

STORAGE NAME: h0955s1a.cj

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 955

RELATING TO: Weapons of Mass Destruction

SPONSOR(S): Committee on Law Enforcement and Crime Prevention, and Representative Futch

TIED BILL(S): SB 1840 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 955 creates section 790.166 F.S., and pertains to the manufacture, possession, sale, delivery, display, use or attempted use of a weapon of mass destruction or a hoax weapon of mass destruction. The term "weapon of mass destruction" is defined in CS/HB 955 as: (1) a weapon that is designed to cause death or great bodily harm through the release of or impact of toxic or poisonous chemicals; (2) a weapon involving a disease or organism; or (3) a weapon designed to release radiation or radioactivity at a level dangerous to human life. The term "hoax weapon of mass destruction" is defined in CS/HB 955 as: a device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be or contain a weapon of mass destruction as defined above.

CS/HB 955 provides the penalty for the use, attempted use or, possession of a weapon of mass destruction, as a first degree felony punishable by imprisonment for a term not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084 F.S., and if death results, a capital felony is committed, punishable as provided in 775.082 F.S. A person who without lawful authority possesses, sells, uses, or attempts to use a "hoax weapon of mass destruction" commits a felony of the second degree.

The bill provides an effective date of July 1, 2000

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Currently, the State of Florida does not have any laws or statutes that pertain directly to "weapons of mass destruction." Section 790.001 (4) defines destructive devices and s. 790.161 F.S., prohibits the making, possessing, projecting, placing, or discharging any destructive device or any attempt to do so. Chemical and biological weapons are not referred to in Florida statutes as "destructive devices."

The federal government does have very specific laws pertaining to weapons of mass destruction. The United States Code, Title 18, section 2332a specifically states: A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction (other than a chemical weapon as that term is defined in section 229F, Title 18 U.S.C.) including any biological agent, toxin, or vector (as those terms are defined in section 178, Title 18 U.S.C.) against a national of the United States, against a person within the United States, against property that is owned, leased or used by the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of year or for life.

Title 18, section 178, U.S.C. defines the terms biological agent, toxin, delivery system, and vector as follows: Biological agent means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing death, disease, or other biological malfunction in a human, animal or plant. Toxin is defined as the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever it's origin or method of production. Delivery system means, any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector. The term "Vector" is defined as a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

Currently, there is no mention of "hoax weapons of mass destruction" in either Florida Statutes or in the United States Code. Possession, manufacture, sale, and display of a "hoax" or "mock" weapon of mass destruction is therefore not a specifically prohibited act at the present time.

C. EFFECT OF PROPOSED CHANGES:

The State of Florida does not currently have laws in place to prohibit the possession and use or threat to use a weapon of mass destruction related to biological and chemical agents or vectors. CS/HB 955 will enact into Florida Statute a very similar measure to that which has already been passed into federal law in the United States Code, Title 18, section 2332a, 178, 175, 229F, and 229. The State of Florida would have the ability to charge a person with possession, display, use, or attempted use of a biological or chemical weapon of mass destruction. Explosive weapons of mass destruction are currently covered in section 790.161 F.S. (destructive devices). A person who violates the provision above shall be guilty of a first degree felony, punishable by imprisonment for a term of years not exceeding life. Any use of a "weapon of mass destruction" that results in death is punishable as a capitol felony, as provided in CS/HB 955.

CS/HB 955 defines "hoax weapon of mass destruction" as any device or object that by its design, construction, content, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, 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, destructive device, biological agent, toxin, vector, or delivery system prohibited by this section. Any person who violates the above section is guilty of a felony of the second degree.

An effective date of July 1, 2000 is included in CS/HB 955.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference received CS/HB 955 on March 16, 2000 and determined the bill will have no impact on prison beds in the state correctional system.

The Department of Corrections determined this bill to have no operational or fiscal impact on the department.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Class 3 destructive devices are defined in U.S.C., Title 26, section 5845 as: any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device.

Legally owned Class 3 firearms and destructive devices are exempted from the possession and display provisions in CS/HB 955. However, if a crime is committed, and use of destructive device or "weapon of mass destruction" is used, the person is not exempt from the provisions in CS/HB 955. All firearms and destructive devices that are legally owned

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and properly obtained by a class 3 federal firearms licence dealer or on Form 4 permit granted by the Bureau of Alcohol, Tobacco and Firearms are exempt from this section.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 2000, the Committee on Law Enforcement and Crime Prevention adopted one amendment, which inserted the penalties for violation into the Offense Severity Ranking Chart of the Criminal Punishment Code, Set forth in 921.0022(3), F.S.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

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