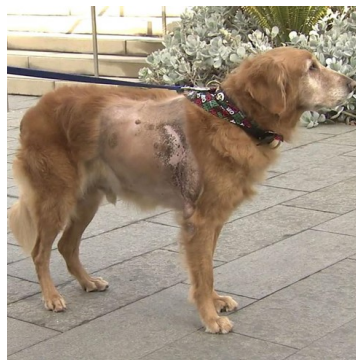




FAILURE TO PROVIDE VET CARE ANIMAL CRUELTY TOOLKIT®

By Claudine Wilkins, Founder of Animal Law Source™ and The Animal Protection Society
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Failing to provide veterinary care is a form of a neglect and can be prosecuted under Georgia Law. Neglect means endangering an animal's health by failing to provide or arrange to provide the animal with adequate food and water if the animal is dependent upon a person for the provision of food or drink. Necessary sustenance means the provision of adequate food, water, and shelter. Neglect can also include the act of restraining an animal in a manner that endangers the animal's life or health. Other acts considered to be neglect include, but are not limited to:

- (1) Failing to provide reasonable care or seek veterinary care for an injury or illness that seriously endangers the life or health of an animal; or
- (2) Leaving an animal outside and exposed to excessive heat or cold without providing the animal with adequate shelter or protection from the heat or cold, or exposing an animal to unsanitary conditions.



Shelter and Vet Care

In misdemeanor cases involving lack of shelter or **vet care**; the prosecutors can charge either or both under “omission” found under O.C.G.A §16-12-4 (b) (1). Prior to these 2014 amendments, the old law treated shelter and vet care the same way (under “omission”). Coincidentally, under title 4, the Animal Protection Act, which is often confused with the Animal Cruelty Statute (Title 16), offers a definition and violation specific to “failure to provide shelter and vet care”.

SEPARATE CHARGES PER ANIMAL.

Each animal harmed or neglected is a separate charge. For example, if one harms or neglects 10 dogs, then the prosecutor may charge the defendant with 10 misdemeanors or felonies or a combination of those charges depending on the facts.

ORDINANCE VIOLATIONS OR STATE LAW VIOLATIONS

It is estimated that 30% of our counties in Georgia do not have animal control or animal related ordinances even though Georgia state laws mandates that each county has to have a designated rabies control officer (under the Rabies law) and a dog control officer (under the Responsible Dog Owner Law aka the dangerous dog law).

That designated person(s) can be the same person and/ or work part-time and/or work for several counties (i.e. contracted between counties). The counties that do have animal ordinances may have an ordinance related to proper shelter. It may be more detailed than our Georgia state law. Ordinance violations and state law violations varies a great deal. Ordinances do not carry the same weight or penalties as state law. Ordinances are usually prosecuted in magistrate or recorders courts. Smaller fines, little jail time, if any, and shorter probation time is typical for ordinance violations.

Most importantly, ordinance violations are simple “local” violations that do not create a criminal history which follows the violator like a state law conviction would. State law violations are reported to the Georgia Crime Information Center (GCIC) and create a criminal history (referred to as a “GCIC” record) that can be researched by prosecutors in the GCIC database.

It is recommended to use state law violations on defendants who repeat the same behavior after they have been warned or are belligerent with law enforcement or when the animal has suffered a lot. The diagram below outlines the court systems in Georgia.

FAILURE TO PROVIDE SHELTER

Examples include, but are not limited, failure to provide proper shelter, exposure to elements, animal kept in crate exposed to elements or crated for long periods of time, size of shelter too small for animal to properly lay or stand, pet is provided a pet house but due hot temperatures or lack of shade, the pet cannot escape the heat, same for cold temperatures. See our [Proper Shelter Toolkit here](#).



Criminal Cases and Courts

Magistrate Court - Citations Issued

Creates local record only

County Ordinance Violations –Misdemeanors

Solicitor, Police, Animal Control Officer prosecutes

- Most animal cruelty cases are heard here.
- If defendant requires a jury trial, the case will be bound over to State Court
- Prosecutor referred to as "Assistant Solicitor" (in most counties)

Municipal Court - Citations Issued

Creates local record only

City Ordinance Violations –Misdemeanors

Solicitor, Police, Animal Control Officer prosecutes

- Most animal cruelty cases are heard here.
- If defendant requires a jury trial, the case will be bound over to State Court
- Prosecutor referred to as "Assistant Solicitor" (in most counties)

State Court – Arrestable Offense, up to 1 year, jail, \$1,000

fine, per charge Creates Criminal History Reported on GCIC Record.

State Code Crimes- Misdemeanors

- Animal Cruelty O.C.G.A. § 16-12-4
- Responsible Dog Owner Act O.C.G.A. § 4-8-1 thru 4-8-33
- Title 4 or Bound Over Cases
- Disposal Actions O.C.G.A. § 4-11-9.3(d)
- Prosecutor referred to as "Assistant Solicitor" (in most counties)

Superior Court - Arrestable Offense, more than 1 year jail,

more than \$1,000 fine per charge

Creates Criminal History Reported on GCIC Record

State Code Crimes - Felonies

- Felony Animal Cruelty
- Aggravated Animal Cruelty
- Dog Fighting O.C.G.A. § 16-12-37
- Disposal Actions O.C.G.A. § 4-11-9.3(d)
- Prosecutor referred to as "Assistant District Attorney"

CHARGES CAN BE
ELEVATED OR AMENDED
BY PROSECUTOR



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FAILURE TO PROVIDE VET CARE or CARE is charged under "omission" and can be charged under O.C.G.A §16-12-4 (b) (1). Examples include failure to treat an illness or injury, in grown collars, failure to have animal groomed (nails, hair, ears, teeth) according to its type or breed.

MISDEMEANOR OR FELONY? If a prosecutor **cannot** prove that a person abused or neglected and animal **maliciously**, then a defendant can be charged with a misdemeanor per animal neglected. If malice can be proven, then felony charge(s) is/are warranted.

MISDEMEANOR FAILURE TO PROVIDE VET CARE, O.C.G.A. § 16-12-4(b), A PROSECUTOR MUST PROVE:

- 1) Venue **AND**
- 2) Identify /Party to Crime **AND**
- 3) One of the following
 - Physical pain caused by an unjustifiable omission; **OR**
 - Physical suffering caused by an unjustifiable omission; **OR**
 - Death caused by an unjustifiable omission **AND**



4) Defendant's behavior is not exempted as listed in O.C.G.A. § 16-12-4(g) or (h)

PROVING IN-GROWN COLLAR CASES/MISDEMEAMOR. In misdemeanor cases involving a person who, without malice, abused an animal or neglected an animal by allowing it to have in-grown collar, the prosecutor will charge it under "any unjustifiable act or omission" or O.C.G.A §16-12-4 (b) (1). Therefore, a prosecutor will have to prove:

- 1) Venue **AND**
- 2) Identify /Party to Crime **AND**
- 3) One of the following
 - Physical pain caused by an unjustifiable omission; **OR**
 - Physical suffering caused by an unjustifiable omission; **OR**
 - Death caused by an unjustifiable omission **AND**

Defendant's behavior is not exempted as listed in O.C.G.A. § 16-12-4(g) or (h)

MISDEAMNOR FAILURE TO PROVIDE CARE, O.C.G.A. § 16-12-4(b)(2), A PROSECUTOR MUST PROVE:

- 1) Venue **AND**
- 2) Identify /Party to Crime **AND**
- 3) Intentionally exercised custody, control, possession, or ownership of an animal; **AND**
- 4) Fails to provide to such animal:
 - adequate food; **OR**
 - water; **OR**
 - sanitary conditions; **OR**
 - ventilationthat 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, **AND**
- 5) Defendant's behavior is not exempted as listed in O.C.G.A. § 16-12-4(g) or (h)

WHAT IS JUSTIFICATION?

An example of justification may be; "I could not feed my dog for 2 days because the veterinarian is testing him for a special colon test after 48 hours".

Justification is found under O.C.G.A. § 16-12-4 (h) (1) in addition to justification and excuse as provided in article 2 of chapter 3 of this title a person shall be justified in injuring or killing an animal to the extent that he or she reasonably believes that such act is necessary to defend against an imminent threat of injury or damage to any person, other animal or property.

The fact that a person's conduct is justified as a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed:

- When the person's conduct is justified under code section 16-3-21,16-3-23, 16-3-24, 16-3-25, or 16-3-26;



- When the person's conduct is in reasonable fulfillment of his duties as a government officer or employee.
- When the person's conduct is the reasonable discipline of a minor by his parents or a person in Loco parentis;

FELONY FAILURE TO PROVIDE PROPER SHELTER FOR AN ANIMAL O.C.G.A. § 16-12-4(d)(1) or (2) or (3), A PROSECUTOR MUST PROVE:

- 1) Venue **AND**
- 2) Identify /Party to Crime **AND**
- 3) That a person had intentionally exercised custody, control, possession*, OR ownership of an animal, **AND** (* "possession" is the easiest of these to prove)
- 4) That a person does one of the following:
 - (1) Maliciously causes the death of an animal; **OR**
 - (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; **OR**
 - (3) Maliciously tortures an animal by the infliction of or subjection to severe or prolonged physical pain; (not always, but typically neglect falls under "prolonged pain")**AND**
- 6) Malice – prove just one of the following:
 - a) That the person did it with an actual intent, which may be shown by the circumstances connected to the act, to cause the 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. **AND**
- 7) Defendant's behavior is not exempted as listed in O.C.G.A. § 16-12-4(g) or (h)

FELONY FAILURE TO PROVIDE PROPER CARE (OR VET CARE) FOR AN ANIMAL O.C.G.A. § 16-12-4(d)(5), A PROSECUTOR MUST PROVE:

- 1) Venue **AND**
- 2) Identify /Party to Crime **AND**
- 3) That a person had intentionally exercised custody, control, possession*, OR ownership of an animal, **AND** (* "possession" is the easiest of these to prove)
- 4) That a person fails to provide adequate sanitary conditions or ventilation that a reasonable person of ordinary knowledge would believe is required for an animal's size, species, breed, age and physical condition; **AND**
- 5) The neglect will be based on what a reasonable person of ordinary knowledge would believe is the normal requirement for that type of animal; **AND**



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- 6) Malice – prove just one of the following:
- a) That the person did it with an actual intent, which may be shown by the circumstances connected to the act, to cause the 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. **AND**
- 7) Results in – one of the following:
- a) Death, **OR**
 - b) Body part rendered useless, **OR**
 - c) seriously disfigured **AND**
- 8) Defendant's behavior is not exempted as listed in O.C.G.A. §16-12-4(g) or (h)

AVOIDING DOUBLE JEOPARDY:

It happens more frequently that one realizes but many animals related violations are charged as simple ordinances initially but after careful review through more investigations or by a prosecutor the case gets

bumped up to a state law violation. If case has been cited under local ordinance and later gets bound over as a state misdemeanor or felony, make sure the ordinance citation does not move forward and becomes adjudicated otherwise double jeopardy may attach. Communicate with the prosecutor to ensure the citation is either dismissed due to the change in charges or some action is taken to prevent double jeopardy. The Double Jeopardy Clause in the [Fifth Amendment to the US Constitution](#) prohibits anyone from being prosecuted twice for substantially the same crime. The relevant part of the Fifth Amendment states, "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb.

For more information contact info@animallawsource.org or go to www.animallawsource.org
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