

separated into armed and unarmed burglary with armed burglary receiving the greater penalty. Robbery is also separated into armed and unarmed robbery.

The fact that a person committed a home-invasion robbery while armed could be accounted for in sentencing, i.e., the sentencing judge could determine that the fact that the person was armed should result in a longer sentence than the judge would impose if the person was not armed (possession of a firearm is not accounted for in scoring the lowest permissible sentence, if the offense is home-invasion robbery or other specific offenses). The judge sentences within a sentencing range with the lowest permissible sentence being the lowest end of the range and the maximum penalty for the felony degree of the offense being the highest end of the range. Additionally, if a person was armed when that person committed a home-invasion robbery, the home-invasion robbery could be reclassified to a life felony under s. 775.087, F.S. See *Vaughan v. State*, 658 So.2d 1107 (Fla. 3rd DCA 1995) (per curiam).

III. Effect of Proposed Changes:

Senate Bill 1828 amends s. 812.135, F.S., to create three home-invasion robbery offenses. The bill is obviously patterned after the current robbery statute and closely tracks language in that statute.

The bill provides that if a person, in the course of committing a home-invasion robbery, carries a firearm or other deadly weapon, the person commits a first degree felony punishable by a term of years not to exceed life imprisonment, which is made a Level 10 offense in the Criminal Punishment Code's offense severity ranking chart. If this person is carrying a weapon, it is a first degree felony, which is made a Level 9 offense. If this person is not carrying a firearm, deadly weapon, or other weapon, it is a first degree felony, which is made a Level 8 offense.

Under current law, home-invasion robbery is a first degree felony ranked in Level 8. This offense does not distinguish between the robbery when it is committed while armed and the robbery when it is committed while unarmed.

It is uncertain whether s. 775.087(1), F.S., will apply to the armed home-invasion robbery offenses. Section. 775.087(1), F.S., precludes felonies for which *use* of a firearm or weapon are an element of the felony. However, the offenses relate to *carrying* a firearm or weapon in the course of committing a home-invasion robbery. Section 775.087, F.S., uses the terms "carries" and "uses." If the words were synonymous there would be no need to use both of them in the statute, which suggests that they are not synonymous.

The bill amends s. 921.0022, F.S., to rank the new offenses as previously described.

The bill reenacts s. 943.325(1), F.S., relating to blood specimen tests for DNA analysis, to incorporate the amendment to s. 812.135, F.S., by the bill in reference thereto.

The bill takes effect upon becoming a law.

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 estimates that the bill is likely to have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.