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HOUSE BILL 224

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Carl Trujillo

AN ACT

RELATING TO CRIMINAL LAW; CLARIFYING THE CRIMES OF CRUELTY TO ANIMALS AND EXTREME CRUELTY TO ANIMALS; PROVIDING ALTERNATIVE PUNISHMENTS; PROVIDING DEFINITIONS; CLARIFYING THE APPLICATION OF THE PRACTICE OF VETERINARY MEDICINE; PROVIDING FOR PSYCHOLOGICAL COUNSELING; INCREASING THE PENALTY WHEN CRUELTY CAUSES DEATH OR GREAT BODILY HARM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-18-1 NMSA 1978 (being Laws 1999, Chapter 107, Section 1, as amended) is amended to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO ANIMALS--PENALTIES--EXCEPTIONS--DEFINITIONS.--

~~[A. As used in this section, "animal" does not include insects or reptiles.~~

~~B.]~~ A. Cruelty to animals consists of a person:

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1 (1) [~~negligently~~] recklessly mistreating,  
2 injuring [~~killing without lawful justification~~] or tormenting  
3 an animal; [~~or~~]

4 (2) recklessly or intentionally abandoning an  
5 animal under that person's custody or control; or

6 (3) recklessly or intentionally failing to  
7 provide necessary sustenance to an animal under that person's  
8 custody or control.

9 [~~C. As used in Subsection B of this section,~~  
10 "~~lawful justification~~" means:

11 (1) ~~humanely destroying a sick or injured~~  
12 ~~animal; or~~

13 (2) ~~protecting a person or animal from death~~  
14 ~~or injury due to an attack by another animal.~~

15 ~~D.]~~ B. Whoever commits cruelty to animals is guilty  
16 of a misdemeanor and shall be [~~sentenced pursuant to the~~  
17 ~~provisions of Section 31-19-1 NMSA 1978~~] punished by  
18 imprisonment for a definite term of less than one year or  
19 payment of a fine not to exceed one thousand dollars (\$1,000),  
20 but not both. Upon a fourth or subsequent conviction for  
21 committing cruelty to animals, the offender is guilty of a  
22 fourth degree felony and shall be [~~sentenced pursuant to the~~  
23 ~~provisions of Section 31-18-15 NMSA 1978~~] punished by eighteen  
24 months imprisonment or payment of a fine not to exceed five  
25 thousand dollars (\$5,000), but not both.

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1           C. Whoever commits cruelty to animals that causes  
2 death or great bodily harm to the animal is guilty of a fourth  
3 degree felony and shall be punished by eighteen months  
4 imprisonment or payment of a fine not to exceed five thousand  
5 dollars (\$5,000), but not both.

6           [E-] D. Extreme cruelty to animals consists of a  
7 person:

- 8                   (1) intentionally or maliciously [~~torturing,~~  
9 ~~mutilating, injuring or poisoning~~] mistreating an animal; or  
10                   (2) maliciously killing an animal without  
11 lawful justification.

12           [F-] E. Whoever commits extreme cruelty to animals  
13 is guilty of a fourth degree felony and shall be [~~sentenced~~  
14 ~~pursuant to the provisions of Section 31-18-15 NMSA 1978~~]  
15 punished by eighteen months imprisonment or payment of a fine  
16 not to exceed five thousand dollars (\$5,000), but not both.

17           [G-] F. The court may order a person convicted for  
18 committing cruelty to animals to participate in an animal  
19 cruelty prevention program or an animal cruelty education  
20 program. The court may also order a person convicted for  
21 committing cruelty to animals [~~or extreme cruelty to animals~~]  
22 to obtain psychological counseling for treatment of a mental  
23 health disorder if, in the court's judgment, the mental health  
24 disorder contributed to the commission of the criminal offense.  
25 The court shall order a person convicted of extreme cruelty to

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1 animals to obtain psychological counseling. The offender shall  
2 bear the expense of participating in an animal cruelty  
3 prevention program, animal cruelty education program or  
4 psychological counseling ordered by the court.

5 ~~[H.]~~ G. If a child is adjudicated of cruelty to  
6 animals, the court shall order an assessment and any necessary  
7 psychological counseling or treatment of the child.

8 ~~[I.]~~ H. The provisions of this section do not apply  
9 to:

10 (1) fishing, hunting, falconry, taking and  
11 trapping, as provided in Chapter 17 NMSA 1978;

12 (2) the practice of veterinary medicine, as  
13 provided in Chapter 61, Article 14 NMSA 1978, when the practice  
14 is in accordance with commonly accepted veterinary practices;

15 (3) rodent or pest control, as provided in  
16 Chapter 77, Article 15 NMSA 1978;

17 (4) the treatment of livestock and other  
18 animals used on farms, ~~[and]~~ ranches and dairies for the  
19 production of food, fiber or other agricultural products, when  
20 the treatment is in accordance with commonly accepted  
21 agricultural animal husbandry practices;

22 (5) the use of commonly accepted Mexican and  
23 American rodeo practices, unless otherwise prohibited by law;

24 (6) research facilities ~~[licensed]~~ registered  
25 pursuant to ~~[the provisions of]~~ 7 U.S.C. Section 2136, except

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1 when knowingly operating outside provisions governing the  
2 treatment of animals of a research or maintenance protocol  
3 approved by the institutional animal care and use committee of  
4 the facility; or

5 (7) other [~~similar~~] activities not otherwise  
6 prohibited by law.

7 I. If there is a dispute as to what constitutes  
8 commonly accepted veterinary practices, the board of veterinary  
9 medicine shall hold a hearing to determine if the practice in  
10 question is a commonly accepted veterinary practice. Criminal  
11 charges shall not be filed until after the board has made a  
12 determination.

13 J. If there is a dispute as to what constitutes  
14 commonly accepted agricultural animal husbandry practices or  
15 commonly accepted rodeo practices, the New Mexico livestock  
16 board shall hold a hearing to determine if the practice in  
17 question is a commonly accepted agricultural animal husbandry  
18 practice or commonly accepted rodeo practice. Criminal charges  
19 shall not be filed until after the board has made a  
20 determination.

21 K. As used in this section:

22 (1) "animal" means captive invertebrates and  
23 all vertebrates except for humans and noncaptive snakes;

24 (2) "captive" means subject to habitual  
25 confinement and control by one or more persons;

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1                   (3) "great bodily harm" means an injury that  
2 creates a high probability of death, that causes serious  
3 disfigurement or that results in permanent or protracted loss  
4 or impairment of the function of any member or organ of the  
5 body;

6                   (4) "lawful justification" means:

7                             (a) humanely destroying a sick or  
8 injured animal; or

9                             (b) protecting a person or animal from  
10 death or injury due to an attack by another animal;

11                   (5) "mistreating" means torturing, mutilating  
12 or poisoning;

13                   (6) "recklessly" means acting with knowledge  
14 that the person's actions create a substantial and foreseeable  
15 risk, disregarding the risk and being wholly indifferent to the  
16 consequences and to the welfare and safety of the animal;

17                   (7) "sustenance" means food, water or shelter;  
18 provided that shelter with regard to livestock shall be in  
19 keeping with commonly accepted agricultural animal husbandry  
20 practices; and

21                   (8) "tormenting" means causing great distress  
22 or agitation or inflicting physical pain or mental anguish."

23                   SECTION 2. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2013.