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DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: PCS/HB 679

RELATING TO: Weapons & Firearms / Domestic Violence

SPONSOR(S): Representative Lynn

STATUTE(S) AFFECTED: Chapters 741, 784, 790, and 901, F.S.

COMPANION BILL(S): SB 1448

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2) LAW ENFORCEMENT AND PUBLIC SAFETY
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT (FISCAL)
- (4)
- (5)

I. SUMMARY:

The bill makes it a first degree misdemeanor for a person who "is subject to" an injunction for domestic violence to possess a firearm or ammunition. Once the injunction is issued, the person who it is issued against will be automatically barred from possessing a firearm. A judge will not have authority to permit a person to keep a firearm after an injunction for domestic violence is issued against that person.

The bill makes Florida's law consistent with Federal law, and like federal law, the bill provides an exception for state or local law enforcement officers who possess a firearm for official duties.

The bill requires the suspension of the license of a person who receives a withhold or a conviction for a violent misdemeanor. Current law states that the Department of State may suspend the license to carry a concealed weapon for a person who is convicted of a violent misdemeanor.

II. SUBSTANTIVE RESEARCH:

A. 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:

1. Is the victim of domestic violence, or
2. 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 issued injunction may grant the following:

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

Final Judgement on an Injunction

A full hearing must be set before the temporary injunction expires (15 days) and both sides 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 a condition of the "final" injunction:

1. Restrain the person who the injunction was filed against from committing any acts of domestic violence.
2. Award the temporary exclusive use and possession of the dwelling that the parties share.
3. Grant temporary custody of minor children.
4. Establish temporary support for minor children.
5. Order treatment, intervention, or counseling.
6. 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 she has reasonable cause to believe that he/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. A contempt proceeding may result in the imposition of county jail time, and it requires a much lower burden of proof than a criminal charge.

A person facing a possible jail sentence on a misdemeanor is entitled to a jury trial, but a jury never hears a contempt proceeding.

Federal Law

Federal law, 18 U.S.C. 922(g), makes it illegal (punishable by up to 10 years in prison) for a person to possess a firearm if that person has been issued an injunction against domestic violence after a hearing in which that person had an opportunity to participate, and if the injunction does one of the following:

1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
2. The injunction 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.

Injunctions in Florida generally prohibit domestic violence or the threat of domestic violence. There is a possible issue as to whether a general prohibition meets the explicit requirement that the threat of force be reasonably "expected to cause bodily injury." Injunctions in Florida do not include a finding that a person represents a credible threat.

Federal law would not be triggered by a temporary injunction because the respondent (accused) does not have an opportunity to participate.

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

Other recent Federal law makes it a crime for a person to possess a firearm if that person has been convicted of a misdemeanor domestic violence. For the purposes of Federal law, a person is not convicted in that person pleads nolo contendere, **and** receives a withhold of adjudication. This new offense is punishable by up to ten years in prison.

Firearms

The possession and use of firearms is controlled by Chapter 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 for a felony offense shall have his or her license to carry a concealed firearm suspended, however, that person may obtain a license three years after probation or the last condition of set by the court has been fulfilled. The Department may deny or suspend the license of an applicant who has been found guilty of a violent misdemeanor within the preceding three years.

Section 790.065, F.S., requires that the seller of a firearm call the Department of Law Enforcement to determine if the buyer has a criminal history that prohibits the sale. Buyers of handguns are subject to a three day waiting period unless the buyer possesses a concealed weapons license. The criminal records check will also

reveal whether a concealed weapons license should be suspended for a withhold of adjudication for a felony offense.

B. EFFECT OF PROPOSED CHANGES:

The bill makes it a first degree misdemeanor for a person who is subject to an injunction for domestic violence to possess a firearm. Once the injunction is issued, the person who it is issued against will be automatically barred from possessing a firearm. A judge will not have authority to permit a person to keep a firearm after an injunction for domestic violence is issued against that person.

The bill makes Florida's law consistent with federal law, and like federal law, the bill makes an exception for state or local law enforcement officers who possess a firearm for official duties.

The bill provides for two ways to charge a person who has been issued a domestic violence injunction and who is in possession (or in custody of) a firearm:

1. The bill creates a new first degree misdemeanor offense in chapter 790, F.S., relating to illegal possession of a firearm.
2. The bill amends Chapter 740, F.S., to make it a first degree misdemeanor to violate a final injunction for domestic violence by possessing a firearm.

The bill also requires that all final injunctions for domestic violence indicate that it is a violation of s. 790.233, F.S., and a first degree misdemeanor, for the person who the injunction is issued against to have in his or her care, custody, possession, or control any firearm or ammunition.

The prosecution of these new offenses will require that a person have notice that he/she is subject to a final injunction for domestic violence.

License to Carry Concealed Weapon or Firearm

Section 790.06, F.S. gives the Department of State the authority to issue a license to carry a concealed firearm. This bill requires that a license be suspended or not issued to a person who has a domestic violence injunction or an injunction that prohibits acts of repeat violence. The injunction may be temporary or final in order for the provisions of this section to take effect.

Current law states that the Department may suspend the license of a person who is convicted of a violent misdemeanor. Florida law does not define violent misdemeanor, but the definition would include battery and perhaps assault. The bill requires the suspension of the license of a person who receives a withhold or a conviction for a violent misdemeanor.

Purchase of a Firearm

The bill requires the Department of Law Enforcement to review the criminal history of the buyer of a firearm to determine if the buyer has been convicted of a violent misdemeanor or has had an adjudication withheld for a violent misdemeanor and three years have not elapsed since the fulfillment of all court imposed sanctions. Then the Department of Law Enforcement must inform the seller (as the Department does for all felony prior offenses) whether the buyer is prohibited from owning a firearm.

The records check for violent misdemeanors, as well as all felonies, would reveal whether the buyer of a hand gun has a valid license to carry a concealed firearm. If the buyer does not have a valid license, then the three day waiting period for the purchase of a firearm applies.

Arrest

Generally, an officer may not make an arrest for a misdemeanor unless the misdemeanor occurs in the officer's presence. The bill permits 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. A few other misdemeanors such as retail theft and battery do not have to occur in an officer's presence for an arrest of the offender to be made.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, more requirements are imposed on the Department of State when the Department is screening a person to determine if that person is eligible for a concealed weapons permit. The bill also requires that the Department suspend a license if the licensee is issued an injunction whether temporary or permanent.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not Applicable.

(3) how is the new agency accountable to the people governed?

Not Applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not Applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not Applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. Possession of a firearm by a person who has been issued an injunction against domestic violence is probably already illegal under federal law. The bill requires the suspension of permits to carry a concealed firearm for a person who has been issued an injunction for domestic violence, however, that person is not lawfully allowed to possess firearms.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

- (4) Are families required to participate in a program?

Not Applicable.

- (5) Are families penalized for not participating in a program?

Not Applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not Applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not Applicable.

- (2) service providers?

Not Applicable.

- (3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Makes it a first degree misdemeanor for a person who is subject to a domestic violence injunction to possess a firearm. Provides an exception for law enforcement officers.

Section 2: Requires that injunctions state on its face that it is a first degree misdemeanor for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

Section 3: Makes it a first degree misdemeanor to violate a domestic violence injunction by possessing a firearm or ammunition. Provides an exception for law enforcement.

Section 4: Allows 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.

Section 5: Requires that a license be suspended or not issued to a person who has a domestic violence injunction or an injunction that prohibits acts of repeat violence. The injunction may be temporary or final in order for the provisions of this section to take effect. The bill also requires the suspension of the license of a person who receives a withhold or a conviction for a violent misdemeanor.

Section 6: Requires the Department of Law Enforcement to review the criminal history a the buyer of a firearm to determine if the buyer has been convicted of a violent misdemeanor or has had an adjudication withheld for a violent misdemeanor and three years have not elapsed since the fulfillment of all court imposed sanctions. Then the

Department of Law Enforcement must inform the seller (as the Department does for all felony prior offenses) whether the buyer is prohibited from owning a firearm.

Section 7: Provides effective date of July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

Since a person can not be sentenced to prison for a misdemeanor, the prison population will not be affected by this bill. However, this bill could cause greater expense to the counties, because the misdemeanor offense could cause more people to be in local jails.

There will be some additional costs on the state level because more requirements are imposed on the Department of State when the Department is screening a person to determine if that person is eligible for a concealed weapons permit. The bill also requires that the Department suspend a license if the licensee is issued an injunction whether temporary or permanent. However, the Department of State's analysis concludes that the Department will not have additional costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Criminal laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution. The bill contains no other mandates.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not impair local government revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not significantly reduce the amount of state tax shared with local governments.

V. COMMENTS:

The Department of Law Enforcement has a database on people who are subject to injunctions for domestic violence and repeat violence. That information may be easily 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 of an injunction for domestic violence.

The bill makes the following changes to section 790.065(2)(a), and (b) , F.S.:

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

(a) Review criminal history records to determine if the potential buyer or transferee has been convicted of a felony or violent misdemeanor and is prohibited from receipt or possession of a firearm pursuant to s. 790.23 or has had adjudication of guilt withheld or imposition of sentence suspended on any felony or violent misdemeanor unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled...

Once the Department makes its review of the records the Department must inform the seller if the transaction is prohibited. Under s. 790.23, F.S., it is a felony for a person who has been convicted of a felony to possess a firearm. Under Federal law, it is a crime for a person who has been convicted of a felony to possess a firearm. However, it is uncertain what is to happen if the Department of Law Enforcement determines that a person received a withhold of adjudication for a felony or a violent misdemeanor. The Department's position is that a person who receives a withhold of adjudication may not buy a firearm within three years of the completion of probation or other court conditions. This bill may impose the same sanction on those who receive a withhold of adjudication for a violent misdemeanor. However, there are no criminal penalties for the possession of a firearm by a person who has received a withhold of adjudication for a felony or a violent misdemeanor.

The Department of Law Enforcement is concerned that there is no definition for the phrase "violent misdemeanor." The phrase could include assaults and even batteries where the violence is very slight. Federal law prohibits the possession of a firearm only by those who have been convicted of a felony or a domestic violent misdemeanor. This portion of the bill would affect a larger class of people than Federal law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill made it a third degree felony for a person who is subject to an injunction for domestic violence or repeat violence to possess a firearm. The proposed committee substitute makes the offense a misdemeanor. The proposed committee substitute does not make it a crime for a person who has been issued an injunction for repeat violence to possess a firearm.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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