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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 Section 30-18-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-1) is repealed and a new Section 30-18-1 NMSA 1978 is enacted to read: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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6 February 19, 1999

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8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 385

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
18 HOUSE BILL 385

19 DO PASS.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HJ/HB 385

Page 10

4 Respectfully submitted,

8 _____
9 R. David Pederson, Chairman

11 Adopted _____

Not Adopted _____

12 (Chief Clerk)

(Chief Clerk)

14 Date _____

15
16 The roll call vote was 11 For 0 Against

17 Yes: 11

18 Excused: Luna

19 Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 385

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

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.

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"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; or

(2) overdriving, overworking, neglecting, abandoning or failing to provide necessary sustenance to an

1 animal under that person's custody or control.

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

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

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

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

15 D. Extreme cruelty to animals consists of a
16 person:

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

19 (2) cruelly killing an animal.

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

23 F. The court may order a person convicted for
24 committing cruelty to animals to participate in an animal
25 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

1 health disorder if, in the court's judgment, the mental health
2 disorder contributed to the commission of the criminal
3 offense. The offender shall bear the expense of participating
4 in an animal cruelty prevention program, animal cruelty
5 education program or psychological counseling ordered by the
6 court.

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

- 10 H. The provisions of this section do not apply to:
- 11 (1) fishing, hunting, falconry, taking and
 - 12 trapping, as provided in Chapter 17 NMSA 1978;
 - 13 (2) the practice of veterinary medicine, as
 - 14 provided in Chapter 61, Article 14 NMSA 1978;
 - 15 (3) rodent or pest control, as provided in
 - 16 Chapter 77, Article 15 NMSA 1978;
 - 17 (4) the treatment of livestock and other
 - 18 animals used on farms and ranches for the production of food,
 - 19 fiber or other agricultural products, when the treatment is in
 - 20 accordance with commonly accepted agricultural animal
 - 21 husbandry practices;
 - 22 (5) the use of commonly accepted rodeo
 - 23 practices;
 - 24 (6) research facilities, intermediate
 - 25 handlers, carriers and exhibitors licensed pursuant to the
 - provisions of 7 U.S.C. Section 2136; or
 - (7) other similar activities not otherwise

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1 prohibited by law.

2 I. If there is a dispute as to what constitutes
3 commonly accepted agricultural animal husbandry practices or
4 commonly accepted rodeo practices, the New Mexico livestock
5 board shall hold a hearing to determine if the practice in
6 question is a commonly accepted agricultural animal husbandry
7 practice or commonly accepted rodeo practice.

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

10 Section 2. A new section of Chapter 30, Article 18 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] SEIZURE OF ANIMALS--NOTICE. --

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

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

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

28 D. If the owner of the animal cannot be

1 determined, a written notice regarding the circumstances of
2 the seizure shall be conspicuously posted where the animal is
3 seized at the time the seizure occurs.

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

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

9 Section 3. A new section of Chapter 30, Article 18 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] DISPOSITION OF SEIZED ANIMALS. --

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

16 B. If the court finds that the seized animal is
17 being cruelly treated or that the animal's owner is unable to
18 adequately provide for the animal, the court shall not return
19 the animal to its owner and the court shall determine the
20 proper disposition for the animal.

21 C. Upon conviction the court shall place the
22 animal for adoption with an animal shelter or animal welfare
23 organization or provide for the humane destruction of the
24 animal."

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

"[NEW MATERIAL] COSTS. --

A. Upon conviction the defendant shall be liable

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1 for the cost of boarding the animal and all necessary
2 veterinary examinations and care provided to the animal.

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

7 Section 5. A new section of Chapter 30, Article 18 NMSA
8 1978 is enacted to read:

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

12 A. As used in this section:

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

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

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

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

(1) striking, beating, kicking, cutting,

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

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

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

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

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

24 G. Whoever commits harassment of a police dog,
25 police horse or fire dog is guilty of a misdemeanor and shall

1 be sentenced pursuant to the provisions of Section 31-19-1
2 NMSA 1978.

3 H. Whoever commits harassment of a police dog,
4 police horse or fire dog that results in bodily injury to a
5 person not an accomplice to the criminal offense is guilty of
6 a fourth degree felony and shall be sentenced pursuant to the
7 provisions of Section 31-18-15 NMSA 1978.

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

14 Section 6. REPEAL. -- Sections 30-18-2 and 30-18-2.1 NMSA
15 1978 (being Laws 1963, Chapter 303, Section 18-2 and Laws
16 1981, Chapter 226, Section 1) are repealed.

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

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