

By Senator Wilson

33-1260A-07

1 A bill to be entitled

2 An act relating to firearms; amending s.

3 775.087, F.S.; providing for the

4 reclassification of a felony if a person

5 carries, displays, uses, or threatens to use a

6 semiautomatic firearm and its detachable

7 high-capacity magazine or a machine gun during

8 the commission of the felony; providing for a

9 minimum mandatory sentence of 3 years if a

10 felon possesses ammunition during commission of

11 certain enumerated offenses; amending s.

12 790.15, F.S.; increasing the severity of the

13 penalty from a misdemeanor of the first degree

14 to a felony of the third degree imposed against

15 a person who knowingly discharges a firearm in

16 any public place, on the right-of-way of any

17 paved public highway or street, or over any

18 occupied premises; providing an effective date.

19

20 Be It Enacted by the Legislature of the State of Florida:

21

22 Section 1. Section 775.087, Florida Statutes, is

23 amended to read:

24 775.087 Possession or use of weapon or ammunition;

25 aggravated battery; felony reclassification; minimum

26 sentence.--

27 (1) Unless otherwise provided by law, whenever a

28 person is charged with a felony, except a felony in which the

29 use of a weapon or firearm is an essential element, and during

30 the commission of ~~the~~ ~~such~~ felony the defendant carries,

31 displays, uses, threatens to use, or attempts to use any

1 | weapon or firearm, or during the commission of ~~the such~~ felony
2 | the defendant commits an aggravated battery, the felony for
3 | which the person is charged shall be reclassified as follows:

4 | (a) In the case of a felony of the first degree, to a
5 | life felony.

6 | (b) In the case of a felony of the second degree, to a
7 | felony of the first degree.

8 | (c) In the case of a felony of the third degree, to a
9 | felony of the second degree.

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11 | For purposes of sentencing under chapter 921 and determining
12 | incentive gain-time eligibility under chapter 944, a felony
13 | offense ~~that which~~ is reclassified under this section is
14 | ranked one level above the ranking under s. 921.0022 or s.
15 | 921.0023 of the felony offense committed.

16 | (2) Unless otherwise provided by law, if a person is
17 | charged with a felony, regardless of whether the use of a
18 | weapon is an element of the felony, and during the course of
19 | committing the felony the person carries, displays, uses,
20 | threatens to use, or attempts to use a semiautomatic firearm
21 | as defined in subsection (4) and its high-capacity, detachable
22 | box magazine or a machine gun as defined in s. 790.001, the
23 | felony for which the person is charged shall be reclassified
24 | as follows:

25 | (a) In the case of a felony of the first degree, to a
26 | life felony.

27 | (b) In the case of a felony of the second degree, to a
28 | felony of the first degree.

29 | (c) In the case of a felony of the third degree, to a
30 | felony of the second degree.

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1 For purposes of sentencing under chapter 921 and determining
2 incentive gain-time eligibility under chapter 944, a felony
3 offense that is reclassified under this section is ranked one
4 level above the ranking under s. 921.0022 or s. 921.0023 of
5 the felony offense committed.

6 ~~(3)~~(2)(a)1. Any person who is convicted of a felony or
7 an attempt to commit a felony, regardless of whether the use
8 of a weapon is an element of the felony, and the conviction
9 was for:

- 10 a. Murder;
- 11 b. Sexual battery;
- 12 c. Robbery;
- 13 d. Burglary;
- 14 e. Arson;
- 15 f. Aggravated assault;
- 16 g. Aggravated battery;
- 17 h. Kidnapping;
- 18 i. Escape;
- 19 j. Aircraft piracy;
- 20 k. Aggravated child abuse;
- 21 l. Aggravated abuse of an elderly person or disabled
22 adult;
- 23 m. Unlawful throwing, placing, or discharging of a
24 destructive device or bomb;
- 25 n. Carjacking;
- 26 o. Home-invasion robbery;
- 27 p. Aggravated stalking;
- 28 q. Trafficking in cannabis, trafficking in cocaine,
29 capital importation of cocaine, trafficking in illegal drugs,
30 capital importation of illegal drugs, trafficking in
31 phencyclidine, capital importation of phencyclidine,

1 trafficking in methaqualone, capital importation of
2 methaqualone, trafficking in amphetamine, capital importation
3 of amphetamine, trafficking in flunitrazepam, trafficking in
4 gamma-hydroxybutyric acid (GHB), trafficking in
5 1,4-Butanediol, trafficking in Phenethylamines, or other
6 violation of s. 893.135(1); or

7 r. Possession of a firearm or ammunition by a felon

8
9 and during the commission of the offense, such person actually
10 possessed a "firearm" or "destructive device" as those terms
11 are defined in s. 790.001, shall be sentenced to a minimum
12 term of imprisonment of 10 years, except that a person who is
13 convicted for aggravated assault, possession of a firearm or
14 ammunition by a felon, or burglary of a conveyance shall be
15 sentenced to a minimum term of imprisonment of 3 years if such
16 person possessed a "firearm" or "destructive device" during
17 the commission of the offense.

18 2. Any person who is convicted of a felony or an
19 attempt to commit a felony listed in sub-subparagraphs
20 (a)1.a.-q., regardless of whether the use of a weapon is an
21 element of the felony, and during the course of the commission
22 of the felony such person discharged a "firearm" or
23 "destructive device" as defined in s. 790.001 shall be
24 sentenced to a minimum term of imprisonment of 20 years.

25 3. Any person who is convicted of a felony or an
26 attempt to commit a felony listed in sub-subparagraphs
27 (a)1.a.-q., regardless of whether the use of a weapon is an
28 element of the felony, and during the course of the commission
29 of the felony such person discharged a "firearm" or
30 "destructive device" as defined in s. 790.001 and, as the
31 result of the discharge, death or great bodily harm was

1 | inflicted upon any person, the convicted person shall be
2 | sentenced to a minimum term of imprisonment of not less than
3 | 25 years and not more than a term of imprisonment of life in
4 | prison.

5 | (b) Subparagraph (a)1., subparagraph (a)2., or
6 | subparagraph (a)3. does not prevent a court from imposing a
7 | longer sentence of incarceration as authorized by law in
8 | addition to the minimum mandatory sentence, or from imposing a
9 | sentence of death pursuant to other applicable law.

10 | Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.
11 | does not authorize a court to impose a lesser sentence than
12 | otherwise required by law.

13 |

14 | Notwithstanding s. 948.01, adjudication of guilt or imposition
15 | of sentence ~~may shall~~ not be suspended, deferred, or withheld,
16 | and the defendant is not eligible for statutory gain-time
17 | under s. 944.275 or any form of discretionary early release,
18 | other than pardon or executive clemency, or conditional
19 | medical release under s. 947.149, prior to serving the minimum
20 | sentence.

21 | (c) If the minimum mandatory terms of imprisonment
22 | imposed pursuant to this section exceed the maximum sentences
23 | authorized by s. 775.082, s. 775.084, or the Criminal
24 | Punishment Code under chapter 921, then the mandatory minimum
25 | sentence must be imposed. If the mandatory minimum terms of
26 | imprisonment ~~under pursuant to~~ this section are less than the
27 | sentences that could be imposed as authorized by s. 775.082,
28 | s. 775.084, or the Criminal Punishment Code under chapter 921,
29 | then the sentence imposed by the court must include the
30 | mandatory minimum term of imprisonment as required in this
31 | section.

1 (d) It is the intent of the Legislature that offenders
2 who actually possess, carry, display, use, threaten to use, or
3 attempt to use firearms or destructive devices be punished to
4 the fullest extent of the law, and the minimum terms of
5 imprisonment imposed under ~~pursuant to~~ this subsection shall
6 be imposed for each qualifying felony count for which the
7 person is convicted. The court shall impose any term of
8 imprisonment provided for in this subsection consecutively to
9 any other term of imprisonment imposed for any other felony
10 offense.

11 ~~(4)(3)~~(a)1. Any person who is convicted of a felony or
12 an attempt to commit a felony, regardless of whether the use
13 of a firearm is an element of the felony, and the conviction
14 was for:

- 15 a. Murder;
- 16 b. Sexual battery;
- 17 c. Robbery;
- 18 d. Burglary;
- 19 e. Arson;
- 20 f. Aggravated assault;
- 21 g. Aggravated battery;
- 22 h. Kidnapping;
- 23 i. Escape;
- 24 j. Sale, manufacture, delivery, or intent to sell,
25 manufacture, or deliver any controlled substance;
- 26 k. Aircraft piracy;
- 27 l. Aggravated child abuse;
- 28 m. Aggravated abuse of an elderly person or disabled
29 adult;
- 30 n. Unlawful throwing, placing, or discharging of a
31 destructive device or bomb;

1 o. Carjacking;
2 p. Home-invasion robbery;
3 q. Aggravated stalking; or
4 r. Trafficking in cannabis, trafficking in cocaine,
5 capital importation of cocaine, trafficking in illegal drugs,
6 capital importation of illegal drugs, trafficking in
7 phencyclidine, capital importation of phencyclidine,
8 trafficking in methaqualone, capital importation of
9 methaqualone, trafficking in amphetamine, capital importation
10 of amphetamine, trafficking in flunitrazepam, trafficking in
11 gamma-hydroxybutyric acid (GHB), trafficking in
12 1,4-Butanediol, trafficking in Phenethylamines, or other
13 violation of s. 893.135(1);
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15 and during the commission of the offense, such person
16 possessed a semiautomatic firearm and its high-capacity
17 detachable box magazine or a machine gun as defined in s.
18 790.001, shall be sentenced to a minimum term of imprisonment
19 of 15 years.

20 2. Any person who is convicted of a felony or an
21 attempt to commit a felony listed in subparagraph (a)1.,
22 regardless of whether the use of a weapon is an element of the
23 felony, and during the course of the commission of the felony
24 such person discharged a semiautomatic firearm and its
25 high-capacity box magazine or a "machine gun" as defined in s.
26 790.001 shall be sentenced to a minimum term of imprisonment
27 of 20 years.

28 3. Any person who is convicted of a felony or an
29 attempt to commit a felony listed in subparagraph (a)1.,
30 regardless of whether the use of a weapon is an element of the
31 felony, and during the course of the commission of the felony

1 such person discharged a semiautomatic firearm and its
2 high-capacity box magazine or a "machine gun" as defined in s.
3 790.001 and, as the result of the discharge, death or great
4 bodily harm was inflicted upon any person, the convicted
5 person shall be sentenced to a minimum term of imprisonment of
6 not less than 25 years and not more than a term of
7 imprisonment of life in prison.

8 (b) Subparagraph (a)1., subparagraph (a)2., or
9 subparagraph (a)3. does not prevent a court from imposing a
10 longer sentence of incarceration as authorized by law in
11 addition to the minimum mandatory sentence, or from imposing a
12 sentence of death pursuant to other applicable law.
13 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.
14 does not authorize a court to impose a lesser sentence than
15 otherwise required by law.

16
17 Notwithstanding s. 948.01, adjudication of guilt or imposition
18 of sentence shall not be suspended, deferred, or withheld, and
19 the defendant is not eligible for statutory gain-time under s.
20 944.275 or any form of discretionary early release, other than
21 pardon or executive clemency, or conditional medical release
22 under s. 947.149, prior to serving the minimum sentence.

23 (c) If the minimum mandatory terms of imprisonment
24 imposed pursuant to this section exceed the maximum sentences
25 authorized by s. 775.082, s. 775.084, or the Criminal
26 Punishment Code under chapter 921, then the mandatory minimum
27 sentence must be imposed. If the mandatory minimum terms of
28 imprisonment pursuant to this section are less than the
29 sentences that could be imposed as authorized by s. 775.082,
30 s. 775.084, or the Criminal Punishment Code under chapter 921,
31 then the sentence imposed by the court must include the

1 | mandatory minimum term of imprisonment as required in this
2 | section.

3 | (d) It is the intent of the Legislature that offenders
4 | who possess, carry, display, use, threaten to use, or attempt
5 | to use a semiautomatic firearm and its high-capacity
6 | detachable box magazine or a machine gun as defined in s.
7 | 790.001 be punished to the fullest extent of the law, and the
8 | minimum terms of imprisonment imposed under ~~pursuant to~~ this
9 | subsection shall be imposed for each qualifying felony count
10 | for which the person is convicted. The court shall impose any
11 | term of imprisonment provided for in this subsection
12 | consecutively to any other term of imprisonment imposed for
13 | any other felony offense.

14 | (e) As used in this subsection, the term:

15 | 1. "High-capacity detachable box magazine" means any
16 | detachable box magazine, for use in a semiautomatic firearm,
17 | which is capable of being loaded with more than 20 centerfire
18 | cartridges.

19 | 2. "Semiautomatic firearm" means a firearm which is
20 | capable of firing a series of rounds by separate successive
21 | depressions of the trigger and which uses the energy of
22 | discharge to perform a portion of the operating cycle.

23 | ~~(5)(4)~~ For purposes of imposition of minimum mandatory
24 | sentencing provisions of this section, with respect to a
25 | firearm, the term "possession" is defined as carrying it on
26 | the person. Possession may also be proven by demonstrating
27 | that the defendant had the firearm within immediate physical
28 | reach with ready access with the intent to use the firearm
29 | during the commission of the offense, if proven beyond a
30 | reasonable doubt.

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1 ~~(6)(5)~~ In every case in which a law enforcement agency
2 based a criminal charge on facts demonstrating that the
3 defendant met the criteria in subparagraph~~(3)(a)1.~~~~(2)(a)1.~~,
4 subparagraph~~(3)(a)2.~~~~(2)(a)2.~~, or subparagraph~~(3)(a)3.~~
5 ~~(2)(a)3.~~ or subparagraph~~(4)(a)1.~~~~(3)(a)1.~~, subparagraph
6 ~~(4)(a)2.~~~~(3)(a)2.~~, or subparagraph~~(4)(a)3.~~~~(3)(a)3.~~ and in
7 which the defendant did not receive the mandatory penalty, the
8 state attorney must place in the court file a memorandum
9 explaining why the minimum mandatory penalty was not imposed.

10 (6) This section does not apply to law enforcement
11 officers or to United States military personnel who are
12 performing their lawful duties or who are traveling to or from
13 their places of employment or assignment to perform their
14 lawful duties.

15 Section 2. Subsection (1) of section 790.15, Florida
16 Statutes, is amended to read:

17 790.15 Discharging firearm in public.--

18 (1) Except as provided in subsection (2) or subsection
19 (3), any person who knowingly discharges a firearm in any
20 public place or on the right-of-way of any paved public road,
21 highway, or street or whosoever knowingly discharges any
22 firearm over the right-of-way of any paved public road,
23 highway, or street or over any occupied premises commits a
24 felony ~~is guilty of a misdemeanor~~ of the third ~~first~~ degree,
25 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
26 775.084. This section does not apply to a person lawfully
27 defending life or property or performing official duties
28 requiring the discharge of a firearm or to a person
29 discharging a firearm on public roads or properties expressly
30 approved for hunting by the Fish and Wildlife Conservation
31 Commission or Division of Forestry.

1 Section 3. This act shall take effect October 1, 2007.

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SENATE SUMMARY

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Reclassifies a felony if a person carries, displays, uses, or threatens to use a semiautomatic firearm and its detachable high-capacity magazine or a machine gun during the commission of the felony. Provides for a minimum mandatory sentence of 3 years if a felon possesses ammunition during commission of certain enumerated offenses. Increases the severity of the penalty from a misdemeanor of the first degree to a felony of the third degree if a person knowingly discharges a firearm in any public place, on the right-of-way of any paved public highway or street, or over any occupied premises.