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## **Coates' Canons Blog: Animal Control: Recovering Sheltering Costs Under G.S. 19A-70**

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When animal control officials seize animals, local governments and animal welfare organizations can end up spending a lot of money to shelter, feed, and otherwise care for the animals. In 2005, the General Assembly enacted G.S. 19A-70, which allows animal shelters to recover costs related to housing and caring for animals that are the subject of certain civil cases and criminal prosecutions. Some local governments across the state have been testing out this new cost recovery tool and experiencing mixed results. Some have decided not to use it at all. I thought I would take a moment to review the law and highlight the primary area of confusion – jurisdiction. I would also like to invite others who have traveled this road to offer tips and suggestions. How have you made it work?

### **Does this law apply every time a government seizes an animal?**

No. G.S. 19A-70 applies if an animal shelter takes custody of an animal after:

- A person is arrested for animal cruelty, abandoning an animal, animal fighting, or certain other cruelty-related crimes (see G.S. Ch. 14, Art. 47); or
- A person is a defendant in a civil animal cruelty action (see G.S. Ch. 19A, Art. 1) brought by (1) a local government, (2) a county-approved animal cruelty investigator, (3) a local government official, or (4) an organization operating a local government shelter under contract.

One of the pressure points with this part of the law is that for criminal cases, the defendant must be arrested to trigger applicability of the statute. In many misdemeanor animal cruelty cases, law enforcement officials may use a criminal summons rather than an arrest warrant. If they do so, the shelter operator will not be allowed to pursue cost recovery using this law.

### **Who is eligible to recover costs under this law?**

An “operator” of an animal shelter is eligible to petition court to recover sheltering costs. The law does not define the term “operator” but a common sense interpretation of the term suggests that it is the person or organization that owns, runs, or manages the shelter. Sheltering arrangements vary widely across the state. Some local governments own and operate their own shelters, some contract with other local governments for sheltering services, and others contract with private entities such as animal welfare organizations. When the local government owns and manages its own shelter, the local government would be the shelter operator and would need to file the petition to recover costs. If a private entity owns and manages the shelter, that entity would likely be considered the shelter operator even if it receives funding from a local government to house animals in certain circumstances. If, however, a different, more integrated relationship exists and the local government has a hand in the management of the shelter, it is conceivable that the local government could be considered the shelter operator instead of or in addition to the private organization.

### **Where and when should the shelter operator file the petition?**

This is the area of great confusion. The law simply states that the shelter operator “may file a petition with the court.” It does not specify which court should hear the petition and does not impose a deadline for filing the initial petition. In civil cruelty cases, the attorney representing the shelter operator may be able to file a motion in the pending case fairly easily. In criminal cases, however, it is my understanding that some attorneys representing shelter operators are able to work with the prosecutors to integrate it into the pending case but in others they are not.

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In the latter instance, the attorney representing the shelter operator must file a separate civil action under G.S. 19A-70. Judges are often surprised by these petitions and aren't necessarily sure how and when to address them – should they wait until the criminal case is heard? What must the shelter operator demonstrate at this stage in order for the petition to be granted? This is where I would like to hear from you – how is this working in your area? Feel free to comment on the post or send me an email.

### **What should the petition say?**

The petition should explain the situation, describe the animal(s) housed by the shelter, cite to G.S. 19A-70, and request that the judge order the defendant to deposit enough money with the court to cover the reasonable expenses in caring for the animal while the case is pending. The law defines the term “reasonable expenses” to include “the cost of providing food, water, shelter, and care, including medical care, for at least 30 days.” The petition should include an estimate of reasonable expenses, including an itemization of the specific items identified in the definition.

### **What will happen after the petition is filed?**

The law outlines the timeline of events that will follow the filing of a petition. Once the court receives the petition, it must hold a hearing in 10-15 business days (no less than 10 and no more than 15 days). Prior to the hearing, the shelter operator must (1) mail notice of the hearing and a copy of the petition to the defendant and (2) if the defendant is in jail, provide notice of the hearing to the custodian of the jail.

During the hearing, the judge will likely provide an opportunity for the shelter operator's attorney and the defendant or the defendant's attorney to speak on the petition. The judge will evaluate the entire situation, including the facts and circumstances of the case, the need to care for the animal(s) while the case is pending, the cost of providing such care, and the defendant's ability to pay. The judge may order the defendant to either

- Deposit enough money with the clerk of superior court to cover the reasonable expenses related to caring for the animal(s) for 30 days or
- Provide care for the animal (presumably at the defendant's home).

If the judge orders the defendant to deposit money with the clerk, the order must explain the process for extending the order for additional periods of time.

### **What if the judge orders the defendant to pay but he or she refuses to pay?**

If the defendant fails to comply with the judge's order to pay within five days of the hearing, the law states that the defendant forfeits the animal. In practice, it is my understanding that many shelter operators prefer to work with the defendant at this point in the process to secure a voluntary surrender of the animal rather than rely on the forfeiture provisions in the law.

Once the animal has been forfeited or surrendered, the shelter operator may decide how to dispose of it. If the operator concludes that the animal is suitable for adoption, the animal may be adopted by any person other than the defendant or a person living in the defendant's household. If the operator concludes that the animal is unsuitable for adoption or the animal is not adopted, the operator may humanely euthanize it.

### **What if the animals need to be held for more than 30 days?**

If the case lasts longer than 30 days, the law imposes obligations on both the shelter operator and the defendant.

- Shelter operator: No later than two business days before each 30-day period ends, the shelter operator must file an affidavit with the clerk of superior court explaining that, to the best of the shelter operator's knowledge, the case has not been resolved. Once this affidavit is filed, the original order will be renewed.
- Defendant: The defendant must either pay for 30 more days of care within five business days of end of the previous 30-day period or request a hearing no less than five days before the expiration of the 30-day period.

If the period is extended and the defendant fails to either request a hearing or pay an additional deposit, the defendant

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forfeits the animal.

### **What if the judge does not order the defendant to pay?**

The judge must consider several factors when evaluating the petition, including the estimated cost of caring for the animals and the defendant's ability to pay. The judge may decide that the defendant is "unable" to pay for the shelter operator to care for the animal. If so, the judge may order the defendant to take custody of the animal and provide it with necessary food, water, shelter and care (including medical care).

If the judge issues this type of order, an animal control or law enforcement official must regularly visit the animal to ensure that it is receiving necessary food, water, shelter, and care. The law does not specify a schedule for these visits but does indicate that they need to be regular – which suggests a relatively structured schedule. If the official encounters difficulty making the inspections, the official may ask a magistrate to issue an administrative search and inspection warrant pursuant to G.S. 15-27.2.

Note that this administrative warrant statute authorizes two types of inspections: one for "legally authorized programs of inspections" and one when "there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection..." In this situation, officials should obtain the former type of warrant — one for a legally authorized program of inspection. The appropriate AOC form is available here (AOC-CR-914M).

### **What if the defendant does not own the animal seized?**

The law appears to assume that the defendant is the owner of the animal(s) and is financially responsible for it. It is relatively easy to imagine situations in which the defendant:

- Has custody of but does not own the animal,
- Jointly owns the animal (e.g., a married couple), or
- Does not own or have custody of the animal.

If the defendant has no ownership interest in the animal, the court will probably not order the defendant to pay or provide for the animal's care nor will an automatic forfeiture be triggered under this statute. It may be difficult, however, to establish or verify "ownership" rights in an animal. Animal control officials have recently been struggling with this very issue as the rabies law (G.S. 130A-192(b)) was recently amended to require shelters to obtain "some proof of ownership" from a person surrendering an animal to a shelter. Without such "proof," the shelter must hold the animal for a minimum of 72 hours before euthanizing it or adopting it out.

### **What other options are available to help a shelter limit and recover costs?**

Some shelter operators or local governments file civil animal cruelty actions using G.S. Chapter 19A, Article 1. This body of law allows a judge to issue an injunction relatively quickly to address (1) ownership interest in the animal and (2) cost recovery. This remedy may allow a judge to step in and decide the fate of the animal more quickly than waiting for a criminal case to work its way through the judicial system.

The shelter operator could try to avoid incurring extensive costs by encouraging the owner to voluntarily surrender the animal to the shelter or the local government, thus allowing the animal to be euthanized or adopted out. In criminal cases, however, the shelter may not be able to dispose of the animal until the prosecutor is satisfied that she has all of the evidence she needs to proceed with the case. If so, the local government may still be responsible for caring for the animal for an extended period of time.



Finally, some have suggested that prosecutors could request that a person convicted of criminal cruelty pay restitution that covers the costs incurred in caring for an animal during the course of the case. When my colleague, Jamie Markham, blogged about this issue a couple of years ago, he raised some good questions about whether restitution would be appropriate in these situations. In addition to the questions he raised, I am also not sure this approach would work in our state because the restitution laws connect payments to “victims” or to people or organizations that assisted victims. The term “victim” is defined as “a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” G.S. 15A-1340.34(a).

So, there are several of options available for cost recovery but none of them appear to be perfect. I’ll ask my question one more time – how is this working in your area? What would you recommend? Please post a comment or drop me a line. If I get lots of interesting answers, I’ll collect them and post a follow-up in the near future.

## Links

- [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_19A/GS\\_19A-70.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_19A/GS_19A-70.pdf)
- [www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_14/Article\\_47.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_14/Article_47.pdf)
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