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FISCAL IMPACT REPORT

SPONSOR Park **ORIGINAL DATE** 02/14/11 **HB** 319
LAST UPDATED _____ **SB** _____
SHORT TITLE Expanding Crimes of Cruelty to Animals **SB** _____
ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 348

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Corrections Department (CD)
 Public Defender Department (PDD)

Other Responses

Animal Protection Voters of New Mexico (APV)

SUMMARY

Synopsis of Bill

House Bill 319 expands the fourth degree felony crime of aggravated cruelty to animals to include the acts of intentionally or maliciously mistreating an animal; negligently mistreating an animal that results in death or great bodily harm to the animal; intentionally or maliciously killing an animal without lawful justification; negligently or intentionally abandoning an animal under the person's custody or control that results in death or great bodily harm to the animal; negligently or intentionally failing to provide necessary sustenance to an animal under the person's custody or control that results in death or great bodily harm to the animal; or engaging in an act of bestiality.

The bill also clarifies or expands the crime of cruelty to animals to indicate that it consists of the

enumerated negligent acts as opposed to intentional acts. This crime remains a misdemeanor until the fourth and subsequent conviction when it is a fourth degree felony.

The bill also relates to the practice of veterinary medicine requiring that the practice must be in accordance with commonly accepted veterinary practices. 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.

The bill provides the following definitions:

- animal means all animals, including captive reptiles, but not insects;
- bestiality means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, penis or vagina of the other;
- 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 humanely destroying a sick or injured animal or protecting a person or animal from death or injury due to an attack by another animal;
- mistreating means tormenting, torturing, mutilating, poisoning or otherwise inflicting unnecessary physical injury upon an animal;
- 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
- sustenance means food, water or shelter.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would 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.

SIGNIFICANT ISSUES

APV offered the following:

The link between cruelty to animals and violence to humans is well established

Prosecution of some animal cruelty cases is being hampered by the current wording of the statute, resulting in difficulty obtaining convictions for clear-cut cases of cruelty to animals and extreme cruelty to animals:

In several cases, prosecutors have been either reluctant or refused to file fourth degree felony charges for dehydrating and starving an animal, even to the death.

In cases where captive reptiles were viciously tortured and killed, prosecutors could not even file criminal charges because the statute does not cover reptiles.

People are escaping responsibility for horrific negligent acts that result in death or serious harm to animals by claiming they didn't know any better.

In cases where individuals have been raping or otherwise sexually abusing animals, some prosecutors aren't convinced that the crimes are covered by the scope of the animal cruelty statute.

In NM Supreme Ct. Case No. 30,524 State of New Mexico vs. Charles River Laboratories, et al. the current wording of the statute allowed the intentional abandonment of, and failure to provide veterinary care to, gravely ill chimpanzees to qualify as an exemption to the statute.

PDD provided the following:

Reviewer believes he violated the proposed law by killing mice in his yard last month. Surely this is not what is intended. While the bill contains an exception for “rodent or pest control as provided in Chapter 77, Article 15 NMSA 1978,” this section refers only to state governmental rodent and pest control programs, not homeowners. The bill’s “commonly accepted activities not otherwise prohibited by law” language is unconscionably vague and will lead to court challenges. Is it commonly accepted for a rancher to shoot a coyote or a prairie dog? Is it commonly accepted for a homeowner to poison a feral cat? While the bill certainly has the laudable goal of protecting animals from cruelty, the language ought to be tailored to better ensure citizens that they will not be subject to arbitrary prosecutions.

The bill’s concept of “negligently killing an animal without lawful justification” is an interesting legal concept. Negligence and justification are like oil and water. The New Mexico Supreme Court recently rejected the possibility of such a claim in State v. Lucero, 2010 -NMSC- 011, 147 N.M. 747, 228 P.3d 1167 holding that an involuntary manslaughter defendant was not entitled to jury instruction regarding justifiable homicide or non deadly force self-defense because the evidence established that the shooting was accidental, rather than intentional.

ADMINISTRATIVE IMPLICATIONS

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

DUPLICATION

HB 319 duplicates SB 348

TECHNICAL ISSUES

The PDD suggests that the language of (C)(2) should be changed from “negligently mistreating an animal” to “negligent mistreating of an animal” in order to make the subsequent clause, “that results in death or great bodily harm” jibe properly.

Without these amendments, animals have less protection from harm, and it is more difficult, or impossible as in the case of reptiles, to successfully prosecute those guilty of cruelty to animals.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO states that without these amendments, animals have less protection from harm and it is more difficult, or impossible as in the case of reptiles, to successfully prosecute those guilty of cruelty to animals.

DW/mew