

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 Rules

BILL: CS/SB 1286

INTRODUCER: Criminal Justice Committee and Senator Collins

SUBJECT: Return of Weapons and Arms Following an Arrest

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Twogood</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1286 requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are *not* seized as evidence, within 45 days of his or her release from detention if he or she meets these other criteria:

- He or she must provide a form of government-issued photographic identification; and
- If requesting the return of a firearm, he or she must successfully complete a criminal history background check confirming the person is not prohibited from possessing a firearm under state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill.

II. Present Situation:

Section 790.08, F.S., requires every law enforcement officer who makes an arrest under s. 790.07, F.S., which prohibits the use or attempted use of a weapon, electric weapon or device, or firearm in committing a felony, to take possession of any weapon or firearm found upon the person. Additionally, in making any arrest under any other law or municipal ordinance, the law enforcement officer must take possession of any weapon, electric weapon or device, or firearm found upon the person arrested.¹

¹ Section 790.08(1), F.S.

The law enforcement officer must deliver such weapons, electric weapons or devices, or “arms”² to the sheriff or chief of police of the jurisdiction in which the arrest was made. The sheriff or the chief of police must retain such weapon or firearm until after the trial of the person arrested.³

Sections 790.08(2) and (3), F.S., require the forfeiture of a weapon or firearm if a person is convicted of violating s. 790.07, F.S., or a similar offense involving the use or attempted use of a weapon or firearm in committing a felony, and the return of a weapon or firearm if a person is acquitted or such charges are dismissed.

If a person fails to claim a weapon or firearm within 60 days of his or her acquittal or the dismissal of charges, the weapon or firearm must be delivered to the sheriff of the county in which the person was arrested.⁴ If a person fails to claim a weapon or firearm within six months from the date it was delivered to the sheriff, such weapon or firearm is forfeited to the state.⁵

The forfeiture and return requirements in s. 790.08(2) and (3), F.S., do *not* apply if a person is arrested for committing an offense in which a weapon or firearm is seized and held as evidence but was not *used* in committing a felony. In such circumstances, the return of such a weapon or firearm is governed by s. 705.105, F.S., which generally provides for the disposition of unclaimed evidence following the conclusion of a criminal proceeding.⁶

III. Effect of Proposed Changes:

The bill amends s. 790.08, F.S., to delete the requirement for a sheriff or chief of police to retain custody of all weapons or firearms seized incident to an arrest until after the trial of the person arrested. Instead, the bill requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are *not* seized as evidence, within 45 days after he or she has been released from detention and if he or she meets all of the following criteria:

- The person must provide a form of government-issued photographic identification; and
- If requesting the return of a firearm, he or she must successfully complete a criminal history background check confirming the person is not prohibited from possessing a firearm under

² The use of the term “arms” is not common in the Florida Statutes, however it does appear throughout s. 790.08, F.S. “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.; “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. Section 790.001(9), F.S.; and “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. Section 790.001(20), F.S.

³ Section 790.08(1), F.S.

⁴ If the weapon, electric weapon or device, or firearm was delivered to the sheriff immediately following a person’s arrest, no transfer is necessary. *Id.*

⁵ Section 790.08(5), F.S.

⁶ Under s. 705.105, F.S., title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency vests permanently in the law enforcement agency 60 days after the conclusion of the proceeding. Section 705.105(1), F.S.

state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill. The bill prohibits a sheriff or chief of police from requiring a court order to release weapons or firearms that are not seized as evidence in a criminal proceeding unless there are competing claims of ownership of such weapons or firearms.

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

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:

None.

C. Government Sector Impact:

None anticipated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.08 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 February 6, 2024:

The committee substitute:

- Requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are *not* seized as evidence, within 45 days after he or she has been released from detention.

- B. **Amendments:**

None.