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## F I S C A L I M P A C T R E P O R T

SPONSOR Ely ORIGINAL DATE 1/29/2017 LAST UPDATED \_\_\_\_\_ HB 210  
SHORT TITLE Cruelty to Animals Changes SB \_\_\_\_\_  
ANALYST Rogers \_\_\_\_\_

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$20.0	\$20.0	\$40.0	Recurring	Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 219.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

Law Office of the Public Defender (LOPD)

Board of Veterinary Medicine (BVM)

### SUMMARY

#### Synopsis of Bill

House Bill 210 amends the standards for cruelty to animals under Section 30-18-1, NMSA 1978. HB 210 adds an offense of cruelty to animals resulting in death or great bodily harm, which would be a fourth degree felony. HB 210 changes the standards for extreme cruelty to animals, and provides that the court must sentence a person convicted of extreme cruelty to animals to obtain psychological counseling. HB 210 also clarifies the exception for veterinary practice and would defer any dispute about commonly accepted veterinary practices to the board of veterinary medicine. Finally, HB 210 adds definitions to clarify the terms used in this section.

### FISCAL IMPLICATIONS

The Board of Veterinary Medicine would incur additional expenditures to its operating budget related to holding a hearing(s) to determine if the practice in question is a commonly accepted veterinary practice. The approximate costs of one hearing (\$10 thousand) would include: civil

attorney fees for hearing preparations, attendance at hearing(s) and the preparation of legal documents as required by the Board of Veterinary Medicine \$4.5 thousand; court reporter fees; \$3.5 thousand; publication fees; \$100; board members' per diem to attend hearing(s); \$650; board members' mileage to attend hearing(s); \$980; miscellaneous expenses \$270. Expenses would increase dependent on length of hearing.

The AOC explains HB 210 has the potential to increase caseloads in the courts 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. This Bill would also increase probation compliance monitoring requirements of the court for people found guilty of extreme cruelty to animals. The courts would have to order psychological counseling, then monitor and enforce compliance with this requirement, without the additional resources necessary to handle the increase. Furthermore, people in smaller, more rural districts may have difficulty obtaining the necessary counseling, depending on availability in their area. There will also be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

The LOPD analysis states it is “difficult to predict the number of cases of this sort that would be brought in any given year, although it does not appear there are many such charged. The dramatic proposed increase in the penalty for many charges is concerning: higher-penalty cases are more likely to go to trial. If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. The Associate Trial Attorney’s mid-point salary including benefits is \$93,154.46.”

LOPD goes on to state that “under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.”

## **SIGNIFICANT ISSUES**

AGO analysis states “the newly created Subsection I may create some evidentiary problems in a criminal trial. As drafted, it appears as if the Board of Veterinary Medicine would determine what constitutes ‘commonly accepted veterinary practices’ if that were in dispute. It is likely that in a criminal prosecution of a veterinarian for animal cruelty, this could potentially be the only disputed issue. The finding of the Board of Veterinary Medicine might be considered inadmissible hearsay in a criminal trial. Additionally, the Board’s findings would typically be under the legal standard of ‘clear and convincing’ whereas the State bears a higher burden in a criminal trial where the legal standard is ‘beyond a reasonable doubt.’”

AOC states:

The proposed amendment to Section 30-18-1(A) moves the lawful justification exception for cruelty to animals to the offense of extreme cruelty to animals and adds a reckless or intentional standard for any form of cruelty. The reckless standard would be defined as “acting with willful disregard of the welfare or safety of an animal and in a manner that endangers an animal.” In HB 210, lawful justification is defined as, “humanely destroying a sick or injured animal; or protecting a person or animal from death or injury due to an attack by another animal.” Theoretically, someone acting with willful disregard of the welfare or safety of an animal and in a manner that endangers or injures an animal while protecting a person or animal from death or could be found guilty of cruelty to animals. Furthermore, if that injury results in death or great bodily harm, that person could be found guilty of a fourth degree felony. This, and the applicability of the common law doctrine of self-defense, is an issue that could lead to lengthy and costly litigation and appeals without the added resources necessary to handle the increased workload in the courts.

The Law Office of the Public Defender submits the following analysis:

Replacing negligence with recklessness is more appropriate for criminal liability. See generally, State v. Chavez, 2007-NMCA-162, 143 N.M. 126. There are issues in the bill, however, with seeming overlaps between misdemeanor and felony liability that would reduce the clarity of the statute. The bill includes “reckless tormenting an animal” in the misdemeanor category while intentionally mistreating, which includes torturing, is a felony. Many juries will have trouble distinguishing those categories, likely leading to an increased number of charged felonies for animal mistreatment. While the desire for deterrence is understandable, felony behavior should be easily distinguishable and should be behavior that warrants incarceration in the penitentiary. For example, putting a mouse in a cage with a reptile in order to have the reptile eat that mouse might constitute “cruelty to animals that causes death or great bodily harm to the animal,” but should that behavior constitute a fourth degree felony?

[...] Does feeding a mouse to a snake qualify as an exception under Section H(7) (allowing “other activities not otherwise prohibited by law”). This is not clear, but should be made clear. Reviewer predicts these cases will often involve litigation of the meaning of H(7).

Subsection C makes it a fourth degree felony to commit any cruelty that causes death or great bodily harm, but does not include the “lawful justification” language. Subsection D(2) includes within extreme cruelty (also a fourth degree felony) “maliciously killing an animal without lawful justification.” Again, there might be some overlap and confusion in the interpretation of the two Subsections.

Also, there is treatment that is not veterinary. For example, pulling porcupine spines or cactus spines out of an animal would “torment” an animal within the meaning of Subsections A(1) and K(8), but the drafter probably did not intend such behavior to be included. Causing pain in order to help the animal could be added to lawful justifications.

[...] LOPD believes that numerous situations will arise that lead to felony prosecutions for behavior that should have been excluded. Reviewer would suggest substantial revision.