

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 947 Possession of a Firearm or Destructive Device During the Commission of an Offense

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Boyd

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1272

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|------------------|----------|---------------------------------------|
| 1) Criminal Justice Subcommittee | 12 Y, 0 N, As CS | Williams | Cunningham |
| 2) Judiciary Committee | 17 Y, 0 N, As CS | Williams | Havlicak |

SUMMARY ANALYSIS

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:

- Murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in certain controlled substances; and possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence, and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof) and actually possessed a firearm or destructive device during the commission of such offense.

The Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of the bill. However, on January 30, 2012, CJIC determined that a similar version of the bill would have an insignificant impact on state prison beds. Therefore, this bill will likely have an insignificant impact on state prison beds.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:¹

- Murder;
- Sexual battery;
- Robbery;
- Burglary;
- Arson;
- Aggravated assault;
- Aggravated battery;
- Kidnapping;
- Escape;
- Aircraft piracy;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- 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), F.S.; and
- Possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.²

Effect of the Bill

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence, and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof)³ and actually possessed a firearm or destructive device during the commission of such offense.

¹ Section 790.001(6) and (4), F.S., defines the terms "firearm" and "destructive device."

² Section 775.087(2)(a)1., F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 2. Provides an effective date of July 1, 2012.

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 Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of the bill. However, on January 30, 2012, CJIC determined that a similar version of the bill would have an insignificant impact on state prison beds. Therefore, this bill will likely have an insignificant impact on state prison beds.

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 does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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.

³ Section 775.084(1)(b)1., F.S., provides the following list of felony offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; 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; and aggravated stalking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a person convicted of "possession of a firearm by a felon" and who has a previous conviction of a felony listed in s. 775.084(1)(b)1., F.S., (or an attempt thereof), regardless of whether the person actually possessed a firearm during such felony, must be sentenced to a 10-year minimum mandatory sentence.

On February 22, 2012, the Judiciary adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a person convicted of "possession of a firearm by a felon" and who has a previous conviction of a felony listed in s. 775.084(1)(b)1., F.S., (or an attempt thereof) and actually possessed a firearm or destructive device during the commission of such offense, must be sentenced to a 10-year minimum mandatory sentence.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.