

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 Committee on Judiciary

BILL: SB 952

INTRODUCER: Senator Steube and others

SUBJECT: Cruelty to Animals

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 952 increases the offense ranking for aggravated animal cruelty, which is defined in s. 828.12(2), F.S. The bill increases the offense ranking from Level 3 to Level 5 on the Offense Severity Ranking Chart of the Criminal Punishment Code. Effectively, this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.

The bill also amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of cruelty to animals from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court.

The bill is effective July 1, 2018.

II. Present Situation:

Animal Cruelty

Section 828.12, F.S., prohibits criminal offenses involving cruelty to animals. The word “animal” is defined to include every “living dumb creature.”¹ The Florida Supreme Court held that this definition “excludes human beings from the commonly understood definition of animals” and that the definition was not unconstitutionally vague.²

Specifically, a person commits animal cruelty if he or she “unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal

¹ Section 828.02, F.S.

² *Wilkerson v. State*, 401 So. 2d 1110, 1112 (1981).

in a cruel or inhumane manner.” Animal cruelty is a first degree misdemeanor.³ The statute authorizes the imposition of a fine of up to \$5,000; whereas, the statutory default maximum fine for a first degree misdemeanor is \$1,000.

A person commits aggravated animal cruelty, if he or she intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done. Aggravated animal cruelty is a third degree felony.⁴ The statute authorizes a fine of up to \$10,000; whereas, the statutory default maximum fine for a third degree felony is \$5,000.

Additionally, a person who intentionally trips, fells, ropes, or lassos the legs of a horse for entertainment or sport commits a third degree felony.⁵

A person convicted of aggravated animal cruelty, where the finder of fact determines that the violation included the knowing and intentional torture or torment of an animal which injured, mutilated, or killed the animal, must be ordered to pay a minimum mandatory fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.⁶

A person convicted of a second or subsequent conviction of aggravated animal cruelty must pay a minimum mandatory fine of \$5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence.⁷

Section 828.12(3), F.S., specifies that if a person commits multiple acts of animal cruelty or aggravated animal cruelty against an animal, he or she may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.⁸

Criminal Punishment Code

The Criminal Punishment Code⁹ (Code) is Florida’s “primary sentencing policy.”¹⁰ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹¹

³ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S. However, this statute authorizes a fine of not more than \$5,000, which is authorized by s. 775.083(1)(g), F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁵ Section 828.12(5), F.S.

⁶ Section 828.12(2)(a), F.S. Any plea of nolo contendere is considered a conviction for purposes of s. 828.12(2), F.S.

⁷ Section 828.12(2)(b), F.S.

⁸ Section 828.12(3), F.S.

⁹ Sections 921.002-921.0027, F.S. See ch. 97-194, s. 3 and ch. 98-204, s. 2, Laws of Fla.

¹⁰ *Florida’s Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited Feb. 8, 2018).

¹¹ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹² Absent mitigation,¹³ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁴

Aggravated animal cruelty is a Level 3 offense on the Offense Severity Ranking Chart of the Code.¹⁵ This means that 16 sentencing points are assigned to the offense of aggravated animal cruelty for purposes of calculating the lowest permissible sentence.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of a violation of cruelty to animals from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court. Presumably this period of time will be limited by the amount of time the court may have jurisdiction to enforce its order against the person, for example, up to five years in a third degree felony case.

The bill increases the offense ranking on the Offense Severity Ranking Chart of the Code from a Level 3 to a Level 5 for a violation of s. 828.12(2), F.S., aggravated animal cruelty.¹⁷ Effectively this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.¹⁸

The act is named “Ponce’s Law” in honor of a puppy that was allegedly beaten to death in Volusia County in April 2017.¹⁹

The bill is effective July 1, 2018.

¹² Section 921.0024(2), F.S.

¹³ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁴ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

¹⁵ Section 921.0022(3)(c), F.S.

¹⁶ Section 921.0024(1)(a), F.S.

¹⁷ Section 921.0022(3)(e), F.S.

¹⁸ Section 921.0024(1)(a), F.S.

¹⁹ Daytona Beach News Journal, *Public Outrage Fuels Push for Animal Abuse Punishments*, Frank Fernandez (April 21, 2017), available at <http://www.news-journalonline.com/news/20170416/public-outrage-fuels-push-for-animal-abuse-punishments>.

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:

The Office of Economic and Demographic Research Criminal Justice Impact Conference met on January 8, 2018, and considered this bill. The Impact Conference determined that the bill would have a positive insignificant prison bed impact, meaning that there would be an increase of ten or fewer prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 828.12, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of 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.
