

STORAGE NAME: h1819.cpcs.doc

DATE: February 18, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1819

RELATING TO: Guide dogs and Service Animals

SPONSOR(S): Representative(s) Kottkamp

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) COUNCIL FOR HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1819 creates three new criminal offenses that involve interfering with, injuring or killing guide dogs or service animals.

The bill also requires any person who is convicted of such offenses to make full restitution for all damages, including replacement and training or retraining expenses for the guide dog and user, and any veterinary or other medical expenses incurred by the animal or user as a result of such violations.

Please see Section V. "Comments" for concerns regarding this bill.

The bill is not expected to have a fiscal impact.

The bill provides an effective date of July 1, 2002.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:
HB 1819 creates three new criminal penalties.

B. PRESENT SITUATION:

Section 828.02, F.S., defines the word "animal" to include "every living dumb creature." Under current law, it is a misdemeanor of the 1st degree to unnecessarily torment, mutilate or kill an animal.¹ It is a felony of the 3rd degree to intentionally commit an act that results in the cruel death or in excessive pain or suffering of an animal.²

Section 843.19(2), F.S., establishes that it is a 3rd degree felony to knowingly and willfully, without lawful cause or justification, inflict bodily harm, permanent disability, or death upon a police dog, fire dog, SAR dog, or police horse.³

There is no statute that specifically defines a "guide dog" or "service animal," nor that establishes offenses and penalties associated with harming or harassing guide dogs or service animals (whether by humans or animals).

C. EFFECT OF PROPOSED CHANGES:

HB 1819 creates three new criminal penalties associated with harassing guide dogs and service animals. The criminal penalties are as follows:

- 2nd degree misdemeanor: anyone who, with reckless disregard, interferes or permits a dog that he owns or is in the immediate control of, to interfere with the use of a guide dog or

¹ s. 828.12(1), F.S.

² s. 828.12(2), F.S.

³ s. 843.19(1)(a) defines "police dog" and "police horse" as any dog or horse that that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;

s. 843.19(1)(b) defines "fire dog" as any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires;

s. 843.19(1)(c) defines "SAR dog" as any search and rescue dog that is owned, or the service of which is utilized, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the animal or its user;⁴

- 1st degree misdemeanor: anyone who, with reckless disregard, injures or kills, or permits a dog that he owns or is in immediate control of, to injure or kill, a guide dog or service animal;
- 3rd degree felony: any person who intentionally injures or kills, or permits a dog that he owns or is in immediate control of, to injure or kill a guide dog or service animal.

The bill also requires individuals who are convicted of the above offenses to make full restitution for all damages that arise out of, or are related to, the offense. The bill states that, for purposes of this section, restitution shall include:

- the value of the animal;
- replacement and training or retraining expenses for the animal and the user;
- veterinary and other medical and boarding expenses for the animal;
- medical expenses for the user; and
- lost wages or income incurred by the user during any period that the user is without the services of such animal.

Although the penalties for harming or killing a guide dog are similar to the penalties for harming or killing other animals, HB 1819 specifically provides for the payment of restitution (including the costs for remedial training or replacement of the guide dog or service animal, and lost wages or income incurred by the handler) based on the violations. Current statutes do not directly mention restitution when an animal is killed.

Currently, there is no comparable statute that criminalizes “interfering” or “obstructing” any other animal, including the statutes that address police dogs, fire dogs, and search and rescue dogs.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to Section C, “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Although the Criminal Justice Impact Conference has not yet reviewed HB 1819, it is standard procedure for the Conference to indicate an “insignificant impact” on the need for prison beds for unranked third degree felonies (which default to level 1). It is not expected that this bill will have any fiscal impact upon the state.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁴ A subsequent offense would be punishable as a 1st degree mis demeanor.

2. Expenditures:

HB 1819 creates two new misdemeanor offenses. Consequently, there could be an increase in the number of people committed to county jails who have been convicted of the new misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Although the terms "guide dog" and "service animal" are used throughout the bill, the terms are not defined or explained. It is unclear as to what officially constitutes a "guide dog" or "service animal," and it is also unclear as to how a person is to be able to recognize that a dog is guide dog or an animal is a service animal.

According to the group "Guide Dog Users, Inc.," which is supporting the bill, there have been an increasing number of attacks on guide dogs and their owners by dogs that roam free or unleashed. Consequently, it is a goal of Guide Dog Users, Inc., to create a penalty for owners of unleashed or unsupervised dogs that attack guide dogs or their owners.⁵ However, it appears that HB 1819, in its

⁵Guide Dog Users, Inc., Legislative Handbook, "The Team, The Attack." December, 2001.

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current state, may not achieve that objective. The bill requires the owner of the “attacking dog” (or person in “immediate control” of the attacking dog) to “permit” his or her dog to interfere with, injure or kill a guide dog or service animal. Such phrasing may not account for animals that are unleashed or roaming free because in such cases it could be argued that the owner was not in control of his dog, nor did he “permit” the attack to happen.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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