

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3551

RELATING TO: Discharging Firearms in Public

SPONSOR(S): Rep. Dawson-White

COMPANION BILL(S): SB 1376 (I)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 5 NAYS 2
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill amends **s. 790.15, F.S.**, to reclassify from a misdemeanor of the first degree to a felony of the third degree the offense of knowingly discharging a firearm in any public place, or on or over the right-of-way of a paved public road, highway, or street, or over occupied premises. The bill provides an effective date of **October 1**, of the year in which enacted.

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 2

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Current Penalties for Discharging Firearms in Public

Section 790.15, F.S., currently provides the following penalties for discharging firearms in public:

(1) Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree. (This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Game and Fresh Water Fish Commission or Division of Forestry).

(2) Any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person commits a felony of the second degree.

(3) Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle commits a felony of the third degree.

According to the current penalties outlined in **Chapter 790, F.S.**, merely carrying a concealed firearm is a felony of the third degree. However, the discharging of a firearm on or over a public place, street, or over an occupied premises is only a misdemeanor.

Definitions/Case Rules Relating to the Discharge of Firearms in Public

Section 790.001, F.S., distinguishes between the definition of a firearm as opposed to a weapon:

(6) "Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

(13) "Weapon" means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or common pocketknife.

The court has held that the definition of "public place", within the meaning of **s. 790.15(1), F.S.**, includes "any place intended or designed to be frequented or resorted to by the public." C.C. v. State (Fla.App. 4 Dist. 1997). This definition of "public place" does not include the back yard of one's home. Id.

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 3

The prohibition against discharging a firearm is obviously “founded upon a need to protect the public’s safety.” Whitaker v. State, 552 So.2d 306 (Fla.App. 5 Dist. 1989). However, it has been decided that the discharge of a firearm on a public street or in a public place does not by itself demonstrate a flagrant disregard for the safety of others. Anthony v. State, 524 So.2d 655 (Fla. 1988).

B. EFFECT OF PROPOSED CHANGES:

The bill provides that it is a felony of the third degree for committing the offense of knowingly discharging a firearm in any public place, or on or over the right-of-way of a paved public road, highway, or street, or over occupied premises.

Thus, under the bill, a person who knowingly discharges a firearm on or over a highway now commits a third-degree felony.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 4

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 5

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 6

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

S. 790.15, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends **s. 790.15, F.S.**, reclassifying from a misdemeanor of the first degree to a felony of the third degree the offense of knowingly discharging a firearm in any public place, on or over the right-of-way of a paved public road, highway, or street, or over occupied premises.

Section 2 provides an effective date of October 1, of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 7

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

STORAGE NAME: h3551a.leps

DATE: March 12, 1998

PAGE 8

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Gregory Godsey

Kurt E. Ahrendt