

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 16, 1998 Revised: 04/21/98 _____

Subject: Weapons and Firearms/Domestic Violence

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Miller</u>	<u>Miller</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1582 creates a first degree misdemeanor for any person who is subject to a final injunction for protection against domestic violence to possess a firearm or ammunition. The injunction must state on its face that it is a first degree misdemeanor for the respondent to an injunction to have a firearm or ammunition in his or her possession. A state or local law enforcement officer, who is the respondent to an injunction, may possess a firearm and ammunition for official duties, unless prohibited by the officer’s law enforcement agency.

Currently, the Department of State, Division of Licensing, may deny the application or revoke a concealed weapon or firearm license for a person who has been *found guilty* of a violent misdemeanor, unless three years have elapsed since the expiration of the sentence. Senate Bill 1582 expands the reasons for denial of the application or revocation of the license to include a person who received a withhold of adjudication, or suspended sentence for a misdemeanor crime of violence.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 790.233, 741.30, 741.31, 901.15, 790.06, and 790.065.

II. Present Situation:

Section 741.30 F.S., authorizes a person to file a sworn request for an injunction for protection against domestic violence if the person requesting the injunction either:

- ▶ Is the victim of domestic violence, or
- ▶ Has reasonable cause to believe that he or she may become the victim of any act of domestic violence.

Temporary Injunction

A court may grant a temporary injunction without a hearing and based solely on the sworn request for an injunction if it appears to the court that an immediate and present danger of domestic violence exists. The temporary injunction is valid for up to 15 days, and the court issuing the injunction may impose the following conditions:

- ▶ Restrain the person who the injunction was filed against from committing any acts of domestic violence;
- ▶ Award the temporary exclusive use and possession of the dwelling that the parties share; and
- ▶ Grant temporary custody of minor children.

Final Judgment on an Injunction

A full hearing must be set before the temporary injunction expires (15 days) and both parties have a right to present evidence regarding the final injunction which has an effective life of one year. A judge may order the following relief as conditions of the final injunction:

- ▶ Restrain the person who the injunction was filed against from committing any acts of domestic violence;
- ▶ Award the temporary exclusive use and possession of the dwelling that the parties share;
- ▶ Grant temporary custody of minor children;
- ▶ Establish temporary support for minor children;
- ▶ Order treatment, intervention, or counseling; and
- ▶ Order such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

At the full hearing, the person requesting the injunction need only demonstrate that there exists reasonable cause to believe that he or she is about to become a victim of domestic violence. *Rey v. Perez-Gurri*, 662 So.2d 1328 (3rd DCA 1995). A person who violates any of the requirements of an injunction commits a misdemeanor of the first degree. A person can, alternatively, be held in contempt for violating a court order. Proof of contempt requires a lower burden of proof than a criminal charge and, upon conviction, the defendant may be sentenced to jail.

Federal Law

The federal Gun Control Act of 1968, Public Law 90-618, was amended in 1994 to prohibit the receipt and possession of firearms by a person under certain restraining orders. 18 U.S.C. 922(g)(8). Violation of this law is punishable by up to 10 years in prison. The alleged offender who is subject to a court order must have been noticed of a hearing at which that person had an opportunity to participate, and the court order must:

-
- ▶ Restrain the person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*
 - ▶ Include a finding that such person represents a credible threat to the physical safety of such intimate partner or child; *or*
 - ▶ By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Federal law allows an exception for law enforcement officers. 18 U.S.C. 925(a)(1).

The federal law specifically states that it shall not be construed as the intent of Congress to occupy the field in which the firearm provisions operate. However, there may not be a direct conflict between the federal and state laws.

More recently, Congress enacted the Omnibus Consolidated Appropriations Act of 1997. One part of the Act amended the Gun Control Act of 1968 to make it unlawful for any person convicted of a “misdemeanor crime of domestic violence” to possess firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor. This new offense is punishable by up to 10 years in prison. For the purposes of federal law, a person is not “convicted” if that person pleads *nolo contendere* and receives a withhold of adjudication of guilt. This provision does apply to all law enforcement officers. This law became effective September 30, 1996.

As defined in this relatively new law, a “misdemeanor crime of domestic violence” means an offense that:

- ▶ Is a misdemeanor under federal or state law; and
- ▶ Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., assault and battery), if the offense is committed by one of the defined persons.

Most importantly, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law’s effective date, September 30, 1996. As of the effective date of this law, such a person may no longer possess a firearm or ammunition. However, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored *and* the person is not otherwise prohibited from possessing firearms or ammunition.

Firearms

The possession and use of firearms is controlled by ch. 790, F.S. It is a second-degree felony for a convicted felon to possess a firearm. It is a third-degree felony for anyone to possess a concealed firearm unless that person has obtained a license from the Department of State. A person who has received a withhold of adjudication of guilt for a felony offense shall have his or her license to carry a concealed firearm revoked; however, that person may be eligible for a license three years after probation or the sentence has been fulfilled. The department may deny a license or revoke the license of a person who has been found guilty of a violent misdemeanor within the preceding three years.

3-day Waiting Period

On November 6, 1990, the electorate passed by an overwhelming majority (84.3 percent) a constitutional amendment for a 3-day waiting period for handgun purchases. The constitutional amendment amends section 8 of article I of the Florida Constitution to require a mandatory 3 days, excluding weekends and legal holidays, between the purchase and delivery of a handgun sold by a retailer. The amendment required the Legislature to pass legislation making a violation of the waiting period a felony. The waiting period became effective on October 1, 1991.

Those persons exempt from the provisions of this law include concealed weapons permit holders and those trading a handgun. The 3-day waiting period is intended to apply only to those persons who are commonly understood to be retailers by engaging in the business of selling tangible personal property for private or public gain, benefit, or advantage, either directly or indirectly.

The law provides that it is a third-degree felony, punishable by imprisonment not to exceed 5 years and up to a \$5,000 fine to obtain delivery of a handgun by fraud, false pretense, or false representation, or for a retailer, employee, or agent to violate the 3-day waiting period.

Background Checks

Section 790.065, F.S., mandated a Firearm Purchase Program (FPP or “instant check” program) to be conducted by the Florida Department of Law Enforcement (FDLE). The program was created in 1989 and became operational on February 1, 1991. According to the Dealer’s Manual, the purpose of the program is “to screen out those individual buyers who are not eligible by federal or state law to purchase firearms in Florida based on their criminal history records.”

Before transferring a firearm to a non-licensed individual, all federally licensed firearm dealers, manufacturers, and importers in Florida must verify the buyer’s identity by photo identification and then call FDLE on a toll-free telephone number. State and national criminal history records are checked to ensure that the prospective buyer is eligible to possess firearms. The FDLE then informs the firearm dealer whether the transfer is approved, not approved, or conditionally approved.

Persons who currently will receive a nonapproval number prohibiting the sale of the firearm include, in pertinent part, a potential buyer who has had an injunction for protection against domestic violence entered against him or her or has had an injunction for protection against repeat violence entered against the potential buyer. s. 790.065(2)(c)1., F.S.

Concealed Weapon and Firearm Licenses

In 1987, the Legislature created the Concealed Weapons Licensing Program in s. 790.06, F.S. The program permits the issuance of licenses to citizens who wish to carry a concealed weapon or firearm for lawful self-defense. “Weapons or firearms” are 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. A concealed firearm is “any firearm which is carried on or about a person in such a manner as to conceal the firearm from ordinary sight of another person.” s. 790.06(2), F.S. Carrying a concealed weapon or firearm without a license, improperly exhibiting a weapon, or openly carrying a weapon is prohibited. ss. 790.01, 790.10, and 790.053, F.S.

Citizens who desire a legal means to carry a concealed weapon or firearm for lawful self-defense are eligible for a license when they meet the qualifications under subsections (2) and (3) of s. 790.06, F.S. An applicant must meet numerous qualifications including that the applicant:

- ▶ Is a resident of the United States or is a consular security official of a foreign government;
- ▶ Is at least 21 years of age;
- ▶ Does not or has not abused alcohol or other substances;
- ▶ Is not mentally incapacitated;
- ▶ Is not ineligible to possess a firearm because of a prior felony conviction;
- ▶ Has not been convicted of a violent misdemeanor or had adjudication withheld on a felony within 3 years; and
- ▶ Demonstrates competence with a firearm.

Section 790.06(2)(h), F.S., contains a list of 7 courses or other criteria, any one of which satisfies the firearms competency requirement. Included in this list are:

- ▶ Completion of any National Rifle Association (NRA) firearms safety or training course;
- ▶ Completion of any firearms safety or training course or class available to the general public offered by law enforcement, junior college, college, or other institution or organization or firearms training school using instructor certified by the NRA, Criminal Justice Standards and Training Commission, or the Department of State; and
- ▶ Completion of any firearms training or safety course or class conducted by a state-certified or NRA-certified firearms instructor.

s. 790.06(2)(h)2., 3., & 7., F.S.

Completion of the course can be demonstrated by a certificate of completion, an instructor’s affidavit, or any document showing completion.

Concealed weapons licenses are valid for 3 years and the license holder may apply for a renewal license. The Department of State administers the concealed weapons licensing program. On January 31, 1998, there were 214,620 individuals that held valid licenses to carry concealed weapons and firearms in Florida.

The department may impose nonrefundable license fees not exceeding \$85 and renewal fees not exceeding \$70. The applicant must also pay for processing the fingerprint background check. The department has 90 days to process the license application. s. 790.06(4), (5) & (6), F.S.

The department is responsible for ensuring that individuals meet the qualifications in order to carry a concealed weapon. The department obtains and reviews applicant background information on current addresses, history of criminal arrests and convictions, history of commitment for mental illness or substance abuse treatment, and documentation indicating completion of a firearms training or safety course. The department also obtains state and federal crime history information on applicants from FDLE. The department is authorized to suspend or revoke the licenses of individuals who no longer meet the requirements for carrying a concealed firearm or who become ineligible for other reasons.

III. Effect of Proposed Changes:

Senate Bill 1582 amends Florida laws to conform to federal law, which prohibits the possession of firearms and ammunition by persons under a domestic violence injunction, or a person who has a conviction, withhold of adjudication of guilt, or suspended sentence for a violent misdemeanor. The bill states “that it is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law.” As such, state and local law enforcement officers are exempt from the provisions of the law when the officer’s employing agency authorizes the possession for use in the performance of the officer’s official duties.

The bill creates a first degree misdemeanor for a person who is subject to a final injunction that is in force and effect, restraining that person from committing acts of domestic violence, from having in his or her care, custody, possession, or control a firearm or ammunition. A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. The final injunction for protection against domestic violence *must*, on its face, inform the respondent of this law.

This misdemeanor is restated in s. 741.31, F.S., which statutorily lists what constitutes a violation of an injunction for protection against domestic violence and provides for a first degree misdemeanor for such violation.

Further, the bill specifically states that a person who has been convicted of a misdemeanor crime of domestic violence may not purchase a firearm. Likewise, a person who has had adjudication of guilt withheld or imposition of sentence suspended may not purchase a firearm.

License to Carry Concealed Weapon or Firearm

Section 790.06, F.S., authorizes the Department of State to issue a license to carry a concealed firearm or weapon. The bill expands the reasons that an application for a license shall be denied or a license revoked to include:

- ▶ The applicant or licensee is a respondent of a temporary or final domestic violence injunction or a temporary or final injunction that prohibits acts of repeat violence; or
- ▶ The applicant or licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for a misdemeanor crime of domestic violence or a crime of violence constituting a misdemeanor. After 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged, the person may be eligible for a concealed weapon or firearm license.

The FDLE has a database on people who are subject to injunctions for domestic violence and repeat violence. That information can be transmitted via computer network to the Department of State so that the Department of State will know when to suspend a license for a person who is subject to an injunction for domestic violence. Information pertaining to convictions or withhold adjudications for domestic violence should also be available to FDLE for criminal history records checks performed prior to the sale and delivery of firearms.

Purchase of a Firearm

Senate Bill 1582 expands the criteria in s. 790.065, F.S., which prohibits the sale or transfer of a firearm to include a person who has had adjudication of guilt withheld or imposition of sentence suspended for a *misdemeanor crime of domestic violence*, unless 3 years have elapsed since the completion of the sentence. A person who is convicted of a *misdemeanor crime of domestic violence* may not currently purchase or transfer a firearm under federal law. Prior to the sale or delivery of a firearm and at the request of a licensed importer, licensed manufacturer, or licensed dealer, the FDLE must review the criminal history of the potential buyer to determine if the buyer has been convicted, had adjudication of guilt withheld, or a suspended sentence imposed for a misdemeanor crime of domestic violence, and 3 years have not elapsed since the fulfillment of all court imposed sanctions. Then, the FDLE must inform the seller (as the department does for all prior felony offenses) whether the buyer is prohibited from owning a firearm. The records check for violent misdemeanors would also reveal whether the buyer of a handgun has a valid license to carry a concealed firearm. If the buyer does not have a valid license, then the 3-day waiting period for the purchase of a firearm applies.

Arrest

Generally, an officer may not make a warrantless arrest for a misdemeanor unless the misdemeanor occurs in the officer's presence. s. 901.15, F.S. However, if the officer has probable cause to believe that the person has committed a criminal act which violates an injunction for protection against domestic violence, a warrantless arrest is authorized. Senate Bill 1582 expands

this authorization to include an arrest when a officer has probable cause to believe that a person, who is subject to a domestic violence injunction, possesses or did possess a firearm or ammunition.

Potential Inadvertent Proposed Change

It appears that SB 1582 inadvertently allows the sale or transfer of a firearm, *without the current time restrictions*, to a person who has had adjudication of guilt withheld or a suspended sentence on a felony. Licensed dealers may not currently sell or transfer a firearm to these felony offenders unless a FDLE records check reveals that 3 years have elapsed since completion of the sentence.

The questionable language is: “[h]as had adjudication of guilt withheld or imposition of sentence suspended on *any felony or misdemeanor crime of domestic violence....*” s. 790.065 (2)(a)3. (page 11, lines 11-13 of SB 1582)(emphasis added) The object of the phrase “crime of domestic violence” is modified by the adjectives “felony” and “misdemeanor,” which means that the 3-year-lapse from sentence completion applies to felony and misdemeanor crimes of domestic violence only and not to all other felony crimes.

Currently, if the potential buyer has had adjudication of guilt withheld or imposition of sentence suspended on “any felony,” 3 years must have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred. s.790.065(2)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE indicates that its Firearm Purchase Program will not experience a workload increase because the federal firearms Brady Law currently requires FDLE to review its records for the disqualifiers in this bill.

However, a workload increase will be seen by FDLE due to programming changes that will be necessary in order to provide the data to the Department of State’s Concealed Weapons Program to make licensing decisions. Programming will be required to provide the Department of State access to the domestic violence injunction area of the “hot files” database within FDLE. It is anticipated that the FDLE will have the following fiscal impact:

	FY 1998-99	FY 1999-2000	FY 2000-01
Non-recurring Effects or Startup Effects	None		
Expenditures	\$30,500		
Recurring or Annualized Continuation Effects			
Expenditures		\$7,200	\$7,200

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Allows correctional probation officers and probation officers, who are respondents to an injunction for protection against domestic violence, to possess a firearm and ammunition while on duty, if authorized by the employing agency. (WITH TITLE AMENDMENT)

#2 by Criminal Justice:

Allows correctional probation officers and probation officers, who are respondents to an injunction for protection against domestic violence, to possess a firearm and ammunition while on duty and if authorized by the employing agency. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
