

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 360

SPONSOR: Criminal Justice Committee and Senator Saunders

SUBJECT: Cruelty to Animals

DATE: March 13, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends the cruelty to animal’s statute, s. 828.12, F.S., to include deprivation of medical attention and sanitation in subsection (1), and provides for minimum mandatory penalties for violations of subsection (2). The bill also specifically exempts certain acts from being prosecuted as animal cruelty under s. 828.12, F.S.

This bill substantially amends or reenacts the following sections of the Florida Statutes: 828.12, 550.2415, 828.122, 828.17, 828.29, 943.051, 985.212 and 921.0022

II. Present Situation:

Under the current provisions of s. 828.12(1), F.S., a person who commits the following acts against an animal, or causes the same to be done, may be convicted of a misdemeanor offense, punishable by a term of up to one year incarceration, *or* a term of probation not to exceed one year, *or* a combination of incarceration and probation not exceeding one year, and a potential fine of \$5,000. These misdemeanor offenses are set forth as follows: “Any 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 misdemeanor of the first degree....”

Under s. 828.12(2), F.S., 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 repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree....” A third degree felony is punishable by up to five years incarceration, up to five years probation, or a combination thereof, and up to a \$10,000 fine.

Both the misdemeanor and felony animal cruelty penalties currently provide for fines in excess of those provided for under s. 775.083, F.S., which are up to \$1000 in the case of a first degree misdemeanor and up to \$5,000 in the case of a third degree felony.

To understand the *true* potential penalties for a third degree felony animal cruelty violation, one must consider the application of the Criminal Punishment Code. The Criminal Punishment Code (Code) became effective on October 1, 1998. The Code established definitions, sentencing criteria, and criminal penalties in accordance with a sentencing policy that focused on the punishment of offenders. The Code focused on incarcerating violent criminal offenders and imposing penalties that are commensurate with the crime committed by the offender.

Under the Code, non-capital felony sentences are scored to result in a "permissible sentencing range." Essentially, the Criminal Punishment Code operates somewhat like minimum mandatory sentences. However, the sentences are not as absolute as minimum mandatory sentences because there are circumstances in which the sentencing court can mitigate a sentence by departing down from a permissible sentencing range if the reasons are valid and memorialized in writing, as set forth in ss. 921.0026 and 921.00265, F.S. The range of permissible sentences is broad, which provides more flexibility to the court and to the prosecutor.

The Criminal Punishment Code encompasses an offense ranking chart that is provided in s. 921.002, F.S. The ranking of the crimes for which the offender is being sentenced, both the primary offense and any additional offenses, provide the starting point for calculating a permissible sentence under the Code. Crimes are ranked in different "levels" with corresponding sentence point values. Sentence points, point multipliers, victim injury points and other point enhancements are provided in s. 921.0024, F.S.

Sentencing points are also included for an offender's prior criminal record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, to the date of the primary offense. An offender's prior record subtotal also includes juvenile dispositions for offenses committed by the offender within 3 years before the primary offense.

Pursuant to s. 921.0024(2), F.S., if an offender scores less than or equal to 44 points, the lowest permissible sentence is any non-state prison sanction. This may include incarceration in the county jail, probation, community control, or some combination thereof. The court has the discretion to sentence the offender to prison, up to the statutory maximum, even where the sentencing points are 44 or less.

If an offender scores more than 44 points, the lowest permissible sentence in terms of prison months is calculated by subtracting 28 from the point total and multiplying that number by .75. For instance, animal cruelty as proscribed in s. 828.12(2), F.S., is presently ranked as a "Level 3" offense. An offender would score 16 points as a result of being convicted of one count of felony animal cruelty. The range of permissible sentences in that particular situation would be any nonstate prison sanction up to the statutory maximum which is up to 5 years. s.775.082(3)(d), F.S.

The Department of Corrections is responsible for developing and submitting a revised Criminal Punishment Code scoresheet to the Florida Supreme Court for approval, by June 15, each year, as it becomes necessary. Upon approval, the department produces the revised scoresheets and provides them by September 30. A scoresheet is required to be prepared for each offender before a court for sentencing on a felony offense so the court can be fully advised as to the range of permissible sentences in each case.

III. Effect of Proposed Changes:

The bill amends the misdemeanor animal cruelty statute to include depriving an animal of necessary medical attention or sanitation among those acts punishable under s. 828.12(1), F.S.

The bill further provides, where the court determines that a felony violation under s. 828.12(2), F.S., includes the knowing and intentional torture or torment of an animal that results in the injury, mutilation, or death of the animal, the court shall do three things: 1) order a psychological evaluation of the defendant to assist the court in determining a sentence, and order an anger management treatment program or such other treatment program as the court deems appropriate; 2) impose a minimum \$2,500 fine; and 3) impose a minimum mandatory sentence of incarceration for one year.

Currently, the crime of intentionally committing an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causing the same to be done, is a third degree felony, ranked as a Level 3 offense. ss. 828.12(2), 921.0022(3)(c) F.S. The points scored for a Level 3 offense are 16. If the offender is before the court for sentencing on a single count of felony animal cruelty as proscribed in s. 828.12(2), F.S., and has no scoreable prior criminal record, the total sentencing points would be 16. The lowest permissible sentence would be any non-state prison sanction, because the total is less than 44 points, and the ceiling would be up to five years in prison. Therefore, the bill would restrict the sentencing court's discretion, in that it requires at least one year imprisonment as the lowest permissible sentence for the felony animal cruelty violation proscribed in s. 828.12(2), F.S, where the court makes the requisite findings that the violation includes the knowing and intentional torture or torment of an animal that results in the injury, mutilation, or death of the animal.

The bill exempts the following activities or the treatment of categories of animals from prosecution under s. 828.12, F.S.:

- the treatment of livestock and other animals used in the production of food, fiber, or other agricultural products, including the transportation or hauling of the animals, when such treatment is in accordance with accepted agricultural animal husbandry;

- the treatment of animals involved in research if the research facility is operating under the rules or research protocols set forth by the state or federal government;
- the treatment of animals involved in rodeos;
- the treatment of dogs used for legal hunting activities;
- nuisance wildlife;
- wildlife and predator control regulated by local or general law; and
- activities related to hunting and fishing.

The bill specifically protects the authority of the Fish and Wildlife Conservation Commission from any change or amendment by the construction of s. 828.12, F.S.

The bill reenacts those provisions of Florida law that refer to s. 828.12, F.S., and becomes effective upon becoming a law.

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:

The Criminal Justice Estimating Conference considered the potential impact of the bill and has estimated the bill would have an insignificant impact on the need for prison beds.

VI. Technical Deficiencies:

None.

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.
