

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 121 Aggravated Animal Cruelty

**SPONSOR(S):** Barnaby and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	18 Y, 0 N	Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Under Florida law, a person commits animal cruelty, a first degree misdemeanor, if he or she:

- Unnecessarily overloads, overdrives, torments, mutilates, or kills an animal;
- Deprives an animal of necessary sustenance or shelter;
- Causes any of the above to be done to an animal; or
- Carries an animal in or upon a vehicle, or otherwise, in a cruel or inhumane manner.

A person commits aggravated animal cruelty, a third degree felony, by intentionally committing an act on an animal – or failing to act if the person owns and has custody and control of the animal – and such action or omission: results in the cruel death of the animal or the excessive or repeated infliction of unnecessary pain or suffering on the animal; or causes the same to be done to the animal.

HB 121 amends s. 828.12, F.S., to create two new criminal offenses that are punishable as aggravated animal cruelty. Under the bill, a person commits a third degree felony offense of aggravated animal cruelty if he or she unlawfully kills any animal that is in the care, possession, or control of a family or household member, regardless of the pain or suffering inflicted or caused to be done to the animal, when perpetrated by an act imminently dangerous to any animal and evincing a depraved mind.

The bill defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

The bill also creates a new third degree felony offense of aggravated animal cruelty if a person intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to any animal, or uses a deadly weapon upon any animal, or causes the same to be done, while engaged in the perpetration of, or in the attempt to perpetrate an enumerated felony or a misdemeanor crime of domestic violence. In addition to the penalties that may be imposed for a third degree felony, the bill provides a person may be fined up to \$10,000 for committing the offense of aggravated animal cruelty while committing an enumerated crime.

The bill may have a positive indeterminate prison bed impact by creating new felony offenses.

The bill provides an effective date of October 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Animal Cruelty

Under Florida law, a person commits animal cruelty, a first degree misdemeanor,<sup>1</sup> if he or she:

- Unnecessarily overloads, overdrives, torments,<sup>2</sup> mutilates, or kills an animal;
- Deprives an animal of necessary sustenance or shelter;
- Causes any of the above to be done to an animal; or
- Carries an animal in or upon a vehicle, or otherwise, in a cruel or inhumane manner.<sup>3</sup>

A person commits aggravated animal cruelty, a third degree felony,<sup>4</sup> by intentionally committing an act on an animal – or failing to act if the person owns and has custody and control of the animal – and such action or omission: results in the cruel death of the animal or the excessive or repeated infliction of unnecessary pain or suffering on the animal; or causes the same to be done to the animal.<sup>5</sup>

If a person is convicted of aggravated animal cruelty and the violation is found to include the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal,<sup>6</sup> he or she must pay a minimum fine of \$2,500 and complete psychological counseling or anger management for a first conviction.<sup>7</sup> If a person is convicted of any offense of aggravated animal cruelty a second or subsequent time, he or she must pay a minimum fine of \$5,000, must be sentenced to at least six months of incarceration, and is ineligible for any form of early release, including gain time.<sup>8</sup> Aggravated animal cruelty is ranked as a level five offense on the Criminal Punishment Code offense severity ranking chart (OSRC).<sup>9</sup>

In addition to any other applicable penalties, a person who is convicted of animal cruelty or aggravated animal cruelty may be prohibited from owning, possessing, keeping, harboring, or having custody or control over any animal for a period of time determined by the court.<sup>10</sup>

##### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>11</sup> are listed in a single offense severity ranking chart (OSRC),<sup>12</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>13, 14</sup> A person's primary offense, any other current offenses, and prior convictions are scored

---

<sup>1</sup> A first degree misdemeanor is generally punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S. However, a person convicted of animal cruelty may be punished by a sentence of up to one year in county jail and a \$1,000 fine or by a fine of not more than \$5,000, or both. S. 828.12(1), F.S.

<sup>2</sup> The terms "cruelty," "torture," "torment" and a "cruel manner" include 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. See also Fla. Std. Jury Instr. (Crim.) 29.13.

<sup>3</sup> S. 828.12(1), F.S.

<sup>4</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>5</sup> S. 828.12(2), F.S.

<sup>6</sup> Fla. Std. Jury Instr. (Crim.) 29.13.

<sup>7</sup> S. 828.12(2)(a), F.S.

<sup>8</sup> S. 828.12(2)(b), F.S.

<sup>9</sup> S. 921.0022(3)(e), F.S.

<sup>10</sup> S. 828.12(6), F.S.

<sup>11</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

<sup>12</sup> S. 921.0022, F.S.

<sup>13</sup> S. 921.0022(2) and (3)(e), F.S.

using the points designated for the offense severity level of each offense.<sup>15, 16</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>17</sup>

A person convicted of an offense of aggravated animal cruelty, which is ranked as a level 5 on the OSRC, will not score a minimum prison sentence, however, the sentencing judge may exercise his or her discretion to sentence the offender to prison without making written findings that a nonstate prison sanction could present a danger to the public.<sup>18</sup>

### Effect of Proposed Changes

HB 121 amends s. 828.12, F.S., to create two new criminal offenses that are punishable as aggravated animal cruelty. Under the bill, a person commits a third degree felony offense of aggravated animal cruelty if he or she unlawfully kills any animal that is in the care, possession, or control of a family or household member, regardless of the pain or suffering inflicted or caused to be done to an animal, when perpetrated by an act imminently dangerous to any animal and evincing a depraved mind. The bill ranks the offense as a Level 5 offense on the OSRC.

The bill defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.<sup>19</sup>

The bill does not define the phrase, “imminently dangerous to any animal and evincing a depraved mind.” However, similar language is used for the crime of second degree murder in s. 782.04, F.S., which prohibits the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual. The Florida Standard Jury Instructions (Criminal) define an act that is “imminently dangerous to another and demonstrating a depraved mind” as an act or series of acts that:

- A person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another,
- Is done from ill will, hatred, spite, or an evil intent, and
- Is of such a nature that the act itself indicates an indifference to human life.<sup>20</sup>

The bill also creates a new third degree felony offense of aggravated animal cruelty if a person intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to any animal, or uses a deadly weapon upon any animal, or causes the same to be done, while engaged in the perpetration of, or in the attempt to perpetrate any:

- Arson.
- Sexual battery.
- Robbery.
- Burglary.
- Kidnapping.

---

<sup>14</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third degree felony defaults to a level 1; an unlisted second degree felony defaults to a level 4; an unlisted first degree felony defaults to a level 7; an unlisted first degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

<sup>15</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>16</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(2), F.S.

<sup>17</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> S. 741.28(3), F.S.

<sup>20</sup> Fla. Std. Jury Instr. (Crim.) 7.4.

- Escape.
- Aggravated child abuse.
- Aggravated abuse of an elderly person or disabled adult.
- Aircraft piracy.
- Unlawful throwing, placing, or discharging of a destructive device or bomb.
- Carjacking.
- Home-invasion robbery.
- Aggravated stalking.
- Murder of a human being.
- Resisting an officer with violence to his or her person.
- Aggravated fleeing or eluding with serious bodily injury or death.
- Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, F.S.
- Human trafficking.
- Treason.
- Manslaughter of a human being.
- Aggravated assault.
- Aggravated battery.
- Crime of domestic violence as defined in s. 741.28, F.S.
- Other felony which involves the use of threat of physical force or violence against an individual.

The bill does not rank the newly created offense of aggravated animal cruelty while committing an enumerated crime on the OSRC. Thus, the crime defaults to a Level 1 offense on the OSRC.<sup>21</sup> In addition to the third degree felony penalty, the bill provides a person may be fined up to \$10,000 for committing the offense of aggravated animal cruelty while committing an enumerated crime. Thus, if a person committed an armed robbery and, in the course of committing the robbery he or she killed an animal, the perpetrator may be charged with both the first degree felony offense of armed robbery *and* the third degree felony offense of aggravated animal cruelty.

The bill provides an effective date of October 1, 2022.

#### B. SECTION DIRECTORY:

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

**Section 2:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 3:** Provides an effective date of October 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a positive indeterminate prison bed impact by creating two new felony offenses.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

---

<sup>21</sup> S. 921.0023, F.S., *supra* note 14.  
**STORAGE NAME:** h0121a.CRM  
**DATE:** 2/15/2022

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES