

Animal Seizures

Pre-Seizure:

Constitutional Authority to Seize: Fourth Amendment (applicable when entering onto private property)

- Warrant; or
 - Criminal Search Warrant: Authorized to *apply* for criminal search warrant, but will need to coordinate with law enforcement to execute ([Chapter 15A, Article 11](#); [AOC-CR-119](#); *In re 1990 Red Cherokee Jeep, VIN 1J4FJ38L4LL146261*, 131 N.C. App. 108 (1998))
 - Administrative Search Warrant: Authorized to apply for and execute to search for conditions made unlawful by a local ordinance ([Chapter 15, Article 4A](#); [AOC-CR-913M](#))
 - When seizing animals pursuant to a warrant, use NC Form [AOC-CR-206](#) (Inventory of Items Seized Pursuant to Search), as well as any forms/notices required by your local ordinance for seizure
- Exception to warrant rule, such as:
 - There is truly no time to get a warrant (also known as exigent circumstances)
 - May apply in cases where an animal is in imminent danger (greatly deteriorated/deteriorating or dying)
 - May apply where an animal is posing an immediate danger to you or to the public
 - A person who owns and occupies or appears to have common authority of a premises consent to search and seizure
 - Landlord or other third party cannot consent unless he or she appears to you to have common authority of the premises, ie, has access to and use of a premises same as a current occupant would
 - A landlord, apartment manager, or the Sheriff may let Animal Control on a premises only after a tenant has been legally evicted (evidence of this may be padlocking and/or changing of locks)
 - You are in an open field
 - Examples are pastures, wooded areas, open water, vacant lots
- You will need separate authority (ie, a warrant and/or exception to the warrant requirement) to search and to seize. See *State v. Nance*, 149 N.C. App. 734 (2002), which analyzes seizure of horses subject to cruelty
 - Ex. If you are allowed to search pursuant to consent, you may only seize items that are contraband or otherwise unlawfully possessed or constitute evidence of an offense (for example, an animal subject to cruelty)
 - Ex. If you observe a violation from an open field or otherwise in plain view, you cannot seize evidence of the violation without a warrant or an applicable exception to the warrant requirement, such as exigent circumstances or consent

Statutory Authority to Seize:

- [§19A-46](#) authorizes animal cruelty investigator to file with a magistrate a sworn complaint requesting an order allowing the investigator to provide suitable care for and take immediate custody of an animal subject to cruel treatment as defined in §19A-1(2)
- [§130A-196](#) authorizes the local health director to order seizure of an animal required to be vaccinated against rabies and that has bitten a person if the owner or keeper refuses to confine the animal as required by Chapter 130A
- [§14-419](#) authorizes an animal control officer or law enforcement officer to investigate violations or impending violations of regulations on the ownership and use of venomous reptiles, large constricting snakes, crocodilians, and the handling of reptiles as described in [Chapter 14, Article 55](#), and to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or a

designated representative of the North Carolina Department of Natural and Cultural Resources to identify the species, assist with determining interim disposition, and recommend appropriate and safe methods to handle and seize the reptile or reptiles involved. This statute also addresses the disposition of reptiles seized pursuant to this section.

Ordinance Authority to Seize: _____

- Pursuant to §153A-121, -127, and/or -131, your jurisdiction may have adopted local ordinances authorizing the seizure of animals that have been subject to cruelty or mistreatment, are a danger to the public, are a public nuisance, or that may have been exposed to rabies. Confirm the seizure complies with ordinance requirements, processes, and/or policies (for example, notice to the owner of the seizure and terms for reclamation)

Post-Seizure

Statutory Remedy in Cruelty Seizures: [§19A-1 -4](#); [§19A-70](#); [§14-360 et al.](#) Note: the process for commencing a civil action should be followed for seizures by animal cruelty investigators pursuant to §19A-46

- Commence a **civil action** to enforce animal cruelty (defined in §19A-1) by filing a **verified complaint** in the district court in the county in which cruelty to an animal has allegedly occurred.
 - Include or separately file for **request for preliminary injunctive relief** in accordance with the procedures set forth in G.S. 1A-1, Rule 65, giving the plaintiff the right to provide suitable care for the animal. §19A-3
 - Request matter be set for further hearing on **permanent injunctive relief**, at which time the court may (1) terminate the defendant's rights of ownership and possession and (2) transfer ownership and right of possession to the person who filed the complaint or to another appropriate person, if it finds there would be a substantial risk that the animal would be subjected to further cruelty if returned to the owner. § 19A-4
 - Include or separately file **petition for bond** authorized by §19A-70: allows "a county, or...an organization operating a county...shelter under contract, if an animal shelter takes custody of an animal, the operator of the shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses (includes the cost of providing food, water, shelter, and care, including medical care, for at least 30 days) expected to be incurred by the animal shelter in caring for and providing for the animal pending the disposition of the litigation."
 - Include **affidavit of animal shelter operator** describing the need to care for and provide for the animal pending the disposition of the litigation, the recommendation of the operator of the animal shelter, the estimated cost of caring for and providing for the animal
 - You must **calendar a petition for bond for hearing no less than 10 and no more than 15 business days after the petition is filed.** §19A-70(b). If the judge orders funds be deposited, the amount of funds necessary for 30 days shall be posted with the clerk of superior court.
 - **If the defendant fails to deposit the funds within five business days of the initial hearing, the animal is forfeited by operation of law.** If funds have been deposited in accordance with this section, the operator of the animal shelter may draw from the funds the actual costs incurred in caring for the animal. §19A-70(d).
 - **If the defendant timely deposits the funds, ensure the order is renewed by filing an affidavit by the operator of the animal shelter at least two business days prior to the expiration of a 30-day period,** stating that, to the best of the affiant's knowledge, the case against the defendant has not yet been resolved. The defendant

shall also deposit the same amount with the clerk of superior court every 30 days thereafter until the litigation is resolved.

- File **petition for bond** where there has been **arrest** pursuant to criminal statutes prohibiting animal cruelty (Chapter 14, Article 47). Coordinate with law enforcement and DA's Office, as criminal summons is not sufficient for petition for bond (though you can file a verified complaint and pursue bond that way in conjunction with criminal charges)

Ordinance Provisions for Reclamation and/or Disposition:

- Your jurisdiction may have local ordinances outlining a process for reclamation or disposition of animals that have been seized:
 - Cruelty/mistreatment: _____
 - Danger to public: _____
 - Public Nuisance: _____
 - Rabies: _____
 - Other: _____

Contact Anne Marie Tosco at amtosco@orangecountync.gov or (919) 245-2320 for Orange County ordinance provisions related to seizing and seized animals; templates for 19A actions and health director orders; and war stories