

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 413

Theft of Property

**SPONSOR(S):** Garcia, L.

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 658

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>9 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u>13 Y, 1 N</u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Currently, committing a robbery while using a firearm or weapon is a first-degree felony. However, courts have held that where a defendant threatens to use a firearm or weapon during the commission of a robbery, but no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon, the defendant may not be convicted of a first-degree felony under the robbery statute. This bill makes committing a robbery while threatening to use a firearm or weapon a first-degree felony, even if no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon.

The effective date of this bill is October 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility** - This bill makes robbery while threatening to use a firearm or weapon a first-degree felony.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current 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 *while carrying a firearm*<sup>1</sup> or *other deadly weapon*<sup>2</sup> is a first-degree felony punishable by imprisonment for a term of years not exceeding life imprisonment and a fine of up to \$10,000.<sup>3</sup>

Robbery *while carrying a weapon*<sup>4</sup> (non-deadly) 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.<sup>5</sup>

Robbery *without a firearm, deadly weapon, or other weapon* is a second-degree felony. A second-degree felony is generally punishable by up to 15 years imprisonment and a fine of up to \$10,000.<sup>6</sup>

Courts have held that where a defendant threatens to use a firearm or weapon during the commission of a robbery, but no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon, the defendant may not be convicted of a first-degree felony under the robbery statute.<sup>7</sup> Such act is instead a second-degree felony under the robbery statute.<sup>8</sup>

##### **Effect of the Bill**

This bill makes robbery while threatening to use a weapon (non-deadly) or a 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 was actually in possession of a firearm or weapon to convict a person of a first-degree felony robbery.

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<sup>1</sup> Florida Standard Jury Instruction 15.1 references the definition of firearm contained in s. 790.001, F.S., which defines the term "firearm" as "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."

<sup>2</sup> Florida Standard Jury Instruction 15.1 provides that a weapon is a "deadly weapon" if "it is used or threatened to be used in a way likely to produce death or great bodily harm."

<sup>3</sup> See ss. 812.13(2)(a), 775.082, and 775.083, F.S.

<sup>4</sup> Florida Standard Jury Instruction 15.1 provides that a "weapon" is legally defined to mean "any object that could be used to cause death or inflict serious bodily harm."

<sup>5</sup> See ss. 812.13(2)(b), 775.082, and 775.083, F.S.

<sup>6</sup> See ss. 812.13(2)(c), 775.082 and 775.083, F.S.

<sup>7</sup> See, e.g., *Johnson v. State*, 560 So.2d 1379 (Fla. 5<sup>th</sup> DCA 1990), *Spellman v. State*, 529 So.2d 305 (Fla. 1<sup>st</sup> DCA 1988), *Hamilton v. State*, 494 So.2d 505 (Fla. 2<sup>nd</sup> DCA 1986).

<sup>8</sup> *Id.*

C. SECTION DIRECTORY:

**Section 1.** Amends s. 812.13, F.S., relating to robbery.

**Section 2.** Reenacts s. 921.0022(3)(f), (h) and (i), F.S., of the Criminal Punishment Code; offense severity ranking chart.

**Section 3.** This bill takes effect October 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 16, 2007, the Criminal Justice Impact Conference determined that the prison bed impact of this bill is indeterminate. This bill makes committing a robbery while threatening to use a firearm or weapon a first-degree felony, even if no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon. No data exist to indicate how many such crimes have been committed in the past.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement was submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**