

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 435 Animal Abuse

SPONSOR(S): Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Grieco and others

TIED BILLS: IDEN./SIM. BILLS: SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee	19 Y, 0 N, As CS	Frost	Kramer

SUMMARY ANALYSIS

Psychological and criminological research has shown a link between animal cruelty and violence towards people. Studies have indicated that individuals who commit acts of animal cruelty are three times more likely to commit other crimes, including murder, rape, robbery, assault, harassment, threats, and drug or substance abuse offenses. There is also a significant correlation between sexually abusing animals and committing sexual offenses against humans. Florida currently criminalizes animal abuse in a number of ways.

Florida’s “Animal Fighting Act” prohibits specified acts relating to animal fighting and baiting, such as baiting, breeding, training, transporting, selling, owning, possessing, or using any animal for animal fighting or baiting and attending the fighting or baiting of animals. A violation of the Animal Fighting Act is a third degree felony, ranked as a level one offense on the Criminal Punishment Code offense severity ranking chart (OSRC).

Section 828.126, F.S., prohibits sexual activities with animals (SAA). A person commits a first degree misdemeanor if he or she knowingly commits SAA, by engaging in specified sexual conduct or sexual contact. Certain accepted practices, such as animal husbandry, conformation judging, and veterinary medicine, are excluded from criminal liability. Under s. 828.126, F.S., “sexual conduct” means any touching or fondling by a person of an animal’s sex organs or anus or any transfer or transmission of semen by a person upon any part of an animal for the purpose of sexual gratification or arousal of the person, and “sexual contact” means any:

- Contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal; or
- Penetration, however slight, of any part of a person’s body into the sex organ or anus of an animal; or
- 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.

Because of the narrow definition of sexual conduct and sexual contact under s. 828.126, F.S., prosecutors have been unable to charge SAA in certain cases involving oral sex with animals.

CS/CS/HB 435 amends s. 828.126, F.S., to clarify current law relating to SAA and ensure that all SAA, including all forms of oral sex, may be prosecuted. The bill removes the definition of “sexual conduct” and “sexual contact” and replaces them with a single comprehensive definition for “sexual contact with an animal.” The bill also creates a new violation of SAA for filming, distributing, or possessing any pornographic image or video of a person and an animal engaged in prohibited sexual activity, increases the criminal penalty for SAA from a first degree misdemeanor to a third degree felony, ranks the crime as a level six offense on the OSRC, and prohibits a person convicted of SAA from having specified contact with animals for up to five years.

The bill also increases the current offense level on the OSRC for any violation of the Animal Fighting Act from a level one to a level six.

The bill may have a positive indeterminate impact on the number of prison beds by creating a new felony offense and increasing the ranking on the OSRC for a current offense.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Animal Abuse

Psychological and criminological research has shown a link between animal cruelty and violence towards people. Studies have indicated that individuals who commit animal cruelty are three times more likely to commit other crimes, including murder, rape, robbery, assault, harassment, threats, and drug or substance abuse offenses.¹ There may also be a significant correlation between sexually abusing animals and committing sexual offenses against humans. The results of one study showed that approximately 25 percent of incarcerated violent offenders admitted they had engaged in animal cruelty. Another study found that a history of sexually abusing animals was the single greatest factor in predicting future child sexual abuse and sexual offenses against humans in general.² According to the International Journal of Law and Psychiatry, engaging in animal cruelty, sex with animals, and sexual assault or rape all suggest a preference for abusing those who are unable to refuse or resist.³ Recognizing this correlation, Florida currently criminalizes animal abuse in a number of ways, under ch. 828, F.S.

Animal Cruelty

Under Florida law, a person commits animal cruelty, a first degree misdemeanor,⁴ if he or she:

- Unnecessarily overloads, overdrives, torments,⁵ 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.⁶

A person commits aggravated animal cruelty, a third degree felony,⁷ 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.⁸

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,⁹ he or she must pay a minimum fine of \$2,500 and complete psychological counseling or anger management for a first conviction.¹⁰ 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.¹¹ Aggravated

¹ Scott A. Johnson, *Animal cruelty, pet abuse & violence: the missed dangerous connection*, Forensic Research & Criminology International Journal (Nov. 20, 2018), <https://medcraveonline.com/FRCIJ/FRCIJ-06-00236.pdf> (last visited Feb. 1, 2022).

² *Id.* at 409.

³ *Id.*

⁴ 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. If a person is convicted of animal cruelty, he or she 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.

⁵ 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.

⁶ S. 828.12(1), F.S.

⁷ 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.

⁸ S. 828.12(2), F.S.

⁹ Fla. Std. Jury Instr. (Crim.) 29.13.

¹⁰ S. 828.12(2)(a), F.S.

¹¹ S. 828.12(2)(b), F.S.

animal cruelty is ranked as a level five offense on the Criminal Punishment Code offense severity ranking chart (OSRC).

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.¹²

Fighting or Baiting Animals

Section 828.122, F.S., “The Animal Fighting Act,” provides that:

- “Animal fighting” means fighting between roosters or other birds or between dogs, bears, or other animals.
- “Baiting” means to attack with violence, to provoke, or to harass an animal with one or more other animals for the purpose of training the animal for, or to cause the animal to engage in, fights with or among other animals, or using live animals to train racing greyhounds.¹³

A person commits animal fighting or baiting if he or she knowingly commits any of the following acts:

- Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or baiting; owning, possessing, or selling equipment used for any of these activities; or owning, leasing, managing, operating, or controlling any property kept or used for any of these activities;
- Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- Performing any service or act to facilitate animal fighting or baiting, including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting;
- Removing or facilitating the removal of any animal impounded under the Act from an agency where the animal is impounded or from a location designated by a court under the Act, without prior court authorization;
- Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
- Attending the fighting or baiting of animals.

Any violation of the Animal Fighting Act is a third degree felony, ranked as a level one offense on the OSRC.¹⁴

The Animal Fighting Act specifies that it may not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.^{15, 16}

Sexual Activities with Animals

In general, sexual activities with animals (SAA) includes the sexual molestation of an animal by a human, including a wide range of behaviors, such as fondling genitalia; vaginal, anal, or oral penetration or oral-genital contact (from person to animal and vice versa); penetration with an object; and injuring or killing an animal for sexual gratification.¹⁷ A study of incidents from 1975 to 2015 found

¹² S. 828.12(6), F.S.

¹³ S. 828.122(2), F.S.

¹⁴ S. 921.0022(3)(a), F.S.

¹⁵ S. 828.122(10), F.S.

¹⁶ The Act also provides exemptions from criminal liability for: simulated fights intended for use on television or in a motion picture; any person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission; any person using animals to work livestock for agricultural purposes; any person violating s. 828.121, F.S.; or any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to custom any hunting or agricultural practices. S. 828.122(9), F.S.

¹⁷ A.W. Stern and M. Smith-Blackmore, *Veterinary Forensic Pathology of Animal Sexual Abuse*, American College of Veterinary Pathologists, *Journal of Veterinary Pathology* (May 11, 2016), <https://journals.sagepub.com/doi/10.1177/0300985816643574> (last visited Feb. 1, 2022).

that approximately 32 percent of animal sex offenders also committed sexual offenses against adults and children,¹⁸ and among those offenders, approximately 53 percent had a prior conviction involving sexual abuse of a human, animal abuse, interpersonal violence, substance abuse, or property offenses.¹⁹

Engaging in SAA is a criminal offense in 46 states. Only Hawaii, New Mexico, West Virginia, Wyoming, and the District of Columbia do not have state laws prohibiting SAA.²⁰ In recent years, many cases of SAA and SAA linked with child pornography charges have occurred in Florida.²¹

Florida criminalizes SAA under s. 828.126, F.S., which provides that a person commits a first degree misdemeanor if he or she knowingly:

- Engages in any sexual conduct or sexual contact with an animal;
- Causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;
- Permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

Section 828.126, F.S., does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.²² When a person is convicted of SAA, his or her judgment and sentence or plea agreement may contain a provision prohibiting contact with animals, but such a condition is not currently statutorily required.

For purposes of SAA:

- “Sexual conduct” means 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;²³ and
- “Sexual contact” means any of the following, when for the purpose of sexual gratification or sexual arousal of the person:
 - 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.²⁴

¹⁸ M. Jenny Edwards, *Arrest and Prosecution of Animal Sex Abuse (Bestiality) Offenders in the United States, 1975 – 2015*, The Journal of the American Academy of Psychiatry and the Law (May 2019), <http://jaapl.org/content/early/2019/05/16/JAAPL.003836-19> (last visited Feb. 1, 2022).

¹⁹ *Id.*

²⁰ Rebecca F. Wisch, *Table of State Animal Sexual Assault Laws*, Michigan State University, Animal Legal & Historical Center (2021), <https://www.animallaw.info/topic/table-state-animal-sexual-assault-laws> (last visited Feb. 1, 2022).

²¹ Alex Hider, *Florida man had sex with dog more than 100 times, reports says*, The Denver Channel (Jan. 12, 2017), <https://www.thedenverchannel.com/news/national/florida-man-had-sex-with-dog-more-than-100-times-report-says> (last visited Feb. 1, 2022); Andrew Gant, *Deltona Man Arrested on Child Porn Charges; More Charges Pending in Sexual Abuse of Dog*, Volusia County Sheriff (Aug. 17, 2020), <https://www.volusiaheriff.org/news/deltona-man-arrested-on-child-porn-charges-more-charges-pending-in-sexual-abuse-of-dog.stml> (last visited Feb. 1, 2022); Ashley Miller, *Woman has sexual interactions with dog; takes selfies*, Tampa Bay 10 (Jun. 22, 2015), <https://www.wtsp.com/article/news/weird/woman-has-sexual-interactions-with-dog-takes-selfies/67-236441551> (last visited Feb. 1, 2022); Gary Detman, *Child porn videos, bestiality files found in Florida man’s phone*, CBS News 12 (Oct. 7, 2020), <https://cbs12.com/news/local/child-porn-videos-bestiality-files-found-in-florida-mans-phone> (last visited Feb. 1, 2022); U.S. Attorney’s Office, Southern District of Florida, *262-Month Federal Prison Sentence for South Florida Veterinarian Who Sexually Abused Dogs, Created Animal Crush Video*, United States Department of Justice (Oct. 8, 2021), <https://www.justice.gov/usao-sdfl/pr/262-month-federal-prison-sentence-south-florida-veterinarian-who-sexually-abused-dogs> (last visited Feb. 1, 2022).

²² S. 828.126(4), F.S.

²³ S. 828.126(1)(a), F.S.

²⁴ S. 828.126(1)(b), F.S.

Because of the narrow definition of sexual conduct and sexual contact under s. 828.126, F.S., prosecutors have been unable to charge SAA in certain cases involving oral sex with animals. Specifically, the current definitions do not capture instances when a person receives non-penetrative oral sex from an animal.²⁵

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²⁶ are listed in a single offense severity ranking chart (OSRC),²⁷ 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.^{28, 29} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{30, 31} 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.³²

As such, a person with no other current offenses or prior convictions who is convicted of one count of fighting or baiting animals, ranked as a level one offense on the OSRC, will not score a minimum prison sentence and may not be sentenced to prison unless the sentencing judge makes written findings that a non-state prison sanction could present a danger to the public.³³ Alternatively, a person convicted of an offense such as aggravated animal cruelty, which is ranked as a level 5 on the OSRC, also 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.³⁴

Effect of Proposed Changes

CS/CS/HB 435 amends s. 828.126, F.S., to clarify current law relating to SAA and ensure that all sexual activity, including all forms of oral sex, with animals may be prosecuted. The bill removes the current definition of "sexual conduct" and "sexual contact" and instead provides a single comprehensive definition for "sexual contact with an animal," which means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain that involves:

- Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;
- The fondling of the sex organ or anus of an animal; or
- The insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal, or the insertion of any part of an animal's body into the vaginal or anal opening of a person.

The bill creates a new crime under SAA which prohibits a person from knowingly filming, distributing, or possessing any pornographic image or video of a person and an animal engaged in any prohibited sexual activity. To more closely align with the penalties for other offenses involving the abuse of animals, the bill also increases the criminal penalty for SAA from a first degree misdemeanor to a third

²⁵ Laura C. Morel, *Man who had sex with dog won't be charged because of unusual reason*, Tampa Bay Times (Jun. 23, 2012), <https://www.tampabay.com/news/publicsafety/crime/man-who-had-sex-with-dog-wont-be-charged-because-of-unusual-reason/1236153/> (last visited Feb. 1, 2022).

²⁶ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

²⁷ S. 921.0022, F.S.

²⁸ S. 921.0022(2) and (3)(e), F.S.

²⁹ 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.

³⁰ Ss. 921.0022 and 921.0024, F.S.

³¹ 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.

³² 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.*

³³ S. 775.082(10), F.S.

³⁴ *Id.*

degree felony, ranks the crime as a level six offense on the OSRC, and prohibits a person convicted of SAA from all of the following for up to five years:

- Harboring, owning, possessing, or exercising control over any animal;
- Residing in any household in which animals are present; and
- Engaging in an occupation, whether paid or unpaid, or participating in a volunteer position at any establishment at which animals are present.

The bill amends the exclusions from criminal liability under s. 828.126, F.S., to specifically provide that assistance with the birthing process or artificial insemination of an animal for reproductive purposes is not considered SAA.

The bill also increases the current offense level on the OSRC for any violation of the Animal Fighting Act from a level one to a level six.

Under the bill, a person with no other current offenses or prior convictions who is convicted of one count of any violation of the Animal Fighting Act or SAA will not score a minimum prison sentence under the sentencing guidelines, however, unlike with a level one offense, a judge may exercise his or her discretion to sentence the offender to prison without having to make written findings that a nonstate prison sanction could present a danger to the public.³⁵

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

B. SECTION DIRECTORY:

Section 1: Amends s. 828.126, F.S., relating to sexual activities involving 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 impact on the number of prison beds by creating a new felony offense and increasing the ranking on the OSRC for a current offense.

³⁵ Additionally, since a level six offense scores more points under the sentencing guidelines, it is more likely that an offender with other current offenses or prior convictions will score a minimum prison sentence under the sentencing guidelines.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 12, 2022, the Criminal Justice & Public Safety Subcommittee adopted an amendment to HB 435 and reported the bill favorably as a committee substitute. The amendment:

- Required any violation of animal fighting or baiting be committed willfully as well as knowingly; and
- Allowed a person to be prosecuted for filming, distributing, or possessing one or more pornographic images as well as one or more videos of a person and an animal engaged in prohibited activities, rather than multiple images only.

On February 1, 2022, the Judiciary Committee adopted a proposed committee substitute (PCS) for CS/HB 435 and reported the bill favorably as a committee substitute. The PCS differed from CS/HB 435 as it:

- Did not create a new violation under the Animal Fighting Act;
- Did not provide a definition for animal husbandry; and
- Provided an effective date of October 1, 2022.