



Criminal Justice Subcommittee

**Tuesday, October 6, 2015
9:00 AM – 11:00 AM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, October 06, 2015 09:00 am
End Date and Time: Tuesday, October 06, 2015 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 147 Expunging and Sealing Criminal History Records of Minors by Latvala, Sprowls
HB 163 Weapons and Firearms by Gaetz
HB 4009 Slungshot by Combee

NOTICE FINALIZED on 09/29/2015 16:00 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 147 Expunging and Sealing Criminal History Records of Minors
SPONSOR(S): 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		Cox	White <i>tw</i>
2) Justice Appropriations Subcommittee			
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, the Criminal Justice Information Program (CJIP) must retain their records until the age of 24, at which time the records are automatically expunged unless other specified circumstances apply.

For juveniles whose records are currently expunged at age 24, the bill amends s. 943.0515, F.S., to instead specify that the automatic expunction must occur five years after the date of the offense. The bill results in the possibility of expunging individual offenses on different dates rather than the entire juvenile record being expunged on the same date.

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.

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)¹ must retain his or her record until the age of 26, at which time the record is automatically expunged.² 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.³

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.^{4,5}

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.⁶

Under current law, FDLE expunges an eligible juvenile's entire criminal history record at the same time, at either age 24 or 26. Offenses which occurred at an earlier date would not be removed from a juvenile's record prior to the juvenile attaining the age of 24 or 26, whichever is applicable.

Effect of the Bill

The bill amends s. 943.0515, F.S., to require the automatic expunction of a juvenile's criminal history record concerning an individual offense five years after the date of the offense. As in current law, the criminal history record will not be expunged and will merge with the person's adult criminal history record if one of the three exceptions mentioned above applies.

The bill results in the possibility of expunging individual offenses on different dates rather than the entire juvenile record being expunged on the same date.⁷ Additionally, the record (or portion of a record) could be expunged while the juvenile is still a minor depending on the age the juvenile committed the offense.

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

¹ Section 943.05, F.S., creates Criminal Justice Information Program (CJIP) within 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.

² s. 943.0515(1)(a), F.S.

³ s. 943.0515(1)(b), F.S.

⁴ s. 943.0515(2) and (3), F.S.

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

⁶ *Id.*

⁷ Florida Department of Law Enforcement, Agency Analysis of 2016 HB 147, p. 2-3 (September 17, 2015).

justice system.⁸ 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.⁹

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.¹⁰

A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program.¹¹ Each diversion program must have an agreement among the establishing agencies to provide for such expunction.¹² 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 expunging¹³ and sealing criminal history records.¹⁴ 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;¹⁵
- 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;¹⁶ 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;
- 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.;¹⁷ and

⁸ "Probation and Community Intervention", DJJ 2011 Comprehensive Accountability Report, <http://www.djj.state.fl.us/research/reports/car> (last visited on October 1, 2015).

⁹ *Id.*

¹⁰ 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.

¹¹ s. 985.125(3), F.S.

¹² *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.

¹³ 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 in the event 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

- 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.¹⁸

Section 943.0582(2)(a), F.S., defines “expunction” to have the same meaning and effect as in s. 943.0585, F.S.,¹⁹ 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 sealed²⁰ 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. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes the requirement that an application for diversion program expunction be submitted within 12 months of the date of completion. If this results in more people submitting the \$75 fee to FDLE to obtain a diversion program expunction, the bill may result in a positive fiscal impact on FDLE.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ As the term is used in s. 943.059, F.S.

2. Expenditures:

The bill requires FDLE to retain juvenile criminal history records for a shorter period of time. However, it also requires FDLE to expunge records in an offense-by-offense manner that will require changes to the database that maintains such records. FDLE states that the bill will require 30 months to implement and will result in an estimated fiscal impact of \$700,000.²¹

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:

The bill amends the age at which a juvenile's criminal history record is expunged, but does not make necessary conforming changes to s. 790.23, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

²¹ *Id.* at 4-5.

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; amending s. 943.0582, F.S.;
8 eliminating a deadline for submission of an
9 application by a minor for a prearrest or postarrest
10 diversion expunction; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (b) of subsection (1) of section
15 943.0515, Florida Statutes, is amended to read:

16 943.0515 Retention of criminal history records of minors.-

17 (1)

18 (b) If the minor is not classified as a serious or
19 habitual juvenile offender or committed to a juvenile
20 correctional facility or juvenile prison under chapter 985, the
21 program shall retain the minor's criminal history record
22 concerning an offense for 5 years after the date of the offense
23 ~~the minor reaches 19 years of age,~~ at which time the record
24 shall be expunged unless it meets the criteria of paragraph
25 (2) (a) or paragraph (2) (b).

26 Section 2. Subsections (3) and (4) of section 943.0582,

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

27 Florida Statutes, are amended to read:

28 943.0582 Prearrest, postarrest, or teen court diversion
 29 program expunction.—

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

33 (a) Submits an application for prearrest or postarrest
 34 diversion expunction, on a form prescribed by the department,
 35 signed by the minor's parent or legal guardian, or by the minor
 36 if he or she has reached the age of majority at the time of
 37 applying.

38 ~~(b) Submits the application for prearrest or postarrest~~
 39 ~~diversion expunction no later than 12 months after completion of~~
 40 ~~the diversion program.~~

41 (b)(e) Submits to the department, with the application, an
 42 official written statement from the state attorney for the
 43 county in which the arrest occurred certifying that he or she
 44 has successfully completed that county's prearrest or postarrest
 45 diversion program, that his or her participation in the program
 46 was based on an arrest for a nonviolent misdemeanor, and that he
 47 or she has not otherwise been charged by the state attorney with
 48 or found to have committed any criminal offense or comparable
 49 ordinance violation.

50 (c)(d) Participated in a prearrest or postarrest diversion
 51 program that expressly authorizes or permits such expunction to
 52 occur.

53 | (d)~~(e)~~ Participated in a prearrest or postarrest diversion
54 | program based on an arrest for a nonviolent misdemeanor that
55 | would not qualify as an act of domestic violence as that term is
56 | defined in s. 741.28.

57 | (e)~~(f)~~ Has never, prior to filing the application for
58 | expunction, been charged by the state attorney with or been
59 | found to have committed any criminal offense or comparable
60 | ordinance violation.

61 | (4) The department may ~~is authorized to~~ charge a \$75
62 | processing fee for each request received for prearrest or
63 | postarrest diversion program expunction, for placement in the
64 | Department of Law Enforcement Operating Trust Fund, unless such
65 | fee is waived by the executive director.

66 | Section 3. 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	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Latvala offered the following:

Amendment (with title amendment)

6 Remove lines 18-25 and insert:

7 (b)1. If the minor is not classified as a serious or
8 habitual juvenile offender or committed to a juvenile
9 correctional facility or juvenile prison under chapter 985, the
10 program shall retain the minor's criminal history record for 2 5
11 years after the date the minor reaches 19 years of age, at which
12 time the record shall be expunged unless it meets the criteria
13 of paragraph (2) (a) or paragraph (2) (b).

14 2. A minor described in subparagraph (b)1. may apply to
15 the department to have his or her criminal history record
16 expunged prior to the minor becoming 21 years of age. To be
17 eligible for expunction under this subparagraph, the minor must



Amendment No. 1

18 be 18 years of age or older and less than 21 years of age and
 19 have not been charged by the state attorney with or found to
 20 have committed any criminal offense within the 5-year period
 21 before the application date. The only offenses eligible to be
 22 expunged under this subparagraph are those that the minor
 23 committed prior to becoming 18 years of age. A criminal history
 24 record expunged under this subparagraph requires the approval of
 25 the state attorney for each circuit in which an offense
 26 specified in the criminal history record occurred.

27 Section 2. Subsection (2) of section 790.23, Florida
 28 Statutes, is amended to read:

29 790.23 Felons and delinquents; possession of firearms,
 30 ammunition, or electric weapons or devices unlawful.-

31 (2) This section shall not apply to a person:

32 (a) Convicted of a felony whose civil rights and firearm
 33 authority have been restored.

34 (b) Whose criminal history record has been expunged
 35 pursuant to s. 943.0515(1)(b).

37 -----

38 **T I T L E A M E N D M E N T**

39 Remove line 7 and insert:

40 juvenile offender; providing an exception for specified minors
 41 to apply for expunction prior to attaining 21 years of age;
 42 amending s. 790.23, F.S.; conforming provisions to changes made
 43 by the act; amending s. 943.0582, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 163 Weapons and Firearms
SPONSOR(S): Gaetz and others
TIED BILLS: IDEN./SIM. BILLS: SB 300

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, White TW, White TW. Row 2: 2) Justice Appropriations Subcommittee. Row 3: 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.

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 and 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.

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 also adds a new subsection (4) to s. 790.053, 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.

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 bill may have an indeterminate fiscal impact on state and local governments and the private sector. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," infra.

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.”¹ 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.”² 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.³

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.”⁴

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.”⁵ 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.’”⁶

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.⁷

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.”⁸

¹ U.S. Const. Amend. II.

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

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

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

⁵ *Norman*, 159 So.3d at 220-222.

⁶ *Id.* at 220.

⁷ *Id.* at 222-224.

⁸ 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.”⁹
- 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.”¹⁰

Legislative Preemption of Firearm Regulation

In s. 790.33(1), F.S., the Florida Legislature has preempted “the whole field of regulation of firearms¹¹ 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...”^{12, 13}

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.

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. 4th 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. 1st Cir. 2014); and *State in Interest of D.V.*, 144 So.3d 1097 (La.App. 4th Cir. 2014).

⁹ 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).

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

¹¹ 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.”

¹² s. 790.33(1), F.S.

¹³ 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.¹⁴

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 weapon¹⁵ without a license if the individual is not statutorily prohibited from possessing a firearm or weapon¹⁶ and such possession and use occurs in a lawful manner and location.¹⁷

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 misdemeanor¹⁸ 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 firearms¹⁹ 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."^{20, 21}

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

- A first degree misdemeanor²⁴ for the person to carry a concealed weapon²⁵ or electric weapon or device²⁶ on or about his or her person.²⁷

¹⁴ s. 790.33(3), F.S.

¹⁵ 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."

¹⁶ 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).

¹⁷ *See* s. 790.25, F.S.

¹⁸ 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.

¹⁹ 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.

²⁰ s. 790.053(1), F.S.

²¹ 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.

²² 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.

²³ s. 790.06, F.S.

²⁴ 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 felony²⁸ to carry a concealed firearm.^{29, 30}

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.³¹
 - A nonlethal stun gun or dart-firing stun gun³² or other nonlethal electric weapon or device that is designed solely for defensive purposes.³³

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.³⁴

Licensees 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.

²⁵ 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.

²⁶ 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."

²⁷ S. 790.01(1), F.S.

²⁸ 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.

²⁹ 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."

³⁰ s. 790.01(2), F.S.

³¹ 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."

³² 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."

³³ s. 790.01(3), F.S.

³⁴ 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.³⁵

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.

³⁵ s. 790.06(12)(d), F.S.

- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.³⁶

Other State Open Carry Laws

*States that Generally Permit Open Carry of Firearms.*³⁷ Forty-two states permit the open carrying of both long guns and handguns.³⁸ Of these states, 25 do not require a license and do not restrict whether the firearm is loaded or unloaded.³⁹ Connecticut,⁴⁰ Georgia,⁴¹ Maryland,⁴² New Hampshire,⁴³ Rhode Island,⁴⁴ and Tennessee⁴⁵ require a license to openly carry a handgun, but not a long gun, such as a rifle or shotgun. Conversely, Massachusetts,⁴⁶ Minnesota,⁴⁷ New Jersey,⁴⁸ Texas,⁴⁹ and Utah⁵⁰ 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.⁵¹ For example, North Dakota limits the hours during which an unlicensed person may openly carry an unloaded handgun.⁵²

Four states permit openly carrying specific types of firearms. Arkansas⁵³ and South Carolina⁵⁴ permit openly carrying a long gun without a license, while prohibiting openly carrying a handgun in any circumstance. Hawaii⁵⁵ permits openly carrying a handgun with a license and prohibits openly carrying a long gun in any circumstance. Oklahoma⁵⁶ 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.⁵⁷ 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.”⁵⁸

³⁶ s. 790.25(3), F.S.

³⁷ “Firearms” refers to both handguns and long guns.

³⁸ These states are Alabama, Alaska, Arizona, 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.

³⁹ These states include Alabama, Alaska, Arizona, 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.

⁴⁰ CONN. GEN. STAT. §29-35.

⁴¹ GA. CODE ANN. §§16-11-126 and 129(a).

⁴² MD. CODE ANN. CRIM. LAW §4-203.

⁴³ 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.

⁴⁴ R.I. GEN. LAWS ANN. §11-47-18.

⁴⁵ A license is only required if openly carrying a *loaded* handgun. TENN. CODE ANN. §§39-17-1308 and 1351.

⁴⁶ MASS. GEN. LAWS ch. 140 §131.

⁴⁷ MINN. STAT. ANN. §§624.714 and 7181.

⁴⁸ 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.

⁴⁹ TEX. PENAL CODE ANN. §46.02 and 46.15(b).

⁵⁰ 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).

⁵¹ Indiana, Iowa, Missouri, Ohio, Oregon, and Pennsylvania

⁵² N.D. CENT CODE ANN. §62.1-03-01.

⁵³ ARK. CODE ANN. §5-73-120.

⁵⁴ S.C. CODE ANN. §16-23-20.

⁵⁵ HAW. REV. STAT. §§134-9 and 134-25.

⁵⁶ OKLA. STAT. ANN. tit. 21, §§1290.5 and 1289.6.

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

⁵⁸ OKLA. STAT. ANN. tit. 21, §§1290.2 and 1290.8.

States that Prohibit Open Carry: The District of Columbia,⁵⁹ Florida,⁶⁰ Illinois,⁶¹ and New York,⁶² 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.⁶³

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 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.⁶⁴

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.

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.

The bill also adds a new subsection (4) to s. 790.053, F.S., which specifies that, "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,

⁵⁹ D.C. CODE §22-4504.01.

⁶⁰ s. 790.053, F.S.

⁶¹ ILL. COMP. STAT. 5/24-1(a)(4).

⁶² N.Y. PENAL §265.01.

⁶³ 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.

⁶⁴ 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).

measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the preemption.

With respect to the liability imposed by the bill, the bill states, "Notwithstanding any other law, no immunity shall apply to persons infringing on such rights in violation of this subsection."

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

Section 3. Amends s. 790.053, F.S., relating to the open carrying of weapons.

Section 4. Amends s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons.

Section 5. 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:

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. 790.053(4), 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 result in a negative jail bed impact (i.e., may decrease the need for jail beds).

The fines and damages and attorney fee and cost awards under s. 790.053(4), 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. 790.053(4), 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,⁶⁵ which prohibits any branch of state government from encroaching upon the powers of another,⁶⁶ because the judicial branch is responsible for interpreting and determining the constitutionality of statutes.⁶⁷

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

(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.

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

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

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

Immunity Waiver: In s. 790.053(4), 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 for self-defense. The bill further states that, "Notwithstanding any other law, no immunity shall apply to persons infringing on such rights in violation of this subsection." The term "law" is not defined. According to Black's Law Dictionary (10th 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."⁶⁸ 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.⁶⁹

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.⁷⁰ 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.⁷¹

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Throughout the bill, references are made to "the right to bear arms or defend one's self," the "right to bear arms" without reference to self-defense, and the "right to bear arms and defend one's self." For consistency in interpretation, it may be desirable to amend the bill to use the same phrase throughout.

In s. 790.053(4), F.S., the bill prohibits persons or entities from infringing on specified rights to bear arms and defend one's self. This subsection is added to the section entitled "Open carrying of weapons." For organizational purposes, it may be desirable to create a new section of law in ch. 790, F.S., to establish this prohibition as it relates to ch. 790, F.S., generally.

In s. 790.053(4), 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 and defend one's self be held liable for

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

⁶⁹ *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).

⁷⁰ 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.

⁷¹ 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).

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. 790.053(4), 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. 790.053(4), 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

N/A

1 A bill to be entitled
 2 An act relating to weapons and firearms; creating s.
 3 776.00111, F.S.; providing for construction of
 4 statutes that implicate the right to bear arms or
 5 engage in self-defense; amending s. 790.02, F.S.;
 6 specifying that a law enforcement officer may arrest a
 7 person for the unlicensed carrying of a concealed
 8 weapon only upon probable cause that such a violation
 9 is being committed; amending s. 790.053, F.S.;
 10 providing that a person licensed to carry a concealed
 11 firearm or weapon may also openly carry such firearm
 12 or weapon; providing that a person or entity who
 13 infringes on specified rights of an individual may be
 14 subject to liability under specified provisions;
 15 providing an exception; providing that certain persons
 16 and entities have no immunity; amending s. 790.25,
 17 F.S.; revising legislative findings concerning the
 18 possession and carrying of weapons and firearms;
 19 revising provisions concerning the construction of
 20 provisions; providing an effective date.

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

23
 24 Section 1. Section 776.00111, Florida Statutes, is created
 25 to read:

26 776.00111 Construction.—The judiciary shall employ strict

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

34 Section 2. Section 790.02, Florida Statutes, is amended to
 35 read:

36 790.02 Officer to arrest without warrant and upon probable
 37 cause.—The unlicensed carrying of a concealed weapon is declared
 38 a breach of peace, and any officer authorized to make arrests
 39 under the laws of this state may make arrests without warrant of
 40 persons violating ~~the provisions of~~ s. 790.01 when said officer
 41 has ~~reasonable grounds or~~ probable cause to believe that the
 42 offense of unlicensed carrying of a concealed weapon is being
 43 committed.

44 Section 3. Section 790.053, Florida Statutes, is amended
 45 to read:

46 790.053 Open carrying of weapons.—

47 (1) A person licensed to carry a concealed firearm or
 48 weapon pursuant to this chapter may openly carry such firearm or
 49 weapon; however, except as otherwise provided by law and in
 50 subsection (2), it is unlawful for any other person to openly
 51 carry on or about his or her person a ~~any~~ firearm or electric
 52 weapon or device. ~~It is not a violation of this section for a~~

53 ~~person licensed to carry a concealed firearm as provided in s.~~
 54 ~~790.06(1), and who is lawfully carrying a firearm in a concealed~~
 55 ~~manner, to briefly and openly display the firearm to the~~
 56 ~~ordinary sight of another person, unless the firearm is~~
 57 ~~intentionally displayed in an angry or threatening manner, not~~
 58 ~~in necessary self-defense.~~

59 (2) A person may openly carry, for purposes of lawful
 60 self-defense:

61 (a) A self-defense chemical spray.

62 (b) A nonlethal stun gun or dart-firing stun gun or other
 63 nonlethal electric weapon or device that is designed solely for
 64 defensive purposes.

65 (3) Any person violating this section commits a
 66 misdemeanor of the second degree, punishable as provided in s.
 67 775.082 or s. 775.083.

68 (4) Unless probable cause exists to believe that a crime
 69 has been committed by an individual, any person or entity
 70 infringing upon the rights conferred on that individual by this
 71 chapter, chapter 776, s. 8, Art. I of the State Constitution, or
 72 the Second Amendment to the United States Constitution is liable
 73 pursuant to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding
 74 any other law, no immunity shall apply to persons infringing on
 75 such rights in violation of this subsection.

76 Section 4. Subsections (1) and (4) of section 790.25,
 77 Florida Statutes, are amended to read:

78 790.25 Lawful ownership, possession, and use of firearms

79 | and other weapons.-

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

93 | (4) CONSTRUCTION.-The judiciary shall construe this act in
 94 | conjunction with the right to bear arms or defend one's self as
 95 | provided in chapter 776. The right to bear arms and defend one's
 96 | self is a fundamental and individual right that exists in any
 97 | place that a person has the right to be, subject only to
 98 | exceptionally and narrowly tailored restrictions that employ the
 99 | least possible restriction on the right in order to achieve a
 100 | compelling government interest. This act shall be liberally
 101 | construed to carry out the declaration of policy herein and in
 102 | favor of the constitutional right to keep and bear arms for
 103 | lawful purposes. This act is supplemental and additional to
 104 | existing rights to bear arms now guaranteed by law and decisions

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105 | of the courts of Florida, and nothing herein shall impair or
106 | diminish any of such rights. This act shall supersede any law,
107 | ordinance, or regulation in conflict herewith.

108 | Section 5. 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: Criminal Justice
2 Subcommittee
3 Representative Gaetz offered the following:

Amendment (with title amendment)

Remove lines 29-95 and insert:

7 right to bear arms or defend one's self is a fundamental and
8 individual right that exists in any place that a person has the
9 right to be, subject only to exceptionally and narrowly tailored
10 restrictions that employ the least possible restriction on the
11 right in order to achieve a compelling government interest.

12 Section 2. Section 790.0015, Florida Statutes, is created
13 to read:

14 790.0015 Infringement of rights; penalties.--Unless
15 probable cause exists to believe that a crime has been committed
16 by an individual, any person or entity infringing upon the
17 rights conferred on that individual by this chapter, chapter



Amendment No. 1

18 776, s. 8, Art. I of the State Constitution, or the Second
19 Amendment to the United States Constitution is liable pursuant
20 to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding any other
21 law, no immunity shall apply to persons infringing on such
22 rights in violation of this subsection.

23 Section 3. Section 790.02, Florida Statutes, is amended to
24 read:

25 790.02 Officer to arrest without warrant and upon probable
26 cause.—The unlicensed carrying of a concealed weapon is declared
27 a breach of peace, and any officer authorized to make arrests
28 under the laws of this state may make arrests without warrant of
29 persons violating ~~the provisions of~~ s. 790.01 when said officer
30 has ~~reasonable grounds or~~ probable cause to believe that the
31 offense of unlicensed carrying of a concealed weapon is being
32 committed.

33 Section 4. Section 790.053, Florida Statutes, is amended
34 to read:

35 790.053 Open carrying of weapons.—

36 (1) A person licensed to carry a concealed firearm or
37 weapon pursuant to this chapter may openly carry such firearm or
38 weapon; however, except as otherwise provided by law and in
39 subsection (2), it is unlawful for any other person to openly
40 carry on or about his or her person a any firearm or electric
41 weapon or device. ~~It is not a violation of this section for a~~
42 ~~person licensed to carry a concealed firearm as provided in s.~~
43 ~~790.06(1), and who is lawfully carrying a firearm in a concealed~~



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44 ~~manner, to briefly and openly display the firearm to the~~
45 ~~ordinary sight of another person, unless the firearm is~~
46 ~~intentionally displayed in an angry or threatening manner, not~~
47 ~~in necessary self-defense.~~

48 (2) A person may openly carry, for purposes of lawful
49 self-defense:

50 (a) A self-defense chemical spray.

51 (b) A nonlethal stun gun or dart-firing stun gun or other
52 nonlethal electric weapon or device that is designed solely for
53 defensive purposes.

54 (3) Any person violating this section commits a
55 misdemeanor of the second degree, punishable as provided in s.
56 775.082 or s. 775.083.

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

59 790.25 Lawful ownership, possession, and use of firearms
60 and other weapons.-

61 (1) DECLARATION OF POLICY.-The Legislature finds as a
62 matter of public policy and fact that the possession and
63 carrying of weapons and firearms by law-abiding individuals for
64 lawful purposes, including self-defense, enhances public safety
65 and that it is necessary to promote firearms safety and to curb
66 and prevent the use of firearms and other weapons in crime and
67 by incompetent persons without prohibiting the lawful use in
68 defense of life, home, and property, and the use by United
69 States or state military organizations, and as otherwise now



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70 | authorized by law, including the right to use and own firearms
71 | for target practice and marksmanship on target practice ranges
72 | or other lawful places, and lawful hunting and other lawful
73 | purposes.

74 | (4) CONSTRUCTION.—The judiciary shall construe this act in
75 | conjunction with the right to bear arms or defend one's self as
76 | provided in chapter 776. The right to bear arms or defend one's
77 |

78 | -----

79 | **T I T L E A M E N D M E N T**

80 | Remove lines 5-16 and insert:

81 | defend one's self; creating s. 790.0015, F.S.; providing that a
82 | person or entity who infringes on specified rights of an
83 | individual may be subject to liability under specified
84 | provisions; providing an exception; providing that certain
85 | persons and entities have no immunity; amending s. 790.02, F.S.;
86 | specifying that a law enforcement officer may arrest a person
87 | for the unlicensed carrying of a concealed weapon only upon
88 | probable cause that such a violation is being committed;
89 | amending s. 790.053, F.S.; providing that a person licensed to
90 | carry a concealed firearm or weapon may also openly carry such
91 | firearm or weapon; amending s. 790.25,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4009 Slungshot
SPONSOR(S): Combee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		White <i>JW</i>	White <i>JW</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Florida law defines a “slungshot” as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. The term is currently included in the definition of “concealed weapon.” As such, a person who is licensed to carry a concealed weapon may carry a slungshot in a concealed manner. A person may also openly carry a slungshot, even without a concealed carry license.

Two provisions in ch. 790, F.S., currently criminalize certain acts with respect to a slungshot:

- Section 790.09, F.S., makes it a second degree misdemeanor for a person to manufacture, cause to be manufactured, sell, or expose for sale a slungshot or metallic knuckles.
- Section 790.18, F.S., makes it a second degree felony for a dealer in arms to sell or transfer a slungshot to a minor.

The bill amends s. 790.001, F.S., to remove “slungshot” from the definition of “concealed weapon.” As a result, a person will be able to carry a slungshot concealed without a permit. The bill also amends ss. 790.09 and 790.18, F.S., to remove references to “slungshot.” This will make it lawful for:

- A person to manufacture, cause to be manufactured, sell, or expose for sale a slungshot; and
- A dealer in arms to sell or transfer a slungshot to a minor.

Because the bill limits the application of misdemeanor and felony offenses, it could have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law defines a “slungshot,” shown below, as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.¹ The term is currently included in the definition of “concealed weapon.”² As such, a person who is licensed to carry a concealed weapon may carry a slungshot in a concealed manner.³ A person may also openly carry a slungshot without a concealed carry license.⁴



Two provisions in ch. 790, F.S., currently criminalize certain acts with respect to a slungshot:

- Section 790.09, F.S., makes it a second degree misdemeanor⁵ for a person to manufacture, cause to be manufactured, sell, or expose for sale a slungshot or metallic knuckles.
- Section 790.18, F.S., makes it a second degree felony⁶ for a dealer in arms to sell or transfer a slungshot to a minor.⁷

Effect of the Bill

The bill amends s. 790.001, F.S., to remove “slungshot” from the definition of “concealed weapon.” As a result, a person will be able to carry a slungshot concealed without a permit. The bill also amends ss. 790.09 and 790.18, F.S., to remove references to “slungshot.” This will make it lawful for:

- A person to manufacture, cause to be manufactured, sell, or expose for sale a slungshot; and
- A dealer in arms to sell or transfer a slungshot to a minor.⁸

B. SECTION DIRECTORY:

Section 1. Amends s. 790.09, F.S., relating to manufacturing or selling slungshot.

Section 2. Amends s. 790.001, F.S., relating to definitions.

¹ s. 790.001(12), F.S. Slungshots were originally used as a maritime tool on sailing ships to cast line from one location to another. <http://www.wordplays.com/definition/slungshot> (last visited on September 30, 2015).

² 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.”

³ Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon (e.g., a slungshot) on or about his or her person. However, the penalty does not apply to a person licensed to carry a concealed weapon pursuant to s. 790.06, F.S.

⁴ Section 790.053, F.S., prohibits a person from openly carrying a firearm or an electric weapon or device – not a slungshot or metallic knuckles.

⁵ 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.

⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁷ The statute also includes the sale or transfer of a firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. s. 790.18, F.S.

⁸ The statute also includes the sale or transfer of a firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. s. 790.18, F.S.

Section 3. Amends s. 790.18, F.S., relating to sale or transfer of arms to minors by dealers.

Section 4. Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, s. 790.18, F.S., makes it a second degree felony for a dealer in arms to sell or transfer a variety of items, including a slungshot, to a minor. Because the bill will allow a dealer in arms to sell or transfer a slungshot to a minor, it could have a negative prison bed impact on the Department of Corrections

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Section 790.09, F.S., makes it a second degree misdemeanor for a person to manufacture, sell, etc., a slungshot or metallic knuckles. Additionally, s. 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon (e.g., a slungshot) on or about his or her person. The bill makes it lawful for a person to manufacture, sell, etc., a slungshot, and allows a person to carry a slungshot concealed. These changes may have a negative jail bed impact.

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

N/A

1 A bill to be entitled
 2 An act relating to slungshot; amending s. 790.09,
 3 F.S.; deleting provisions prohibiting the manufacture
 4 or sale of any instrument or weapon usually known as
 5 slungshot; amending s. 790.001, F.S.; revising the
 6 definition of the term "concealed weapon" to delete
 7 the inclusion of a slungshot; amending s. 790.18,
 8 F.S.; deleting a provision prohibiting a dealer in
 9 arms from selling or transferring a slungshot to a
 10 minor; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 790.09, Florida Statutes, is amended to
15 read:

16 790.09 Manufacturing or selling metallic knuckles
 17 ~~slungshot~~.—Whoever manufactures or causes to be manufactured, or
 18 sells or exposes for sale any instrument or weapon of the kind
 19 usually known as ~~slungshot~~, or metallic knuckles commits, ~~shall~~
 20 ~~be guilty of~~ a misdemeanor of the second degree, punishable as
 21 provided in s. 775.082 or s. 775.083.

22 Section 2. Paragraph (a) of subsection (3) of section
23 790.001, Florida Statutes, is amended to read:

24 790.001 Definitions.—As used in this chapter, except where
25 the context otherwise requires:

26 (3) (a) "Concealed weapon" means any dirk, metallic

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27 | knuckles, ~~slungshot~~, billie, tear gas gun, chemical weapon or
28 | device, or other deadly weapon carried on or about a person in
29 | such a manner as to conceal the weapon from the ordinary sight
30 | of another person.

31 | Section 3. Section 790.18, Florida Statutes, is amended to
32 | read:

33 | 790.18 Sale or transfer of arms to minors by dealers.—It
34 | is unlawful for any dealer in arms to sell or transfer to a
35 | minor any firearm, pistol, Springfield rifle or other repeating
36 | rifle, bowie knife or dirk knife, brass knuckles, ~~slungshot~~, or
37 | electric weapon or device. A person who violates this section
38 | commits a felony of the second degree, punishable as provided in
39 | s. 775.082, s. 775.083, or s. 775.084.

40 | Section 4. This act shall take effect upon becoming a law.