

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1238

INTRODUCER: Senator Mayfield

SUBJECT: Safety of Religious Institutions

DATE: March 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	<b>Pre-meeting</b>
2.			CJ	
3.			RC	

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**I. Summary:**

SB 1238 enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school's property. If a school exercises this option, its governing board or body must create policies and procedures that the designees must meet.

Under current law, a person who has a concealed firearm license is authorized to carry a concealed handgun on the typical property of a religious institution, such as a church property that is not also home to a school. However, a license does not authorize a person to possess a firearm on the property of a school, whether public or private, from preschool through college.

**II. Present Situation:**

**Overview**

A person who holds a concealed firearm license may carry a concealed firearm on the property of a religious institution unless the property is also home to a school. This right is subject to a religious institution's authority to prohibit the carrying of firearms on its property.

The law broadly prohibits a person, including a licenseholder, from carrying a firearm on public or private school property, from preschool through the postsecondary level.

## Lawful Concealed Carry of Firearms

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed firearm license.<sup>1, 2</sup>

The license authorizes a person to carry a concealed handgun “throughout the state.” However, the license does not authorize a person to carry a firearm into any of a list of places, including “school facilities and administration buildings” and “college or university facilities.” This list of places that are off-limits even for licensed carry does *not* include the property of a religious institution. So, a licensee generally may carry a concealed handgun when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which licensed carry is illegal.<sup>3</sup>

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:<sup>4</sup>

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;<sup>5</sup>

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<sup>1</sup> As of December 31, 2018, 1,941,180 Floridians held a standard concealed firearm license. Fla. Dept. of Ag., *Number of Licensees by Type*, [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf).

<sup>2</sup> Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

<sup>3</sup> As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

<sup>4</sup> Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

<sup>5</sup> See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

While the licensing statute states that the concealed carry license “*does not authorize*” carrying into any school building or facility, another statute broadly *prohibits* the possession of a firearm on any public or private school property regardless of whether a person has a license.

### **Prohibited Possession of a Firearm on School Property**

Section 790.115, F.S., broadly prohibits a person from possessing a firearm on the property of any “school,” meaning any preschool through postsecondary school, whether public or private.<sup>6</sup> As such, property covered by the ban appears to include property shared by a religious institution and a school, and may even include the property of a church that hosts a voluntary prekindergarten (VPK) program.

There are three exceptions to the general ban on possessing a firearm on school property. The first allows a person to possess a firearm “as authorized in support of school-sanctioned activities.” The second exception allows a person to carry a firearm in a case to a firearms training program or to a firearms training range at a career center. The third exception generally allows a person to store a firearm inside a parked car.<sup>7</sup>

The penalty for violating the ban on firearms on school property varies depending on whether the violator has a concealed firearm license.<sup>8</sup>

### **Federal Law**

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.<sup>9</sup> However, this

<sup>6</sup> It also means any career center. Section 790.115(2)(a), F.S.

<sup>7</sup> Section 790.115(2)(a), F.S. Also, the ban does not apply to law enforcement officers. Section 790.115(3), F.S.

<sup>8</sup> A non-licensee who willfully and knowingly possesses a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See* ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

<sup>9</sup> 18 U.S.C. § 922(q)(2)(A).

prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.<sup>10</sup>

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting *students* from possessing firearms at or near schools. This prohibition is also subject to exceptions.<sup>11</sup> The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”<sup>12</sup>

### **Right to Exclude Anyone Possessing a Firearm**

A religious institution is free to prohibit firearm possession on its property, regardless of whether the property also contains a school. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”<sup>13</sup> The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”<sup>14</sup>

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,<sup>15</sup> punishable by up to 5 years in prison,<sup>16</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>17</sup>

### **III. Effect of Proposed Changes:**

The bill enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school’s property. If a school exercises this option, its governing board or body must create policies and procedures the designees must meet.

The bill is effective July 1, 2019.

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<sup>10</sup> See 18 U.S.C. § 922(q)(2)(B)(ii).

<sup>11</sup> See 20 U.S.C. § 7961.

<sup>12</sup> 20 U.S.C. § 7961(g).

<sup>13</sup> FLA. CONST. art. I, s. 2.

<sup>14</sup> *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

<sup>15</sup> Section 810.08(2)(c), F.S.

<sup>16</sup> Section 775.082(3)(e), F.S.

<sup>17</sup> Section 775.083(1)(c), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 790.06 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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