

STORAGE NAME: h0691a.jo.doc
DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 691
RELATING TO: Cruelty to Animals
SPONSOR(S): Representatives 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
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill amends the statute prohibiting cruelty to animals to add that a person who deprives an animal of necessary medical attention or sanitation commits a first degree misdemeanor, punishable by not more than one year in jail or by a fine of not more than \$5,000. A person convicted of felony animal cruelty must complete an anger management treatment program if the court determines that the violation includes the knowing and intentional torture or torment of an animal and that violation kills, mutilates, or injures the animal. The offender must pay the costs of the program unless he or she is indigent.

This bill also provides for minimum mandatory punishments for certain violations of the animal cruelty statute. If the court determines that certain violations include an intentional act of cruelty, the offender must serve a minimum mandatory period of incarceration of at least 3 months and pay a minimum mandatory fine of \$2,500, in addition to other sanctions which the court may impose. A repeat violator of the animal cruelty statute is subject to a minimum mandatory sentence of 6 months incarceration and a minimum mandatory fine of \$5,000, in addition to other penalties.

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

The Committee on Judicial Oversight adopted two amendments to this bill. The amendments are discussed in "Amendments or Committee Substitute Changes".

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 checked="" 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 \$5,000,¹ 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, ²or 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:

This bill amends s. 828.12(1), F.S., to add that a person who deprives an animal of necessary medical attention or sanitation commits a first degree misdemeanor, punishable by not more than one year in jail or by a fine of not more than \$5,000.

¹ 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.

² 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.

This bill further provides that a person convicted of a violation of s. 828.12(2), F.S. (felony animal cruelty), must complete an anger management treatment program if the court determines that the violation includes the knowing and intentional torture or torment³ of an animal and that action kills, mutilates, or injures the animal. The offender must pay the costs of the program unless that person is indigent. In those cases, the county must pay the cost of the program.

This bill also provides for minimum mandatory punishments for certain violations of s. 828.12(2), F.S. If the court determines that the violation of s. 828.12(2), F.S., includes an intentional act of cruelty, the offender must serve a minimum mandatory period of incarceration of at least 3 months and pay a minimum mandatory fine of \$2,500. If a person is convicted of a second or subsequent violation of s. 828.12(2), F.S., the court must impose a minimum mandatory sentence of 6 months incarceration and a minimum mandatory fine of \$5,000. In addition, this bill requires the person convicted to serve 100% of the sentence and provides that the person is not eligible for parole, control release, or any other form of early release.

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:

Unknown. The Criminal Justice Impact Conference has not considered the prison bed impact of this bill.

2. Expenditures:

Unknown. The Criminal Justice Impact Conference has not considered the prison bed impact of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown. Counties would be liable for the costs incurred by indigents ordered to complete anger management programs. It is not known how many indigent persons would be ordered to complete the programs.

³ "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.

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 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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:

This bill provides that an offender may be subject to enhanced penalties or minimum mandatory sentences if the "court determines" that certain conditions, such the knowing and intentional torture or torment of an animal, have been met. It can be argued that allowing the court to determine whether the necessary conditions have been met invades the "historical function" of the jury as finder of fact. See State v. Overfelt, 457 So. 2d 1385, 1387 (Fla. 1984). The Florida Supreme Court has held that even when a fact is uncontested and the record is clear beyond all doubt that the fact exists, the finder of fact must make a specific finding that the fact exists before an enhanced penalty may be imposed. See State v. Hargrove, 694 So. 2d 729 (Fla. 1997). Overfelt and Hargrove both dealt with imposition of the mandatory minimum sentence for possession of a firearm during the commission of a felony. Hargrove made clear that the finder of fact must make the determination of whether the fact necessary for imposition of the mandatory minimum sentence exists:

Our decision in Overfelt encompasses cases where the evidence of use of a firearm is unrebutted. There must be a specific finding by the jury. Even where the use of a firearm is uncontested, the overriding concern of Overfelt still applies: the jury is the fact finder, and use of a firearm is a finding of fact.

Hargrove, 694 So. 2d at 730.

Under Overfelt and Hargrove, a defendant could challenge a minimum mandatory sentence if the trial court imposed the sentence without a specific finding of fact by the fact finder. If the trial court has a specific finding of fact, such as an interrogatory to the jury or a finding of "guilty as charged" where the charging document includes the specific facts, such a challenge would likely be unsuccessful.

This issue is addressed by an amendment adopted by the Committee on Judicial Oversight. The amendment is discussed in "Amendments and Committee Substitute Changes".

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The terms "medical attention" and "sanitation" are not defined in this bill. If the Legislature does not define the terms, the court, in instructing the jury, will create instructions to define the elements of crimes and might create definitions. If a statutory term is not defined in the statute and is not ambiguous, a court will generally resort to the plain meaning of the term in question and can even use a dictionary definition. See e.g. Alvarez v. State, 800 So. 2d 237 (Fla. 3d DCA 2001).

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. 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. The bill was then reported favorably.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

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

Nathan L. Bond, J.D.