

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Sexual Activities Involving Animals

SPONSOR(S): Snyder and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Thompson	Reese
2) Public Safety & Domestic Security Policy Committee			
3) Criminal & Civil Justice Policy Council			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

A 1971 Florida Supreme Court decision<sup>1</sup> voided the then existing law<sup>2</sup> covering bestiality on the grounds that its vagueness violated the state constitution. As a result, current Florida law<sup>3</sup> does not specifically prohibit sexual activities involving animals and people. The bill creates specific language prohibiting persons from knowingly engaging in sexual conduct or sexual contact with an animal.

The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing such acts for commercial or recreational purposes. The bill provides for the exemption of accepted animal husbandry (breeding and raising) practices or accepted veterinary medical practices.

Violations are a third degree felony punishable by a \$5000 fine and up to 5 years in jail plus applicable administrative fees and court costs. Habitual violent felony offenders may be sentenced to 10 years in jail without being eligible for parole for at least 5 years.

Although the bill creates a new third degree felony, the Department of Corrections anticipates an insignificant fiscal impact. It is impossible to forecast how many violations might occur, thus the fiscal impact on state and local government is unknown. Associated medical and insurance costs to the private sector may be reduced. (See Fiscal Comments section for additional details)

This bill's effective date is October 1, 2009.

<sup>1</sup> 257 So. 2d 21; 1971 Fla. LEXIS 3074

<sup>2</sup> s. 800.01, F.S.

<sup>3</sup> s. 828.12, F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0273.ANR.doc

DATE: 2/27/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

According to the Humane Society of the United States (HSUS), animal sexual abuse, often referred to as bestiality, is the sexual molestation of an animal by a human. This type of animal abuse includes a wide range of behaviors that may result in killing or injuring an animal for sexual gratification. Animal sexual abuse may also be referred to as zoophilia, bestiality, zooerasty, or sodomy.

Animal sexual abusers defend their actions by claiming their victims consent, even though these acts usually require physical restraint.<sup>4</sup> This is similar to adult sexual activity with a child where consent is presumed to be impossible.<sup>5</sup> Animals are unable to communicate consent, or speak out about the abuse.<sup>6</sup>

Not all cases of animal sexual abuse involve physical injury to the animal, but sexual molestation of an animal by a human is classified as abuse. Psychologists have found that bestiality is harmful even in cases when physical harm to an animal does not occur.<sup>7</sup>

The health risks to abused animals include, but are not limited to the following:

- Vaginitis,
- Urinary tract infections,
- Bladder infections,
- Pyometra (disease of the uterus),
- Spread of brucellosis (disease that can infect humans),
- Mammary cancer,
- Ovarian cancer,
- Ovarian cysts,
- Prostatic enlargement or infection,
- Testicular and prostatic cancers,

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<sup>4</sup> Ascione, Frank R., Ph.D.; (1993). Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychology. *Anthrozoos*, 6 (4): 226-247.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

- Behavioral problems, and
- Various other diseases that can infect humans.

Research indicates a connection between animal sexual abuse and other types of violent crimes. Forty percent of the perpetrators of sexually motivated homicides who had been sexually abused as children also reported that they sexually abused animals.<sup>8</sup>

In 2007, a sexual behavior research project<sup>9</sup> found that individuals who participated in sexually problematic behaviors such as bestiality, fetishism, voyeurism, having affairs, and using pornography had an elevated likelihood of starting to sexually abuse children. The study found bestiality as the strongest predictor of child sexual abuse. According to the study, the younger a person is when they begin having sex with animals, the greater the risk that they will start to sexually abuse children at a later point in time.

## Present Situation

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on the grounds that the wording is no longer relevant to society or understandable to the average citizen. These repeals have inadvertently caused animal sexual abuse to be legalized in some states. Such is the case in Florida.

A 1971 Florida Supreme Court decision<sup>10</sup> voided the then existing law<sup>11</sup> covering bestiality on the grounds that its vagueness violated the state constitution. The statute, which was drafted in 1868, read as follows: "Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years." The ruling stated that the language was vague, thus it could entrap unsuspecting citizens.

As a result, current Florida law<sup>12</sup> does not specifically prohibit sexual activities involving animals and people. It only prohibits a person from intentionally committing an act to an animal that results in injury or excessive or repeated infliction of pain. Consequently, people who are caught in the act of sexual intercourse with an animal generally cannot be charged with or convicted of a sex-related crime. Such defendants must be charged with far less serious crimes like disorderly conduct or indecent exposure. Violations of this section are a felony of the third degree, punishable by a fine of not more than \$10,000 or 5 years in jail, or both.

## Proposed Changes

HB 273 creates section 828.126, F.S., prohibiting persons from knowingly engaging in sexual conduct or sexual contact with an animal. In order to prevent speculation as to the statutory meaning, the bill defines the following prohibited acts:

- Sexual conduct -- as touching or fondling directly or indirectly, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.
- Sexual contact -- as any contact, between the mouth, sex organ, or anus of a person and an animal, or any penetration of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

<sup>8</sup> Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. *Journal of Interpersonal Violence*, 1: 273-287.

<sup>9</sup> Association for the Treatment of Sexual Abusers, 26<sup>th</sup> Annual Conference, San Diego, California; Sexual Behavior Predictors of Sexual Abuse of Children

<sup>10</sup> 257 So. 2d 21; 1971 Fla. LEXIS 3074

<sup>11</sup> s. 800.01, F.S.

<sup>12</sup> s. 828.12, F.S.

The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts for commercial or recreational purposes. The bill provides for the exemption of animal husbandry or veterinary medical practices that are generally accepted within their profession.

Violations are a third degree felony punishable by a \$5,000 fine and up to 5 years in jail plus applicable administrative fees and court costs. Habitual violent felony offenders may be sentenced to 10 years in jail without being eligible for parole for at least 5 years. Offenders that are found to be violent career criminals may be sentenced to 15 years in jail with a mandatory minimum term of 10 years and are not eligible for any form of early release other than pardon or executive clemency.<sup>13</sup>

**B. SECTION DIRECTORY:**

Section 1. Creates s. 828.126, F.S.; providing for definitions of “sexual conduct” and “sexual contact”; prohibiting such contact with an animal; prohibiting specified related activities such as aiding, abetting, permitting such activity to be conducted, or organizing for commercial or recreational purposes; providing penalties; providing an exemption for certain husbandry and veterinary practices.

Section 2. Providing an effective date of October 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Enforcement of bestiality violations may result in the assessment of penalties and court costs. However, because it is impossible to forecast how many violations might occur, the fiscal impact on local governments is unknown.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that the bill may increase the health of animals in Florida by reducing physical injuries, behavioral problems and deaths of animals, associated medical and insurance costs to the private sector may be decreased.

**D. FISCAL COMMENTS:**

According to the Department of Corrections (DOC), although the bill creates a new third degree felony, DOC records reflect there have been no admissions to prison or supervision in the last two years for the closest felony offense similar to this criminal activity. Hence, the DOC anticipates an insignificant fiscal impact. Also, the 2009 Criminal Justice Impact Conference heard HB 273 on February 25, 2009, and determined it would have an insignificant impact on prison beds.

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<sup>13</sup> s. 775.084, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, people caught in the act of sexual intercourse with an animal may be charged with lesser crimes like disorderly conduct or indecent exposure and fined up to \$10,000. The bill prohibits sexual activities involving animals but only authorizes a \$5,000 fine for violations. The bill appears to remedy the justiciable limitations of current law but may create a \$5,000 reduction in penalties for violations prohibiting sexual activities involving animals.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES