

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 124

SENATORS CLEMENTS, WELD, AND BALDWIN, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on January 23, 2019]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating
2 to creating a felony offense for cruelty to an animal that causes bodily injury to or death of
3 the animal; and creating a felony offense for second and subsequent convictions of cruelty
4 to animals.

Be it enacted by the Legislature of West Virginia:

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, including food or water;

6 (ii) Shelter that protects 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 fined and confined. A person in violation of subdivision
21 (1) of this subsection that causes bodily injury to an animal or death of an animal, or a person
22 who has a second or subsequent conviction of a violation of subdivision (1) of this subsection, is
23 guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not
24 less than one nor more than five years and be fined not less than \$1000 nor more than \$5000.
25 For the purposes of this section, "bodily injury" has the same meaning as in §61-2-29(a)(2) of this
26 code.

27 (b) A person who intentionally tortures, ~~or~~ mutilates, or maliciously kills an animal, or
28 causes, procures, or authorizes any other person to torture, mutilate, or maliciously kill an animal,
29 is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility
30 not less than one nor more than five years and be fined not less than \$1,000 nor more than
31 \$5,000. For the purposes of this subsection, "torture" means an action taken for the primary
32 purpose of inflicting pain.

33 (c) A person, other than a licensed veterinarian or a person acting under the direction or
34 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
35 be administered to any animal participating in any contest any controlled substance or any other
36 drug for the purpose of altering or otherwise affecting said animal's performance, is guilty of a
37 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
38 \$2,000.

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

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

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

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

57 ~~(h)(g)(1)~~ Notwithstanding any provision of this code to the contrary, ~~no~~ a person who has
58 been convicted of a violation of the provisions of subsection (a) or (b) of this section may not be
59 granted probation until the defendant has undergone a complete psychiatric or psychological
60 evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the
61 court to be indigent, he or she is responsible for the cost of the evaluation.

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

67 ~~(†)~~ (h) In addition to any other penalty which can be imposed for a violation of this section,
68 a court shall prohibit any person so convicted from possessing, owning, or residing with any
69 animal or type of animal for a period of five years following entry of a misdemeanor conviction
70 and 15 years following entry of a felony conviction. A violation under this subsection is a
71 misdemeanor punishable by a fine not exceeding \$2,000 and forfeiture of the animal.