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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/11  
 SPONSOR SJC LAST UPDATED 03/14/11 **HB** \_\_\_\_\_  
 SHORT TITLE Expanding Crimes of Cruelty to Animals **SB** CS/CS/348/aSJC  
 ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### 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 SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 348 allows the courts the leeway to punish offenders to less than 18 months.

#### Synopsis of Original Bill

The Senate Judiciary Committee substitute for the Senate Public Affairs Committee substitute for Senate Bill 348 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 under that person's custody or control.

The bill states that whoever commits cruelty to animals is guilty of a misdemeanor and shall be punished by imprisonment for a definite term of less than one year or payment of a fine not to exceed \$1,000, but not both.

Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be punished by 18 months imprisonment or payment of a fine not to exceed \$5,000, but not both.

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 punished by 18 months imprisonment or payment of a fine not to exceed \$5,000, but not both.

The bill also relates to the practice of veterinary medicine, requiring that the practice must be in accordance with commonly accepted veterinary practices in order 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. Criminal charges shall not be filed until after the board has made a determination.

The bill mandates psychological counseling for those convicted of extreme cruelty to animals.

The bill provides the following definitions:

- animal means captive invertebrates and all vertebrates except for humans and non captive snakes;
- captive means subject to habitual confinement and control by one or more persons;
- extreme cruelty to animals means a person intentionally or maliciously mistreating an animal or maliciously killing an animal without lawful justification.
- 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 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 or mental anguish.

## **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 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.

## **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 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.

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.

## **ADMINISTRATIVE IMPLICATIONS**

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

## **POSSIBLE QUESTIONS**

Why isn't mandate psychological counseling required for those convicted of cruelty to animals? The bill only requires those convicted of Extreme cruelty.