



OVERVIEW OF THE SECURITY POSTING PROCESS

*This procedural description is not intended to be legal advice, but simply to provide information as to the basic process that has been followed by many impounding organizations and courts in New York State with regard to the security posting application process. The complete details of the process are specified in **NYS Agriculture and Markets Law, Article 26, Section 373 (6) and should be examined by anyone engaging in this process.** If a local court is unfamiliar with the security posting application process, because this is a relatively new law, this generalized procedural description may be helpful to the court.*

According to Section 373 (6), the impounding organization (the lead humane organization) that has control of the animals in a cruelty case may file a petition with the Court for a security posting (bond) to cover the projected costs of animal care for at least a 30 day period. The impounding organization must also serve a copy upon the defendant and the district attorney.

The impounding organization should file the petition upon arraignment. UPON in our experience has been interpreted to mean thereafter and thereon; thus, at arraignment itself or at a subsequent court date within a reasonable time thereafter. All documents that you need to deal with the security posting process are included within this link for your convenience. Note that the original of the petition must be signed, dated, and notarized.

The Court must hold a hearing on the petition within 10 business days. The court will inform all present of the date. **Important:** *The security bond hearing is not an issue of innocence or guilt of the defendant on the criminal charges, it is just to show that there is a preponderance of evidence that indicates an act(s) of animal cruelty took place.*

The petition process may proceed in any of the following three ways:

* **Presenting the Petition at Arraignment:**

The impounding organization finds out the date of arraignment from the ADA in charge of the case. The arraignment normally occurs within a few days of the charges being filed. It is best to deal with the petition at that time. A reasonable estimate of the costs of caring for the animals for 30 days, plus any one-time costs that may occur because of immediate veterinary care needed to address neglect issues and necessary inoculations should be made. A copy of details of the estimate should be attached to the petition. If the impounding organization is unable to ascertain all the costs by that point, then in parenthesis next to the estimate, the words "subject to revision" should be inserted. Prior to filing it with the court, it is best to have the ADA review the petition.

Prior to the arraignment, the original of the petition should be provided to the court and copies made for the defendant, the ADA (and other interested persons if the court directs it). Also, the impounding organization should consider making extra copies in case someone loses their copy. (It is best to drop off the original and copies at the court ahead of time, so the judge can review the petition prior to the court date. Note that the security amount applied for is for at least a 30-day period; however, if the original petition is approved, petitions for additional periods can be submitted to the judge until the case is resolved.

At the arraignment, the impounding organization serves the petition upon the defendant and the ADA. In our experience, the judge hands it to the parties. The petition is then considered to have been served on the record. The judge will order a hearing in 10 business days.

Click for Petition [completed example](#) –or– [editable copy](#).

Click for Order to Show Cause [completed example](#) –or– [editable copy](#).

* **Presenting the Petition at a Court Date Soon After:**

Generally speaking, there is a court date soon after arraignment to settle issues raised by the defense or prosecution. If this court date occurs within a few weeks of arraignment, the procedure outlined above can be used at that time.

* **Serving the Petition via an Order to Show Cause:**

If the petition was not served at arraignment, and another subsequent, timely court date has not been set, then in order to start the process, the impounding organization must pursue an Order to Show Cause in order to establish a hearing date. The process is as follows:

– The impounding organization presents the petition and the Order to Show Cause, along with three copies of these documents, to the court. Because the organization needs funds to care for the animals, it requests that the judge set a hearing date. The judge then specifies a hearing date and signs the original Order to Show Cause which he retains, along with the original copy of the petition. The judge or his clerk then specifies the hearing date on the copies. The Order to Show Cause contains an instruction that the Order to Show Cause and the Petition and any attachments are to be mailed to the defendant by Certified Mail with Return Receipt Requested. This notifies the defendant and/or his or her attorney of the hearing date for the petition, so that they can appear to defend against the security posting. Note that the judge may order an alternative method of delivery.

Click for Petition [completed example](#) –or– [editable copy](#).

Click for Order to Show Cause [completed example](#) –or– [editable copy](#).

– The impounding organization creates a "backer" for the petition and the Order to Show Cause. A "backer" is a single sheet that contains the name of the court and the parties involved in the action. The plaintiff is the impounding organization. The defendant is the person who has been charged with a crime. The petitioner is the individual who is heading the impounding organization and asking for the security posting bond on behalf of the organization. Place the Order to Show Cause on top of the petition and staple the "backer" to the back of them with the identifying information on the "backer" facing out. A set of these documents (the petition and the Order to Show Cause, enclosed in the "backer") are mailed to the defendant and the ADA, and anyone else the judge deemed should be present at the hearing — via Certified Mail with Return Receipt Requested.

Click for "backer" [completed example](#) –or– [editable copy](#).

Roles:

Because the security posting process is part and parcel of the entire case, it is best that the ADA assigned to the case present the evidence at the hearing to demonstrate that there is a preponderance of evidence that indicates an act of cruelty took place. The reason being that whatever evidence is presented in a Security Posting hearing can be used by the defense in the criminal case. Thus, the prosecutor would not want the impounding organization to present evidence that may be erroneous and that may harm the case. Note: If, in a rare case, the ADA does not assist in the process, the impounding organization's humane officer or attorney must present this evidence.

The role of the impounding organization is to present, explain, and defend the amount of the projected expenses for the first 30 days of care, plus any one time expenses.

Security Posting Hearing Process

The objective of the hearing is for the judge to determine if the security bond sought by the impounding organization should be granted. It is a two-step process.

1) The ADA submits evidence to the Court to demonstrate that a preponderance of the evidence indicates that an act(s) of cruelty against an animal(s) did occur. The evidence can include pictures taken by police at the scene, accusatory instruments created by police (Informations), and the deposition of the veterinarian.

After the ADA presents the evidence, the Court asks the defendant to respond.

After examining the evidence and listening to the defendant's response, the Court determines whether there is a preponderance of evidence to indicate an act of cruelty did occur.

2) Once the Court makes that decision, and if the decision is "yes," then the hearing moves on to the second stage at which time the Court reviews the requested amount of the security posting. The impounding organization presents projected bills and actual bills and can be asked questions by the defendant's lawyer and by the judge as to the projected costs. If the judge agrees the amount is valid, he informs the defendant that the security amount shall be posted within five business days or the animals may be forfeited to the impounding organization. In some cases, the judge may decide to review the case in terms of the evidence presented and the amount requested, and announce his decision by mail or at a subsequent court date.

If the defendant deposits the ordered amount of security with the Court, the impounding organization then provides actual written bills (not estimates) to the court for review. The court clerk then issues a check for the amount of the bills presented. The impounding organization also makes copies of the bills for the defendant and leaves them with the Court. (The impounding organization should always have extra copies of the bills because things get lost.)

If after posting the security, the defendant is subsequently acquitted or the charges are dismissed, the impounding agency must return the entire amount of the security within a reasonable amount of time. If the person is found guilty or the charges are adjourned in contemplation of dismissal (ACD), the impounding agency retains the security for the amount of expenses it has incurred and must return any unused portion.

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(Updated 4/16)