially unwanted dogs, which indirectly relates to animal cruelty. It states that: “No owner or custodian of any dog in heat shall permit the dog to roam or run free beyond the limits of his property.”

12. Police Dogs and Horses

O.C.G.A. § 16-11-107(b) specifically addresses injury to police dogs and horses. It provides that:

(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.

(Emphasis added.)⁴⁹

13. Assistance Dogs

O.C.G.A. § 16-11-107.1 forbids and criminalizes harassment of assistance dogs. It became effective July 1, 2004.

15. Certain Wild Animals

O.C.G.A. § 27-5-1, *et seq.* addresses the importation, transportation, sale, transfer, and possession of certain wild animals. Persons engaged in such activities must obtain a wild animal license.⁵⁰ This law includes certain protections for such animals, including protections relating to facilities, feeding, sanitation and veterinary care.⁵¹

⁴⁹ The Federal Law Enforcement Animal Protection Act is at 18 U.S.C.A. § 1368.

⁵⁰ O.C.G.A. § 27-5-4.

⁵¹ O.C.G.A. § 27-5-6.

16. Wildlife Rehabilitation

Ga Comp. R. & Regs. 391-4-9-.03 requires a permit for persons involved in the rehabilitation of wildlife.

17. Wildlife Exhibition

Ga Comp. R. & Regs. 391-4-9-.04 requires a permit for the exhibition of wildlife.

18. Scientific Collecting

Ga Comp. R. & Regs. 391-4-9-.01 establishes permitting and related regulations relating to the collection of wildlife for scientific purposes. It aims to discourage excessive collecting.

19. Regulation of Killing of Deer that Damage Crops

Ga Comp. R. & Regs. 391-4-2-.201 regulates the killing of deer that are alleged to damage crops.

20. Trapping

O.C.G.A. § 27-3-63 provides in pertinent parts that:

(a) It shall be unlawful for any person to:

(3) Trap any wildlife without inspecting the traps used for such purpose at least once during each 24 hour period and removing from the traps any wildlife caught therein; . . .

(6) Fail to carry a weapon of .22 caliber rimfire while tending traps and to fail to use such weapon to dispatch any fur-bearing animal found in a trap, which animal is to be taken by the person;

(7) Fail to carry a choke stick or similar device while tending traps, which device shall be used for releasing domestic animals; . . .

(9) Sell the fur, hide, or pelt of any domestic dog or cat caught by a trap;
...

(11) Set any body-gripping trap (as opposed to a leg-hold trap) of a size in excess of 9 1/2 inches square except in water or on land within ten feet of water, including swamps, marshes, and tidal areas.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall be punished as for a misdemeanor, subject to a minimum punishment as follows:

(1) For the first offense, the offender shall be fined not less than \$100.00, except that this minimum fine shall not apply to the offender if he is 17 years of age or younger;

(2) For a second offense within a two-year period after the first offense, the offender shall be fined not less than \$300.00; or

(3) For a third offense and for each subsequent offense within a two-year period after the first offense, the offender shall be fined not less than \$750.00.

Other provisions relating to trapping are at O.C.G.A. § 27-3-60, et seq. All of these provisions should be examined when dealing with animal cruelty or welfare issues relating to trapping.⁵²

21. Disturbing Dens, Holes, or Homes of Wildlife

O.C.G.A. § 27-1-30 provides:

Except as otherwise provided by law or regulation, it shall be unlawful to disturb, mutilate, or destroy the dens, holes, or homes of any wildlife; to blind wildlife with lights; or to use explosives, chemicals, electrical or mechanical devices, or smokers of any kind in order to drive such wildlife out of such habitats.

22. Protections for Hawks, Eagles, Owls and Many Other Birds

O.C.G.A. § 27-3-22 provides:

It shall be unlawful for any person to hunt, trap, take, possess, sell, purchase, ship, or transport any hawk, eagle, owl, or any other bird or any part, nest, or egg thereof, except for the English or European house sparrow, the European starling, feral pigeons, and domestic fowl, and except as otherwise permitted by the game and fish laws of this state; provided, however, that any person may transport into this state feathers of birds, other than migratory game birds, for millinery purposes.

⁵² See also Ga Comp. R. & Regs. 391-4-2-.12.

23. Pitfalls and Snares Prohibited

O.C.G.A. § 27-3-8 provides:

It shall be unlawful for any person to make use of any pitfall, deadfall, catch, snare, trap, net, salt lick, blind pig, baited hook, or other device for the purpose of taking any game animal or game bird or any other wildlife, except as otherwise provided in this title or by rule or regulation of the board.⁵³

24. Killing or Crippling Game without Reasonable Retrieval Effort

O.C.G.A. § 27-3-14 provides:

It shall be unlawful for any person to kill or cripple any game bird or game animal without making a reasonable effort to retrieve the same.

25. Baiting Fields

O.C.G.A. § 27-3-9 substantially restricts the hunting-related baiting of game birds or game animals with corn, wheat, or other grains, salts, apples, or other feeds.

O.C.G.A. § 27-3-27 prohibits the baiting of bears and states that a violation is a misdemeanor of a high and aggravated nature. Ga Comp. R. & Regs. 391-4-2-.41 generally prevents the baiting of certain migratory birds.

26. Other Hunting Related Laws

O.C.G.A. § 27-3-1 through O.C.G.A. § 27-3-50 address hunting. Some of these sections are discussed above. Some other sections provide additional protections to wildlife and should be reviewed when dealing with hunting-related questions involving animal cruelty and welfare. Regulations relating to hunting are at Ga Comp. R. & Regs. 391-4-2-.01 and elsewhere.

27. Protection of Endangered Species

The Georgia Endangered Wildlife Act is at O.C.G.A. § 27-3-130, et seq. It requires the Department of Natural Resources to issue rules and regulations “as it may deem necessary” for the protection of species of animal life that it determines to be a “protected species.” Under O.C.G.A. § 27-3-133, a violation of those rules or regulations are misdemeanors. Regulations under the Act are at Ga Comp. R. & Regs. 391-4-10-.01,

⁵³ See also Ga Comp. R. & Regs. 391-4-2-.12.

et seq. A list of protected species is at Ga Comp. R. & Regs. 391-4-10-.09. A list of prohibited acts is at Ga Comp. R. & Regs. 391-4-10-.06. A person violating regulations under the Act commits a misdemeanor. Ga Comp. R. & Regs. 391-4-10-.08.

28. “Humane” Slaughter

O.C.G.A. § 26-2-110.1 lists methods of slaughter determined by the Georgia Legislature to be humane.

29. Restitution

As is true for other victims of crimes, the owner of an animal is generally entitled to restitution from the offender. O.C.G.A. § 17-14-3 states that:

- (a) Subject to the provisions of Code Section 17-14-10, notwithstanding the provisions contained in Chapter 11 of Title 15, and in addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.
- (b) If the offender is placed on probation, including probation imposed pursuant to Chapter 11 of Title 15 or Article 3 of Chapter 8 of Title 42, or sentence is suspended, deferred, or withheld, restitution ordered under this Code section shall be a condition of that probation, sentence, or order.
- (c) If the offender is granted relief by the Department of Juvenile Justice, Department of Corrections, or the State Board of Pardons and Paroles, the the terms of any court order requiring the offender to make restitution to a victim shall be a condition of such relief in addition to any other terms or conditions which may apply to such relief.

O.C.G.A. § 17-14-10 requires a judge to consider various factors, such as the financial resources of the offender, in determining the nature and amount of restitution.

O.C.G.A. § 17-14-9 states that “[t]he amount of restitution ordered shall not exceed the victim's damages.” O.C.G.A. § 17-14-11 provides that:

An order for restitution shall not bar any civil action against the offender. However, any payments made by an offender to a victim under an order for restitution may be a setoff against any judgment awarded to the victim in a civil

action based on the same facts for which restitution was ordered. The fact of restitution or a restitution order under this article shall not be placed before the jury on the issue of liability. If the amount of restitution made is in dispute and liability is established, the court shall order further appropriate proceedings to determine the amount of setoff.

Under O.C.G.A. § 17-14-13(a), a restitution order may be enforced as a civil judgment by execution as provided in O.C.G.A. § 17-14-20. If the offender willfully refuses to comply with a restitution order, O.C.G.A. § 17-14-13(b) permits the court, upon request by the victim or prosecuting attorney, to hold the offender in contempt. Under O.C.G.A. § 17-14-13(b), the court may also revoke relief, such as earned time allowances, for any failure to comply with a restitution order.

30. Civil Liability for Animal Cruelty

Animal cruelty can be addressed not only by criminal laws, but also by civil ones. The “owner” of an animal that is the victim of cruelty, either intentional or negligent, will generally have a civil claim for damages against the perpetrator. In most cases, that liability will be based on tort law, although contract law may sometimes also support a claim (e.g., against a veterinarian or pet boarder).

Under O.C.G.A. § 51-10-3, “[a]ny unlawful abuse of or damage done to the personal property of another constitutes a trespass for which damages may be recovered.” As earlier noted, pets and other domesticated animals are deemed personal property. O.C.G.A. § 51-10-6, discussed in more detail below, also authorizes a recovery of civil damages by the owner of an animal that has been damaged by another person.

The owner may, in the case of a death of an animal as a result of cruelty, recover in tort for the fair market value of the animal. *Columbus R. Co., v. Woolfolk*, 128 Ga. 631, 58 S.E. 152 (1907); see also *Futch v. State*, 314 Ga. App. 294(4), 723 S.E.2d 714 (2012), which based restitution on fair market value. Consistent with rights associated with other personal property, the owner of such an animal that is injured by animal cruelty should also be able to recover for the diminished value of that animal as a result of the cruelty if that value can be proved.⁵⁴

Effective July 1, 2014, another remedy and measure of damages appears to be available for the willful damage to an owner’s animal. O.C.G.A. § 51-10-6(a) allows the owner of personal property to recover “compensable damages” in a civil suit for willful damage to that property. The recoverable damages include, “in addition to the value⁵⁵ of the personal property, any other loss sustained as a result of the willful damage....” At a

⁵⁴ See, *McKinney v. State*, 81 Ga. 164, 9 S.E. 1091 (1889) (decided under former Code Section 4612a.)

⁵⁵ This statute defines “value” as “the retail value of any personal property that is offered for sale by a mercantile establishment or the replacement value of any other personal property.” O.C.G.A. § 51-10-6(f).

minimum the “other loss” should include out-of-pocket costs like veterinarian charges. In addition to those compensatory damages, under O.C.G.A. § 51-10-6(a), the owner may in some cases, subject to conditions specified in the statute, recover exemplary damages equal to \$300.00 or triple the amount of the entire loss sustained by the property owner as a result of the willful damage, whichever is greater, as well as the cost of maintaining the civil action. This new statute might make a civil action relating to animal cruelty financially worthwhile that otherwise would not be financially worthwhile given the small “value” of domestic animals when valued as personal property.

Even without this new statute, the owner of an animal may also recover expenses incurred as a result of the cruelty. O.C.G.A. § 51-12-7.⁵⁶ Veterinarian bills incurred as a result of animal cruelty are an example of such expenses.

An owner might also be entitled to general damages under O.C.G.A. § 51-12-2 or nominal damages under O.C.G.A. § 51-12-4.

Attorney’s fees and litigation expenses might also be recoverable under O.C.G.A. § 13-6-11 if one of its grounds apply.

Finally, an owner might be able to recover damages for his own emotional distress if the defendant’s conduct was egregious enough.⁵⁷

31. Miscellaneous Other Authority

ALR Library

Applicability of state animal cruelty statute to medical or scientific experimentation employing animals, 42 A.L.R.4th 860.

What constitutes offense of cruelty to animals--modern cases, 6 A.L.R.5th 733.

What constitutes statutory offense of cruelty to animals, 82 A.L.R.2d 794.

Encyclopedias

4 Am. Jur. 2d, Animals, §§ 27-29.

C.J.S. Animals, §§ 99 to 140, 108.

20 Ga. Jur., Criminal Law, § 45:11.

Forms

4 Brown's Ga. Forms 2nd Ed. (1995 Rev.) § 16-12-4.

⁵⁶ See also O.C.G.A. § 13-6-9 for a contract-based right to recover such damages.

⁵⁷ Ga. Law of Torts § 29:2.

United States Code Annotated

Animals, birds, fish and plants, federal crimes and offenses, see 18 U.S.C.A. § 41 *et seq.*

Depiction of animal cruelty, interstate or foreign commerce, see 18 U.S.C.A. § 48.

Dogs, cats and other domestic animals, transportation, sale and humane handling, see 7 U.S.C.A. § 2131, *et seq.*

Transportation of animals on aircraft, vehicle or vessel, see 49 U.S.C.A. § 80502.