

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 448

INTRODUCER: Criminal Justice Committee and Senator Rich

SUBJECT: Sexual Activities Involving Animals

DATE: February 18, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	AG	_____
3.	_____	_____	JU	_____
4.	_____	_____	JA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill creates a new section of law which prohibits as a third degree felony, sexual conduct, or contact for the purpose of sexual gratification, with animals, and other acts related to the prohibited behavior.

This bill creates section 828.126 of the Florida Statutes.

II. Present Situation:

Despite the efforts of prosecutors in the State of Florida, persons who are actually caught in the act of sexual intercourse with an animal cannot generally be charged with or convicted of a sex-related crime. There have been several recently reported incidents of the abuse of animals in this particular way.

Reported incidents in Florida include:

- In Leon County, in 2005, a man was convicted of a misdemeanor disorderly conduct charge for sexually battering his own Guide Dog.

- In April of 2004 a Marion County man pled no contest to animal cruelty after his fiancé caught him sexually battering her 1-year old female dog. The dog was physically injured in the process. The Sheriff's Office reports indicated that the man told deputies that this type of behavior had been a "life-long problem." (Ocala Star Banner, April 15, 2004)
- A West Palm Beach man was caught sexually battering a neighbor's dog in January of 2004. The dog was alleged to have been yelping in pain. The man was charged with animal cruelty and indecent exposure. The perpetrator is a registered sex offender.
- A family's pregnant goat was sexually battered and asphyxiated in January of 2008 in a small panhandle town. Although there was a suspect in the case, prosecutors were unable to charge him in the mistreatment and death of the goat because DNA tests were inconclusive. (Miami Herald, January 4, 2008)
- Martin County Sheriff's deputies were called to investigate an animal in distress and found a man sexually battering a four-month old puppy. Reports indicate that when the deputy approached the man, she saw him in the act as the puppy whined and tried to break free.

Since there are no sex crime statutes in existence in Florida that would seem to apply in cases like those mentioned above, law enforcement officers and prosecutors must charge defendants with far less serious crimes like disorderly conduct, or crimes that don't seem to tell the "whole story" like indecent exposure. Also, because of the elements of animal cruelty offenses these acts and behaviors cannot always be prosecuted as such. There must be evidence of injury or evidence of excessive or repeated infliction of pain to the animal in order to prove felony animal cruelty.¹

In other states, situations like those set forth above have resulted in the passage of laws designed to more accurately capture these behaviors within the criminal law as the particularized crimes that they are. Georgia, Louisiana, Mississippi, North Carolina, Virginia, Oklahoma, and South Carolina are among the states in the southeast that currently have felony bestiality statutes.

III. Effect of Proposed Changes:

The bill creates a felony offense for knowingly engaging in sexual conduct or sexual contact with an animal, as defined in the newly created section of law. It also prohibits aiding or abetting another in committing those acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts in furtherance of such acts.

All of the acts prohibited by the bill are designated as unranked third degree felony offenses.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹ Section 828.12, F.S., subsection (2) is the felony animal cruelty statute. It states: "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, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or both."

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the bill creates new felony offenses, during the 2008 Legislative Session the Criminal Justice Impact Conference expected an insignificant prison bed impact if the law had gone into effect. There is no expectation of a different result when this year's Conference considers the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 18, 2009:

The Committee Substitute deletes the parts of the bill that prohibited the taking or distributing of photos and films of the sexual activities proscribed in the bill. This change should eliminate the potential for a freedom of expression First Amendment challenge.

B. Amendments:

None.