



What is Proper Shelter for Animals and How to Charge and Prosecute “Failure to Provide Shelter” Under Georgia Law©

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ASK YOURSELF THIS QUESTION...

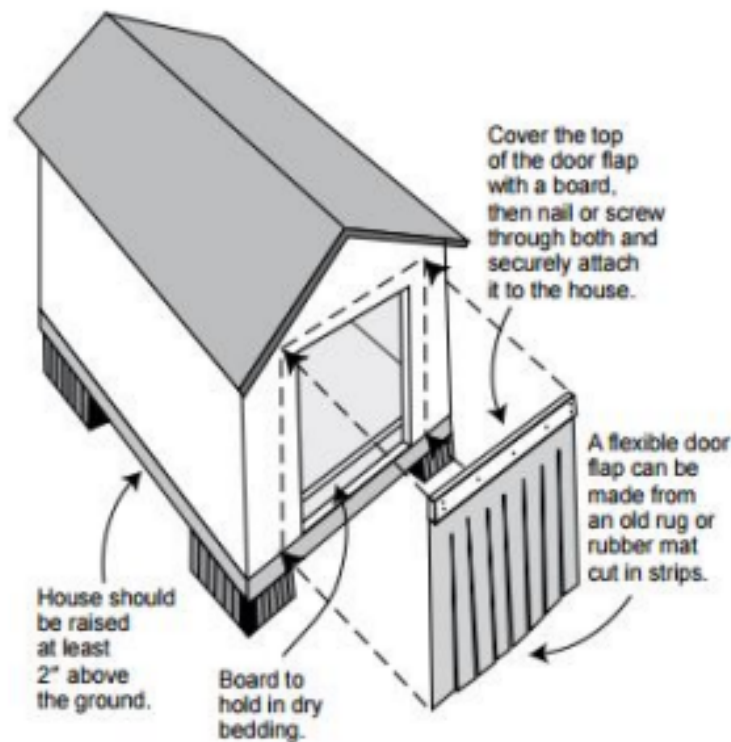
“Does the shelter, or lack thereof, provided for an animal give proper protection and shelter from all of the elements?”

It is best to share your home with your pets and keep them inside during the cold winter months or scorching hot days. If pets must be kept outside for extended periods, it must be provided with proper shelter for the weather “that day”. Pets kept outdoors may be exposed to weather elements such as rain, sleet, snow, and extreme heat or cold.



In HOT weather, a proper shelter:

- Provides protection from direct sun. (is there shade over the yard, dog house, etc.).
- Allows the animal to comfortably stand, sit, lie down and turn around in its shelter.
- Has an entrance that is proportionate to the animal using it, faces away from direct sun and provide ventilation to cool the doghouse.
- Is the dog house adequately shaded in hot weather.
- Has a floor elevated several inches off of the ground that is impervious to moisture, and covered with clean, dry bedding (preferably straw).
- Is not made of materials or constructed in a manner that may pose a risk of injury to the animal



In the COLD weather, a proper shelter:

- Provides protection from the cold, wind, rain, sleet and snow.
- Allows the animal to comfortably stand, sit, lie down and turn around in its shelter, but is small enough that the animal's body heat will warm the air space.
- Has an entrance that is proportionate to the animal using it, faces away from the prevailing winds, and is covered by a flap or door.
- Has a floor elevated several inches off of the ground that is impervious to moisture, and covered with clean, dry bedding (preferably straw).
- Is not made of materials or constructed in a manner that may pose a risk of injury to the animal.



SOME DOGS ARE MEANT TO STAY INDOORS

Not all dogs are suited to be kept outside. This is true with senior dogs, puppies, small or short haired breeds. They must be conditioned slowly to the weather.

Protected Entrance: The shelter's entryway must be protected by a self-closing windbreak, or an offset outdoor or a flexible door flap.

Bedding: Sufficient amount of nonabsorbent bedding such as cedar shavings, straw, or wood chips must be provided to insulate against the cold and damp. All bedding should be kept dry and changed periodically.

Commercially Available Dog Houses. Dog houses bought at pet supply stores often need to be modified to meet the requirements. Sometimes you just need to raise them off the ground and install a weatherproofed flap (see diagram). Raised dog houses can also be purchased, but will still need a flap installed.

WHAT IS NOT PROPER SHELTER? Any shelter that does not provide protection from the elements. Those include, porches, crawl spaces, barrels, plastic kennels or airline-type animal shipping crates, inadequately insulated containers, metal or plastic drums, abandoned or parked vehicles, lean-tos and motor vehicles.

Is a car proper shelter? Not as permanent shelter. A proper shelter must be small enough to allow a dog to maintain body heat. Most cars are too large to meet the size requirement for proper shelter.

Is a garage proper shelter? Not by itself. If a garage is heated, insulated, and has an area with raised bedding, it may be considered proper shelter, but without these modifications, a garage is too large to meet the size requirement for proper shelter.



IS ANY DOGHOUSE PROPER PROTECTION?

Even popular doghouses may not provide proper shelter if weather conditions are severe. A dog was found frozen to death in an igloo-shaped doghouse on Jan. 8, 2017 in North Carolina. Authorities said that the owner of a dog found frozen to death has been identified and that criminal charges are pending. Animal Control officers were responding to a phone call when they found the brown female dog frozen inside an igloo-shaped doghouse. Read about the case [here](#).

There are many factors to consider when determining the adequacy of a shelter, including species and breed type as well as the coat length, age, and general health of the animal. What constitutes proper shelter for your neighbor's pet may not for yours.

The weather changes every day, so the shelter provided should be sufficient in case the weather becomes severe (too cold, too windy, too hot, too rainy, hail, sleet, snow, etc.) If a shelter/house does **NOT** provide proper temperature inside, good ventilation, dryness, daylight, and room enough for the animal to live **without unjustifiable pain or suffering**, then it is not proper shelter.



For example, if a dog is left outside during a windy and cold/freezing night (or day) and the doghouse does not provide enough protection from wind and cold, then the owner may be charged with misdemeanor animal cruelty O.C.G.A. § 16-12-4 (b)(1) as an “omission”. If malicious intent can be proven, then the owner may be charged with felony animal cruelty O.C.G.A. § 16-12-4 (d) for failure to provide shelter. More on the law below.

FINDING RESOURCES FOR ANIMAL THAT NEED PROPER SHELTER

Lack of care is often a result from ignorance, poverty, or extenuating circumstances. These are not excuses to the law however. In some cases, an owner needs resources to assist in finding proper shelter. Contact your local animal shelter to see what they offer and check out these other resources that offer free housing or bedding: [Pets for Life](#), [Habitat For Hounds](#), and [Humane Society of the U.S.](#)

WHAT HAPPENS WHEN AN OWNER DOES NOT PROVIDE PROPER SHELTER FOR THEIR ANIMAL(S)?

It's a crime under Georgia law not to provide proper shelter for your animal. Animals protected under this law are not limited to dogs and cats, but include a wide range of animals (domestic animals and livestock). See all animals protected under our GA Animal Cruelty Statute by clicking on our "[Animal Cruelty Statute Toolkit©](#)".

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.



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)

*CHARGES CAN BE
ELEVATED OR AMENDED
BY PROSECUTOR*

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**"



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HOW TO REPORT AN ANIMAL THAT DOES NOT HAVE PROPER SHELTER?

If you see an animal outside that is:

- Not protected against the elements of weather; **OR**
- Is in direct sun or not shielded from the cold; **OR**
- Tethered in a city or county that does not allow chained animals without supervision; **OR**
- Tangled in their tether or chain, or cannot freely move or reach their water/food bowls

Contact the local animal control or call 911 if the animal is in distress due to lack of shelter. In local governments without animal control, contact the police. The animals cannot speak for themselves so never hesitate to call for help

WHAT ARE NOT CONSIDERED DEFENSES UNDER THE LAW?

- I could not afford a doghouse or vet care
- I did not know the animal was sick or suffering
- I went off my medication and I am not well
- I am physically incapable
- I thought the animal would get better naturally / on its own



- I just found the animal or it someone's animal or I'm pet sitting (in some cases, this is a good defense, but good questioning by the officer can determine if this is true. How long was this person in custody and control of the animal?)

WHAT HAPPENS WHEN THE OWNER SAYS IT IS NOT MY ANIMAL?

Georgia law, via statute and case law, clearly identifies the person who has "custody and control" of the animal (and this could mean multiple persons) is the "owner" under the law. For more on "proving ownership" check out "Who Owns" in our "[Animal Cruelty Statute Toolkit](#)".

WHAT CHARGES CAN BE MADE FOR FAILING TO PROVIDE PROPER SHELTER?

A person may be charged under the Georgia's State Animal Cruelty Statute (misdemeanor or felony) or charged under a local ordinance violation. For first time offenders whose animal was not found in serious distress, a visit from an animal control officer who may cite owner with a warning and give the owner a chance to correct the situation. Police can arrest a person who violates state animal cruelty laws. The animal may be seized depending on the circumstances.

ANIMAL NEGLECT & ABUSE COMES IN MANY FORMS

While animal cruelty results in an infliction of pain, suffering or distress to an animal, animal neglect narrows the definition to the deprivation of certain necessities of life: adequate levels of food, water, shelter, veterinary care, grooming, or sanitation resulting in poor physical conditions. Neglect is the most common form of animal maltreatment investigated by animal protection authorities. Under Georgia law O.C.G.A. § 16-12-4 (b), misdemeanor animal neglect based on lack of shelter can be proven in cases involving a person who, without malice, neglected an animal. The prosecutor will charge it under "omission". Under Georgia Law O.C.G.A. § 16-12-4 (d), felony animal neglect based on lack of shelter can be proven in cases involving a person who, with malice, neglected an animal.

DO YOU HAVE TO PROVE INTENT ON MISDEMEANOR CASES?

NO - you do not have to prove intent or malice for misdemeanor animal cruelty. *See Cox v. State, 263 Ga.App. 843, 589 S.E. 2d610 (2003), cert. denied Feb, 16, 2004*

MISDEMEANOR ANIMAL CRUELTY O.C.G.A. § 16-12-4 (b), PROSECUTOR HAS 6 SEPERATE WAYS TO PROVE BY:

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



MISDEMEANOR FAILURE TO PROVIDE SHELTER O.C.G.A. § 16-12-4 (b)(1), 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**
- 5) Defendant's behavior is not exempted as listed in O.C.G.A. § 16-12-4(g) or (h)

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

MISDEMEANOR 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**
 - 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, **AND**

- 6) 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:

1. 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;
2. When the person's conduct is in reasonable fulfillment of his duties as a government officer or employee.
3. 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 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**



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- 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**

 - 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)

**FELONY FAILURE TO PROVIDE PROPER CARE 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 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**

- 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

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

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