

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1091 **Use of Hoax Firearms**

**SPONSOR(S):** Dorworth

#### **TIED BILLS:**

IDEN./SIM. BILLS: SB 2076

|    | <b>REFERENCE</b>  | <b>ACTION</b> | <b>ANALYST</b> | <b>STAFF DIRECTOR</b> |
|----|---|---------------|----------------|-----------------------|
| 1) | Public Safety & Domestic Security Policy Committee              |               | Kramer         | Kramer                |
| 2) | Criminal & Civil Justice Policy Council                         |               |                |                       |
| 3) | Criminal & Civil Justice Appropriations Committee               |               |                |                       |
| 4) | Full Appropriations Council on General Government & Health Care |               |                |                       |
| 5) |   |               |                |                       |

## SUMMARY ANALYSIS

The offenses of robbery, home-invasion robbery and carjacking are first degree felonies if in the course of committing the offense, the offender carried a firearm or other deadly weapon. Currently, if the offense of robbery, home-invasion robbery or carjacking is committed with a "hoax firearm", the offense is treated as if it were committed without a firearm or a weapon. This bill amends these statutes to make the offenses of robbery, home-invasion robbery and carjacking first degree felonies if in the course of the offense, the offender carried a "hoax firearm".

The bill does not amend the 10-20-Life statute. Therefore, the minimum mandatory sentences that must be imposed pursuant to that section of statute for offenses committed with a firearm will not apply to a robbery, carjacking or home-invasion robbery offense that is committed with a hoax firearm.

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. During the 2008 session, the conference reported that the bill would have an indeterminate but potentially significant prison bed impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Hoax bomb or hoax weapon of mass destruction:*

Section 790.165, F.S. makes it a second degree felony for a person to manufacture, possess, sell, deliver, send, mail, display, use, threaten to use, attempt to use, or conspire to use, or make readily accessible to others, a hoax bomb. The term "hoax bomb" is defined as "any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive.....but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented."

Section 790.166, F.S. makes it a second degree felony to, without lawful authority, manufacture, possess, sell, deliver, mail, send, display, use, threaten to use, attempt to use, or conspire to use, or make readily accessible to others, a hoax weapon of mass destruction.<sup>1</sup>

##### *Robbery:* Section 812.13, F.S., defines the term "robbery" as:

[T]he 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<sup>2</sup> there is the use of force, violence, assault, or putting in fear.

If in the course of committing a robbery<sup>3</sup>, the offender carries a firearm<sup>4</sup> or other deadly weapon<sup>5</sup>, the offense 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>6</sup>

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<sup>1</sup> The term "hoax weapon of mass destruction" is defined as "any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction ... but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section."

<sup>2</sup> According s. 812.13(3)(b), F.S., an act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

<sup>3</sup> According to s. 812.13(3)(a), F.S., an act shall be deemed to be in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

<sup>4</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

If in the course of committing the robbery, the offender carries a weapon<sup>7</sup> (non-deadly), the offense 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>8</sup>

If in the course of the robbery, the offender did not carry a firearm, deadly weapon or other weapon, the offense 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>9</sup>

**Carjacking:** Section 812.133, F.S. defines the term “carjacking” to mean the “taking of a motor vehicle 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 motor vehicle, when in the course of the taking, there is the use of force, violence, assault or putting in fear.”

If in the course of committing a carjacking, the offender carries a *firearm or other deadly weapon*, the offense 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>10</sup> If in the course of the carjacking, the offender did not carry a firearm, deadly weapon or other weapon, the offense is a first-degree felony.

**Home-invasion robbery:** Section 812.135, F.S. defines the term “home-invasion robbery” to mean “any robbery that occurs when the offender enters the dwelling with the intent to commit a robbery, and does commit a robbery of the occupants therein.”

If in the course of committing a home-invasion robbery, the offender carries a *firearm or other deadly weapon*, the offense is a first-degree felony punishable by imprisonment for a term of years not exceeding life imprisonment. If in the course of committing the home-invasion robbery, the offender carries a *weapon* (non-deadly), the offense is a first-degree felony. If in the course of the home-invasion robbery, the offender did not carry a firearm, deadly weapon or other weapon, the offense is a first-degree felony.

**10-20-Life:** Section 775.087(2), F.S. requires the imposition of minimum terms of imprisonment for certain firearm related offenses. This provision is commonly referred to as a “10-20-Life”. The section sets forth a list of enumerated felonies including the offenses of robbery, carjacking and home-invasion robbery. The section requires the imposition of a minimum term of imprisonment of 10 years if the offender possessed a firearm or destructive device during the commission of an enumerated felony; a minimum term of imprisonment of 20 years if the offender discharged a firearm or destructive device during the commission of an enumerated felony and a minimum term of imprisonment of 25 years and up to a life sentence if the offender discharged a firearm or destructive device during the commission of an enumerated felony and as a result of the discharge, death or great bodily harm was inflicted upon any person.

**Changes made by HB 1091:** The bill creates s. 812.19, F.S. which defines the term “hoax firearm” to mean “any device or object that by its design, construction, content, or characteristics appears to be a firearm as defined in s. 790.001, but is, in fact, a facsimile or imitation of such firearm.”

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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>5</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>6</sup> See ss. 812.13(2)(a), 775.082, and 775.083, F.S.

<sup>7</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.” See also, s. 790.001(13), F.S. (defining term “weapon” to mean “any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.”)

<sup>8</sup> See ss. 812.13(2)(b), 775.082, and 775.083, F.S.

<sup>9</sup> See ss. 812.13(2)(c), 775.082 and 775.083, F.S.

<sup>10</sup> See ss. 812.13(2)(a), 775.082, and 775.083, F.S.

Under current law, if the offense of robbery, home-invasion robbery or carjacking is committed with a "hoax firearm", the offense is treated as if it were committed without a firearm or a weapon.<sup>11</sup> The bill amends the robbery, carjacking and home-invasion robbery statutes to provide that if during the course of committing one of these offenses, the offender carried a hoax firearm, the offense will be the same degree of felony as if an actual firearm or other deadly weapon was carried. Thus, if a hoax firearm is carried during the course of committing a robbery, a carjacking or a home-invasion robbery offense, the offense would be a first degree felony, punishable by up to a life sentence in the same manner as if an actual firearm or other deadly weapon was carried.<sup>12</sup>

The bill does not amend the 10-20-Life statute. Therefore, the minimum mandatory sentences that must be imposed pursuant to that section of statute will not apply to a robbery, carjacking or home-invasion robbery offense that is committed with a hoax firearm.

The bill has an effective date of October 1, 2009.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 812.129, F.S., creating definitions.

Section 2. Amends s. 812.13, F.S., relating to robbery.

Section 3. Amends s. 812.133, F.S. relating to carjacking.

Section 4. Amends s. 812.135, F.S., relating to home-invasion robbery.

Section 5. Amends s. 921.0022, F.S., relating to offense severity ranking chart of the Criminal Punishment Code.

Section 6. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 7. Provides effective date of October 1, 2009.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>11</sup> In *Stanley v. State*, 757 So.2d 1275 (Fla. 4<sup>th</sup> DCA 2000), the state charged the defendant with robbery with a weapon rather than robbery with a firearm for carrying a gun lacking a firing pin during a robbery. The appellate court overturned the conviction, noting that the definition of the term weapon excludes a firearm and that the state did not prove that firearm was used in manner that could cause serious bodily injury or death such as using it as a club. See also, *Tookes v. State*, 842 So.2d 1063 (Fla. 4<sup>th</sup> DCA 2003)(overturning conviction for robbery with firearm; stating that defendant could not lawfully be found guilty of carrying a firearm if it was a toy or imitation firearm).

<sup>12</sup> The offense of robbery with a hoax firearm will be ranked in level 9 of the offense severity ranking chart, in the same manner as robbery with a firearm; the offense of carjacking with a hoax firearm will be ranked in level 9 of the offense severity ranking chart, in the same manner as the offense of carjacking with a firearm and the offense of home-invasion robbery with a hoax firearm will be ranked in level 10, in the same manner as the offense of home-invasion robbery with a firearm.

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. During the 2008 session, the conference reported that the bill would have an indeterminate but potentially significant prison bed impact.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**