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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/13
LAST UPDATED 03/07/13 **HB** 224/HJCS

SPONSOR HJC

SHORT TITLE Animal Cruelty, Veterinarians & Counseling **SB** _____

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)
 *See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From (Original Bill)

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Department of Public Safety (DPS)
 New Mexico Corrections Department (NMCD)
 Department of Game and Fish (DGF)
 Administrative Office of the District Attorneys (AODA)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 224 (HB 224) proposes to change what constitutes the crimes of cruelty to animals and extreme cruelty to animals and sets the penalties for those crimes. This bill amends Section 30-18-1, NMSA 1978, and defines cruelty to animals as a person recklessly mistreating, injuring or tormenting an animal; or recklessly or intentionally abandoning an animal under that person's custody or control; or recklessly or intentionally failing to provide necessary sustenance to an animal that has been willfully accepted into that person's custody or control. The bill states that whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 30-19-1, NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. Whoever commits cruelty to animals that causes death or great bodily harm to the

animal or commits extreme cruelty is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. “Extreme cruelty to animals” consists of a person: (1) intentionally or maliciously mistreating an animal; or (2) maliciously killing an animal without lawful justification. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The bill allows the court to order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals [or extreme cruelty to animals] to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The court shall order a person convicted of extreme cruelty to animals to obtain psychological counseling. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court. Additionally, the bill orders that if a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

The bill does not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978, when the practice is in accordance with commonly accepted veterinary practices;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms, and ranches and dairies for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed registered pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions governing the treatment of animals of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

HB 224 also relates to the practice of veterinary medicine, requiring that the practice must be in accordance with commonly accepted veterinary practices to qualify for an exemption to the statute. In addition, if there is a dispute as to what constitutes commonly accepted veterinary practices, the Board of Veterinary Medicine shall hold a hearing to determine if the practice in question is a commonly accepted veterinary practice. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

The bill adds a list of definitions to the crimes of cruelty and extreme cruelty to animals:

- "abandoning" means leaving or casting out an animal and failing to provide or ensure necessary sustenance;

- "animal" means all vertebrates except for humans and noncaptive snakes;
- "great bodily harm" means an injury that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of any member or organ of the body;
- "lawful justification" means:
 - (a) humanely destroying a sick or injured animal; or (b) protecting a person or animal from death or injury due to an attack by another animal;
- "mistreating" means torturing, mutilating or poisoning;
- "recklessly" means acting with knowledge that the person's actions create a substantial and foreseeable risk, disregarding the risk and being wholly indifferent to the consequences and to the welfare and safety of the animal;
- "sustenance" means food, water or shelter; provided that shelter with regard to livestock shall be in keeping with commonly accepted agricultural animal husbandry practices; and
- "tormenting" means causing great distress or agitation or inflicting physical pain."

FISCAL IMPLICATIONS

The New Mexico Livestock Board reports HB 224 could cause increase in requests to both the New Mexico Veterinary Board and the Livestock Board for clarification of issues. Increased hearings will result in a negative fiscal impact due to increase hearings.

The Attorney General's Office (AGO) indicates that if enacted, this bill could result in additional expense related to more criminal matters filed in response to broadened definitions.

The Administrative Office of the District Attorneys (AODA) reports that reckless or intentional are higher standards than negligence so those changes might result in not as many cruelty to animal cases being charged. Changing penalties to either incarceration or a fine may also have a fiscal impact. Since great bodily harm is proposed as an additional basis for extreme cruelty to animal cases and those are punishable as felonies, cases with that predicate are likely to be litigated more intensively unless they are pled to lesser charges. The AODA also states that the addition of great bodily harm cases to the definition of extreme cruelty to animals will likely increase the number of cases that must be litigated, and some of them are likely to require expert testimony so they may have a fiscal impact on DA offices.

The Administrative Office of the Courts (AOC) indicates HB 224 will result in a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Public Defender Department (PDD) states that while it is likely that it would be able to absorb some new cases under the proposed law, any increase in the number of prosecutions will bring a concomitant need for an increase in indigent defense funding.

The New Mexico Corrections Department (NMCD) does not have the statutory authority to incarcerate misdemeanor offenders, who are by statute required to serve any incarceration time in the county jail. However, if the person is convicted of more than one misdemeanor, and given

consecutive sentences for those crimes, New Mexico case law allows the judge to sentence that misdemeanor offender to incarceration in the NMCD.

Also, the NMCD does not generally provide probation supervision to misdemeanor offenders, but does in some cases. Finally, while the bill does create a new fourth degree felony for animal cruelty if the animal dies or suffers great bodily as a result of the cruelty, it is anticipated that most of these offenders would be placed on probation with the NMCD in lieu of incarceration in the NMCD. If the offender is incarcerated at the NMCD for this new fourth degree felony, a parole term of one year would also attach. Probation and parole costs are obviously less than incarceration costs, and both costs are provided below.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$38,070 per year in a state-owned and operated prison to \$31,686 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$29,375 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$2,227 per year. The cost per client in Intensive Supervision programs is \$4,311 per year. The cost per client in Community Corrections is \$3,489 per year. The cost per client per year for female residential Community Corrections programs is \$33,281 and for males is \$21,728. Based on the above factors, the NMCD anticipates that this bill would result in a minimal number of new fourth degree felony convictions, and therefore the fiscal impact of the bill on the NMCD would only be minimal.

SIGNIFICANT ISSUES

The AGO states that while the bill makes numerous changes to the existing law, it also makes clear that an offender must have a degree of intent to commit either cruelty or extreme cruelty to animals. In other words, mere negligence will no longer be sufficient. This makes the bill much less susceptible to challenge by any defendant aggrieved by the enhanced penalties found therein.

The AODA reports that allowing great bodily harm to be a basis for finding someone guilty of extreme cruelty to animals is likely to increase the number of those cases that are litigated unless there is overwhelming evidence, like one of the animal's limbs being amputated. The great bodily harm cases are probably going to require expert testimony on issues like whether an injury creates a high probability of death or will result in permanent or protracted impairment of the function of any member or organ of the animal's body.

PERFORMANCE IMPLICATIONS

The PDD reports that Public Defender trial caseloads could be impacted if the number of prosecutions for animal cruelty increases.

The NMCD indicates that HB 224 seems unlikely to significantly impact the NMCD prison population or probation/parole caseloads, and therefore has no or minimal performance implications to the NMCD’s ability to meet its performance targets.

The AOC notes that courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

RELATIONSHIP

HB 224 relates to:

SB 174 – “REPEAL ANIMAL SHELTER BOARD & MOVE DUTIES,”

SB 155 – “EXPAND ANIMAL CRUELTY DEFINITIONS,”

SB 139 – “DISPOSITION OF STATE-OWNED ANIMALS,”

SB 83 – “ANIMAL CRUELTY DEFINITIONS & PENALTIES”

TT/blm:svb