

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 989 Appointment of Courtroom Animal Advocates

SPONSOR(S): Civil Justice Subcommittee, Cross and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 3 N, As CS	Mathews	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Animals play an important role in the lives of many Floridians. Animals are an important part of our lives: a cat may offer support and comfort by curling up in his owner's lap to show he loves her; an excited dog may wait for his humans to get home from school; and a service animal may stand at his or her owner's side to ensure his or her health and safety. Unfortunately, animals lack a voice of their own, making them vulnerable, and putting them at risk for violence and cruelty.

Under Florida law, the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal, or
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.

Animal cruelty or aggravated animal cruelty is punishable, as appropriate, by a fine, incarceration, the inability to own or possess animals, or mental health counseling.

CS/HB 989 creates s. 828.035, F.S., to create a courtroom animal advocate program. Under the bill, a court may appoint a separate courtroom advocate to represent the interests of justice on behalf of a dog or cat. The bill contemplates such an animal advocate serving in a voluntary capacity.

Under the bill, a courtroom animal advocate is authorized to:

- Monitor the case.
- Consult any individual who has information that could aid the proceeding.
- Review relevant documents from law enforcement, animal control, and veterinarians.
- Attend hearings.
- Present information or recommendations to the court pertinent to determinations that relate to the interests of justice.

The effective date of the bill July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Animal Cruelty

Under Florida law, the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal, or
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.¹

Animal cruelty is a first-degree misdemeanor, punishable by up to one year in the county jail or by a fine up to \$5,000.²

A person commits aggravated animal cruelty, a third-degree felony,³ by intentionally committing an act to an animal or failing to act if the person is the owner having 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 an animal.⁴

Aggravated animal cruelty is a third-degree felony and is punishable, at a minimum, by a \$2,500 fine and the imposition of psychological counseling or an anger management treatment program.⁵ Additionally, a third-degree felony may be punishable by up to five years imprisonment,⁶ or up to a \$10,000 fine, or both. A person who is convicted of a second or subsequent violation of animal cruelty must pay a minimum \$5,000 fine and serve a minimum sentence of 6 months in jail. Additionally, a person convicted a second or subsequent time of aggravated animal cruelty is ineligible for any form of early release, including gain time.⁷

Under current law, a person who is convicted of animal cruelty or aggravated animal cruelty may be prohibited by the court from owning, possessing, keeping, harboring, or having custody or control over any animal for a period of time to be determined by the court.⁸

Issues with Prosecuting Animal Cruelty

Animal cruelty matters are a unique and complex type of criminal matter. The victim in an animal cruelty case is a voiceless animal without a proper advocate. Animal crime cases may involve a variety of unique issues, including:

- A deceased animal from the act of animal abuse;
- A living animal who is unable to speak for himself or herself to provide insight into the abuse;
- Various scientific and forensic challenges and nuances related to establishing a crime and identifying a perpetrator;
- A surviving animal who is taken into custody and may itself be evidence of the criminal act; or
- A surviving animal who will need to food, water, shelter, socialization, and veterinary care.^{9,10}

¹ S. 828.12(1), F.S.

² Ss. 775.082 and 775.083, F.S.

³ 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.

⁴ S. 828.12(2), F.S.

⁵ S. 828.12(2)(a), F.S.

⁶ S. 828.12(2)(a), F.S.; s. 775.082(3)(e), F.S.

⁷ *Id.*

⁸ S. 828.12(6), F.S.

⁹ See Animal Legal Defense Fund, *Courtroom Animal Advocate Programs (CAAP)*, <https://aldf.org/article/courtroom-animal-advocate-programs-caap/> (last visited Mar. 23, 2023).

Because the abused or neglected animal is unable to speak to the court, the specific needs of the animal may often be overlooked.

Animal Cruelty as a Gateway Crime

Some people who hurt animals do not stop at simply victimizing animals. There is an established link between cruelty to animals and violence towards humans.¹¹ As such, it is imperative that crimes against animals be taken seriously, not only in light of the animal's well-being, but for the future safety of humans in the community.

One study found that 43% of school shooters in the United States between 1988 and 2012 had histories of animal abuse, including close-up and personal violence against household pets like cats and dogs.¹² Additionally, actions of animal cruelty and violence frequently offer a glimpse into the home-life of the way the humans are treated in the home. In homes with domestic violence incidents, 50% of children reported that their abuser threatened to harm or kill a beloved animal in order to maintain control over their human victims.¹³

Guardian Ad Litem as a Model

Unfortunately, animals lack a voice of their own, making them incredibly vulnerable, and putting them at an increased risk for violence and cruelty.¹⁴ Under current law, a court may appoint a guardian ad litem (GAL) or an attorney ad litem for certain persons, including abused, neglected, or abandoned children, in civil matters. A court may also appoint an attorney ad litem (AAL) to provide legal services and counsel to the client-child, and such AAL functions based on an attorney-client relationship like a traditional attorney and client. A GAL serves to represent the child's best interest in court proceedings but does not serve as legal counsel.

Unlike abused or neglected children, abused or neglected animals are not afforded the benefit of a guardian ad litem or other volunteer to advocate on their behalf during a court proceeding.

Legal Representation of Children in the Child Welfare System

The two standards by which a child can be represented in court are the best interest standard and the expressed wishes standard. The term "best interests of a child" generally refers to deliberations undertaken by courts in making decisions about the services, actions, and orders that will best serve a child and who is best suited to care for that child.¹⁵ There are two types of best interest representation: Attorney or Professional and Lay Volunteer.¹⁶ Expressed wishes or client-directed¹⁷ representation occurs when an attorney is appointed instead of or in addition to a guardian ad litem (GAL) to represent a child's expressed wishes.

¹⁰ *Id.* (a dog may languish in a shelter while her abuser awaits trial; dogs used in fighting rings will almost certainly require rehabilitation; and kittens born to a cat held as evidence will need to be placed in loving homes).

¹¹ ALDF, *The Link Between Cruelty to Animals and Violence Toward Humans*, <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2/> (last visited Mar. 23, 2023).

¹² ALDF, Factsheet: Animal Cruelty's Link to Other Forms of Violence, <https://aldf.org/wp-content/uploads/2022/01/Animal-Legal-Defense-Fund-Link-Factsheet.pdf> (last visited Mar. 23, 2023), citing to Arnold Arluke & Eric Madfis, *Animal Abuse as a Warning Sign of School Massacres: A Critique and Refinement*, 2018 Homicide Studies 7 (2018).

¹³ ALDF Factsheet, citing to Shelby Elaine McDonald et. Al., *Children's Experiences of Companion Animal Maltreatment in Households Characterized by Intimate Partner Violence*, 50 Child Abuse & Neglect 116 (2016).

¹⁴ Charlie Robinson, *The Link Between Animal Cruelty and Human Violence* (Aug. 10, 2021), <https://leb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence> (last visited Mar. 23, 2023).

¹⁵ Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program* (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf>.

¹⁶ Children in states with this representation model always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.

¹⁷ OPPAGA Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program* (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf> (last visited Mar. 23, 2023).

Florida's child representation system authorizes both types of representation. Current law requires best interest representation through GALs, who are to be appointed at the earliest possible time in all abuse and neglect proceedings.¹⁸ It also authorizes attorney representation for children with special needs.¹⁹ The Guardian ad Litem Program is a network of volunteer advocates and professional staff representing the best interest of abused, abandoned, and neglected children. The court must appoint a GAL to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.²⁰

Attorney Ad Litem

An attorney ad litem (AAL) is an attorney appointed to provide legal services to a person such as a parent, a child, or an incapacitated person. The AAL has an attorney-client relationship with the person he or she is appointed to represent and owes that person the duties of his or her undivided loyalty, confidentiality, and competent representation. The AAL is an advocate for the person he or she is appointed to represent and expresses the person's wishes to the court or jury.

Under current law, an animal, the victim of a criminal act of animal cruelty, is left without a voice and without an advocate to pursue justice on its behalf. This may cause a greater risk that the animal cruelty case may be dismissed or go unprosecuted.

Effect of Proposed Changes

CS/HB 989 creates s. 828.035, F.S., to create a courtroom animal advocate program. Under the bill, a court may appoint a separate advocate to represent the interests of justice on behalf of a cat or dog. It is within the court's discretion to order the appointment of such an animal advocate and, as such, a denial of a request to appoint an animal advocate is not subject to appeal.

Under the bill, a courtroom animal advocate is authorized to:

- Monitor the case.
- Consult any individual who has information that could aid the judge or finder of fact and review records relating to the condition of the cat or dog and the defendant's actions, including, but not limited to, records from animal control officers, veterinarians, and police officers.
- Attend hearings.
- Present information or recommendations to the court pertinent to determinations that relate to the interests of justice.

To be eligible for appointment, a courtroom animal advocate must be:

- An attorney with knowledge of animal issues and the legal system; or
- A law school student who has an interest in animal issues and the legal system and who is certified by the Florida Supreme Court as a certified legal intern.

Under the bill, a courtroom animal advocate is a voluntary role at the discretion of the court.

The provisions of the bill do not apply to prosecutions or proceedings involving an entity accredited through a recognized zoological or aquarium accreditation organization.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 828.035, F.S., relating to courtroom animal advocates.

Section 2: Provides an effective date.

¹⁸ S. 39.822(1), F.S.

¹⁹ S. 39.01305, F.S.

²⁰ S. 39.822, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the appointed courtroom animal advocate may only be appointed for a dog or a cat. Further, the amendment specified that the provisions of the bill are not applicable to prosecutions or proceedings involving a recognized zoological or aquarium entity. The amendment also included an emeritus lawyer in the list of those eligible to be appointed as an animal advocate.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

