

By Senator Geller

31-1768A-04

1                                   A bill to be entitled  
2           An act relating to possession of firearms,  
3           electric weapons or devices, or concealed  
4           weapons by persons found to have committed  
5           certain delinquent acts; amending s. 790.23,  
6           F.S.; prohibiting persons found to have  
7           committed certain delinquent acts involving  
8           firearms, electric weapons or devices, or  
9           destructive devices from possessing firearms,  
10          electric weapons or devices, or concealed  
11          weapons for a specified period following  
12          completion of sentence; providing criminal  
13          penalties; amending s. 790.06, F.S.; revising  
14          cross-references specifying circumstances  
15          relating to issuance and revocation of license  
16          to carry concealed weapon or firearm, to  
17          conform; amending s. 790.065, F.S.; revising a  
18          cross-reference specifying circumstances  
19          relating to the sale and delivery of firearms,  
20          to conform; amending s. 943.0515, F.S.;  
21          expanding the circumstances in which the  
22          criminal history records of certain minors must  
23          be retained as part of the adult record;  
24          reenacting ss. 790.01(5) and 921.0022(3)(e),  
25          F.S., relating to the use of an electric weapon  
26          or device or remote stun gun or self-defense  
27          chemical spray during the commission of any  
28          criminal offense and to the offense severity  
29          ranking chart, respectively, to incorporate the  
30          amendment to s. 790.23, F.S., in references  
31          thereto; providing an effective date.

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

2

3 Section 1. Section 790.23, Florida Statutes, is  
4 amended to read:

5 790.23 Felons and delinquents; possession of firearms  
6 or electric weapons or devices unlawful.--

7 (1) It is unlawful for any person to own or to have in  
8 his or her care, custody, possession, or control any firearm  
9 or electric weapon or device, or to carry a concealed weapon,  
10 including a tear gas gun or chemical weapon or device, if that  
11 person has been:

12 (a) Convicted of a felony in the courts of this state;

13 (b) Found, in the courts of this state, to have  
14 committed a delinquent act that would be a felony if committed  
15 by an adult. However, the prohibition created by this  
16 paragraph shall only extend until and such person is under 24  
17 years of age, unless the delinquent act involved the use of a  
18 firearm, an electric weapon or device, or a destructive  
19 device, in which case the prohibition extends for 10 years  
20 following the date of completion of sentence;-

21 (c) Convicted of or found to have committed a crime  
22 against the United States which is designated as a felony;

23 (d) Found to have committed a delinquent act in  
24 another state, territory, or country that would be a felony if  
25 committed by an adult and which was punishable by imprisonment  
26 for a term exceeding 1 year. However, the prohibition created  
27 by this paragraph shall only extend until and such person is  
28 under 24 years of age, unless the delinquent act involved the  
29 use of a firearm, an electric weapon or device, or a  
30 destructive device, in which case the prohibition extends for  
31 10 years following the date of completion of sentence; or

1           (e) Found guilty of an offense that is a felony in  
2 another state, territory, or country and which was punishable  
3 by imprisonment for a term exceeding 1 year.

4           (2) This section shall not apply to a person convicted  
5 of a felony whose civil rights and firearm authority have been  
6 restored.

7           (3) Any person who violates this section commits a  
8 felony of the second degree, punishable as provided in s.  
9 775.082, s. 775.083, or s. 775.084.

10           Section 2. Subsections (2) and (10) of section 790.06,  
11 Florida Statutes, are amended to read:

12           790.06 License to carry concealed weapon or  
13 firearms.--

14           (2) The Department of Agriculture and Consumer  
15 Services shall issue a license if the applicant:

16           (a) Is a resident of the United States or is a  
17 consular security official of a foreign government that  
18 maintains diplomatic relations and treaties of commerce,  
19 friendship, and navigation with the United States and is  
20 certified as such by the foreign government and by the  
21 appropriate embassy in this country;

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

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

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

27           (e) Has not been committed for the abuse of a  
28 controlled substance or been found guilty of a crime under the  
29 provisions of chapter 893 or similar laws of any other state  
30 relating to controlled substances within a 3-year period  
31

1 immediately preceding the date on which the application is  
2 submitted;

3 (f) Does not chronically and habitually use alcoholic  
4 beverages or other substances to the extent that his or her  
5 normal faculties are impaired. It shall be presumed that an  
6 applicant chronically and habitually uses alcoholic beverages  
7 or other substances to the extent that his or her normal  
8 faculties are impaired if the applicant has been committed  
9 under chapter 397 or under the provisions of former chapter  
10 396 or has been convicted under s. 790.151 or has been deemed  
11 a habitual offender under s. 856.011(3), or has had two or  
12 more convictions under s. 316.193 or similar laws of any other  
13 state, within the 3-year period immediately preceding the date  
14 on which the application is submitted;

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

17 (h) Demonstrates competence with a firearm by any one  
18 of the following:

19 1. Completion of any hunter education or hunter safety  
20 course approved by the Fish and Wildlife Conservation  
21 Commission or a similar agency of another state;

22 2. Completion of any National Rifle Association  
23 firearms safety or training course;

24 3. Completion of any firearms safety or training  
25 course or class available to the general public offered by a  
26 law enforcement, junior college, college, or private or public  
27 institution or organization or firearms training school,  
28 utilizing instructors certified by the National Rifle  
29 Association, Criminal Justice Standards and Training  
30 Commission, or the Department of Agriculture and Consumer  
31 Services;

1           4. Completion of any law enforcement firearms safety  
2 or training course or class offered for security guards,  
3 investigators, special deputies, or any division or  
4 subdivision of law enforcement or security enforcement;

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

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

11           7. Completion of any firearms training or safety  
12 course or class conducted by a state-certified or National  
13 Rifle Association certified firearms instructor;

14  
15 A photocopy of a certificate of completion of any of the  
16 courses or classes; or an affidavit from the instructor,  
17 school, club, organization, or group that conducted or taught  
18 said course or class attesting to the completion of the course  
19 or class by the applicant; or a copy of any document which  
20 shows completion of the course or class or evidences  
21 participation in firearms competition shall constitute  
22 evidence of qualification under this paragraph; any person who  
23 conducts a course pursuant to subparagraph 2., subparagraph  
24 3., or subparagraph 7., or who, as an instructor, attests to  
25 the completion of such courses, must maintain records  
26 certifying that he or she observed the student safely handle  
27 and discharge the firearm;

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

1           (j) Has not been committed to a mental institution  
2 under chapter 394, or similar laws of any other state, unless  
3 the applicant produces a certificate from a licensed  
4 psychiatrist that he or she has not suffered from disability  
5 for at least 5 years prior to the date of submission of the  
6 application;

7           (k) Has not had adjudication of guilt withheld or  
8 imposition of sentence suspended on any felony or misdemeanor  
9 crime of domestic violence unless 3 years have elapsed since  
10 probation or any other conditions set by the court have been  
11 fulfilled, or the record has been sealed or expunged;

12           (l) Has not been issued an injunction that is  
13 currently in force and effect and that restrains the applicant  
14 from committing acts of domestic violence or acts of repeat  
15 violence; and

16           (m) Is not prohibited from purchasing or possessing a  
17 firearm by any other provision of Florida or federal law.

18           (10) A license issued under this section shall be  
19 suspended or revoked pursuant to chapter 120 if the licensee:

20           (a) Is found to be ineligible under the criteria set  
21 forth in subsection (2);

22           (b) Develops or sustains a physical infirmity which  
23 prevents the safe handling of a weapon or firearm;

24           (c) Is ~~convicted of a felony which would make the~~  
25 ~~licensee~~ ineligible to possess a firearm pursuant to s.  
26 790.23;

27           (d) Is found guilty of a crime under the provisions of  
28 chapter 893, or similar laws of any other state, relating to  
29 controlled substances;

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1 (e) Is committed as a substance abuser under chapter  
2 397, or is deemed a habitual offender under s. 856.011(3), or  
3 similar laws of any other state;

4 (f) Is convicted of a second violation of s. 316.193,  
5 or a similar law of another state, within 3 years of a  
6 previous conviction of such section, or similar law of another  
7 state, even though the first violation may have occurred prior  
8 to the date on which the application was submitted;

9 (g) Is adjudicated an incapacitated person under s.  
10 744.331, or similar laws of any other state; or

11 (h) Is committed to a mental institution under chapter  
12 394, or similar laws of any other state.

13 Section 3. Paragraph (a) of subsection (2) of section  
14 790.065, Florida Statutes, is amended to read:

15 790.065 Sale and delivery of firearms.--

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

19 (a) Review criminal history records to determine if  
20 the potential buyer or transferee:

21 1. ~~Has been convicted of a felony and~~ Is prohibited  
22 from receipt or possession of a firearm pursuant to s. 790.23;

23 2. Has been convicted of a misdemeanor crime of  
24 domestic violence, and therefore is prohibited from purchasing  
25 a firearm; or

26 3. Has had adjudication of guilt withheld or  
27 imposition of sentence suspended on any felony or misdemeanor  
28 crime of domestic violence unless 3 years have elapsed since  
29 probation or any other conditions set by the court have been  
30 fulfilled or expunction has occurred.

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1           Section 4. Paragraph (a) of subsection (1) and  
2 subsection (2) of section 943.0515, Florida Statutes, are  
3 amended to read:

4           943.0515 Retention of criminal history records of  
5 minors.--

6           (1)(a) The Criminal Justice Information Program shall  
7 retain the criminal history record of a minor who is  
8 classified as a serious or habitual juvenile offender or  
9 committed to a juvenile correctional facility or juvenile  
10 prison under chapter 985 for 5 years after the date the  
11 offender reaches 21 years of age, at which time the record  
12 shall be expunged unless any of it meets the criteria  
13 specified in subsection (2) applies of paragraph (2)(a) or  
14 paragraph (2)(b).

15           (2)(a) If a person 18 years of age or older is charged  
16 with or convicted of a forcible felony and the person's  
17 criminal history record as a minor has not yet been destroyed,  
18 the person's record as a minor must be merged with the  
19 person's adult criminal history record and must be retained as  
20 a part of the person's adult record.

21           (b) If, at any time, a minor is adjudicated as an  
22 adult for a forcible felony, the minor's criminal history  
23 record prior to the time of the minor's adjudication as an  
24 adult must be merged with his or her record as an adjudicated  
25 adult.

26           (c) If a minor is found to have committed a delinquent  
27 act that would be a felony if committed by an adult and such  
28 act involved the use of a firearm, an electric weapon or  
29 device, or a destructive device, the minor's criminal history  
30 record for such act must be retained as part of his or her  
31 adult record.



1 Section 5. For the purpose of incorporating the  
2 amendment to section 790.23, Florida Statutes, in a reference  
3 thereto, subsection (5) of section 790.01, Florida Statutes,  
4 is reenacted to read:

5 790.01 Carrying concealed weapons.--

6 (5) This section does not preclude any prosecution for  
7 the use of an electric weapon or device or remote stun gun or  
8 self-defense chemical spray during the commission of any  
9 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.  
10 790.235, or for any other criminal offense.

11 Section 6. For the purpose of incorporating the  
12 amendment to section 790.23, Florida Statutes, in a reference  
13 thereto, paragraph (e) of subsection (3) of section 921.0022,  
14 Florida Statutes, is reenacted to read:

15 921.0022 Criminal Punishment Code; offense severity  
16 ranking chart.--

17 (3) OFFENSE SEVERITY RANKING CHART

18	19	20	21	22
	Florida	Felony		
	Statute	Degree	Description	
23			(e) LEVEL 5	
24	316.027(1)(a)	3rd	Accidents involving personal	
25			injuries, failure to stop;	
26			leaving scene.	
27	316.1935(4)	2nd	Aggravated fleeing or eluding.	
28	322.34(6)	3rd	Careless operation of motor	
29			vehicle with suspended license,	
30			resulting in death or serious	
31			bodily injury.	

1	327.30(5)	3rd	Vessel accidents involving
2			personal injury; leaving scene.
3	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
4			knowing HIV positive.
5	440.10(1)(g)	2nd	Failure to obtain workers'
6			compensation coverage.
7	440.105(5)	2nd	Unlawful solicitation for the
8			purpose of making workers'
9			compensation claims.
10	440.381(2)	2nd	Submission of false, misleading,
11			or incomplete information with
12			the purpose of avoiding or
13			reducing workers' compensation
14			premiums.
15	624.401(4)(b)2.	2nd	Transacting insurance without a
16			certificate or authority; premium
17			collected \$20,000 or more but
18			less than \$100,000.
19	626.902(1)(c)	2nd	Representing an unauthorized
20			insurer; repeat offender.
21	790.01(2)	3rd	Carrying a concealed firearm.
22	790.162	2nd	Threat to throw or discharge
23			destructive device.
24	790.163(1)	2nd	False report of deadly explosive
25			or weapon of mass destruction.
26	790.221(1)	2nd	Possession of short-barreled
27			shotgun or machine gun.
28	790.23	2nd	Felons in possession of firearms
29			or electronic weapons or devices.
30	800.04(6)(c)	3rd	Lewd or lascivious conduct;
31			offender less than 18 years.

1	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
2			offender 18 years or older.
3	806.111(1)	3rd	Possess, manufacture, or dispense
4			fire bomb with intent to damage
5			any structure or property.
6	812.0145(2)(b)	2nd	Theft from person 65 years of age
7			or older; \$10,000 or more but
8			less than \$50,000.
9	812.015(8)	3rd	Retail theft; property stolen is
10			valued at \$300 or more and one or
11			more specified acts.
12	812.019(1)	2nd	Stolen property; dealing in or
13			trafficking in.
14	812.131(2)(b)	3rd	Robbery by sudden snatching.
15	812.16(2)	3rd	Owning, operating, or conducting
16			a chop shop.
17	817.034(4)(a)2.	2nd	Communications fraud, value
18			\$20,000 to \$50,000.
19	817.234(11)(b)	2nd	Insurance fraud; property value
20			\$20,000 or more but less than
21			\$100,000.
22	817.2341(1),		
23	(2)(a)&(3)(a)	3rd	Filing false financial
24			statements, making false entries
25			of material fact or false
26			statements regarding property
27			values relating to the solvency
28			of an insuring entity.
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1	817.568(2)(b)	2nd	Fraudulent use of personal
2			identification information; value
3			of benefit, services received,
4			payment avoided, or amount of
5			injury or fraud, \$5,000 or more
6			or use of personal identification
7			information of 10 or more
8			individuals.
9	817.625(2)(b)	2nd	Second or subsequent fraudulent
10			use of scanning device or
11			reencoder.
12	825.1025(4)	3rd	Lewd or lascivious exhibition in
13			the presence of an elderly person
14			or disabled adult.
15	827.071(4)	2nd	Possess with intent to promote
16			any photographic material, motion
17			picture, etc., which includes
18			sexual conduct by a child.
19	839.13(2)(b)	2nd	Falsifying records of an
20			individual in the care and
21			custody of a state agency
22			involving great bodily harm or
23			death.
24	843.01	3rd	Resist officer with violence to
25			person; resist arrest with
26			violence.
27	874.05(2)	2nd	Encouraging or recruiting another
28			to join a criminal street gang;
29			second or subsequent offense.
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1	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
2			cocaine (or other s.
3			893.03(1)(a), (1)(b), (1)(d),
4			(2)(a), (2)(b), or (2)(c)4.
5			drugs).
6	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
7			cannabis (or other s.
8			893.03(1)(c), (2)(c)1., (2)(c)2.,
9			(2)(c)3., (2)(c)5., (2)(c)6.,
10			(2)(c)7., (2)(c)8., (2)(c)9.,
11			(3), or (4) drugs) within 1,000
12			feet of a child care facility,
13			school, or state, county, or
14			municipal park or publicly owned
15			recreational facility or
16			community center.
17	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
18			cocaine (or other s.
19			893.03(1)(a), (1)(b), (1)(d),
20			(2)(a), (2)(b), or (2)(c)4.
21			drugs) within 1,000 feet of
22			university.
23	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver
24			cannabis or other drug prohibited
25			under s. 893.03(1)(c), (2)(c)1.,
26			(2)(c)2., (2)(c)3., (2)(c)5.,
27			(2)(c)6., (2)(c)7., (2)(c)8.,
28			(2)(c)9., (3), or (4) within
29			1,000 feet of property used for
30			religious services or a specified
31			business site.

1 893.13(1)(f)1. 1st Sell, manufacture, or deliver  
2 cocaine (or other s.  
3 893.03(1)(a), (1)(b), (1)(d), or  
4 (2)(a), (2)(b), or (2)(c)4.  
5 drugs) within 1,000 feet of  
6 public housing facility.  
7 893.13(4)(b) 2nd Deliver to minor cannabis (or  
8 other s. 893.03(1)(c), (2)(c)1.,  
9 (2)(c)2., (2)(c)3., (2)(c)5.,  
10 (2)(c)6., (2)(c)7., (2)(c)8.,  
11 (2)(c)9., (3), or (4) drugs).  
12 Section 7. This act shall take effect October 1, 2004,  
13 and shall apply to offenses committed on or after that date.  
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16 SENATE SUMMARY

17 Prohibits a person found to have committed a delinquent  
18 act involving a firearm, electric weapon, or destructive  
19 device from possessing a firearm or other weapon for 10  
20 years following completion of sentence. Requires that a  
21 record of the minor's criminal history be retained as  
22 part of the adult record. (See bill for details.)  
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