

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 473 Animal Welfare  
**SPONSOR(S):** Judiciary Committee, Leek, Brodeur and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Bruno	Sumner
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Gusky
3) Judiciary Committee	17 Y, 0 N, As CS	Bruno	Poche

### SUMMARY ANALYSIS

Section 828.12, F.S., defines the crimes of animal cruelty. Prohibited acts at the misdemeanor level include:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating or killing any animal,
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.

An act – or failure to act by an owner or person in custody or control of an animal – that results in the cruel death or excessive or repeated infliction of unnecessary pain or suffering constitutes aggravated animal cruelty, a third degree felony.

CS/HB 473 increases the offense severity ranking for aggravated animal cruelty from level three to level five under the Criminal Punishment Code. With aggravated animal cruelty at level five, a person convicted of one count of aggravated animal cruelty with no other open offenses or prior convictions would not score a minimum prison sentence under the sentencing guidelines; however, the judge could, in his or her discretion, sentence such an individual to prison without having to make written findings that a nonstate prison sanction could present a danger to the public.

The bill also allows the court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion.

The bill requires a public or private animal shelter, humane organization, or animal control agency that receives lost or stray dogs or cats to adopt written policies and procedures to ensure that every reasonable effort is made to return owned animals to their owners. The written policies and procedures must include:

- Screening lost or stray dogs and cats for identification;
- A process for matching received lost or stray dogs and cats with any reports of lost pets;
- Public notice of lost or stray dogs and cats received within 48 hours;
- Reasonable efforts to notify identified owners of lost or stray dogs and cats within 48 hours of identification;
- Notice to the public of the shelter's location, hours, fees, and return-to-owner process;
- Access for owners to retrieve dogs and cats at least one weekend day per week and after 5:00 pm one weekday per week, but the entity is not required to increase its total operating hours;
- Direct return-to-owner protocols that allow animal control officers in the field to directly return lost or stray dogs and cats to their owners when the owners are identified;
- Procedural safeguards to minimize the euthanasia of owned dogs and cats; and
- Temporary extension of local minimum stray hold periods after a disaster is declared by the President of the United States or a state of emergency declared by the Governor.

To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments. The Criminal Justice Impact Conference met on January 8, 2018, and determined the bill will insignificantly increase the need for prison beds.

The bill provides an effective date of July 1, 2018.

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

**STORAGE NAME:** h0473e.JDC

**DATE:** 1/25/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Animal Cruelty

Under Florida law, the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal, or
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.<sup>1</sup>

Animal cruelty is a first degree misdemeanor, punishable by up to one year in the county jail and a \$1,000 fine.<sup>2</sup>

A person commits aggravated animal cruelty, a third degree felony,<sup>3</sup> by intentionally committing an act to an animal – or failing to act if the person is the owner having custody and control of the animal – and such action or omission results in:

- The cruel death of the animal, or
- The excessive or repeated infliction of unnecessary pain or suffering on an animal.<sup>4</sup>

Aggravated animal cruelty carries minimum mandatory sanctions of a \$2,500 fine and psychological testing or anger management for a first conviction,<sup>5</sup> and a \$5,000 fine and six months of incarceration for a second or subsequent conviction.<sup>6</sup> A person convicted a second or subsequent time of aggravated animal cruelty is ineligible for any form of early release, including gain time.<sup>7</sup>

Felony offenses subject to the Criminal Punishment Code<sup>8</sup> are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe to most severe. 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. Aggravated animal cruelty is level three on the offense severity ranking chart.<sup>9</sup>

##### Lost and Stray Animals

Following Hurricane Irma in September 2017, animal shelters throughout the state reached or surpassed capacity with the influx of lost and stray animals.<sup>10</sup> Outside the context of a disaster aftermath, Miami-Dade Animal Services recently euthanized a woman's runaway dog within hours of

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<sup>1</sup> S. 828.12(1), F.S.

<sup>2</sup> SS. 775.082 and 775.083, F.S.

<sup>3</sup> 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.

<sup>4</sup> S. 828.12(2), F.S.

<sup>5</sup> S. 828.12(2)(a), F.S.

<sup>6</sup> S. 828.12(2)(b), F.S.

<sup>7</sup> Id.

<sup>8</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998 are subject to the Criminal Punishment Code.

<sup>9</sup> S. 921.0022, F.S.

<sup>10</sup> Jason Ruitter, *Animal shelters network to find homes for dogs and cats after Hurricane Irma*, Orlando Sentinel (Sept. 24, 2017), available at: <http://www.orlandosentinel.com/news/hurricane-irma-recovery/os-hurricane-irma-animal-shelters-influx-20170921-story.html> (last viewed Jan. 25, 2018).

the dog's admission in a well-publicized case.<sup>11</sup> Some shelters have procedures designed to ensure lost pets are returned to their owners,<sup>12</sup> but no Florida law regulates animal shelter policies regarding efforts to return pets to their owners.

### Effect of Proposed Changes

CS/HB 473 amends s. 828.12, F.S., permitting a court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion.

Under current law, a judge may prohibit a person on probation or community control from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal as a special condition of his or her supervision.<sup>13</sup> The bill broadens that authority to allow a judge to prohibit such action or activity independent of any supervision and for an unlimited amount of time. The court could enforce such a prohibition through indirect criminal contempt proceedings.<sup>14</sup>

The bill amends s. 921.0022(3), F.S., increasing the severity ranking for aggravated animal cruelty from level three to level five under the Criminal Punishment Code.<sup>15</sup> As with a level three offense, a person with no other open offenses or prior convictions who is convicted of one count of aggravated animal cruelty at level five would not score a minimum prison sentence under the sentencing guidelines. Unlike with a level three offense, however, the judge could exercise his or her discretion to sentence the individual to prison without having to make written findings that a nonstate prison sanction could present a danger to the public.<sup>16</sup> Additionally, since a level five offense scores more points under the sentencing guidelines, it is more likely that people with other open offenses or prior convictions would score a minimum prison sentencing under the sentencing guidelines.

The bill requires a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision that receives lost or stray dogs or cats to adopt written policies and procedures to ensure that every reasonable effort is made to return owned animals to their owners. The written policies and procedures must be made available to the public and include:

- Screening lost or stray dogs and cats for identification, including tags, licenses, implanted microchips, and tattoos;
- A process for matching received lost or stray dogs and cats with any reports of lost pets received by the shelter from owners;
- Public notice of lost or stray dogs and cats received, provided at the shelter or on the Internet, within 48 hours of the animal's admission;
- Reasonable efforts to notify identified owners of lost or stray dogs and cats within 48 hours of identification;
- Notice to the public of the shelter's location, hours, fees, and return-to-owner process through specified means;
- Access for owners to retrieve dogs and cats at least one weekend day per week and after 5:00 pm one weekday per week, but the entity is not required to increase its total operating hours;
- Direct return-to-owner protocols that allow animal control officers in the field to directly return lost or stray dogs and cats to their owners when the owners are identified;

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<sup>11</sup> Jessica Lipscomb, *Miami-Dade Animal Services Euthanized Woman's Runaway Dog in the Middle of the Night*, Miami New Times (Dec. 27, 2017), available at: <http://www.miaminewtimes.com/news/miami-dade-animal-services-euthanized-womans-runaway-dog-in-the-middle-of-the-night-9931417> (last viewed Jan. 25, 2018).

<sup>12</sup> Wendi Lane, *House Bill wants to help lost pets in times of natural disasters*, ABC Action News WFTS Tampa Bay (Jan. 16, 2018), available at: <https://www.abcactionnews.com/news/region-citrus-hernando/house-bill-wants-to-help-lost-pets-in-times-of-natural-disasters> (last viewed Jan. 25, 2018).

<sup>13</sup> S. 948.03(2), F.S.

<sup>14</sup> S. 828.23, F.S.; FLA. R. CRIM. P. 3.840.

<sup>15</sup> S. 921.0022, F.S.

<sup>16</sup> S. 775.082(10), F.S.

- Procedural safeguards to minimize the euthanasia of owned dogs and cats; and
- Temporary extension of local minimum stray hold periods after a disaster is declared by the President of the United States or a state of emergency declared by the Governor.

Finally, the bill provides a short title for the act as “Ponce’s law,” in memory of a puppy who was beaten to death in Volusia County in April 2017.<sup>17</sup>

The bill provides an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 823.151, F.S., relating to lost or stray dogs and cats.  
**Section 2:** Provides the short title of “Ponce’s law.”  
**Section 2:** Amends s. 828.12, F.S., relating to cruelty to animals.  
**Section 3:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.  
**Section 4:** Provides an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments. The Criminal Justice Impact Conference met on January 8, 2018, and determined the bill will insignificantly increase the need for prison beds.<sup>18</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

<sup>17</sup> Frank Fernandez, *Public Outrage Fuels Push for Animal Abuse Punishments*, DAYTONA BEACH NEWS JOURNAL (April 21, 2017), <http://www.news-journalonline.com/news/20170416/public-outrage-fuels-push-for-animal-abuse-punishments> (last viewed Jan. 25, 2018).

<sup>18</sup> An insignificant change in prison beds means a change of 10 or fewer.

### 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:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2018, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Added provisions requiring requires a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision that receives lost or stray dogs or cats to adopt written policies and procedures to ensure that every reasonable effort is made to return owned animals to their owners. The written policies and procedures must be made available to the public and include:
  - Screening lost or stray dogs and cats for identification, including tags, licenses, implanted microchips, and tattoos;
  - A process for matching received lost or stray dogs and cats with any reports of lost pets received by the shelter from owners;
  - Public notice of lost or stray dogs and cats received, provided at the shelter or on the Internet, within 48 hours of the animal's admission;
  - Reasonable efforts to notify identified owners of lost or stray dogs and cats within 48 hours of identification;
  - Notice to the public of the shelter's location, hours, fees, and return-to-owner process through specified means;
  - Access for owners to retrieve dogs and cats at least one weekend day per week and after 5:00 pm one weekday per week, but the entity is not required to increase its total operating hours;
  - Direct return-to-owner protocols that allow animal control officers in the field to directly return lost or stray dogs and cats to their owners when the owners are identified;
  - Procedural safeguards to minimize the euthanasia of owned dogs and cats; and
  - Temporary extension of local minimum stray hold periods after a disaster is declared by the President of the United States or a state of emergency declared by the Governor.
- Removed language authorizing a court to prohibit a person convicted of animal cruelty from having contact with any animal.
- Provided legislative findings.
- Retitled the act as an act relating to animal welfare.

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

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