

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 41 Discharge of Firearms on Residential Property
SPONSOR(S): Local and Federal Affairs Committee, Combee and Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 130

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N | White | White |
| 2) Local & Federal Affairs Committee | 16 Y, 0 N, As CS | Monroe | Kiner |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Currently, s. 790.15, F.S., provides that it is a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

The bill amends this section to also provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that "recreationally discharge" includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm;
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property; or
- To a person who accidentally discharges a firearm.

The bill may result in a minor increase in the need for jail beds since it creates a new misdemeanor offense.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Recently, some individuals constructed “gun ranges” in the backyards of their homes.¹ Since some of these individuals live in densely populated residential neighborhoods, neighbors expressed safety concerns. Current Florida statutes do not clearly address the status of such “gun ranges” in residential neighborhoods. The legality of building and using such a range depends on a number of factors including:

- The circumstances surrounding the discharge of the firearm on the residential property, i.e., whether the discharge was reckless or negligent, and
- Whether the range may be deemed a “sport shooting range” subject to a local government regulation².

Currently, it is a first degree misdemeanor³ for any person to recklessly or negligently discharge a firearm⁴ outdoors on any property used primarily as the site of a dwelling⁵ or zoned exclusively for residential use.⁶ The penalty does not apply to a person:

- Lawfully defending life or property;
- Performing official duties requiring the discharge of a firearm; or
- Discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.⁷

Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.”⁸ The term “negligently” is defined as “failing to use reasonable care under the circumstances.”⁹

Local government authority to regulate firearms and ammunition is restricted. The Legislature has preempted “the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof.”¹⁰ With respect to shooting ranges, the Legislature has preempted local government regulation of firearms and

¹ See, e.g., Charles Billi, “Backyard Gun Range Concerns St. Pete Neighbors,” 10NEWS. February 3, 2015.

<http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited September 17, 2015), and Cammy Clark, “Fla. Law Allows Backyard Shooting Ranges,” Herald-Tribune, February 1, 2014, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited September 17, 2015).

² Section 823.16(7), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ Section 790.001(6), F.S., defines “firearm” as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.”

⁵ The term “dwelling” is defined to mean “... a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” ss. 776.013(5)(a) and 790.15(1), F.S.

⁶ Section 790.15, F.S., also provides that it is a: (a) first degree misdemeanor to knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street and to knowingly discharge any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises; (b) a second degree felony or any occupant of any vehicle to knowingly and willfully discharge any firearm from the vehicle within 1,000 feet of any person; and (c) a third degree felony for any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle.

⁷ Section 790.15(1), F.S.

⁸ FLA. STD. JURY INSTR. (Crim.) 10.6.

⁹ *Id.*

¹⁰ s. 790.33(1), F.S.

ammunition use at a “sport shooting and training range,”¹¹ but has authorized local governments to regulate the location and construction of a “sport shooting range.”¹² The term “sport shooting range” is defined as “an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.”¹³ Whether this definition may be construed to authorize local regulation of residential areas where firearms are routinely discharged is unclear.

According to an Attorney General Opinion, the Legislature has indicated through statutorily codified intent language that a “sport shooting range,” is not merely any location where firearms are discharged. Therefore, a local government may not regulate the use of firearms anywhere simply by couching the regulation in terms of regulating a shooting range. The Attorney General wrote “... a county may not regulate the recreational discharge of firearms in residentially zoned areas when the discharge is not on a ‘shooting range,’ but merely recreational shooting on private property.”¹⁴

Effect of the Bill

The bill amends s. 790.15, F.S., to provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that “recreationally discharge” includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm;
- If, under the circumstances, the discharge does not pose a reasonably foreseeable¹⁵ risk to life, safety, or property; or
- To a person who accidentally discharges a firearm.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.15, F.S., relating to discharging a firearm in public or on residential property.

Section 2. Provides the bill is effective upon becoming a law.

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 bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹¹ The term “sport shooting and training range” means “any area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or any other type of sport or training shooting.” s. 790.33, F.S.

¹² s. 823.16(7), F.S.

¹³ s. 823.16(1)(c), F.S.

¹⁴ 11-17 Fla. Op. Att’y Gen. 1 (2011).

¹⁵ The term “reasonably foreseeable” is a well-established legal concept which is used in other criminal statutes (*See*, ss. 316.192, 316.1975, 782.071, F.S.), and has been interpreted in a number of criminal cases including *Bradley v. State*, 33 So.3d 664, 675, (Fla. 2010), *D.E. v. State*, 904 So.2d 558, 562 (Fla. 5th DCA 2005), *Johnson v. State*, 36 So.3d 170, 171 (Fla. 3rd DCA 2010), *Luzardo v. State*, 147 So.3d 1083, 1085 (Fla. 3rd DCA 2014).

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may result in a minor increase in the need for jail beds since it creates a new misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill addresses persons who “recreationally” discharge a firearm. The modifying term “recreationally” is undefined by the bill. A review of current statutes shows the term is used in three other locations (in connection with fishing),¹⁶ but it is not defined in any of those statutes.¹⁷

As such, this term will be defined by the courts. A court may determine the meaning of the term “recreationally” by referring to a dictionary for the ordinary and customary use of the word.¹⁸ According to the online Merriam-Webster Dictionary, the primary definition of the term “recreational” means “done for enjoyment.”¹⁹ The online Oxford Dictionary of US English provides “relating to or denoting activity done for enjoyment when one is not working” as its first definition of the term.²⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 7, 2015, the Local and Federal Affairs Committee adopted one amendment to the bill. This amendment specifically states that the provisions of the bill do not apply to a person who accidentally discharges a firearm.

This analysis is drawn to the bill as amended.

¹⁶ See, Sections 163.3177(6)(d)1.e., 379.353(2)(p), and 304.813(1)(g), F.S.

¹⁷ In reference to fishing, Rule 68B-24.002(12), F.A.C., does define a “recreational harvester” of fish as a person other than a commercial harvester. No other definition of “recreational” or “recreationally” has been found in the F.A.C.

¹⁸ *Rollins v. Pizzarelli*, 761 So.2d 294 (Fla. 2000).

¹⁹ Merriam-Webster Dictionary (September 17, 2015), <http://www.merriam-webster.com/dictionary/recreational>.

²⁰ Oxford Dictionaries (September 17, 2015), http://www.oxforddictionaries.com/us/definition/american_english/recreational