

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Animal Cruelty

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Kiar and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Kaiser	Blalock
2) Criminal Justice Subcommittee	14 Y, 0 N	Cunningham	Cunningham
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1971, the Florida Supreme Court held that Florida's law criminalizing bestiality was unconstitutionally vague. The statute was subsequently repealed. As a result, current Florida law does not specifically prohibit sexual activities involving animals and people.

The bill creates subsection (5) in s. 828.12, F.S., which makes it a 1st degree misdemeanor for a person to knowingly:

- Engage in sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

The bill exempts accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices from the provisions of the bill.

The bill also defines the terms "animal," "sexual conduct," and "sexual contact."

The bill may impact local jails and is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to the Humane Society of the United States, animal sexual abuse, often referred to as bestiality, is the sexual molestation of an animal by a human. This type of animal abuse includes a wide range of behaviors that may result in killing or injuring an animal for sexual gratification.

Not all cases of animal sexual abuse involve physical injury to the animal, but sexual molestation of an animal by a human is classified as abuse. Psychologists have found that bestiality is harmful even in cases when physical harm to an animal does not occur.¹

Research indicates a connection between animal sexual abuse and other types of violent crimes. Forty percent of the perpetrators of sexually motivated homicides who had been sexually abused as children also reported that they sexually abused animals.² In 2007, a sexual behavior research project³ found that individuals who participated in sexually problematic behaviors such as bestiality, fetishism, voyeurism, having affairs, and using pornography had an elevated likelihood of starting to sexually abuse children. The study found bestiality as the strongest predictor of child sexual abuse, and that the younger a person is when they begin having sex with animals, the greater the risk that they will start to sexually abuse children at a later point in time.

Florida's Bestiality / Cruelty to Animals Statutes

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on grounds that the wording is no longer relevant to society or understandable to the average citizen. In 1971, the Florida Supreme Court⁴ invalidated Florida's then-existing law⁵ criminalizing bestiality on grounds that it was unconstitutionally vague. The statute, which was drafted in 1868,⁶ read as follows:

"Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years."

This statute was repealed in 1974.⁷ As a result, current Florida law does not specifically prohibit sexual activities involving animals and people.

Section 828.12, F.S., entitled "cruelty to animals," currently prohibits a person from intentionally committing an act to an animal that results in the cruel death or excessive or repeated infliction of unnecessary pain or suffering. This offense is punishable as a 3rd degree felony.⁸ Due to the elements of the offense, it can be difficult to charge persons who commit bestiality with a violation of s. 828.12, F.S. Such persons are generally charged with crimes such as disorderly conduct,⁹ trespassing¹⁰ or exposure of sexual organs.¹¹

¹ Ascione, Frank R., Ph.D.; (1993). Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychology. *Anthrozoos*, 6 (4): 226-247.

² Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. *Journal of Interpersonal Violence*, 1: 273-287.

³ *Sexual Behavior Predictors of Sexual Abuse of Children*. Association for the Treatment of Sexual Abusers, 26th Annual Conference, San Diego, California (2007).

⁴ *Franklin v. State*, 257 So.2d 21 (Fla. 1971).

⁵ Section 800.01, F.S.

⁶ Laws 1868, c. 1637, subc. 8, § 17.

⁷ Ch. 74-121, L.O.F.

⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 877.03, F.S., provides that whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such

Effect of the Bill

The bill creates subsection (5) in s. 828.12, F.S., which makes it a 1st degree misdemeanor¹² for a person to knowingly:

- Engage in sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

The bill exempts accepted animal husbandry¹³ practices, conformation judging practices, or accepted veterinary medical practices from the provisions of the bill.

The bill also defines the following terms:

- “Animal” is defined as “any living or dead dumb creature.”
- “Sexual conduct” is defined as “any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.”
- “Sexual contact” is defined as “any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.”

B. SECTION DIRECTORY:

Section 1. Amends s. 828.12, F.S., relating to cruelty to animals.

Section 2. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.

¹⁰ Trespass offenses are in ch. 810, F.S.

¹¹ Section 800.03, F.S., entitled “exposure of sexual organs,” provides It is unlawful to expose or exhibit one’s sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083, F.S. A mother’s breastfeeding of her baby does not under any circumstance violate this section.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹³ “Animal husbandry” is defined as “a branch of agriculture concerned with the production and care of domestic animals.” <http://www.merriam-webster.com/dictionary/animal%20husbandry> (last accessed March 23, 2011).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates a 1st degree misdemeanor offense punishable by up to one year in county jail and a \$1,000 fine. This may impact county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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

On March 15, 2011, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Moved the provisions of the bill into s. 828.12(5), F.S., relating to animal cruelty, as opposed to creating a new section of statute as provided in the original bill.
- Defined "animal," as it relates to s. 828.12(5), F.S., to mean any living or dead dumb creature.

This analysis is drafted to the Committee Substitute.