

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 70

BY SENATORS WELD, BOSO, PREZIOSO, CLINE, AND

TAKUBO

[Introduced January 10, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating
 2 to cruelty to animals; creating the felony offense of aggravated cruelty to animals;
 3 providing a criminal penalty for the offense; and defining a term.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Aggravated cruelty to animals; penalties; exclusions.

1 (a)(1) It is unlawful for any person to intentionally or knowingly: ~~or recklessly~~

2 (A) Cause serious bodily injury to an animal;

3 (B) Withhold any of the following which results in the serious injury or death of an animal;

4 (i) Proper sustenance, including food or water;

5 (ii) Shelter that protects from the elements of weather; or

6 (iii) Medical treatment necessary to sustain normal health;

7 (C) Failing to provide proper care to end the suffering of any animal;

8 (D) Abandon an animal to die without proper medical care;

9 (E) Leave an animal unattended and confined in a motor vehicle resulting in the death of
 10 the animal;

11 (2) Any person in violation of subdivision (1) of this subsection is guilty of a felony and,
 12 upon conviction shall be fined not less than \$1,000 nor more than \$3,000 or confined in a state
 13 correctional facility not less than one nor more than three years, or both fined and confined.

14 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or
 15 causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,
 16 is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility
 17 not less than one nor more than five years and be fined not less than \$1,000 nor more than
 18 \$5,000. For the purposes of this subsection, "torture" means an action taken for the primary
 19 purpose of inflicting pain.

20 (c) (1) It is unlawful for any person to recklessly:

- 21 (A) Mistreat an animal in cruel manner;
- 22 (B) Abandon an animal;
- 23 (C) Withhold:
- 24 (i) Proper sustenance, including food or water;
- 25 (ii) Shelter that protects from the elements of weather; or
- 26 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the
- 27 suffering of any animal;
- 28 (D) Abandon an animal to die; or
- 29 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to
- 30 or death of the animal is likely to result;
- 31 (2) It is unlawful for any person to intentionally, knowingly, or recklessly:
- 32 ~~(F)~~ (A) Ride an animal when it is physically unfit;
- 33 ~~(G)~~ (B) Bait or harass an animal for the purpose of making it perform for a person's
- 34 amusement;
- 35 ~~(H)~~ (C) Cruelly chain or tether an animal; or
- 36 ~~(I)~~ (D) Use, train or possess a domesticated animal for the purpose of seizing, detaining
- 37 or mistreating any other domesticated animal.
- 38 ~~(2)~~ (3) Any person in violation of subdivision (1) or (2) of this subsection is guilty of a
- 39 misdemeanor and, upon conviction thereof, shall be fined not less than \$300 nor more than
- 40 \$2,000 or confined in jail not more than six months, or both.
- 41 ~~(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or~~
- 42 ~~causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,~~
- 43 ~~is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less~~
- 44 ~~than one nor more than five years and be fined not less than \$1,000 nor more than \$5,000. For~~
- 45 ~~the purposes of this subsection, "torture" means an action taken for the primary purpose of~~
- 46 ~~inflicting pain.~~

47 ~~(e)~~ (d) A person, other than a licensed veterinarian or a person acting under the direction
48 or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes
49 to be administered to any animal participating in any contest any controlled substance or any
50 other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of
51 a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
52 \$2,000.

53 ~~(d)~~ (e) Any person convicted of a violation of this section forfeits his or her interest in any
54 animal and all interest in the animal vests in the humane society or county pound of the county in
55 which the conviction was rendered and the person is, in addition to any fine imposed, liable for
56 any costs incurred or to be incurred by the humane society or county pound as a result.

57 ~~(e)~~ (f) For the purpose of this section, the term "controlled substance" has the same
58 meaning ascribed to it by §60A-1-101(d) of this code.

59 ~~(f)~~ (g) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping
60 or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed
61 game farms if kept and maintained according to usual and accepted standards of livestock,
62 poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of
63 animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et*
64 *seq.*, and the regulations promulgated thereunder, as both statutes and regulations are in effect
65 on the effective date of this section.

66 ~~(g)~~ (h) Notwithstanding ~~the provisions of~~ subsection (a) of this section, any person
67 convicted of a second or subsequent violation of that subsection ~~(a)~~ is guilty of a misdemeanor
68 and, shall be confined in jail for a period of not less than ninety days nor more than one year,
69 fined not less than \$500 nor more than \$3,000, or both. The incarceration set forth in this
70 subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

71 ~~(h)~~ (i) (1) Notwithstanding any provision of this code to the contrary, no person who has
72 been convicted of a violation of the provisions of subsection (a) or (b) of this section may be

73 granted probation until the defendant has undergone a complete psychiatric or psychological
74 evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the
75 court to be indigent, he or she is responsible for the cost of the evaluation.

76 (2) For any person convicted of a violation of subsection (a) or (b) of this section, the court
77 may, in addition to the penalties provided in this section, impose a requirement that he or she
78 complete a program of anger management intervention for perpetrators of animal cruelty. Unless
79 the defendant is determined by the court to be indigent, he or she is responsible for the cost of
80 the program.

81 ~~(i)~~ (j) In addition to any other penalty which can be imposed for a violation of this section,
82 a court shall prohibit any person so convicted from possessing, owning or residing with any animal
83 or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen
84 years following entry of a felony conviction. A violation under this subsection is a misdemeanor
85 punishable by a fine not exceeding \$2,000 and forfeiture of the animal.

NOTE: The purpose of this bill is to create the felony offense of aggravated cruelty to animals. The bill creates a criminal penalty and defines a term.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.