

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Animal Cruelty
SPONSOR(S): Kiar
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			
3) State Affairs Committee			

SUMMARY ANALYSIS

A 1971 Florida Supreme Court decision¹ voided the existing law² covering bestiality on the grounds that the law's vagueness violated the state constitution. As a result, current Florida law³ does not specifically prohibit sexual activity involving an animal and a person.

The bill creates specific language prohibiting persons from knowingly engaging in sexual conduct or sexual contact with either a dead or live animal for the purpose of sexual gratification or arousal of the person. The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing such acts for commercial or recreational purposes.

Violations are a first degree misdemeanor punishable by a \$1,000 fine and up to one year in jail, plus applicable administrative fees and court costs.

The bill provides exemptions for animal husbandry (the agricultural practice of breeding and raising livestock), conformation judging practices, and accepted veterinary medical practices.

The mandates provision appears to apply because the bill provides that violations are a first degree misdemeanor; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

It is impossible to forecast how many violations might occur, thus the fiscal impact on local government is unknown. (See Fiscal Comments section for additional details)

The bill's effective date is October 1, 2011.

¹ *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)

² Section 800.01, F.S.

³ Section 828.12, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to the Humane Society of the United States (HSUS), 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.⁴

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.⁵

In 2007, a sexual behavior research project⁶ 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. According to the study, 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.

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on the grounds that the wording is no longer relevant to society or understandable to the average citizen. A 1971 Florida Supreme Court decision⁷ invalidated the then-existing law⁸ covering bestiality on the grounds that its vagueness violated the state constitution. The statute, which was drafted in 1868, 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.”

The court ruling stated that the language was vague, thus providing entrapment to unsuspecting citizens.

As a result, current Florida law⁹ does not specifically prohibit sexual activities involving animals and people. It only prohibits a person from intentionally committing an act to an animal that results in injury or excessive or repeated infliction of pain. Consequently, people who are caught in the act of sexual intercourse with an animal generally cannot be charged with or convicted of a sex-related crime. Such defendants must be charged with crimes like disorderly conduct, trespassing or indecent exposure. However, these crimes are sometimes difficult to prove.

⁴ 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.

⁵ 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.

⁶ Association for the Treatment of Sexual Abusers, 26th Annual Conference, San Diego, California; *Sexual Behavior Predictors of Sexual Abuse of Children*

⁷ *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)

⁸ Section 800.01, F.S.

⁹ Section 828.12, F.S.

Effect of Proposed Changes

The bill amends section 828.12, F.S., prohibiting persons from knowingly engaging in “sexual conduct” or “sexual contact” with either a dead or live animal for the purpose of sexual gratification of the person.¹⁰

The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts for commercial or recreational purposes.

Violations of the provisions of this bill constitute a first degree misdemeanor punishable by a \$1,000 fine and up to one year in jail plus applicable administrative fees and court costs.

Animal husbandry¹¹, conformation judging practices, or accepted veterinary medical practices are not subject to the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 828.02, F.S.; provides definitions.

Section 2: Amends s. 828.12, F.S.; prohibits sexual contact with an animal; prohibits specified related activities; provides penalties; provides a definition; and provides exemptions.

Section 3: 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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁰ 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. 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 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.

¹¹ The agricultural practice of breeding and raising livestock

D. FISCAL COMMENTS:

The bill provides that violations are a first degree misdemeanor. According to Florida statute¹², misdemeanor terms of imprisonment may only be served in a county correctional facility, thus requiring the county to spend related funds. However, because it is impossible to forecast how many violations might occur, the fiscal impact on local governments is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

According to the State Constitution, a bill imposes a mandate if the substance of the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduces the authority that counties or municipalities have to raise revenues in the aggregate, or reduces the percentage of a state tax shared with counties or municipalities.¹³

The mandates provision appears to apply because the bill provides that violations are a first degree misdemeanor. According to s. 775.08, F.S., misdemeanor terms of imprisonment may only be served in a county correctional facility, thus requiring the county to spend related funds; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

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 and Natural Resources Subcommittee adopted one strike-all amendment to HB 125. The amendment moved the provisions of the bill into section 828.12, F.S., relating to animal cruelty as opposed to creating a new section as the original bill provided. The strike-all amendment also defined "animal," as it relates to this subsection of statute, to mean any living or dead dumb creature.

¹² Section 775.08, F.S.

¹³ Article VII, Section 18; Florida Constitution