

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 Criminal and Civil Justice Appropriations Committee

BILL: SB 104

INTRODUCER: Senator Rich

SUBJECT: Sexual Activities Involving Animals

DATE: April 9, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Hill</u>	<u>Poole</u>	<u>AG</u>	Favorable
3.	<u>Anderson</u>	<u>Maclure</u>	<u>JU</u>	Favorable
4.	<u>Hendon</u>	<u>Sadberry</u>	<u>JA</u>	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a new section of law that prohibits, as a first-degree misdemeanor, sexual conduct, or contact for the purpose of sexual gratification, with animals, and other acts related to the prohibited behavior. The bill provides an effective date of October 1, 2010.

This bill creates section 828.126, Florida Statutes.

II. Present Situation:

Despite the efforts of prosecutors in the State of Florida, persons who are actually caught in the act of sexual intercourse with an animal cannot generally be charged with or convicted of a sex-related crime. There have been several recently reported incidents of the abuse of animals in this particular way.

Reported incidents in Florida include:

- In Leon County, in 2005, a man was convicted of a misdemeanor disorderly conduct charge for sexually battering his own guide dog.
- In April 2004, a Marion County man pled no contest to animal cruelty after his fiancée caught him sexually battering her 1-year-old female dog. The dog was physically injured in the process. The Sheriff's Office reports indicated that the man told deputies that this type of behavior had been a "life-long problem."¹

¹ Rick Cundiff, *Man gets probation, psychological testing for sex abuse of dog*, OCALA STAR-BANNER, Apr. 15, 2004, at <http://www.ocala.com/article/20040415/NEWS/204150320>.

- A West Palm Beach man was caught sexually battering a neighbor's dog in January 2004. The dog was alleged to have been yelping in pain. The man was charged with animal cruelty and indecent exposure. The perpetrator is a registered sex offender.
- A family's pregnant goat was sexually battered and asphyxiated in January 2008, in a small Panhandle town. Although there was a suspect in the case, prosecutors were unable to charge him in the mistreatment and death of the goat because DNA tests were inconclusive.²
- Martin County Sheriff's deputies were called to investigate an animal in distress and found a man sexually battering a 4-month-old puppy. Reports indicate that when the deputy approached the man, she saw him in the act as the puppy whined and tried to break free.

Because there are no sex crime statutes in Florida that would seem to apply in cases like those mentioned above, law enforcement officers and prosecutors must charge defendants with far less serious crimes, such as disorderly conduct, or crimes that may not seem to reflect fully the circumstances of the case, such as indecent exposure. Also, because of the elements of animal cruelty offenses, these acts and behaviors cannot always be prosecuted as such. There must be evidence of injury or evidence of excessive or repeated infliction of pain to the animal in order to prove felony animal cruelty.³

In other states, situations like those set forth above have resulted in the passage of laws designed to more accurately capture these behaviors within the criminal law as the particularized crimes that they are. Georgia, Louisiana, Mississippi, North Carolina, Virginia, and South Carolina are among the states in the Southeast that have enacted felony bestiality statutes.⁴

III. Effect of Proposed Changes:

The bill creates a first-degree misdemeanor offense for knowingly engaging in sexual conduct or sexual contact with an animal, as defined in the newly created section of law. It also prohibits aiding or abetting another in committing those acts, permitting such acts to be conducted on premises under the person's control, or organizing, promoting, or performing acts in furtherance of such acts.

The bill provides exemptions from prosecution for accepted animal husbandry practices, conformation judging practices, and accepted veterinary medical practices.

The bill provides an effective date of October 1, 2010.

² Marc Caputo, *Beastly crime gives rise to unusual bill*, MIAMI HERALD, Jan. 4, 2008 (on file with the Senate Committee on Judiciary).

³ Section 828.12(2), F.S., is the felony animal cruelty statute. It states: "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 felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or both."

⁴ See GA. CODE ANN. s. 16-6-6, LA. REV. STAT. ANN. s. 14:89, MISS. CODE ANN. s. 97-29-59, N.C. GEN. STAT. s. 14-177, VA. CODE ANN. s. 18.2-361, and S.C. CODE ANN. s. 16-15-120.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

A version of this bill filed during the 2009 Regular Session created a new third-degree felony. At the time, the Criminal Justice Impact Conference estimated that there would be an insignificant prison bed impact if the law went into effect.⁵ This session's bill classifies the offense as a first-degree misdemeanor, which could result in 1 year or less in county jail.⁶ Thus, the bill may have a fiscal impact at the county level. However, in light of the conference's state-impact analysis of the previous year's bill, the impact is not anticipated to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵ See Criminal Justice Impact Conference, *Summary of Final Actions – 2009* (table of results, including CS/SB 448 (2009 Reg. Sess.)), available at <http://edr.state.fl.us/conferences/criminaljustice/Impact/2009/2009%20CJIC%20Final%20Actions.pdf>.

⁶ See s. 775.082(4)(a), F.S.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
