

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 67 Police, Fire, and Search and Rescue Dogs and Police Horses
SPONSOR(S): Judiciary Committee, Tomkow, Josie and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 96

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|------------|--|
| 1) Criminal Justice Subcommittee | 15 Y, 0 N | Deatherage | Hall |
| 2) Justice Appropriations Subcommittee | 10 Y, 0 N | Smith | Gusky |
| 3) Judiciary Committee | 16 Y, 0 N, As CS | Deatherage | Poche |

SUMMARY ANALYSIS

Police canines have a variety of skills and abilities used to aid law enforcement and other public safety efforts, including locating missing persons, apprehending criminal suspects, and detecting explosives, accelerants, narcotics, and other criminal evidence. Recently, police canines have been shot and killed in the line of duty in Florida. In September 2018, a police canine named Fang was shot and killed while pursuing an armed carjacking suspect in Jacksonville. Later, in December 2018, a canine named Cigo was shot and killed in Palm Beach while pursuing an offender wanted for attempted murder.

Section 843.19, F.S., criminalizes offenses against police dogs, fire dogs, search-and-rescue (SAR) dogs, and police horses. A person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police dog, fire dog, SAR dog, or police horse commits a third degree felony, punishable by up to five years in prison and a \$5,000 fine.

CS/HB 67 increases the penalty for causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police, fire, SAR dog, or police horse to a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine.

The bill makes technical changes to the current definitions used in s. 843.19, F.S., by replacing "dog" with "canine" wherever the word appears. This change does not substantively change current law. The bill expands the definitions of "police canine" and "SAR canine" to include any canine that is owned or used by a correctional agency. The bill also conforms ss. 767.16 and 921.0022, F.S., to changes made by the bill.

The Criminal Justice Impact Conference met on February 27, 2019, and determined the bill would insignificantly increase the need for prison beds.

The bill provides an effective date of October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Canine Units and Police Horses

Police canines are valued for their senses of smell and hearing, speed, and agility.¹ These combined abilities allow police canines to perform functions that human officers cannot. Police canines contribute to a variety of law enforcement functions, including:

- Locating missing persons,
- Apprehending criminal suspects,
- Performing article searches,
- Detecting narcotics,
- Detecting explosives and accelerants, and
- Tracking ground disturbances.²

Canines are also used by fire departments for investigating fires and detecting flammable materials and by other departments for search-and-rescue operations.³ Additionally, select law enforcement agencies use horses to assist with crowd control, special events, and community outreach.⁴

Police Canine Training

Though specific requirements of basic training for police canines are not standardized, all police canines receive training in the fundamentals of agility, endurance, and obedience training.⁵ Training usually begins when the canine is approximately one year old and lasts approximately 12 to 16 weeks.⁶ A police canine may serve in a law enforcement role for six to 10 years.⁷

Although not required for service in Florida, police canine certification is available through several commissions and associations.⁸ Commissions and associations used by Florida law enforcement agencies to obtain certification for police canines include:

- Criminal Justice Standards and Training Commission,
- The Florida Law Enforcement Canine Association,
- The United States Police Canine Association,
- The National Police Canine Training Association, and
- The North American Police Work Dog Association.⁹

¹ See Leon County Sheriff's Office, K9, <http://www.leoncountysso.com/departments/law-enforcement/k9> (last visited Mar. 17, 2019).

² *Id.*; Stefanie Dazio, *19 K-9 Line of Duty Deaths This Year Highlight Police Dogs' Important Jobs*, PoliceOne.com (Sept. 30, 2018), <https://www.policeone.com/k-9/articles/481541006-19-K-9-line-of-duty-deaths-this-year-highlight-police-dogs-important-jobs/> (last visited Mar. 17, 2019).

³ S. 843.19, F.S.

⁴ City of Orlando, *Mounted Patrol*, <http://www.cityoforlando.net/police/mounted-patrol/> (last visited Mar. 21, 2019).

⁵ Dogster, *Police Dogs: Just the Facts*, <https://www.dogster.com/lifestyle/police-dogs-dog-breeds-k9-unit-law-enforcement> (last visited Mar. 17, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ Pursuant to R. 11B-27.013, F.A.C., certification for police dogs is not required. Policy regarding certification of police dogs is on an office-by-office basis. Criminal Justice Agency, *Canine-Units-PD-2017*, FDLE, <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP-2017/PD-Index.aspx> (last visited Mar. 17, 2019).

⁹ *Id.*

Certification for police canines includes up to 480 hours of instruction on skills such as:

- Heeling control,
- Distance control,
- Social exposure,
- Gunfire exposure,
- Recall,
- Apprehension,
- Search,
- Alert, and
- Tracking/trailing.¹⁰

As of 2017, the Department of Law Enforcement reports that there are 469 canine units in Florida.¹¹ The estimated cost for a police canine is \$34,786, which includes the purchase price of the animal and specialized training for both the animal and the handler.¹²

Offenses Against Police Canines

In assisting with daily law enforcement activity, a police canine may be present and active in dangerous situations, such as riding in speeding cars, responding to active shooting threats, and checking for explosives.¹³ Recently, police canines have been shot and killed in the line of duty in Florida. In September 2018, a police canine named Fang was shot and killed while pursuing an armed carjacking suspect in Jacksonville.¹⁴ The canine caught the suspect after a short chase before being struck by a series of shots fired by the suspect.¹⁵ Later, in December 2018, a canine named Cigo was shot and killed in Palm Beach while pursuing a gang member wanted for attempted murder.¹⁶

Current Law

Offenses Against Police, Fire, and SAR Dogs, and Police Horses

Section 843.19, F.S., defines the terms “police dog,” “police horse,” “fire dog,” and “SAR dog.”¹⁷ A “police dog” or “police horse” mean a dog or horse, respectively, which is owned or used by a law enforcement agency for the principal purpose of aiding in the:

- Detection of criminal activity,
- Enforcement of laws, or
- Apprehension of offenders.¹⁸

A “fire dog” is a dog that is owned or used by a fire department, special fire district, or the State Fire Marshal for the principal purpose of aiding in detecting flammable materials or investigating fires.¹⁹ An “SAR dog” is a search and rescue dog owned or used by a fire department, law enforcement agency, special fire district, or the State Fire Marshal for the principal purpose of aiding detection of missing persons.²⁰

¹⁰ Criminal Justice Standards and Training Commission, *CJSTC-083-7-2015*, FDLE, <http://www.fdle.state.fl.us/CJSTC/Documents/Rules-Forms> (last visited Mar. 17, 2019).

¹¹ Criminal Justice Agency, *supra*, note 6.

¹² Email from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriffs Association, Law Enforcement K-9 Costs, (Jan. 14, 2019).

¹³ Stefanie Dazio, *supra*, note 2.

¹⁴ Teresa Stepzinski, *JSO Police Dog Shot, Killed Pursuing Carjacking Suspect*, The Florida Times-Union (Sept. 20, 2018), <https://www.jacksonville.com/news/20180930/jso-police-dog-shot-killed-pursuing-carjacking-suspect> (last visited Mar. 17, 2019).

¹⁵ *Id.*

¹⁶ WPEC-CBS12, *Two Suspects Identified in Killing of K-9 During Christmas Eve Shootout*, South Florida Sun Sentinel (Dec. 25, 2018), <http://www.sun-sentinel.com/local/palm-beach/fl-ne-mall-shooting-wpec-20181224-story.html> (last visited Mar. 17, 2019).

¹⁷ S. 843.19, F.S.

¹⁸ S. 843.19(1)(a), F.S.

¹⁹ S. 843.19(1)(b), F.S.

²⁰ S. 843.19(1)(c), F.S.

Florida law criminalizes certain offenses against these animals. A person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police animal commits a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.²¹ The penalty for a person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police animal is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.²²

Finally, it is a third degree felony to intentionally and knowingly, without lawful cause or justification, cause great bodily harm²³, permanent disability, or death to, or use a deadly weapon upon, a police dog, fire dog, SAR dog, or police horse.²⁴ A third degree felony is punishable by up to five years in prison and a \$5,000 fine.²⁵ Additionally, an offender must pay restitution for any injury caused to a police, fire, or SAR dog, or police horse, including the replacement cost of the animal if the animal can no longer perform its duties as a result of the offense.²⁶

Offenses against law enforcement officers and firefighters have higher penalties than offenses against police, fire, and SAR dogs, and police horses.²⁷ Aggravated battery on a law enforcement officer, which has similar elements of either causing great bodily harm, permanent disability, or permanent disfigurement or using a deadly weapon, is a first degree felony, punishable by up to 30 years in prison and a \$10,000 fine, and carries a five year mandatory minimum sentence.²⁸

Criminal Punishment Code—Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code²⁹ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.³⁰ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.³¹ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.³² The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.³³

The third degree felony offense of causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police dog, fire dog, or SAR dog or police horse is currently ranked as a level three offense on the offense severity ranking chart.³⁴ An offender with no prior criminal history before a court for sentencing on this charge would not be eligible for a mandatory prison sentence. However, this offense is often accompanied by other charges, as the crime typically occurs during the pursuit or

²¹ S. 843.19(4), F.S.

²² S. 843.19(3), F.S.

²³ "Great bodily harm" is not defined in s. 843.19, F.S. The Fourth District Court of Appeal looked to cases discussing "great bodily harm" in the context of aggravated battery to a human being in order to determine the scope of this term. *T.W. v. State*, 98 So. 3d 238, 243 (Fla. 4th DCA 2012). While "great bodily harm" is also not defined for aggravated battery to a human being, courts have generally defined the term to mean "great as distinguished from slight, trivial, minor or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple assault and battery." *Id.* In this case, the offender repeatedly kicked and punched a police dog with force, causing the dog to bleed. The dog suffered no permanent injury and was able to return to regular training the following week. *Id.* at 240-41. Accordingly, the court found the offender did not cause "great bodily harm." *Id.* at 243.

²⁴ S. 843.19(2), F.S.

²⁵ Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

²⁶ S. 843.19(5), F.S.

²⁷ S. 784.07, F.S.; s. 775.0823, F.S.; *Allen v. State*, 211 So. 3d 55, 57 (Fla. 4th DCA 2017).

²⁸ S. 784.07(2)(d), F.S.

²⁹ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

³⁰ S. 921.0022, F.S.

³¹ Ss. 921.0022 and 921.0024, F.S.

³² S. 921.0024(2), F.S.

³³ *Id.*

³⁴ S. 921.0022(3)(c), F.S.

search for a suspect wanted for outstanding charges. The additional charges would increase the total sentencing points under the sentencing guidelines.

Effect of Proposed Changes

CS/HB 67 increases the penalty for causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police canine, fire canine, SAR canine, or police horse from a third degree felony to a second degree felony. A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine.³⁵

The bill revises three statutorily defined terms in s. 843.19, F.S. The terms “police dog,” “fire dog,” and “SAR dog” are amended to read “police canine,” “fire canine,” and “SAR canine,” respectively. This change does not substantively change the law, as “dog” and “canine” are synonymous.³⁶ The bill expands the definitions of “police canine” and “SAR canine” to include any canine that is owned or used by a correctional agency. Additionally, the bill conforms ss. 767.16 and 921.0022, F.S., to changes made the bill.

The bill amends the offense severity ranking chart to conform to the changes made to the offense's terminology and penalty levels. The enhanced second degree felony offense for causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police canine, fire canine, SAR canine, or police horse remains ranked as a level three offense. As such, the total sentencing points used to determine an offender's lowest permissible sentence remains unchanged. However, because the bill increases the felony level of the offense against police canines, fire canines, SAR canines, and police horses, the maximum sentence an offender may receive is increased.

The bill provides an effective date of October 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 843.19, F.S., relating to offenses against police dogs, fire dogs, SAR dogs, or police horses.

Section 2: Amends s. 767.16, F.S., relating to police or service dog; exemption.

Section 3: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4: Provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on February 27, 2019, and determined that a prior version of the bill that only enhanced the penalty for offenses against police, fire, and SAR dogs would insignificantly increase the need for prison beds.³⁷

According to the Florida Department of Corrections, in FY 17-18, only one offender was sentenced for the Level 3, 3rd degree felony under s. 843.19, F.S., with no offenders sentenced to prison.³⁸ As

³⁵ Ss. 775.082(3)(d) and 775.083(1)(b), F.S.

³⁶ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/canine> (last visited Mar. 17, 2019).

³⁷ An insignificant change in prison beds means a change of 10 or fewer.

such, it is likely that the impact on prison beds will be insignificant where the penalty is also increased for an offense to a police horse.

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. The 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2019, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Increased the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon police horses to a second degree felony.
- Expanded the definition of “police canine” and “SAR canine” to include any canine that is owned or used by a correctional agency.
- Conformed terminology in s. 767.16, F.S., to changes made by the bill.
- Conformed the offense severity ranking chart to changes made by the bill.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

³⁸ Department of Economic and Demographic Research, HB 67 – Police, Fire, and Search and Rescue Dogs, “Criminal Justice Impact Conference”, February 27, 2019, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB67.pdf>