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HOUSE BILL 385

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

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 Section 30-18-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-1) is repealed and a new Section 30-18-1 NMSA 1978 is enacted to read: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. [NEW MATERIAL] CRUELTY TO ANIMALS-- EXTREME CRUELTY TO ANIMALS-- PENALTIES-- EXCEPTIONS. --

A. Cruelty to animals consists of a person:

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

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1 or

2 (2) overdriving, overworking, neglecting,  
3 abandoning or failing to provide necessary sustenance to an  
4 animal under that person's custody or control.

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

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

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

11 C. Whoever commits cruelty to animals is guilty of  
12 a misdemeanor and shall be sentenced pursuant to the  
13 provisions of Section 31-19-1 NMSA 1978. Upon a second or  
14 subsequent conviction for committing cruelty to animals, the  
15 offender is guilty of a fourth degree felony and shall be  
16 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
17 1978.

18 D. Extreme cruelty to animals consists of a  
19 person:

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

22 (2) cruelly killing an animal.

23 E. Whoever commits extreme cruelty to animals is  
24 guilty of a fourth degree felony and shall be sentenced  
25 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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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. The court may order that a person convicted for committing extreme cruelty to animals or cruelty to animals be prohibited from owning or possessing an animal for a period of time determined by the court.

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,

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1 fiber or other agricultural products, when the treatment is in  
2 accordance with commonly accepted agricultural animal  
3 husbandry practices;

4 (5) the use of commonly accepted rodeo  
5 practices;

6 (6) research facilities, intermediate  
7 handlers, carriers and exhibitors licensed pursuant to the  
8 provisions of 7 U. S. C. Section 2136; or

9 (7) other similar activities not otherwise  
10 prohibited by law.

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

13 Section 2. A new section of Chapter 30, Article 18 NMSA  
14 1978 is enacted to read:

15 "[NEW MATERIAL] SEIZURE OF ANIMALS. --

16 A. A peace officer, animal control officer or  
17 livestock inspector who reasonably believes that the life or  
18 health of an animal is endangered due to cruel treatment by  
19 the animal's owner may apply to the district court, magistrate  
20 court or the metropolitan court, in the county where the  
21 animal is located, for a warrant to seize the animal.

22 B. If the district court, magistrate court or  
23 metropolitan court finds probable cause that the animal is  
24 being cruelly treated, the court shall issue a warrant for the  
25 seizure of the animal. The court shall also schedule a

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1 hearing on the matter within ten days following seizure of the  
2 animal. Written notice regarding the time and location of the  
3 hearing shall be provided to the owner of the seized animal.  
4 If the animal is a type of livestock, written notice shall  
5 also be provided to the New Mexico livestock board. If the  
6 owner of the animal cannot be determined, a written notice  
7 regarding the circumstances of the seizure shall be posted  
8 where the animal was seized at the time the seizure occurred.  
9 After a hearing has been scheduled, the time and location of  
10 the hearing shall be posted where the animal was seized.

11 C. If the district court, magistrate court or the  
12 metropolitan court finds that the seized animal is not being  
13 cruelly treated and that the animal's owner is able to  
14 adequately provide for the animal, the court shall return the  
15 animal to its owner.

16 D. If the district court, magistrate court or  
17 metropolitan court finds that the seized animal is being  
18 cruelly treated or that the animal's owner is unable to  
19 adequately provide for the animal, the court shall not return  
20 the animal to its owner and the court shall determine the  
21 proper care for the animal. The court may place the animal  
22 for adoption, place the animal with an animal shelter or  
23 animal welfare organization, provide for the sale of the  
24 animal at public auction or provide for the humane destruction  
25 of the animal. Upon a finding that the animal's owner treated

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1 the animal cruelly or that the owner is unable to adequately  
2 provide for the animal, the owner shall be liable for the cost  
3 of boarding the animal and all veterinary care provided to the  
4 animal. "

5 Section 3. A new section of Chapter 30, Article 18 NMSA  
6 1978 is enacted to read:

7 "[NEW MATERIAL] INJURY TO A POLICE DOG, POLICE HORSE OR  
8 FIRE DOG-- HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE  
9 DOG. --

10 A. As used in this section:

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

15 (2) "police dog" means a dog used by a law  
16 enforcement or corrections agency that is specially trained  
17 for law enforcement or corrections work in the areas of  
18 tracking, suspect apprehension, crowd control or drug or  
19 explosives detection; and

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

23 B. Injury to a police dog, police horse or fire  
24 dog consists of willfully and maliciously:

25 (1) striking, beating, kicking, cutting,

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1 stabbing, shooting or administering poison or other harmful  
2 substance to a police dog, police horse or fire dog; or

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

6 C. Whoever commits injury to a police dog, police  
7 horse or fire dog when the injury causes the animal minor  
8 physical injury or pain is guilty of a fourth degree felony  
9 and shall be sentenced pursuant to the provisions of Section  
10 31-18-15 NMSA 1978.

11 D. Whoever commits injury to a police dog, police  
12 horse or fire dog when the injury causes the animal serious  
13 physical injury or death or directly causes the destruction of  
14 the animal is guilty of a third degree felony and shall be  
15 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
16 1978.

17 E. A person convicted of injury to a police dog,  
18 police horse or fire dog shall be ordered to make restitution  
19 for the animal's veterinary bills or replacement costs of the  
20 animal if it is permanently disabled, killed or destroyed.

21 F. Harassment of a police dog, police horse or  
22 fire dog consists of a person willfully and maliciously  
23 interfering with or obstructing a police dog, police horse or  
24 fire dog by frightening, agitating, harassing or hindering the  
25 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 fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. "

Section 4. 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 5. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1999.



1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4  
5 February 24, 1999

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8 Mr. President:

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10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
11 referred

12  
13 SENATE BILL 385

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15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the  
17 FINANCE COMMITTEE.

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19 Respectfully submitted,

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Shannon Robinson, Chairman

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Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Stockard

Absent: None

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