

By the Committee on Criminal Justice and Senator Lee

307-1810-00

1 A bill to be entitled

2 An act relating to weapons of mass destruction;

3 creating s. 790.166, F.S.; prohibiting the

4 unlawful manufacture, possession, sale,

5 delivery, display, use, or attempted or

6 threatened use of a weapon of mass destruction;

7 prohibiting unlawful conspiring to use such

8 weapon; prohibiting making such weapon readily

9 accessible to others; providing a first degree

10 felony penalty for violation; providing that

11 violation which results in death is a capital

12 felony; prohibiting the unlawful manufacture,

13 possession, sale, delivery, display, use, or

14 attempted or threatened use of a hoax weapon of

15 mass destruction; prohibiting unlawful

16 conspiring to use such weapon; prohibiting

17 making such weapon readily accessible to

18 others; providing a second degree felony

19 penalty for violation; providing definitions

20 for purposes of the act; providing

21 nonapplicability of the act; amending s.

22 921.0022, F.S., relating to the Criminal

23 Punishment Code; providing for ranking the

24 offense of possessing, selling, or using a

25 weapon of mass destruction and the offense of

26 possessing, selling, or using a hoax weapon of

27 mass destruction; providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Section 790.166, Florida Statutes, is
2 created to read:

3 790.166 Manufacture, possession, sale, delivery,
4 display, use, or attempted or threatened use of a weapon of
5 mass destruction or hoax weapon of mass destruction
6 prohibited; definitions; penalties.--

7 (1) As used in this section, the term:

8 (a) "Weapon of mass destruction" means:

9 1. Any device or object that is designed or intended
10 to cause death or serious bodily injury through the release,
11 dissemination, or impact of toxic or poisonous chemicals, or
12 their precursors;

13 2. Any device or object involving a disease organism;
14 or

15 3. Any device or object that is designed to release
16 radiation or radioactivity at a level dangerous to human life.

17 (b) "Hoax weapon of mass destruction" means any device
18 or object that by its design, construction, content, or
19 characteristics appears to be or to contain, or is represented
20 to be, constitute, or contain, a weapon of mass destruction as
21 defined in this section, but which is, in fact, an inoperative
22 facsimile, imitation, counterfeit, or representation of a
23 weapon of mass destruction which does not meet the definition
24 of a weapon of mass destruction or which does not actually
25 contain or constitute a weapon, biological agent, toxin,
26 vector, or delivery system prohibited by this section.

27 (c) "Biological agent" means any microorganism, virus,
28 infectious substance, or biological product that may be
29 engineered through biotechnology, or any naturally occurring
30 or bioengineered component of any such microorganism, virus,
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1 infectious substance, or biological product, capable of
2 causing:
3 1. Death, disease, or other biological malfunction in
4 a human, an animal, a plant, or other living organism;
5 2. Deterioration of food, water, equipment, supplies,
6 or material of any kind; or
7 3. Deleterious alteration of the environment.
8 (d) "Toxin" means the toxic material of plants,
9 animals, microorganisms, viruses, fungi, or infectious
10 substances, or a recombinant molecule, whatever its origin or
11 method of reproduction, including:
12 1. Any poisonous substance or biological product that
13 may be engineered through biotechnology produced by a living
14 organism; or
15 2. Any poisonous isomer or biological product,
16 homolog, or derivative of such substance.
17 (e) "Delivery system" means:
18 1. Any apparatus, equipment, device, or means of
19 delivery specifically designed to deliver or disseminate a
20 biological agent, toxin, or vector; or
21 2. Any vector.
22 (f) "Vector" means a living organism or molecule,
23 including a recombinant molecule or biological product that
24 may be engineered through biotechnology, capable of carrying a
25 biological agent or toxin to a host.
26 (2) A person who, without lawful authority,
27 manufactures, possesses, sells, delivers, displays, uses,
28 threatens to use, attempts to use, or conspires to use, or who
29 makes readily accessible to others a weapon of mass
30 destruction, including any biological agent, toxin, vector, or
31 delivery system as those terms are defined in this section,

1 commits a felony of the first degree, punishable by
2 imprisonment for a term of years not exceeding life or as
3 provided in s. 775.082, s. 775.083, or s. 775.084, and if
4 death results, commits a capital felony, punishable as
5 provided in s. 775.082.

6 (3) Any person who, without lawful authority,
7 manufactures, possesses, sells, delivers, displays, uses,
8 threatens to use, attempts to use, or conspires to use, or who
9 makes readily accessible to others, a hoax weapon of mass
10 destruction with the intent to deceive or otherwise mislead
11 another person into believing that the hoax weapon of mass
12 destruction will cause terror, bodily harm, or property damage
13 commits a felony of the second degree, punishable as provided
14 in s. 775.082, s. 775.083, or s. 775.084.

15 (4) This section does not apply to any member or
16 employee of the Armed Forces of the United States, a federal
17 or state governmental agency, or a private entity who is
18 otherwise engaged in lawful activity within the scope of his
19 or her employment, if such person is otherwise duly authorized
20 or licensed to manufacture, possess, sell, deliver, display,
21 or otherwise engage in activity relative to this section and
22 if such person is in compliance with applicable federal and
23 state law.

24 Section 2. Paragraphs (g) and (i) of subsection (3) of
25 section 921.0022, Florida Statutes, are amended to read:

26 921.0022 Criminal Punishment Code; offense severity
27 ranking chart.--

28 (3) OFFENSE SEVERITY RANKING CHART
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1	Florida	Felony	
2	Statute	Degree	Description
3			
4			
5			(g) LEVEL 7
6	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
7			injury.
8	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
9			bodily injury.
10	402.319(2)	2nd	Misrepresentation and negligence
11			or intentional act resulting in
12			great bodily harm, permanent
13			disfiguration, permanent
14			disability, or death.
15	409.920(2)	3rd	Medicaid provider fraud.
16	494.0018(2)	1st	Conviction of any violation of
17			ss. 494.001-494.0077 in which the
18			total money and property
19			unlawfully obtained exceeded
20			\$50,000 and there were five or
21			more victims.
22	782.051(3)	2nd	Attempted felony murder of a
23			person by a person other than the
24			perpetrator or the perpetrator of
25			an attempted felony.
26	782.07(1)	2nd	Killing of a human being by the
27			act, procurement, or culpable
28			negligence of another
29			(manslaughter).
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1	782.071	2nd	Killing of human being or viable
2			fetus by the operation of a motor
3			vehicle in a reckless manner
4			(vehicular homicide).
5	782.072	2nd	Killing of a human being by the
6			operation of a vessel in a
7			reckless manner (vessel
8			homicide).
9	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
10			causing great bodily harm or
11			disfigurement.
12	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
13			weapon.
14	784.045(1)(b)	2nd	Aggravated battery; perpetrator
15			aware victim pregnant.
16	784.048(4)	3rd	Aggravated stalking; violation of
17			injunction or court order.
18	784.07(2)(d)	1st	Aggravated battery on law
19			enforcement officer.
20	784.08(2)(a)	1st	Aggravated battery on a person 65
21			years of age or older.
22	784.081(1)	1st	Aggravated battery on specified
23			official or employee.
24	784.082(1)	1st	Aggravated battery by detained
25			person on visitor or other
26			detainee.
27	784.083(1)	1st	Aggravated battery on code
28			inspector.
29	790.07(4)	1st	Specified weapons violation
30			subsequent to previous conviction
31			of s. 790.07(1) or (2).

1	790.16(1)	1st	Discharge of a machine gun under
2			specified circumstances.
3	<u>790.166(3)</u>	<u>2nd</u>	<u>Possessing, selling, using, or</u>
4			<u>attempting to use a hoax weapon</u>
5			<u>of mass destruction.</u>
6	796.03	2nd	Procuring any person under 16
7			years for prostitution.
8	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
9			victim less than 12 years of age;
10			offender less than 18 years.
11	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
12			victim 12 years of age or older
13			but less than 16 years; offender
14			18 years or older.
15	806.01(2)	2nd	Maliciously damage structure by
16			fire or explosive.
17	810.02(3)(a)	2nd	Burglary of occupied dwelling;
18			unarmed; no assault or battery.
19	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
20			unarmed; no assault or battery.
21	810.02(3)(d)	2nd	Burglary of occupied conveyance;
22			unarmed; no assault or battery.
23	812.014(2)(a)	1st	Property stolen, valued at
24			\$100,000 or more; property stolen
25			while causing other property
26			damage; 1st degree grand theft.
27	812.019(2)	1st	Stolen property; initiates,
28			organizes, plans, etc., the theft
29			of property and traffics in
30			stolen property.
31	812.131(2)(a)	2nd	Robbery by sudden snatching.

1	812.133(2)(b)	1st	Carjacking; no firearm, deadly
2			weapon, or other weapon.
3	825.102(3)(b)	2nd	Neglecting an elderly person or
4			disabled adult causing great
5			bodily harm, disability, or
6			disfigurement.
7	825.1025(2)	2nd	Lewd or lascivious battery upon
8			an elderly person or disabled
9			adult.
10	825.103(2)(b)	2nd	Exploiting an elderly person or
11			disabled adult and property is
12			valued at \$20,000 or more, but
13			less than \$100,000.
14	827.03(3)(b)	2nd	Neglect of a child causing great
15			bodily harm, disability, or
16			disfigurement.
17	827.04(3)	3rd	Impregnation of a child under 16
18			years of age by person 21 years
19			of age or older.
20	837.05(2)	3rd	Giving false information about
21			alleged capital felony to a law
22			enforcement officer.
23	872.06	2nd	Abuse of a dead human body.
24	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
25			cocaine (or other drug prohibited
26			under s. 893.03(1)(a), (1)(b),
27			(1)(d), (2)(a), or (2)(b)) within
28			1,000 feet of a child care
29			facility or school.
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1	893.13(1)(e)	1st	Sell, manufacture, or deliver
2			cocaine or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), or (2)(b), within
5			1,000 feet of property used for
6			religious services or a specified
7			business site.
8	893.13(4)(a)	1st	Deliver to minor cocaine (or
9			other s. 893.03(1)(a), (1)(b),
10			(1)(d), (2)(a), or (2)(b) drugs).
11	893.135(1)(a)1.	1st	Trafficking in cannabis, more
12			than 50 lbs., less than 2,000
13			lbs.
14	893.135		
15	(1)(b)1.a.	1st	Trafficking in cocaine, more than
16			28 grams, less than 200 grams.
17	893.135		
18	(1)(c)1.a.	1st	Trafficking in illegal drugs,
19			more than 4 grams, less than 14
20			grams.
21	893.135		
22	(1)(d)1.	1st	Trafficking in phencyclidine,
23			more than 28 grams, less than 200
24			grams.
25	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
26			than 200 grams, less than 5
27			kilograms.
28	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
29			than 14 grams, less than 28
30			grams.
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1	893.135		
2	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
3			grams or more, less than 14
4			grams.
5			(i) LEVEL 9
6	316.193		
7	(3)(c)3.b.	1st	DUI manslaughter; failing to
8			render aid or give information.
9	782.04(1)	1st	Attempt, conspire, or solicit to
10			commit premeditated murder.
11	782.04(3)	1st,PBL	Accomplice to murder in
12			connection with arson, sexual
13			battery, robbery, burglary, and
14			other specified felonies.
15	782.051(1)	1st	Attempted felony murder while
16			perpetrating or attempting to
17			perpetrate a felony enumerated in
18			s. 782.04(3).
19	782.07(2)	1st	Aggravated manslaughter of an
20			elderly person or disabled adult.
21	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
22			reward or as a shield or hostage.
23	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
24			or facilitate commission of any
25			felony.
26	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
27			interfere with performance of any
28			governmental or political
29			function.
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1	787.02(3)(a)	1st	False imprisonment; child under
2			age 13; perpetrator also commits
3			aggravated child abuse, sexual
4			battery, or lewd or lascivious
5			battery, molestation, conduct, or
6			exhibition.
7	790.161	1st	Attempted capital destructive
8			device offense.
9	<u>790.166(2)</u>	<u>1st,PBL</u>	<u>Possessing, selling, using, or</u>
10			<u>attempting to use a weapon of</u>
11			<u>mass destruction.</u>
12	794.011(2)	1st	Attempted sexual battery; victim
13			less than 12 years of age.
14	794.011(2)	Life	Sexual battery; offender younger
15			than 18 years and commits sexual
16			battery on a person less than 12
17			years.
18	794.011(4)	1st	Sexual battery; victim 12 years
19			or older, certain circumstances.
20	794.011(8)(b)	1st	Sexual battery; engage in sexual
21			conduct with minor 12 to 18 years
22			by person in familial or
23			custodial authority.
24	800.04(5)(b)	1st	Lewd or lascivious molestation;
25			victim less than 12 years;
26			offender 18 years or older.
27	812.13(2)(a)	1st,PBL	Robbery with firearm or other
28			deadly weapon.
29	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
30			deadly weapon.
31	827.03(2)	1st	Aggravated child abuse.

1	847.0145(1)	1st	Selling, or otherwise
2			transferring custody or control,
3			of a minor.
4	847.0145(2)	1st	Purchasing, or otherwise
5			obtaining custody or control, of
6			a minor.
7	859.01	1st	Poisoning food, drink, medicine,
8			or water with intent to kill or
9			injure another person.
10	893.135	1st	Attempted capital trafficking
11			offense.
12	893.135(1)(a)3.	1st	Trafficking in cannabis, more
13			than 10,000 lbs.
14	893.135		
15	(1)(b)1.c.	1st	Trafficking in cocaine, more than
16			400 grams, less than 150
17			kilograms.
18	893.135		
19	(1)(c)1.c.	1st	Trafficking in illegal drugs,
20			more than 28 grams, less than 30
21			kilograms.
22	893.135		
23	(1)(d)1.c.	1st	Trafficking in phencyclidine,
24			more than 400 grams.
25	893.135		
26	(1)(e)1.c.	1st	Trafficking in methaqualone, more
27			than 25 kilograms.
28	893.135		
29	(1)(f)1.c.	1st	Trafficking in amphetamine, more
30			than 200 grams.
31			Section 3. This act shall take effect July 1, 2000.

- 1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1840
- 4 - Deletes the term "destructive devise" from the
5 definition of a weapon of mass destruction since current
6 law already provides penalties for possession or use of
7 a destructive device. Other references to destructive
8 device are also deleted.
- 9 - Deletes provision excluding chemical weapons from weapon
10 of mass destruction offense to clarify that use or
11 possession of chemical weapons do come within scope of
12 newly created offense.
- 13 - Deletes provisions requiring that the weapons of mass
14 destruction offense must be committed "against" any
15 person in the state or "against" any state property
16 since these elements do not relate well with the
17 manufacture, possess, sell, deliver, or display
18 elements.
- 19 - Adds intent element to the hoax weapon of mass
20 destruction offense to clarify that use of hoax must be
21 with the intent to deceive or otherwise mislead another
22 person into believing that the hoax weapon will cause
23 terror, bodily harm, or property damage.
- 24 - Adds the designation "PBL" in the Offense Severity
25 Ranking Chart for the new created first degree felony
26 which is punishable by life imprisonment.
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