



LEGAL PRESCRIPTS OF TOY/IMITATION FIREARMS IN SOUTH AFRICA

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ON A JOURNEY TO A SAFER SOUTH AFRICA

Creating a safe and secure, crime free environment, that is conducive for
social and economic stability, supporting a better life for all.

#PatrioticandSelflessService



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Introduction



- **Problem statement**

- Firearms are most often the weapon of choice of criminals because they are small, light, easy to conceal and use by untrained and trained individuals
- Most common crimes are murder including attempts, car hijacking, truck hijacking, rapes and robberies
- Toy/imitation firearms used in a lot of serious crimes reported looks and feels like a real gun – see slides no 3-6
- Different pieces of legislation and amendments to existing legislation have declared the unlawful possession and use of toy or imitations firearms as criminal offence
- Crime code for the registration of Imitation/toy gun on ICDM and GAGS systems
- Crime statistics for reported incidence- 8.1.1.1
- Stations do not include the key words 'toy/imitation gun ' during the input under 8.1.1.1

Crime Stats



Robberies involving Toy Guns 01 April 2018 to 04 July 2022

Offences	2018/2019	2019/2020	2020/2021	2021/2022	01 April to 04 July 2022	Grand Total
Robbery With Firearm	25	13	26	11	8	83
House Robbery	13	3	3	7		26
Robbery With A Weapon Or Instrument Other Than A Firearm	9	1	8	7	3	28
Business Robbery	7		4	4	2	17
Carjacking			1	1	1	3
Hijacking - Truck				1		1
Grand Total	54	17	42	31	14	158

Crime Stats cont...



Districts list for the relevant offences detected 01 April 2018 to 30 June 2022

Districts	2018/2019	2019/2020	2020/2021	2021/2022	01 April to 04 July 2022	Grand Total
Distr. Ekurhuleni	15	4	16	8	6	49
Distr. Johannesburg	25	10	18	13	8	74
Distr. Sedibeng	4	2	3	4		13
Distr. Tshwane	5	1	4	3		13
Distr. West Rand	5		1	3		9
Grand Total	54	17	42	31	14	158



Crime Stats cont...



Top 40 Stations	
Stations	Total
Hillbrow	9
Ivory Park	6
Bramley	5
Randburg	5
Rabie Ridge	4
Evaton	4
Tembisa	4
Cleveland	4
Vanderbijlpark	4
Eldorado Park	4
JHB Central	4
Booyens	3
Sophia Town	3
Alexandra	3
Pretoria Central	3



Vosloorus	3
Protea	3
Actonville	3
Daveyton	3
Kliptown	3
Diepkloof	2
Sandringham	2
Krugersdorp	2
Meadowlands	2
Alberton	2
Meyerton	2
Kempton Park	2
Moffatview	2
Randfontein	2
Norkempark	2
Sandton	2
Parkview	2
Springs	2
Benoni	2
Tokoza	2
Brixton	2
Diepsloot	2
Fochville	2
Boksburg North	2



Legal framework



- Firearms Control Act, No 60 of 2000
- Criminal Procedure Act, No 51 of 1977
- Dangerous Weapons Act, No 15 of 2013
- Domestic Violence Act, No 116 of 1998
- Domestic Violence Amendment Act, No 14 of 2021
- Criminal Law Amendment Act, No 105 of 1997- sect 51;- minimum sentence for certain crime to be put to Accused
- Decided cases



FIREARMS CONTROL ACT



- No 60 of 2000
- Sect 1- Definition
- ‘imitation firearm’ means anything that has the appearance of a firearm but is not capable of operating as such and cannot by superficial examination be identified as imitation

- Sect 4. Prohibited firearms
- (1) The following firearms and devices are prohibited firearms and may not be licensed in terms of this Act, except as provided for in sections 17,18(5), 19 and 20(1) (b):

- **OFFENCES**
- Sect 4(1)(e), any imitation of any device contemplated in paragraph (b), (c) excluding the frame, body or barrel of a fully automatic firearm, or (d);
- Sect 20(6)- It is an offence to point-
- (b) anything which is likely to lead a person to believe that it is a firearm,at any other person, without good cause or reason to do so.



Legal framework cont.....



Schedule 4

Penalties

- Sect 4; - maximum period not exceeding 25 years
- Sect 120 (6); - maximum period not exceeding 10 years



Criminal Procedure Act (CPA)



- No 51 of 1977
- Sect 1 defines ‘aggravating circumstances in relation to robbery or attempted robbery under paragraph (b) to mean:
 - (i) the wielding of a firearm or any other dangerous weapon;
 - (ii) the infliction of grievous bodily harm; or
 - (iii) a threat to inflict grievous bodily harm by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence.

Statements must describe the behaviour of the Suspect/s in detail to determine if there are any “Aggravating circumstances” present during the commission of the criminal act/s



Dangerous Weapons Act



- Act No 15 of 2013
- Sect 2(1) reads as follows
- “ Any person who is in possession of any dangerous weapon or of any object which so resembles firearm that, under circumstances such as those under which such a person is in possession thereof, it is likely to be mistaken for a real firearm, shall be guilty of an offence, unless he is able to prove that he at no time had any intention of using such weapon or object for any unlawful purpose, and shall on conviction be liable to a fine or to imprisonment for a period not exceeding two years.”



Dangerous Weapons Act cont...



- Sect 3 (2) was also quoted with authority; “(2) In determining whether a person intends to use the object as a dangerous weapon for an unlawful purpose, all relevant factors, including but not limited to, the following must be taken into account;
 - (a) The place and time where the person is found;
 - (b) the behaviour of the person, including the making of any threat or display of intimidatory behaviour;
 - (c) the manner in which the object is carried or displayed;
 - (d) whether the possession of the object was within the context of drug dealing, gang association or any organised crime or any other criminal activity; or
 - (e) any other relevant factors, including any explanation the person wish to provide for his or her possession of the object: Provided that this paragraph shall not be interpreted as an obligation on the person to explain his or her possession of the object.

Domestic Violence Amendment Act



- Act N0 14 of 2021
- Definition of weapon means-
 - (a) any airgun, ammunition, imitation firearm.... As defined in section 1 of the Firearms Control Act, 60 of 2000
- Amends Sect 9 of the principal act as follows;
 - Seizure of arms and dangerous weapons
- 9.(1) The court must order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under control of a respondent as specified in that order, regardless of the requirements of the respondent's employment to possess such weapon, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4(1), that-
 - (a) the respondent has threatened or expressed the intention to kill or injure himself or herself or themselves, any person in a domestic relationship or, a related person , or any other person, whether or not by means of such arms or dangerous weapon; or
 - (b) the possession of such arm or dangerous weapon is not in the best interest of the respondent or any person in a domestic relationship or related , as a result of the respondent's-
 - (i) state of mind or mental condition
 - (ii) inclination to violence; or
 - (iii) use of or dependence on intoxicating liquor or drugs



Domestic Violence Act cont...



- (2) Any arm or weapon contemplated in paragraph (a) of the definition of weapon seized in terms of subsection (1) must be handed over to the holder of an office in the or kept by the South African Police Service and the court must direct the clerk of the court to refer a copy of the record of evidence concerned to the relevant station commander for consideration in terms of section 102 of the Firearms Control Act, 2000 and a copy of the record must be submitted to the National Commissioner of the South African Police Service.
- (3) Any dangerous weapon contemplated in paragraph (b) of the definition of weapon seized in terms of subsection (1)-
 - (a) must be given a distinctive mark and retained in police custody for such period of time as the court may determine; and
 - (b) may only be returned to the respondent or, if the respondent is not the owner of the dangerous weapon, to the owner thereof, by order of the court and on such conditions as the court may determine.



Decided Cases

- **State v Z Yawa** Special Review No; 55/2014 (Free State High Court)
- State v Z Yawa court stated the following; “ (any person who is in possession of any dangerous weapon under circumstances which may raise a suspicion that the person intends to use the dangerous weapon for any unlawful purpose...)”- Sect 2(1) of the Dangerous Weapons Act, No 71 of 1968 and Sect 3(1) of Act No 15 of 2013

- **M George v The State**, Case No A194/2019
- - Robbery with aggravating circumstances- use of toy gun by suspects to rob victim of cellphones, Sect 120(6)(b) and Sect 4(e) (Firearm Control Act)

- - The **State v R K Swarts**, Case No; 20170042 (Eastern Cape High Court)
- - Robbery with aggravating circumstances – pointing with anything likely to lead a person to believe it is a firearm, - Sect 120(6)(b) and Sect 4(e) (Firearm Control Act)

- Crimes and Offences giving rise to unfitness enquiry by Court
- Sect 103(2) of the Domestic Violence Act, (Act 116 of 1998)
- 7. Any crime or offence-
- (b) in terms of the Domestic Violence Act, (Act 116 of 1998) in respect of which an accused was not sentenced to a period of imprisonment without an option of a fine;



Statement taking elements



- A1 –Description of weapon used must be clear and precise- disclose material elements as per Sect 4(1)(e) of Firearm Control Act
- Believe that it was a real firearm/ toy gun- victim must have believed it to be genuine firearm
- Influenced victim in certain way/manner- describe the feelings and emotions
- Imitation/toy gun to be treated like any other exhibit and disposed off in same way
- Chain statement regarding to the exhibit must be clear and consistent with seizure statement
- Suspects must be asked for an explanation as to reason for possession- no duty on suspect to answer
- Clear description of the circumstances of arrest and the behaviour of suspect in the statement



Bail classification



- Schedule 6 of the CPA applicable when imitation gun is use in an offence- similar as a real gun- aggravating circumstances
- Onus on Accused/Suspect to prove exceptional circumstances to be released on Bail
- NO Saps bail (sec 59) or Prosecutor bail allowed- must appear in court



Q & A
The End