

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1291

Weapons

**SPONSOR(S):** Poppell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2438

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u></u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>PreK-12 Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Chapter 790 defines the term “weapon” as “any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except* a firearm or a common pocketknife.” Although not specifically listed, knives have commonly been included in the definition of “weapon.”

Currently, Florida school districts are required to adopt a zero tolerance policy that requires the expulsion of students who bring firearms or weapons, as defined by chapter 790, F.S., to school, to any school function, or onto school-sponsored transportation. While chapter 790, F.S. currently excepts “common pocketknives” from its definition of “weapon,” other types of knives, such as butter knives and plastic knives, are not currently excepted. As a result, there has been some confusion as to whether students who bring objects such as butter knives onto school grounds must be disciplined.

This bill amends the definition of “weapon” to include the term “knife,” and to except from the definition “plastic knives” and “blunt-bladed knives.” The result is that a “knife” would be considered a weapon, while “common pocketknives”, “plastic knives”, and “blunt-bladed knives” would not be. The bill also provides in s. 790.115, F.S. (relating to the possession and discharge of weapons at school-sponsored events or on school property), and in s. 810.095, F.S. (relating to trespassing on school property with a weapon), that the term “weapon” is to be defined by s. 790.001(13), F.S. This should help clarify what types of knives are permitted on school grounds.

This bill takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill revises the definition of “weapon” to include the term “knife” and clarifies provisions relating to the prohibited exhibition and possession of specified weapons at school-sponsored events or on school property.

#### B. EFFECT OF PROPOSED CHANGES:

Chapter 790 defines the term “weapon” as “any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except* a firearm or a common pocketknife.”<sup>1</sup> Although the term “knife” is not included in the above definition, courts have interpreted the statute as including certain knives.<sup>2</sup>

Currently, Florida school districts are required to adopt a zero tolerance policy that requires the expulsion of students who bring firearms or weapons, as defined by chapter 790, F.S., to school, to any school function, or onto school-sponsored transportation.<sup>3</sup> Schools also must refer such students to either the criminal or juvenile justice systems.<sup>4</sup> While chapter 790, F.S., currently excepts the “common pocketknife” from its definition of “weapon,” other types of knives, such as butter knives and plastic knives, are not currently excepted. As a result, there has been some confusion as to whether students who bring objects such as butter knives onto school grounds must be disciplined.<sup>5</sup>

This bill amends the definition of the term “weapon” to include the term “knife,” and except from the definition “plastic knives” and “blunt-bladed knives.” The result is that a “knife” would be considered a weapon, while “common pocketknives,” “plastic knives,” and “blunt-bladed knives” would not be. The bill also amends the definition of “weapon” by removing the exception for firearms. As noted above, firearms have been excepted from the definition of “weapon” and instead, are defined by s. 790.001(6), F.S. Because the bill removes the exception for firearms, it could be argued that a “firearm” would now be considered a “weapon” under s. 790.001(13), F.S.

The bill clarifies in s. 790.115, F.S. (relating to the possession and discharge of weapons at school-sponsored events or on school property), and in s. 810.095, F.S. (relating to trespassing on school property with a weapon), that the term “weapon” is to be defined by s. 790.001(13), F.S. This should help clarify what types of knives are permitted on school grounds. The bill also specifies in s. 790.115, F.S., that “common pocketknives, dirks, metallic knuckles, slungshots, billies, tear gas guns, chemical weapons or devices, or other deadly weapons” are included in the list of items that may not be exhibited in a rude, careless, angry, or threatening manner at a school-sponsored event or on school property.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 790.001, F.S., revising the definition of “weapon.”

**Section 2.** Amends s. 790.115, F.S., revising and clarifying provisions related to the prohibited exhibition and possession of specified weapons at school-sponsored events or on school property.

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<sup>1</sup> s. 790.001(13), F.S.

<sup>2</sup> See, e.g., *State v. Walthour*, 876 So.2d 594 (Fla. 5<sup>th</sup> DCA 2004); *Garcia v. State*, 789 So.2d 1059 (Fla. 4<sup>th</sup> DCA 2001), *Evans v. State*, 703 So.2d 1201 (Fla. 1<sup>st</sup> DCA 1997). *Miller v. State*, 421 So.2d 746 (Fla. 4<sup>th</sup> DCA 1982);

<sup>3</sup> s. 1006.13, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., [http://www.sptimes.com/2005/10/25/Hernando/Girl\\_arrested\\_for\\_but.shtml](http://www.sptimes.com/2005/10/25/Hernando/Girl_arrested_for_but.shtml) (An 11-year old girl was arrested and charged with a felony for bringing a butter knife to school)

**Section 3.** Amends s. 810.095, F.S., clarifying provisions related to the prohibited trespass on school property with a weapon.

**Section 4.** This act takes effect July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The 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:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 790.001, F.S., contains definitions for both "firearms" and "weapons." As noted above, removing the exception for firearms may cause some to believe that a "firearm" is now a "weapon" under s. 790.001(13), F.S. This may have many unintended consequences. For example, a statute may specifically reference the term "weapon" and not intend to include the term "firearm." The bill would likely prevent this.

It is unclear what a “blunt-bladed knife” is. It is suggested that the term “blunt-bladed table knife” be used” instead. In holding that the term “common pocketknife” was not unconstitutionally vague, the Florida Supreme Court has turned to Webster’s to define the term.<sup>6</sup> A “table knife” is defined by Webster’s as “a knife used for eating at dining table.”<sup>7</sup>

Section 2 of the bill adds the terms “dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon” as prohibited items. However, the current language of the statute states that “weapons” are prohibited. Including terms that are already contained in the definition of “weapon” is duplicitous.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>6</sup> *L.B. v. State*, 700 So.2d 370, 372 (Fla. 1997)

<sup>7</sup> <http://dictionary.reference.com/search?q=table%20knife>