

# LOCAL GOVERNMENT LAW BULLETIN

Number 107 October 2005

David Lawrence, Editor

## **NORTH CAROLINA ANIMAL CONTROL LAW: 2005 LEGISLATIVE UPDATE**

■ Aimee Wall

The North Carolina General Assembly enacted several new laws in 2005 that will affect animal control services provided by local governments. The new laws address state regulation of animal shelters, euthanasia of animals held in shelters, state regulation of petting zoos, financial responsibility for the care of dogs allegedly used for fighting, and criminal penalties for cockfighting. This bulletin summarizes the new laws and briefly discusses the potential impact of the changes on local government animal control programs.

### **Regulation of Animal Shelters**

#### **Background**

Local governments have the authority to operate animal shelters or contribute to the support of animal shelters.<sup>1</sup> They are not required to own or operate one, but many have chosen to do so. Others have entered into cooperative agreements with local humane societies, other nonprofit organizations and neighboring jurisdictions.

Under the Animal Welfare Act, the North Carolina Department of Agriculture and Consumer Services (the Department) is responsible for establishing and enforcing licensing regulations

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1. North Carolina General Statutes 153A-442 (counties); 160A-493 (municipalities) [hereinafter G.S.]. Note that both counties and municipalities have the authority to contract with private entities to carry out public purposes, such as operating an animal shelter. G.S. 153A-449 (counties); 160A-20.1 (municipalities).

governing animal shelters.<sup>2</sup> Until recently, only private animal shelters operated by animal welfare organizations were subject to those regulations; city and county shelters were exempt.<sup>3</sup>

In 2004, the General Assembly passed legislation that required local government shelters to comply with the Department's regulations.<sup>4</sup> The 2004 amendments, however, did not provide the Department with specific authority to enforce those regulations against local government shelters. Specifically, the General Assembly did not directly amend the Animal Welfare Act, which is the law that empowers the Department to adopt and enforce shelter regulations. Because of this ambiguity and the limited resources available for regulatory oversight, the Department did not actively pursue enforcement against any local government shelters in 2004. It did provide technical assistance and other support in several instances.

## 2005 Changes

In August 2005, the General Assembly enacted legislation that directly addressed the ambiguities that remained after the 2004 amendments.<sup>5</sup> The legislation amended the definition of "animal shelter" in the Animal Welfare Act to clarify that all of the provisions of the Act apply not only to private shelters but also those owned, operated, maintained by or under contract with a local government.<sup>6</sup> This change in the law went into effect October 1, 2005.

2. G.S. Chapter 19A, Article 3.

3. See G.S. 19A-23(5) (prior to the 2005 amendments, the definition of "animal shelter" only included facilities "owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of animals").

4. S.L. 2004-199 (amending the laws providing local governments with the authority to establish, equip, operate, and maintain animal shelters [G.S. 153-442; 160A-493] by adding a sentence that states: "The animal shelters shall meet the same standards as animal shelters regulated" under the Animal Welfare Act).

5. S.L. 2005-276 (Sec. 11.5; Uniform Regulation of Animal Shelters). These provisions were originally included in a freestanding bill (S 529/H 685) but were later incorporated into the appropriations act.

6. Two additional changes were made to the definition of "animal shelter." First, the definition was expanded to

Now that public shelters are clearly subject to the Act, local government officials responsible for such shelters should familiarize themselves with the provisions of the Act as well as the accompanying regulations.<sup>7</sup>

In general, the Act:

- Requires animal shelters to have certificates of registration from the Department,<sup>8</sup>
- Authorizes the Department to refuse a request for, suspend or revoke a certificate of registration under certain circumstances,<sup>9</sup> and
- Requires the Board of Agriculture to establish standards (i.e., regulations) governing the care of animals at shelters, transportation of animals to and from shelters, and recordkeeping at shelters.<sup>10</sup>

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encompass facilities affiliated with nonprofit organizations devoted to the rehabilitation of animals. Second, the definition previously encompassed facilities used to house or contain any dogs and cats. The language was clarified to limit the scope of the definition to facilities housing or containing "seized, stray, homeless, quarantined, abandoned or unwanted" dogs and cats. S.L. 2005-276 (Section 11.5(a); amending G.S. 19A-23(5)).

7. Copies of the Animal Welfare Act and the Board of Agriculture's regulations are available on the Department's Veterinary Division website: <http://www.agr.state.nc.us/vet/welfare.htm>. In addition, the Act is available on the General Assembly's website: <http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0019A> (see Article 3) and the regulations are available on the website of the Office of Administrative Hearings: [http://ncrules.state.nc.us/ncadministrativ\\_/title02agricult\\_/default.htm](http://ncrules.state.nc.us/ncadministrativ_/title02agricult_/default.htm) (see Chapter 52, Subchapter J) (sites last visited Sept. 13, 2005).

8. G.S. 19A-26.

9. G.S. 19A-30.

10. G.S. 19A-24. Until this year, the Board of Agriculture was simply *permitted* to establish these standards; it was not required to do so. The new law changed the introductory language from the permissive "may" to the mandatory "shall." It also added a new section requiring the Board to establish standards related to euthanasia of animals, as discussed in the next section of the bulletin. S.L. 2005-276 (Section 11.5(b); amending G.S. 19A-24).

The Act provides for civil and criminal penalties.<sup>11</sup> Those penalties, however, may not apply to local governments. Both types of penalties may be used to enforce the provisions of the Act against a “person” but, according to the statutes, the definition of the term “person” does not include local governments or political subdivisions of the state.<sup>12</sup>

The Board of Agriculture’s regulations provide specific guidance to registered shelters regarding:

- Recordkeeping, record retention, and the Department’s authority to access shelter records,<sup>13</sup>
- Condition of indoor and outdoor facilities (e.g., surfaces impervious to moisture, temperature control, sanitation, drainage, ventilation),<sup>14</sup>
- Size and condition of primary enclosures,<sup>15</sup>
- Feeding, watering, sanitation (including waste disposal), and veterinary care,<sup>16</sup>
- Separation of animals (e.g., age, health, species),<sup>17</sup> and
- Transportation of animals (including enclosures, access to food and water and exercise).<sup>18</sup>

The Department is in the preliminary stages of developing its strategy for responding to the changes to the Act. According to Dr. Fred Kirkland of the Animal Health Section of the Department’s Veterinary Division, the agency recognizes the significant financial burden that some cities and counties may face when working to bring their shelters into compliance with the existing regulations. Therefore, the Department plans to amend some provisions of the current shelter regulations to provide public shelters with a certain degree of

11. G.S. 19A-35 (failure to adequately house, feed, and water animals is a Class 3 misdemeanor; Department may revoke registration); 19A-40 (Department may assess a civil penalty up to \$5,000 against any person who violates a provision of the Act or the accompanying regulations).

12. G.S. 19A-23(11) (defining “person” to mean “any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity”).

13. 2 NCAC 52J .0101; .0103.

14. 2 NCAC 52J .0201 to .0203.

15. 2 NCAC 52J .0204.

16. 2 NCAC 52J .0205 to .0207; .0210.

17. 2 NCAC 52J .0209.

18. 2 NCAC 52J 0301 to .0304.

flexibility. The ultimate goal will be to bring all of the shelters up to the same health and safety standards, but the Department recognizes that such changes may not happen immediately. Dr. Kirkland indicated that the Department’s first steps will likely be to hire new staff members and conduct a survey of public shelters to gain a better sense of the current landscape and resources. He emphasized that the Department will focus on education; he believes that the state’s role is not to close down shelters but rather to ensure that shelters are using consistent, humane methods for handling and caring for animals.<sup>19</sup>

## Euthanasia

### Background

Previously, the only state law that addressed euthanasia of animals in local government shelters was the rabies law. Under that law, animal control officers are authorized to impound cats and dogs that are not wearing the required rabies vaccination tags. If, after holding the animal for a minimum of 72 hours, the animal is not reclaimed by its owner, the officer has three options. He may place the animal up for adoption, sell it to a research facility regulated by the U.S. Department of Agriculture, or euthanize it. The law only permits animal control officers or shelters to employ euthanasia procedures that are approved by one of three national organizations: the American Veterinary Medical Association (AVMA), the Humane Society of the United States (HSUS) or the American Humane Association (AHA).<sup>20</sup>

The methods approved by these three organizations vary.<sup>21</sup> Below is a brief description of

19. Phone interview with Dr. Fred Kirkland, Director of Livestock Programs within the Animal Health Section of the Veterinary Division, North Carolina Dept. of Agriculture and Consumer Services (September 15, 2005).

20. G.S. 130A-192.

21. The policy statements for all three organizations are available on the web. American Humane Association, *American Humane’s Policy Statement on Acceptable Method of Euthanasia of Dogs and Cats in Animal Shelters*, available at [http://www.americanhumane.org/site/PageServer?pagename=wh\\_where\\_stand\\_apspcs\\_ebi\\_cats\\_dogs](http://www.americanhumane.org/site/PageServer?pagename=wh_where_stand_apspcs_ebi_cats_dogs) (approved Jan. 26, 2003) (last visited Sept. 13, 2005); Humane Society of the United States, *The HSUS Statement on Euthanasia Methods for Dogs and Cats*, available at [http://www.animalsheltering.org/resource\\_library/policies](http://www.animalsheltering.org/resource_library/policies).

the methods approved by at least one of the organizations for the euthanasia of cats and dogs.<sup>22</sup>

- Injection of sodium pentobarbital: All three organizations recognize injection of sodium pentobarbital as an acceptable method. AHA considers it to be the only acceptable method and HSUS identifies it as the preferred method. Both HSUS and AVMA impose some conditions on the administration of the drug (i.e., whether it is administered intravenously or through other methods).<sup>23</sup> AVMA also mentions that injection of other barbiturates might also be acceptable (such as secobarbital).
- Injection of sodium pentobarbital combined with another drug: Both HSUS and AVMA approve of such combination drugs in some circumstances. Both organizations, however, disapprove of combinations of pentobarbital with a neuromuscular blocking agent.
- Carbon monoxide (CO) gas: AVMA approves of euthanasia using compressed CO in cylinders as long as certain precautions are taken (such as appropriate training for personnel and the use of a chamber that allows for individual separation of animals). AVMA does not recommend that any inhalant agent,

and guidelines/statement\_on\_euthanasia.html (Aug. 23, 2005) (last visited Sept. 13, 2005) [hereinafter HSUS Statement]; American Veterinary Medical Association Panel on Euthanasia, *2000 Report of the AVMA Panel on Euthanasia*, 218 J. AM. VET. MED. ASSOC. 669 (Mar. 1, 2001), available at <http://www.avma.org/resources/euthanasia.pdf> (last visited Sept. 13, 2005) [hereinafter AVMA Report].

22. Note that this discussion is limited to the euthanasia of cats and dogs. AVMA approves of additional or different methods for the euthanasia of other types of animals.

23. The HSUS policy indicates that intravenous (into the vein) injection is preferred; intraperitoneal (into the peritoneal cavity) injection is allowed in some circumstances; and intracardiac (into a chamber of the heart) injection is only acceptable when the animal is unconscious. Other injection routes are not acceptable. See HSUS Statement (discussion under heading "Sodium Pentobarbital"). The AVMA report also indicates that intravenous injection is preferred but approves of intraperitoneal and intracardiac injections in some circumstances. AVMA Report, at 680.

including CO, be used alone in animals less than 16 weeks old except to induce loss of consciousness (followed by another method for euthanasia). HSUS considers the use of carbon monoxide gas to be conditionally acceptable in those states (like North Carolina)<sup>24</sup> where shelters do not have direct access to sodium pentobarbital.<sup>25</sup> HSUS does not approve of the use of CO for the euthanasia of cats and dogs who are geriatric, under four months of age, sick, injured or obviously pregnant. HSUS policy also outlines additional conditions that should be satisfied when using CO for euthanasia.

- Other inhalant agents: AVMA approves of the use of some other inhalant agents (such as halothane, enflurane, isoflurane, sevoflurane, methoxyflurane, and desflurane) for euthanasia of small animals (< 7 kg). AVMA approves of euthanasia for all cats and dogs through the delivery of compressed carbon dioxide (CO<sup>2</sup>) in cylinders but only if certain conditions are satisfied. In addition, AVMA conditionally approves of the use of nitrogen and argon gases under certain conditions, but states that other methods of euthanasia are preferable.<sup>26</sup> As with the use of carbon monoxide, AVMA does not recommend using any of these inhalant agents alone in animals less than 16 weeks old.
- Gunshot: HSUS policy states that euthanasia by gunshot is acceptable only in an emergency field situation where (a) an animal cannot be confined and transferred to

24. Sodium pentobarbital is a controlled substance under North Carolina law. G.S. 90-90(4) (Schedule II); 90-91(b) (Schedule III). State law significantly restricts the availability and use of controlled substances and does not appear to authorize animal shelters to obtain controlled substances directly. G.S. 90-101; 10A NCAC 26E .0101 to .0506. The shelter must have a relationship with a licensed veterinarian or other person authorized under law.

25. Humane Society of the United States, *Appropriate Use of Carbon Monoxide for Animal Euthanasia*, available at [http://www.animalsheltering.org/resource\\_library/policies\\_and\\_guidelines/appropriate\\_use\\_of\\_carbon\\_monoxide.html](http://www.animalsheltering.org/resource_library/policies_and_guidelines/appropriate_use_of_carbon_monoxide.html) (August 23, 2005) (last visited October 7, 2005).

26. *But see* discussion accompanying and following note 29 (concluding that euthanasia using gases other than CO are not authorized under the newly amended state law).

the shelter, (b) sodium pentobarbital is unavailable, and (c) the personnel are appropriately trained. AVMA also conditionally approves of using a gunshot but indicates that the method should not be used for routine euthanasia of animals in animal control situations (such as shelters).

- Injection of potassium chloride: AVMA approves of the injection of potassium chloride but only when the animal is under general anesthesia.
- Penetrating captive bolt (dogs only): AVMA approves of the use of a penetrating captive bolt to the head in limited situations (e.g., research facilities, farms when use of drugs is inappropriate).
- Electrocutation (dogs only): AVMA approves of the use of electrocutation but only in very limited circumstances.

## 2005 Changes

In conjunction with the other changes to the Animal Welfare Act described above, the 2005 General Assembly amended the Act to require the Board of Agriculture to adopt new regulations related to the euthanasia of animals in animal shelters and other facilities regulated by the Department (such as pet shops and boarding kennels).<sup>27</sup> The regulations will identify those euthanasia methods that are approved for use in all of the regulated facilities in all situations (not just when an animal is impounded for a violation of the rabies law). The regulations must also address the equipment, process, separation of animals, age and condition of animals and the mandatory training of personnel.

While the process of drafting and finalizing the regulations will take some time, the new law does provide some guidance to local governments as they move forward with their euthanasia programs. First, the regulations adopted by the Board of Agriculture may only authorize methods of euthanasia approved by one of the three national organizations identified in the rabies law (AVMA, HSUS, and AHA).<sup>28</sup>

27. S.L. 2005-276 (Sec. 11.5(b); amending G.S. 19A-24).

28. It is possible that the Board will refuse to adopt one or more of the euthanasia methods approved by the three national organizations. Until the regulations are issued, however, it is reasonable to assume that any method

Therefore, local governments should limit their euthanasia methods to those described above (with the exception of the gases identified in the “other inhalant anesthetics” category; see discussion below).

Second, if the Board approves of the gas method of euthanasia, the regulations must require that (a) only commercially compressed carbon monoxide be used and (b) the gas be delivered in a commercially manufactured chamber that allows for the individual separation of animals.<sup>29</sup> This provision in the law raises a couple of concerns for local government shelters. The Board does not have the authority to approve of any euthanasia method that uses a gas other than carbon monoxide so any local government shelter using such a method should immediately begin reevaluating its euthanasia program. In addition, if a local government is in the process of building or upgrading its shelter and plans to have a gas chamber, it should ensure that the facility can be used in a way that satisfies this state law.

## Petting Zoos

### Background

In the fall of 2004, over 100 people – mostly children under age 6 – contracted a communicable disease called E. coli after visiting the petting zoo at the North Carolina State Fair.<sup>30</sup> At the time, there were no state laws in place regulating sanitation at petting zoos.

In response to the outbreak, the NC Department of Agriculture and Consumer Services and the Division of Public Health within the NC Department of Health and Human Services jointly issued a guidance document in April 2005.<sup>31</sup> The document includes recommendations and guidelines for

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approved by one of the three organizations is still permissible under state law.

29. S.L. 2005-276 (Sec. 11.5(b); amending G.S. 19A-24(5)).

30. See Lisa Hoppenjans, *As Girl Copes, Legacy May Protect Others*, RALEIGH NEWS & OBSERVER, July 26, 2005, at 1A.

31. North Carolina Dept. of Agriculture and Consumer Services and the North Carolina Dept. of Health and Human Services, Division of Public Health, *Guidelines for Reducing Risk of Disease Associated with Animals at Public Events* (April 2005), available at <http://www.ncagr.com/paffairs/release/2005/4-05guidelines.htm> (last visited September 16, 2005).

minimizing the risk of exposure to diseases at animal exhibits in public settings, including petting zoos. The guidance addresses issues such as

- the need for signs to inform the public about potential health risks and proper hand washing measures,
- the organization and monitoring of the animal and non-animal areas,
- access to hand washing stations for adults and children, and
- the need to monitor the animals' health status on exhibit.

At the time the guidelines were issued, the Department of Agriculture indicated that the recommendations would be implemented at all future Department-run events offering animal exhibitions, including the State Fair.<sup>32</sup> For other animal exhibitions, such as county fairs, the guidelines would be advisory only.<sup>33</sup>

## 2005 Changes

Shortly after the guidelines were released, the General Assembly enacted legislation requiring the Department of Agriculture (the Department) to directly regulate "animal exhibitions."<sup>34</sup> An "animal exhibition" is defined as "any sanctioned agricultural fair where animals are displayed on the exhibition grounds for physical contact with humans."<sup>35</sup> The new law requires:

32. *Id.*

33. *Id.* See Kristin Collins, *N.C. Fair Has New Rules for Zoos*, RALEIGH NEWS & OBSERVER, Apr. 22, 2005, at 1B.

34. S.L. 2005-191 (adopting new G.S. 106-520.3A)

35. G.S. 106-520.3A(b)(2). A separate statute defines "fair" to mean "a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto." G.S. 106-520.1. The fair regulations issued by the Department further clarify the difference between a non-commercial community fair and commercial agricultural fairs. 2 NCAC 43G .0101. A non-commercial community fair is (a) free to the public, (b) not-for-profit, (c) operated by a bona fide not-for-profit organization and (d) offers no traveling shows, rides, or games. If a fair does not satisfy

- Owners or operators of animal exhibitions to obtain operation permits from the Department,<sup>36</sup>
- The Department to adopt rules governing the operation of animal exhibitions and the issuance of permits for such exhibitions,<sup>37</sup> and
- The Department to continue educating agricultural fair operators, exhibitors, agritourism business operators, and the general public about the health risks associated with animal exhibitions.<sup>38</sup>

While the law went into effect in October 2005, the permitting process will likely not be in place for some time because the Department must first draft the rules governing the process. The new law directs the Department to address several issues in its rules, all of which are specifically addressed in the April 2005 guidance. The rules must, for example, address signage and public education, animal and nonanimal areas, animal care and management, and handwashing facilities. Given that the guidance document was developed so recently, it should provide useful information to regulated operations as they prepare for the upcoming regulations.

The new law also authorizes the Department to assess a civil penalty of up to \$5,000 against any person that violates the new statutes or rules.<sup>39</sup>

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that definition, then it is considered a commercial agricultural fair and is regulated by the Department. 2 NCAC 43G .0102.

36. G.S. 106-520.3A(c).

37. G.S. 106-520.3A(d). The rules must be developed "with the advice and approval of the State Board of Agriculture" and "in consultation with the Division of Public Health of the Department of Health and Human Services." *Id.*

38. G.S. 106-520.3A(e).

39. G.S. 106-520.3A(f). Other remedies are also available under current law. Specifically, the person may also be subject to criminal penalties. G.S. 106-520.7 (providing that "any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a Class 1 misdemeanor"). In addition, the Department most likely has the authority to take an action on a fair's license (i.e., deny or revoke the license). G.S. 106-520.3 (providing the Department with licensing authority although not specifically mentioning the authority to deny or revoke licenses).

## Dog Fighting

### Background

Under current state law, it is a crime to be involved with dog fighting and baiting. Specifically, the following acts constitute Class H felonies:

- Instigating, promoting conducting, being employed at, providing a dog for, allowing property to be used for, gambling on or profiting from an exhibition featuring the fighting or baiting of a dog,<sup>40</sup>
- Owning, possessing, or training a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog,<sup>41</sup> and
- Participating as a spectator at an exhibition featuring the fighting or baiting of a dog.<sup>42</sup>

Often when a dog fighting operation is discovered, local animal control officials are involved in seizing the animals and providing food, shelter and veterinary care for the dogs until the criminal case has been resolved.<sup>43</sup> If the person is convicted under the criminal law, the court may turn over custody of the animals to the local government and may order the person convicted to reimburse the local government for the cost of the animals' care while the case was pending. Given that the costs can be in the tens of thousands of dollars, the local government sometimes has difficulty recovering that money.<sup>44</sup>

### 2005 Changes

The General Assembly passed legislation designed to provide some financial relief to animal shelters in these dog fighting cases. In short, the law allows the animal shelter to get an order from a court requiring a defendant in a dog fighting case to pay in advance for the anticipated costs of caring for seized dogs.<sup>45</sup> The

40. G.S. 14-362.2(a).

41. G.S. 14-362.2(b).

42. G.S. 14-362.2(c).

43. Kristin Collins, *Law Burdens Animal Shelters*, RALEIGH NEWS & OBSERVER, Jul. 31, 2005, at 1A.

44. *Id.* ("Cindy Bailey, animal control administrator in Durham, said she gets less than \$10 a month from a convicted dogfighter whose dogs she spent \$67,000 to house in 2000.").

45. S.L. 2005-383 (adopting new G.S. 19A-70).

law goes into effect on December 1, 2005. A more detailed description of the legal process follows.

### *Initial petition*

If a person is arrested under the dog fighting law and a shelter takes custody of dogs, the shelter is allowed to file a petition with the court. The petition may ask the court to order the defendant to deposit enough money to cover "reasonable expenses" expected to be incurred. The term "reasonable expenses" is defined to include "the cost of providing food, water, shelter, and care, including medical care, for at least 30 days."

### *Hearing*

The court is required to set a hearing on the petition 10 to 15 business days after the petition is filed. The animal shelter must mail written notice of the hearing and a copy of the petition to the defendant. If the defendant is in a local detention facility (i.e., jail), the shelter must also provide notice to the custodian of the facility. At the hearing, the court must determine the amount of money necessary to provide the dogs with care for 30 days. In setting the amount, the court must consider the recommendation of the shelter as well as the defendant's ability to pay.

The court has the option of entering one of two orders: it may order the defendant to deposit funds as requested by the shelter or, if the court concludes that the defendant does not have the ability to pay, it may order that the defendant provide necessary care to the dogs at their current location (in other words, not at the shelter). If the court orders the defendant to care for the dogs, it must also provide for an animal control or law enforcement officer to make regular visits to ensure that the dogs are receiving appropriate care. If the officer concludes that the animals are not receiving appropriate care (food, water, shelter, and veterinary care), the dogs may be impounded.

### *Order to deposit funds*

If the court orders the defendant to deposit funds, the defendant must post with the clerk of superior court the amount required to care for the dogs for 30 days. Once the funds are deposited, the animal shelter may draw from the funds the actual costs incurred. In other words, the shelter should typically seek reimbursement for expenses after they have been incurred. If the defendant fails to deposit the funds

within five business days of the initial hearing, the dogs are automatically forfeited.

### ***Affidavit to renew order***

If the criminal case has not been resolved within the first 30 days covered by the initial order, the animal shelter may file an affidavit with the clerk of superior court stating that, to the best of the shelter's knowledge, the shelter believes that the criminal case is still pending. The affidavit must be filed at least two business days before the expiration of the 30-day period. Upon receipt of such an affidavit, the original order of the court will be automatically renewed every 30 days until the criminal case is resolved. Note that a new affidavit is not required every 30 days.

Once the order has been renewed, the defendant must continue to deposit the same amount identified in the initial order every 30 days. If the defendant fails to deposit the funds within five business days of the expiration of the 30-day period, the dogs are forfeited. If, however, the defendant submits a request for a hearing at least five business days prior to the expiration of a 30-day period, the defendant is not required to deposit the funds until the court orders him to do so.

The animal shelter is allowed to dispose of the animals prior to the expiration of any 30-day period in the event the criminal case is resolved. The shelter is not legally required to continue caring for the dogs simply because it has adequate funds available to do so.

### ***Forfeiture***

If the dogs are forfeited, the animal shelter is allowed to determine whether any of the animals are suitable for adoption. If a dog is suitable for adoption, the shelter may arrange for an adoption but it may not allow the defendant or any person residing in the defendant's household to adopt the dog. When a person adopts such a dog, the shelter must notify him or her of the liability provisions for owners of dangerous dogs.<sup>46</sup> If the dog is not suitable for adoption, the shelter must humanely euthanize it.

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46. Under the state's dangerous dog laws, any dog that is trained for dog fighting is considered a "dangerous dog." G.S. 67-4.1(a)(1)(b). Persons owning dangerous dogs must take certain precautions, such as confining them on the owner's property and muzzling them when leaving the property. G.S. 67-4.2. The law includes two liability

### ***Refund***

Once the criminal case is resolved, the defendant may be eligible for a refund of some or all of the deposit. The defendant, whether convicted or not, is entitled to a refund of any balance remaining (i.e., money not spent by the shelter to care for the dogs). In addition, if the defendant is found not guilty, he is entitled to a full refund of the entire amount deposited with the court.

### ***Cockfighting***

Under current state law, it is a crime to be involved with an exhibition featuring the fighting of a cock.<sup>47</sup> Specifically, the law applies to persons who instigate, promote, conduct, are employed at, allow property to be used for, participate as a spectator at, or profit from such an exhibition. In 2005, the General Assembly significantly increased the penalty for such activities from a Class 2 misdemeanor to a Class I felony.<sup>48</sup>

### ***Inherently Dangerous Animals***

In addition to the enacted legislation addressed above, the General Assembly also considered legislation that would have required the Department of the Environment and Natural Resources to either regulate inherently dangerous (or exotic) animals or conduct a study on potential regulation of such animals.<sup>49</sup> The legislation was not enacted.

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provisions: (a) if the dog attacks a person causing physical injuries requiring medical treatment costing more than \$100, the owner can be found guilty of a Class I misdemeanor, and (b) if the dog inflicts any injuries or property damages, the owner can be held strictly liable in civil damages (which basically means that the injured person is not required to show that the dog owner was negligent in order to recover damages). G.S. 67-4.3; -4.4. In addition to these state laws, many local governments have different dangerous dog laws that apply within their jurisdictions. For more information, see the frequently asked questions on [www.ncanimalcontrol.unc.edu](http://www.ncanimalcontrol.unc.edu).

47. G.S. 14-362.

48. S.L. 2005-437 (amending G.S. 14-362).

49. S 1032 (original bill calling for regulation; later calling for a study); H 413 (Sec. 35.1 to 35.3) (study bill); H 1723 (Sec. 35.1 to 35.3) (same); H 1269 (Sec. 33.1 to 33.3) (same).

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