

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee

BILL: CS/CS/SB 504

INTRODUCER: Appropriations Committee; Criminal Justice Committee; and Senator Brandes and others

SUBJECT: Animal Cruelty

DATE: April 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Cantral	Sadberry	ACJ	Favorable
3.	Cantral	Hansen	AP	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 504 clarifies that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. The bill also clarifies that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill designates misdemeanor cruelty to animals as “animal cruelty” and designates felony cruelty to animals as “aggravated animal cruelty.”

Finally, the bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, F.S.

The Criminal Justice Impact Conference met on March 21, 2013, and determined that the bill will have an insignificant fiscal impact.

This bill has an effective date of July 1, 2013.

This bill substantially amends sections 828.12 and 895.02, Florida Statutes.

II. Present Situation:

Cruelty to Animals

Section 828.12(1) and (2), F.S., provides the following:

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a first degree misdemeanor or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a third degree felony or by a fine of not more than \$10,000, or both.

A circuit judge in the First Judicial Circuit recently held that, “a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions.” The court also stated, “the confinement of animals without sufficient food, water, or exercise charges are not distinguishable into separate acts merely because of an allegation that individual animals are kept in separate pens.”¹ Based upon the court’s ruling, acts of animal cruelty committed upon more than one animal would have to be prosecuted in the First Circuit as one act despite the fact that more than one animal suffered the cruelty. There is no similar judicial precedent at the circuit or appellate level. The trial court ruling makes the First Circuit the only circuit in the state with this particular interpretation of current law.

Animal Fighting or Baiting

Section 828.122(3), F.S., makes it a third degree felony for a person to:

- (3)(a) Bait, breed, train, transport, sell, own, possess, or use any wild or domestic animal for the purpose of animal fighting or baiting;
- (b) Own, possess, or sell equipment for use in any activity in paragraph (a).
- (c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);
- (d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- (e) 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;
- (f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a

¹ State v. Kervin, Sr. Case No. 000887A, (Fla. 1st Cir. Ct., 2012).

location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;

(g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or

(h) Attending the fighting or baiting of animals.

Notwithstanding any provision of this subsection to the contrary, possession of the animal alone does not constitute a violation of this section. ...

(9) This section shall not apply to:

(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided s. 828.12 is not violated.

(b) 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.

(c) Any person using animals to work livestock for agricultural purposes.

(d) Any person violating s. 828.121.

(e) Any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.

(10) This section shall not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.

Racketeer Influenced and Corrupt Organization (RICO) Act

It is a first degree felony, ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart, to violate Florida's RICO statute for a person:²

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- Who is employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- To conspire or endeavor to violate any of the above-described provisions.

Section 895.02, F.S., defines the term "racketeering activity," in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S.

² Section 921.0022, F.S.

There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide Prosecution.³

Local Animal Control or Cruelty Ordinances

Section 828.27(1), F.S. defines the terms “animal,” “animal control officer,” “control,” “cruelty,” “officer,” “citation,” and “ordinance.”

Cruelty is defined as any act of neglect, torture, or torment that causes unjustifiable pain or suffering of an animal.⁴

A citation, under section 828.27(f), F.S., is a written notice, issued by an officer, who has probable cause to believe that a civil infraction in violation of a county ordinance has occurred. The citation must contain the following:

- The date and time of issuance.
- The name and address of the person.
- The date and time the civil infraction was committed.
- The facts constituting probable cause.
- The ordinance violated.
- The name and authority of the officer.
- The procedure for the person to follow in order to pay the civil penalty, to contest the citation, or to appear in court as required under subsection (6).
- The applicable civil penalty if the person elects to contest the citation.
- The applicable civil penalty if the person elects not to contest the citation.
- A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
- A conspicuous statement that if the person is required to appear in court as mandated by subsection (6), he or she does not have the option of paying a fine in lieu of appearing in court.⁵

³ Section 16.56, F.S., reads, in part,
16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason.

⁴ Section 828.27(1)(d), F.S.

⁵ Section 828.27(1)(f), F.S.

A violation of the county or municipality's animal control or cruelty ordinance is subject to a civil penalty not to exceed \$500. Any person who willfully refuses to sign and accept a citation issued by an officer, is guilty of second degree misdemeanor and is subject to a fine of up to \$500.⁶

Under section 827.27(4)(b), F.S., the governing body of a county or municipality may impose and collect a surcharge of up to \$5 upon each civil penalty imposed for a violation of such animal control or cruelty ordinance. The proceeds from such surcharges shall be used to pay the costs of training for all animal control officers.

Animal control officers shall successfully complete a 40-hour minimum standards training course, which includes, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations. Such training is subject to approval by the Florida Animal Control Association.⁷ Each certified county-employed animal control officer is required to complete 4 hours of post certification training every two years.⁸

III. Effect of Proposed Changes:

The bill designates a violation of s. 828.12(1), F.S., as "animal cruelty," and a violation of s. 828.12(2), F.S., as "aggravated animal cruelty."

The bill adds a new subsection (3) to s. 828.12, F.S., specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. This provision brings the First Judicial Circuit back in line with the rest of the state after a court ruling in a particular case in that circuit had ruled otherwise.⁹

The bill allows a county, as defined in s. 125.011, F.S., to use carryover proceeds or fund balances obtained from civil penalties from violations of ordinances relating to animal control or cruelty for animal shelter operating expenses. This provision expires July 1, 2014.

Finally, the bill amends the definition of "racketeering activity" to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Section 775.082, F.S.

⁷ Section 827.27(4)(a)1, F.S.

⁸ Section 827.27(4)(a)3, F.S.

⁹ State v. Kervin, Sr. Case No.000887A, (Fla. 1st Cir. Ct., 2012).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections reports that there have been no admissions to prison under s. 828.12, F.S., during the last three fiscal years. However, it is uncertain if the modifications made in the bill will lead to prison admissions. The following chart reflects the number of admissions to community supervision during the last three fiscal years.

Primary Offense Description	Supervision Admission Years		
	FY 09/10	FY 10/11	FY 11/12
Tortures Animals w/Intent	73	53	89

On March 21, 2013, the Criminal Justice Impact Conference determined the bill will have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 18, 2013:

Allows carryover proceeds or fund balance from the collection of surcharges for civil penalties for violation of an ordinance relating to animal control or cruelty to be used for animal shelter operating expenses. This provision expires on July 1, 2014.

CS by Criminal Justice on March 18, 2013:

Deleted section 2 of the bill relating to evidentiary matters regarding baiting and fighting animals.

- B. **Amendments:**

None.