

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 656

INTRODUCER: Senator Burgess

SUBJECT: Unlawful Possession of Firearms, Ammunition, or Electric Weapons or Devices

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 656 provides a consistent application of s. 790.23(1)(b) and (d), F.S., with s. 985.35(7), F.S., by clarifying that an adjudication of delinquency for an offense classified as a felony shall disqualify a person from lawfully possessing a firearm until such person reaches 24 years of age, unless the person’s criminal history record for that offense has been expunged pursuant to s. 943.0515(1)(b), F.S.

Specifically, the bill amends s. 790.23(1)(b) and (d), F.S., by removing the term “found to have committed a delinquent act” and inserting the term “adjudicated delinquent” which is consistent with the terminology in s. 985.35(7), F.S.

This will provide clarity in the application of s. 790.23(1)(b) and (d), F.S., to persons who committed a delinquent act that is a felony offense and who was adjudicated delinquent.

Any potential fiscal impact from the bill is currently unknown.

The bill becomes effective on July 1, 2023.

II. Present Situation:

Section 790.23, F.S., provides that it is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

- Convicted of a felony in the courts of this state;
- Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;

- Convicted of or found to have committed a crime against the United States which is designated as a felony;
- Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding one year and such person is under 24 years of age; or
- Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding one year.¹

Section 790.23, F.S., does not apply to a person:

- Who was convicted of a felony whose civil rights and firearm authority have been restored; or
- Whose criminal history record has been expunged pursuant to s. 943.0515(1)(b), F.S.²

An adult who is convicted of a felony offense and therefore has lost his or her civil rights and the right to possess a firearm pursuant to s. 790.23, F.S., may have “firearm authority” restored.³ It is within the executive branch’s discretionary authority to grant a full or partial restoration of civil rights; therefore, whether a person re-gains firearm authority is entirely up to the Governor.⁴

Juvenile Delinquency Matters

Section 985.03(9), F.S, provides that “[c]hild who has been found to have committed a delinquent act” means a child who is “found” by delinquency court to have committed a violation of law or to be in direct or indirect contempt of court. Section 985.03(53), F.S., defines “violation of law” or “delinquent act” as a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult.

In a juvenile delinquency proceeding, a “finding” that the child has committed a delinquent act or violation of law can occur whether the court adjudicates the child or the court withholds adjudication of delinquency.⁵ A violation of s. 790.23(1)(b) or (d), F.S., requires only that the person has been “found” to have committed the prior felony offense that triggers the firearm disability in s. 790.23, F.S. There is no requirement in s. 790.23 (1)(b) or (d), F.S., that the person be adjudicated delinquent.

However, s. 985.35(7), F.S, appears to require that the person have been adjudicated delinquent of a felony offense for s. 790.23(1)(b) or (d), F.S., to apply, not just be the subject of a “finding”

¹ Section 790.23(1), F.S.

² Section 790.23(2), F.S.: The offenses are second degree felonies punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

³ Section 790.23(2)(a), F.S. While there is no similar provision for juvenile delinquency cases, a person can apply to have his or her juvenile record expunged.

⁴ *Parker v. State*, 263 So.3d 192 (Fla. 5th DCA 2018).

⁵ If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency. Section 985.35(4), F.S.

by the court that he or she committed the offense. Section 985.35(7), F.S., plainly states that “[a]n ‘adjudication of delinquency’ for an offense classified as a felony shall disqualify a person from lawfully possessing a firearm until such person reaches 24 years of age, unless the person’s criminal history record for that offense has been expunged pursuant to s. 943.0515(1)(b), F.S.” Therefore it appears that s. 790.23(1)(b) and (d), F.S., are not consistent with s. 985.35(7), F.S.

III. Effect of Proposed Changes:

The bill provides a consistent application of s. 790.23(1)(b) and (d), F.S., with s. 985.35(7), F.S., by clarifying that an adjudication of delinquency for an offense classified as a felony shall disqualify a person from lawfully possessing a firearm until such person reaches 24 years of age, unless the person’s criminal history record for that offense has been expunged pursuant to s. 943.0515(1)(b), F.S.

In other words, the prior adjudication of delinquency is a qualifying juvenile offense if it would be a felony offense if committed by an adult. Such prior adjudication of delinquency may form the basis for charges under s. 790.23, F.S.

Specifically, the bill amends s. 790.23(1)(b) and (d), F.S., by removing the term “found to have committed a delinquent act” and inserting the term “adjudicated delinquent” which is identical to the terminology used in s. 985.35(7), F.S.

The bill becomes effective on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Although it is possible that the bill could result in some fiscal impact to the state, the impact is not known at this time as the Criminal Justice Conference has not yet considered the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.23 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.