



Pinellas County

315 Court Street, 5th Floor
Assembly Room
Clearwater, Florida 33756

Staff Report

File #: 15-802, **Version:** 1

Agenda Date: 11/24/2015

Subject:

County Commission miscellaneous

- Legislative Items.

1 A bill to be entitled

2 An act relating to weapons and firearms; creating s.
3 776.00111, F.S.; providing for construction of
4 statutes that implicate the right to bear arms or
5 defend one's self; creating s. 790.0015, F.S.;
6 providing that a person or entity who infringes on
7 specified rights of an individual may be subject to
8 liability under specified provisions; providing an
9 exception; providing that certain persons and entities
10 have no immunity; amending s. 790.02, F.S.; specifying
11 that a law enforcement officer may arrest a person for
12 the unlicensed carrying of a concealed weapon only
13 upon probable cause that such a violation is being
14 committed; amending s. 790.053, F.S.; providing that a
15 person licensed to carry a concealed firearm or weapon
16 may also openly carry such firearm or weapon; amending
17 s. 790.25, F.S.; revising legislative findings
18 concerning the possession and carrying of weapons and
19 firearms; revising provisions concerning the
20 construction of provisions; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 776.00111, Florida Statutes, is created
26 to read:

27 776.00111 Construction.—The judiciary shall employ strict
28 scrutiny in reviewing any statute that implicates the right to
29 bear arms or defend one's self pursuant to this chapter. The
30 right to bear arms or defend one's self is a fundamental and
31 individual right that exists in any place that a person has the
32 right to be, subject only to exceptionally and narrowly tailored
33 restrictions that employ the least possible restriction on the
34 right in order to achieve a compelling government interest.

35 Section 2. Section 790.0015, Florida Statutes, is created
36 to read:

37 790.0015 Infringement of rights; penalties.—Unless
38 probable cause exists to believe that a crime has been committed
39 by an individual, any person or entity infringing upon the
40 rights conferred on that individual by this chapter, chapter
41 776, s. 8, Art. I of the State Constitution, or the Second
42 Amendment to the United States Constitution is liable pursuant
43 to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding any other
44 law, no immunity shall apply to persons or entities infringing
45 on such rights in violation of this section.

46 Section 3. Section 790.02, Florida Statutes, is amended to
47 read:

48 790.02 Officer to arrest without warrant and upon probable
49 cause.—The unlicensed carrying of a concealed weapon is declared
50 a breach of peace, and any officer authorized to make arrests
51 under the laws of this state may make arrests without warrant of
52 persons violating ~~the provisions of~~ s. 790.01 when said officer

53 has ~~reasonable grounds or~~ probable cause to believe that the
54 offense of unlicensed carrying of a concealed weapon is being
55 committed.

56 Section 4. Section 790.053, Florida Statutes, is amended
57 to read:

58 790.053 Open carrying of weapons.—

59 (1) A person licensed to carry a concealed firearm or
60 weapon pursuant to this chapter may openly carry such firearm or
61 weapon; however, except as otherwise provided by law and in
62 subsection (2), it is unlawful for any other person to openly
63 carry on or about his or her person a ~~any~~ firearm or electric
64 weapon or device. ~~It is not a violation of this section for a~~
65 ~~person licensed to carry a concealed firearm as provided in s.~~
66 ~~790.06(1), and who is lawfully carrying a firearm in a concealed~~
67 ~~manner, to briefly and openly display the firearm to the~~
68 ~~ordinary sight of another person, unless the firearm is~~
69 ~~intentionally displayed in an angry or threatening manner, not~~
70 ~~in necessary self-defense.~~

71 (2) A person may openly carry, for purposes of lawful
72 self-defense:

73 (a) A self-defense chemical spray.

74 (b) A nonlethal stun gun or dart-firing stun gun or other
75 nonlethal electric weapon or device that is designed solely for
76 defensive purposes.

77 (3) Any person violating this section commits a
78 misdemeanor of the second degree, punishable as provided in s.

79 775.082 or s. 775.083.

80 Section 5. Subsections (1) and (4) of section 790.25,
81 Florida Statutes, are amended to read:

82 790.25 Lawful ownership, possession, and use of firearms
83 and other weapons.—

84 (1) DECLARATION OF POLICY.—The Legislature finds as a
85 matter of public policy and fact that the possession and
86 carrying of weapons and firearms by law-abiding individuals for
87 lawful purposes, including self-defense, enhances public safety
88 and that it is necessary to promote firearms safety and to curb
89 and prevent the use of firearms and other weapons in crime and
90 by incompetent persons without prohibiting the lawful use in
91 defense of life, home, and property, and the use by United
92 States or state military organizations, and as otherwise now
93 authorized by law, including the right to use and own firearms
94 for target practice and marksmanship on target practice ranges
95 or other lawful places, and lawful hunting and other lawful
96 purposes.

97 (4) CONSTRUCTION.—The judiciary shall construe this act in
98 conjunction with the right to bear arms or defend one's self as
99 provided in chapter 776. The right to bear arms or defend one's
100 self is a fundamental and individual right that exists in any
101 place that a person has the right to be, subject only to
102 exceptionally and narrowly tailored restrictions that employ the
103 least possible restriction on the right in order to achieve a
104 compelling government interest. This act shall be liberally

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105 construed to carry out the declaration of policy herein and in
106 favor of the constitutional right to keep and bear arms for
107 lawful purposes. This act is supplemental and additional to
108 existing rights to bear arms now guaranteed by law and decisions
109 of the courts of Florida, and nothing herein shall impair or
110 diminish any of such rights. This act shall supersede any law,
111 ordinance, or regulation in conflict herewith.

112 Section 6. This act shall take effect upon becoming a law.

By the Committee on Criminal Justice; and Senator Gaetz

591-00895-16

2016300c1

A bill to be entitled
An act relating to weapons and firearms; creating s.
776.00111, F.S.; providing for construction of
statutes that implicate the right to bear arms or
engage in self-defense; amending s. 790.02, F.S.;
specifying that a law enforcement officer may arrest a
person for the unlicensed carrying of a concealed
weapon only upon probable cause that such a violation
is being committed; amending s. 790.053, F.S.;
providing that a person licensed to carry a concealed
firearm or weapon may also openly carry such firearm
or weapon as long as such person is in compliance with
specified provisions; providing that a person or
entity who infringes on specified rights of an
individual may be subject to liability under specified
provisions; providing an exception; providing that
certain persons and entities have no immunity;
amending s. 790.25, F.S.; revising legislative
findings concerning the possession and carrying of
weapons and firearms; revising provisions concerning
the construction of provisions; providing an effective
date.

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

Section 1. Section 776.00111, Florida Statutes, is created
to read:

776.00111 Construction.—The judiciary shall employ strict
scrutiny in reviewing any statute that implicates the right to

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2016300c1

30 bear arms or defend one's self pursuant to this chapter. The
31 right to bear arms is a fundamental and individual right that
32 exists in any place that a person has the right to be, subject
33 only to exceptionally and narrowly tailored restrictions that
34 employ the least possible restriction on the right in order to
35 achieve a compelling government interest.

36 Section 2. Section 790.02, Florida Statutes, is amended to
37 read:

38 790.02 Officer to arrest without warrant and upon probable
39 cause.—The unlicensed carrying of a concealed weapon is declared
40 a breach of peace, and any officer authorized to make arrests
41 under the laws of this state may make arrests without warrant of
42 persons violating ~~the provisions of~~ s. 790.01 when said officer
43 has ~~reasonable grounds or~~ probable cause to believe that the
44 offense of unlicensed carrying of a concealed weapon is being
45 committed.

46 Section 3. Section 790.053, Florida Statutes, is amended to
47 read:

48 790.053 Open carrying of weapons.—

49 (1) Subject to ss. 790.06 and 790.10, a person licensed to
50 carry a concealed firearm or weapon pursuant to this chapter may
51 openly carry such firearm or weapon; however, except as
52 otherwise provided by law and in subsection (2), it is unlawful
53 for any other person to openly carry on or about his or her
54 person a any firearm or electric weapon or device. ~~It is not a~~
55 ~~violation of this section for a person licensed to carry a~~
56 ~~concealed firearm as provided in s. 790.06(1), and who is~~
57 ~~lawfully carrying a firearm in a concealed manner, to briefly~~
58 ~~and openly display the firearm to the ordinary sight of another~~

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59 ~~person, unless the firearm is intentionally displayed in an~~
60 ~~angry or threatening manner, not in necessary self-defense.~~

61 (2) A person may openly carry, for purposes of lawful self-
62 defense:

63 (a) A self-defense chemical spray.

64 (b) A nonlethal stun gun or dart-firing stun gun or other
65 nonlethal electric weapon or device that is designed solely for
66 defensive purposes.

67 (3) Any person violating this section commits a misdemeanor
68 of the second degree, punishable as provided in s. 775.082 or s.
69 775.083.

70 (4) Unless probable cause exists to believe that a crime
71 has been committed by an individual, any person or entity
72 infringing upon the rights conferred on that individual by this
73 chapter, chapter 776, s. 8, Art. I of the State Constitution, or
74 the Second Amendment to the United States Constitution is liable
75 pursuant to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding
76 any other law, no immunity shall apply to persons infringing on
77 such rights in violation of this subsection.

78 Section 4. Subsections (1) and (4) of section 790.25,
79 Florida Statutes, are amended to read:

80 790.25 Lawful ownership, possession, and use of firearms
81 and other weapons.—

82 (1) DECLARATION OF POLICY.—The Legislature finds as a
83 matter of public policy and fact that the possession and
84 carrying of weapons and firearms by law-abiding individuals for
85 lawful purposes, including self-defense, enhances public safety
86 and that it is necessary to promote firearms safety and to curb
87 and prevent the use of firearms and other weapons in crime and

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88 by incompetent persons without prohibiting the lawful use in
89 defense of life, home, and property, and the use by United
90 States or state military organizations, and as otherwise now
91 authorized by law, including the right to use and own firearms
92 for target practice and marksmanship on target practice ranges
93 or other lawful places, and lawful hunting and other lawful
94 purposes.

95 (4) CONSTRUCTION.—The judiciary shall construe this act in
96 conjunction with the right to bear arms or defend one's self as
97 provided in chapter 776. The right to bear arms and defend one's
98 self is a fundamental and individual right that exists in any
99 place that a person has the right to be, subject only to
100 exceptionally and narrowly tailored restrictions that employ the
101 least possible restriction on the right in order to achieve a
102 compelling government interest. This act shall be liberally
103 construed to carry out the declaration of policy herein and in
104 favor of the constitutional right to keep and bear arms for
105 lawful purposes. This act is supplemental and additional to
106 existing rights to bear arms now guaranteed by law and decisions
107 of the courts of Florida, and nothing herein shall impair or
108 diminish any of such rights. This act shall supersede any law,
109 ordinance, or regulation in conflict herewith.

110 Section 5. This act shall take effect upon becoming a law.

1 A bill to be entitled

2 An act relating to expunging and sealing criminal
3 history records of minors; amending s. 943.0515, F.S.;
4 providing for the nonjudicial expunction of the
5 criminal history of an offense after a specified
6 period for a minor who is not a serious or habitual
7 juvenile offender; providing an exception for
8 specified minors to apply for expunction before
9 attaining 21 years of age; amending s. 943.0582, F.S.;
10 eliminating a deadline for submission of an
11 application by a minor for a prearrest or postarrest
12 diversion expunction; amending s. 790.23, F.S.;
13 conforming provisions to changes made by the act;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (b) of subsection (1) of section
19 943.0515, Florida Statutes, is amended to read:

20 943.0515 Retention of criminal history records of minors.—

21 (1)

22 (b)1. If the minor is not classified as a serious or
23 habitual juvenile offender or committed to a juvenile
24 correctional facility or juvenile prison under chapter 985, the
25 program shall retain the minor's criminal history record for 2 ~~5~~
26 years after the date the minor reaches 19 years of age, at which

27 time the record shall be expunged unless it meets the criteria
28 of paragraph (2)(a) or paragraph (2)(b).

29 2. A minor described in subparagraph 1. may apply to the
30 department to have his or her criminal history record expunged
31 before the minor reaches 21 years of age. To be eligible for
32 expunction under this subparagraph, the minor must be 18 years
33 of age or older but less than 21 years of age and have not been
34 charged by the state attorney with or found to have committed a
35 criminal offense within the 5-year period before the application
36 date. The only offenses eligible for expunction under this
37 subparagraph are those that the minor committed before reaching
38 18 years of age. Expunction of a criminal history record under
39 this subparagraph requires the approval of the state attorney
40 for each circuit in which an offense specified in the criminal
41 history record occurred.

42 Section 2. Subsections (3) and (4) of section 943.0582,
43 Florida Statutes, are amended to read:

44 943.0582 Prearrest, postarrest, or teen court diversion
45 program expunction.—

46 (3) The department shall expunge the nonjudicial arrest
47 record of a minor who has successfully completed a prearrest or
48 postarrest diversion program if that minor:

49 (a) Submits an application for prearrest or postarrest
50 diversion expunction, on a form prescribed by the department,
51 signed by the minor's parent or legal guardian, or by the minor
52 if he or she has reached the age of majority at the time of

53 applying.

54 ~~(b) Submits the application for prearrest or postarrest~~
55 ~~diversion expunction no later than 12 months after completion of~~
56 ~~the diversion program.~~

57 (b)~~(e)~~ Submits to the department, with the application, an
58 official written statement from the state attorney for the
59 county in which the arrest occurred certifying that he or she
60 has successfully completed that county's prearrest or postarrest
61 diversion program, that his or her participation in the program
62 was based on an arrest for a nonviolent misdemeanor, and that he
63 or she has not otherwise been charged by the state attorney with
64 or found to have committed any criminal offense or comparable
65 ordinance violation.

66 (c)~~(d)~~ Participated in a prearrest or postarrest diversion
67 program that expressly authorizes or permits such expunction to
68 occur.

69 (d)~~(e)~~ Participated in a prearrest or postarrest diversion
70 program based on an arrest for a nonviolent misdemeanor that
71 would not qualify as an act of domestic violence as that term is
72 defined in s. 741.28.

73 (e)~~(f)~~ Has never, prior to filing the application for
74 expunction, been charged by the state attorney with or been
75 found to have committed any criminal offense or comparable
76 ordinance violation.

77 (4) The department may ~~is authorized to~~ charge a \$75
78 processing fee for each request received for prearrest or

79 postarrest diversion program expunction, for placement in the
80 Department of Law Enforcement Operating Trust Fund, unless such
81 fee is waived by the executive director.

82 Section 3. Subsection (2) of section 790.23, Florida
83 Statutes, is amended to read:

84 790.23 Felons and delinquents; possession of firearms,
85 ammunition, or electric weapons or devices unlawful.—

86 (2) This section does ~~shall~~ not apply to a person:

87 (a) Convicted of a felony whose civil rights and firearm
88 authority have been restored.

89 (b) Whose criminal history record has been expunged
90 pursuant to s. 943.0515(1) (b).

91 Section 4. This act shall take effect July 1, 2016.

By Senator Detert

28-00488-16

2016386__

A bill to be entitled
An act relating to expunction of records of minors;
amending s. 943.0515, F.S.; decreasing the period of
time that a minor's criminal history record must be
retained before expunction; amending s. 943.0582,
F.S.; deleting a limitation on the period of time
within which a minor must submit an application for
prearrest or postarrest diversion expunction to the
Department of Law Enforcement after successful
completion of the diversion program; reenacting s.
985.125(3), F.S., relating to prearrest and postarrest
diversion programs, to incorporate the amendment made
to s. 943.0582, F.S., in a reference thereto;
providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section
943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b) If the minor is not classified as a serious or habitual
juvenile offender or committed to a juvenile correctional
facility or juvenile prison under chapter 985, the program shall
retain the minor's criminal history record for 2 5 years after
the date the minor reaches 19 years of age, at which time the
record must ~~shall~~ be expunged unless it meets the criteria of
paragraph (2)(a) or paragraph (2)(b).

Section 2. Subsection (3) of section 943.0582, Florida

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Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(a) Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.

~~(b) Submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.~~

(b)(e) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

(c)(d) Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.

(d)(e) Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is

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defined in s. 741.28.

(e)~~(f)~~ Has never been, prior to filing the application for expunction, ~~been~~ charged by the state attorney with, or ~~been~~ found to have committed, any criminal offense or comparable ordinance violation.

Section 3. For the purpose of incorporating the amendment made by this act to section 943.0582, Florida Statutes, in a reference thereto, subsection (3) of section 985.125, Florida Statutes, is reenacted to read:

985.125 Prearrest or postarrest diversion programs.—

(3) The prearrest or postarrest diversion program may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.

Section 4. This act shall take effect July 1, 2016.