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SENATE JUDICIARY-CRIMINAL COMMITTEE
Staff Analysis (by Eleanor Mitchell)

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1975
BILL NO. & INTRODUCER: : RELATING TO:
HB 1289
Committee on Criminal Justice, The Criminal Code, Ch. 74-383

I BILL SUMMARY:

The bill provides clearer definitions of terms in the Code; e.g., noncriminal violation, makes other terms conform to other statutory language; e.g., rape and sodomy, and clarifies legislative intent; e.g., to reclassify felonies when weapons are used though merely carried and concealed.

It also alters references to penalties to assure the applicability of the sections which must be specified related to fines in lieu of penalties, and habitual offender provisions.

The bill reenacts child fondling and nuisance sections of the statutes, some of which were mistakenly repealed by the Code.

II ANALYSIS:

A. CURRENT SITUATION:

Presently the Code:

1. defines "crime" as felony or misdemeanor, but does not specify that violations are not crimes;
2. separates habitual felony and misdemeanor sections requiring particular reference to each section for the increased penalties to apply;
3. reclassifies felonies when weapons are displayed, used, attempted or threatened to be used, but not when carried and concealed;
4. defines as forcible felonies "rape" and "sodomy", terms inconsistent with the involuntary sexual battery act;
5. requires punishment references to Ch. 775, omitting the applicability of the sections which must be referred to specifically, for example fines in lieu of imprisonment;

If the Code becomes effective as is, no statutes will exist applying to the enumerated public nuisances, including bonfires, dead animals, lewd places, discarded refrigerators -- or to child fondling.

B. BILL ANALYSIS:

The bill addresses errors and omissions in the Criminal Code with provisions intended to:

1. distinguish clearly between criminal and noncriminal offenses,
2. combine habitual offender provisions into one section to facilitate statutory references,
3. allow reclassification of felonies when weapons are carried during the commission of the felony,
4. delete the terms "rape" and "sodomy" and insert "involuntary

sexual battery",

5. change all references to penalties in the Code and other statutes from Ch. 775 to s. 775.082, s. 775.083, or s. 775.084,

6. reenact sections which were repealed by the Code relating to:

Relevant Section #

- | | |
|---------|--|
| 800.04 | a. child fondling |
| 823.01 | b. nuisances affecting community health or morals and their removal by county courts |
| 823.02 | c. building bonfires within 10 rods of a house or building |
| 823.04 | d. introducing diseased animals into the state |
| 823.041 | e. disposing of diseased animals |
| 823.05 | f. abating or enjoining nuisances injuring health and morals declared to be places of prostitution, lewdness, and games of chance, |
| 823.06 | g. outwardly opening doors for public buildings to allow mass exits with fires or accidents, |
| 823.07 | h. discarding large air-tight appliances which are attractive nuisances to children with either secure locks or doors removed, |
| 823.08 | |
| 823.09 | |
| 823.10 | i. abating or enjoining as nuisances those places where controlled substances are unlawfully kept or used. |

III TECHNICAL ERRORS:

None noted.

IV STAFF COMMENTS:

The proposal is essential to avoid problems when the Code becomes effective.

This committee has passed bills this session which are intended to amend some provisions of the Code which appear in their original, unamended form in this bill.

According to Dr. Means in Statutory Revision referring to s. 1.04, Florida Statutes, 1974 supp., the substantive amendatory acts will be given effect despite the subsequent passage of this bill which essentially reorganizes the format and makes technical corrections in some of the same sections.

Other recommended technical changes for which staff amendments have been prepared include:

1. Adding to section 3, an amendment to apply reclassification penalties to subsection (2) of 775.087 as well as to subsection (1) if weapons were carried and concealed during the commission of a felony outside the state is suggested for consistency.
2. Clarifying the applicability of the Code to offenses committed prior to the October 1, effective. date. (The House has passed such a bill, but it relates to the original

July 1, effective date.) Renumbering subsequent sections and revising the title accordingly are also needed.

3. Incest, 826.04, uses the term "sexual intercourse" rather than "sexual battery" which would apply to homosexual incest.
4. Arson, s. 806.01, requires higher penalties when the person knows, or has reason to know, that a human being is in the structure. Alternative language to avoid the necessity to show subjective intent is suggested, such as with reasonable grounds to believe. The latter phrase would allow proof of constructive knowledge by objective facts.

V Updated Analysis Based on Judiciary-Criminal Committee Amendments to the Criminal Code bill, HB 1289:

1. S. 806.01, Arson, deleted "has reason to know" and replaced it with the more objective "with reasonable grounds to believe" that a structure is occupied as a basis for increasing arson penalties. (p.14, l. 14).
2. S. 826.04, Incest, deleted "has sexual intercourse" and replaced it with "commits sexual battery". (p. 22, l. 11, 12).
3. The definition of sexual intercourse is deleted from the above section. (p. 22, l. 16-18).
4. S. 282.08, related to penalties for exposing to poison by leaving it in public places or on the property of others is reenacted. (p. 31, new section 42).
5. S. 775.011, on applicability to antecedent offenses was amended to apply to the new effective date, October 1, 1975 (extended by HB 1288). (p. 31, new section 43).
6. S. 775.087 (2), on reclassification of felonies for weapons use in the commission of felonies was amended to include carrying a concealed weapon. (p. 6, insert between l. 22 and l. 23).
7. S. 812.021, larceny, was amended to include the theft of a fire extinguisher as grand larceny, punishable as a third degree felony. (p. 19, l. 15)
8. S. 812.031, or receiving stolen property was also amended making receiving a stolen fire extinguisher a third degree felony. (p. 20, l. 16).
9. S. 838.016, prohibiting unlawful compensation for official behavior was amended to include past, present or future behavior which is attempted to be unlawfully influenced. (p. 25, l. 15-1. 18).
10. S. 812.13, the existing robbery statute's definition was reenacted as an amendment to the code robbery provisions. (p. 21, at line 11).
11. A new section 44 was created to provide for additional types of proceedings in which tampering with witnesses is prohibited in accord with HB 969. (p. 31, new section 44).
12. A new section 48 was created to provide that the provisions of the act are severable with continuing effect given to all others should any one be declared unconstitutional. (p. 13, new section 48).

13. S. 782.02 (2)(a), allowing the use of deadly force to defend a person from murder and to defend a dwelling is reenacted.
14. S. 776.021, Florida Statutes, 1974 Supplement, on defense of dwelling is repealed.
15. Title
16. Title
17. Title
18. Title
19. Title
20. Title
21. Title
22. Title
23. Title
24. Title
25. Title

EXPLANATIONS OF RECOMMENDED

AMENDMENTS TO HB 1289

AMEND-
MENT

- 1 Arson, s. 806.01, requires that higher penalties be imposed when the person knows or has reason to know that the structure is occupied by a human being. To avoid the necessity of subjective standards of proof, the more objective description "with reasonable grounds to believe" is recommended.
- 2 and Incest, s. 826.04, uses the term "sexual intercourse", but if homo-
3 sexual incest is also to be an offense, the term should be "sexual battery."
- 4 Section 828.08, exposing living things to poison by leaving poisonous substances in public areas or on another's private property would be reenacted.
- 5 The Code provision which explains the effect on crimes committed prior to the effective date needs to reflect the change in effective date passed by this committee as HB 1288.
- 6 Title
- 7 Title
- 8 Title
- 9 Title