

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Dangerous Dogs

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill redefines the term “dangerous dog”; moves the process for a hearing on a dangerous dog classification to the county court; limits the application of dangerous dog controls pending final resolution; requires owners from other jurisdictions to notify animal control authority of the dangerous dog when moved to a new jurisdiction; provides penalties for dog owners allowing their dogs to run as a pack if the pack injures a person; and provides an effective date of July 1, 1998.

This bill substantially amends the following sections of the Florida Statutes: 767.11, 767.13, 767.12, and 784.05.

II. Present Situation:

A. Dangerous Dogs

Currently, s. 767.11, F.S., defines a “dangerous dog” as a dog that, according to the records of the appropriate authority:

- Has aggressively bitten, attacked, endangered, or inflicted severe injury to a human;
- Has more than once severely injured or killed a domestic animal while off its owner’s property;
- Has been used in dog fighting or is trained for dog fighting; or
- Has, unprovoked, chased, or approached a person in a menacing fashion or in apparent attitude of attack, if sworn to by a person.

The definition of “dangerous dog” is of import in s. 767.13, F.S., which provides that a dog owner is guilty of a first-degree misdemeanor if the owner’s dog has been previously declared

dangerous and the dog attacks or bites a person or a domestic animal without provocation, and that a dog owner is guilty of a third-degree felony if their dog has previously been declared dangerous and attacks and causes severe injury to or the death of any human. In either of the above circumstances, such a dog is to be immediately confiscated by an animal control authority, placed in quarantine, if necessary, or impounded for 10 business days after the owner is given written notification, during which time the owner may request a hearing under s. 767.12, F.S.

Section 767.13, F.S., also provides that the dog is to be destroyed in an expeditious manner, that the owner is to pay for all boarding costs and other fees to house the dog during any appeal procedure, and that the dog may not be destroyed while the appeal is pending. An owner is not guilty of any crime under this section if their dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack.

In addition, the section provides that even if a dog that has not been declared dangerous, but causes severe injury to or death of any human, the dog will be confiscated by an animal control authority and is to be held for 10 business days, pending the owner's request for a hearing, and thereafter destroyed. An owner is guilty of a second-degree misdemeanor if the owner had prior knowledge of the animal's dangerous propensities, yet "demonstrated a reckless disregard" for such propensities under the circumstances.

Section 767.12, F.S., provides that an animal control authority is to investigate reported incidents involving a suspected dangerous dog. A dog that is the subject of such an investigation is to be kept confined by the owner and may not be relocated or have its ownership transferred pending the outcome of the investigation. This section provides an exclusion from the classification if the threat, injury, or damage was sustained by a person who was unlawfully on the property, harassing the dog or its owner, or if the dog was protecting a human from an unjustified attack.

After investigation, the animal control authority is to make an initial determination (a "sufficient cause finding") whether to classify the dog as dangerous. The animal control authority is to provide written notice to the owner, and the owner may request a hearing, the procedures of which are to be established by the local governing authority. After the hearing, if the dog is classified as a dangerous dog, the animal control authority must provide written notice to the owner, and the owner may file a written request for a hearing in the county court to appeal the classification.

Within 14 days after the classification as a dangerous dog by the animal control authority or the classification is upheld by the county court on appeal, the owner must register the dog and renew the certificate annually. A fee may be imposed for the certificate, and to obtain a certificate, an owner must show that: the owner is 18 years of age; the dog is currently vaccinated for rabies; the owner has a proper enclosure to confine the dog and has posted warning signs; and the dog has permanent identification (such as a tattoo or electronic implantation).

The owner is to notify the animal control authority if the dangerous dog is loose, has bitten a human or attacked another animal, is sold, dies, or moved. If sold or given away, the owner is to

provide the animal control authority with the name address and telephone number of the new owner. The new owner must comply with all requirements of this statute, and must notify the animal control authority in the new jurisdiction. The dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Hunting dogs are exempt from the dangerous dog provisions when engaged in a legal hunt, training, or exhibition. Dogs used by law enforcement are exempt as well. Any violation of this statute is a noncriminal infraction, punishable by a fine of not more than \$500.

B. Cruelty to Animals

Section 828.12, F.S., currently provides that any person who treats any animal in a cruel or inhumane manner is guilty of a first-degree misdemeanor. 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 is guilty of a third-degree felony. This section also provides that veterinarians are immune from criminal or civil liability for their part in an investigation of cruelty to animals.

Section 828.073, F.S., provides a mechanism by which any law enforcement officer or any agent appointed under s. 828.03, F.S., may lawfully take custody of any animal found neglected or cruelly treated by removing the animal. If the animal is seized, the officer or agent must provide for the animal until a court determines that either:

- The owner is able to provide adequately for the animal and the animal is to be returned; or
- The owner is unable or unfit to care for the animal, in which case the court may order the animal to be sold at a public auction or be destroyed or disposed of as the local animal control authority deems fit.

A court may order that other animals that are in the custody of the owner that were not seized by the officer or agent be turned over to the officer or agent, and may enjoin the owner's further possession or custody of other animals.

C. Culpable Negligence

Section 784.05, F.S., currently provides that any person who, through culpable negligence, exposes another person to personal injury or inflicts actual personal injury on another commits a second-degree misdemeanor, punishable by up to a year imprisonment, or a fine of up to \$1000. The statute currently provides an upgraded penalty (a third-degree felony) for violating the above by storing or leaving a loaded firearm within the reach or easy access of a minor if the minor inflicts injury or death upon himself or herself or another. This section provides exceptions, provides time limitations with regard to the arrest of a family member under this section, and defines "minor" as one less than 16 years of age.

III. Effect of Proposed Changes:

A. Culpable Negligence

The bill amends the culpable negligence statute by creating an offense relating to a “pack of dogs.” The bill makes it unlawful for a person to knowingly permit a dog or dogs owned by that person to run at large as a pack of dogs when the pack of dogs inflicts significant injury or death to a person.

The type of injury the dogs cause determines the offense severity. If the pack of dogs inflicts significant injury on a person, the offense is a first-degree misdemeanor. If the pack of dogs inflicts injuries which cause the death of a person, the offense is a third-degree felony. However, the bill does not place this new offense in the offense severity ranking chart for purposes of the sentencing guidelines. An unranked third-degree felony is placed in level 1, the least severe placement. Consequently, a person with no prior criminal history who is convicted of this offense would not “score” a state prison sentence.

The bill requires ownership of the dogs. Ownership is not defined, but would probably not be construed to include a person who has temporary custody or control over a dog.

The bill does not define what it means for dogs to “run at large.” In the definition of “pack of dogs,” the meaning of the phrase “engaged in the same activity” is unclear.

The bill requires that significant injury or death *be inflicted by the pack of dogs*. However, as defined in the bill, “pack of dogs” means more than two dogs. Consequently, when significant injury or death is inflicted by *one or two* dogs in a pack, this bill will have no effect. Proof of causation of the injuries will be difficult. Also, the bill will not have an effect if the dogs inflict less than significant or no injuries. Finally, if no one person owns more than two of the dogs, the bill will have no effect. Presumably, the existing culpable negligence statute would apply in these circumstances.

The bill requires the owner to *knowingly permit* the dog or dogs to run at large as a pack. These elements could be construed to require that the owner take some action to release the dogs to run at large. Although the bill places the new offense within the culpable negligence statute, the elements requiring the owner to *knowingly permit* the dogs to run in a pack will not capture the situation where an owner negligently creates the circumstances which allow the dogs to escape confinement.

B. Dangerous Dogs

The bill amends s. 767.11, F.S., by altering one of four possible criteria for defining a “dangerous dog.” Current statute defines a dog as a dangerous dog if it “more than once” severely injured or killed a domestic animal while off the owner’s property. The bill changes this to “without provocation” severely injured or killed a domestic animal while off the owner’s property.

The bill amends s. 767.12, F.S., to alter the hearing and appeal process regarding the classification of dangerous dogs. Currently, the animal control authority makes an initial determination as to whether there is sufficient cause to classify a dog as dangerous, with an opportunity for the owner to have a hearing prior to a final determination. The hearing must be held no more than 21 days after receipt of request from the owner. After a dog is classified as dangerous, the owner may file for an appeal hearing in county court.

The bill deletes all provisions relating to the hearing by the local animal control authority to determine whether a dog is dangerous. Instead, the bill provides that the animal control authority may declare a dog dangerous, and the first opportunity for the owner to have a hearing is a hearing in county court to challenge this declaration. The county court hearing must be held within 21 days after the owner makes the request for the hearing or as soon thereafter as is practical. The owner must confine the dog pending the final resolution of the matter, however, the animal control authority may not impose any of the dangerous dog requirements relating to registration of the dog or further restrictions on the freedom of the dog until the county court case is resolved. The authority may, however, impound the dog.

The current statute provides that when a dangerous dog is sold or given away, the new owner must comply with all requirements of the statute and “implementing” local ordinances. The bill changes this to “applicable” local ordinances. The bill further requires that the owner of an animal classified as dangerous or the owner of a dog that is subject to similar restrictions imposed by a jurisdiction outside this state must also comply with the statute and local ordinances. The animal control authority must be notified by the owner of a dangerous dog so classified within this state or in another jurisdiction outside the state that the dog is in its jurisdiction.

The current statute provides that hunting dogs are exempt from the statute when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from the provisions of this act when engaged in any legal procedures. However, such dogs at all other times in all other respects shall be subject to this and local laws. Dogs that have been classified as dangerous shall not be used for hunting purposes. The bill also exempts dogs from the provisions of this statute when engaged in any legal herding of cows or hogs, when the dog is protecting its young, or when the dog is protecting its food.

The bill amends s. 767.13, F.S., to conform to the new hearing provisions. Current statute provides that the owner of a dog that has been declared dangerous will be responsible for payment of all boarding costs to house the animal “during any appeal procedure.” The bill changes this time period to “pending final resolution.”

C. Effective Date

The bill takes effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 4 of the bill deletes the current process for a hearing before the animal control authority after the authority has notified the owner that sufficient cause exists for a finding that the dog is dangerous, and deletes the “appeal” to county court after the animal control authority determines a dog is dangerous. This may increase the number of county court hearings.

VI. Technical Deficiencies:

The definition of “pack of dogs” is unworkable.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
