



# Pinellas County

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

## Staff Report

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

**Agenda Date:** 11/24/2015

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**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

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

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       engage in self-defense; amending s. 790.02, F.S.;  
6       specifying that a law enforcement officer may arrest a  
7       person for the unlicensed carrying of a concealed  
8       weapon only upon probable cause that such a violation  
9       is being committed; amending s. 790.053, F.S.;  
10      providing that a person licensed to carry a concealed  
11      firearm or weapon may also openly carry such firearm  
12      or weapon as long as such person is in compliance with  
13      specified provisions; providing that a person or  
14      entity who infringes on specified rights of an  
15      individual may be subject to liability under specified  
16      provisions; providing an exception; providing that  
17      certain persons and entities have no immunity;  
18      amending s. 790.25, F.S.; revising legislative  
19      findings concerning the possession and carrying of  
20      weapons and firearms; revising provisions concerning  
21      the construction of provisions; providing an effective  
22      date.

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

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

28       776.00111 Construction.—The judiciary shall employ strict  
29 scrutiny in reviewing any statute that implicates the right to

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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\_\_

1                   A bill to be entitled  
2           An act relating to expunction of records of minors;  
3           amending s. 943.0515, F.S.; decreasing the period of  
4           time that a minor's criminal history record must be  
5           retained before expunction; amending s. 943.0582,  
6           F.S.; deleting a limitation on the period of time  
7           within which a minor must submit an application for  
8           prearrest or postarrest diversion expunction to the  
9           Department of Law Enforcement after successful  
10          completion of the diversion program; reenacting s.  
11          985.125(3), F.S., relating to prearrest and postarrest  
12          diversion programs, to incorporate the amendment made  
13          to s. 943.0582, F.S., in a reference thereto;  
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) If the minor is not classified as a serious or habitual  
23           juvenile offender or committed to a juvenile correctional  
24           facility or juvenile prison under chapter 985, the program shall  
25           retain the minor's criminal history record for 2 5 years after  
26           the date the minor reaches 19 years of age, at which time the  
27           record must ~~shall~~ be expunged unless it meets the criteria of  
28           paragraph (2) (a) or paragraph (2) (b).

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

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30 Statutes, is amended to read:

31 943.0582 Prearrest, postarrest, or teen court diversion  
32 program expunction.—

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

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

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

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

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

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

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59 defined in s. 741.28.

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

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

68 985.125 Prearrest or postarrest diversion programs.—

69 (3) The prearrest or postarrest diversion program may, upon  
70 agreement of the agencies that establish the program, provide  
71 for the expunction of the nonjudicial arrest record of a minor  
72 who successfully completes such a program pursuant to s.  
73 943.0582.

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