

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 871 Animal Abuser Registration
SPONSOR(S): Criminal Justice Subcommittee, Ingoglia and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Hall	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In recent years, some animal advocates have argued for the adoption of animal abuser registries that would allow the public to identify persons convicted of crimes against animals. Tennessee and numerous localities have adopted an animal abuse offender registry.

Florida law does not currently provide for an animal abuser registry. However, Florida does require other offenders, convicted of specified offenses, to register with law enforcement. Under current law, sexual offenders, sexual predators, career offenders, and convicted felons are subject to mandatory registration requirements. These registration requirements allow law enforcement to track offenders as well as to provide the public notification that such offenders are present in their communities.

The bill creates s. 943.0425, F.S., requiring the Florida Department of Law Enforcement (FDLE) to create a publicly accessible registry list of persons convicted of certain animal abuse offenses. Related to the development and function of the registry, the bill provides that FDLE must do the following:

- Post to its website a publicly access registry list of convicted animal abusers on or after Jan. 1, 2018;
- Include a booking photograph of the convicted animal abuser, as well as the person's full name, and any other identification information necessary to properly identify such persons;
- Maintain the animal abuser's name and identifying information for two years upon a first time conviction, and for five years upon a second or subsequent conviction;
- Remove the name of any person who's animal abuse offense has been sealed or expunged;
- Send letters annually to the registered breeders informing them of the existence of the registry and encouraging them to urge their members to not provide animals to those persons listed on the registry;
- Send notice, each year, to pet dealers, animal shelters, humane organizations, and certain animal control agencies informing them of the existence of the registry and of newly added offenders.

The bill defines "animal abuser" to mean a person convicted of one of the following animal abuse offenses:

- A felony conviction for animal cruelty, pursuant to s. 828.12, F.S.;
- A felony conviction for fighting or baiting animals, pursuant to s. 828.122, F.S.; or
- Any conviction for sexual activities involving animals, pursuant to s. 828.126, F.S.

The bill authorizes a sentencing court to prohibit an offender convicted of animal cruelty or sexual activities involving animals from owning or possessing, an animal as a condition of the offender's probation.

The bill is expected to have a fiscal impact on FDLE as it requires the department to develop and maintain the registry as well as send out annual notifications of the existence of the registry. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0871.CRJ

DATE: 3/15/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Animal Abuse Registries

In recent years, multiple jurisdictions have passed legislation creating animal abuse registries. The state of Tennessee maintains an animal abuse registry that is publicly accessible through the Tennessee Bureau of Investigation's website.¹ The registry requires an offender convicted of a felony level specified animal abuse offense to register and provides a booking photograph as well as the name, date of birth, and address for each offender.² The information is maintained for two years following a first time conviction and five years following any subsequent conviction, at which time it is removed, provided that the person is not convicted of another animal abuse offense during that period.³

Several localities throughout the country have adopted similar animal abuse offender registries. In New York, Rockland,⁴ Nassau,⁵ and Suffolk Counties,⁶ as well as New York City⁷ maintain registries. While most offender registries are accessible online to the public, New York City's registry only allows users to subscribe who are animal control officers, an animal rescue group, veterinarian, or an employee of an animal shelter, humane society, or pet shop.⁸

In Florida, Hillsborough County passed an ordinance in 2016 requiring convicted animal abuse offenders to self-register within 10 days of their conviction or release from incarceration. The ordinance prohibits registered offenders from obtaining certain animals from any animal shelter or pet seller, and from owning, possessing, or residing in the same household as an animal while on the registry. An offender remains on the county's registry for three years for a misdemeanor conviction, five years for a felony conviction, and 10 years for a second or subsequent conviction of either misdemeanor or felony abuse.⁹

¹ TENNESSEE BUREAU OF INVESTIGATION, *Tennessee Animal Abuse Registry*, <https://www.tn.gov/tbi/topic/tennessee-animal-abuse-registry> (last visited March 11, 2017).

² There are currently seven offenders on the Tennessee Animal Abuse Registry. *Id.*

³ TENN. CODE ANN. § 40-39-403 (2016).

⁴ There are currently three offenders on the county's registry which is publicly accessible through the Rockland County Sheriff's Office website. The available information includes the offender's booking photograph, name, and address. ROCKLAND COUNTY SHERIFF'S OFFICE, *Animal Abuse Registry*, http://www.rocklandcountysheriffoffice.com/animal_abuse_registry.html (last visited March 11, 2017).

⁵ The Nassau County Animal Abuse Registry is hosted by the Nassau County Society for the Prevention of Cruelty to Animals and is publicly available online. The registry currently lists four offenders and provides a booking photograph, name, and address for each offender. NASSAU COUNTY SPCA, *Nassau County Animal Abuse Registry*, <http://nassaucountyspca.org/nassaucountyanimalabuserregistry.cfm> (last visited March 11, 2017).

⁶ Suffolk County's registry is publicly available online and provides a booking photograph, name, address, and other identifying information for each offender. There are currently four offenders listed on the registry. SUFFOLK COUNTY POLICE DEPARTMENT, *Animal Abuse Registry*, <http://scpd.suffolkcounty.gov/aaregistry.htm> (last visited March 11, 2017).

⁷ New York City's 2014 Animal Abuse Registration Act requires anyone living in New York City, who is at least 18 years old at the time of conviction for an animal abuse crime to register through the City Health Department. The registration period lasts for five years after sentencing or release from incarceration and a failure to register can result in up to one year in jail, a fine of \$1,000, or both. CITY OF NEW YORK, *Animal Abuse Registry*, <http://www1.nyc.gov/nyc-resources/service/5142/animal-abuse-registry> (last visited March 11, 2017).

⁸ NYC HEALTH, *Online Service Registration*, <https://a816-healthpsi.nyc.gov/OnlineRegistration/dohmh/DOHMHService.action> (last visited March 11, 2017).

⁹ The ordinance also prohibits animal-related businesses from transferring animals to a person registered as an animal abuser. A violation may be punishable by warning, fine, or 60 days imprisonment depending on any history of violation. HILLSBOROUGH COUNTY ORDINANCE No. 16-18 (2016).

Animal Abuse Offenses

Florida currently prohibits crimes against animals by proscribing offenses at both the misdemeanor and felony level. Section 828.12, F.S., prohibits a person from committing cruelty to animals. A person who unnecessarily commits any of the following offenses against an animal commits a first degree misdemeanor:¹⁰

- Overloads, overdrives, torments, or deprives of necessary sustenance or shelter;
- 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.

The law prohibits aggravated animal cruelty when a person intentionally commits an act to an animal, or fails to act if the person is the owner having custody and control of the animal, which results in one of the following:

- The cruel death of the animal;
- The excessive or repeated infliction of unnecessary pain or suffering; or
- Causes both to be done.

A person guilty of aggravated animal cruelty commits a third degree felony which s. 828.12, F.S., provides is punishable by up to five years imprisonment and a \$10,000 fine.¹¹ If it is determined that a person guilty of this offense, knowingly and intentionally tortured or tormented and he or she injured, mutilated, or killed the animal, he or she must be ordered to pay a fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.¹² If a person is later convicted of a subsequent offense, he or she must be ordered to pay a fine of \$5,000 and serve a minimum mandatory sentence of 6 months in jail without eligibility for gain time.¹³

Florida law also prohibits a person from engaging in animal fighting¹⁴ or animal baiting¹⁵. Related to animal fighting or baiting, s. 828.122, F.S., prohibits a person from doing any of the following:

- Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or animal baiting;
- Owning, possessing, or selling equipment for any activity previously described;
- Owning, leasing, managing, operating, or having control of any property kept or used for any activity previously described;
- Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- Performing any service or act to facilitate animal fighting or baiting;¹⁶
- Removing or facilitating the removal of any animal impounded for a violation of this section without prior authorization by the court;
- Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
- Attending the fighting or baiting of animals.

A person who commits any of these prohibited acts commits a third degree felony.¹⁷ If a court finds probable cause to believe that animal fighting or baiting has occurred, it may order the seizure of any

¹⁰ A first degree misdemeanor is punishable by up to a year in the county jail and for this offense a fine of not more than \$5,000. s. 775.082, F.S.

¹¹ s. 828.12(2), F.S.

¹² s. 828.12(2)(a), F.S.

¹³ s. 828.12(2)(b), F.S.

¹⁴ "Animal fighting" is defined to mean "fighting between roosters or other birds or between dogs, bears, or other animals." s. 828.122(2)(a), F.S.

¹⁵ "Baiting" is defined to mean "to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals." s. 828.122(2)(b), F.S.

¹⁶ 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. s. 828.12(3)(e), F.S.

¹⁷ 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.

animals and equipment used for that purpose.¹⁸ Additionally, the court may prohibit a person convicted of animal fighting or baiting from owning or keeping any animals within the species that were the subject of the conviction for a period of time.¹⁹

Furthermore, a person is prohibited from performing sexual conduct²⁰ or having sexual contact²¹ involving animals. Section 828.126, F.S., creates a first degree misdemeanor²² offense when a person knowingly:

- Engages in any sexual conduct or sexual contact with an animal;
- Causes, aids, or abets another person to engage in sexual conduct or sexual contact with an animal;
- Permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Knowingly organizes, promotes, conducts, advertises, aids, abets, participates as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for commercial or recreational purpose.

Florida Offender Registries

Florida law requires offenders convicted of certain crimes to register their information with law enforcement. The purpose of such registration requirements are to aid law enforcement in tracking offenders and to provide notification to the public and community of the presence of these offenders.

The following persons are required by law to register with law enforcement:

- Sexual offenders²³ pursuant to s. 943.0435, F.S.;
- Sexual predators²⁴ pursuant to s. 775.21, F.S.;
- Career offenders²⁵ pursuant to s. 775.261, F.S.; and
- Convicted felons²⁶ pursuant to s. 775.13, F.S.

Florida does not currently require registration for offenders convicted of animal abuse related offenses.

Effect of the Bill

The bill creates s. 943.0425, F.S., to create a publicly accessible registry list on the Florida Department of Law Enforcement (FDLE) website of persons convicted of certain animal abuse offenses. In establishing criteria for the registry and its requirements, the bill provides definitions as follows:

- “Abuser” or “animal abuser” means a person who has been convicted in Florida of committing an animal abuse offense.
- “Animal” means a dog,²⁷ a cat,²⁸ a pet normally maintained in or near the household of its owner; a domesticated animal; previously captured wildlife; an exotic animal; or any other pet, including, but not limited to, a rabbit, chick, duck, or potbellied pig.²⁹

¹⁸ s. 828.122(4), F.S.

¹⁹ s. 828.122(8), F.S.

²⁰ “Sexual conduct” is defined to mean “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.” s. 828.126(1)(a), F.S.

²¹ “Sexual contact” is defined to mean “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.” s. 828.126(1)(b), F.S.

²² A first degree misdemeanor is punishable by up to one year in the county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

²³ See s. 943.0435(1)(h)1., F.S.

²⁴ See s. 775.21(4), F.S.

²⁵ A “career offender” means “any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison release reoffender under s. 775.082(9).” s. 775.261(2)(a), F.S.

²⁶ For registration requirements under this section, the term “convicted” means, a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld for a felony offense. s. 775.13(1), F.S.

²⁷ Of the species *canis familiaris*.

²⁸ Of the species *Felis catus*.

- “Animal abuse offense” means a conviction of a person who is not a child³⁰ for a felony violation of animal cruelty under s. 828.12, F.S. or animal fighting under s. 828.122, F.S.; or any violation of involving sexual activities with animals under s. 828.126, F.S.
- “Conviction” has the same meaning as defined in s. 775.21, F.S.³¹
- “Pet dealer” includes a pet dealer as defined in s. 828.29, F.S.,³² or an animal shelter, humane organization, or animal control agency operated by a human organization that receives funds from the state or from a political subdivision of the state and that, in the ordinary course of business, engages in the sale or adoption of animals.
- “Registered breed association” means an association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in constitutions, bylaws, or other rules of the association.

The bill requires the FDLE to post to its website a publicly accessible registry list of each person convicted of an animal abuse offense on or after January 1, 2018. The registry list is required to include a booking photograph of the convicted animal abuser, as well as the person’s full name, and any other identifying information that FDLE determines is necessary to properly identify such persons. The registry list is prohibited from containing an abuser’s social security number, driver’s license number, or any other state or federal identification number. In order to accurately maintain and update the registry, a the clerk of court must forward a copy of the judgement and date of birth of each person convicted of an animal abuse offense to FDLE within 30 days of the date of the judgement.

The bill requires the FDLE to remove the name and information of any person from the registry when the criminal record of the offense which made them eligible for the registry is expunged or sealed. Additionally, the bill provides for removal of an animal abuser’s name and identifying information from the registry list after a specified period of time assuming that person is not convicted of a subsequent animal abuse offense. The bill requires FDLE to maintain an animal abuser’s name and identifying information for the specified time periods:

- Two years after the date of conviction for a first-time conviction for an animal abuse offense.
- Five years after the date of the most recent conviction for a subsequent conviction for an animal abuse offense.

Beginning in 2019, the bill requires FDLE to send annual letters to the leading registered breed associations for animals covered under this act to inform them of the existence of the registry list and to encourage them to urge their members to not give or sell animals to persons listed on the registry. FDLE will also be required to send notice of the existence of an animal abuser registry and of newly added offenders to the registry, each year, to the following entities:

- All pet dealers, animal shelters, and human organizations in the state; and
- All animal control agencies operated by a humane organization that receives funds from the state or from a political subdivision of the state that, in the ordinary course of business, engages in the sale or adoption of animals.

²⁹ The bill specifies the term “animal” does not include: an equine, an animal that is being raised primarily for use as food or fiber for human utilization or consumption, including, but not limited to, cattle, sheep, swine, goats, and poultry; a wild vertebrate; or a mollusk, crustacean, or fish.

³⁰ “Child” is defined to mean “any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.” s. 985.03(7), F.S.

³¹ “Conviction” is defined to mean “a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.” s. 775.21(2)(e), F.S.

³² “Pet dealer” is defined to mean “any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale or more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public. This definition includes breeders of animals who sell such animals directly to a consumer.” s. 828.29(13), F.S.

Finally, the bill amends ss. 828.12 and 828.126, F.S., relating to cruelty to animals and sexual activity with animals, respectively, to authorize a sentencing court to prohibit a person who has violated either of these laws from owning, possessing, maintaining, having custody of, residing with, or caring for any animal as a condition of his or her probation.

The bill provides an effective date of October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Creating s. 943.0425, F.S., relating to animal abuser registration.

Section 2: Amending s. 828.12, F.S., relating to cruelty to animals.

Section 3: Amending s. 828.126, F.S., relating to sexual activities involving animals.

Section 4: Providing an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have any impact of state government revenues.
2. Expenditures: The bill is expected to have a fiscal impact on FDLE as it requires the department to develop and maintain the registry, as well as send out annual notifications of the existence of the registry. Fiscal impact data has not yet been received for the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: 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: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This 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 March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as file in that the CS:

- Excludes a child, as defined in s. 985.03, F.S., from eligibility for inclusion on the registry;
- Amends the qualifying offenses to include any violation of s. 828.126, F.S., relating to sexual activity with animals as it is currently a first degree misdemeanor offense;
- Removes the provision that authorized FDLE's executive director to determine how long the registry would remain on the department's website, as it conflicted with the requirement for the registry to be publicly posted on the department's website;
- Authorizes a court to prohibit offenders convicted of ss. 828.12 and 828.126, F.S., cruelty to animals and sexual activity with animals, respectively, from having contact with animals as a probation condition; and
- Removes criminal penalties for pet dealers who sell or deliver animals without verifying the prospective purchaser's identity and determining that person is not on the registry list.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.