

STORAGE NAME: h1437a.cja.doc
DATE: February 19, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 1437
RELATING TO: Criminal Justice
SPONSOR(S): Representative Gelber

TIED BILL(S):

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

- (1) SELECT COMMITTEE ON SECURITY YEAS 9 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 11 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

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I. SUMMARY:

This bill amends the crime of false reporting about planting bombs and the crime of false reporting of bombs on state property to include false reporting of weapons of mass destruction.

This bill also amends the criminal offense of planting a hoax bomb and raises the felony degree of the crime from a third-degree felony to a second-degree felony, bringing the sentence in parity with other similar offenses relating to hoax weapons of mass destruction and false reports of bombs. The bill also clarifies and expands the definition of "weapon of mass destruction" by providing that injury may be to either humans or animals.

Further, this bill creates a second-degree felony offense for the possession, display, or threat to use a hoax weapon of mass destruction during the commission or attempted commission of a felony, and ranks the above crimes in the offense severity ranking chart.

The bill takes effect July 1, 2002.

A strike-everything amendment traveling with the bill would amend the first four sections of the bill relating to the offenses of false bomb reports; planting of hoax bombs; and crimes relating to weapons of mass destruction and hoax weapons of mass destruction to authorize a court to order restitution against a defendant convicted of these offenses under circumstances where the violation of the offense resulted in the mobilization or action of any law enforcement, state, or local agency.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government and Individual Freedom: This bill does not support the principles of less government and individual freedom because it creates a second-degree felony offense for any person who possesses, displays, or threatens to use a hoax weapon of mass destruction while committing or attempting to commit a felony. This bill also adds "weapons of mass destruction" to false reporting of crimes.

B. PRESENT SITUATION:

False reports about planting a bomb or explosive and false reports of bombing against state owned property

Section 790.163, F.S., provides that a false report regarding the planting of a bomb, dynamite, or other deadly explosive is a second-degree felony. Section 790.164, F.S., also provides that it is a second-degree felony to make a false report regarding the planting of a bomb, dynamite, other deadly explosive, or any act of arson or other violence to state-owned property.

Planting hoax bombs

Section 790.165, F.S., describes the crime of planting a hoax bomb and defines "hoax bomb." The section also makes it a third-degree felony for anyone to manufacture, possess, sell, deliver, or mail a hoax bomb to another person. Anyone who possesses, displays, or threatens to use a hoax bomb while committing or attempting to commit any felony commits a second-degree felony. The adjudication of guilt or imposition of a sentence for this offense cannot be suspended, deferred, or withheld. However, the state attorney or defense attorney may move to reduce or suspend the sentence if the defendant provides substantial assistance in the identification, arrest, or conviction of any of his/her accomplices, accessories, co-conspirators, or principals.

Weapons of mass destruction

A "weapon of mass destruction" is defined in s. 790.166, F.S., to include:

- Any device or object that is intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
- Any device or object involving a disease organism; or
- Any device or object that is designed to release radiation or radioactivity at a level dangerous to human life.

This section also defines “hoax weapon of mass destruction,” “biological agent,” “toxin,” “delivery system,” and “vector” and provides that anyone who “manufactures, possesses, sells, delivers, displays, uses, threatens to use, attempts to use, conspires to use, or who makes readily accessible to others” a weapon of mass destruction, including a biological agent, toxin, vector, or delivery system, commits a first-degree felony.¹ Anyone who does the same with a hoax weapon of mass destruction with the intent to deceive or mislead commits a second-degree felony. There is an exemption for certain persons or entities lawfully engaging in an activity within the scope of employment covered in this section.

Offense severity ranking chart

Section 921.0022, F.S., provides the offense severity ranking chart ranking each felony offense according to the severity. The offenses listed above are ranked as follows:

- False report about planting a bomb (s. 790.163, F.S.): level 5;
- False reports of bombing against state property (s. 790.164, F.S.): level 6;
- Planting hoax bombs (s. 790.165(2), F.S.): level 5; and
- Hoax weapons of mass destruction (s. 790.166(3), F.S.): level 7.

C. EFFECT OF PROPOSED CHANGES:

False report about planting a bomb or explosive and false reports of bombing against state owned property

The bill amends both the crime of false reporting of planting bombs (s. 790.163, F.S.) and the crime of false reporting of bombs on state property (s. 790.164, F.S.) to include weapons of mass destruction. The bill also provides that the sentence under these sections may not be set aside except that a state attorney may move to reduce the sentence if the violator substantially assists in the identification, arrest, or conviction of others involved in the violation. Further, proof that a person knowingly made a false report creates a permissive inference that the person intended to deceive, mislead, or otherwise misinform another person.

Planting hoax bombs

The bill amends the crime of planting a hoax bomb (s. 790.165, F.S.) to include a person who sends, mails, displays, uses, threatens to use, or makes readily accessible to others a hoax bomb. Also, the bill raises the penalty from a third-degree to a second-degree felony to bring the sentence in parity with other similar offenses relating to hoax weapons of mass destruction and false reports of bombs.

Weapons of mass destruction

The bill amends the definition of “weapon of mass destruction” (s. 790.166, F.S.) to clarify that it includes injury to any human or animal and makes other technical, conforming changes. The bill adds “sends” and “mails” a weapon of mass destruction or hoax weapon of mass destruction to the list of actions that qualify for punishment and creates a second-degree felony offense that applies to anyone who possesses, displays, or threatens to use a hoax weapon of mass destruction while committing or attempting to commit any felony. A “substantial assistance” provision identical to the “substantial assistance” provision for planting a hoax bomb is also added to s. 790.166, F.S. The

¹ If the weapon of mass destruction involved in this offense resulted in a death, the offense is increased to a capital felony.

bill creates a permissive inference that a weapon of mass destruction was intended to cause death or serious bodily injury based upon proof that it caused serious bodily injury or death, and a permissive inference that a radiological agent was designed to release radiation based upon proof that it released radiation.

Offense severity ranking chart

The bill makes the following changes to the offense severity ranking chart:

- Adds false report of a weapon of mass destruction to false report of deadly explosive and ranks the crime as a level 5, second-degree felony;
- Adds false report of a weapon of mass destruction to false report of deadly explosive or act of arson or violence to state property and ranks the crime as a level 6, second-degree felony;
- Deletes hoax bombs (s. 790.165(2), F.S.) from level 5 and replaces it as a level 7, second-degree felony;
- Adds the crime of using a hoax bomb while committing or attempting to commit a felony as a level 7, second-degree felony; and
- Adds the crime of using a hoax weapon of mass destruction while committing or attempting to commit a felony to level 7 as a second-degree felony.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to the Effect of Proposed Changes for a description of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The traveling amendment to HB 1437 authorizes a court to order restitution against a defendant convicted of the offenses of false bomb reports; planting of hoax bombs; and crimes relating to weapons of mass destruction and hoax weapons of mass destruction where the offense resulted in the mobilization or action of any law enforcement, state, or local agency. The fiscal impact of this provision to state and local governments is indeterminate as it is difficult to foresee the level of restitution warranted and awarded for specific cases that could result in a conviction for these offenses.

Additionally, both the underlying bill and the traveling amendment increase the penalties of the noted offenses on the offense severity ranking chart from third-degree to second-degree felonies (and creating a second-degree felony relating to real and hoax weapons of mass destruction). While the Criminal Justice Estimating Conference has not reviewed this legislation, they did review SB 1014 on February 8, 2002, a similar bill which stipulates the same third-to-second degree felony change for manufacturing, possessing, selling, delivering and sending hoax bombs. It was determined to have an insignificant impact on the prison population.

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 state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

There is a potential due process issue regarding the presumptions added in ss. 790.163(3), 790.164(3), and 790.166(6), F.S., by this bill. The Florida Supreme Court discussed the constitutionality of presumptions in a recent case and stated, "a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."²

B. RULE-MAKING AUTHORITY:

None.

² *State v. Brake*, 796 So. 2d 522, 529 (Fla. 2001) quoting *Leary v. U.S.*, 395 U.S. 6, 36 (1969).

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 11, 2002, the Select Committee on Security adopted a strike-everything amendment by Representative Gelber. This strike-everything amends the first four sections of the bill relating to the offenses of false bomb reports; planting of hoax bombs; and crimes relating to weapons of mass destruction and hoax weapons of mass destruction to authorize a court to order restitution against a defendant convicted of these offenses under circumstances where the violation of the offense resulted in the mobilization or action of any law enforcement, state, or local agency. The amendment makes further technical changes.

VII. SIGNATURES:

SELECT COMMITTEE ON SECURITY:

Prepared by:

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