

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 998

SPONSOR: Criminal Justice Committee and Senator Smith

SUBJECT: Criminal Justice

DATE: January 29, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 998 specifically makes unlawful the false reporting of weapons of mass destruction. Regarding false reporting of hoax bombs and weapons of mass destruction, the sentence may not be suspended, deferred, or withheld. However, state attorneys are authorized to move for a reduction or suspension of sentence if substantial assistance is provided in the identification, arrest, or conviction of accomplices, accessories, coconspirators, and principals (a “substantial assistance” provision is also applicable to offenses involving hoax weapons of mass destruction).

The CS also amends the elements of planting a hoax bomb to make them consistent with the elements of planting a hoax weapon of mass destruction, and raises the felony degree of the crime from a third degree felony to a second degree felony.

The CS also creates a second degree felony offense that applies to any person who possesses, displays, or threatens to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

The CS creates some permissive inferences relating to false reporting and also to the weapons of mass destruction offense. Proof of certain basic facts allows for these inferences of certain elemental facts, which the jury may accept or reject.

This CS substantially amends the following sections of the Florida Statutes: 790.163; s. 790.164; 790.165; 790.166; and 921.0022.

## II. Present Situation:

Section 790.163, F.S., provides that it is a second degree felony for a person to make a false report, with the intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or deadly explosive.

Section 790.164, F.S., provides that it is a second degree felony for a person to make a false report, with the intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or deadly explosive, or concerning any act of arson or other violence to property owned by the state or any political subdivision.

Section 790.165, F.S., provides that it is a third degree felony for a person to manufacture, possess, sell, or deliver a hoax bomb. The elements and penalties for planting a hoax bomb and planting a hoax weapon of mass destruction (s. 790.166(3), F.S.) are not identical. Unlike the offense of planting a bomb, the offense of planting a hoax weapon of mass destruction includes attempting or conspiring to use the hoax weapon or making the hoax weapon readily accessible to others. On the other hand, the offense of planting a hoax bomb addresses sending or mailing a hoax bomb, while those acts are not addressed by the offense of planting a hoax weapon of mass destruction.

The hoax weapon of mass destruction offense has an intent requirement not found in the hoax bomb offense: the intent to deceive or mislead another person into believing that the hoax weapon will cause terror, bodily harm, or mass destruction.

Section 790.165, F.S., makes it a second degree felony for a person, while committing or attempting to commit any felony, to possess, display, or threaten to use a hoax bomb. No similar offense exists regarding a hoax weapon of mass destruction.

Section 790.165, F.S., provides that adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld. However the state attorney or defense attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of that section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals. Section 790.166, F.S., contains no similar “substantial assistance” provision.

Planting a hoax bomb is a third degree felony; planting a hoax weapon of mass destruction is a second degree felony.

The definition of “weapon of mass destruction” in s. 790.166, F.S., does not indicate that it may apply to animal life, though there is the potential for a person infecting animals with pathogens that could decimate food supplies.

The definition presently includes any device or object involving a disease organism. However, this wording is under inclusive because a disease organism is but one type of biological agent.

The definition speaks directly to the device or object that is releasing the destructive item or substance, e.g., a toxin, but does not specifically indicate that the toxin itself is included in the definition.

### **III. Effect of Proposed Changes:**

CS/SB 998 amends the general crime of false reporting about planting bombs, and the more specific crime of false reporting of bombs on state property, to:

- Include false reporting of weapons of mass destruction.
- Allow a state attorney to move for a reduction or suspension of sentence if substantial assistance is provided in the identification, arrest, or conviction of accomplices, accessories, coconspirators, and principals.
- Provide that proof that a person knowingly made a false report creates a permissive inference that the person intended to deceive, mislead, or otherwise misinform another person.

The CS also amends the elements of planting a hoax bomb to make them consistent with the elements of the hoax weapon of mass destruction crime, and raises the felony degree of the crime from a third degree felony to a second degree felony, consistent with the second degree felony for planting a hoax weapon of mass destruction.

The CS clarifies that injury caused by a weapon of mass destruction can be to humans or animals, and makes other changes to reconcile terminology in the definitions consistent with the remainder of the statutory text. The CS also clarifies that the definition of “weapons of mass destruction” does not include certain instruments or devices lawfully used for self-protection or by law enforcement officers and others, as specified, in the course of their official duties.

The CS also creates a second degree felony offense that applies to any person who possesses, displays, or threatens to use a hoax weapon of mass destruction while committing or attempting to commit a felony, and adds a “substantial assistance” provision similar to the “substantial assistance” provision for planting a hoax bomb and for false reporting offenses.

The CS also creates a permissive inference that a weapon of mass destruction was intended to cause death or injury based upon proof that it caused injury or death, and a permissive inference that a radiological agent was designed to release radiation based upon proof that it released radiation.

Finally, the CS ranks in level 7 the unranked bomb-planting offenses and their new hoax weapon counterparts, and corrects referencing errors.

The act takes effect July 1, 2002.

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

#### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of CS/SB 998.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.