

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 348

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

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 [~~G. 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.

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 for the production of food,  
19 fiber or other agricultural products, when the treatment is in  
20 accordance with commonly accepted agricultural animal husbandry  
21 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, 2011.

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