

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 and Civil Justice Appropriations Committee

BILL: CS/CS/CS/SB 448

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Agriculture Committee; Criminal Justice Committee; and Senator Rich

SUBJECT: Sexual Activities Involving Animals

DATE: April 20, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Leal	Poole	AG	Fav/CS
3.	Sumner	Maclure	JU	Favorable
4.	Hendon	Sadberry	JA	Fav/CS
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 first degree misdemeanor, sexual conduct, or contact for the purpose of sexual gratification, with animals, and other acts related to the prohibited behavior. The offense would be low volume and is not expected to have a fiscal impact on the state. Any impact to local governments would be minimal.

This bill creates section 828.126, 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."¹
- 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.²
- 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.

Because there are no sex crime statutes 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 do or crimes that do not seem to reflect fully the circumstances of the case, 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.³

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, and South Carolina are among the states in the southeast that currently have felony bestiality statutes.⁴

III. Effect of Proposed Changes:

The bill creates a first degree misdemeanor 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, permitting such acts to be conducted, and organizing, promoting, or performing acts in furtherance of such acts.

The bill provides an exception for accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.

¹ Ocala Star Banner, April 15, 2004.

² Miami Herald, January 4, 2008.

³ Section 828.12(2), F.S., 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."

⁴ See GA. CODE ANN. s. 16-6-6, LA. REV. STAT. ANN. s. 14:89, MISS. CODE ANN. s. 97-29-59, N.C. GEN. STAT. s. 14-177, VA. CODE ANN. s. 18.2-361, and S.C. CODE ANN. s. 16-15-120 (1976).

The bill provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The bill creates a low volume offense and is not expected to have a fiscal impact on the state. Any impact to local governments would be minimal.

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/CS/CS by Criminal and Civil Justice Appropriations on April 20, 2009:

Makes the offense of knowingly engaging in sexual conduct or contact with an animal a first degree misdemeanor.

CS/CS by Agriculture on March 10, 2009:

The committee substitute inserts into the bill language that creates an exception for “conformation judging practices” from the felony offense of knowingly engaging in sexual conduct or contact with an animal.

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.