

## **FLORIDA ANIMAL CRUELTY LAWS<sup>1</sup>**

### **Introduction**

Most of Florida's laws related to animals are contained in Title 46 Ch. 828 of the state's code. There are provisions for both for misdemeanor, 828.12(1), and felony, 828.12(2), animal cruelty violations. Euthanasia of a suffering animal may be a complete defense,<sup>2</sup> although the manner in which euthanasia is to be performed is proscribed by law.<sup>3</sup> Local laws may exist, as provided in § 828.27(2).

### **List of Statutes**

1. Misdemeanor Animal Cruelty - § 828.12(1)
2. Felony Animal Cruelty - § 828.12(2)
3. Fighting or baiting animals; offenses; penalties - § 828.122 The Animal Fighting Act
4. Confinement of animals without sufficient food, water, or exercise; abandonment of animals - § 828.13
5. Animals found in distress; when agent may take charge; hearing; disposition; sale - § 828.073
6. Killing or aggravated abuse of horses or cattle; offenses; penalties - § 828.125
7. Penalty for Exposing Poison - § 828.08
8. Conduct of simulated bullfighting exhibitions - § 828.121
9. Water and food for stock on trains, vessels, etc - § 828.14.

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<sup>1</sup> W. Mike Jayne produced this document as an undertaking of the George Washington University Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner.

<sup>2</sup> See § 828.05, Fla. Stat. (2014).

**Misdemeanor Animal Cruelty - § 828.12(1)**

(1) A person who 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 in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$ 5,000, or both.

Case Law:

No Case Law Found.

**Felony Animal Cruelty - § 828.12**

(2) A person who 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, commits aggravated animal cruelty, 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.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of \$ 2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of \$ 5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal 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.

(4) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(5) A person who intentionally trips, fells, ropes, or lassos the legs of a horse by any means for the purpose of entertainment or sport shall be guilty of a third degree felony,

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punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, "trip" means any act that consists of the use of any wire, pole, stick, rope, or other apparatus to cause a horse to fall or lose its balance, and "horse" means any animal of any registered breed of the genus Equus, or any recognized hybrid thereof. The provisions of this subsection shall not apply when tripping is used:(a) To control a horse that is posing an immediate threat to other livestock or human beings;

- (b) For the purpose of identifying ownership of the horse when its ownership is unknown; or
- (c) For the purpose of administering veterinary care to the horse.

Applicable Case Law:

**Aaroe v. State, 788 So. 2d 340 (Fla. Dist. Ct. App. 5th Dist. 2001)**

**Facts:** The defendant was charged with shooting a cat. He admitted doing so in a phone conversation with police, telling them that the cat was under his trailer and that his dogs were "raising all kinds of hell." In a second call, the defendant told the police that if they did not come and get the cat, he would "put another round through it." He also admitted shooting the cat to the deputies who responded to investigate. The defendant claimed he shot the cat to put it out of its misery after it had been mauled by the defendant's dogs. A veterinarian who treated the cat testified that there were no injuries that could have been caused by a dog bite.

**Holding:** The The trial judge's post-trial acquittal was in error. The finding of guilty was reinstated. This was not a circumstantial evidence case, and the evidence was overwhelming.

**Bartlett v. State, 929 So. 2d 1125 (Fla. Dist. Ct. App. 4th Dist. 2006)**

**Facts:** Mr. Bartlett was found by officers standing over an injured animal, holding a loaded BB gun. The animal had "countless amounts of pellets or BB's" embedded within its body and the officers heard several "popping" noises prior to seeing Bartlett standing over the animal. Bartlett gave a statement to police claiming he was defending himself from the animal in the wake of the hurricanes..

**Holding:** The case was remanded to determine whether the police erred procedurally in failing to advise the defendant of his right to counsel.

**B.S. v. State, 1994 Fla. App. LEXIS 9608 (Fla. Dist. Ct. App. 2d Dist. 1994)**

**Facts:** A juvenile was found guilty under the statute for torturing an animal with an intent to cause pain or death.

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**Holding:** The conviction was upheld, but the sentencing was remanded because, in effect, it exceeded the punishment allowed under statute.

**Cano v. State, 955 So. 2d 614 (Fla. Dist. Ct. App. 3d Dist. 2007)**

**Facts:** The defendant murdered his wife, her aunt and the family pet.

**Holding:** The defendant appealed on a procedural matter, but the trial court's action was affirmed.

**Daniels v. State, 351 So. 2d 749 (Fla. Dist. Ct. App. 2d Dist. 1977)**

**Facts:** After shooting a dog in the leg, appellant was charged by information with the malicious maiming of an animal in violation of Fla. Stat. ch. 828.07 (1975) (repealed).

**Holding:** The judgment was vacated, because the defendant was charged under a repealed act that was never intended to apply to dogs.

**Hamilton v. State, 128 So. 3d 872 (Fla. Dist. Ct. App. 4th Dist. Dec. 16, 2013)**

**Facts:** The defendant was walking his dog on a leash when the dog attacked and killed a cat.

**Holding:** While the defendant's actions may have been negligent, he can't be held criminally liable under §828.12. Objectively, it is unlikely that walking a dog would normally give rise to such an incident. The conviction of the trial court was reversed.

**Horn v. State, 17 So. 3d 342 (Fla. Dist. Ct. App. 5th Dist. 2009)**

**Facts:** The defendant was charged with animal cruelty

**Holding:** The defendant's appeal based on an objection to terms used in the jury instructions would only have merit if there was a fundamental error in them. In this case there was not, and the defendant should have raised the issue at trial.

**Hynes v. State, 1 So. 3d 328 (Fla. Dist. Ct. App. 5th Dist. 2009)**

**Facts:** After the defendant's dog was found on the grounds of his apartment complex by a maintenance man, who subsequently tried to contact the defendant, the maintenance man entered the defendant's apartment and found other emaciated and near-dead animals, including two other dogs, a bird and snake.

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**Holding:** Because of an issue in state procedure, the appellate court was unable to reinstate the jury's finding of guilt for felony animal cruelty. The trial judge had reduced the conviction to misdemeanor animal cruelty after the jury's finding.

**J.P. v. State, 895 So. 2d 1202 (Fla. Dist. Ct. App. 5th Dist. 2005)**

**Facts:** The defendant, a minor, was convicted of felony animal cruelty for killing a dog. His mother testified that she left him alone with the dog. When she returned, the dog came inside in pain and died the following day. A screwdriver wound was found.

**Holding:** The trial court's decision was affirmed. The Court held that the defendant's confession was voluntary, and that the trial court made an appropriate finding of fact.

**King v. State, 12 So. 3d 1271 (Fla. Dist. Ct. App. 5th Dist. 2009)**

**Facts:** The victim testified at trial that he forcibly removed the defendant from his home after an argument. The victim's dog appeared to go outside at the same time. The victim and defendant's son heard the dog yelp moments later. The dog had been stabbed and died soon after. The victim went outside and the defendant brandished a knife, asking the victim "if he wanted some too."

**Holding:** Misdemeanor animal cruelty is not a lesser-included offense under felony animal cruelty. The trial court erred in not providing a jury instruction on self-defense when there was marginal evidence of self-defense (A doctor observed puncture marks on defendant's thigh two weeks after incident). The matter was remanded for a new trial.

**Kiper v. State, 310 So. 2d 42 (Fla. Dist. Ct. App. 1st Dist. 1975)**

**Facts:** Defendants were charged with animal cruelty for training their greyhound racing dogs with live rabbits.

**Holding:** There was insufficient evidence showing that the defendants violated the cruelty statutes.

**Lukaszewski v. State, 111 So. 3d 212 (Fla. Dist. Ct. App. 1st Dist. 2013)**

**Facts:** The defendant claimed he was taking necessary actions to discipline his elderly dog when he used rope to tie the dog to a pole and struck it with a two-by-four. There was testimony that the dog yelped more than once and was struggling to get free, that the dog had its tail tucked, that its legs were shaking, and that the dog was suffering or injured. There was testimony that the defendant's yelling and the dog's barking continued over a period of at least ten minutes. The defendant's neighbor witnessed the event and notified authorities.

Updated as of February 8, 2015.

**Holding:** There was legally sufficient evidence to sustain the trial court's finding that the defendant's actions met the criteria of felony animal abuse under § 828.12(2).

**Mikell v. Henderson, 63 So. 2d 508 (Fla. 1953)**

**Facts:** The appellee sheriff threatened to arrest appellant cock breeders for violation of Fla. Stat. Ann. § 828.02 and § 828.12 unless they discontinued their business of selecting birds through combat.

**Holding:** The method of selection employed by the cock breeders fell within the confines of the statute. However, the court agreed that the statute was unconstitutional and reversed the lower court's judgment. The court found that, in prohibiting cruelty to animals, the statute prohibited cock fighting on land but permitted it on watercraft. Note: This case fell under old statutory language. The statute has been revised since.

**Reynolds v. State, 842 So. 2d 46 (Fla. 2002)**

**Facts:** The facts of the case are not discussed in appellate opinions. The defendant was found guilty of felony animal cruelty

**Holding:** Under § 828.12(2), felony animal cruelty is a general intent crime and does not require evidence of specific intent. The judgement of the trial court was affirmed.

**State v. Morival, 75 So. 3d 810 (Fla. Dist. Ct. App. 2d Dist. 2011)**

**Facts:** Mr. Morival owned two dogs that were discovered in his apartment in a severely undernourished and emaciated condition. The State maintains that Mr. Morival intentionally starved the dogs, causing them excessive or unnecessary pain and suffering. Photos also showed the dogs in an emaciated condition.

**Holding:** The court reversed the trial court's motion to dismiss and remanded the case to trial. There were several theories that could have accounted for the dogs' condition, and the matter should have been a question for the jury.

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

**Facts:** The defendant plead nolo contendere to felony animal cruelty for unnecessarily or cruelly beating, mutilating, or killing a raccoon.

**Holding:** The court upheld the constitutionality of the statute over a challenge of vagueness and held that the defendant had no standing to challenge the construction of the statute.

**Fighting or baiting animals; offenses; penalties - § 828.122 The Animal Fighting Act**

(3) Any person<sup>2</sup> who knowingly commits any of the following acts commits a felony of the third degree, punishable as provided in *s. 775.082*, *s. 775.083*, or *s. 775.084*:

- (a) Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting<sup>3</sup> or baiting<sup>4</sup>;
- (b) Owning, possessing, or selling equipment for use in any activity described in paragraph (a);
- (c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);
- (d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- (e) Performing any service or act to facilitate animal fighting or baiting, 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;
- (f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;
- (g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
- (h) Attending the fighting or baiting of animals.

Applicable Case Law

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<sup>2</sup> "Person" means every natural person, firm, copartnership, association, or corporation. § 828.122(2)(c), Fla. Stat (2014).

<sup>3</sup> "Animal fighting" means fighting between roosters or other birds or between dogs, bears, or other animals. § 828.122(2)(a), Fla. Stat. (2014).

<sup>4</sup> "Baiting" means 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. In addition, "baiting" means the use of live animals in the training of racing greyhounds. Fla. Stat. § 828.122(2)(b).

**Bonilla v. State, 579 So. 2d 802 (Fla. Dist. Ct. App. 5th Dist. 1991)**

**Facts:** No facts are available from the appellate opinion. The defendant was convicted of fighting and/or baiting animals under the statute.

**Holding:** The conviction was overturned because the affidavit that led to the search of the defendant's home did not show probable cause.

**Gonzalez v. State, 941 So. 2d 1226 (Fla. Dist. Ct. App. 5th Dist. 2006)**

**Facts:** The defendant admitted to attending a rooster fight and possessed tiny spurs, which are affixed to the birds during fights to inflict damage.

**Holding:** The defendant's challenge that the language of the statute was too broad was held to be without merit. There was a "knowing" requirement, and the statute's wording is clear and unambiguous.

**Rodriguez v. State, 29 So. 3d 357 (Fla. Dist. Ct. App. 4th Dist. 2010)**

**Facts:** An investigating officer testified to finding more than 100 animals on the defendant's property with an overwhelming amount of paraphernalia used to prepare and treat roosters for fighting.

**Holding:** The court granted a motion for acquittal because the state failed to produce evidence of actual fighting or baiting rather than mere possession of paraphernalia. All offenses under § 828.122 require evidence of actual fighting or baiting.

**Confinement of animals without sufficient food, water, or exercise; abandonment of animals - § 828.13**

(2) Whoever:

(a) Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and wholesome food and water,

(b) Keeps any animals in any enclosure without wholesome exercise and change of air, or

(c) Abandons to die any animal that is maimed, sick, infirm, or diseased, is guilty of a misdemeanor of the first degree, punishable as provided in *s. 775.082* or by a fine of not more than \$5,000, or by both imprisonment and a fine.



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(3) Any person who is the owner<sup>5</sup> or possessor, or has charge or custody, of any animal who abandons such animal to suffer injury or malnutrition or abandons<sup>6</sup> any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$ 5,000, or by both imprisonment and a fine.

#### Case Law

#### **State v. Wilson, 464 So. 2d 667 (Fla. Dist. Ct. App. 2d Dist. 1985)**

**Facts:** The defendant was charged with violation of the statute for keeping poodles confined in cages in the back of her van without exercise and change of air.

**Holding:** In reversing the dismissal of charges, the Court held that the statute is not unconstitutionally vague, being definite enough to apprise persons of common intelligence of the proscribed activities.

#### **Animals found in distress; when agent may take charge; hearing; disposition; sale - § 828.073**

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal can be:

(a) Removed from its present custody, or

(b) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, or any agent of the county or of any society or association for the prevention of cruelty to animals appointed under s. 828.03, and given protection and an appropriate and humane disposition made.

The neglected animal may be taken into the custody of any law enforcement officer and may be placed into the care of any society or association for the prevention of cruelty to animals.<sup>87</sup>

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<sup>5</sup> "Owner" includes any owner, custodian, or other person in charge of an animal. § 828.13(1)(b), Fla. Stat. (2010).

<sup>6</sup> "Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner. § 828.13(1)(a), Fla. Stat. (2014).

<sup>7</sup> § 828.073(2), Fla. Stat. (2014).

Updated as of February 8, 2015.

### Applicable Case Law

#### **Brinkley v. County of Flagler, 769 So. 2d 468 (Fla. Dist. Ct. App. 5th Dist. 2000)**

**Facts:** Responding to a complaint, authorities found animals in critical condition on the defendant's farm. A large number of animals were being kept in unsanitary conditions and were malnourished.

**Holding:** The trial court did not err. The seizure of the animals was justified.

#### **Helmy v. Swigert, 662 So. 2d 395 (Fla. Dist. Ct. App. 5th Dist. 1995)**

**Facts:** The defendant's dog was seized as evidence in a criminal trial that was dropped and transferred to the Humane Society. The state responded that the dog was seized because it was a victim of animal cruelty.

**Holding:** A new trial was ordered to determine how the Humane Society took possession of the dog.

#### **Hillsborough County v. Lovelace, 673 So. 2d 917 (Fla. Dist. Ct. App. 2d Dist. 1996)**

**Facts:** The defendant filed for an injunction to prevent the county from closing her kennel or seizing her dogs.

**Holding:** An action of the trial court was reversed. The original verdict was reinstated.

#### **Pet Fair, Inc. v. Humane Soc. of Greater Miami, 583 So. 2d 407 (Fla. Dist. Ct. App. 3d Dist. 1991)**

**Facts:** The Humane Society seized animals from the defendant corporation, alleging mistreatment. After a finding in favor of the defendant, the plaintiff was ordered to return the animals after they received payment for care while they were in the plaintiff's custody. The defendant failed to make payment, and the plaintiff sued.

**Holding:** The plaintiff was not entitled to both keep the animals and receive payment.

#### **Standifer v. Metropolitan Dade County, 519 So. 2d 53 (Fla. Dist. Ct. App. 3d Dist. 1988)**

**Facts:** Pursuant to a court order, the county seized about 50 domesticated animals from the defendant's farm and transferred them to the Humane Society.

Updated as of February 8, 2015.

**Holding** In responding to the defendant's claim that the Humane Society was unjustly enriched by the subsequent sale of the animals, the Court ruled that the Humane Society could keep only the amount of expenses it incurred for its custody of the animals.

**Killing or aggravated abuse of horses or cattle; offenses; penalties - § 828.125**

(1) Any person who willfully and unlawfully, by any means whatsoever, kills, maims, mutilates, or causes great bodily harm or permanent breeding disability to any animal of the genus *Equus* (horse) or any animal of any registered breed or recognized registered hybrid of the genus *Bos* (cattle) commits a felony of the second degree, punishable as provided by *s. 775.082*, *s. 775.083*, or *s. 775.084*, except that any person who commits a violation of this subsection shall be sentenced to a minimum mandatory fine of \$ 3,500 and a minimum mandatory period of incarceration of 1 year.

Note: The subsequent provisions of the statute forbid conspiracy and solicitation to abuse horses or cattle and make credible threats to do such punishable as a felony<sup>8</sup>. Under this statute, attempt is punished as severely as the completed offense.<sup>9</sup>

No Applicable Case Law.

**Penalty for Exposing Poison - § 828.08**

Whoever leaves or deposits any poison or any substance containing poison, in any common street, alley, lane, or thoroughfare of any kind, or in any yard or enclosure other than the yard or enclosure occupied or owned by such person, shall be guilty of a misdemeanor of the first degree, punishable as provided in *s. 775.082* or *s. 775.083*.

No Applicable Case Law.

**Conduct of simulated bullfighting exhibitions - § 828.121**

It shall be unlawful, and punishable as a misdemeanor, for any person to conduct or engage in a simulated or bloodless bullfighting exhibition.

Applicable Case Law

**C. E. America, Inc. v. Antinori, 210 So. 2d 443 (Fla. 1968)**

**Facts:** The appellant sought a declaratory judgment that staging a bullfight would not violate § 828.12.

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<sup>8</sup> § 828.125(3), Fla. Stat. (2014).

<sup>9</sup> See Johnson v. State, 715 So. 2d 1015 (Fla. Dist. Ct. App. 2d Dist. 1998)

Updated as of February 8, 2015.

**Holding:** The court held that a “Portugese-style bloodless simulated bullfight” would violate § 828.12. Legislation which has for its purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power. If the activity results in cruelty to the animal, it is in violation of the statute.

**Water and food for stock on trains, vessels, etc - § 828.14.**

(1) No person or corporation, or agent of either, engaged in transporting livestock on railway trains or on steam or sailing vessels, or otherwise, shall detain such stock for a longer continuous period than 28 hours after the same are so placed without supplying the same with necessary food, water, and attention, or shall permit them to be crowded so as to overlie, crush, wound, or kill each other; and any person or agent as aforesaid violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in *s. 775.082* or *s. 775.083*, and any corporation violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in *s. 775.083*.

(2) Nothing in this section shall apply to owners, officers, or crew of water craft detained on the navigable waters of this state by storms and prevented by bad weather from reaching port.

No Applicable Case Law.