

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1272

INTRODUCER: Senator Latvala

SUBJECT: Possession of a Firearm or Destructive Device During the Commission of an Offense

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill provides that an offender who is before the court for sentencing on a conviction of possession of a firearm by a convicted felon *and* who has a *prior conviction* for committing or attempting to commit certain felony offenses, *during which time* he or she possessed a firearm or destructive device, is subject to a 10 year mandatory sentence under the “10-20-Life” law.

This bill substantially amends section 775.087 of the Florida Statutes.

**II. Present Situation:**

Section 775.087(2), F.S., is commonly referred to as the “10-20-Life” sentencing law. It requires a minimum term of imprisonment if the offender is convicted of committing or attempting to commit one of the enumerated felony offenses, regardless of whether the use of a weapon is an element of that felony offense, when during the commission of the felony offense the offender possesses, discharges, or causes death or great bodily harm with a firearm or destructive device.<sup>1</sup>

Firearm is defined in s. 790.001(6), F.S., 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. It does not include an antique firearm unless the antique firearm is used in the commission of a crime. Destructive device is defined in s. 790.001(4), F.S., as follows:

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<sup>1</sup> s. 775.087(2) (a) 1.-3., F.S.

(4) “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. “Destructive device” does not include:

- (a) A device which is not designed, redesigned, used, or intended for use as a weapon;
- (b) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;
- (c) Any shotgun other than a short-barreled shotgun; or
- (d) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

The offenses to which the minimum mandatory sentences apply are set forth in s. 775.087(2)(a)1., F.S. as follows:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in

- amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Possession of a firearm by a felon.

A person who possesses a firearm or destructive device during the commission of the offenses listed above *except for* aggravated assault, possession of a firearm by a convicted felon, or burglary of a conveyance, shall be sentenced to a minimum of 10 years imprisonment.<sup>2</sup> If the conviction is for aggravated assault, possession of a firearm by a convicted felon or burglary of a conveyance, the minimum sentence is 3 years imprisonment.<sup>3</sup>

The mandatory minimum sentence provided for in s. 775.087(2), F.S., increases to 20 years if the firearm or destructive device is discharged during the commission of or attempt to commit the offenses enumerated in s. 775.087(2)(a)1. a.-q., F.S., as set forth above.<sup>4</sup> The offense of possession of a firearm by a convicted felon is specifically *excluded* from the application of the mandatory 20 years.

The mandatory minimum sentence provided for in s. 775.087(2), F.S., increases to 25 years to life if the firearm or destructive device is discharged and someone is killed or suffers great bodily harm by the discharge during the commission of or attempt to commit the offenses enumerated in s. 775.087(2)(a)1. a.-q., F.S., as set forth above.<sup>5</sup> The offense of possession of a firearm by a convicted felon is likewise *excluded* from the application of the mandatory 25 years to life sentence.

### III. Effect of Proposed Changes:

The bill provides that an offender who is before the court for sentencing on a conviction of possession of a firearm by a convicted felon *and* who has a *prior conviction* for committing or attempting to commit the following listed offenses, *during which time* he or she possessed a firearm or destructive device, is subject to the 10 year mandatory sentence under s. 775.087(2)(a)1., F.S.<sup>6</sup>

The felony offenses that comprise the *listed prior conviction offenses* referred to above are:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;

<sup>2</sup> s. 775.087(2)(a)1., F.S.

<sup>3</sup> *Id.*

<sup>4</sup> s. 775.087(2)(a)2., F.S.

<sup>5</sup> s. 775.087(2)(a)3., F.S.

<sup>6</sup> This interpretation of the effect of the bill is partly based upon a review of the bill's title as the statutory amendment itself is somewhat unclear (please see the Technical Deficiencies section of the Bill Analysis). It should be noted that the House companion bill (HB 947) was amended on January 31, 2012, in an attempt to clarify the bill language.

- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.<sup>7</sup>

The bill has a July 1, 2012 effective date.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill's effect on the Department of Corrections inmate population should be insignificant.

#### **VI. Technical Deficiencies:**

Because of the placement of the amendatory language within s. 775.087(2)(a)1., F.S., it could be read to have a different meaning than what is apparently intended by the bill. The use of the phrase "unless such a person" (who is described thereafter) on lines 56-57 is problematic, given

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<sup>7</sup> This list of offenses is found in s. 775.084(1)(b)1., F.S., the "habitual violent felony offender" statute.

that there is no restatement of the *application* of the mandatory minimum to “such a person.” The language as set forth in the bill could be interpreted to actually provide that *neither* the 3 year nor the 10 year mandatory sentence should be imposed upon “such a person.” A reorganization of the bill’s sentence structure (or the current flush-left statutory language) is recommended.

A possible solution would be to restore the period after the word “offense” on line 56 and begin a new sentence to read: However, if the offender convicted of possession of a firearm by a felon has previously been convicted of committing or attempting to commit a felony listed in s. 775.084(1)(b)1. and who actually possessed a “firearm” or “destructive device” during the commission of that prior felony, the offender shall be sentenced to a minimum term of imprisonment of 10 years.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.