

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Section 828.12, F.S., prohibits cruelty to animals as follows:

1. A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates or kills any animal, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits a first degree misdemeanor.
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, commits a third degree felony¹.
 - a. A person who commits this animal cruelty offense, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates or kills the animal must be ordered to pay a \$2,500 fine and undergo psychological counseling or complete an anger management treatment program. This provision was added to section 828.12, F.S. during the 2002 session.² *HB 1637, with committee substitute, increases the mandatory fine under this provision to \$5,000 and requires that the offender be sentenced to a minimum mandatory term of incarceration of 6 months.*
 - b. A person who is convicted of a second or subsequent felony animal cruelty offense must be ordered to pay a minimum mandatory fine of \$5,000 and sentenced to a minimum mandatory period of incarceration of 6 months. This provision was also added during the 2002 session. *The bill increases the mandatory minimum period of incarceration to 10 months.*³

The bill also amends section 828.121, F.S., relating to simulated bullfighting exhibitions, to provide that a person who intentionally drags or fells by the tail a bovine animal in an organized sports exhibition, commits a third degree felony. This activity is sometimes referred to as "bulltailing". The bill provides

¹ This provision has been interpreted by the Florida Supreme Court to be a "general intent" crime rather than a "specific intent" crime. *Reynolds v. State*, 842 So.2d 46 (Fla. 2002). The court determined that the statute requires proof that the defendant intentionally committed the act that resulted in the death, pain or suffering of the animal but does not require proof that the offender acted "with the mental intent to inflict a cruel death or unnecessary suffering".

² See, 2002-51, Laws of Florida.

³ The section also provides that a person who intentionally trips, fells, ropes or lassos the legs of a horse by any means for the purpose of entertainment or sport commits a third degree felony. The offense is not committed when the tripping is done for certain specified purposes.

that the term "bovine animal" means "an animal of the subfamily bovine and includes, but is not limited to, a steer, calf, bull, ox, heifer or cow".

C. SECTION DIRECTORY:

Section 1. Amends s. 828.12, F.S.; increasing criminal penalties for certain acts of cruelty to animals.

Section 2. Amends s. 828.121, F.S.; provides criminal penalties for dragging or felling by the tail a bovine animal.

Section 3. Amends s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

Section 4. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill requires the imposition of minimum mandatory sentences of 6 and 10 months for specified animal cruelty offenses. Because a term of incarceration of one year or less is served in county jail, these minimum mandatory sentences should have no impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A term of incarceration of one year or less is served in county jail. The provisions of the bill which create and increase mandatory minimum terms of incarceration, may result in offenders being sentenced to 6 or 10 months incarceration where they would have otherwise served less or no time in jail and therefore have some impact on the county jail population.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the amount of fine that must be imposed for an animal cruelty offense under certain circumstances.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Original bill: As originally filed, HB 1637 amended section 828.12, F.S. to eliminate any misdemeanor designation for the offense of cruelty to an animal. Further, the third degree felony offense contained in section 828.12, F.S. was made a second degree felony.

Committee amendments: The Committee on Public Safety & Crime Prevention adopted three amendments. Amendment 1 contained the language relating to "bull tailing" discussed in the Effect of Proposed Changes section of this analysis. Amendment 2 made technical changes to the language relating to minimum mandatory terms of incarceration contained in the bill to conform the language to minimum mandatory sentencing provisions found elsewhere in statute. Amendment 3 restored the first degree misdemeanor and third degree felony designations that are currently provided for in section 828.12, F.S.