

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Justice Appropriations Committee

BILL: CS/SB 174

INTRODUCER: Criminal Justice Committee, Senators Rich, and others

SUBJECT: Theft of Property

DATE: March 30, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|-----------|------------------|
| 1. | <u>Cellon</u> | <u>Cannon</u> | <u>CJ</u> | Fav/CS |
| 2. | <u>Cibula</u> | <u>Maclure</u> | <u>JU</u> | Favorable |
| 3. | <u>Sadberry</u> | <u>Sadberry</u> | <u>JA</u> | Favorable |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill makes robbery while threatening to use a weapon or firearm a first-degree felony. The potential incarceration for a first-degree felony is generally up to 30 years imprisonment. Under existing law, the robbery is a second-degree felony if actual possession of a weapon or firearm cannot be proven. The potential incarceration for a second-degree felony is generally up to 15 years imprisonment.

This bill substantially amends section 812.13, Florida Statutes. The bill also reenacts section 921.0022, Florida Statutes.

II. Present Situation:

Section 812.13, F.S., defines the term “robbery” as:

the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

Robbery with a firearm or other deadly weapon is a first-degree felony punishable by life imprisonment and a fine of up to \$15,000.¹

Robbery with a weapon (not a deadly weapon) is a first-degree felony. A first-degree felony generally is punishable by up to 30 years imprisonment and a fine of up to \$10,000.²

¹ Sections 812.13(2)(a), 775.082(3)(a)3., and 775.083(1)(a), F.S.

Robbery without a firearm, deadly weapon, or other weapon is a second-degree felony and is also called simple robbery. A second-degree felony is generally punishable by up to 15 years imprisonment and a fine of up to \$10,000.³

Courts have held that for a person to be convicted of a first-degree felony under the robbery statute, the state must prove that the robber carried a firearm or deadly weapon.⁴ A threat to use a deadly weapon is insufficient to prove that a robber carried a firearm or deadly weapon.

III. Effect of Proposed Changes:

This bill makes robbery while threatening to use a weapon or firearm a first-degree felony. The potential incarceration for a first-degree felony is generally up to 30 years imprisonment. Under existing law, the robbery is a second-degree felony if actual possession of a weapon or firearm cannot be proven. The potential incarceration for a second-degree felony is generally up to 15 years imprisonment. This bill will reverse case law holding that the state must prove a defendant actually carried a real firearm to convict a person of a first-degree felony robbery.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

² Sections 812.13(2)(b), 775.082(3)(b), and 775.083(1)(b), F.S.

³ Sections 812.13(2)(c), 775.082(3)(c) and 775.083(1)(b), F.S.

⁴ See, e.g., *Tookes v. State*, 842 So. 2d 1063 (Fla. 4th DCA 2003); *Hamilton v. State*, 494 So. 2d 505 (Fla. 2d DCA 1986).

C. Government Sector Impact:

On February 28, 2006, the Criminal Justice Impact Conference determined that this bill will have an indeterminate impact on the number of prison beds needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
