

**STORAGE NAME:** h0113s1.cor

**DATE:** January 13, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CORRECTIONS  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 113

**RELATING TO:** Punishment of Felons

**SPONSOR(S):** Representative Crist, Representative Feeney and others

**COMPANION BILL(S):** SB 194

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 1
  - (2) CORRECTIONS
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

CS/HB 113 amends section 775.087(2), F.S., to require a judge to impose a minimum term of imprisonment of 10 years, instead of the current 3 years, for any person who possesses a firearm at any time during the course of an enumerated offense or during an attempt to commit any of the enumerated offenses.

The bill adds trafficking in illegal drugs and capital importation of illegal drugs to the enumerated crimes that can qualify an offender for the new 10 year minimum mandatory.

The bill provides that a minimum sentence of 20 years must be imposed if the firearm that an offender possesses is discharged during the course of one of the enumerated felonies.

The bill further provides that a minimum sentence of 25 years, and up to a life sentence, must be imposed if the firearm that an offender possesses during the course of an enumerated felony is discharged causing death or great bodily harm. These minimum mandatory sentences do not prohibit a judge from imposing a greater sentence as authorized by law. The bill also increases the penalty for the possession of a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun during the course of an enumerated felony from 8 years to 15 years.

The bill provides that the Legislature intends for the new minimum mandatory sentences to be imposed for each qualifying count and the court is required to impose the minimum mandatory sentences consecutive to any other term of imprisonment imposed for any other felony offense. State attorneys are required to prepare a report relating to the sentencing of offenders to the minimum mandatory terms and the report must be sent annually by the state attorneys to the Governor and the Legislature.

The Criminal Justice Estimating Conference projects that through FY 2003-04, an additional 440 inmates will be admitted to the prison system at a total cumulative cost of \$31.5 million.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**California and Assembly Bill 4 (“10-20-life”)**

CS/HB 113 is patterned after a California bill passed in 1997. Assembly Bill 4 was approved by the Governor of California on September 25, 1997. Prior to the passage of this bill, any person who was armed with a firearm in the commission or attempted commission of a felony was punished, in addition to the punishment prescribed for the felony offense, by an additional term of one year. If the firearm was an assault weapon, the additional term of imprisonment was 3 years.

Prior to the passage of AB 4, any person who used a firearm in the commission or attempted commission of a felony was punished by an additional 3, 4, or 10 years. If the felony was a carjacking or attempted carjacking, the additional term of imprisonment was 4, 5, or 10 years. If the person used an assault weapon, the additional term was 5, 6, or 10 years.

Under AB 4, a person convicted of enumerated felonies who is charged as a principal in the commission of an offense and uses a firearm during the commission of the offense will be punished by an additional term of imprisonment of 10 years, to be imposed consecutive to the punishment prescribed for the underlying felony. If the firearm is intentionally discharged, the person will be punished an additional term of 20 years. If great bodily harm is caused to any person other than an accomplice, the person will be punished by an additional term of imprisonment of 25 years to life.

AB 4 applies to a list of specified felonies including murder, kidnaping, robbery, carjacking, assault to commit a felony, assault with a firearm on a law enforcement officer, rape, lewd act on a child, and an assault or holding a hostage by a prisoner.

According to data from the California Department of Corrections provided to the California Legislature’s Legislative Analyst’s Office, AB 4 would result in no increase in prison population through FY 2002-03, a minimal increase in FY 2003-04 of 20 additional inmates, an increase in FY 2004-05 of 455 inmates, and an increase in the prison population by FY 2005-06 of 1,189 inmates. Through FY 2005-06, the California Department of Corrections estimated that an additional \$247.6 million in fixed capital outlay and \$35.7 million in operating costs would need to be expended.

According to staff at the California Legislative Analyst’s Office, AB 4 has not been in effect long enough to demonstrate its impact on the rate of firearm-related offenses. Neither are there data from the California Department of Corrections as to the number of inmates admitted under the “10-20-life” bill since its enactment.

**The Florida Punishment Code**

The Punishment Code came into effect for crimes committed after October 1, 1998. The Code establishes a lowest permissible sentence for felony offenses by establishing a method of scoring the severity of the offense and the severity of an offender’s criminal history. A judge may not sentence a person below the lowest permissible sentence without a mitigating reason which is authorized by statute or case law. An example of a

mitigating reason to impose a sentence below the lowest permissible sentence is the young age of the offender. Under the Punishment Code, a judge has complete discretion to sentence an offender to any sentence that is above the lowest permissible sentence and below the statutory maximum. Thus, the Punishment Code sets a floor to a judge's sentencing options, but not a ceiling, and even a first offender could receive the statutory maximum. The statutory maximum periods of incarceration established in s. 775.082 F.S., are as follows:

- second degree misdemeanor - 60 days in jail
- first degree misdemeanor - 1 year in jail
- third degree felony - 5 years in prison
- second degree felony - 15 years in prison
- first degree felony - 30 years in prison
- life felony or first degree felony punishable by life - life in prison.

The Punishment Code does not apply to the sentencing of an offender for a misdemeanor. A judge may impose any sentence for a misdemeanor up to the statutory maximum.

### **Minimum Mandatory Sentences for Crimes with Firearms**

Section 775.087(2), F.S., requires a judge to impose a minimum term of imprisonment of 3 years for any person who possesses a firearm at any time during the course of one of the following offenses or during an attempt to commit any of the following offenses.

- (a) murder
- (b) sexual battery
- (c) robbery
- (d) burglary
- (e) arson
- (f) aggravated assault
- (g) aggravated battery
- (h) kidnaping
- (l) escape
- (j) aircraft piracy
- (k) aggravated child abuse

- (l) aggravated abuse of an elderly person or disabled adult
- (m) unlawful throwing, placing, or discharging of a destructive device or bomb
- (n) car jacking
- (o) home-invasion robbery
- (p) aggravated stalking

Section 775.087(3)(a), F.S., requires a court to impose an 8 year minimum mandatory sentence if a person committed any of the above enumerated offenses and during the course of the offense the person possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

Minimum mandatory sentences are not reduced by gain time and the offender must spend the entire mandatory term in prison.

### **Other Enhanced Penalties**

#### **Habitual Felony Offender**

A judge has discretion under section 775.084 F.S., to sentence a person as a habitual felony offender if the following criteria are met:

1. The offender has been convicted of two prior felonies. [A withhold of adjudication counts as a conviction for the purposes of enhanced penalties.]
2. The prior convictions were sentenced on separate occasions.
3. The charge for which the offender is being sentenced is a felony.
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison, whichever was later.
5. The pending offense and one of the priors were not third degree felonies for possession of controlled substances such as cocaine. [Possession with intent to sell or trafficking are qualifying offenses.]

If a judge designates a qualifying person as an habitual felony offender, the judge may impose a sentence which is double the statutory maximum. For example, an habitual offender being sentenced for a third degree felony such as auto theft may be sentenced to ten years in prison. An habitual felony offender may be sentenced for a maximum of thirty years in prison for a second degree felony such as burglary of a dwelling or possession of cocaine with intent to sell. An habitual felony offender may receive a life sentence for committing a first degree felony.

#### **Habitual Violent Felony Offender**

A judge has discretion under section 775.084 F.S., to sentence a person as an habitual violent felony offender if the following criteria are met:

1. A person has previously been convicted for one of the following crimes or for an attempt to commit one of the following crimes:
  - arson; sexual battery; robbery; kidnaping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.
  
2. The crime for which the offender is being sentenced is any felony that was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison, whichever was later.

If a judge designates a qualifying person as an habitual violent felony offender, the judge may impose a sentence that is double the statutory maximum; thus, the enhanced penalty authorized by the habitual violent felony offender statute is the same as the enhanced penalty authorized by the habitual felony offender law. State v. Hudson, 698 So.2d 831 (Fla.1997).

Section 775.084(3)(a)6., F.S., provides that a judge must sentence a qualifying person as an habitual felony offender or habitual violent felony offender unless the judge finds that such a sentence is not necessary for the protection of the public. The statute further requires a judge to file a report every time a qualifying offender is not sentenced as an habitual felony offender or an habitual violent felony offender. The State Court Administrator's Office has indicated that these reporting requirements are rarely complied with. Furthermore, it is lawful for a judge to designate a person as an habitual felony offender or as an habitual violent felony offender and sentence the person to probation with no term of incarceration.

#### Violent Career Criminal

A judge must sentence a person as a violent career criminal if the offender meets the following criteria:

1. The offender has been previously been convicted three or more times of any of the following offenses:
  - burglary; aggravated assault; aggravated battery; aggravated stalking; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; lewd, lascivious, or indecent conduct; escape; possession of a concealed firearm; possession of a firearm by a convicted felon; possession of a short-barrel shotgun; robbery; car jacking; sexual battery; manslaughter; murder; treason; home invasion robbery; and any other felony which involves the use or threat of physical force or violence against any individual.

2. The offense for which the offender is to be sentenced is for one of the crimes enumerated above.
3. The prior convictions were sentenced on separate occasions.
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison, whichever was later.
5. The offender has previously been incarcerated in state or federal prison.

If a judge elects to designate an offender as a violent career criminal, then the court must sentence the violent career criminal as follows.

1. In the case of a life felony or a felony of the first degree, imprisonment for life.
2. In the case of a felony of the second degree, imprisonment for a term of years not exceeding 40 with a mandatory minimum term of 30 years.
3. In the case of a felony of the third degree, imprisonment for a term of years not exceeding 15 with a mandatory minimum term of 10 years.

Section 775.084(4)(d) F.S., gives judges discretion to decide whether a person should be designated as a habitual offender, habitual violent offender, or violent career criminal:

(d) If the court finds ... that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

#### Prison Releasee Reoffender

A judge must sentence a person as a prison releasee reoffender to the statutory maximum if:

1. A state attorney decides to seek to have a person sentenced as a prison releasee reoffender.
2. The offender has committed or attempted to commit one of the following crimes:

treason; murder; manslaughter; sexual battery; car jacking; home-invasion robbery; robbery arson; kidnaping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of an occupied structure or dwelling; any felony violation of s. 790.

07(relating to felonies committed with firearms), s. 800.04(lewd, lascivious, or indecent assault), s. 827.03 (aggravated abuse of a child or the disabled), or s. 827.071 (sexual performance by a child), F.S.

3. The offender committed one of the enumerated offenses within 3 years of being released from prison.

Section 775.082(8)(d), F.S. requires that a state attorney must explain the sentencing deviation in writing in the case file and file a report with the Florida Prosecuting Attorneys' Association explaining the sentence for every case in which a qualifying offender does not receive the statutory maximum sentence.

**B. EFFECT OF PROPOSED CHANGES:**

**Mandatory Sentencing**

CS/HB 113 amends section 775.087(2), F.S. to require a judge to impose a minimum term of imprisonment of 10 years instead of the current 3 years, for any person who possess a firearm at any time during the course of one of the enumerated offenses or during an attempt to commit one of the enumerated offenses. Except the minimum mandatory sentence for possession of a firearm during an aggravated assault or during a burglary of a conveyance will remain 3 years. The enumerated offenses are as follows.

- (a) murder
- (b) sexual battery
- (c) robbery
- (d) burglary
- (e) arson
- (f) aggravated assault
- (g) aggravated battery
- (h) kidnaping
- (l) escape
- (j) aircraft piracy
- (k) aggravated child abuse
- (l) aggravated abuse of an elderly person or disabled adult
- (m) unlawful throwing, placing, or discharging of a destructive device or bomb

(n) car jacking

(o) home-invasion robbery

(p) aggravated stalking

The bill adds trafficking in illegal drugs and capital importation of illegal drugs to the enumerated crimes that can qualify an offender for the new 10 year minimum mandatory.

The bill provides that a minimum sentence of 20 years must be imposed if the firearm that an offender possesses discharged during the course of one of the enumerated felonies.

The bill further provides that a minimum sentence of 25 years, and up to a life sentence, must be imposed if the firearm that an offender possesses during the course of an enumerated felony is discharged causing death or great bodily harm. These minimum mandatory sentences do not prohibit a judge from imposing a greater sentence as authorized by law.

While the 10 year minimum mandatory sentence does not apply if the offense is burglary of a conveyance or aggravated assault, the 20 and 25 year minimum mandatories do apply to these offenses.

### **Semiautomatic Firearms and Machine Guns**

The bill amends section 775.087(2), F.S. to require a judge to impose a minimum term of imprisonment of 15 years, instead of the current 8 years, for any person who possess a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun at any time during the course of one of the enumerated offenses or during an attempt to commit one of the offenses. Similarly, the penalty for the discharge of the machine gun or semiautomatic firearm becomes a minimum of 20 years under the bill and if a victim suffers great bodily harm or is killed with such a weapon, the penalty is a minimum mandatory term of imprisonment from 25 years to life.

### **Legislative Intent and Other Provisions**

The bill provides that the Legislature intends for the new minimum mandatory sentences to be imposed for each qualifying count and the court is required to impose the minimum mandatory sentences consecutive to any other term of imprisonment imposed for any other felony offense.

The bill requires the Governor to place public service announcements throughout the state explaining the penalties provided by the bill.

### **Reporting Requirements**

Qualifying offenders must receive the new minimum mandatory sentences unless the state attorney's office submits a written memorandum to the court requesting that the minimum mandatory term not be imposed and stating the reasons why the minimum mandatory term should not be imposed. The memorandum must be entered in the court file in any case where a law enforcement agency based a criminal charge on facts



demonstrating that the defendant met the criteria for the new minimum mandatory sentences provided for by the bill.

A report relating to the sentencing of offenders to the minimum mandatory terms provided for by the bill must be sent annually by the state attorneys to the Speaker of the House, The President of the Senate, and the Executive Office of the Governor. The report shall include the number of charges made by law enforcement that were received in each circuit during the previous year alleging facts that qualify an offender for a minimum mandatory sentence as provided for by the bill. The report must also include the case number for these qualifying offenses, the final disposition, and whether the minimum mandatory sentences were imposed. These reports must also be made available to the public on the Internet by July 1, 2001.

The bill takes effect upon becoming law.

**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

(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:

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:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

775.087, F.S.; 921.0022, F.S.; 947.146, F.S.

**E. SECTION-BY-SECTION ANALYSIS:**

Section 1: Increases current 3 year minimum mandatory for possession of a firearm during the course of an enumerated felony to 10 years; includes drug trafficking and capital importation of illegal drugs in the list of enumerated felonies subject to the minimum mandatory penalty; provides that the minimum mandatory sentences must be imposed consecutively to the sentence for any other felony offenses; requires a judge to impose a minimum term of imprisonment of 15 years, instead of the current 8 years, for any person who possess a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun at any time during the course of one of the enumerated offenses or during an attempt to commit one of the offenses; provides that the penalty for the discharge of the machine gun or semiautomatic firearm becomes a minimum of 20 years under the bill and if a person is injured with such a weapon the penalty is a minimum mandatory of 25 years to life.

Section 2: Establishes Legislative intent and reporting requirements necessary when state attorneys make charging decision which do not result in the imposition of minimum mandatory sentences provided in the bill; requires the State Attorney's to file annual reports and to make the information available on the Internet.

Section 3. Reenacts sections 921.0022, 921.0024, and 947.146, F.S.

Section 4. Requires the Governor to place public service announcements throughout the state explaining the penalties provided by the bill.

Section 5. Makes the bill effective upon becoming law.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Estimating Conference met on December 18, 1998 and based projections on HB 113 for the next five fiscal years for additional prison beds and funds necessary on the assumption that all offenders would be sentenced to prison under HB 113 who had a 3 or 8 year firearm mandatory sentence under current law. On 1/12/99, these projections were modified for CS/HB 113. The projections for additional prison beds and costs for CS/HB 113 are as follows:

**Projected Prison Beds and Costs  
for  
CS/HB 113**

			<b>Funds Required</b>			
<b>Fiscal Year</b>	<b>Projected Additional Cumulative Prison Beds Required Under CS/HB 113</b>	<b>Projected Additional Annual Prison Beds Required</b>	<b>Annual Operating Cost</b>	<b>Annual Fixed Capital Outlay Costs</b>	<b>TOTAL Annual Funds</b>	<b>TOTAL Cumulative Funds</b>
1999-2000	0	0	\$0	\$ 75,056	\$ 75,056	\$ 75,056
2000-2001	3	3	\$ 29,641	\$ 1,361,075	\$ 1,390,717	\$ 1,465,773
2001-2002	56	53	\$ 598,367	\$ 3,456,581	\$ 4,054,948	\$ 5,520,721
2002-2003	187	131	\$2,532,158	\$ 6,862,673	\$ 9,394,832	\$14,915,552
2003-2004	440	253	\$6,716,600	\$ 9,907,926 *	\$16,624,526	\$31,540,079
Total	440	440	\$9,876,766	\$21,663,313	\$31,540,079	\$31,540,079

Source: Criminal Justice Estimating Conference and the Department of Corrections (1/12/99).

\* Annual fixed capital outlay costs in FY 2003-04 are for projected additional prison beds required in FY 2004-05. Cost figures are tentative pending updated operating and fixed capital data.

the Any additional prison costs would be partly offset to the extent to which the threat of harsher penalties deters offenders from committing gun-related offenses. Additional prison costs would also be partly offset to the degree to which longer sentences have effect of incapacitating offenders who would otherwise have committed additional crimes and been returned to prison for new offenses. These cost savings are indeterminate.

In addition to state costs for new prison beds, this bill would likely result in significant costs to the court system and related criminal justice agencies such as offices of the state attorneys and public defenders. Offenders charged with crimes specified in this bill would be faced with lengthy prison terms. Some offenders would be more likely to contest their cases in a jury trial. Since most criminal cases are disposed of through plea negotiations without a criminal trial occurring, an increase in the number of trials would result in additional costs for the adjudication of these cases by the courts, state attorneys, and public defenders or court-appointed counsel. Should offenders spend longer time in county jails awaiting trial and increasing jail populations, rather than accepting a negotiated plea, additional jail costs would be incurred by county governments. These additional court-related and jail costs would be offset to the extent to which some offenders would accept plea negotiated agreements to avoid the sentence enhancements provided for in this bill. These additional costs and cost savings are indeterminate.

To the extent to which longer prison sentences provided for in this bill incapacitates offenders who would otherwise have committed firearms-related violent crimes, both the state and local governments could realize additional unknown savings. These savings would result from a reduction in the public costs incurred in providing health care and victims' assistance for persons who would otherwise have been injured by firearms.

Additional indeterminate costs would be incurred for the provision in this bill related to the statewide publicity campaign to inform citizens of the state of the enhanced penalties for committing gun-related offenses.

#### 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 that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

**Reports and Memorandums**

Reporting requirements provided for in this bill should make the state attorneys more accountable for charging decisions which would result in the imposition of the minimum mandatory penalties required by the bill. The reporting requirements should provide documentation of those cases in which there were case-specific circumstances which in the judgement of the state attorney would justify not imposing the minimum mandatory penalties required in this bill. Since the state attorneys are elected officials, the reports could also be used by political opponents to show a lack of willingness to file the appropriate charges resulting in the imposition of minimum mandatory sentences.

The bill requires state attorneys to file a memorandum in each case where a law enforcement officer charges an offender with a qualifying offense. However, the purpose of the memorandum is to explain why a state attorney did not seek the minimum mandatory. When the minimum mandatory is imposed, the bill would still require a memorandum to be filed even though there would be no reason to prepare a memorandum.

**Consecutive Sentences**

The bill provides that the Legislature intends for the new minimum mandatory sentences to be imposed for each qualifying count, and the court is required to impose the minimum mandatory sentences required by the bill consecutive to any other term of imprisonment imposed for *any other* felony offense. This provision does not explicitly prohibit a judge from imposing the minimum mandatory sentences concurrent to each other. For instance, a person sentenced for 2 qualifying counts, such as armed burglary and aggravated assault, could receive a ten year minimum mandatory sentence for each count, but the judge could order that the sentences run concurrently so that the offender is incarcerated for a total of 10 years.

**Accomplices**

Section 777.011, F.S., provides that any person who aids or abets any criminal offense may be charged, convicted, and punished as a principle in the first degree. This statute allows the person who helps plan a murder to receive the same sentence as the person who actually kills the victim. However, the courts have held that an accomplice who does not possess a firearm is not subject to the minimum mandatory penalties. The Florida Supreme Court in Earnest v. State, 351 So. 2d 957 (Fla. 1977), interpreted s. 777.011, F.S. as not applying to the minimum mandatory for firearms:

“We agree that the term "possession" does not clearly encompass vicarious possession, and we agree that petitioner is entitled to the benefit of the doubt. The Legislature has not unequivocally expressed an intention to require three year minimum sentences for all persons who participate in one of the enumerated criminal adventures”.



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Thus, an accomplice who drives an offender to and from the scene of an armed robbery may be charged with armed burglary. However, if the driver never possessed a firearm during the commission of the crime, then the driver can not receive the minimum mandatory for the firearm possessed by the co-defendant. Kenny v. State 693 So.2d 1136 (1st DCA 1997)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute changed the original bill by removing burglary of a conveyance and aggravated assault from the qualifying offenses that subject a person to the new 10 year minimum mandatory for possession of a firearm during the commission of a crime.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

J. Willis Renuart

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Ken Winker

Ken Winker