

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 493 Carrying a Concealed Weapon or Concealed Firearm

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Fitzenhagen and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 290

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|---------------------|------------|--|
| 1) Criminal Justice Subcommittee | 9 Y, 2 N, As CS | Cunningham | Cunningham |
| 2) Judiciary Committee | 17 Y, 1 N, As CS | Cunningham | Havlicak |

SUMMARY ANALYSIS

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. Carrying a concealed firearm is a third degree felony. These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm; or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
 - Self-defense chemical spray; or
 - A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties 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 a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S.

The bill defines "in the act of evacuating" as "the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered." The 48 hours may be extended by an order issued by the Governor.

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that this bill will have a negative insignificant prison bed impact on the Department of Corrections (i.e., a decrease of 10 or fewer beds). The bill may also have a negative jail bed impact (i.e., it will reduce the need for jail beds).

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Mandatory Evacuation during a State of Emergency

Governor's Authority

Section 252.36, F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, and she or he terminates the state of emergency by executive order or proclamation.¹ No state of emergency may continue for longer than 60 days unless renewed by the Governor.²

As part of his or her emergency management powers, the Governor is authorized to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if she or he deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery.³ The Governor may also suspend or limit the sale, dispensing, or transportation of firearms.⁴

Local Authority

Section 870.043, F.S., authorizes sheriffs and designated city officials to declare a state of emergency if he or she determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof. The state of emergency commences upon its declaration and terminates 72 hours thereafter unless, prior to the end of the 72-hour period, the public official, Governor, county commission, or city council terminate it.⁵

Whenever a sheriff or city official declares a state of emergency, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with any limitations and conditions he or she deems appropriate:

- The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking;
- The prohibition of the sale or distribution of any alcoholic beverage;
- The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;
- The closing of places of public assemblage with designated exceptions;
- The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof; and
- The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.⁶

In addition to the above-described measures that a local public official has discretion to order, the following acts are prohibited during a state of emergency:

¹ s. 252.36(2), F.S.

² *Id.*

³ s. 252.36(5)(e), F.S.

⁴ s. 252.36(5)(h), F.S.

⁵ s. 870.047, F.S.

⁶ s. 870.045, F.S. These measures remain in effect during the period of the emergency in the area or areas for which the emergency has been declared.

- The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description;
- The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description; and
- The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.⁷

A violation of any of the above-described provisions is a first degree misdemeanor.⁸

Carrying a Concealed Weapon or Firearm

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon⁹ or electric weapon or device¹⁰ on or about his or her person. Carrying a concealed firearm¹¹ is a third degree felony.^{12,13} These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.;¹⁴ or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
 - Self-defense chemical spray;¹⁵ or
 - A nonlethal stun gun or dart-firing stun gun¹⁶ or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹⁷

The statute does not provide an exception for carrying a concealed weapon or firearm while complying with a mandatory evacuation order during a state of emergency.

Effect of the Bill

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties 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 a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S.

The bill defines "in the act of evacuating" as "the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered." The 48 hours may be extended by an order issued by the Governor.

The bill does not alter any laws relating to when a person may lawfully use force or where a person may lawfully carry a weapon or firearm.

⁷ s. 870.044, F.S.

⁸ 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.

⁹ Section 790.001(3)(a), F.S., defines "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.

¹⁰ Section 790.001(14), F.S., defines "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.

¹¹ Section 790.001(2), F.S., defines "concealed firearm" as any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person. Section 790.001(6), F.S., defines "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 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.

¹³ s. 790.01(2), F.S.

¹⁴ Section 790.06, F.S., sets forth the requirements for obtaining a concealed weapon and concealed firearms license.

¹⁵ Section 790.001(3)(b), F.S., defines "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.

¹⁶ Section 790.001(15), F.S., defines "dart-firing stun gun" as any device having one or more darts that are capable of delivering an electrical current.

¹⁷ s. 790.01(3) and (4), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.01, F.S., relating to carrying concealed weapons.

Section 2. 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 (CJIC) met on March 11, 2015, and determined that this bill will have a negative insignificant prison bed impact on the Department of Corrections (i.e., a decrease of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. The bill creates an additional exception to this statute, which could have a negative jail bed impact (i.e., it will reduce the need for jail beds).

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:

The bill authorizes a person to carry a concealed weapon or firearm without a license while in the act of evacuating during a mandatory evacuation order issued during a state of emergency declared by a local authority pursuant to ch. 870, F.S. However, ch. 870, F.S., does not specifically grant a local official authority to issue mandatory evacuation orders during a state of emergency.

Section 870.044, F.S., prohibits a person from intentionally possessing a firearm in a public place during a state of emergency declared by a local authority. This provision appears to conflict with the bill, which allows a person to carry a concealed weapon or firearm while evacuating during a mandatory evacuation order issued during a state of emergency declared by a local authority.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment defined the term “in the act of evacuating.”

On March 11, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the effective date to “upon becoming a law.”

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.