

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 489 Unlawful Possession of Firearms or Weapons by a Person Adjudicated Delinquent

SPONSOR(S): Criminal Justice Subcommittee, Tuck

TIED BILLS: **IDEN./SIM. BILLS:** SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall

SUMMARY ANALYSIS

Section 790.23, F.S., prohibits a person from owning or having in his or her care, custody, possession, or control, any firearm, ammunition, or electric weapon or device, or from carrying a concealed weapon, including a tear gas gun or chemical weapon or device, if such 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.

A violation of the prohibition is a second degree felony.

For purposes of s. 790.23, F.S., the Florida Supreme Court has held that an adult defendant must have been adjudicated guilty of committing a felony offense for the prohibition against possessing a firearm, ammunition, or specified weapon to apply. However, under current law, for felony offenses committed as a juvenile, the prohibition against possessing a firearm, ammunition, or specified weapon has been interpreted to apply *both* in circumstances where a person was adjudicated delinquent *and* where an adjudication of delinquency was withheld.

CS/HB 489 amends s. 790.23, F.S., by limiting, for a felony committed as a juvenile, the prohibition against possessing a firearm, ammunition, or specified weapon to apply *only* if the juvenile was adjudicated delinquent for committing an act that would be a felony if committed by an adult in the courts of this state, or another state, territory, or country. A juvenile who is adjudicated delinquent of committing a felony would still be prohibited from possessing a firearm, ammunition, or other specified weapon until he or she reaches 24 years of age, which is unchanged from current law. By requiring an adjudication of delinquency as a juvenile for the prohibition to apply, the bill aligns with the standard in current law which requires an adjudication of guilt for the prohibition to apply for felony offenses committed by an adult.

The bill may have a negative indeterminate impact on jail beds, prison beds, and beds in detention and commitment facilities operated by the Department of Juvenile Justice by narrowing the prohibition in s. 790.23(1)(b) and (d), F.S., against possessing a firearm, ammunition, or specified weapons to apply only if a person was adjudicated delinquent of a felony offense as a juvenile, which may result in fewer admissions to such facilities.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Possession of Firearms by Prohibited Persons

Section 790.23, F.S., prohibits a person from owning or having in his or her care, custody, possession, or control, any firearm,¹ ammunition,² or electric weapon or device,³ or from carrying a concealed weapon,⁴ including a tear gas gun or chemical weapon or device,⁵ if such person has been:

- Convicted of a felony⁶ 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.

The prohibition against owning or possessing a firearm, ammunition, or an electric weapon or device does not apply to a person:

- Who has been convicted of a felony whose civil rights and firearm authority have been restored; or
- Whose criminal history has been expunged pursuant to s. 943.0515(1)(b), F.S.⁷

A violation of the prohibition is a second degree felony.⁸ If a person who violates the prohibition previously qualified or currently qualifies for the penalty enhancements in s. 874.04, F.S., relating to gang-related offenses,⁹ a violation is punishable as a first degree felony punishable by life.¹⁰

¹ "Firearm" means 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. S. 790.001(9), F.S.

² "Ammunition" means an object consisting of all of the following:

- A fixed metallic or nonmetallic hull or casing containing a primer.
- One or more projectiles, one or more bullets, or shot.
- Gunpowder.

All of the specified components must be present for an object to be ammunition. S. 790.001(1), F.S.

³ "Electric weapon or device" means 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. S. 790.001(7), F.S.

⁴ "Concealed weapon" means any dirk, metallic knuckles, 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. S. 790.001(4)(a), F.S.

⁵ "Tear gas gun" or "chemical weapon or device" means any weapon of such nature, except a device known as a "self-defense chemical spray." "Self-defense chemical spray" means 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. S. 790.001(4)(b), F.S.

⁶ "Felony" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. S. 775.08(1), F.S.

⁷ Generally, s. 943.0515(1)(b), F.S., requires the Florida Department of Law Enforcement to expunge a minor's criminal history record two years after the minor reaches 19 years of age unless the minor: is classified as a serious or habitual juvenile offender, was committed to a juvenile correctional facility or juvenile prison, or if the minor is charged with or convicted of committing a forcible felony as an adult.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S. Under s. 775.087(2)(a)1., F.S., a felon who is convicted of unlawfully possessing a firearm and who was in actual possession of such firearm must be sentenced to a mandatory minimum term of imprisonment for three years.

Adult Convicted of a Felony

In Florida, when a criminal case involving an adult defendant is resolved through a plea or a defendant is found guilty at trial, a court may, subject to specified limitations,¹¹ either adjudicate a defendant guilty or withhold adjudication of guilt. For purposes of s. 790.23, F.S., the Florida Supreme Court has held that a person has been “convicted” of a felony and thus prohibited from possessing a firearm, ammunition, or specified weapon *only* if he or she was adjudicated *guilty* of committing a felony by the sentencing court.¹² Thus, a person who received a withhold of adjudication has not been “convicted” of a felony and therefore *not* prohibited from possessing a firearm, ammunition, or specified weapon under s. 790.23, F.S.¹³

Juvenile Found to Have Committed a Delinquent Act

Similar to a criminal case involving an adult defendant, in a juvenile case, a judge, after making a finding that a juvenile has committed a delinquent act, may either adjudicate the juvenile delinquent or withhold an adjudication of delinquency.¹⁴ Since s. 790.23(1)(b) and (d), F.S., explicitly prohibit a juvenile who has been found to have *committed* a delinquent act that is a felony from possessing a firearm, ammunition, or specified weapon, the prohibition has been interpreted to apply to *both* a juvenile who was adjudicated delinquent and a juvenile who received a withhold of adjudication. Thus, a juvenile who was adjudicated delinquent and a juvenile who received a withhold of adjudication are prohibited from possessing a firearm until he or she is at least 24 years old.¹⁵

Effect of Proposed Changes

CS/HB 489 amends s. 790.23, F.S., by limiting, for a felony committed as a juvenile, the prohibition against possessing a firearm, ammunition, or specified weapon to apply only if the juvenile was adjudicated delinquent for committing an act that would be a felony if committed by an adult in the courts of this state, or another state, territory, or country. A juvenile who is adjudicated delinquent of committing a felony would still be prohibited from possessing a firearm, ammunition, or other specified weapon until he or she reaches 24 years of age, which is unchanged from current law. By requiring an adjudication of delinquency as a juvenile for the prohibition to apply, the bill aligns with the standard in current law which requires an adjudication of guilt for the prohibition to apply for felony offenses committed by an adult.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 2: Provides an effective date of July 1, 2024.

⁹ Under s. 874.04, F.S., if the jury finds beyond a reasonable doubt that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the penalty for a felony or misdemeanor may be enhanced to the next highest degree. S. 874.04, F.S.

¹⁰ Ss. 775.082, 775.083, or 775.084, F.S.

¹¹ A court is prohibited from withholding adjudication of guilt of an adult defendant for:

- Any capital, life, or first degree felony offense;
- A second degree felony offense, unless specified conditions are met;
- A third degree felony offense, if the person has a prior withholding of adjudication for a felony offense or that is a crime of domestic violence, unless specified conditions are met; or
- Any offense involving driving under the influence, manslaughter resulting from the operation of a vehicle, or vehicular homicide.

Ss. 316.656(1) and 775.08435, F.S.

¹² *Clarke v. State*, 184 So. 3d 1107 (Fla. 2016).

¹³ *Id.*

¹⁴ S. 985.35(4) and (5), F.S.

¹⁵ *State v. Menuto*, 912 So. 2d 603 (Fla. 2d DCA 2005).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a negative indeterminate impact on jail beds, prison beds, and beds in detention and commitment facilities operated by the Department of Juvenile Justice by narrowing the prohibition in s. 790.23(1)(b) and (d), F.S., against possessing a firearm, ammunition, or specified weapons to apply only if a person was adjudicated delinquent of a felony offense as a juvenile, which may result in fewer admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it changed the title of the bill and made technical changes to improve the clarity and structure of the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

