

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 91 Severe Injuries Caused by Dogs

SPONSOR(S): Judiciary Committee; Local Government Affairs Subcommittee; Civil Justice Subcommittee; Steube and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 334

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|---------------------------------------|
| 1) Civil Justice Subcommittee | 13 Y, 0 N, As CS | Robinson | Bond |
| 2) Local Government Affairs Subcommittee | 11 Y, 0 N, As CS | Darden | Miller |
| 3) Judiciary Committee | 17 Y, 0 N, As CS | Robinson | Havlicak |

SUMMARY ANALYSIS

State laws governing the classification, control, and destruction of “dangerous dogs” are enforced by local animal control authorities. The overall purpose of such laws is to protect public safety by classifying certain dogs as “dangerous” and requiring their owners to follow specific safety restrictions.

Under current law, dogs which cause severe injury to human beings may either be classified as a dangerous dog subject to safety restrictions or immediately confiscated and destroyed. If an animal control authority proceeds under the classification provisions, the owner of the dog may raise certain affirmative defenses for the dog’s bad acts. Affirmative defenses may not be raised in a destruction proceeding. This inconsistency has led three different Florida courts to declare the current law unconstitutional.

The bill requires that all cases involving severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding where affirmative defenses may be raised rather than a destruction proceeding. If classified as a dangerous dog, the dog may be destroyed or returned to its owner subject to the safety restrictions for dangerous dogs.

The bill also moves jurisdiction over appeals in dangerous dog cases from county court to circuit court and expressly exempts law enforcement dogs from all provisions governing dangerous dogs.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dangerous Dogs

Chapter 767, F.S., governs the classification, control, and disposition of “dangerous dogs.” A “dangerous dog”¹ is a dog that, according to the records of the appropriate authority, has:

- Aggressively bitten, attacked, or endangered or has inflicted severe injury² on a human being on public or private property.
- More than once severely injured or killed a domestic animal while off the owner’s property.
- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

Investigation and Classification of Dangerous Dogs

Section 767.12, F.S., requires that animal control authorities³ investigate reported incidents involving any dog that may be a dangerous dog. While under investigation, the dog must be impounded with the authorities or securely confined by the owner pending the outcome.⁴

In determining whether a dog is a “dangerous dog”, an animal control authority must consider certain defenses for the dog’s bad acts. If the threat, injury, or damage that is the subject of the reported incident was sustained by a person who was unlawfully on the property where the attack occurred, by a person who was tormenting, abusing, or assaulting the dog, its owner, or a family member, the dog may not be classified as dangerous.⁵ A dog may not be classified as dangerous if the dog was protecting a human being from an unjustified attack or assault.⁶ Law enforcement dogs are also exempt from classification as a dangerous dog.⁷

In all other cases, if the animal control authority finds sufficient evidence that the dog meets the statutory criteria, it may make an initial determination that the dog should be classified as dangerous.⁸ The owner may request a hearing within 7 days of receiving notice of the initial determination. The hearing must be held no earlier than 5 days, but no later than 21 days, after receipt of the owner’s request.⁹

Thereafter, the animal control authority issues a written final determination of the dog’s status as a dangerous dog. The owner may appeal the dangerous dog classification to the county court within 10 days after receipt of the final determination.¹⁰

Local governments may adopt ordinances placing restrictions and additional requirements on the owners of dangerous dogs, provided that those regulations do not target a specific breed.¹¹

¹ s. 767.11(1), F.S.

² “Severe injury” means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. s. 767.11(3), F.S.

³ “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff carries out such duties. s. 767.11(5), F.S.

⁴ s. 767.12(1)(a), F.S.

⁵ s. 767.12(1)(b), F.S.

⁶ *Id.*

⁷ s. 767.12(6), F.S.

⁸ s. 767.12(1)(c), F.S.

⁹ *Id.*

¹⁰ s. 767.12(1)(d), F.S.

Dangerous Dog Restrictions

The owner¹² of a dog that has been classified as a dangerous dog must comply with the following requirements and restrictions:

- Within 14 days of the final determination, or the completion of any appeal, the owner must obtain, and annually renew, a certificate of registration which requires proof of current rabies vaccination.¹³
- The dog must be marked with a form of permanent identification, such as a tattoo or electronic implant.¹⁴
- The owner must provide a proper enclosure¹⁵ to confine the dog and post the premises with warning signs at each entry point.¹⁶
- The dog must be muzzled and restrained when outside a proper enclosure or when being transported within a vehicle.¹⁷
- The owner must notify animal control if the dog is moved to another address, and, if such address is in a different jurisdiction, inform the authorities of that jurisdiction of the presence of the dog.¹⁸
- The owner must notify animal control when the dog is loose or has attacked a human being or animal.¹⁹
- The owner must notify animal control prior to the dog being sold or given away and provide the contact information of the new owner.²⁰
- The dog may not be used for hunting purposes.²¹

The owner of a dangerous dog is subject to civil penalties for violating any of the specified restrictions²² and may be criminally charged if the dog subsequently attacks or bites a human being or domestic animal.²³

Destruction of Dogs

In addition to classifying dogs as “dangerous”, ch. 767, F.S. also requires animal control authorities to destroy dogs which display dangerous behaviors. The circumstances under which a dog must be destroyed depend upon whether the dog has been classified as a dangerous dog.

Dangerous Dogs

A dog that has previously been classified as a dangerous dog must be destroyed if the dog subsequently:

¹¹ s. 767.14, F.S.

¹² Subsequent owners of a dog that has been declared dangerous must also comply with all the dangerous dog requirements and the implementing local ordinances, even if the dog is moved from one local jurisdiction to another within the state. s. 767.12(3), F.S.

¹³ s. 767.12(2), F.S.

¹⁴ s.767.12(2)(c), F.S.

¹⁵ “Proper enclosure of a dangerous dog” means, while on the owner’s property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure must have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and must also provide protection from the elements.

s. 767.11(4), F.S.

¹⁶ s. 767.12(2)(b), F.S.

¹⁷ s. 767.12(4), F.S.

¹⁸ s. 767.12(3), F.S.

¹⁹ s. 767.12(3)(a)-(b), F.S.

²⁰ s. 767.12(3)(c), F.S.

²¹ s. 767.12(5), F.S.

²² s. 767.12(7), F.S.

²³ s. 767.13, F.S.

- Attacks or bites a human being or domestic animal without provocation.²⁴
- Attacks and causes severe injury to a human being.²⁵
- Attacks and causes the death of a human being.²⁶

Upon the occurrence of any such event, the dog is immediately confiscated by the animal control authority and placed in quarantine, if necessary, or impounded. The dog is held for 10 business days from the notification of its owner, and then destroyed. During the 10 day time period, the owner may request a hearing before the animal control authority. If an appeal of the destruction order is filed to the county court, the dog may not be destroyed pending the appeal, although the owner will be liable for boarding costs and fees arising from holding the dog.²⁷

Unclassified Dogs

Previously unclassified dogs must be destroyed under a narrower set of circumstances. Section 767.13(2), F.S., provides in pertinent part:

If a dog that has not been declared dangerous attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner.

The owner of a previously unclassified dog that causes severe injury or death to a human being possesses the same rights to a hearing and appeal as the owner of a dangerous dog.²⁸

Difficulty has arisen in the resolution of destruction cases involving previously unclassified dogs that cause severe injuries. Rather than destruction, the classification scheme under s. 767.12, F.S. provides that a dog which causes severe injuries to a human being may be classified as “dangerous” and returned to its owner subject to compliance with certain safety restrictions.

Accordingly, under current law, the investigating animal control authority may treat such a previously unclassified dog as either a dangerous dog subject to restriction under s. 767.12, F.S., or as a candidate for destruction under s. 767.13(2), F.S. This dichotomy essentially gives animal control authorities unfettered discretion to determine whether a previously unclassified dog shall be confiscated and destroyed or returned to its owner. One county court²⁹ has found that “such discretion in the hands of the enforcement authority runs afoul of the constitutional doctrine of nondelegation.”³⁰ The court overturned an order mandating destruction of a dog that, alternately, could have been classified and restricted as a dangerous dog under s. 767.12, F.S.

Further, in classification proceedings, the dog owner may raise a number of affirmative defenses, such as provocation or abuse of the dog, to prevent the classification of his or her dog as dangerous. However, if the animal control authority pursues destruction under s. 767.13(2), F.S., the owner may raise no defense for the dog’s bad acts. Section 767.13(2), F.S. is a strict liability statute and the fate of

²⁴ s. 767.13(1), F.S.

²⁵ s. 767.13(3), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ s. 767.13(2), F.S.

²⁹ Order on Petitioner’s Motion for Rehearing at 4, *In Re: Petition of Gilbert Otero Regarding the Dog “Zeus,”* No. 2007-CC-2863-SC (Sarasota Cty. Ct. Jul. 27, 2007).

³⁰ The doctrine of nondelegation describes the principle that one branch of government may not authorize another entity to exercise the power or function which it is constitutionally authorized to exercise itself. The nondelegation doctrine is explicitly stated in Article II, Section 3 of the Florida Constitution, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” *See also Dickinson v. State*, 227 So. 2d 36, 37 (Fla. 1969) (the legislative exercise of the police power should be so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of the administrative agency charged with responsibility of enforcing the act).

the dog is determined with finality the moment that the dog inflicts a severe injury or death, regardless of the reason or circumstances. The inability to raise affirmative defenses to the destruction of the dog led the county court in *In Re: "Cody"* to declare s. 767.13(2), F.S. unconstitutional as a violation of the owner's right to substantive due process.³¹

It truly does defy logic that the owner of a dog facing potential classification as "dangerous" may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense, no matter how valid or compelling, may be raised by a person trying to prevent *execution* of his or her pet. To compel execution of all dogs confiscated under Section 767.13(2) is arbitrary and unduly oppressive. The legislature has given animal control authorities unfettered authority to order the killing of any dog, who has not previously been declared dangerous and who causes "severe injury," regardless of the circumstances. Section 767.13(2), as it is currently written, does not further the government's interest of protecting society from "dangerous dogs."³²

On December 14, 2015, in a case of first impression before the circuit courts,³³ the Twelfth Judicial Circuit Court in and for Manatee County also declared s. 767.13(2), F.S. unconstitutional.³⁴ The court similarly cited violations of the nondelegation doctrine and substantive due process as grounds for its decision.³⁵

Effect of Proposed Changes

The bill amends ss. 767.12 and 767.13, F.S. to require that all cases involving severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding where affirmative defenses may be raised rather than a destruction proceeding. In such cases an animal authority may, but is not required to, quarantine and confiscate the dog pending the outcome of the dangerous dog investigation and any related hearings or appeals. If not confiscated, the dog is subject to home confinement under s. 767.12(1)(a), F.S., and its relocation and transfer of ownership restricted until the completion of the investigation and any related hearings or appeals.

If the dog is classified as a dangerous dog as a result of the investigation, the animal control authority may impose one of the following penalties after considering the nature of the injury and the future likelihood of harm:

- Compliance with the dangerous dog safety restrictions; or
- Destruction of the dog in an expeditious and humane manner.

³¹ The Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the State Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. Dogs and other domestic animals, commonly referred to as pets, are subjects of property or ownership. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967). The owner of such animals may not be deprived of their use, except in accord with all of the elements of due process. *County of Pasco v. Riehl*, 620 So. 2d 229, 231 (Fla. 2d DCA 1993). Due process protects not only basic procedural rights, but also basic substantive rights. In considering whether a statute violates substantive due process, the basic test is whether the state can justify the infringement of its legislative activity upon personal rights and liberties. The statute must bear a reasonable relationship to the legislative objective and not be arbitrary, discriminatory, or oppressive. See *Young v. Broward County*, 570 So. 2d 309, 310 (Fla. 4th DCA 1990); *Joseph v. Henderson*, 834 So. 2d 373, 374 (Fla. 2d DCA 2003).

³² Opinion of the Court at 5, *In Re: "Cody", an adult male, black and tan German Shepard dog, owned by Charles Henshall*, No. 1999-33984-COCI (Volusia Cty. Ct. May 6, 2003).

³³ Dale White, *Attorney cites 'Stand your ground' in Padi case*, Sarasota Herald-Tribune, September 29, 2015, <http://www.heraldtribune.com/article/20150929/ARTICLE/150929611/2416/NEWS?Title=Attorney-cites-Stand-your-ground-in-Padi-case&tc=ar>.

³⁴ Final Order Granting Motions for Summary Judgment, Deeming §767.13(2), Florida Statutes, Unconstitutional, and Granting Declaratory and Supplemental Relief at 9-10, *Manatee County v. Paul Gartenberg*, No. 2015-CA-003844 (Fla. 12th Cir. Dec. 14, 2015).

³⁵ *Id.*

The animal control authority must notify the owner of the proposed penalty within the notice of sufficient cause. The dog owner may request a hearing regarding the classification, proposed penalty, or both before the animal control authority makes a final determination. The failure to timely request a hearing as to either issue renders such determination of the animal control authority final.

The bill also:

- Transfers jurisdiction over appeals of final orders in dangerous dog cases from county court to circuit court which is consistent with current law. Appeals may be commenced by filing a petition for writ of certiorari within 30 days of the rendition of the final order.³⁶
- Authorizes local governments to adopt ordinances placing further restrictions or requirements on dogs that have bitten or attacked persons or domestic animals, but have not been declared dangerous. The bill does not change current law prohibiting such ordinances from targeting specific breeds.
- Expressly exempts law enforcement dogs from all dangerous dog provisions.

The bill makes conforming changes to s. 767.13(2), F.S. and also recreates an existing criminal penalty in a new section of law.

B. SECTION DIRECTORY:

Section 1 provides a directive to the Division of Law Revision and Information.

Section 2 amends s. 767.12, F.S., regarding the classification of dangerous dogs.

Section 3 transfers, renumbers, and amends s. 767.13(2), F.S., regarding the confiscation and destruction of dogs.

Section 4 creates s. 767.136, F.S., regarding criminal penalties for attack or bite by an unclassified dog.

Section 5 amends s. 767.14, F.S., regarding additional local restrictions on dogs that have bitten or attacked persons or domestic animals.

Section 6 amends s. 767.16, F.S., regarding exemptions for police or service dogs.

Section 7 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Office of the State Courts Administrator anticipates no additional judicial workload as a result of shifting appeals from the county court to the circuit court and, therefore, the bill is unlikely to have a significant impact on expenditures of the State Courts System.³⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

³⁶ Fla. R. App. P. 9.100(c)

³⁷ Office of the State Courts Administrator, 2016 Judicial Impact Statement of Senate Bill CS/SB 334 (December 3, 2015) (on file with the Judiciary Committee).

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 7, 2015, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. That strike-all amendment:

- Required that cases involving the severe injury of a human being by an unclassified dog be resolved pursuant to a classification proceeding rather than a destruction proceeding.
- Provided that confiscation and impoundment of a dog which has caused severe injuries to a human is discretionary.
- Established penalties for dangerous dogs that cause severe injuries to humans.
- Exempted law enforcement dogs from all provisions of the dangerous dog law.
- Made conforming and technical changes to ch. 767, F.S.

On November 4, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorizes local governments to adopt additional restrictions concerning dogs that have attacked a person or a domestic animal.

On January 13, 2016, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised the hearing and appeals process in dangerous dog cases, including transferring jurisdiction over appeals from county court to circuit court. This analysis is drawn to the committee substitute as passed by the Judiciary Committee.