

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 504

INTRODUCER: Senator Brandes and others

SUBJECT: Animal Cruelty

DATE: March 13, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 504 specifies that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. The bill also provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill designates misdemeanor cruelty to animals as “animal cruelty” and designates felony cruelty to animals as “aggravated animal cruelty.”

The animal fighting or baiting section (s. 828.122, F.S.) is amended to include a list of paraphernalia generally associated with fighting dogs and cocks. The bill specifies certain factors that a judge or jury should consider in determining whether any of the objects in the list are actually fighting or baiting paraphernalia.

Finally, the bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, F.S.

This bill substantially amends sections 828.12, 828.122 and 895.02 of the Florida Statutes.

## II. Present Situation:

### Cruelty to Animals

Section 828.12(1) and (2), F.S., provides the following:

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a first degree misdemeanor or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a third degree felony or by a fine of not more than \$10,000, or both.

A circuit judge in the First Judicial Circuit recently held that, “a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions.” The court also stated, “the confinement of animals without sufficient food, water, or exercise charges are not distinguishable into separate acts merely because of an allegation that individual animals are kept in separate pens.”<sup>1</sup> Based upon the court’s ruling, acts of animal cruelty committed upon more than one animal would have to be prosecuted as one act despite the fact that more than one animal suffered the cruelty.

### Animal Fighting or Baiting

Section 828.122(3), F.S., makes it a third degree felony for a person to:

- (3)(a) Bait, breed, train, transport, sell, own, possess, or use any wild or domestic animal for the purpose of animal fighting or baiting;
- (b) Own, possess, or sell equipment for use in any activity in paragraph (a).
- (c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);
- (d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- (e) Performing any service or act to facilitate animal fighting or baiting, including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting;
- (f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;
- (g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or

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<sup>1</sup> State v. Kervin, Sr. Case No.000887A, (Fla. 1st Cir. Ct., 2012).

(h) Attending the fighting or baiting of animals.

Notwithstanding any provision of this subsection to the contrary, possession of the animal alone does not constitute a violation of this section. ...

(9) This section shall not apply to:

(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided s. 828.12 is not violated.

(b) Any person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission.

(c) Any person using animals to work livestock for agricultural purposes.

(d) Any person violating s. 828.121.

(e) Any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.

(10) This section shall not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.

Because animal fighting is not generally done in open view these cases have been difficult to investigate and prove beyond a reasonable doubt. In 2010, the 4th District Court of Appeal overturned an animal fighting conviction in the case of *Rodriguez v. State*, 29 So.3d 357 (Fla. 4th DCA 2010). The court ruled that the prosecution failed to adduce sufficient evidence to convict the defendant of animal fighting or baiting. This case involved nearly 100 cocks and game fowl.

Since law enforcement did not witness the defendant actually fighting or baiting the animals to fight, the evidence presented at trial was purely circumstantial evidence. The evidence included paraphernalia commonly used in fighting birds. The defendant was able to explain his possession of the evidence – metal spurs, clippers and glue sticks (often used to trim the natural spur and attach the metal spur), sparring muffs (protect the handler from the spur), duct tape (to protect beaks), various vitamins, ointments, hormones, medications, needles and blood-stop. The court required evidence of actual fighting or baiting, presumably an eyewitness account, and without an eyewitness the state was unable to refute the defendant's testimony that the birds were pets.<sup>2</sup>

A detective from the Collier County Sheriff's Office Organized Crime Bureau reports that animal fighting activities happen frequently and it is difficult to document all cases due to the underground and secretive nature of the operations. He further states that since the 2010 *Rodriguez* case, it has been almost impossible to investigate and prosecute complaints of animal fighting or associated effects.<sup>3</sup>

Subsequent to the *Rodriguez* case being decided, the Organized Crime Bureau received many animal fighting reports, but according to the detective, the state attorney's office will only prosecute if the fighting is actually observed. He further claims that the original law (s. 828.122, F.S.) was intended to prosecute offenders with evidence such as gaffs, spurs or any other

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<sup>2</sup> *Rodriguez v. State*, 29 So.3d 357 (Fla. 4th DCA 357).

<sup>3</sup> Staff Analysis, Senate Bill 2032, 2011 Legislative Session.

associated animal fighting paraphernalia. Now, the Collier County detective reports that it is virtually impossible to charge any such cases.<sup>4</sup>

At times the Fish and Wildlife Commission (FWC) receives calls about animal fighting as well. The FWC completed a Computer Aided Dispatch (CAD) search from January 1, 2005 through December 31, 2010. The Commission reported eight total calls relating to animal fighting: four related to dogs and four related to cock fighting.<sup>5</sup>

### **Racketeer Influenced and Corrupt Organization (RICO) Act**

It is a first degree felony, ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart to violate Florida's RICO statute for a person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- Who is employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- To conspire or endeavor to violate any of the above-described provisions.

Section 895.02, F.S., defines the term "racketeering activity," in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S.

There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide prosecution.<sup>6</sup>

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<sup>4</sup> *Id.*

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

<sup>6</sup> 16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason.

### III. Effect of Proposed Changes:

The bill designates a violation of s. 828.12(1), F.S., as “animal cruelty,” and a violation of s. 828.12(2), F.S., as “aggravated animal cruelty.”

The bill adds a new subsection (3) to s. 828.12, F.S., specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill amends s. 828.122, F.S., to add “paraphernalia” to the list of items it is unlawful to own, possess, or sell if used in animal fighting or baiting activities. The bill also specifies that the terms “equipment” and “paraphernalia” include, but are not limited to:

- A pen, pit, ring, or enclosure;
- A gaff, sparring glove, muff, blade, slasher, or other implement designed to be attached to a bird in the location of its natural spurs;
- A betting slip, a document or record relating to a fight, training and fighting literature, or a fight trophy or award; and
- A cat mill, slat mill, treadmill, jenny, rape stand, spring pole, flirt pole, break stick, supplement, drug, or scale when found in combination with or in proximity to any other item listed above.

This list includes equipment and paraphernalia often found in conjunction with dog or cock fighting.

In determining whether an object is animal fighting or baiting paraphernalia, the bill requires a court, other authority, or jury to consider the following, in addition to all other logically relevant evidence:

- Statements by the owner or by anyone in control of the object concerning its use;
- The proximity of the object, in time and space, to a violation of s. 828.122(3), F.S.;
- The proximity of the object to an animal fight;
- The existence of any blood on the object;
- Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver the object to a person who he or she knows, or should reasonably know, intends to use the object to facilitate a violation of s. 828.122, F.S.;
- Instructions, oral or written, provided with the object concerning its use;
- Descriptive materials accompanying the object which explain or depict its use;
- Any advertising concerning the object’s use;
- The manner in which the object is displayed for sale;
- The existence and scope of legitimate uses for the object in the community; and
- Expert testimony concerning the object’s use.

Adding a listing of paraphernalia that is generally associated with animal fighting and requiring that the evidence be evaluated as it relates to other relevant factors, could help prosecutors get these cases to the fact-finder (judge or jury) to decide if the case can be proven beyond a reasonable doubt.

Finally, the bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections reports that there have been no admissions to prison under s. 828.12, F.S., during the last three fiscal years. However, it is uncertain if the modifications made in the bill will lead to prison admissions. The following chart reflects the number of admissions to community supervision during the last three fiscal years.

Primary Offense Description	Supervision Admission Years		
	FY 09/10	FY 10/11	FY 11/12
Tortures Animals w/Intent	73	53	89

Prison bed impact will be determined by the Criminal Justice Impact Conference at its next meeting.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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