

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: CS/SB 498

INTRODUCER: Criminal Justice Committee and Senator Gruters and others

SUBJECT: Safety of Religious Institutions

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 498 effectively removes the prohibition against firearms on school property for religious institutions that have a co-located school.

The bill provides, notwithstanding any other law, for purposes of safety, security, personal protection, or any other lawful purpose, a person having a concealed weapon or firearm license may carry a firearm on property:

- Owned;
- Rented;
- Leased;
- Borrowed; or
- Lawfully used by:
 - A church,
 - A synagogue, or
 - Any other religious institution.

A church, synagogue, or other religious institution may opt out of the new concealed carry law by having a policy specifically prohibiting persons who are lawfully licensed under s. 790.06, F.S., from carrying a firearm on such property.

The bill becomes effective upon becoming law.

II. Present Situation:

Concealed Weapon and Firearm Licenses

Florida is known as a “shall issue”¹ state for applications for concealed weapon and firearm licenses.² The Department of Agriculture and Consumer Services (department) must review and either issue or deny a license within 90 days of receiving an application.³ As of February 28, 2021, there were 2,515,678 concealed weapon or firearm licensees in Florida.⁴

Denial of a license must occur if an applicant:

- Is not a citizen of the United States, permanent resident alien, or consular security official of a foreign government;
- Is not 21 years of age or older;
- Suffers from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Has been convicted of a felony;
- Has been found guilty of a controlled substances crime within the previous 3 years;
- Has been committed for the abuse of a controlled substance;⁵
- Suffers from chronic and habitual use of alcohol or other substances to the extent that their normal faculties are impaired;⁶
- Does not intend to carry a concealed weapon or firearm for lawful self-defense;
- Fails to demonstrate competency with a firearm;⁷
- Has been adjudicated as an incapacitated person;
- Has been committed to a mental institution;⁸

¹ Generally, states issue a permit, or license, to carry a concealed weapon such as a firearm on either a “shall issue,” or “may issue” basis. The key difference is that shall issue states must issue the permit or license if the applicant meets the requirements; whereas, may issue states have much more discretion to deny an application even if the applicant meets the requirements under the law. New York may deny a license, for example, if the applicant fails to demonstrate “proper cause” or lacks “good moral character” as determined by a judge reviewing the application. N.Y. Penal Law s. 400.00.

² Section 790.06(2), F.S.

³ Section 790.06(6)(c), F.S.

⁴ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licenses by Type*, January 31, 2021, available at https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited March 4, 2021).

⁵ An applicant granted relief of firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to be committed for the abuse of a controlled substance.

⁶ The law presumes that a person chronically and habitually uses alcoholic beverages or other substances to the point of impairment if the applicant has been convicted of using a firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances or has been deemed a habitual offender of disorderly intoxication under s. 856.011(3), F.S., or has had two or more convictions of driving under the influence within a 3-year period preceding the date which the application is submitted.

⁷ There are several methods of demonstrating competency with a firearm, including completion of a hunter education or safety course approved by the Fish and Wildlife Conservation Commission, completion of any law enforcement firearms safety or training course, or completion of firearms training safety courses using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services.

⁸ An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to have been committed in a mental institution.

- Has had an adjudication of guilt withheld or a suspended sentence on a felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has had an adjudication of guilt withheld or an imposition of sentence suspended on a 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 expunged;
- Has been issued an injunction that is currently in force and effect that restrains that applicant from committing acts of domestic violence or acts of repeat violence; or
- Is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁹

Additionally, the department must 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 until final disposition of the case.¹⁰ The department 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.¹¹

Once obtained, the licensee must carry the license with valid identification at all times when the licensee is in actual possession of a concealed weapon or firearm.¹² According to s. 790.06(12)(a), F.S, the license, however, “does not authorize any person to carry a concealed weapon or firearm into:”

- Any place of nuisance;¹³
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom;¹⁴
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;
- 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;
- Any college or university facility;¹⁵

⁹ Section 790.01(2), F.S.

¹⁰ Section 790.06(3), F.S.

¹¹ *Id.*

¹² Section 790.06(1), F.S.

¹³ *See* s. 823.05, F.S., for an extensive description of places of nuisance.

¹⁴ However, Judges may carry a concealed weapon and allow others to do so within their courtroom. Section 790.06(12)(a)5., F.S.

¹⁵ However, a “student, employee, or faculty member” may carry a stun gun or nonlethal electric weapon designed for defensive purposes as long as the weapon does not fire a dart or projectile.

- The inside of the passenger terminal and sterile area of any airport; or
- Any place where the carrying of firearms is prohibited by federal law.¹⁶

While a concealed weapon or firearm license is generally needed when carrying a concealed firearm, there are instances where an individual may legally possess or carry a firearm without a license, so long as they are not a prohibited firearm possessor.¹⁷ These instances include an individual:

- Fishing, camping, or hunting or going to or returning from fishing, camping, or hunting;
- Who is 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;
- 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;
- 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; or
- At his or her home or place of business.¹⁸

Firearms Prohibited on School Property

A person may not possess any firearm on the property of any school except as authorized in support of school activities.¹⁹

There are five exceptions to this general rule. A person may carry a firearm on school property:

- In a case to a firearms program, class, or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range;
- In a vehicle pursuant to s. 790.25(5), F.S.; except that school districts may adopt written and published policies that waive this exception for purposes of student and campus parking privileges, thereby not allowing students to have firearms in their vehicles on campus;²⁰
- If he or she is a law enforcement officer;²¹ or
- If he or she is a school guardian acting under the Coach Aaron Feis Guardian Program.²²

¹⁶ Section 790.06(12)(a)1.-15., F.S.

¹⁷ Those prohibited from possessing a firearm include convicted felons whose civil rights have not been restored. Section 790.23, F.S.

¹⁸ Section 790.25(3), F.S. This authority to carry a concealed firearm without a license applies to where "business is transacted." *State v. Little*, 104 So. 3d 1263, 1266 (Fla. 4th DCA 2013) (Finding that a labor union official could not be charged with carrying a concealed firearm while at the union hall because the union hall was his place of business).

¹⁹ Section 790.115(2)(a), F.S.

²⁰ Section 790.115(2)(a)1.-3., F.S. Note that the ability to adopt written and published policies waiving the exception for student and campus parking does not extend to institutions of higher learning, i.e. colleges and universities. *Florida Carry v. University of North Florida*, 133 So.3d 966 (Fla. 1st DCA 2013).

²¹ Section 790.115(3), F.S.

²² Section 1006.12, F.S.

“School” means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.²³

Firearms and Religious Institutions

In response to violent incidents targeting religious institutions,²⁴ some churches in other states have opted to form “security teams” for the purpose of keeping their congregation safe during services.²⁵ These security teams are often comprised of individuals having concealed weapons licenses who carry concealed firearms during service on a voluntary basis.²⁶

Florida law does not prohibit a licensee from carrying a concealed firearm inside a church or other religious institution. However, some churches are co-located with a school where concealed firearms are expressly prohibited.²⁷ The firearm prohibition makes it more difficult for co-located religious institutions to implement a security team because the religious institution would be limited to utilizing individuals who are authorized to carry a concealed firearm on school properties, such as law enforcements officers.²⁸

III. Effect of Proposed Changes:

The bill provides, notwithstanding any other law, for purposes of safety, security, personal protection, or any other lawful purpose, the bill permits a person having a concealed weapons license to carry a firearm on property:

- Owned;
- Rented;
- Leased;
- Borrowed; or
- Lawfully used by:
 - A church,
 - A synagogue, or
 - Any other religious institution.²⁹

²³ Section 790.115(2)(a), F.S.

²⁴ Section 199.183(2)(a), F.S., defines “religious institutions” as churches and ecclesiastical or denominational organizations having established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted, as well as church cemeteries.

²⁵ Nichole Manna, *After shooting, how can Texas churches keep members safe and still welcome all people?*, FORT WORTH STAR TELEGRAM (December 31, 2019), <https://www.star-telegram.com/news/state/texas/article238834258.html> (last visited February 24, 2021). Texas revised its law in 2019, following a church shooting, to clarify that persons could carry firearms in churches unless given notice to the contrary. See S.B. 535, Senator Campbell, effective September 1, 2019, available at <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB00535F.pdf> (last visited March 2, 2021). See also Hon. Ken Paxton, Attorney General of Texas, Opinion No. KP-0176, December 21, 2017, available at <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2017/kp0176.pdf> (last visited March 2, 2021).

²⁶ *Id.*

²⁷ Sections 790.115(2)(a) and 790.06(12)(a), F.S.

²⁸ Section 790.115(3), F.S.

²⁹ The terms church, synagogue, and religious institution are not defined in the bill.

A church, synagogue, or other religious institution may opt out of the new concealed carry law by having a policy specifically prohibiting persons who are lawfully licensed under s. 790.06, F.S., from carrying a firearm on such property.

The bill effectively removes the prohibition against firearms on school property for religious institutions that have a co-located school.

The bill takes effect upon becoming law.

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:

The bill may be cost effective for religious institutions. Churches on school grounds, for example, may use volunteers having concealed weapons licenses within their church membership in lieu of hiring off-duty law enforcement officers to provide security.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 9, 2021:

The committee substitute removes the word “posted” from the bill. As a result the religious institution’s policy related to concealed firearms is no longer required to be posted. This means that a church, synagogue, or other religious institution may opt out of the new concealed carry law simply by having a policy specifically prohibiting persons who are lawfully licensed under s. 790.06, F.S., from carrying a firearm on such property.

- B. **Amendments:**

None.