

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Weapons or Firearms
SPONSOR(S): Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	5 Y, 8 N	Cunningham	Cunningham
2) Local Government Affairs Subcommittee			
3) Local & Federal Affairs Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 790.15, F.S., makes it a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use. Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.” The term “negligently” is defined as “failing to use reasonable care under the circumstances.”

The bill amends s. 790.15, F.S., to remove the requirement that the person discharge the firearm “recklessly” or “negligently,” as well as the requirement that the discharge occur “outdoors.” As such, it will be a first degree misdemeanor for a person to discharge a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

The bill may have a positive jail bed impact (i.e., increase the need for jail beds) because it expands a misdemeanor offense.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The term “sport shooting range” is defined similarly in two sections of statute as “an area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black power, BB guns, airguns, or similar devices, or any other type of sport or training shooting.”¹ The Legislature has preempted the regulation of firearms and ammunition use at sport shooting ranges.² As such, local governments are not permitted to enact ordinances regulating how firearms can be used at sport shooting ranges. However, local governments may regulate the location and construction of sport shooting ranges.³

In recent months, there have been reports of persons constructing “gun ranges” in their backyards.⁴ Many of these individuals live in residential neighborhoods, which cause their neighbors concern. It is unclear whether such “gun ranges” meet the definition of a “sport shooting range.”

A person discharging a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use is subject to s. 790.15, F.S. This statute applies to the discharge of a firearm for any reason (e.g., individual target practice, group firearm training, etc.).

Section 790.15, F.S., makes it a first degree misdemeanor⁵ for a person to recklessly or negligently discharge a firearm⁶ outdoors on any property used primarily as the site of a dwelling⁷ or zoned exclusively for residential use.⁸ The penalty does not apply to a person:

- Lawfully defending life or property;
- Performing official duties requiring the discharge of a firearm; or
- Discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.

Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.”⁹ The term “negligently” is defined as “failing to use reasonable care under the circumstances.”¹⁰

Effect of the Bill

¹ ss. 790.333 and 823.16, F.S.

² s. 790.333(8), F.S.

³ s. 823.16(7), F.S.

⁴ See, e.g., *Backyard gun range concerns St. Pete neighbors*, <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited March 20, 2015), and *Fla. law allows backyard shooting ranges*, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited March 20, 2015).

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ Section 790.001(6), F.S., defines “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.

⁷ The term “dwelling” is defined in accordance with s. 776.013, F.S., as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

⁸ Section 790.15, F.S., also makes it a first degree misdemeanor for a person to:

- Knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street; or
- Knowingly discharge a firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises.

⁹ FLA. STD. JURY INSTR. (Crim.) 10.6.

¹⁰ *Id.*

The bill amends s. 790.15, F.S., to remove the requirement that the person discharge the firearm “recklessly” or “negligently,” as well as the requirement that the discharge occur “outdoors.” As such, it will be a first degree misdemeanor for a person to discharge a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.15, F.S., relating to discharging firearm in public or on residential property.

Section 2. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a positive jail bed impact (i.e., increase the need for jail beds) because it expands a misdemeanor offense.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill unfavorably as amended. The amendment:

- Specified that the discharge of a firearm is presumed to be reckless or negligent if, as a result of the discharge, the projectile crosses the real property of another, regardless of whether the projectile harms a person or property;
- Made it a first degree misdemeanor for a person to discharge a firearm for target practice or recreational purposes within 1,000 feet of a person or developed real property, other than at an authorized sport shooting range that meets certain standards or on a property expressly approved for hunting by the Florida Fish and Wildlife Conservation Commission; and
- Made a conforming change to the offense severity ranking chart.