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# **Justice Appropriations Subcommittee**

# **Meeting Packet**

**November 18, 2015  
1:00 p.m. – 3:00 p.m.  
Morris Hall**



# The Florida House of Representatives

## APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli  
Speaker

Larry Metz  
Chair

### MEETING AGENDA

Morris Hall

November 18, 2015

- I. Meeting Called To Order
- II. Opening Remarks by Chair
- III. Consideration of the following bills:
  - CS/HB 55 - Trade Secrets by Criminal Justice Subcommittee; Rep. Pilon
  - CS/HB 75 - Electronic Monitoring Devices by Criminal Justice Subcommittee;  
Rep. Torres
  - CS/HB101 - Violation of an Injunction for Protection by Criminal Justice  
Subcommittee; Rep. Rodriguez, J.
  - CS/HB 147 - Expunging and Sealing Criminal History Records of Minors by  
Criminal Justice Subcommittee; Rep. Latvala, Sprowls
  - CS/HB163 - Weapons and Firearms by Criminal Justice Subcommittee;  
Rep. Rodriguez. J.
- IV. Closing Remarks
- V. Meeting Adjourned



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 55 Trade Secrets  
**SPONSOR(S):** Criminal Justice Subcommittee; Pilon  
**TIED BILLS:** CS/HB 57 **IDEN./SIM. BILLS:** SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Government Operations Subcommittee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill amends the definition of "trade secret" to mean "any scientific, technical, or commercial information, *including financial information*," that otherwise qualifies as trade secret. The bill reenacts ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes to the definition of "trade secret."

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015 and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). The bill also creates a new first degree misdemeanor, therefore it may increase commitments to local jails.

This bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony<sup>1</sup> for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret which is residing or existing internal or external to a computer, computer system, computer network, or electronic device.<sup>2</sup>
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor<sup>3</sup> for a designated employee, inspector, or collaborator of the Division of Plant Industry of the Department of Agriculture and Consumer Services or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;<sup>4</sup> however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.<sup>5</sup>

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., as:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.<sup>6</sup>

<sup>1</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>2</sup> The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

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

<sup>4</sup> ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

<sup>5</sup> ss. 721.071 and 812.035, F.S.

### **Effect of the Bill**

The bill amends the definition of “trade secret” in s. 812.081(1)(c), F.S., to mean “any scientific, technical, or commercial information, *including financial information*, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.” As such, the criminal offenses described above will apply to a clarified list of trade secret information.

Florida law contains a variety of provisions that cross-reference the definition of “trade secret” in s. 812.081(1)(c), F.S. The bill reenacts the following provisions to incorporate the changes made by the bill to the definition of “trade secret”:

- Section 581.199, F.S., prohibits any unauthorized representative from using trade secret information for personal gain or to reveal it to an unauthorized person.
- Section 721.071(1), F.S., provides requirements for filing trade secret information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.
- Section 812.035, F.S., provides civil remedies for violations of ss. 812.012-812.037, F.S., or s. 812.081, F.S.
- Section 815.04(4), F.S., prohibits a person from willfully, knowingly, and without authorization disclosing or taking specified data, programs, or supporting documentation that is trade secret or confidential.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Reenacts s. 581.199, F.S., relating to confidential business information.

Section 3. Reenacts s. 721.071(1), F.S., relating to trade secrets.

Section 4. Reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., relating to civil remedies; limitation on civil and criminal actions.

Section 5. Reenacts s. 815.04(4), F.S., relating to offenses against intellectual property; public records exemption.

Section 6. Provides an effective date of October 1, 2016.

## **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 Criminal Justice Impact Conference (CJIC) met on October 28, 2015 and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds).

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

1. Revenues:

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

2. Expenditures:

The bill makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways, therefore it may increase the application of this offense, and increase commitments to local jails.

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added reenactments of ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes made by the bill to the definition of "trade secret" in s. 812.081, F.S.

1                                   A bill to be entitled  
 2       An act relating to trade secrets; amending s. 812.081,  
 3       F.S.; including financial information in provisions  
 4       prohibiting the theft, embezzlement, or unlawful  
 5       copying of trade secrets; providing criminal  
 6       penalties; reenacting ss. 581.199, 721.071(1),  
 7       812.035(1), (2), (5), (7), (8), (10), and (11), and  
 8       815.04(4), F.S., relating to confidential business  
 9       information, trade secret information filed with the  
 10      Division of Florida Condominiums, Timeshares, and  
 11      Mobile Homes within the Department of Business and  
 12      Professional Regulation, civil remedies, and offenses  
 13      against intellectual property, respectively, to  
 14      incorporate changes made by this act to the definition  
 15      of the term "trade secret" in s. 812.081, F.S., in  
 16      references thereto; providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20       Section 1. Section 812.081, Florida Statutes, is amended  
 21   to read:

22       812.081 Trade secrets; theft, embezzlement; unlawful  
 23   copying; definitions; penalty.—

24       (1) As used in this section, the term:

25       (a) "Article" means any object, device, machine, material,  
 26   substance, or composition of matter, or any mixture or copy

27 | thereof, whether in whole or in part, including any complete or  
 28 | partial writing, record, recording, drawing, sample, specimen,  
 29 | prototype model, photograph, microorganism, blueprint, map, or  
 30 | copy thereof.

31 |         (b) "Representing" means completely or partially  
 32 | describing, depicting, embodying, containing, constituting,  
 33 | reflecting, or recording.

34 |         (c) "Trade secret" means the whole or any portion or phase  
 35 | of any formula, pattern, device, combination of devices, or  
 36 | compilation of information which is for use, or is used, in the  
 37 | operation of a business and which provides the business an  
 38 | advantage, or an opportunity to obtain an advantage, over those  
 39 | who do not know or use it. The term ~~"Trade secret"~~ includes any  
 40 | scientific, technical, or commercial information, including  
 41 | financial information, and includes any design, process,  
 42 | procedure, list of suppliers, list of customers, business code,  
 43 | or improvement thereof. Irrespective of novelty, invention,  
 44 | patentability, the state of the prior art, and the level of  
 45 | skill in the business, art, or field to which the subject matter  
 46 | pertains, a trade secret is considered to be:

- 47 |             1. Secret;
- 48 |             2. Of value;
- 49 |             3. For use or in use by the business; and
- 50 |             4. Of advantage to the business, or providing an
- 51 | opportunity to obtain an advantage, over those who do not know
- 52 | or use it

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when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) "Copy" means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits ~~is guilty~~ of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of ~~the provisions of~~ this section, the fact ~~it is no defense~~ that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

Section 2. For the purpose of incorporating the amendment made by this act to section 812.081, Florida Statutes, in a reference thereto, section 581.199, Florida Statutes, is reenacted to read:

581.199 Confidential business information.—It is unlawful for any authorized representative who in an official capacity

79 obtains under the provisions of this chapter any information  
 80 entitled to protection as a trade secret, as defined in s.  
 81 812.081, to use that information for personal gain or to reveal  
 82 it to any unauthorized person.

83 Section 3. For the purpose of incorporating the amendment  
 84 made by this act to section 812.081, Florida Statutes, in a  
 85 reference thereto, subsection (1) of section 721.071, Florida  
 86 Statutes, is reenacted to read:

87 721.071 Trade secrets.—

88 (1) If a developer or any other person filing material  
 89 with the division pursuant to this chapter expects the division  
 90 to keep the material confidential on grounds that the material  
 91 constitutes a trade secret, as that term is defined in s.  
 92 812.081, the developer or other person shall file the material  
 93 together with an affidavit of confidentiality. "Filed material"  
 94 for purposes of this section shall mean material that is filed  
 95 with the division with the expectation that the material will be  
 96 kept confidential and that is accompanied by an affidavit of  
 97 confidentiality. Filed material that is trade secret information  
 98 includes, but is not limited to, service contracts relating to  
 99 the operation of reservation systems and those items and matters  
 100 described in s. 815.04(3).

101 Section 4. For the purpose of incorporating the amendment  
 102 made by this act to section 812.081, Florida Statutes, in  
 103 references thereto, subsections (1), (2), (5), (7), (8), (10),  
 104 and (11) of section 812.035, Florida Statutes, are reenacted to

105 read:

106 812.035 Civil remedies; limitation on civil and criminal  
107 actions.-

108 (1) Any circuit court may, after making due provisions for  
109 the rights of innocent persons, enjoin violations of the  
110 provisions of ss. 812.012-812.037 or s. 812.081 by issuing  
111 appropriate orders and judgments, including, but not limited to:

112 (a) Ordering any defendant to divest himself or herself of  
113 any interest in any enterprise, including real estate.

114 (b) Imposing reasonable restrictions upon the future  
115 activities or investments of any defendant, including, but not  
116 limited to, prohibiting any defendant from engaging in the same  
117 type of endeavor as the enterprise in which he or she was  
118 engaged in violation of the provisions of ss. 812.012-812.037 or  
119 s. 812.081.

120 (c) Ordering the dissolution or reorganization of any  
121 enterprise.

122 (d) Ordering the suspension or revocation of any license,  
123 permit, or prior approval granted to any enterprise by any  
124 department or agency of the state.

125 (e) Ordering the forfeiture of the charter of a  
126 corporation organized under the laws of the state or the  
127 revocation of a certificate authorizing a foreign corporation to  
128 conduct business within the state, upon finding that the board  
129 of directors or a managerial agent acting on behalf of the  
130 corporation, in conducting the affairs of the corporation, has

131 | authorized or engaged in conduct in violation of ss. 812.012-  
 132 | 812.037 or s. 812.081 and that, for the prevention of future  
 133 | criminal activity, the public interest requires the charter of  
 134 | the corporation forfeited and the corporation dissolved or the  
 135 | certificate revoked.

136 |       (2) All property, real or personal, including money, used  
 137 | in the course of, intended for use in the course of, derived  
 138 | from, or realized through conduct in violation of a provision of  
 139 | ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture  
 140 | to the state. The state shall dispose of all forfeited property  
 141 | as soon as commercially feasible. If property is not exercisable  
 142 | or transferable for value by the state, it shall expire. All  
 143 | forfeitures or dispositions under this section shall be made  
 144 | with due provision for the rights of innocent persons.

145 |       (5) The Department of Legal Affairs, any state attorney,  
 146 | or any state agency having jurisdiction over conduct in  
 147 | violation of a provision of ss. 812.012-812.037 or s. 812.081  
 148 | may institute civil proceedings under this section. In any  
 149 | action brought under this section, the circuit court shall  
 150 | proceed as soon as practicable to the hearing and determination.  
 151 | Pending final determination, the circuit court may at any time  
 152 | enter such injunctions, prohibitions, or restraining orders, or  
 153 | take such actions, including the acceptance of satisfactory  
 154 | performance bonds, as the court may deem proper.

155 |       (7) The state, including any of its agencies,  
 156 | instrumentalities, subdivisions, or municipalities, if it proves

157 by clear and convincing evidence that it has been injured in any  
158 fashion by reason of any violation of the provisions of ss.  
159 812.012-812.037 or s. 812.081, has a cause of action for  
160 threefold the actual damages sustained and, in any such action,  
161 is entitled to minimum damages in the amount of \$200 and shall  
162 also recover court costs and reasonable attorney's fees in the  
163 trial and appellate courts. In no event shall punitive damages  
164 be awarded under this section. The defendant shall be entitled  
165 to recover reasonable attorney's fees and court costs in the  
166 trial and appellate courts upon a finding that the claimant  
167 raised a claim which was without substantial fact or legal  
168 support.

169 (8) A final judgment or decree rendered in favor of the  
170 state in any criminal proceeding under ss. 812.012-812.037 or s.  
171 812.081 shall estop the defendant in any subsequent civil action  
172 or proceeding as to all matters as to which such judgment or  
173 decree would be an estoppel as between the parties.

174 (10) Notwithstanding any other provision of law, a  
175 criminal or civil action or proceeding under ss. 812.012-812.037  
176 or s. 812.081 may be commenced at any time within 5 years after  
177 the cause of action accrues; however, in a criminal proceeding  
178 under ss. 812.012-812.037 or s. 812.081, the period of  
179 limitation does not run during any time when the defendant is  
180 continuously absent from the state or is without a reasonably  
181 ascertainable place of abode or work within the state, but in no  
182 case shall this extend the period of limitation otherwise

183 applicable by more than 1 year. If a criminal prosecution or  
 184 civil action or other proceeding is brought, or intervened in,  
 185 to punish, prevent, or restrain any violation of the provisions  
 186 of ss. 812.012-812.037 or s. 812.081, the running of the period  
 187 of limitations prescribed by this section with respect to any  
 188 cause of action arising under subsection (6) or subsection (7)  
 189 which is based in whole or in part upon any matter complained of  
 190 in any such prosecution, action, or proceeding shall be  
 191 suspended during the pendency of such prosecution, action, or  
 192 proceeding and for 2 years following its termination.

193 (11) The application of one civil remedy under any  
 194 provision of ss. 812.012-812.037 or s. 812.081 shall not  
 195 preclude the application of any other remedy, civil or criminal,  
 196 under ss. 812.012-812.037 or s. 812.081 or any other section of  
 197 the Florida Statutes.

198 Section 5. For the purpose of incorporating the amendment  
 199 made by this act to section 812.081, Florida Statutes, in a  
 200 reference thereto, subsection (4) of section 815.04, Florida  
 201 Statutes, is reenacted to read:

202 815.04 Offenses against intellectual property; public  
 203 records exemption.—

204 (4) A person who willfully, knowingly, and without  
 205 authorization discloses or takes data, programs, or supporting  
 206 documentation that is a trade secret as defined in s. 812.081 or  
 207 is confidential as provided by law residing or existing internal  
 208 or external to a computer, computer system, computer network, or

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209 | electronic device commits an offense against intellectual  
210 | property.

211 |       Section 6. This act shall take effect October 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 75 Electronic Monitoring Devices  
**SPONSOR(S):** Criminal Justice Subcommittee; Torres, Jr. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and offenders who have been placed on probation, community control, or conditional release (community supervision).

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case. Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD. Pursuant to s. 948.11(7), F.S., it is a third degree felony for a person to intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment pursuant to court or commission order, unless that person is the owner of the equipment or an agent of the owner, and is performing ordinary maintenance and repairs.

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of specified EMDs, or to solicit another person to do so.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections (Department) may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (an increase of ten or fewer beds).

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,<sup>1</sup> or conditional release<sup>2</sup> (community supervision). The use of EMDs is a common practice throughout the nation, with over five million offenders being monitored in some form in the United States.<sup>3</sup> Likewise, Florida has used EMDs to monitor the location of released felons for years. As of July 31, 2015, there were 4,318 offenders in Florida using EMDs while being monitored on community supervision by the Department of Corrections (Department).<sup>4</sup>

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.<sup>5</sup> Additionally, judges are required to impose electronic monitoring in certain instances (e.g., judges are required to impose electronic monitoring on offenders placed on community supervision for specified sexual offenses).<sup>6</sup> The Commission on Offender Review (Commission) is given the authority to determine the conditions of release, including ordering an offender to use an EMD, when an offender is released on conditional release, control release, parole, or conditional medical release.<sup>7</sup>

Aside from the authority given to the courts and the Commission, the Department is authorized by s. 948.11(1), F.S., to order electronic monitoring of offenders serving a community control sentence. However, the Department does not exercise such authority because courts have held that an offender's community control may not be revoked for noncompliance with electronic monitoring when such monitoring was ordered by the Department instead of a judge.<sup>8</sup>

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case.<sup>9</sup> Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.<sup>10</sup>

In 2005, the Florida Legislature made it a crime to interfere with an EMD.<sup>11</sup> Section 948.11(7), F.S., makes it a third degree felony<sup>12</sup> for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission order, unless that person is:

- The owner of the equipment or an agent of the owner; and

<sup>1</sup> Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. s. 948.001(1), F.S.

<sup>2</sup> Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by DOC probation officers. s. 947.1405, F.S.

<sup>3</sup> United States Department of Justice, *Electronic Monitoring Reduces Recidivism*, NATIONAL INSTITUTE OF JUSTICE (Sept. 2011), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwjc9O6m-NbIAhXGSIYKHfQwDPU&url=https%3A%2F%2Fwww.ncjrs.gov%2Fpdffiles1%2Fnij%2F234460.pdf&usq=AFQjCNFEOxJWIVAmllbSaotGfkGOT4SIRA&sig2=qiNkzbUrRBTZ-wZ4CaZ9Sw&bvm=bv.105814755,d.eWE> (last visited Oct. 22, 2015).

<sup>4</sup> Department of Corrections, Agency Analysis of 2016 House Bill 75, p. 3 (Sept. 24, 2015).

<sup>5</sup> See, e.g., ss. 907.041, 947.1405, 948.101, and 948.30, F.S.

<sup>6</sup> s. 948.30(2)(e), F.S.

<sup>7</sup> s. 947.13, F.S.

<sup>8</sup> *Carson v. State*, 531 So. 2d 1069 (Fla. 4th DCA 1988); *Anthony v. State*, 854 So. 2d 744, 747 (Fla. 2d DCA 2003).

<sup>9</sup> s. 907.041(4)(c)7., F.S.

<sup>10</sup> s. 948.06, F.S.; *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Meeks*, 789 So. 2d 982 (Fla. 2001).

<sup>11</sup> Ch. 2005-28, Laws of Florida.

<sup>12</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

- Performing ordinary maintenance and repairs.<sup>13</sup>

A close read of s. 948.11(7), F.S., reveals that it is not a crime under current law to *circumvent* an EMD unless the circumvention involves altering, tampering, damaging or destroying the EMD. It is also not a crime to *solicit another person* to remove, destroy, alter, tamper with, damage, or circumvent an EMD.

#### **Effect of the Bill**

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn pursuant to a court order or an order of the Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn as described above.

The bill defines "electronic monitoring device" to include any device that is used to track the location of a person.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

#### **B. SECTION DIRECTORY:**

Section 1. Creates s. 843.23, F.S., relating to tampering with an electronic monitoring device.

Section 2. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 3. Provides an effective date of October 1, 2016.

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

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

##### **1. Revenues:**

The bill does not appear to have an impact on state government revenues.

##### **2. Expenditures:**

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (an increase of ten or fewer beds). In Fiscal Year 2014-2015, 13 offenders were sentenced for this offense and eight received a prison sentence (mean sentence length was 25.5 months).

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

##### **1. Revenues:**

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

##### **2. Expenditures:**

The bill does not appear to have an impact on local government expenditures.

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:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute clarifies that *any* person who intentionally removes, destroys, alters, tampers with, damages, or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to electronic monitoring devices;  
 3           creating s. 843.23, F.S.; defining the term  
 4           "electronic monitoring device"; prohibiting a person  
 5           from removing, destroying, altering, tampering with,  
 6           damaging, or circumventing the operation of an  
 7           electronic monitoring device being worn or used  
 8           pursuant to a court order or an order by the  
 9           Commission on Offender Review; prohibiting the request  
 10          or solicitation of a person to perform such an act;  
 11          providing criminal penalties; amending s. 948.11,  
 12          F.S.; specifying that the Department of Corrections  
 13          may electronically monitor an offender sentenced to  
 14          community control when the court has imposed  
 15          electronic monitoring as a condition of community  
 16          control; deleting a provision imposing criminal  
 17          penalties on persons who intentionally alter, tamper  
 18          with, damage, or destroy electronic monitoring  
 19          equipment; providing an effective date.

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

22  
 23           Section 1. Section 843.23, Florida Statutes, is created to  
 24   read:

25           843.23 Tampering with an electronic monitoring device.-

26           (1) As used in this section, the term "electronic

27 monitoring device" includes any device that is used to track the  
 28 location of a person.

29 (2) It is unlawful for a person to intentionally and  
 30 without authority:

31 (a) Remove, destroy, alter, tamper with, damage, or  
 32 circumvent the operation of an electronic monitoring device that  
 33 must be worn or used by that person or another person pursuant  
 34 to a court order or pursuant to an order by the Commission on  
 35 Offender Review; or

36 (b) Request or solicit an individual to remove, destroy,  
 37 alter, tamper with, damage, or circumvent the operation of an  
 38 electronic monitoring device required to be worn or used  
 39 pursuant to a court order or pursuant to an order by the  
 40 Commission on Offender Review.

41 (3) A person who violates this section commits a felony of  
 42 the third degree, punishable as provided in s. 775.082, s.  
 43 775.083, or s. 775.084.

44 Section 2. Subsections (1) and (7) of section 948.11,  
 45 Florida Statutes, are amended to read:

46 948.11 Electronic monitoring devices.—

47 (1) The Department of Corrections may, ~~at its discretion,~~  
 48 electronically monitor an offender sentenced to community  
 49 control when the court has imposed electronic monitoring as a  
 50 condition of community control.

51 ~~(7) A person who intentionally alters, tampers with,~~  
 52 ~~damages, or destroys any electronic monitoring equipment~~

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53 ~~pursuant to court or commission order, unless such person is the~~  
54 ~~owner of the equipment, or an agent of the owner, performing~~  
55 ~~ordinary maintenance and repairs, commits a felony of the third~~  
56 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~  
57 ~~775.084.~~

58 Section 3. This act shall take effect October 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 101 Violation of an Injunction for Protection  
**SPONSOR(S):** Criminal Justice Subcommittee; Rodríguez, J.  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may obtain an injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. A respondent violates the terms of an injunction for protection if the respondent willfully commits specified prohibited acts against the petitioner. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony.

While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. The Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely increase prison beds. Additionally, because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may reduce the need for jail beds. (See Fiscal Impact Statement)

The bill is effective on October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Injunctions for Protection against Specified Acts of Violence**

###### *Domestic Violence*

Any person who is the victim of domestic violence<sup>1</sup> or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>2</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>3</sup> A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.<sup>4</sup> At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>5</sup>

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.<sup>6,7</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>8</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>9</sup>

###### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>10</sup> dating violence,<sup>11</sup> and sexual violence.<sup>12</sup> This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

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<sup>1</sup> Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>2</sup> s. 741.30(1), F.S.

<sup>3</sup> s. 741.30(3), F.S.

<sup>4</sup> s. 741.30(4), F.S.

<sup>5</sup> s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

<sup>6</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. s. 741.30(5), F.S.

<sup>7</sup> The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741.30(5)(b), F.S.

<sup>8</sup> s. 741.30(5)(c), F.S.

<sup>9</sup> The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. s. 741.30(5)(c), F.S.

<sup>10</sup> Section 784.046(1)(b), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

<sup>11</sup> Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

### **Violation of an Injunction against Specified Acts of Violence**

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking<sup>13</sup> if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;<sup>14</sup>
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.<sup>15</sup>

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.<sup>16,17</sup>

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

### Effect of the Bill

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 2. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

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- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

<sup>12</sup> Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

<sup>13</sup> Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S., provide that this includes foreign protection orders that are accorded full and faith credit pursuant to s. 741.315, F.S.

<sup>14</sup> This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

<sup>15</sup> ss. 741.31(4)(a), 784.047, and 784.0487, F.S.

<sup>16</sup> 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.

<sup>17</sup> ss. 741.30(9), 784.046(9), and 784.0485(9), F.S.

Section 3. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 4. Reenacts s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 5. Reenacts s. 741.315, F.S., relating to recognition of foreign protection orders.

Section 6. Reenacts s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 7. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8. Provides an effective date of October 1, 2016.

## **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 Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely increase prison beds.

This bill increases penalties from a misdemeanor to a third degree felony for third or subsequent offenses. While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. In Fiscal Year 2014-2015, there were 190 persons convicted and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 12 persons convicted and one adjudication withheld for repeat offenders violating s. 784.047, F.S. There was one guilty/convicted count and 0 adjudication withheld counts for repeat offenders violating s. 784.0487, F.S. It is unknown what number of these repeat offenses were third or subsequent violations.

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

#### **1. Revenues:**

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

#### **2. Expenditures:**

The bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, therefore the bill may reduce the need for jail beds.

### **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:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reenacts necessary cross-referenced provisions of statute that are impacted by changes made in the act.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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A bill to be entitled  
 An act relating to violation of an injunction for  
 protection; amending ss. 741.31, 784.047, and  
 784.0487, F.S.; providing enhanced criminal penalties  
 for a third or subsequent violation of an injunction  
 for protection against specified acts of violence or a  
 foreign protection order issued under specified  
 provisions; reenacting s. 741.30(9), F.S., relating to  
 injunctions for protection against domestic violence,  
 to incorporate the amendment made by the act to s.  
 741.31, F.S., in references thereto; reenacting s.  
 741.315(2), F.S., relating to recognition of foreign  
 protection orders, to incorporate the amendment made  
 by the act to ss. 741.31, 784.047, and 784.0487, F.S.,  
 in references thereto; reenacting s. 784.0485(9),  
 F.S., relating to injunctions for protection against  
 stalking, to incorporate the amendment made by the act  
 to s. 784.0487, F.S., in references thereto;  
 reenacting s. 901.15(6) and (7), F.S., relating to  
 when an arrest by an officer without warrant is  
 lawful, to incorporate the amendment made by the act  
 to ss. 741.31 and 784.047, F.S., in references  
 thereto; providing an effective date.

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 Section 1. Subsection (4) of section 741.31, Florida  
28 Statutes, is amended to read:

29 741.31 Violation of an injunction for protection against  
30 domestic violence.—

31 (4)(a) A person who willfully violates an injunction for  
32 protection against domestic violence issued pursuant to s.  
33 741.30, or a foreign protection order accorded full faith and  
34 credit pursuant to s. 741.315, by:

- 35 1. Refusing to vacate the dwelling that the parties share;
- 36 2. Going to, or being within 500 feet of, the petitioner's  
37 residence, school, place of employment, or a specified place  
38 frequented regularly by the petitioner and any named family or  
39 household member;
- 40 3. Committing an act of domestic violence against the  
41 petitioner;
- 42 4. Committing any other violation of the injunction  
43 through an intentional unlawful threat, word, or act to do  
44 violence to the petitioner;
- 45 5. Telephoning, contacting, or otherwise communicating  
46 with the petitioner directly or indirectly, unless the  
47 injunction specifically allows indirect contact through a third  
48 party;
- 49 6. Knowingly and intentionally coming within 100 feet of  
50 the petitioner's motor vehicle, whether or not that vehicle is  
51 occupied;
- 52 7. Defacing or destroying the petitioner's personal

53 property, including the petitioner's motor vehicle; or  
 54 8. Refusing to surrender firearms or ammunition if ordered  
 55 to do so by the court

56  
 57 commits a misdemeanor of the first degree, punishable as  
 58 provided in s. 775.082 or s. 775.083, except as provided in  
 59 paragraph (c).

60 (b)1. It is a violation of s. 790.233, and a misdemeanor  
 61 of the first degree, punishable as provided in s. 775.082 or s.  
 62 775.083, for a person to violate a final injunction for  
 63 protection against domestic violence by having in his or her  
 64 care, custody, possession, or control any firearm or ammunition.

65 2. It is the intent of the Legislature that the  
 66 disabilities regarding possession of firearms and ammunition are  
 67 consistent with federal law. Accordingly, this paragraph shall  
 68 not apply to a state or local officer as defined in s.  
 69 943.10(14), holding an active certification, who receives or  
 70 possesses a firearm or ammunition for use in performing official  
 71 duties on behalf of the officer's employing agency, unless  
 72 otherwise prohibited by the employing agency.

73 (c) A person who has two or more prior convictions for  
 74 violation of an injunction and who commits any third or  
 75 subsequent violation commits a felony of the third degree,  
 76 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 77 For purposes of this paragraph, the term "conviction" means a  
 78 determination of guilt that is the result of a plea or a trial,

79 regardless of whether adjudication is withheld or a plea of nolo  
 80 contendere is entered.

81 Section 2. Section 784.047, Florida Statutes, is amended  
 82 to read:

83 784.047 Penalties for violating protective injunction  
 84 against violators.—

85 (1) A person who willfully violates an injunction for  
 86 protection against repeat violence, sexual violence, or dating  
 87 violence, issued pursuant to s. 784.046, or a foreign protection  
 88 order accorded full faith and credit pursuant to s. 741.315 by:

89 (a)~~(1)~~ Refusing to vacate the dwelling that the parties  
 90 share;

91 (b)~~(2)~~ Going to, or being within 500 feet of, the  
 92 petitioner's residence, school, place of employment, or a  
 93 specified place frequented regularly by the petitioner and any  
 94 named family or household member;

95 (c)~~(3)~~ Committing an act of repeat violence, sexual  
 96 violence, or dating violence against the petitioner;

97 (d)~~(4)~~ Committing any other violation of the injunction  
 98 through an intentional unlawful threat, word, or act to do  
 99 violence to the petitioner;

100 (e)~~(5)~~ Telephoning, contacting, or otherwise communicating  
 101 with the petitioner directly or indirectly, unless the  
 102 injunction specifically allows indirect contact through a third  
 103 party;

104 (f)~~(6)~~ Knowingly and intentionally coming within 100 feet

105 of the petitioner's motor vehicle, whether or not that vehicle  
 106 is occupied;

107 (g) ~~(7)~~ Defacing or destroying the petitioner's personal  
 108 property, including the petitioner's motor vehicle; or

109 (h) ~~(8)~~ Refusing to surrender firearms or ammunition if  
 110 ordered to do so by the court,

111  
 112 commits a misdemeanor of the first degree, punishable as  
 113 provided in s. 775.082 or s. 775.083, except as provided in  
 114 subsection (2).

115 (2) A person who has two or more prior convictions for  
 116 violation of an injunction and who commits any third or  
 117 subsequent violation commits a felony of the third degree,  
 118 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 119 For purposes of this subsection, the term "conviction" means a  
 120 determination of guilt that is the result of a plea or a trial,  
 121 regardless of whether adjudication is withheld or a plea of nolo  
 122 contendere is entered.

123 Section 3. Subsection (4) of section 784.0487, Florida  
 124 Statutes, is amended to read:

125 784.0487 Violation of an injunction for protection against  
 126 stalking or cyberstalking.—

127 (4) (a) A person who willfully violates an injunction for  
 128 protection against stalking or cyberstalking issued pursuant to  
 129 s. 784.0485, or a foreign protection order accorded full faith  
 130 and credit pursuant to s. 741.315, by:

131        1.(a) Going to, or being within 500 feet of, the  
 132 petitioner's residence, school, place of employment, or a  
 133 specified place frequented regularly by the petitioner and any  
 134 named family members or individuals closely associated with the  
 135 petitioner;

136        2.(b) Committing an act of stalking against the  
 137 petitioner;

138        3.(e) Committing any other violation of the injunction  
 139 through an intentional unlawful threat, word, or act to do  
 140 violence to the petitioner;

141        4.(d) Telephoning, contacting, or otherwise communicating  
 142 with the petitioner, directly or indirectly, unless the  
 143 injunction specifically allows indirect contact through a third  
 144 party;

145        5.(e) Knowingly and intentionally coming within 100 feet  
 146 of the petitioner's motor vehicle, whether or not that vehicle  
 147 is occupied;

148        6.(f) Defacing or destroying the petitioner's personal  
 149 property, including the petitioner's motor vehicle; or

150        7.(g) Refusing to surrender firearms or ammunition if  
 151 ordered to do so by the court,

152  
 153 commits a misdemeanor of the first degree, punishable as  
 154 provided in s. 775.082 or s. 775.083, except as provided in  
 155 paragraph (b).

156        (b) A person who has two or more prior convictions for

157 violation of an injunction and who commits any third or  
 158 subsequent violation commits a felony of the third degree,  
 159 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 160 For purposes of this paragraph, the term "conviction" means a  
 161 determination of guilt that is the result of a plea or a trial,  
 162 regardless of whether adjudication is withheld or a plea of nolo  
 163 contendere is entered.

164 Section 4. For the purpose of incorporating the amendment  
 165 made by this act to section 741.31, Florida Statutes, in  
 166 references thereto, subsection (9) of section 741.30, Florida  
 167 Statutes, is reenacted to read:

168 741.30 Domestic violence; injunction; powers and duties of  
 169 court and clerk; petition; notice and hearing; temporary  
 170 injunction; issuance of injunction; statewide verification  
 171 system; enforcement; public records exemption.—

172 (9) (a) The court may enforce a violation of an injunction  
 173 for protection against domestic violence through a civil or  
 174 criminal contempt proceeding, or the state attorney may  
 175 prosecute it as a criminal violation under s. 741.31. The court  
 176 may enforce the respondent's compliance with the injunction  
 177 through any appropriate civil and criminal remedies, including,  
 178 but not limited to, a monetary assessment or a fine. The clerk  
 179 of the court shall collect and receive such assessments or  
 180 fines. On a monthly basis, the clerk shall transfer the moneys  
 181 collected pursuant to this paragraph to the State Treasury for  
 182 deposit in the Domestic Violence Trust Fund established in s.

183 741.01.

184 (b) If the respondent is arrested by a law enforcement  
 185 officer under s. 901.15(6) or for a violation of s. 741.31, the  
 186 respondent shall be held in custody until brought before the  
 187 court as expeditiously as possible for the purpose of enforcing  
 188 the injunction and for admittance to bail in accordance with  
 189 chapter 903 and the applicable rules of criminal procedure,  
 190 pending a hearing.

191 Section 5. For the purpose of incorporating the amendment  
 192 made by this act to sections 741.31, 784.047, and 784.0487,  
 193 Florida Statutes, in references thereto, subsection (2) of  
 194 section 741.315, Florida Statutes, is reenacted to read:

195 741.315 Recognition of foreign protection orders.—

196 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for  
 197 protection against domestic violence issued by a court of a  
 198 foreign state must be accorded full faith and credit by the  
 199 courts of this state and enforced by a law enforcement agency as  
 200 if it were the order of a Florida court issued under s. 741.30,  
 201 s. 741.31, s. 784.046, s. 784.047, s. 784.0485, or s. 784.0487,  
 202 and provided that the court had jurisdiction over the parties  
 203 and the matter and that reasonable notice and opportunity to be  
 204 heard was given to the person against whom the order is sought  
 205 sufficient to protect that person's right to due process. Ex  
 206 parte foreign injunctions for protection are not eligible for  
 207 enforcement under this section unless notice and opportunity to  
 208 be heard have been provided within the time required by the

209 foreign state or tribal law, and in any event within a  
 210 reasonable time after the order is issued, sufficient to protect  
 211 the respondent's due process rights.

212 Section 6. For the purpose of incorporating the amendment  
 213 made by this act to section 784.0487, Florida Statutes, in  
 214 references thereto, subsection (9) of section 784.0485, Florida  
 215 Statutes, is reenacted to read:

216 784.0485 Stalking; injunction; powers and duties of court  
 217 and clerk; petition; notice and hearing; temporary injunction;  
 218 issuance of injunction; statewide verification system;  
 219 enforcement.—

220 (9) (a) The court may enforce a violation of an injunction  
 221 for protection against stalking through a civil or criminal  
 222 contempt proceeding, or the state attorney may prosecute it as a  
 223 criminal violation under s. 784.0487. Any assessments or fines  
 224 ordered by the court enforcing such an injunction shall be  
 225 collected by the clerk of the court and transferred on a monthly  
 226 basis to the State Treasury for deposit into the Domestic  
 227 Violence Trust Fund.

228 (b) If the respondent is arrested by a law enforcement  
 229 officer under s. 901.15(6) or for a violation of s. 784.0487,  
 230 the respondent shall be held in custody until brought before the  
 231 court as expeditiously as possible for the purpose of enforcing  
 232 the injunction and for admittance to bail in accordance with  
 233 chapter 903 and the applicable rules of criminal procedure,  
 234 pending a hearing.

235 Section 7. For the purpose of incorporating the amendment  
 236 made by this act to sections 741.31 and 784.047, Florida  
 237 Statutes, in a references thereto, subsections (6) and (7) of  
 238 section 901.15, Florida Statutes, are reenacted to read:

239 901.15 When arrest by officer without warrant is lawful.—A  
 240 law enforcement officer may arrest a person without a warrant  
 241 when:

242 (6) There is probable cause to believe that the person has  
 243 committed a criminal act according to s. 790.233 or according to  
 244 s. 741.31 or s. 784.047 which violates an injunction for  
 245 protection entered pursuant to s. 741.30 or s. 784.046, or a  
 246 foreign protection order accorded full faith and credit pursuant  
 247 to s. 741.315, over the objection of the petitioner, if  
 248 necessary.

249 (7) There is probable cause to believe that the person has  
 250 committed an act of domestic violence, as defined in s. 741.28,  
 251 or dating violence, as provided in s. 784.046. The decision to  
 252 arrest shall not require consent of the victim or consideration  
 253 of the relationship of the parties. It is the public policy of  
 254 this state to strongly discourage arrest and charges of both  
 255 parties for domestic violence or dating violence on each other  
 256 and to encourage training of law enforcement and prosecutors in  
 257 these areas. A law enforcement officer who acts in good faith  
 258 and exercises due care in making an arrest under this  
 259 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a  
 260 foreign order of protection accorded full faith and credit

CS/HB 101

2016

261 | pursuant to s. 741.315, is immune from civil liability that  
262 | otherwise might result by reason of his or her action.

263 |       Section 8. This act shall take effect October 1, 2016.

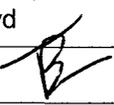


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 147 Expunging and Sealing Criminal History Records of Minors

**SPONSOR(S):** Criminal Justice Subcommittee; Latvala; Sprowls and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee		Smith 	Lloyd 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Chapter 943, F.S., in part, sets forth procedures for expunging and sealing criminal history records.

Section 943.0515, F.S., requires the automatic expunction of the criminal history records of specified juveniles at age 26 or 24. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP) must retain his or her criminal history record until the age of 26, at which time it is automatically expunged unless other specified circumstances apply. For other juveniles, CJIP must retain their records until the age of 24, at which time the records are automatically expunged unless other specified circumstances apply.

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, provided the specified exceptions do not apply. The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged earlier than age 21. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

The bill makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system. A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program. To obtain such an expunction, a juvenile who has completed a diversion program must provide specified documentation to FDLE within a 12-month time frame in accordance with s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for diversion program expunction must be submitted within a 12-month time frame.

The bill will likely have both a positive and a negative fiscal impact on FDLE. See "Fiscal Impact on State Government," *infra*.

The bill is effective July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0147b.JUAS.DOCX

DATE: 11/3/2015

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Automatic Expunction of Criminal History Records of Minors**

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP)<sup>1</sup> must retain his or her record until the age of 26, at which time the record is automatically expunged.<sup>2</sup> For all other juveniles, CJIP must retain the record until the juvenile reaches the age of 24, at which time the record is automatically expunged.<sup>3</sup>

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.<sup>4,5</sup>

In these three instances, the person's record as a minor must be merged with and retained as part of his or her adult record.<sup>6</sup>

##### Effect of the Bill

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, so long as one of the three above-mentioned exceptions does not apply. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at age 26.

The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged before the minor reaches 21 years of age. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

The bill makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

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<sup>1</sup> Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information repository, including the maintenance of a statewide automated biometric identification system. Identifying information of persons arrested and prosecuted in this state is sent to FDLE for inclusion in CJIP, which can then transmit this information between criminal justice agencies.

<sup>2</sup> s. 943.0515(1)(a), F.S.

<sup>3</sup> s. 943.0515(1)(b), F.S.

<sup>4</sup> s. 943.0515(2) and (3), F.S.

<sup>5</sup> Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

<sup>6</sup> *Id.*

## Juvenile Prearrest and Postarrest Diversion Program Expunction

### *Juvenile Prearrest and Postarrest Diversion Program*

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system.<sup>7</sup> These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.<sup>8</sup>

Section 985.125, F.S., authorizes a law enforcement agency or school district, in collaboration with the state attorney, to establish a diversion program for juveniles charged with criminal offenses. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for up to 90 days.<sup>9</sup>

A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program.<sup>10</sup> Each diversion program must have an agreement among the establishing agencies to provide for such expunction.<sup>11</sup> Expunction of a criminal history record resulting from a diversion program is obtained in accordance with s. 943.0582, F.S.

### *Juvenile Diversion Program Expunction*

Chapter 943, F.S., in part, sets forth procedures for expunging<sup>12</sup> and sealing criminal history records.<sup>13</sup> FDLE is required to expunge the nonjudicial arrest record of a juvenile who has successfully completed a diversion program if that juvenile:

- Submits a signed copy of FDLE's application for diversion program expunction;<sup>14</sup>
- Submits the application no later than 12 months after completion of diversion program;
- Submits an official written statement from the state attorney for the county in which the charges originated certifying that:
  - He or she has successfully completed that county's diversion program;
  - Participation in the program is based on an arrest for a nonviolent misdemeanor;<sup>15</sup> and
  - He or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation;

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<sup>7</sup> "Probation and Community Intervention," DJJ 2011 Comprehensive Accountability Report, <http://www.djj.state.fl.us/research/reports/car> (last visited on October 1, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> s. 985.125(2), F.S. Additionally, if the juvenile fails to comply with the requirements of the program, the state attorney may notify Department of Highway Safety and Motor Vehicles in writing to suspend their driver's license for up to 90 days.

<sup>10</sup> s. 985.125(3), F.S.

<sup>11</sup> *Id.* Juveniles who successfully complete diversion programs that do not expressly authorize expunction pursuant to s. 943.0582, F.S., are not eligible for expunction under this section.

<sup>12</sup> Section 943.045(16), F.S., defines "expunction of a criminal history record" to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record if an order to expunge is vacated by a court of competent jurisdiction. The definitions provided for in s. 943.045, F.S., apply to ss. 943.045 through 943.08, F.S.

<sup>13</sup> Section 943.045(6), F.S., defines "criminal history record" to mean any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(5), F.S., defines "criminal history information" to mean information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. Criminal history information does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>14</sup> The application is required to be on the prescribed FDLE form and "signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying." s. 943.0582(3)(a), F.S.

<sup>15</sup> Section 943.0582(2), F.S., defines "nonviolent misdemeanor" as including simple assault or battery when diversion expunction is approved in writing by the state attorney in the county in which arrest occurred. Under current law, a juvenile who enters and successfully completes a diversion program for any felony offense or a violent misdemeanor is not eligible for expunction.

- Participated in a diversion program that expressly authorizes or permits such expunction;
- Participated in a diversion program based on an arrest for a nonviolent misdemeanor that is not considered an act of domestic violence as that term is defined in s. 741.28, F.S.;<sup>16</sup> and
- Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.<sup>17</sup>

Section 943.0582(2)(a), F.S., defines “expunction” to have the same meaning and effect as in s. 943.0585, F.S.,<sup>18</sup> except in two circumstances:

- FDLE may only make available an expunged juvenile diversion criminal record to:
  - Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
  - When the record is sought as part of a criminal investigation; or
  - When the subject of the record is a candidate for employment with a criminal justice agency; and
- The records that are maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction must be sealed<sup>19</sup> instead of destroyed.

#### Effect of the Bill

The bill amends s. 943.0582(3)(b), F.S., to eliminate the requirement that an application for expunction relating to a juvenile’s completion of a diversion program must be submitted within a 12-month time frame.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 2. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 3. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 4. Provides an effective date of July 1, 2016.

<sup>16</sup> An act of “domestic violence” is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

<sup>17</sup> s. 943.0582, F.S. It should be noted that a juvenile who obtains an expunction under this section is not prevented from petitioning for expunction or sealing of a later criminal history record under s. 943.0585, F.S. and 943.059, F.S., provided he or she is otherwise eligible.

<sup>18</sup> Section 943.0585(4), F.S., provides that when a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records. Records that have been expunged are confidential and exempt from the public records law and it is a first degree misdemeanor to divulge their existence. Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution. 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.

<sup>19</sup> As the term is used in s. 943.059, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

CS/HB 147 removes the requirement that an application for diversion program expunction be submitted within 12 months of the date of program completion. If this results in more people submitting the \$75 fee to FDLE to obtain a diversion program expunction of their juvenile arrest record, the bill would result in a positive indeterminate fiscal impact on FDLE.

#### 2. Expenditures:

Implementation of CS/HB 147 would reduce the period for automatic juvenile criminal record expungement from 24 years of age to 21 years of age. According to the FDLE, existing staff resources will be utilized to implement the required changes.<sup>20</sup> The estimated time to develop and implement these changes is 1.5 months at an approximate cost of \$20,000, according to FDLE estimates.<sup>21</sup> The cost of implementation is insignificant and can be absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

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<sup>20</sup> Florida Department of Law Enforcement, *HB0147 Bill Analysis* (2016), (On file with the House Justice Appropriations Subcommittee)

<sup>21</sup> *Id*

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                    A bill to be entitled  
 2            An act relating to expunging and sealing criminal  
 3            history records of minors; amending s. 943.0515, F.S.;  
 4            providing for the nonjudicial expunction of the  
 5            criminal history of an offense after a specified  
 6            period for a minor who is not a serious or habitual  
 7            juvenile offender; providing an exception for  
 8            specified minors to apply for expunction before  
 9            attaining 21 years of age; amending s. 943.0582, F.S.;  
 10           eliminating a deadline for submission of an  
 11           application by a minor for a prearrest or postarrest  
 12           diversion expunction; amending s. 790.23, F.S.;  
 13           conforming provisions to changes made by the act;  
 14           providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18            Section 1. Paragraph (b) of subsection (1) of section  
 19            943.0515, Florida Statutes, is amended to read:

20            943.0515 Retention of criminal history records of minors.—

21            (1)

22            (b)1. If the minor is not classified as a serious or  
 23            habitual juvenile offender or committed to a juvenile  
 24            correctional facility or juvenile prison under chapter 985, the  
 25            program shall retain the minor's criminal history record for 2 5  
 26            years after the date the minor reaches 19 years of age, at which

27 time the record shall be expunged unless it meets the criteria  
 28 of paragraph (2)(a) or paragraph (2)(b).

29 2. A minor described in subparagraph 1. may apply to the  
 30 department to have his or her criminal history record expunged  
 31 before the minor reaches 21 years of age. To be eligible for  
 32 expunction under this subparagraph, the minor must be 18 years  
 33 of age or older but less than 21 years of age and have not been  
 34 charged by the state attorney with or found to have committed a  
 35 criminal offense within the 5-year period before the application  
 36 date. The only offenses eligible for expunction under this  
 37 subparagraph are those that the minor committed before reaching  
 38 18 years of age. Expunction of a criminal history record under  
 39 this subparagraph requires the approval of the state attorney  
 40 for each circuit in which an offense specified in the criminal  
 41 history record occurred.

42 Section 2. Subsections (3) and (4) of section 943.0582,  
 43 Florida Statutes, are amended to read:

44 943.0582 Prearrest, postarrest, or teen court diversion  
 45 program expunction.—

46 (3) The department shall expunge the nonjudicial arrest  
 47 record of a minor who has successfully completed a prearrest or  
 48 postarrest diversion program if that minor:

49 (a) Submits an application for prearrest or postarrest  
 50 diversion expunction, on a form prescribed by the department,  
 51 signed by the minor's parent or legal guardian, or by the minor  
 52 if he or she has reached the age of majority at the time of

53 applying.

54 ~~(b) Submits the application for prearrest or postarrest~~  
 55 ~~diversion expunction no later than 12 months after completion of~~  
 56 ~~the diversion program.~~

57 (b)(e) Submits to the department, with the application, an  
 58 official written statement from the state attorney for the  
 59 county in which the arrest occurred certifying that he or she  
 60 has successfully completed that county's prearrest or postarrest  
 61 diversion program, that his or her participation in the program  
 62 was based on an arrest for a nonviolent misdemeanor, and that he  
 63 or she has not otherwise been charged by the state attorney with  
 64 or found to have committed any criminal offense or comparable  
 65 ordinance violation.

66 (c)(d) Participated in a prearrest or postarrest diversion  
 67 program that expressly authorizes or permits such expunction to  
 68 occur.

69 (d)(e) Participated in a prearrest or postarrest diversion  
 70 program based on an arrest for a nonviolent misdemeanor that  
 71 would not qualify as an act of domestic violence as that term is  
 72 defined in s. 741.28.

73 (e)(f) Has never, prior to filing the application for  
 74 expunction, been charged by the state attorney with or been  
 75 found to have committed any criminal offense or comparable  
 76 ordinance violation.

77 (4) The department may ~~is authorized to~~ charge a \$75  
 78 processing fee for each request received for prearrest or

79 | postarrest diversion program expunction, for placement in the  
 80 | Department of Law Enforcement Operating Trust Fund, unless such  
 81 | fee is waived by the executive director.

82 |       Section 3. Subsection (2) of section 790.23, Florida  
 83 | Statutes, is amended to read:

84 |       790.23 Felons and delinquents; possession of firearms,  
 85 | ammunition, or electric weapons or devices unlawful.—

86 |       (2) This section does ~~shall~~ not apply to a person:

87 |       (a) Convicted of a felony whose civil rights and firearm  
 88 | authority have been restored.

89 |       (b) Whose criminal history record has been expunged  
 90 | pursuant to s. 943.0515(1)(b).

91 |       Section 4. This act shall take effect July 1, 2016.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Latvala offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove line 41 and insert:

7 history record occurred. A minor seeking to expunge a criminal  
 8 history record under this subparagraph shall apply to the  
 9 department for expunction in the manner prescribed by rule. An  
 10 application for expunction under this subparagraph shall include  
 11 a:

12 a. Processing fee of \$75 to the department for placement  
 13 in the Department of Law Enforcement Operating Trust Fund,  
 14 unless such fee is waived by the executive director.

15 b. Full set of fingerprints of the applicant taken by a  
 16 law enforcement agency for purposes of identity verification.

Amendment No. 1

17 c. Sworn, written statement from the minor seeking relief  
18 that he or she is no longer under court supervision applicable  
19 to the disposition of the arrest or alleged criminal activity to  
20 which the application to expunge pertains and that he or she has  
21 not been charged with or found to have committed a criminal  
22 offense, in any jurisdiction of the state or within the United  
23 States, within the 5-year period before the application date.

24  
25 A person who knowingly provides false information on the sworn  
26 statement required by this sub-subparagraph commits a felony of  
27 the third degree, punishable as provided in s. 775.082, s.  
28 775.083, or s. 775.084.

29 3. A minor who applies, but who is not approved for early  
30 expunction in accordance with subparagraph 2., shall have his or  
31 her criminal history record expunged at age 21 if eligible under  
32 subparagraph 1.

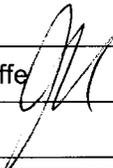
33  
34 -----  
35 **T I T L E A M E N D M E N T**

36 Remove line 9 and insert:  
37 attaining 21 years of age; establishing an application process  
38 and requiring specified documentation be submitted; requiring  
39 sworn statement from applicant; providing a criminal penalty for  
40 perjury on such sworn statement; amending s. 943.0582, F.S.;



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 163 Weapons and Firearms  
**SPONSOR(S):** Criminal Justice Subcommittee; Gaetz and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	8 Y, 4 N, As CS	White	White
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Currently, Florida law generally prohibits the open carrying of firearms and certain weapons. Under s. 790.053, F.S., it is a second degree misdemeanor for a person to openly carry on or about his or her person any firearm or electric weapon or device. The bill amends this provision to authorize concealed carry licensees to openly carry firearms or weapons.

Section 790.02, F.S., currently authorizes an officer to make a warrantless arrest for the carrying of a concealed weapon in violation of s. 790.01, F.S., when the officer has reasonable grounds or probable cause to believe such offense has been committed. The bill amends this provision to clarify that it only applies to the unlicensed carrying of a concealed weapon and to delete authorization for such warrantless arrests based on reasonable grounds.

The bill creates s. 776.00111, F.S., and amends s. 790.25(4), F.S., to require the judiciary to employ strict scrutiny in reviewing any statute that implicates the right to bear arms or defend one's self. The bill also specifies that the right to bear arms or defend one's self is a fundamental and individual right that exists in any place that a person has the right to be, subject only to exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest.

The bill also creates s. 790.0015, F.S., to specify that it is a violation subject to liability for any person or entity to infringe on certain rights to bear arms or defend one's self. With respect to this liability, the bill states, "Notwithstanding any other law, no immunity shall apply to persons or entities infringing on such rights in violation of this section."

Finally, the bill amends s. 790.25(1), F.S., to specify that the Legislature finds that the possession and carrying of weapons and firearms by law-abiding individuals for lawful purposes, including self-defense, enhances public safety.

The Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely decrease prison beds. The bill may have an indeterminate fiscal impact on state and local governments and the private sector. (See Fiscal Impact Statement)

The bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Right to Bear Arms for Self-Defense, State Regulation, and Judicial Review

The Second Amendment of the U.S. Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."<sup>1</sup> With respect to this provision, the U.S. Supreme Court has stated that the amendment guarantees "the individual right to possess and carry weapons in case of confrontation."<sup>2</sup> According to the Fourth District Court of Appeals, the amendment encompasses the right to carry a gun both inside and outside the home for self-defense.<sup>3</sup>

Article I, section 8(a) of the Florida Constitution states, "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Regarding this provision, the Florida Supreme Court has stated, "Although [sic] the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen. We have specifically held that the Legislature can regulate the use and the manner of bearing certain specific weapons."<sup>4</sup>

Regulations regarding the bearing of weapons and firearms in Florida have been adopted by the Legislature in ch. 790, F.S., entitled "Weapons and Firearms" and regulations regarding self-defense have been adopted by the Legislature in ch. 776, F.S., entitled "Justifiable Use of Force."

With respect to judicial review of the constitutionality of Florida's regulations relating to the right to bear arms for self-defense, the Fourth District Court of Appeals in *Norman v. State*, recently held that intermediate, rather than strict, scrutiny is the applicable standard for regulations that do not "destroy the core right of self-defense enshrined in the Second Amendment."<sup>5</sup> Intermediate scrutiny "require[s] (1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective," whereas "strict scrutiny 'requires the Government to prove that [a challenged law] 'furthers a compelling interest and is narrowly tailored to achieve that interest.'"<sup>6</sup>

Under the intermediate scrutiny standard, the Court upheld the constitutionality of s. 790.053, F.S., which prohibits the open carrying of certain firearms and weapons, agreeing with the state's assertion that it had a paramount interest in public safety which was furthered by the ban on open carry and finding that a reasonable fit existed between the challenged law and the state's asserted objectives.<sup>7</sup>

In at least three other states, strict scrutiny requirements for the review of restrictions on the right to bear arms have recently been adopted as constitutional amendments:

- Article 1, section 11 of the Louisiana Constitution, now provides after the amendment approved November 6, 2012, "The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny."<sup>8</sup>

<sup>1</sup> U.S. Const. Amend. II.

<sup>2</sup> *Dist. of Columbia v. Heller (Heller I)*, 554 U.S. 570, 592 (2008).

<sup>3</sup> *Norman v. State*, 159 So.3d 205, 212 (Fla. 4<sup>th</sup> DCA 2015) pet. for rev. pending, no. SC15-650.

<sup>4</sup> *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

<sup>5</sup> *Norman*, 159 So.3d at 220-222.

<sup>6</sup> *Id.* at 220.

<sup>7</sup> *Id.* at 222-224.

<sup>8</sup> Since the adoption of this amendment, several lower courts have held unconstitutional certain Louisiana statutes that prohibit minors and felons from possessing firearms under the strict scrutiny standard. Each of these rulings has been reversed by a superior Louisiana

- Article 1, section 23 of the Missouri Constitution (emphasis added), now provides after the amendment approved August 5, 2014, “That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. *Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement.* Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.”<sup>9</sup>
- Article I, section 26(a) of the Alabama Constitution, now provides after the amendment approved November 4, 2014, “Every citizen has a fundamental right to bear arms in defense of himself or herself and the state. Any restriction on this right shall be subject to strict scrutiny.”<sup>10</sup>

### Legislative Preemption of Firearm Regulation

In s. 790.33(1), F.S., the Florida Legislature has preempted “the whole field of regulation of firearms<sup>11</sup> and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof.” Local government authority to regulate firearms and ammunition is prohibited, “except as otherwise expressly provided by the State Constitution or general law....”<sup>12, 13</sup>

Section 790.33(3), F.S., specifies that any person, county, agency, municipality, district, or other entity that violates the preemption by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field is subject to the following liability:

- The court is required to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. Acting in good faith or upon advice of counsel is not a defense.
- If the court determines that a violation was knowing and willful, the court must assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. Additionally, a knowing and willful violation by a person acting in an official capacity for any entity that commits a violation is cause for termination of employment or contract or removal from office by the Governor.
- A county, agency, municipality, district, or other entity is liable to a prevailing plaintiff for actual damages, up to \$100,000, and attorney fees and costs, including a contingency fee multiplier, if the plaintiff is found to have been adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the preemption.

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appellate court. *See, e.g., State v. Draughter*, 130 So.3d 855 (La. 2013); *State of Louisiana in the Interest of J.M.*, 144 So.3d 853 (La. 2014); *State v. Eberhardt*, 145 So.3d 377 (La. 2014); and *State v. Dixon*, 146 So.3d 662 (La.App. 4<sup>th</sup> Cir. 2014). In other cases, both the lower courts and appellate courts rejected arguments that certain gun regulation statutes are unconstitutional under strict scrutiny review. *See, e.g., State v. Zeno*, 155 So.3d 4 (La.App. 1<sup>st</sup> Cir. 2014); and *State in Interest of D.V.*, 144 So.3d 1097 (La.App. 4<sup>th</sup> Cir. 2014).

<sup>9</sup> The Missouri Supreme Court recently held that the right to bear arms is a fundamental right and that any law restricting such right is subject to strict scrutiny regardless of whether the pre-amended or amended version of Missouri’s Constitution applies. *Missouri v. Merritt*, No. SC 94096, 2015 WL 4929765, at \*3-4 (August 18, 2015).

<sup>10</sup> There does not appear to be any case law in Alabama discussing the 2014 constitutional amendment.

<sup>11</sup> Section 790.001(6), F.S., defines the term “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.”

<sup>12</sup> s. 790.33(1), F.S.

<sup>13</sup> The Legislature has expressly authorized local government regulation of the location and construction of a sport shooting range. s. 823.16(7), F.S.

Unless required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully committed a violation.<sup>14</sup>

Section 790.33(4), F.S., states that the section does not prohibit:

- Certain zoning ordinances that encompass firearms businesses along with other businesses.
- A law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties.
- Any entity subject to the section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties, except as provided in s. 790.251, F.S., relating to the protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.
- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

#### Florida's Regulations Relating to the Open and Concealed Carry of Weapons and Firearms

Generally, in Florida, an individual is authorized to own, possess, and lawfully use a firearm and other weapon<sup>15</sup> without a license if the individual is not statutorily prohibited from possessing a firearm or weapon<sup>16</sup> and such possession and use occurs<sup>17</sup> in a lawful manner and location.<sup>17</sup>

*Open Carry:* Florida law prohibits the open carrying of firearms and certain weapons unless an exemption applies. Specifically, s. 790.053, F.S., makes it a second degree misdemeanor<sup>18</sup> for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms<sup>19</sup> if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless "the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."<sup>20, 21</sup>

*Concealed Carry:* In order to lawfully carry a concealed weapon or concealed firearm,<sup>22</sup> a person, unless exempted, must obtain a license from the Department of Agriculture and Consumer Services.<sup>23</sup> If a person is unlicensed, s. 790.01, F.S., specifies that it is a:

- A first degree misdemeanor<sup>24</sup> for the person to carry a concealed weapon<sup>25</sup> or electric weapon or device<sup>26</sup> on or about his or her person.<sup>27</sup>

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<sup>14</sup> s. 790.33(3), F.S.

<sup>15</sup> Section 790.001(13), F.S., defines "weapon" as "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

<sup>16</sup> There are numerous prohibitions in statute specifying individuals who may not lawfully possess a gun. *See, e.g.*, ss. 790.22 and 790.23, F.S., (prohibiting the possession of firearms and certain weapons by minors, convicted felons, and delinquents, except under specified circumstances).

<sup>17</sup> *See* s. 790.25, F.S.

<sup>18</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>19</sup> The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

<sup>20</sup> s. 790.053(1), F.S.

<sup>21</sup> Section 790.053(2), F.S., also specifies that a person may openly carry for purposes of lawful self-defense a self-defense chemical spray and a nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

<sup>22</sup> The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

<sup>23</sup> s. 790.06, F.S.

<sup>24</sup> 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.

- A third degree felony<sup>28</sup> to carry a concealed firearm.<sup>29, 30</sup>

These prohibitions do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during certain mandatory evacuation orders.
- A person who carries for purposes of lawful self-defense in a concealed manner:
  - A self-defense chemical spray.<sup>31</sup>
  - A nonlethal stun gun or dart-firing stun gun<sup>32</sup> or other nonlethal electric weapon or device that is designed solely for defensive purposes.<sup>33</sup>

The carrying of a concealed weapon in violation of s. 790.01, F.S., is statutorily designated as a breach of peace for which an officer may make a warrantless arrest if the officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.<sup>34</sup>

Licenses are limited with regard to where they may carry a concealed weapon or concealed firearm. Section 790.06(12)(a), F.S., specifies that the license does not authorize a person to openly carry a handgun or carry a concealed weapon or firearm into:

- Any place of nuisance as defined in s. 823.05.
- Any police, sheriff, or highway patrol station.
- Any detention facility, prison, or jail.
- Any courthouse.
- Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom.
- Any polling place.
- Any meeting of the governing body of a county, public school district, municipality, or special district.
- Any meeting of the Legislature or a committee thereof.
- Any school, college, or professional athletic event not related to firearms.
- Any elementary or secondary school facility or administration building.
- Any career center.
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose.
- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile.

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<sup>25</sup> Section 790.001(3)(a), F.S., defines the term "concealed weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person." The weapons listed in this definition require licensure to carry them in a concealed manner.

<sup>26</sup> Section 790.001(14), F.S., defines the term "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."

<sup>27</sup> S. 790.01(1), F.S.

<sup>28</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>29</sup> Section 790.001(2), F.S., defines the term, "concealed firearm" as "any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person."

<sup>30</sup> s. 790.01(2), F.S.

<sup>31</sup> Section 790.001(3)(b), F.S., defines the term "self-defense chemical spray" as "a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical."

<sup>32</sup> Section 790.001(15), F.S., defines the term "dart-firing stun gun" as "any device having one or more darts that are capable of delivering an electrical current."

<sup>33</sup> s. 790.01(3), F.S.

<sup>34</sup> s. 790.02, F.S.

- The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft.
- Any place where the carrying of firearms is prohibited by federal law.

A person who knowingly and willfully carries a concealed weapon or firearm into any of the above-listed locations commits a second degree misdemeanor.<sup>35</sup>

*Exemptions from Open Carry Prohibitions and Concealed Carry Licensing Requirements:* Section 790.25(3), F.S., provides that certain persons under specified circumstances are exempt from the requirements for a license to carry concealed weapons or concealed firearms in s. 790.06, F.S., and the limitations on open carrying in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.
- Citizens of this state subject to duty under certain sections of law if on duty or when training or preparing themselves for military duty.
- Persons carrying out or training for emergency management duties under chapter 252, F.S.
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.
- Officers or employees of the state or United States duly authorized to carry a concealed weapon.
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits.
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.
- A person firing weapons in a safe and secure indoor range for testing and target practice.
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- A person possessing arms at his or her home or place of business.

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<sup>35</sup> s. 790.06(12)(d), F.S.  
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- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.<sup>36</sup>

### Other State Open Carry Laws

*States that Generally Permit Open Carry of Firearms.*<sup>37</sup> Forty-three states permit the open carrying of both long guns and handguns.<sup>38</sup> Of these states, 26 do not require a license and do not restrict whether the firearm is loaded or unloaded.<sup>39, 40</sup> Connecticut,<sup>41</sup> Georgia,<sup>42</sup> Maryland,<sup>43</sup> New Hampshire,<sup>44</sup> Rhode Island,<sup>45</sup> and Tennessee<sup>46</sup> require a license to openly carry a handgun, but not a long gun, such as a rifle or shotgun. Conversely, Massachusetts,<sup>47</sup> Minnesota,<sup>48</sup> New Jersey,<sup>49</sup> Texas,<sup>50</sup> and Utah<sup>51</sup> require a license to openly carry any firearm. The remaining six states permit open carry, but impose special limitations on the circumstances in which a person can openly carry a firearm.<sup>52</sup> For example, North Dakota limits the hours during which an unlicensed person may openly carry an unloaded handgun.<sup>53</sup>

Three states permit openly carrying specific types of firearms. South Carolina<sup>54</sup> permits openly carrying a long gun without a license, while prohibiting openly carrying a handgun in any circumstance. Hawaii<sup>55</sup> permits openly carrying a handgun with a license and prohibits openly carrying a long gun in any circumstance. Oklahoma<sup>56</sup> permits openly carrying a handgun with a license and prohibits openly carrying a long gun in most circumstances.

Some states regulate the manner of openly carrying a handgun. For example in Texas, licensees must carry the handgun in a shoulder or belt holster.<sup>57</sup> In Oklahoma, licensees may carry a “unconcealed handgun,” which means, “a loaded or unloaded pistol carried upon the person in a belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case designed for carrying firearms that is wholly or partially visible.”<sup>58</sup>

<sup>36</sup> s. 790.25(3), F.S.

<sup>37</sup> “Firearms” refers to both handguns and long guns.

<sup>38</sup> These states are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas (effective January 1, 2016), Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>39</sup> These states include Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>40</sup> The status of Arkansas law is based on Attorney General Opinion No. 2015-064 issued August 28, 2015.

<sup>41</sup> CONN. GEN. STAT. §29-35.

<sup>42</sup> GA. CODE ANN. §§16-11-126 and 129(a).

<sup>43</sup> MD. CODE ANN. CRIM. LAW §4-203.

<sup>44</sup> A license is required if carrying a firearm in a vehicle or if carrying a loaded handgun, regardless of whether the firearm is concealed or openly carried. N.H. REV. STAT. ANN. §159:4.

<sup>45</sup> R.I. GEN. LAWS ANN. §11-47-18.

<sup>46</sup> A license is only required if openly carrying a *loaded* handgun. TENN. CODE ANN. §§39-17-1308 and 1351.

<sup>47</sup> MASS. GEN. LAWS ch. 140 §131.

<sup>48</sup> MINN. STAT. ANN. §§624.714 and 7181.

<sup>49</sup> A license is required to carry a handgun in an open or concealed manner. N.J. STAT. ANN. §2C:39-5(b). A license is also required to openly carry an *unloaded* long gun. Loaded long guns may not be openly carried. N.J. STAT. ANN. §2C:39-5(c) and §2C:58-3.

<sup>50</sup> TEX. PENAL CODE ANN. §46.02 and 46.15(b).

<sup>51</sup> A person may not carry a loaded firearm openly or concealed in most places. UTAH CODE ANN. §76-10-505. However, this restriction does not apply to holders of a concealed weapon license issued under UTAH CODE ANN. §53-5-704. UTAH CODE ANN. §76-10-523(2)(a).

<sup>52</sup> Indiana, Iowa, Missouri, Ohio, Oregon, and Pennsylvania

<sup>53</sup> N.D. CENT CODE ANN. §62.1-03-01.

<sup>54</sup> S.C. CODE ANN. §16-23-20.

<sup>55</sup> HAW. REV. STAT. §§134-9 and 134-25.

<sup>56</sup> OKLA. STAT. ANN. tit. 21, §§1290.5 and 1289.6.

<sup>57</sup> TEX. PENAL CODE ANN. §46.02(a-1) (effective January 1, 2016).

<sup>58</sup> OKLA. STAT. ANN. tit. 21, §§1290.2 and 1290.8.

*States that Prohibit Open Carry:* The District of Columbia,<sup>59</sup> Florida,<sup>60</sup> Illinois,<sup>61</sup> and New York,<sup>62</sup> prohibit the open carry of both handguns and long guns. California does not statutorily prohibit the open carrying of all firearms; however, the restrictions on openly carrying a firearm in the state result in very limited ability to openly carry.<sup>63</sup>

#### Effect of Bill

The bill creates s. 776.00111, F.S., to require the judiciary to employ strict scrutiny in reviewing any statute that implicates the right to bear arms or defend one's self pursuant to ch. 776, F.S. The new section of law further states that the right to bear arms or defend one's self is a fundamental and individual right that exists in any place that a person has the right to be, subject only to *exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest*. The italicized language is similar to verbiage used by Florida courts when describing the requirements of strict scrutiny review.<sup>64</sup>

The bill creates s. 790.0015, F.S., which specifies, "Unless probable cause exists to believe that a crime has been committed by an individual, any person or entity infringing upon the rights conferred on that individual by this chapter, chapter 776, s. 8, Art. I of the State Constitution, or the Second Amendment to the United States Constitution is liable pursuant to s. 790.33(3)(c), (d), (e), and (f)." As discussed *supra*, s. 790.33(3)(c) through (f), F.S., provide for:

- A civil fine of up to \$5,000 for a local government official or administrative agency head under whose jurisdiction a knowing and willful violation of legislative preemption has occurred. Additionally, such violation by a person acting in an official capacity for any entity that commits a violation is cause for termination of employment or contract or removal from office by the Governor.
- A county, agency, municipality, district, or other entity to be liable to a prevailing plaintiff for actual damages, up to \$100,000, and attorney fees and costs, including a contingency fee multiplier, if the plaintiff is found to have been adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the preemption.

With respect to the aforementioned liability, the bill states, "Notwithstanding any other law, no immunity shall apply to persons or entities infringing on such rights in violation of this section."

The bill amends s. 790.02, F.S., which authorizes an officer to make a warrantless arrest for the carrying of a concealed weapon in violation of s. 790.01, F.S., when the officer has reasonable grounds or probable cause to believe such offense has been committed, to:

- Clarify that its provisions apply to the *unlicensed* carrying of a concealed weapon.
- Delete authorization for such warrantless arrests based on reasonable grounds. Thus, warrantless arrests may only be based upon probable cause.

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<sup>59</sup> D.C. CODE §22-4504.01.

<sup>60</sup> s. 790.053, F.S.

<sup>61</sup> ILL. COMP. STAT. 5/24-1(a)(4).

<sup>62</sup> N.Y. PENAL §265.01.

<sup>63</sup> It is illegal to carry any loaded firearm in an open or concealed manner, CAL. PENAL §25850, or to openly carry an unloaded handgun, CAL. PENAL §26350, in any public place in an incorporated city or on a public street in any prohibited area of an unincorporated territory.

<sup>64</sup> In *Norman v. State*, the Fourth District described strict scrutiny as requiring, "the Government to prove that [a challenged law] 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Norman*, 159 So.3d at 220. The Florida Supreme Court has stated, "To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. \*\*\* Strict scrutiny requires the State to demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means." *State v. T.M.*, 907 So.2d 1101 (Fla. 2004)(citations omitted).

The bill amends s. 790.053(1), F.S., which currently prohibits any person, unless exempted, to openly carry firearms and electronic weapons or devices, to authorize concealed carry licensees to openly carry firearms or weapons.

Finally, the bill amends s. 790.25, F.S., to:

- Specify that the Legislature finds that the possession and carrying of weapons and firearms by law-abiding individuals for lawful purposes, including self-defense, enhances public safety.
- Require the judiciary to construe this act in conjunction with the right to bear arms or defend one's self as provided in chapter 776.
- Specify that the right to bear arms or defend one's self is a fundamental and individual right that exists in any place that a person has the right to be, subject only to exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 776.00111, F.S., relating to construction of statutes that implicate the right to bear arms or defend one's self.

Section 2. Creates s. 790.0015, F.S., relating to the infringement of rights and penalties for such infringement.

Section 3. Amends s. 790.02, F.S., relating to warrantless arrests for concealed weapon carry violations.

Section 4. Amends s. 790.053, F.S., relating to the open carrying of weapons.

Section 5. Amends s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons.

Section 6. Provides that 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 Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely decrease prison beds. In Fiscal Year 2014-2015, there were 1,320 offenders sentenced under s. 790.01, F.S. for carrying a concealed weapon or firearm and 174 of these offenders were sentenced to prison. It is unknown how many of these offenders were convicted due to a warrantless arrest (the bill now requires probable cause for an arrest) that would not have not been sentenced to prison.

If litigation is generated by the bill's requirement that the judiciary employ strict scrutiny in reviewing statutes that implicate the right to bear arms or defend one's self, there will be an indeterminate fiscal impact for litigation costs.

The fines and damages and attorney fee and cost awards under s. 790.0015, F.S., could result in a fiscal impact for violations by state government entities.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

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

### 2. Expenditures:

The bill limits application of the second degree misdemeanor penalty for the open carrying of firearms and electronic devices to persons who are not licensed to concealed carry. As such, the bill may decrease the need for jail beds.

The fines and damages and attorney fee and cost awards under s. 790.0015, F.S., could result in a fiscal impact for violations by local government entities.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fines and damages and attorney fee and cost awards under s. 790.0015, F.S., could result in a private sector fiscal impact if applicable to private persons or entities.

## 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:

*Strict Scrutiny:* The bill creates s. 776.00111, F.S., and amends s. 790.25(4), F.S., to require the judiciary to employ strict scrutiny in reviewing any statute that implicates the right to bear arms or defend one's self. In directing the judiciary to employ a certain standard of review, issues might be raised under the Separation of Powers Doctrine set forth in Article II, Section 3 of the Florida Constitution,<sup>65</sup> which prohibits any branch of state government from encroaching upon the powers of another,<sup>66</sup> because the judicial branch is responsible for interpreting and determining the constitutionality of statutes.<sup>67</sup>

There is precedent in Florida Statute for a similar legislative prescription of strict scrutiny review. Section 761.03, F.S. (emphasis added), of the Florida Religious Freedom Restoration Act (FRFRA) of 1998, states:

(1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, *except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:*

*(a) Is in furtherance of a compelling governmental interest; and*

<sup>65</sup> Holly Martin, *Legislating Judicial Review: An Infringement on Separation of Powers*, 17 N.Y.U.J. Legis. & Pub. Pol'y 1097, 1115 (2014).

<sup>66</sup> *Chiles v. Children A,B,C,D,E, and F*, 589 So. 260, 263-264 (Fla. 1991).

<sup>67</sup> *Chiles v. Phelps v. Webster*, 714 So.2d 453, 456 (Fla. 1998).

- (b) *Is the least restrictive means of furthering that compelling governmental interest.*
- (2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

There is no case law considering the constitutionality of this statute.

*Immunity Waiver:* In s. 790.0015, F.S., the bill appears to impose liability on a person or entity who, without probable cause to believe a crime has been committed, infringes on an individual's rights to bear arms or defend one's self. The bill further states that, "Notwithstanding any other law, no immunity shall apply to persons or entities infringing on such rights in violation of this section." The term "law" is not defined. According to Black's Law Dictionary (10<sup>th</sup> ed. 2014), the term "law" means "[t]he aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them ...."

Law emanating from federal and state statutes, court decisions, and the common law affords a variety of immunities from liability. For example, s. 768.28(9), F.S., provides that an officer, employee, or agent of the state or its subdivisions may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment, unless certain exceptions apply. Prosecutorial and judicial immunity derived from the common law is afforded to prosecutors and judges because "a strict guarantee of immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi-judicial offices."<sup>68</sup> Qualified or absolute immunity in actions under 42 U.S.C. s. 1983, for a deprivation of civil rights is afforded to legislative, executive, and judicial branch government officials under certain circumstances.<sup>69</sup>

Due to bill's general waiver of immunity, it is difficult to determine all of the precise immunities that may be waived. The Florida Supreme Court has held that it is a violation of the Separation of Powers Doctrine set forth in Article II, Section 3 of the Florida Constitution for the Legislature to waive prosecutorial or judicial immunity.<sup>70</sup> Additionally, if the bill were construed to waive a federal law immunity, legal challenges might be brought based on an argument that such waiver violates the Supremacy Clause set forth in Article VI, Clause 2 of U.S. Constitution.<sup>71</sup>

## B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, section 8(a) of the Florida Constitution (emphasis added), in relevant part, states, "The right of the people to keep and *bear arms in defense of themselves* and of the lawful authority of the state shall not be infringed ...." Throughout the bill, references are made to "the right to *bear arms or defend one's self*."

<sup>68</sup> *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097, 1098-1099 (Fla. 1993).

<sup>69</sup> *See, e.g., Junior v. Reed*, 693 So.2d 586 (1st DCA 1997); *Greason v. Kemp*, 891 F.2d 829, 833 (11th Cir.1990); and *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

<sup>70</sup> The Florida Supreme Court has stated, "While the legislature has authority to waive immunity for those organs of government within its purview, the legislature cannot take actions that would undermine the independence of Florida's judicial and quasi-judicial offices. This would violate the doctrine of separation of powers. Art. II, § 3, Fla. Const." *Office of State Attorney, Fourth Judicial Circuit of Florida*, 628 So.2d at 1099.

<sup>71</sup> The Florida Supreme Court has stated, "Under the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, state laws may be preempted by federal laws in three situations: (1) where express federal statutory language so provides; (2) where federal law has so thoroughly occupied a legislative field as to create a reasonable inference that there is no room for the state to supplement it; or (3) where a state law conflicts with a federal law." *Rosado v. DaimlerChrysler Financial Services Trust*, 112 So.3d 1165 (Fla. 2013).

In s. 790.0015, F.S., the bill requires, through a cross-reference to s. 790.33(3)(c)-(f), F.S., that persons or entities who infringe on specified rights to bear arms or defend one's self be held liable for civil fines, subject to termination from government employment, and liable for actual damages and attorney fees and costs. Section 790.33, F.S., however, addresses violations by government entities and officials of the Legislature's preemption of the field of firearms and ammunitions. Due to the differences in the types of violations created by the bill in s. 790.0015, F.S., and in existing law in s. 790.33, F.S., there may not be sufficient guidance in the bill for implementation of the cited penalty scheme in s. 790.033(3), F.S., for violations of s. 790.0015, F.S., particularly in cases involving violations by private persons or entities.

In s. 790.25(4), F.S., the bill refers to "this act." For clarity, it may be desirable to amend the bill to specifically cite the chapter, section, or portion of a section to which it is referring.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On October 6, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created a new s. 790.0015, F.S., in Section 2. of the bill so that the bill's prohibition against persons or entities infringing on specified rights to bear arms or defend one's self would be set forth in a stand-alone section of law. The amendment also revised terminology in order to use the phrase "right to bear arms or defend one's self" consistently throughout the bill.

This bill analysis is drafted to the committee substitute adopted by the Criminal Justice Subcommittee.



27 776.00111 Construction.—The judiciary shall employ strict  
 28 scrutiny in reviewing any statute that implicates the right to  
 29 bear arms or defend one's self pursuant to this chapter. The  
 30 right to bear arms or defend one's self is a fundamental and  
 31 individual right that exists in any place that a person has the  
 32 right to be, subject only to exceptionally and narrowly tailored  
 33 restrictions that employ the least possible restriction on the  
 34 right in order to achieve a compelling government interest.

35 Section 2. Section 790.0015, Florida Statutes, is created  
 36 to read:

37 790.0015 Infringement of rights; penalties.—Unless  
 38 probable cause exists to believe that a crime has been committed  
 39 by an individual, any person or entity infringing upon the  
 40 rights conferred on that individual by this chapter, chapter  
 41 776, s. 8, Art. I of the State Constitution, or the Second  
 42 Amendment to the United States Constitution is liable pursuant  
 43 to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding any other  
 44 law, no immunity shall apply to persons or entities infringing  
 45 on such rights in violation of this section.

46 Section 3. Section 790.02, Florida Statutes, is amended to  
 47 read:

48 790.02 Officer to arrest without warrant and upon probable  
 49 cause.—The unlicensed carrying of a concealed weapon is declared  
 50 a breach of peace, and any officer authorized to make arrests  
 51 under the laws of this state may make arrests without warrant of  
 52 persons violating ~~the provisions of~~ s. 790.01 when said officer

53 | has ~~reasonable grounds or~~ probable cause to believe that the  
 54 | offense of unlicensed carrying of a concealed weapon is being  
 55 | committed.

56 | Section 4. Section 790.053, Florida Statutes, is amended  
 57 | to read:

58 | 790.053 Open carrying of weapons.—

59 | (1) A person licensed to carry a concealed firearm or  
 60 | weapon pursuant to this chapter may openly carry such firearm or  
 61 | weapon; however, except as otherwise provided by law and in  
 62 | subsection (2), it is unlawful for any other person to openly  
 63 | carry on or about his or her person a ~~any~~ firearm or electric  
 64 | weapon or device. ~~It is not a violation of this section for a~~  
 65 | ~~person licensed to carry a concealed firearm as provided in s.~~  
 66 | ~~790.06(1), and who is lawfully carrying a firearm in a concealed~~  
 67 | ~~manner, to briefly and openly display the firearm to the~~  
 68 | ~~ordinary sight of another person, unless the firearm is~~  
 69 | ~~intentionally displayed in an angry or threatening manner, not~~  
 70 | ~~in necessary self-defense.~~

71 | (2) A person may openly carry, for purposes of lawful  
 72 | self-defense:

73 | (a) A self-defense chemical spray.

74 | (b) A nonlethal stun gun or dart-firing stun gun or other  
 75 | nonlethal electric weapon or device that is designed solely for  
 76 | defensive purposes.

77 | (3) Any person violating this section commits a  
 78 | misdemeanor of the second degree, punishable as provided in s.

79 | 775.082 or s. 775.083.

80 | Section 5. Subsections (1) and (4) of section 790.25,  
81 | Florida Statutes, are amended to read:

82 | 790.25 Lawful ownership, possession, and use of firearms  
83 | and other weapons.—

84 | (1) DECLARATION OF POLICY.—The Legislature finds as a  
85 | matter of public policy and fact that the possession and  
86 | carrying of weapons and firearms by law-abiding individuals for  
87 | lawful purposes, including self-defense, enhances public safety  
88 | and that it is necessary to promote firearms safety and to curb  
89 | and prevent the use of firearms and other weapons in crime and  
90 | by incompetent persons without prohibiting the lawful use in  
91 | defense of life, home, and property, and the use by United  
92 | States or state military organizations, and as otherwise now  
93 | authorized by law, including the right to use and own firearms  
94 | for target practice and marksmanship on target practice ranges  
95 | or other lawful places, and lawful hunting and other lawful  
96 | purposes.

97 | (4) CONSTRUCTION.—The judiciary shall construe this act in  
98 | conjunction with the right to bear arms or defend one's self as  
99 | provided in chapter 776. The right to bear arms or defend one's  
100 | self is a fundamental and individual right that exists in any  
101 | place that a person has the right to be, subject only to  
102 | exceptionally and narrowly tailored restrictions that employ the  
103 | least possible restriction on the right in order to achieve a  
104 | compelling government interest. This act shall be liberally

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105 construed to carry out the declaration of policy herein and in  
106 favor of the constitutional right to keep and bear arms for  
107 lawful purposes. This act is supplemental and additional to  
108 existing rights to bear arms now guaranteed by law and decisions  
109 of the courts of Florida, and nothing herein shall impair or  
110 diminish any of such rights. This act shall supersede any law,  
111 ordinance, or regulation in conflict herewith.

112 Section 6. This act shall take effect upon becoming a law.

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative Gaetz offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 37-45 and insert:

7 790.0015 Infringement of rights; penalties; construction.-

8 (1) Unless probable cause exists to believe that a crime  
9 has been committed by an individual, any public entity subject  
10 to s. 790.33, or person acting on behalf of such public entity,  
11 infringing on the rights conferred on that individual by this  
12 chapter, chapter 776, s. 8, Art. I of the State Constitution, or  
13 the Second Amendment to the United States Constitution is liable  
14 pursuant to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding  
15 any other provision of law, no immunity applies to such public  
16 entities, or persons acting on behalf of such public entities,  
17 infringing on such rights in violation of this section.

Amendment No.1

18       (2) (a) This chapter, chapter 776, s. 8, Art. I of the  
19 State Constitution, and the Second Amendment to the United  
20 States Constitution do not modify or diminish the rights of a  
21 private owner or lessee of real property, or its agent, or a  
22 private employer, to prohibit the possession of a firearm on the  
23 property or to post or display written notice or otherwise  
24 directly communicate to any person on the property that the  
25 possession of a firearm is prohibited on the property.

26       (b) This chapter, chapter 776, s. 8, Art. I of the State  
27 Constitution, and the Second Amendment to the United States  
28 Constitution do not expand any existing duty, or create any  
29 additional duty, on the part of a private owner or lessee of  
30 real property, or its agent, or a private employer.

31  
32 -----  
33                   **T I T L E   A M E N D M E N T**

34       Remove lines 6-10 and insert:

35       providing that certain persons and public entities who  
36       infringe on specified rights of an individual may be  
37       subject to liability under specified provisions and have no  
38       immunity; providing an exception; providing construction;  
39       amending s. 790.02, F.S.; specifying

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Gaetz offered the following:  
 4

**Amendment (with title amendment)**

6 Remove line 59 and insert:

7 (1) Subject to ss. 790.06 and 790.10, a person licensed to  
 8 carry a concealed firearm or  
 9

10 -----  
 11 **T I T L E A M E N D M E N T**

12 Remove line 16 and insert:

13 may also openly carry such firearm or weapon as long  
 14 as such person is in compliance with specified  
 15 provisions; amending

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative Gaetz offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 45 and 46, insert:

7 Section 3. Section 790.0016, Florida Statutes, is created  
8 to read:

9 790.0016 No employee shall have a cause of action against  
10 an employer related to disciplinary action of the employer,  
11 including termination of employment, resulting from the failure  
12 of the employee to comply with an order of the employer to  
13 carry, or not to carry, or the manner of carrying, a weapon on  
14 his or her person during work hours.

15  
16  
17 -----

Amendment No. 3

18

**T I T L E   A M E N D M E N T**

19

Remove line 10 and insert:

20

have no immunity; creating s. 790.0016, F.S.; providing that an

21

employer may direct an employee regarding weapons; providing

22

that an employee has no cause of action against an employer

23

regarding such direction; amending s. 790.02, F.S.; specifying