

By Representative Lynn

1                                   A bill to be entitled  
2           An act relating to weapons and firearms;  
3           amending s. 741.30, F.S.; authorizing the  
4           court, as part of an injunction for protection  
5           against domestic violence, to order that the  
6           respondent relinquish possession of any  
7           firearms or ammunition; amending s. 741.31,  
8           F.S.; providing that it is a third-degree  
9           felony to fail to relinquish such possession  
10          following actual notice of the hearing on the  
11          petition and an opportunity to be heard;  
12          amending s. 784.046, F.S.; authorizing the  
13          court, as part of an injunction for protection  
14          against repeat violence, to order that the  
15          respondent relinquish possession of any  
16          firearms or ammunition; amending s. 784.047,  
17          F.S.; providing that it is a third-degree  
18          felony to fail to relinquish such possession  
19          following actual notice of the hearing on the  
20          petition and an opportunity to be heard;  
21          reenacting s. 901.15(6), F.S., relating to  
22          lawful arrest by officer without a warrant, to  
23          incorporate the amendments to ss. 741.31,  
24          784.047, F.S, in references thereto; amending  
25          s. 790.06, F.S.; providing that the Department  
26          of State may issue a license to carry a  
27          concealed weapon or firearm if the applicant  
28          has not had adjudication of guilt withheld or  
29          imposition of sentence suspended for committing  
30          a violent misdemeanor; authorizing the  
31          department to issue such a license if the

1 applicant has not been issued an injunction  
2 against committing acts of domestic violence or  
3 acts of repeat violence; requiring that the  
4 department suspend such a license, or the  
5 processing of a license application, if the  
6 licensee or applicant is issued an injunction  
7 against committing acts of domestic violence or  
8 acts of repeat violence; amending s. 790.065,  
9 F.S.; requiring that the Department of Law  
10 Enforcement determine if a potential buyer or  
11 transferee of a firearm has been convicted of a  
12 violent misdemeanor or had adjudication of  
13 guilt withheld or imposition of sentence  
14 suspended for committing a violent misdemeanor;  
15 providing an effective date.

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

18  
19 Section 1. Subsection (6) of section 741.30, Florida  
20 Statutes, 1996 Supplement, is amended to read:

21 741.30 Domestic violence; injunction; powers and  
22 duties of court and clerk; petition; notice and hearing;  
23 temporary injunction; issuance of injunction; statewide  
24 verification system; enforcement.--

25 (6)(a) Upon notice and hearing, the court may grant  
26 such relief as the court deems proper, including an  
27 injunction:

28 1. Restraining the respondent from committing any acts  
29 of domestic violence.  
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1           2. Awarding to the petitioner the exclusive use and  
2 possession of the dwelling that the parties share or excluding  
3 the respondent from the residence of the petitioner.

4           3. On the same basis as provided in chapter 61,  
5 awarding temporary custody of, or temporary visitation rights  
6 with regard to, a minor child or children of the parties.

7           4. On the same basis as provided in chapter 61,  
8 establishing temporary support for a minor child or children  
9 or the petitioner.

10           5. Ordering the respondent to relinquish possession of  
11 any firearms and ammunition.

12           ~~6.5.~~ Ordering the respondent to participate in  
13 treatment, intervention, or counseling services.

14           ~~7.6.~~ Ordering such other relief as the court deems  
15 necessary for the protection of a victim of domestic violence,  
16 including injunctions or directives to law enforcement  
17 agencies, as provided in this section.

18           (b) Any relief granted by the injunction shall be  
19 granted for a fixed period not to exceed 1 year, unless upon  
20 petition of the victim the court extends the injunction for  
21 successive fixed periods not to exceed 1 year. Broad  
22 discretion resides with the court to grant an extension after  
23 considering the circumstances. No specific allegations are  
24 required. Such relief may be granted in addition to other  
25 civil or criminal remedies.

26           (c) A temporary or final judgment on injunction for  
27 protection against domestic violence entered pursuant to this  
28 section must ~~shall~~, on its face, indicate that:

29           1. The injunction is valid and enforceable in all  
30 counties of the State of Florida.

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1           2. Law enforcement officers may use their arrest  
2 powers pursuant to s. 901.15(6) to enforce the terms of the  
3 injunction.

4           (d) An injunction for protection against domestic  
5 violence entered pursuant to this section, on its face, may  
6 order that the respondent attend a batterers' intervention  
7 program as a condition of the injunction. Unless the court  
8 makes written factual findings in its judgment or order which  
9 are based on substantial evidence, stating why batterers'  
10 intervention programs would be inappropriate, the court shall  
11 order the respondent to attend a batterers' intervention  
12 program if:

13           1. It finds that the respondent willfully violated the  
14 ex parte injunction;

15           2. The respondent, in this state or any other state,  
16 has been convicted of, had adjudication withheld on, or pled  
17 nolo contendere to a crime involving violence or a threat of  
18 violence; or

19           3. The respondent, in this state or any other state,  
20 has had at any time a prior injunction for protection entered  
21 against the respondent after a hearing with notice.

22

23 It is preferred, but not mandatory, that such programs be  
24 certified under s. 741.32.

25           (e) The fact that a separate order of protection is  
26 granted to each opposing party is ~~shall~~ not ~~be~~ legally  
27 sufficient to deny any remedy to either party or to prove that  
28 the parties are equally at fault or equally endangered.

29           Section 2. Subsection (4) of section 741.31, Florida  
30 Statutes, 1996 Supplement, is amended to read:

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1           741.31 Violation of an injunction for protection  
2 against domestic violence.--

3           (4)(a) A person who willfully violates an injunction  
4 for protection against domestic violence, issued pursuant to  
5 s. 741.30, by:

6           ~~1.(a)~~ Refusing to vacate the dwelling that the parties  
7 share;

8           ~~2.(b)~~ Going to the petitioner's residence, school,  
9 place of employment, or a specified place frequented regularly  
10 by the petitioner and any named family or household member;

11           ~~3.(c)~~ Committing an act of domestic violence against  
12 the petitioner;

13           ~~4.(d)~~ Committing any other violation of the injunction  
14 through an intentional unlawful threat, word, or act to do  
15 violence to the petitioner; or

16           ~~5.(e)~~ Telephoning, contacting, or otherwise  
17 communicating with the petitioner directly or indirectly,  
18 unless the injunction specifically allows indirect contact  
19 through a third party,

20  
21 is guilty of a misdemeanor of the first degree, punishable as  
22 provided in s. 775.082 or s. 775.083.

23           **(b) It is a felony of the third degree, punishable as**  
24 **provided in s. 775.082, s. 775.083, or s. 775.084, to fail to**  
25 **relinquish possession of any firearm or ammunition as directed**  
26 **by the court pursuant to an injunction issued for protection**  
27 **against domestic violence under s. 741.30. A person convicted**  
28 **under this paragraph must have been given actual notice of the**  
29 **hearing on the petition and the opportunity to be heard.**

30           Section 3. Subsection (7) of section 784.046, Florida  
31 Statutes, is amended to read:

1           784.046 Action by victim of repeat violence for  
2 protective injunction; powers and duties of court and clerk of  
3 court; filing and form of petition; notice and hearing;  
4 temporary injunction; issuance; statewide verification system;  
5 enforcement.--

6           (7)(a) Upon notice and hearing, the court may grant  
7 such relief as the court deems proper, including an  
8 injunction:

9           1.(a) Enjoining the respondent from committing any  
10 acts of violence.

11           2.(b) Ordering such other relief as the court deems  
12 necessary for the protection of the petitioner, including  
13 injunctions or directives to law enforcement agencies, as  
14 provided in this section.

15           3. Ordering the respondent to relinquish possession of  
16 any firearms and ammunition.

17           (b)(c) Any relief granted by the injunction shall be  
18 granted for a fixed period not to exceed 1 year, unless upon  
19 petition of the victim the court extends the injunction for  
20 successive fixed periods not to exceed 1 year. Such relief may  
21 be granted in addition to other civil or criminal remedies.

22           Section 4. Section 784.047, Florida Statutes, is  
23 amended to read:

24           784.047 Penalties for violating protective injunction  
25 against repeat violators.--

26           (1) A person who willfully violates an injunction for  
27 protection against repeat violence, issued pursuant to s.  
28 784.046, by:

29           (a)(1) Refusing to vacate the dwelling that the  
30 parties share;

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1           ~~(b)(2)~~ Going to the petitioner's residence, school,  
2 place of employment, or a specified place frequented regularly  
3 by the petitioner and any named family or household member;

4           ~~(c)(3)~~ Committing an act of repeat violence against  
5 the petitioner;

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

9           ~~(e)(5)~~ Telephoning, contacting, or otherwise  
10 communicating with the petitioner directly or indirectly,  
11 unless the injunction specifically allows indirect contact  
12 through a third party,~~†~~

13  
14 is guilty of a misdemeanor of the first degree, punishable as  
15 provided in s. 775.082 or s. 775.083.

16           (2) It is a felony of the third degree, punishable as  
17 provided in s. 775.082, s. 775.083, or s. 775.084, to fail to  
18 relinquish possession of any firearm or ammunition as directed  
19 by the court pursuant to an injunction issued for protection  
20 against repeat violence under s. 784.046. A person convicted  
21 under this subsection must have been given actual notice of  
22 the hearing on the petition and the opportunity to be heard.

23           Section 5. For the purpose of incorporating the  
24 amendments made by this act to section 741.31, Florida  
25 Statutes, 1996 Supplement, and section 784.047, Florida  
26 Statutes, in references thereto, subsection (6) of section  
27 901.15, Florida Statutes, 1996 Supplement, is reenacted to  
28 read:

29           901.15 When arrest by officer without warrant is  
30 lawful.--A law enforcement officer may arrest a person without  
31 a warrant when:

1           (6) There is probable cause to believe that the person  
2 has committed a criminal act according to s. 741.31 or s.  
3 784.047 which violates an injunction for protection entered  
4 pursuant to s. 741.30 or s. 784.046, over the objection of the  
5 petitioner, if necessary.

6           Section 6. Subsections (2) and (3) of section 790.06,  
7 Florida Statutes, are amended to read:

8           790.06 License to carry concealed weapon or firearm.--

9           (2) The Department of State shall issue a license if  
10 the applicant:

11           (a) Is a resident of the United States or is a  
12 consular security official of a foreign government that  
13 maintains diplomatic relations and treaties of commerce,  
14 friendship, and navigation with the United States and is  
15 certified as such by the foreign government and by the  
16 appropriate embassy in this country;

17           (b) Is 21 years of age or older;

18           (c) Does not suffer from a physical infirmity which  
19 prevents the safe handling of a weapon or firearm;

20           (d) Is not ineligible to possess a firearm pursuant to  
21 s. 790.23 by virtue of having been convicted of a felony;

22           (e) Has not been committed for the abuse of a  
23 controlled substance or been found guilty of a crime under the  
24 provisions of chapter 893 or similar laws of any other state  
25 relating to controlled substances within a 3-year period  
26 immediately preceding the date on which the application is  
27 submitted;

28           (f) Does not chronically and habitually use alcoholic  
29 beverages or other substances to the extent that his normal  
30 faculties are impaired. It shall be presumed that an  
31 applicant chronically and habitually uses alcoholic beverages



1 or other substances to the extent that his normal faculties  
2 are impaired if the applicant has been committed under chapter  
3 397 or under the provisions of former chapter 396 or has been  
4 convicted under s. 790.151 or has been deemed a habitual  
5 offender under s. 856.011(3), or has had two or more  
6 convictions under s. 316.193 or similar laws of any other  
7 state, within the 3-year period immediately preceding the date  
8 on which the application is submitted;

9 (g) Desires a legal means to carry a concealed weapon  
10 or firearm for lawful self-defense;

11 (h) Demonstrates competence with a firearm by any one  
12 of the following:

13 1. Completion of any hunter education or hunter safety  
14 course approved by the Game and Fresh Water Fish Commission or  
15 a similar agency of another state;

16 2. Completion of any National Rifle Association  
17 firearms safety or training course;

18 3. Completion of any firearms safety or training  
19 course or class available to the general public offered by a  
20 law enforcement, junior college, college, or private or public  
21 institution or organization or firearms training school,  
22 utilizing instructors certified by the National Rifle  
23 Association, Criminal Justice Standards and Training  
24 Commission, or the Department of State;

25 4. Completion of any law enforcement firearms safety  
26 or training course or class offered for security guards,  
27 investigators, special deputies, or any division or  
28 subdivision of law enforcement or security enforcement;

29 5. Presents evidence of equivalent experience with a  
30 firearm through participation in organized shooting  
31 competition or military service;

1           6. Is licensed or has been licensed to carry a firearm  
2 in this state or a county or municipality of this state,  
3 unless such license has been revoked for cause; or

4           7. Completion of any firearms training or safety  
5 course or class conducted by a state-certified or National  
6 Rifle Association certified firearms instructor;

7  
8 A photocopy of a certificate of completion of any of the  
9 courses or classes; or an affidavit from the instructor,  
10 school, club, organization, or group that conducted or taught  
11 said course or class attesting to the completion of the course  
12 or class by the applicant; or a copy of any document which  
13 shows completion of the course or class or evidences  
14 participation in firearms competition shall constitute  
15 evidence of qualification under this paragraph;

16           (i) Has not been adjudicated an incapacitated person  
17 under s. 744.331, or similar laws of any other state, unless 5  
18 years have elapsed since the applicant's restoration to  
19 capacity by court order;

20           (j) Has not been committed to a mental institution  
21 under chapter 394, or similar laws of any other state, unless  
22 the applicant produces a certificate from a licensed  
23 psychiatrist that he has not suffered from disability for at  
24 least 5 years prior to the date of submission of the  
25 application; ~~and~~

26           (k) Has not had adjudication of guilt withheld or  
27 imposition of sentence suspended on any felony or violent  
28 misdemeanor unless 3 years have elapsed since probation or any  
29 other conditions set by the court have been fulfilled, or the  
30 record has been sealed or expunged; and-

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1           (1) Has not been issued an injunction restraining the  
2 applicant from committing acts of domestic violence or acts of  
3 repeat violence.

4           (3) The Department of State may deny a license if the  
5 applicant has been found guilty of, had adjudication of guilt  
6 withheld for, or had imposition of sentence suspended for one  
7 or more crimes of violence constituting a misdemeanor, unless  
8 3 years have elapsed since probation or any other conditions  
9 set by the court have been fulfilled, or the record has been  
10 sealed or expunged. The Department of State, or may revoke a  
11 license if the licensee has been found guilty of, had  
12 adjudication of guilt withheld for, or had imposition of  
13 sentence suspended for one or more crimes of violence within  
14 the preceding 3 years. The department shall, upon  
15 notification by a law enforcement agency, a court, or the  
16 Florida Department of Law Enforcement and subsequent written  
17 verification, suspend a license or the processing of an  
18 application for a license if the licensee or applicant is  
19 arrested or formally charged with a crime that which would  
20 disqualify such person from having a license under this  
21 section, until final disposition of the case. The department  
22 shall suspend a license or the processing of an application  
23 for a license if the licensee or applicant is issued an  
24 injunction that restrains the licensee or applicant from  
25 committing acts of domestic violence or acts of repeat  
26 violence.

27           Section 7. Subsections (1) and (2) of section 790.065,  
28 Florida Statutes, 1996 Supplement, are amended to read:

29           790.065 Sale and delivery of firearms.--

30           (1) A ~~No~~ licensed importer, licensed manufacturer, or  
31 licensed dealer may not ~~shall~~ sell or deliver from his

1 inventory at his licensed premises any firearm to another  
2 person, other than a licensed importer, licensed manufacturer,  
3 licensed dealer, or licensed collector, until he has:

4 (a) Obtained a completed form from the potential buyer  
5 or transferee, which form shall have been promulgated by the  
6 Department of Law Enforcement and provided by the licensed  
7 importer, licensed manufacturer, or licensed dealer, which  
8 shall include the name, date of birth, gender, race, and  
9 social security number or other identification number of such  
10 potential buyer or transferee and has inspected proper  
11 identification including an identification containing a  
12 photograph of the potential buyer or transferee.

13 (b)~~1.~~ Collected a fee from the potential buyer for  
14 processing the criminal history check of the potential buyer.  
15 The fee shall be \$8. The Department of Law Enforcement shall,  
16 by rule, establish procedures for the fees to be transmitted  
17 by the licensee to the Department of Law Enforcement. All such  
18 fees shall be deposited into the Department of Law Enforcement  
19 Operating Trust Fund, but shall be segregated from all other  
20 funds deposited into such trust fund and must be accounted for  
21 separately. Such segregated funds must not be used for any  
22 purpose other than the operation of the criminal history  
23 checks required by this section. The Department of Law  
24 Enforcement, each year prior to February 1, shall make a full  
25 accounting of all receipts and expenditures of such funds to  
26 the President of the Senate, the Speaker of the House of  
27 Representatives, the majority and minority leaders of each  
28 house of the Legislature, and the chairs of the appropriations  
29 committees of each house of the Legislature. In the event  
30 that the cumulative amount of funds collected exceeds the  
31 cumulative amount of expenditures by more than \$2.5 million,

1 excess funds may be used for the purpose of purchasing soft  
2 body armor for law enforcement officers.

3 ~~2. For the 1995-1996 fiscal year only, if the~~  
4 ~~cumulative amount of funds collected exceeds the cumulative~~  
5 ~~amount of expenditures by more than \$2.5 million, \$1.5 million~~  
6 ~~of such excess funds may be transferred to the General Revenue~~  
7 ~~Fund. This subparagraph is repealed on July 1, 1996.~~

8 (c) Requested, by means of a toll-free telephone call,  
9 the Department of Law Enforcement to conduct a check of the  
10 information as reported and reflected in the Florida Crime  
11 Information Center and National Crime Information Center  
12 systems as of the date of the request.

13 (d) Received a unique approval number for that inquiry  
14 from the Department of Law Enforcement, and recorded the date  
15 and such number on the consent form.

16  
17 However, if the person purchasing, or receiving delivery of,  
18 the firearm is a holder of a valid concealed weapons or  
19 firearms license pursuant to the provisions of s. 790.06 or  
20 holds an active certification from the Criminal Justice  
21 Standards and Training Commission as a "law enforcement  
22 officer," a "correctional officer," or a "correctional  
23 probation officer" as defined in s. 943.10(1), (2), (3), (6),  
24 (7), (8), or (9), the provisions of this subsection do not  
25 apply.

26 (2) Upon receipt of a request for a criminal history  
27 record check, the Department of Law Enforcement shall, during  
28 the licensee's call or by return call, forthwith:

29 (a) Review criminal history records to determine if  
30 the potential buyer or transferee has been convicted of a  
31 felony or violent misdemeanor and is prohibited from receipt

1 or possession of a firearm pursuant to s. 790.23 or has had  
2 adjudication of guilt withheld or imposition of sentence  
3 suspended on any felony or violent misdemeanor unless 3 years  
4 have elapsed since probation or any other conditions set by  
5 the court have been fulfilled or expunction has occurred.

6 (b) Inform the licensee making the inquiry either that  
7 records demonstrate that the buyer or transferee is so  
8 prohibited and provide the licensee a nonapproval number, or  
9 provide the licensee with a unique approval number.

10 (c)1. Review any records available to it to determine  
11 whether the potential buyer or transferee has been indicted or  
12 has had an information filed against him for an offense that  
13 is a felony under either state or federal law, or, as mandated  
14 by federal law, has had an injunction for protection against  
15 domestic violence entered against the potential buyer or  
16 transferee under s. 741.30, has had an injunction for  
17 protection against repeat violence entered against the  
18 potential buyer or transferee under s. 784.046, or has been  
19 arrested for a dangerous crime as specified in s.

20 907.041(4)(a) or for any of the following enumerated offenses:

- 21 a. Criminal anarchy under ss. 876.01 and 876.02.
- 22 b. Extortion under s. 836.05.
- 23 c. Explosives violations under s. 552.22(1) and (2).
- 24 d. Controlled substances violations under chapter 893.
- 25 e. Resisting an officer with violence under s. 843.01.
- 26 f. Weapons and firearms violations under this chapter.
- 27 g. Treason under s. 876.32.
- 28 h. Assisting self-murder under s. 782.08.
- 29 i. Sabotage under s. 876.38.
- 30 j. Stalking or aggravated stalking under s. 784.048.

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1 If the review indicates any such indictment, information, or  
2 arrest, the department shall provide to the licensee a  
3 conditional nonapproval number.

4         2. Within 24 working hours, the department shall  
5 determine the disposition of the indictment, information, or  
6 arrest and inform the licensee as to whether the potential  
7 buyer is prohibited from receiving or possessing a firearm.  
8 For purposes of this paragraph, "working hours" means the  
9 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding  
10 legal holidays.

11         3. The office of the clerk of court, at no charge to  
12 the department, shall respond to any department request for  
13 data on the disposition of the indictment, information, or  
14 arrest as soon as possible, but in no event later than 8  
15 working hours.

16         4. The department shall determine as quickly as  
17 possible within the allotted time period whether the potential  
18 buyer is prohibited from receiving or possessing a firearm.

19         5. If the potential buyer is not so prohibited, or if  
20 the department cannot determine the disposition information  
21 within the allotted time period, the department shall provide  
22 the licensee with a conditional approval number.

23         6. If the buyer is so prohibited, the conditional  
24 nonapproval number shall become a nonapproval number.

25         7. The department shall continue its attempts to  
26 obtain the disposition information and may retain a record of  
27 all approval numbers granted without sufficient disposition  
28 information. If the department later obtains disposition  
29 information which indicates:

30  
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1           a. That the potential buyer is not prohibited from  
2 owning a firearm, it shall treat the record of the transaction  
3 in accordance with this section; or

4           b. That the potential buyer is prohibited from owning  
5 a firearm, it shall immediately revoke the conditional  
6 approval number and notify local law enforcement.

7           8. During the time that disposition of the indictment,  
8 information, or arrest is pending and until the department is  
9 notified by the potential buyer that there has been a final  
10 disposition of the indictment, information, or arrest, the  
11 conditional nonapproval number shall remain in effect.

12           Section 8. This act shall take effect July 1, 1997.

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14           \*\*\*\*\*

15           SENATE SUMMARY

16           Provides that an injunction that restrains acts of  
17 domestic violence or acts of repeat violence may require  
18 the respondent to relinquish possession of firearms and  
19 ammunition. Provides that it is a third-degree felony to  
20 violate such injunction following notice of hearing and  
21 an opportunity to be heard. Provides that the Department  
22 of State may not issue a license to carry a concealed  
23 weapon or firearm to a person who is issued an injunction  
24 against committing acts of domestic violence or acts of  
25 repeat violence. Provides that the department may not  
26 issue a license to carry a concealed weapon or firearm to  
27 a person who has had adjudication of guilt withheld or  
28 imposition of sentence suspended for a violent  
29 misdemeanor within the past 3 years. Requires that the  
30 department suspend a license to carry a concealed weapon  
31 or firearm, or the processing of an application for such  
a license, if the licensee or applicant is issued an  
injunction against committing acts of domestic violence  
or acts of repeat violence.