

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 78**

By Senators Weld and Woelfel

[Introduced January 11, 2023; 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 to  
 2 cruelty to animals; creating the felony offense of aggravated cruelty to animals; creating  
 3 the felony offense of malicious killing, torture, or mutilation of an animal; providing criminal  
 4 penalties for these offenses; modifying the elements of the existing offense of cruelty to  
 5 animals; and defining a term.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-19. Cruelty Aggravated cruelty to animals; malicious killing or torture; 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; or  
 9 (E) Leave an animal unattended and confined in a motor vehicle resulting in the death of  
 10 the animal.  
 11 (2) Any person who violates subdivision (1), subsection (a) of this section is guilty of a  
 12 felony and, upon conviction, shall be fined not less than \$1,000 nor more than \$3,000 or  
 13 imprisoned in a state correctional facility not less than one nor more than three years, or both fined  
 14 and confined.  
 15 (b) A person who intentionally tortures, or mutilates, or maliciously kills an animal, or  
 16 causes, procures, or authorizes any other person to torture, mutilate, or maliciously kill an animal,  
 17 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less

18 than one nor more than five years and be fined not less than \$1,000 nor more than \$5,000. For the  
19 purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting  
20 pain.

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

22 (A) Mistreat an animal in cruel manner;

23 (B) Abandon an animal;

24 (C) Withhold;

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

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

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

29 (D) Abandon an animal to die; or

30 (2) It is unlawful for any person to intentionally, knowingly, or recklessly:

31 ~~(F)~~ (A) Ride an animal when it is physically unfit;

32 ~~(G)~~ (B) Bait or harass an animal for the purpose of making it perform for a person's  
33 amusement;

34 ~~(H)~~ (C) Cruelly chain or tether an animal; or

35 ~~(I)~~ (D) Use, train, or possess a domesticated animal for the purpose of seizing, detaining,  
36 or maltreating any other domesticated animal.

37 ~~(2)~~ (3) Any person in violation of ~~subdivision (1)~~ subdivisions (1) or (2) of this subsection is  
38 guilty of a misdemeanor and, upon conviction, ~~thereof~~ shall be fined not less than \$300 nor more  
39 than \$2,000 or confined in jail not more than six months, or both fined and confined.

40 ~~(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or~~  
41 ~~causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, is~~  
42 ~~guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less~~  
43 ~~than one nor more than five years and be fined not less than \$1,000 nor more than \$5,000. For the~~

44 purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting  
45 pain

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

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

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

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

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

70 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 the  
80 program.

81 ~~(i)~~ (j) In addition to any other penalty which can be imposed for a violation of this section, a  
82 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 offenses of aggravated cruelty to animals and malicious killing, torture, or mutilation of an animal. It also modifies the grounds making up the existing offense of cruelty to animals. The bill creates a criminal penalties 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.