

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 1500

INTRODUCER: Senator Simpson

SUBJECT: Concealed Weapons and Firearms

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1500 removes the statutory prohibition against concealed carry license-holders carrying a concealed weapon or firearm into the passenger terminal of any airport.

The inside of the airport’s sterile (secure) area is differentiated from the passenger terminal and remains in the law as amended by the bill so that concealed weapons or firearms may not be carried into the sterile area of the airport.

Section 790.06(12), F.S., as part of the concealed weapon or firearm licensure statute, appears to be clarifying in nature by stating what the license *does not* authorize. The statute specifically includes the airport passenger terminal among the places where a concealed weapon or firearm license does not authorize the licensee to “openly carry a handgun or carry a concealed weapon or firearm.”¹

It should be noted that while a licensee may be able to carry a *concealed* weapon or firearm into the passenger terminal of an airport upon the bill becoming law, *openly* carrying a firearm, except in specific locations or under certain circumstances, is not statutorily authorized under current law. Openly carrying a firearm is not directly addressed in the bill.

The bill provides an effective date of July 1, 2016.

¹ Section 790.06(12)(a)13., F.S.

II. Present Situation:

Limitations on the Concealed Carrying of a Firearm or Weapon for Licensees

Persons who hold a valid license to carry a concealed weapon or firearm are statutorily authorized to carry a handgun,² electronic weapon or device,³ tear gas gun,⁴ knife,⁵ or billie in a concealed manner.⁶

However, s. 790.06(12), F.S., sets forth the following limitations on the concealed carry statutory authorization. It should be noted that concealed carry by a licensee is not specifically limited unless the firearm or weapon is carried into the listed places.

A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public school district, municipality, or special district;
8. Any meeting of the Legislature or a committee thereof;
9. Any school, college, or professional athletic event not related to firearms;
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
14. *The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which*

² “Handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. s. 790.0655, 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(14), F.S.

⁴ “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(3)(b), F.S.

⁵ “Knife” is defined as what it is *not* in s. 790.001(13), F.S.: “Weapon” means...or other deadly weapon *except* ... a common pocketknife, plastic knife, or blunt-bladed table knife.

⁶ Section 790.06(1), F.S.

firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
 15. Any place where the carrying of firearms is prohibited by federal law.⁷
(emphasis added)

Prohibitions Against the Concealed Carrying of a Firearm or Weapon

Section 790.01, F.S., prohibits the carrying of a concealed firearm and punishes a violation of the law as a third degree felony unless the person carrying the concealed firearm is licensed under s. 790.06, F.S.⁸ The carrying of a weapon in a concealed manner by a person who is not licensed to do so under s. 790.06, F.S., is a first degree misdemeanor.⁹

Open Carrying of a Firearm Generally Prohibited

Section 790.053, F.S., prohibits the open carrying of a firearm or electric weapon or device. The offense is punished as a second degree misdemeanor.¹⁰

It is not a violation of the open carry prohibition for a person to openly carry a self-defense chemical spray or a nonlethal stun gun, dart-firing stun gun, or other nonlethal electric weapon, if the weapon is carried for purposes of lawful self-defense.¹¹

Lawful Open and Concealed Carry in Florida

Section 790.25, F.S., contains an exception to the requirement that a person possess a valid concealed carry license in order to lawfully carry in a concealed manner *if* the person is engaged in certain listed activities. Likewise, a person engaged in those activities may lawfully carry a firearm or weapon openly.

Section 790.25, F.S., states in part:

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

(2) USES NOT AUTHORIZED.—

(a) This section *does not authorize* carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02. ...

(3) LAWFUL USES.—The provisions of ss. 790.053 and 790.06 *do not apply* in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

⁷ Section 790.06(12)(a), F.S.

⁸ Section 790.01(2), (3), F.S. Concealed firearm is defined in s. 790.001(2), F.S.

⁹ Section 790.01(1), (3), F.S. Concealed weapon is defined in s. 790.001(3), F.S.

¹⁰ It is not a violation of s. 790.053, F.S., for a person who is licensed to carry a concealed firearm under s. 790.06(1), F.S., and who is carrying the firearm in a lawful manner to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in self-defense.

¹¹ Section 790.053(2), F.S.

- (a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- (b) Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty;
- (c) Persons carrying out or training for emergency management duties under chapter 252;
- (d) Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- (e) Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- (f) Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- (g) Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- (h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- (i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- (j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- (k) A person firing weapons in a safe and secure indoor range for testing and target practice;
- (l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- (m) A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- (n) A person possessing arms at his or her home or place of business;
- (o) Investigators employed by the several public defenders of the state, while actually carrying out official duties;...and
- (p) Investigators employed by the capital collateral regional counsel, while actually carrying out official duties;...

(5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased¹² or is otherwise not readily accessible for immediate use.¹³ Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

Concealed Carry Licensure

The Department of Agriculture and Consumer Services (DACCS) *issues a license* to carry concealed weapons or firearms if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States or is a consular security official of a foreign government and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;¹⁴
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state 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. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;

¹² “Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access. s. 790.001(17), F.S.

¹³ “Readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person. s. 790.001(16), F.S.

¹⁴ The minimum age requirement is waived if the applicant otherwise qualifies and is either a service member as defined in s. 250.01, F.S., or a veteran of the U.S. Armed Forces who was discharged under honorable conditions. s. 790.062, F.S.

- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that 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.¹⁵

DACS shall *deny a concealed carry license* if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹⁶

DACS shall *revoke* a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.¹⁷

Upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, DACS shall *suspend* a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.¹⁸ DACS is also required to *suspend* a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁹

A license already issued must be *suspended or revoked* by DACS if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;

¹⁵ Section 790.06(2)(a)-(m), F.S.

¹⁶ Section 790.06(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.²⁰

The concealed carry license issued by DACS, along with valid identification, must be carried at all times the licensee is in actual possession of a concealed weapon or firearm and must be displayed upon demand of a law enforcement officer.²¹

Airport Security

The Transportation Security Administration (TSA) was created by the Aviation and Transportation Security Act, passed by the 107th Congress and signed on November 19, 2001, in response to the events of September 11, 2001. TSA is a component of the federal Department of Homeland Security. The Office of Security Operations, within TSA, provides risk-based, adaptive security that includes airport checkpoint and baggage screening operations, regulatory compliance, cargo inspections and other specialized programs designed to secure transportation.²²

Although a person may travel with a firearm, it must be unloaded, packed to specifications, and declared to the person's airline as contents of checked baggage.²³

A person may not possess a weapon, carried on or about his or her person or accessible property when the checkpoint security screening has begun prior to entry to the sterile area of the airport.²⁴

TSA may impose civil penalties of up to \$11,000 per violation per person. The table below outlines some of the penalties that may be imposed on individuals for prohibited items violations and violations of other TSA regulations. Repeat violations will result in higher penalties.

²⁰ Section 790.06(10), F.S.

²¹ Section 790.06(1), F.S.

²² <https://www.tsa.gov/about/tsa-leadership> (visited February 11, 2016).

²³ 49 C.F.R. 1540.111.

²⁴ (a) On an individual's person or accessible property—prohibitions. Except as provided in paragraph (b) of this section, an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

- (1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under this subchapter;
- (2) When the individual is entering or in a sterile area; or
- (3) When the individual is attempting to board or onboard an aircraft for which screening is conducted...49 C.F.R. 1540.111.

Security Violations by Individuals for Prohibited Items Discovered at Checkpoint/Sterile Area/Onboard Aircraft²⁵

Loaded firearms (or unloaded firearms with accessible ammunition)	\$3,000 - \$7,500 + criminal referral
Unloaded firearms	\$1,500 - \$3,000 + criminal referral
BB, pellet, and compressed-air guns; flare and starter pistols; realistic replicas of firearms (including gun lighters); permanently inert firearms; spear guns; stun guns, cattle prods, or other shocking devices	\$250 - \$1,500
Blasting caps; dynamite; gunpowder (more than 10 oz.); hand grenades; plastic explosives; all other high explosives	\$6,000 - \$11,000 + criminal referral
Consumer fireworks, novelty fireworks, professional display fireworks; flares; gunpowder (10 oz. or less); realistic replicas of explosives	\$250 - \$1,500 + criminal referral
Silencers, mufflers frames and/or receivers	\$1500 - 3,000 + criminal referral
Firearm parts	\$250 - \$1,500
Axes and hatchets; bows and/or arrows; ice axes and ice picks; knives with blades that open automatically (such as switchblades); knives with blades that open via gravity (such as butterfly knives); any double-edge knives or daggers; meat cleavers; sabers; swords; and machetes throwing stars	\$250 - \$1,500
Any flammable liquid or gel fuels, including gasoline, lighter fluids, cooking fuels; turpentine and paint thinners	\$250-\$1,500
Self-defense spray; tear gas; Chlorine and other chemicals for pools/spas; compressed gas cylinders (including fire extinguishers); liquid bleach	\$250-\$1,500

Additionally, a person may be fined in the amount of \$1,000 to \$3,000 for entering a sterile area without submitting to screening. The term “sterile area” is defined in TSA regulations as a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator or a foreign air carrier, through the screening of persons and property.²⁶

²⁵ <https://www.tsa.gov/travel/civil-enforcement> (visited February 11, 2016).

²⁶ 49 C.F.R. § 1540.5.

III. Effect of Proposed Changes:

The bill amends s. 790.06(12)(a)14., F.S., to remove the prohibition against a person who holds a concealed weapon or firearm license carrying a concealed weapon or firearm into the passenger terminal of any airport.

Section 790.06(12), F.S., as part of the concealed weapon or firearm licensure statute, appears to be clarifying in nature by stating what the license *does not* authorize. The statute specifically includes the airport passenger terminal among the places where a concealed weapon or firearm license does not authorize the licensee to “openly carry a handgun or carry a concealed weapon or firearm.”²⁷

The bill leaves intact the provision that prohibits such person from carrying a concealed weapon or firearm into the sterile area of any airport. Under federal law, the sterile area of an airport is that area accessible only after a person has been cleared through the checkpoint security screening process.

The prohibition against openly carrying a handgun, mentioned in s. 790.06(12)(a), F.S., is not addressed by the bill. Openly carrying handguns is currently prohibited by s. 790.053, F.S.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁷ Section 790.06(12)(a)13., F.S.

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.