

CHAPTER 30. CRIMINAL OFFENSES
ARTICLE 18. ANIMALS

N.M. Stat. Ann. § 30-18-1 (2002)

§ 30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

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

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

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

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

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

E. Extreme cruelty to animals consists of a person:

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

(2) maliciously killing an animal.

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

G. 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.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. 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, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;

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

(6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or

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

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

K. The provisions of this section shall not be interpreted to prohibit cockfighting in New Mexico.

HISTORY: 1978 Comp., § 30-18-1, enacted by Laws 1999, ch. 107, § 1; 2001, ch. 81, § 1.

NOTES:

CROSS-REFERENCES. --For dog fighting, see 30-18-9 NMSA 1978. As to authority of livestock officers to arrest persons for violations of this article, see 77-2-9 NMSA 1978.

REPEALS AND REENACTMENTS. --Laws 1999, ch. 107, § 1 repeals 30-18-1 NMSA 1978, as enacted by Laws 1963, ch. 303, § 18-1, and enacts the above section, effective July 1, 1999. For provisions of former section, see 1994 Replacement Pamphlet.

THE 2001 AMENDMENT, effective June 15, 2001, inserted the Subsection A designation and renumbered the remaining Subsections accordingly and made related changes; and rewrote Paragraph I(6) which formerly read "research facilities intermediate handlers, carriers and exhibitors licensed pursuant to the provisions of 7 U.S.C. Section 2136; or".

MEANING OF "TORTURE" AND "TORMENT". --The words "torture" and "torment" are commonly defined to include every act, omission or neglect whereby unjustified physical pain and suffering or death is caused or permitted. *State v. Buford*, 65 N.M. 51, 331 P.2d 1110 (1958).

ANIMALS INCLUDED. --No legislative intent appears to restrict the sanction of this section to any particular class of animals. 1963-64 Op. Att'y Gen. No. 64-86.

The language of former 40-4-3, 1953 Comp., seemed to apply only to brute creatures and work animals, and the history showed that it was passed in relation to other laws governing livestock. *State v. Buford*, 65 N.M. 51, 331 P.2d 1110 (1958).

SECTION INAPPLICABLE TO WILD ANIMALS. --This section applies only to cruelty to domesticated animals and wild animals previously reduced to captivity, and under the "general-specific" rule of statutory construction, treatment of wild animals is presumed to be governed by the comprehensive hunting and fishing laws contained in Chapter 17, which therefore preempt this section as to such animals. *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23.

COCKFIGHTING. --Cruelty to animal statute (former 40-4-3, 1953 Comp.) was not passed with the intention of prohibiting such sports as cockfighting. *State v. Buford*, 65 N.M. 51, 331 P.2d 1110 (1958).

CRUEL SPORT. --Placing of a live coon in a shallow barrel which is swiveled to rotate around a pole when pushed, with the object of finding which hound dog can pull the coon out of the barrel in the shortest time, constitutes

cruelty to animals as defined in this section. 1963-64 Op. Att'y Gen. No. 64-86.