

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 436

BY SENATORS KIRKENDOLL, BOLEY, MULLINS

AND WALTERS

[Originating in the Committee on the Judiciary;

reported on February 12, 2016]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating
2 to animal cruelty; and defining adequate shelter for certain dogs and cats and giving
3 discretion in determining adequate shelter in certain circumstances.

Be it enacted by the Legislature of West Virginia:

1 That §61-8-19 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a)(1) It is unlawful for any person to intentionally, knowingly or recklessly;

2 (A) Mistreat an animal in a cruel manner;

3 (B) Abandon an animal;

4 (C) Withhold:

5 (i) Proper sustenance from the animal, including food or water;

6 (ii) ~~Shelter~~ Adequate shelter that protects the animal from the elements of weather; or

7 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the
8 suffering of any animal;

9 (D) Abandon an animal to die;

10 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to
11 or death of the animal is likely to result;

12 (F) Ride an animal when it is physically unfit;

13 (G) Bait or harass an animal for the purpose of making it perform for a person's
14 amusement;

15 (H) Cruelly chain or tether an animal; or

16 (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or
17 maltreating any other domesticated animal.

18 (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor
19 and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined
20 in jail not more than six months, or both.

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

27 (c) A person, other than a licensed veterinarian or a person acting under the direction or
28 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
29 be administered to any animal participating in any contest any controlled substance or any other
30 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a
31 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
32 \$2,000.

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

37 (e) For the purpose of this section:

38 (1) (A) "Adequate shelter" for a dog or cat, predominantly maintained outdoors, is a shelter
39 that is structurally sound and strong enough to block elements of weather, including protection
40 from extreme temperatures; constructed of materials that are impervious to moisture, including a
41 floor with a solid surface, such as a resting platform, pad, floor mat or a similar device, with a
42 minimum of three sides and a waterproof roof enabling the animal to remain dry and clean;
43 sufficient space to allow the animal adequate freedom of movement; and properly ventilated and
44 periodically cleaned to minimize health hazards.

45 (B) Notwithstanding any other provision in this section, any officer or agent charged with
46 enforcement of this section may consider all reasonable facts and circumstances in determining
47 whether a violation has occurred, even if the shelter does not meet the requirements of adequate
48 shelter as defined in paragraph (A) of this subdivision. The facts and circumstances which an
49 officer or agent may consider include, but are not limited to, the breed's need for shelter, the
50 quality of any shelter provided, the animal's actual need for shelter, the duties or function of the
51 breed and the animal's age.

52 (2) "Controlled substance" has the same meaning ascribed to it by subsection (d), section
53 one hundred one, article one, chapter sixty-a of this code.

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

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

66 (h)(1) Notwithstanding any provision of this code to the contrary, no person who has been
67 convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted
68 probation until the defendant has undergone a complete psychiatric or psychological evaluation
69 and the court has reviewed the evaluation. Unless the defendant is determined by the court to be
70 indigent, he or she is responsible for the cost of the evaluation.

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

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