

FLORIDA SHERIFFS ASSOCIATION

LEGAL ALERT



CONSTITUTIONAL (PERMITLESS) CARRY OF CONCEALED WEAPONS: CS/HB543, Ch. 2023-18 LAWS OF FLA.

This legislation, which takes effect July 1, 2023, authorizes a person to carry a concealed weapon or firearm pursuant to a valid concealed weapons license or without a concealed weapons license provided that the criteria for obtaining a license is met. **It does not authorize the open carry of a firearm.** The bill also addresses school safety by expanding the accessibility of safe-school officers, including the school guardian program, to private schools and requiring written active assailant response policies for each law enforcement agency.

Permitless Carry

The intent of this legislation is to remove licensing requirements for those individuals who qualify for a concealed weapons license (“CWL”). In other words, it will no longer be necessary to apply for a CWL and complete the necessary background check, fingerprinting, or training provided that the CWL criteria are met.

Pursuant to section 790.001(3)(a), a concealed weapon or concealed firearm means a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun as defined in section 790.001(9), Florida Statutes.

Eligibility Requirements

A person is eligible for a concealed firearms license, and under the new law may carry without a CWL, if he or she satisfies all of the following requirements:

- Is a resident and a citizen of the United States, a permanent resident alien of the United States, or an eligible consular security official;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm because of a felony conviction;
- Has not been committed under chapter 397, Florida Statutes for abusing a controlled substance;
- Does not chronically and habitually use alcoholic beverages to the extent that his or her normal faculties are impaired;
- Has not been adjudicated an incapacitated person in a guardianship proceeding;
- Has not been committed to a mental institution under chapter 394, Florida Statutes;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;

- Has not been issued an injunction that is currently in force and effect restraining the individual for committing acts of domestic violence or acts of repeat violence;
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.
- Has not had an adjudication of guilt withheld for or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless three years have elapsed since probation, or any other condition set by the court have been fulfilled or the record has been sealed or expunged.

Identification Requirements

Section 790.013 requires that a person who carries a concealed weapon or firearm without a CWL must carry valid identification at all times when he or she is in possession of the weapon or firearm and shall display the identification upon demand by a law enforcement officer. A violation of this provision is punishable as a noncriminal violation and a \$25 fine. An individual who has a CWL no longer needs to carry the actual CWL license in addition to identification.

Prohibited Locations

Additionally, a person authorized to carry a weapon or firearm without a CWL may not carry the firearm or weapon in any location where a person with a CWL is not authorized to carry it. A violation is punishable as a second-degree misdemeanor. The locations include:

- Any place of nuisance as defined in section 823.05.
- Any police, sheriff, or Highway Patrol station;
- Any detention facility, prison or jail;
- Any courthouse; any courtroom, except that a judge may carry a concealed weapon and determine who may carry a concealed weapon in the courtroom;
- 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 legislative committee;
- 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 for that purpose;
- Any college or university facility unless the holder is a registered student, employee, or faculty member of the 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;
- 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, if the firearm is encased for shipment for purposes of checking the firearm as baggage to be lawfully transported on any aircraft; or
- Any place where the carrying of firearms is prohibited by federal law.

As provided in section 790.06(12)(d), any person who knowingly and willfully carries a concealed firearm in an unauthorized location commits a second-degree misdemeanor.

* Repeals section 790.145 (Crimes in pharmacies; possession of weapons; penalties), which prohibited the concealed carry of a firearm in a pharmacy.

Reciprocity

A nonresident without a CWL issued by his or her state may carry a concealed weapon or concealed firearm in Florida if this person is at least 21 years old, a resident of the United States, and satisfies the criteria under Florida Statute for obtaining a CWL.

The bill also deletes the reciprocity requirement of section 790.015(4) that limits recognition of a CWL issued by other states to only those states that honor a Florida CWL.

Open Carry

The exemption for openly carrying a firearm in section 790.053 that currently applies to a CWL holder who **briefly and openly** displays a firearm to the ordinary sight of another person will also apply to a person who is authorized to carry a concealed firearm without a license. Otherwise, open carry is still not permitted, and the exemption does not apply if the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.

Private Conveyances

As under current law (section 790.25(5)), section s. 790.25(4)(a) of the new law provides that a person 18 years of age or older who is lawfully in possession of a firearm or weapon may carry the firearm in the interior of a private conveyance provided that it is securely encased or otherwise not readily accessible for immediate use. Also, as under current law, section 790.25(4)(b)1., permits a legal firearm other than a handgun to be carried anywhere in a private conveyance when the firearm is being carried for lawful use, such as fishing, camping, or hunting.

Current law section 790.25(5)) allows a person with a CWL to carry a concealed weapon or firearm on his person while in a private conveyance. The new law, section 790.25(4)(b)2. affords similar rights to CWL holders and those who do not have a CWL but meet the CWL requirements of section 790.06. **In other words, a person 21 years of older who satisfies the CWL criteria but does not have a CWL may carry a weapon or firearm on his or her person while traveling in a motor vehicle. However, a person 18 – 20 years of age may only carry a firearm in a vehicle if it is securely encased or otherwise not readily accessible for immediate use.**

Under current law, section 790.251(4) precludes an employer from prohibiting an employee who has a CWL from possessing a legally owned firearm if it is lawfully possessed and locked inside or locked to a motor vehicle in a parking lot when the employee is lawfully in the parking lot. This statute is amended to afford the same rights to an employee who does not hold a CWL but otherwise qualifies for the license to possess a firearm that is locked in or to a vehicle in the employer's parking lot.

Off-duty Law Enforcement Officers

Section 790.052 (carrying concealed firearms by off-duty law enforcement officers) is amended to assure law enforcement officers that they have the same right to concealed carry off-duty as other citizens. As under current law, an officer's employing agency may establish policies that limit officers from carrying concealed weapons and firearms during off-duty hours.

School Guardians

School guardians are currently required by section 30.15(2)(k)2. to meet certain requirements in order to be eligible for certification by a sheriff who establishes a guardian program, including the requirement that a school guardian hold a concealed weapons license. The new legislation does not change this current requirement. **Guardians are still required by section 30.15(2)(k)2. to possess a valid CWL.**

School Safety

In 2018 legislation was enacted in response to the mass shootings at the Marjory Stoneman Douglas High School in Parkland. CS/HB 543 updates the 2018 legislation; several provisions of the new law are directly applicable to law enforcement.

Active Assailant Policy

The new law creates section 943.6873, effective April 3, 2023, to require every law enforcement agency to develop an active assailant response policy by October 1, 2023. The policy must be consistent with the agency's response capabilities and include response procedures specifying command protocol and coordination with other law enforcement agencies. FDLE shall make a model active assailant response policy available on its website and each law enforcement agency must review the model policy in developing its assailant response policy.

FDLE has indicated that they will be posting the model active assailant policy on their website by May 1. FDLE will also be sending out a memo and further guidance on certification through the mail to all law enforcement agencies and through email to the FSA. The memo, as well as the model active assailant policy, will be distributed by FSA to all sheriffs' offices.

Additionally, each agency shall ensure that all of its sworn personnel have been trained on the policy within 180 days after the policy is established. All sworn personnel shall receive, at a minimum, annual training on the policy.

The head of each law enforcement agency must provide written certification to FDLE by October 1, 2023, that the agency has adopted a written active assailant response policy. FDLE shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2024, identifying each law enforcement agency that has not complied with the requirements.

Safe-school Officers

The new law amends section 1002.42 to authorize a private school to partner with a law enforcement agency or security agency to establish or assign safe-school officers. The private school is responsible for the cost of implementing such a program, including all training costs relating to a guardian program pursuant to section 30.15(1)(k). The private school must comply with the requirements of section 1006.12 regarding safe-school officers.

Threat Management

The new law further amends section 1001.212 effective April 23, 2023, to require the Office of Safe Schools of the Department of Education (“Office”) to develop a statewide behavioral threat management operational process, a behavioral threat assessment instrument, and a threat management portal. The Office is responsible for developing the process by December 1, 2023, to identify, assess, manage, and monitor potential and real threats to schools.

By August 1, 2023, the Office shall develop a behavioral threat assessment instrument to evaluate the behavior of students who may pose a threat to the school, school staff, or other students and to coordinate intervention for these students. The Office is also required to develop, host, maintain, and administer by August 1, 2025, a threat management portal that will digitize the behavioral threat assessment instrument for use by each school district, school, charter school governing board, and charter school. The portal is also intended to facilitate the electronic threat assessment reporting and documentation required by the behavioral threat assessment instrument.

Threat assessment reports and related documentation maintained in the portal are considered education records and may not be retained, maintained, or transferred except in accordance with State Board of Education rule. A parent of a student may access education records of their child in the portal in accordance with the Board of Education rule but may not have access to the portal.

The Office is also required to provide role-based training by August 1, 2025, to all authorized school district, school, charter school governing board, and charter school personnel.

Safe Schools Canine Program

The new law also creates section 1006.121, effective April 23, 2023, which requires the Office to establish the Florida Safe Schools Canine Program to designate a person, school, or business entity as a Florida Safe Schools Canine Partner. A law enforcement agency may nominate a person, school, or business entity to be designated as a Florida Safe Schools Canine Partner. A school, person, or business entity may also apply to the Office for this designation, if a monetary or an in-kind donation is made to a law enforcement agency for the purchase, training, or care of a firearm detection canine.

The canine must be trained to interact with children and must complete behavior and temperament training. The canine may also be trained as an animal-assisted therapy canine. The Office shall adopt procedures for the designation process of a Florida Safe Schools Canine Partner.

Miscellaneous Provisions

Section 768.28 (waiver of sovereign immunity in tort claims) is amended by adding to the definition of “officer” members of a threat management team.

Effective April 23, 2023 section 1006.13 (Zero tolerance for crime and victimization) is amended to require each district school board to adopt a policy of zero tolerance that identifies acts that are required to be reported under the school environmental safety incident reporting pursuant to section 1006.07(9).

April 24, 2023
Legal Alert #2

Questions concerning this legal alert should be directed to the sheriff's legal advisor or may otherwise be directed to Wayne Evans, General Counsel for the FSA, at revans@anblaw.com, (850) 561-3503.

