

**STORAGE NAME:** h0691s1.ccc.doc

**DATE:** March 5, 2002

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY  
COUNCIL FOR COMPETITIVE COMMERCE  
ANALYSIS**

**BILL #:** CS/HB 691

**RELATING TO:** Cruelty to Animals

**SPONSOR(S):** Council for Competitive Commerce, Representative Kottkamp and others

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 2
- (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 11 NAYS 1
- (4)
- (5)

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I. SUMMARY:

This bill amends the current statute prohibiting cruelty to animals to require a person convicted of felony animal cruelty to pay a fine of \$2,500, and complete an anger management treatment program or psychological counseling if the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that kills, mutilates, or injures the animal. A repeat violator of the felony animal cruelty statute is subject to a minimum mandatory sentence of 6 months incarceration and a minimum mandatory fine of \$5,000.

The fiscal impact on state and local governments of this bill is indeterminate.

See Section VI for a description of the difference between the bill as filed and the council substitute.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill expands the scope of a criminal statute and provides minimum mandatory sentences for certain violations of the animal cruelty statute.

B. PRESENT SITUATION:

Section 828.12, F.S., prohibits cruelty to animals. Section 828.12(1), F.S., provides that 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" commits a first degree misdemeanor, punishable by not more than one year in jail or by a fine of not more than \$5,000,<sup>1</sup> or both.

Section 828.12(2), F.S., provides that 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" commits a third degree felony, punishable by not more than five years in prison or by a fine of not more than \$10,000,<sup>2</sup> or both.

Section 828.12(3), F.S., provides that a veterinarian cannot be held criminally liable for any decisions made or services rendered under the provisions of this section. Section 828.05, F.S., provides procedures for destroying animals that are suffering from incurable or untreatable conditions or are diseased and allows animal owners to destroy their domestic animals without criminal sanctions if appropriate procedures are followed. See s. 828.05, F.S. Chapter 828 also provides for euthanasia of animals. See e.g. ss. 828.055, 828.058, 828.065, F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill adds an additional penalty to a felony animal cruelty conviction, when the violation includes the, "knowing and intentional torture or torment"<sup>3</sup> of an animal, and that action kills, mutilates, or injures the animal. The convicted person must complete an anger management treatment program

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<sup>1</sup> The fine amount under this statute is greater than the fine amount imposed under s. 775.083, F.S., for first degree misdemeanors. Section 775.083, F.S., provides for a fine not greater than \$1,000 for a first degree misdemeanor.

<sup>2</sup> The fine amount under this statute is greater than the fine amount imposed under s. 775.083, F.S., for third degree felonies. Section 775.083, F.S., provides for a fine of not greater than \$5,000 for a third degree felony.

<sup>3</sup> "Torture," "cruelty," and "torment" are defined under current law as, "every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief." s. 828.02, F.S.

or undergo psychological counseling, and pay a minimum mandatory fine of \$2,500. This penalty would be in addition to any other penalty imposed by the court for felony animal cruelty.

The bill also requires a person convicted of a second or subsequent violation of felony animal cruelty under s. 828.12(2), F.S., to serve a minimum mandatory sentence of six months of incarceration, and pay a minimum mandatory fine of \$5,000. In addition, this bill requires a person who is convicted under this statute to serve 100 percent of the sentence imposed by a court, and provides that the person is not eligible for parole, control release, or any other form of early release.

The bill also requires any plea of nolo contendere under the felony animal cruelty sub-section to be considered a conviction. In effect, this would cause any person pleading no contest to a felony animal cruelty charge to be considered convicted of felony animal cruelty for purposes of punishment, and for determining whether that person was a repeat offender. This would not affect the subsection addressing misdemeanor animal cruelty.

This bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the imposition of a minimum mandatory fine in certain cases.

2. Expenditures:

The Criminal Justice Impact Conference has determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

The bill requires the imposition of minimum mandatory sentences of six months of incarceration in certain circumstances. These terms of incarceration would be served in county jail, and the bill will thus have an indeterminate impact on local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties and municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Judicial Oversight adopted two amendments to this bill. The first amendment provides that the finder of fact, and not the court, must determine whether the facts exist that require the imposition of the minimum mandatory sentences created by this bill. **This amendment was incorporated into the Council Substitute on March 4, 2002.** The second amendment provides that an offender may be ordered to undergo psychological counseling in lieu of attending an anger management program in situations where the crime involved the knowing and intentional torture or torment of an animal. **In effect, this amendment was incorporated into the council substitute.**

On February 12, 2002, the Committee on Crime Prevention, Corrections & Safety adopted two amendments. The first amendment removed language in the bill that would have criminalized the unnecessary deprivation of medical attention or sanitation to an animal. **This amendment was incorporated into the Council Substitute on March 4, 2002.** The second amendment removed language from the bill that would have required the counties to pay for anger management treatment if the defendant was indigent. **In effect, this amendment was incorporated into the council substitute.**

On March 4, 2002, the Council for Competitive Commerce adopted one amendment and voted to incorporate two of the traveling amendments into a council substitute. The Council amendment provided that a person convicted of felony animal cruelty, where the crime involved the knowing and intentional torture or torment of an animal, must pay a \$2,500 minimum mandatory fine, and complete an anger management program or undergo psychological counseling. The amendment removed the

language addressing payment for the anger management or psychological counseling program, thereby removing the financial burden on counties to pay the costs if the court deemed the convicted person indigent.<sup>4</sup> **This amendment nullified the effect of two traveling amendments.** The remaining two amendments that changed the term “court” to “finder of fact”, and removed the terms “medical attention” and “sanitation” from the initial definition of misdemeanor animal cruelty, were incorporated into the council substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier, Jr., J.D.

Nathan L. Bond, J.D.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer

AS REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Council Director:

Katherine Scott

Matthew Carter

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<sup>4</sup> The original bill required counties to pay for anger management program costs if the court found the perpetrator indigent.