

The House Committee on Judiciary Non-civil offers the following substitute to HB 863:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to general provisions relative to offenses against public health and morals, so as to  
3 change provisions relating to cruelty to animals and aggravated cruelty to animals; to provide  
4 for and change definitions; to clarify provisions relating to justification; to provide for related  
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
9 general provisions relative to offenses against public health and morals, is amended by  
10 revising Code Section 16-12-4, relating to cruelty to animals, as follows:

11 "16-12-4.

12 (a) As used in this Code section, the term:

13 (1) 'Adequate care' shall include, but shall not be limited to, adequate food, adequate  
14 water, sanitary conditions, adequate ventilation, adequate shelter, and veterinary care  
15 consistent with the normal requirements and feeding habits of an animal's size, species,  
16 breed, age, and physical condition.

17 ~~(1)~~(2) 'Animal' shall not include any fish nor shall such term include any pest that might  
18 be exterminated or removed from a business, residence, or other structure.

19 ~~(2) 'Conviction' shall include pleas of guilty or nolo contendere or probation as a first~~  
20 ~~offender pursuant to Article 3 of Chapter 8 of Title 42 and any conviction, plea of guilty~~  
21 ~~or nolo contendere, or probation as a first offender for an offense under the laws of the~~  
22 ~~United States or any of the several states that would constitute a violation of this Code~~  
23 ~~section if committed in this state.~~

24 (3) 'Malice' means:

25 (A) An actual intent, which may be shown by the circumstances connected to the act,  
26 to cause the particular harm produced without justification or excuse; or

27 (B) The wanton and willful doing of an act with an awareness of a plain and strong  
 28 likelihood that a particular harm may result.

29 ~~(3) 'Willful neglect' means the intentional withholding of food and water required by an~~  
 30 ~~animal to prevent starvation or dehydration.~~

31 (b) A person commits the offense of cruelty to animals when he or she ~~causes death or~~  
 32 ~~unjustifiable physical pain or suffering to any animal by an act, an omission, or willful~~  
 33 ~~neglect:~~

34 (1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or  
 35 omission; or

36 (2) Having intentionally exercised care and control of an animal, fails to provide  
 37 adequate care to such animal.

38 ~~(c) Any person convicted of a violation of this subsection~~ the offense of cruelty to animals  
 39 shall be guilty of a misdemeanor; provided, however, that:

40 ~~(1) Any person who is convicted of a second or subsequent violation of this subsection~~  
 41 ~~shall be punished by imprisonment not to exceed 12 months, a fine not to exceed~~  
 42 ~~\$5,000.00, or both; and~~

43 ~~(2) Any any person who is convicted of a second or subsequent violation of this~~  
 44 ~~subsection which results in the death of an animal~~ has had a prior adjudication of guilt for  
 45 the offense of cruelty to animals, or an adjudication of guilt for the commission of an  
 46 offense under the laws of any other state, territory, possession, or dominion of the United  
 47 States, or of any foreign nation recognized by the United States, which would constitute  
 48 the offense of cruelty to animals if committed in this state, including an adjudication of  
 49 a juvenile for the commission of an act, whether committed in this state or in any other  
 50 state, territory, possession, or dominion of the United States, or any foreign nation  
 51 recognized by the United States, which if committed by an adult would constitute the  
 52 offense of cruelty to animals, upon the second or subsequent conviction of cruelty to  
 53 animals shall be guilty of a misdemeanor of a high and aggravated nature ~~and shall be~~  
 54 ~~punished by imprisonment for not less than three months nor more than 12 months, a fine~~  
 55 ~~not to exceed \$10,000.00, or both, which punishment shall not be suspended, probated,~~  
 56 ~~or withheld.~~

57 ~~(c)(d)~~ (d) A person commits the offense of aggravated cruelty to animals when he or she  
 58 ~~knowingly and maliciously:~~

59 (1) Maliciously causes the death or physical harm to of an animal;

60 (2) Maliciously causes physical harm to an animal by depriving it of a member of its  
 61 body, by rendering a part of such animal's body useless, or by seriously disfiguring such  
 62 animal animal's body or a member thereof;

63 (3) Maliciously tortures an animal by the infliction of or subjection to severe or  
 64 prolonged physical pain;

65 (4) Maliciously administers poison to an animal, or exposes an animal to any poisonous  
 66 substance, with the intent that the substance be taken or swallowed by the animal; or

67 (5) Having care and control of an animal, maliciously fails to provide adequate care to  
 68 such animal to the extent that the death of such animal results, or a member of its body  
 69 is rendered useless, or its body or a member thereof is seriously disfigured.

70 (e) Any A person convicted of the offense of aggravated cruelty to animals shall be guilty  
 71 of a felony and shall be punished by imprisonment for not less than one nor more than five  
 72 years, a fine not to exceed \$15,000.00, or both; provided, however, that any person who  
 73 is convicted of a second or subsequent violation of this subsection has had a prior  
 74 adjudication of guilt for the offense of aggravated cruelty to animals, or an adjudication of  
 75 guilt for the commission of an offense under the laws of any other state, territory,  
 76 possession, or dominion of the United States, or of any foreign nation recognized by the  
 77 United States, which would constitute the offense of aggravated cruelty to animals if  
 78 committed in this state, including an adjudication of a juvenile for the commission of an  
 79 act, whether committed in this state or in any other state, territory, possession, or dominion  
 80 of the United States, or any foreign nation recognized by the United States, which if  
 81 committed by an adult would constitute the offense of aggravated cruelty to animals, upon  
 82 the second or subsequent conviction of aggravated cruelty to animals shall be punished by  
 83 imprisonment for not less than one nor more than five ten years, a fine not to exceed the  
 84 amount provided by Code Section 17-10-8 \$100,000.00, or both.

85 ~~(d)~~(f) Before sentencing a defendant for any conviction under this Code section, the  
 86 sentencing judge may require psychological evaluation of the offender and shall consider  
 87 the entire criminal record of the offender.

88 ~~(e)~~(g) The provisions of this Code section shall not be construed as prohibiting conduct  
 89 which is otherwise permitted under the laws of this state or of the United States, including,  
 90 but not limited to, agricultural, animal husbandry, butchering, food processing, marketing,  
 91 scientific; research, training, medical, zoological, exhibition, competitive, hunting,  
 92 trapping, fishing, wildlife management, or pest control practices or the authorized practice  
 93 of veterinary medicine nor to limit in any way the authority or duty of the Department of  
 94 Agriculture, Department of Natural Resources, any county board of health, any law  
 95 enforcement officer, dog, animal, or rabies control officer, humane society, veterinarian,  
 96 or private landowner protecting his or her property.

97 ~~(f)(1)~~ Nothing in this Code section shall be construed as prohibiting a person from:

98 ~~(A) Defending his or her person or property, or the person or property of another, from~~  
 99 ~~injury or damage being caused by an animal, or~~

100 ~~(B) Injuring or killing an animal reasonably believed to constitute a threat for injury~~  
101 ~~or damage to any property, livestock, or poultry.~~

102 (h)(1) A person shall be justified in injuring or killing an animal when and to the extent  
103 that he or she reasonably believes that such act is necessary to defend against an  
104 imminent threat of injury or damage to any person, other animal, or property.

105 (2) A person shall not be justified in injuring or killing an animal under the  
106 circumstances set forth in paragraph (1) of this subsection when:

107 (A) The person being threatened is attempting to commit, committing, or fleeing after  
108 the commission or attempted commission of a felony; or

109 (B) The person or other animal being threatened is attempting to commit or committing  
110 a trespass or other tortious interference with property.

111 (2)(3) The method used to injure or kill such an animal under the circumstances set forth  
112 in paragraph (1) of this subsection shall be designed to be as humane as is possible under  
113 the circumstances. A person who humanely injures or kills an animal under the  
114 circumstances indicated in this subsection shall incur no civil or criminal liability or  
115 criminal responsibility for such injury or death."

116 **SECTION 2.**

117 All laws and parts of laws in conflict with this Act are repealed.