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SENATE BILL 348

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

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO CRIMINAL LAW; EXPANDING AND CLARIFYING THE CRIMES OF CRUELTY TO ANIMALS AND AGGRAVATED CRUELTY TO ANIMALS; CLARIFYING THE APPLICATION OF THE PRACTICE OF VETERINARY MEDICINE; 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]~~ AGGRAVATED 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:

(1) negligently mistreating [~~injuring~~] an

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1 animal;

2 (2) negligently killing an animal without  
3 lawful justification; ~~[or tormenting an animal; or~~

4 ~~(2)]~~ (3) negligently abandoning [or] an animal  
5 under that person's custody or control; or

6 (4) negligently failing to provide necessary  
7 sustenance to an animal under that person's custody or control.

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

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

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

14 ~~D.]~~ B. Whoever commits cruelty to animals is guilty  
15 of a misdemeanor and ~~[shall be sentenced pursuant to the~~  
16 ~~provisions of Section 31-19-1 NMSA 1978]~~, upon a fourth or  
17 subsequent conviction ~~[for committing cruelty to animals, the~~  
18 ~~offender]~~, is guilty of a fourth degree felony. ~~[and shall be~~  
19 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~  
20 ~~1978.~~

21 ~~E. Extreme]~~ C. Aggravated cruelty to animals  
22 consists of a person:

23 (1) intentionally or maliciously ~~[torturing,~~  
24 ~~mutilating, injuring or poisoning]~~ mistreating an animal; ~~[or]~~

25 (2) negligently mistreating an animal that

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1 results in death or great bodily harm to the animal;

2 (3) intentionally or maliciously killing an  
3 animal without lawful justification;

4 (4) negligently or intentionally abandoning an  
5 animal under the person's custody or control that results in  
6 death or great bodily harm to the animal;

7 (5) negligently or intentionally failing to  
8 provide necessary sustenance to an animal under the person's  
9 custody or control that results in death or great bodily harm  
10 to the animal; or

11 (6) engaging in an act of bestiality.

12 [~~F.~~] D. Whoever commits [~~extreme~~] aggravated  
13 cruelty to animals is guilty of a fourth degree felony. [~~and~~  
14 shall be sentenced pursuant to the provisions of Section  
15 31-18-15 NMSA 1978.

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

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1 cruelty education program or psychological counseling ordered  
2 by the court.

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

6 ~~[I.]~~ G. The provisions of this section do not apply  
7 to:

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

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

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

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

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

22 (6) research facilities ~~[licensed]~~ registered  
23 pursuant to ~~[the provisions of]~~ 7 U.S.C. Section 2136, except  
24 when knowingly operating outside provisions governing the  
25 treatment of animals of a research or maintenance protocol

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1 approved by the institutional animal care and use committee of  
2 the facility; or

3 (7) other [~~similar~~] commonly accepted  
4 activities not otherwise prohibited by law.

5 H. If there is a dispute as to what constitutes  
6 commonly accepted veterinary practices, the board of veterinary  
7 medicine shall hold a hearing to determine if the practice in  
8 question is a commonly accepted veterinary practice.

9 [~~J.~~] I. If there is a dispute as to what  
10 constitutes commonly accepted agricultural animal husbandry  
11 practices or commonly accepted rodeo practices, the New Mexico  
12 livestock board shall hold a hearing to determine if the  
13 practice in question is a commonly accepted agricultural animal  
14 husbandry practice or commonly accepted rodeo practice.

15 J. As used in this section:

16 (1) "animal" means all animals, including  
17 captive reptiles, but not insects;

18 (2) "bestiality" means any sexual act between  
19 a person and an animal involving the sex organ of the one and  
20 the mouth, anus, penis or vagina of the other;

21 (3) "great bodily harm" means an injury that  
22 creates a high probability of death, that causes serious  
23 disfigurement or that results in permanent or protracted loss  
24 or impairment of the function of any member or organ of the  
25 body;

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(4) "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;

(5) "mistreating" means tormenting, torturing, mutilating, poisoning or otherwise inflicting unnecessary physical injury upon an animal;

(6) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of an animal; and

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

**SECTION 2. EFFECTIVE DATE.--**The effective date of the provisions of this act is July 1, 2011.