

AN ACT

RELATING TO ANIMALS; INCREASING CRIMINAL PENALTIES FOR
CRUELTY TO ANIMALS; PROVIDING FOR SEIZURE OF ANIMALS;
PROVIDING CRIMINAL PENALTIES FOR INJURY TO OR HARASSMENT OF
A POLICE DOG, POLICE HORSE OR FIRE DOG; REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-18-1 NMSA 1978 (being Laws 1963,
Chapter 303, Section 18-1) is repealed and a new Section
30-18-1 NMSA 1978 is enacted to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO
ANIMALS--PENALTIES--EXCEPTIONS.--As used in this section,
animal does not include insects or reptiles.

A. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring,
killing without lawful justification or tormenting an
animal; or

(2) abandoning or failing to provide
necessary sustenance to an animal under that person's
custody or control.

B. As used in Subsection A of this section,
"lawful justification" means:

(1) humanely destroying a sick or injured
animal; or

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

C. Whoever commits cruelty to animals is guilty
of a misdemeanor and shall be sentenced pursuant to the
provisions of Section 31-19-1 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.

D. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

E. 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.

F. The court may 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 offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

G. 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.

H. The provisions of this section do 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;
- (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 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, intermediate handlers, carriers and exhibitors licensed pursuant to the provisions of 7 U.S.C. Section 2136; or
- (7) other similar activities not otherwise prohibited by law.

I. 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.

J. The provisions of this section shall not be interpreted to prohibit cockfighting in New Mexico."

Section 2. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"SEIZURE OF ANIMALS--NOTICE.--

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978."

Section 3. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"DISPOSITION OF SEIZED ANIMALS.--

A. If the court finds that the seized animal is not being cruelly treated and that the animal's owner is

able to adequately provide for the animal, the court shall return the animal to its owner.

B. If the court finds that the seized animal is being cruelly treated or that the animal's owner is unable to adequately provide for the animal, the court shall hold a hearing to determine the disposition of the animal.

C. Upon conviction the court may place the animal for adoption with an animal shelter or animal welfare organization or provide for the humane destruction of the animal."

Section 4. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"COSTS.--

A. Upon conviction the defendant may be liable for the cost of boarding the animal and all necessary veterinary examinations and care provided to the animal.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings."

Section 5. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"INJURY TO A POLICE DOG, POLICE HORSE OR FIRE DOG--
HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE DOG.--

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law

enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution

for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

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G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures."

Section 6. REPEAL.--Sections 30-18-2 and 30-18-2.1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-2 and Laws 1981, Chapter 226, Section 1) are repealed.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____