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COMMENTS

CARRYING CONCEALED WEAPONS IN SELF-DEFENSE: FLORIDA ADOPTS UNIFORM REGULATIONS FOR THE ISSUANCE OF CONCEALED WEAPONS PERMITS

RICHARD GETCHELL

THE FLORIDA Constitution provides that the right of citizens to keep and bear arms in self-defense and in defense of the state "shall not be infringed."¹ However, "the manner of bearing arms may be regulated by law."² To further the citizens' right to bear arms in self-defense, during the 1987 Legislative Session the Florida Legislature passed two laws³ regulating the carrying of concealed weapons and firearms. The broad intent of these laws was to preempt county and local firearms regulation in order to obtain uniformity of laws throughout the state⁴ and to allow law-abiding citizens to obtain permits to carry concealed weapons for purposes of self-defense.⁵

The constitutional debate over the right to bear arms rages on; however, the intricacies of that debate go beyond the scope of this Comment. In this Comment, the author surveys concealed weapons regulations throughout the states in order to put Florida's law in perspective, and reviews the history of the firearms laws in Florida. The author also provides an in-depth legislative history and analysis of the 1987 acts and an assessment of how the Legislature might improve Florida's law in future sessions. Finally, the author discusses the action taken during the 1987 Special Session to close a perceived loophole in the new law.

1. FLA. CONST. art. I, § 8.

2. *Id.*

3. Joe Carlucci Uniform Firearms Act, ch. 87-23, 1987 Fla. Laws 133 (to be codified at FLA. STAT. § 790.33); Jack Hagler Self Defense Act, ch. 87-24, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985)).

4. Ch. 87-23, § 4, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33).

5. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(16)).

I. THE CONCEALED WEAPONS DEBATE: BACKGROUND

The controversy among various organizations, individuals, and citizens' groups over whether it is proper for law-abiding citizens to carry weapons has resulted in the polarization of proponents of strict gun control and supporters of an absolute constitutional right to bear arms. One area of focus in this debate is whether liberal concealed weapons laws deter crime, since criminals do not want to be shot any more than do non-criminals.⁶ It is argued, however, that criminals are likely to consider the potential of confronting armed victims, and the possibility of such confrontations motivates criminals to arm themselves in "self-defense."⁷ Regardless, Florida's new law is expressly intended as a self-defense bill, not as a deterrent.⁸

Another point of debate is whether allowing more citizens to carry weapons, especially in urban areas, will increase the number of gun-related incidents and the rate of violent crime. Florida currently has a relatively high rate of violent crime, with 1037 incidents per 100,000 citizens per year, as compared with Georgia, which has a rate of 588 per 100,000.⁹ The area of the United States reporting the highest violent crime rate in 1986 was Dade County, an urban area that includes Miami, which had 1791 incidents per 100,000 residents.¹⁰ A uniform state gun law creates equality among residents of different counties in their ability to arm themselves, but precludes local governments faced with high crime rates from enacting stricter gun control laws. Opponents of strict gun control argue that statistics show that cities and states with tougher firearms laws have higher crime rates than do states with less restrictive measures.¹¹ Of course, this assertion begs the ques-

6. According to Marion Hammer of Unified Sportsmen of Florida, an affiliate of the National Rifle Association [hereinafter NRA], perception among felons that citizens are likely to be armed is a significant deterrent to crime involving direct contact with a victim. Telephone interview with Marion Hammer, Exec. Dir., Unified Sportsmen of Florida (June 12, 1987)(notes on file, *Florida State University Law Review*). Her assertions are based largely on a study which shows that criminals surveyed clearly are aware of the likelihood that a citizen may be armed or that they might encounter an armed homeowner during a burglary. See J. WRIGHT & P. ROSSI, *ARMED AND CONSIDERED DANGEROUS* 141-54 (1986).

7. *Id.* at 125-39.

8. Fla. H.R. Comm. on Crim. Just., tape recording of proceedings (Apr. 8, 1987)(on file with committee)(statements of Rep. Ron Johnson, Dem., Panama City, discussing HB 253).

9. Wall Street J., Sept. 3, 1987, at 21, col. 4.

10. *Id.*

11. See *CRIMINALS DON'T WAIT; WHY SHOULD YOU?* 1 (1987) (NRA Institute for Legislative Action).

tion: What would the high crime areas be like with *lax* gun control?

Perhaps the one issue on which there is the most disagreement does not involve concealed weapons permits, but rather questions of whether waiting periods ought to be required between the purchase of a firearm and delivery to the buyer. Proponents of waiting periods tell horror stories about despondent individuals who decide to end their lives and who, on the spur of the moment, go to local gun shops, buy handguns, and commit suicide in the parking lot.¹² The National Rifle Association (NRA), on the other hand, cites numerous statistics showing that tough gun control does not reduce violent crime, that waiting periods divert police from the business of catching criminals to the task of running background checks on law-abiding citizens, and that making people wait for handguns has little effect on so-called "crimes of passion."¹³ Statistics tend to offset each other, leaving on one side the philosophical arguments that the decision to buy a gun should be well thought out, so that a waiting period becomes merely part of the process, and on the other that: (1) the constitutional right to bear arms is controlling; (2) criminals do not abide by waiting periods in acquiring guns; and (3) if a law-abiding citizen decides he wants a gun, he should be able to purchase one without delay.¹⁴ As will be seen, the Legislature was unable to cut through the rhetoric to decide the issue, and so worked out a compromise that leaves the question of waiting periods in the hands of the counties.

II. THE LAW IN OTHER STATES

The several states have chosen various ways of dealing with the carrying of concealed weapons and firearms. The legislation covers a broad range of restrictions, licensing provisions, exemptions to restrictions, and unusual provisions unique to individual states. Twenty-two of the states have enacted statutes preempting the field of legislation regarding possession and sale of firearms.¹⁵ A

12. Fla. S. Comm. on Judiciary-Crim., tape recording of proceedings (Apr. 14, 1987) (on file with committee). The veracity of these stories is questionable, but they illustrate the arguments of the proponents of waiting periods.

13. CRIMINALS DON'T WAIT; WHY SHOULD YOU?, *supra* note 11.

14. For a collection of essays on the perceived effects of gun restrictions, see *RESTRICTING HANDGUNS* (D. Kates ed. 1979).

15. **Alabama:** ALA. CODE § 11-45-1.1 (Supp. 1986); **Arizona:** ARIZ. REV. STAT. ANN. § 13-3108 (Supp. 1986); **California:** CAL. GOV'T CODE § 53071 (West 1983); **Delaware:** DEL. CODE ANN. tit. 22, § 838 (Supp. 1986); **Idaho:** IDAHO CODE § 50-343 (Supp. 1987); **Louisiana:** LA. REV. STAT. ANN. § 40:1796 (West Supp. 1987); **Maryland:** MD. ANN. CODE art. 27, §

few states, including four in the above category, specifically give to local governments the authority to restrict the carrying of concealed weapons.¹⁶ All of the other states have statutes prohibiting the carrying of concealed weapons, or weapons in general.¹⁷ Some of the state prohibitions are less restrictive than others. For example, in Vermont it is unlawful for a person to carry "a dangerous or deadly weapon, openly or concealed, with the intent or avowed

36H (Supp. 1986); **Minnesota:** MINN. STAT. ANN. § 471.633 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. § 45-9-51 (Supp. 1986); **Missouri:** MO. ANN. STAT. § 21.750 (Vernon Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-351 (1985); **New Mexico:** NEW MEXICO CONST. art. II, § 6; **North Dakota:** N.D. CENT. CODE § 62.1-01-03 (1985); **Oklahoma:** OKLA. STAT. ANN. tit. 21, § 1289.24 (West Supp. 1986-87); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6120 (Purdon 1982); **Rhode Island:** R.I. GEN. LAWS § 11-47-58 (Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. §§ 9-19-20, 8-5-13, 7-18A-36 (Supp. 1987); **Tennessee:** 1986 Tenn. Pub. Acts 271; **Utah:** UTAH CODE ANN. § 76-10-50(1)(b) (Supp. 1987); **Vermont:** VT. STAT. ANN. tit. 24, § 2291(8) (1975); **Virginia:** VA. CODE ANN. § 15.1-29.15 (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.290 (Supp. 1987).

16. **Missouri:** MO. ANN. STAT. § 79.460 (Vernon 1985); **Montana:** MONT. CODE ANN. § 45-8-351 (1985); **Nebraska:** NEB. REV. STAT. §§ 16-227, 17-556, 14-102 (1983); **Oklahoma:** OKLA. STAT. ANN. tit. 11, § 22-110 (West Supp. 1987); **Utah:** UTAH CODE ANN. § 10-8-48 (1986).

17. **Alabama:** ALA. CODE § 13A-11-50 (1982); **Alaska:** ALASKA STAT. § 11.61.220 (1983); **Arizona:** ARIZ. REV. STAT. ANN. § 13-3102 (1978); **Arkansas:** ARK. STAT. ANN. § 41-3151 (1977); **California:** CAL. PENAL CODE § 12025(b) (West Supp. 1987); **Colorado:** COLO. REV. STAT. § 18-12-105 (1986); **Connecticut:** CONN. GEN. STAT. ANN. § 29-28 (West 1958); **Delaware:** DEL. CODE ANN. tit. 11, § 1442 (1979); **Georgia:** GA. CODE ANN. § 16-11 126 (1984); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Idaho:** IDAHO CODE § 18-3302 (1979); **Illinois:** ILL. ANN. STAT. ch. 38, para. 24-1(a)(4) (Smith-Hurd Supp. 1987-88); **Indiana:** IND. CODE ANN. § 35-47-2-1 (Burns 1985); **Iowa:** IOWA CODE § 724.4 (1987); **Kansas:** KAN. STAT. ANN. § 21-4201 (1981); **Kentucky:** KY. REV. STAT. ANN. § 527.020 (Michie/Bobbs-Merrill 1985); **Louisiana:** LA. REV. STAT. ANN. § 40:1789 (West 1977); **Maine:** ME. REV. STAT. ANN. tit. 25, § 2001 (Supp. 1985); **Maryland:** MD. ANN. CODE art. 27, § 36B (Supp. 1986); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 269, § 10 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 750.227 (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 624.714 (West 1987); **Mississippi:** MISS. CODE ANN. § 97-37-1 (1972); **Missouri:** MO. ANN. STAT. § 571.030 (Vernon Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-316 (1985); **Nebraska:** NEB. REV. STAT. § 28-1202 (1985); **Nevada:** 1985 NEV. STAT. 592; **New Hampshire:** N.H. REV. STAT. ANN. § 159-4 (1977); **New Jersey:** N.J. STAT. ANN. § 2C:39-8 (West 1982); **New Mexico:** N.M. STAT. ANN. § 30-7-2 (Supp. 1987); **New York:** N.Y. PENAL LAW § 265.01(1) (McKinney Supp. 1987); **North Carolina:** N.C. GEN. STAT. § 14-269 (1986); **North Dakota:** N.D. CENT. CODE § 62.1-04-02 (1985); **Ohio:** OHIO REV. CODE ANN. § 2923.12 (Anderson 1987); **Oklahoma:** OKLA. STAT. ANN. tit. 21, § 1272 (West Supp. 1987); **Oregon:** OR. REV. STAT. §§ 166.240-250 (Supp. 1987); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6106(a) (Purdon 1982); **Rhode Island:** R.I. GEN. LAWS § 11-47-8 (1981); **South Carolina:** S.C. CODE ANN. § 16-23-20 (Law. Co-op 1985); **South Dakota:** S.D. CODIFIED LAWS ANN. § 22-14-9 (Supp. 1987); **Tennessee:** TENN. CODE ANN. § 39-6-1701 (1982); **Texas:** TEX. PENAL CODE ANN. § 46.02 (Vernon 1982); **Utah:** UTAH CODE ANN. § 76-10-504 (Supp. 1987); **Vermont:** VT. STAT. ANN. tit. 13, § 4003 (1975); **Virginia:** VA. CODE ANN. § 18.2-308 (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.050 (Supp. 1986-87); **West Virginia:** W. VA. CODE § 61-7-1 (1984); **Wisconsin:** WIS. STAT. ANN. § 941.23 (West 1957); **Wyoming:** WYO. STAT. § 6-8-104 (1983).

purpose of injuring a fellow man."¹⁸ Alabama prohibits the carrying of concealed weapons, but also allows defendants standing trial for such an offense to present evidence that they were carrying the weapon while having a good reason to fear an attack, which may be considered by the jury in mitigation of the charge.¹⁹ Most of the states that prohibit the carrying of weapons and concealed weapons specifically exempt carrying weapons in the home or business, or both.²⁰ New York's exception applicable to possession of loaded firearms in one's home or place of business is limited to mitigating the degree of the violation from a Class D felony to a Class A misdemeanor.²¹

A. *Permits for the Carrying of Concealed Weapons*

Twenty-eight states have laws allowing the issuance of concealed weapons permits.²² Only four of these twenty-eight states provide

18. VT. STAT. ANN. tit. 13, § 4003 (1975).

19. ALA. CODE § 13A-11-51 (1982).

20. **Alabama:** ALA. CODE § 13A-11-73 (1982); **Arizona:** ARIZ. REV. STAT. ANN. § 13-3102(B) (1978); **California:** CAL. PENAL CODE § 12026 (West 1982); **Connecticut:** CONN. GEN. STAT. ANN. § 29-35 (West Supp. 1987); **Georgia:** GA. CODE ANN. § 16-11-126(c) (1984); **Illinois:** ILL. ANN. STAT. ch. 38, para. 24-1(a)(4) (Smith-Hurd Supp. 1987-88); **Indiana:** IND. CODE ANN. § 35-47-2-1 (Burns 1985); **Iowa:** IOWA CODE § 724.4(1)(1987); **Kansas:** KAN. STAT. ANN. § 21-4201(1)(d) (1981); **Michigan:** MICH. COMP. LAWS ANN. § 750.227(2) (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 624.714(9)(a) (West 1987); **Montana:** MONT. CODE ANN. § 45-8-317(7) (1985); **New Hampshire:** N.H. REV. STAT. ANN. § 159:4 (1977); **New Jersey:** 1987 N.J. SESS. LAW SERV. 139(e) (West); **New Mexico:** N.M. STAT. ANN. § 30-7-2(A) (Supp. 1987); **North Carolina:** N.C. GEN. STAT. § 14-269(a) (1986); **North Dakota:** N.D. CENT. CODE § 62.1-03-01(2)(b) (1985); **Ohio:** OHIO REV. CODE ANN. §§ 2923.12(C)(1), (3) (Anderson 1987); **Oregon:** OR. REV. STAT. § 166.250(2) (Supp. 1987); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6106(a) (Purdon 1982); **Rhode Island:** R.I. GEN. LAWS § 11-47-8(a) (1981); **South Carolina:** S.C. CODE ANN. § 16-23-20(8) (Law. Co-op. 1985); **South Dakota:** S.D. CODIFIED LAWS ANN. § 22-14-11 (1979); **Texas:** TEX. PENAL CODE ANN. § 46.03(a)(2) (Vernon Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-504(2) (Supp. 1987); **Virginia:** VA. CODE ANN. § 18.2-308(B)(1) (1982); **Washington:** WASH. REV. CODE ANN. § 9.41.050(1) (Supp. 1986-87); **West Virginia:** W. VA. CODE § 61-7-3 (Supp. 1987).

Nebraska does not have a general exemption allowing persons to carry a firearm at home or at their place of business, but it is an affirmative defense to a charge of illegally carrying a firearm that the person was engaged in a lawful business or employment which placed him in a situation where a prudent person would be justified in carrying a weapon in defense of person or property. NEB. REV. STAT. § 28-1202(2) (1985). *See also* COLO. REV. STAT. § 18-12-105(2) (1986).

Ohio makes an affirmative defense to a charge of unlawful possession of a weapon that the person charged "had reasonable cause to fear a criminal attack." OHIO REV. CODE ANN. § 2923.12(C)(2) (Anderson 1987).

21. N.Y. PENAL LAW §§ 265.01, .02(4) (McKinney 1980).

22. **Alabama:** ALA. CODE § 13A-11-75 (1982); **California:** CAL. PENAL CODE § 12050 (West 1982); **Colorado:** COL. REV. STAT. § 18-12-105.1 (Supp. 1986); **Connecticut:** CONN. GEN. STAT. ANN. § 29-28 (West 1958); **Delaware:** DEL. CODE ANN. tit. 11, § 1441 (1979);

for the permits to be issued by the state,²³ while the balance are issued either by county commissioners or other local government officials,²⁴ county and local law enforcement,²⁵ or courts.²⁶ Permits

Georgia: GA. CODE ANN. § 16-11-129 (Supp. 1987); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Idaho:** IDAHO CODE § 18-3302 (1979); **Indiana:** IND. CODE ANN. § 35-47-2-3 (Burns 1985); **Iowa:** IOWA CODE § 724.7 (Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 25, § 2003 (Supp. 1985); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.422 (West Supp. 1987-88); **Minnesota:** MINN. STAT. ANN. § 624.714 (West Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-319 (1985); **Nevada:** NEV. REV. STAT. § 160(2)(4) (Supp. 1985); **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (1986); **New Jersey:** N.J. STAT. ANN. § 2C:58-4 (West 1982); **New York:** N.Y. PENAL LAW § 400.00 (McKinney Supp. 1987); **North Dakota:** N.D. CENT. CODE § 62.1-04-03 (Supp. 1987); **Oregon:** OR. REV. STAT. § 166.290(1) (1983); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6109(a) (Purdon Supp. 1987-88); **Rhode Island:** R.I. GEN. LAWS § § 11-47-11, 18 (Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-7 (Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-513 (Supp. 1987); **Virginia:** VA. CODE ANN. § 18.2-308D (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.070(1) (Supp. 1987); **West Virginia:** W. VA. CODE § 61-7-2 (1984).

Mississippi does not allow citizens other than various private security personnel to obtain permits to carry concealed weapons but does make it a defense to a charge of unlawfully carrying a deadly weapon that an individual was threatened and under apprehension of attack from an enemy. MISS. CODE ANN. §§ 97-37-7, 9 (Supp. 1986).

Not only does New Mexico not provide for the issuance of permits to carry concealed weapons, its state constitution expressly declares that the right to keep and bear arms shall not be construed as permitting the carrying of concealed weapons, and prohibits local governments from regulating in any way (including carrying concealed weapons) "an incident of the right to keep and bear arms." N.M. CONST. art. II, § 6.

South Carolina issues permits only to those whose business or employment places them in "dangerous circumstances." S.C. CODE ANN. § 23-31-120 (Law Co-op. 1976). Since this is a limited provision not applicable to the general public, no further treatment is given it here. See also LA. REV. STAT. ANN. § 1379.3 (West Supp. 1987).

23. **Indiana:** IND. CODE ANN. § 35-47-2-3 (e) (Burns 1985); **North Dakota:** N.D. CENT. CODE § 62.1-04-03(1) (Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-18 (Supp. 1986); **Utah:** UTAH CODE ANN. § 76-10-513(1) (Supp. 1987).

24. **Connecticut:** CONN. GEN. STAT. ANN. § 29-28 (West 1958); **Maine:** ME. REV. STAT. ANN. tit. 25, §§ 2002(9), 2003(1) (Supp. 1986); **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (Supp. 1986).

25. **Alabama:** ALA. CODE § 13A-11-75 (1982); **California:** CAL. PENAL CODE § 12050(a) (West 1982); **Colorado:** COLO. REV. STAT. § 18-12-105.1 (Supp. 1986); **Connecticut:** CONN. GEN. STAT. ANN. § 29-28 (West 1958); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Idaho:** IDAHO CODE § 18-3302 (1979); **Iowa:** IOWA CODE § 724.11 (Supp. 1987); **Maine:** ME. REV. STAT. ANN. § 2002(9) (Supp. 1986); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.422(1) (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 624.714(2) (West Supp. 1987); **Nevada:** NEV. REV. STAT. § 160(2)(4) (Supp. 1985); **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (Supp. 1986); **New York:** N.Y. PENAL LAW § 400.00(3) (McKinney Supp. 1987); **Oregon:** OR. REV. STAT. § 166.290(1) (1983); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6109(a) (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-11 (Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-7 (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.070(1) (Supp. 1987).

26. **Georgia:** GA. CODE ANN. § 16-11-129(a) (Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-319(1) (1985); **New Jersey:** N.J. STAT. ANN. § 2C:58-4(D) (West 1982); **Virginia:**

issued in twelve states are applicable statewide,²⁷ and three states specifically limit licenses to local areas.²⁸

Concealed weapons permits are issued based on a variety of criteria, such as: (1) the objective or subjective (or both) personal qualifications of the individual; (2) background investigations; (3) fingerprint checks for criminal information; and (4) safety training courses or qualification to use a weapon. Eighteen states require individuals to meet objective criteria before a permit will be issued.²⁹ Five of these states issue permits based on objective criteria alone.³⁰

South Dakota's objective criteria for issuance of a permit are representative of the requirements found in other states.³¹ The statute requires that the applicant be at least eighteen years of age, never convicted of (or pled guilty or *nolo contendere* to) a felony or crime of violence, not be habitually drugged or intoxicated, have no history of recurring violent acts, and not be mentally ill or

VA. CODE ANN. § 18.2-308D (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.070(1) (Supp. 1987); **West Virginia:** W. VA. CODE § 61-7-2 (1984).

27. **Georgia:** GA. CODE ANN. § 16-11-129(a) (Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 25, § 2003(10) (Supp. 1986); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Nevada:** NEV. REV. STAT. § 160 2(4) (Supp. 1985); **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (Supp. 1986); **New Jersey:** N.J. STAT. ANN. § 2C:58-4(a) (West 1982); **New York:** N.Y. PENAL LAW § 400.00(6) (McKinney Supp. 1987) (except in New York City, where a local permit is required); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6109(a) (Purdon Supp. 1987-88); **Rhode Island:** R.I. GEN. LAWS § 11-47-11 (Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-7 (Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-513(1) (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.070(1) (Supp. 1987).

28. **Connecticut:** CONN. GEN. STAT. ANN. § 29-28 (West 1958); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **West Virginia:** W. VA. CODE § 61-7-2 (1984).

29. **Connecticut:** CONN. GEN. STAT. ANN. § 53-206 (West Supp. 1987); **Georgia:** GA. CODE ANN. § 16-11-129(b) (Supp. 1987); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Indiana:** IND. CODE ANN. § 35-47-2-3(f) (Burns 1985); **Iowa:** IOWA CODE § 724.8 (Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 25, § 2003(1)(D), (4) (Supp. 1985); **Massachusetts:** MASS. GEN. REV. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.426 (West Supp. 1987-88); **Minnesota:** MINN. STAT. ANN. §§ 624.714(5), .713(1) (West Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-319(4) (1985); **New Jersey:** N.J. STAT. ANN. § 2C:58-4(c) (West 1982); **New York:** N.Y. PENAL LAW § 400.00(1) (McKinney 1980); **North Dakota:** N.D. CENT. CODE §§ 62.1-02-01, 62.1-04-03 (Supp. 1987); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-7.1 (Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-513(2) (Supp. 1987); **Virginia:** VA. CODE ANN. § 18.2-308D (Supp. 1987); **Washington:** WASH. REV. CODE ANN. §§ 9.41.070(1)(a)-(e) (Supp. 1986-87); **West Virginia:** W. VA. CODE § 61-7-2 (1984).

30. **Maine:** ME. REV. STAT. ANN. tit. 25, § 2003(1)(D), (4) (Supp. 1985); **Minnesota:** MINN. STAT. ANN. §§ 624.713-714 (West Supp. 1987); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-7.1 (Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-513(2) (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.070(1) (Supp. 1987).

31. S.D. CODIFIED LAWS ANN. § 27-7-7.1 (Supp. 1987).

mentally incompetent. Besides South Dakota, nine states allow eighteen-year-olds to obtain concealed weapons permits.³² Minors in Minnesota may obtain a permit to carry a pistol if they have completed an approved pistol marksmanship and safety course.³³ Two states require applicants to be at least twenty-one years of age³⁴ while Delaware requires that the applicant be of "full age,"³⁵ and Hawaii grants permits to applicants who are twenty years old.³⁶

Of those states requiring that specific objective criteria be met, thirteen also require that certain subjective criteria be met.³⁷ For example, Indiana requires its applicants to be "of good character and reputation and a proper person to be so licensed"³⁸ (subjective), but prohibits issuance of a license to applicants who have been convicted of a felony or who are less than eighteen years old (objective).³⁹ Colorado requires local law enforcement to inquire "into the background of an applicant . . . to determine if the applicant would present a danger to others or to himself,"⁴⁰ but gives them the option of running a criminal background check. The incentive to run the optional check is that the issuing authority is absolved of any liability for damages resulting from granting the permit.⁴¹ Similarly, Connecticut gives the issuing authority discre-

32. **Indiana:** IND. CODE ANN. § 35-47-2-3(f) (Burns 1985); **Iowa:** IOWA CODE § 724.8 (Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 25, § 2003(1)(A) (Supp. 1985); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.426(1) (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 624.713(1)(a) (West Supp. 1987); **New Jersey:** N.J. STAT. ANN. § 2C:58-3c(4) (West 1982); **North Dakota:** N.D. CENT. CODE §§ 62.1-02-01(4), 62.1-04-03(1)(b) (Supp. 1987); **West Virginia:** W. VA. CODE § 61-7-2(c) (1984).

33. MINN. STAT. ANN. § 624.713(1)(a) (West Supp. 1987).

34. GA. CODE ANN. § 16-11-129(b)(1) (Supp. 1987); UTAH CODE ANN. § 76-10-513(2)(a) (Supp. 1987).

35. DEL. CODE ANN. tit. 11, § 1441(a) (1979).

36. HAW. REV. STAT. § 134-9 (1985).

37. **Colorado:** COL. REV. STAT. § 18-12-105.1(2) (Supp. 1986); **Georgia:** GA. CODE ANN. § 16-11-129(d) (Supp. 1987); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Indiana:** IND. CODE ANN. § 35-47-2-3(c), (e) (Burns 1985); **Iowa:** IOWA CODE § 724.8(a)(5) (Supp. 1987); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. §§ 28.426(1), (5) (West Supp. 1987); **Montana:** MONT. CODE ANN. § 45-8-319(3) (1985); **New Jersey:** N.J. STAT. ANN. § 2C:58-4b (West 1982); **New York:** N.Y. PENAL LAW §§ 400.00(1) (McKinney 1980); **North Dakota:** N.D. CENT. CODE § 62.1-04-03(1)(b) (Supp. 1987); **Virginia:** VA. CODE ANN. § 18.2-308D (Supp. 1987); **West Virginia:** W. VA. CODE §§ 61-7-2(c) (1984).

38. IND. CODE ANN. § 35-47-2-3(e) (Burns 1985).

39. *Id.* § 35-47-2-3(f).

40. COL. REV. STAT. § 18-12-105.1(2) (Supp. 1986).

41. *Id.*

tion over whether or not to make an investigation into "the suitability of the applicant to carry any such weapon."⁴² Maine requires that applicants be of good moral character, but limits investigators to information documented by government authorities, such as reports of abuse of family members, in making that determination.⁴³ In an interesting twist to these subjective background checks, Delaware and West Virginia require that notification of an application for a concealed weapons permit be published in a local paper.⁴⁴ The purpose of this notice is probably to put local citizens on alert, giving them an opportunity to come forward with any information they may have regarding that particular individual's suitability for licensing.

Four states issue permits based on subjective criteria alone.⁴⁵ Delaware, for example, depends on certification by five local citizens that the applicant is of "sobriety and good moral character, that he bears a good reputation for peace and good order in the community . . . and that the carrying of a concealed deadly weapon . . . is necessary for the protection of the applicant or his property."⁴⁶

Sixteen states require the applicant to have a satisfactory reason for wanting to carry a concealed weapon.⁴⁷ Idaho allows people to obtain a permit to carry a concealed weapon "after satisfying the sheriff of the necessity therefor."⁴⁸ Indiana is unique in that the issuing authority may issue either an unlimited license for self and property defense or a qualified license for hunting and target prac-

42. CONN. GEN. STAT. ANN. § 53-206(a) (West Supp. 1987).

43. ME. REV. STAT. ANN. tit. 25, § 2003(1), (4) (West Supp. 1985).

44. DEL. CODE ANN. tit. 11, § 1441 (b) (1979); W. VA. CODE § 61-7-2 (1984).

45. **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (Supp. 1986); **Oregon:** OR. REV. STAT. § 166.290(1) (1983); **Pennsylvania:** PA. CONS. STAT. ANN. tit. 18, § 6109(a) (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-11 (Supp. 1986).

46. DEL. CODE ANN. tit. 11, § 1441 (a)(2) (Supp. 1979). *See also* N.J. STAT. ANN. § 2C:58-4b (West 1982) (requiring certification by three individuals "that the applicant is a person of good moral character and behavior").

47. **Delaware:** DEL. CODE ANN. tit. 11, § 1441 (1979); **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Indiana:** IND. CODE ANN. § 35-47-2-3 (1985); **Iowa:** IOWA CODE § 724.7 (1987); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.426(5) (West Supp. 1987); **Nevada:** NEV. REV. STAT. § 160(2) (1985); **New Hampshire:** N.H. REV. STAT. ANN. § 159:6 (1986); **New Jersey:** N.J. STAT. ANN. § 2C:58-4c,d (West 1982); **North Dakota:** N.D. CENT. CODE § 62.1-04-03(1)(c) (Supp. 1987); **Oregon:** OR. REV. STAT. § 166.290(2) (1983); **Pennsylvania:** PA. CONS. STAT. ANN. § 6109(a) (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-11, 18 (Supp. 1986); **Utah:** UTAH CODE ANN. § 76-10-513(1) (1987); **Virginia:** VA. CODE ANN. § 18.2-308D (Supp. 1987); **West Virginia:** W. VA. CODE § 61-7-2(d) (1984).

48. IDAHO CODE § 18-3302 (1979).

tice.⁴⁹ Alabama also issues qualified licenses, although the statute does not state the differences between qualified and unlimited licenses.⁵⁰ California gives the issuing authority the latitude to place any reasonable restrictions it deems necessary on the carrying of a concealed firearm by a licensee.⁵¹ Licenses issued in New York which, along with California, is among the states with the strictest gun control laws, take a variety of forms, including licenses to possess a weapon in a dwelling or place of business, licenses for certain judges to carry a concealed weapon, or licenses for persons showing "proper cause."⁵²

Georgia specifically prohibits the issuing authority from requiring that applicants include serial numbers or other identifying information on their applications "as a de facto registration of firearms owned by the applicant."⁵³ Minnesota's statute expressly provides that the number of handguns that may be carried by a permit holder may not be limited.⁵⁴ On the other hand, California requires that the specific weapon to be carried be identified on the license application.⁵⁵ New York requires a person selling a pistol or revolver to take from the licensee a coupon (which comes attached to the license) and record on it information identifying the weapon sold.⁵⁶ Virginia authorizes courts to issue permits for "a specific type of concealed weapon."⁵⁷

Only five states require that applicants complete some type of training program in the handling of firearms before they can obtain a permit.⁵⁸ Iowa, for example, issues permits locally, and requires the issuing authority (the county sheriff or the director of public safety) to provide a safety training program, approved by the director of public safety, for applicants to complete before they

49. IND. CODE ANN. § 35-47-2-4 (a) (Burns 1985).

50. ALA. CODE § 13A-11-75 (1982).

51. CAL. PENAL CODE § 12050(b) (West 1982). See also MICH. COMP. LAWS ANN. § 28.426(5) (West Supp. 1987).

52. N.Y. PENAL LAW § 400.00(2) (McKinney Supp. 1987).

53. GA. CODE ANN. § 16-11-129(a) (Supp. 1987). See also R.I. GEN. LAWS § 11-47-11 (Supp. 1986).

54. MINN. STAT. ANN. § 62A.714, Subd. 11 (West 1987).

55. CAL. PENAL CODE § 12051(a) (West 1982). See also OR. REV. STAT. § 166.290(2) (1983).

56. N.Y. PENAL LAW § 400.00(7) (McKinney 1980).

57. VA. CODE ANN. § 18.2-308D (Supp. 1987).

58. **Hawaii:** HAW. REV. STAT. § 134-9 (1985); **Iowa:** IOWA CODE § 724.9 (1987); **Minnesota:** MINN. STAT. ANN. § 62A.714, Subd. 5 (b) (West 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-15 (1981); **West Virginia:** W. VA. CODE § 61-7-2(e) (1984).

may receive a permit to carry a concealed weapon.⁵⁹ North Dakota requires applicants to complete a written test covering weapons safety rules and the state's deadly force laws, as well as an actual proficiency test in the handling and firing of a weapon.⁶⁰ New Jersey does not require a safety course *per se*, but requires applicants to demonstrate to the satisfaction of the issuing authority that they are thoroughly competent in the safe handling of firearms.⁶¹

As part of the background check, eight states require that applicants' fingerprints be checked by state and/or federal authorities before a license may be issued.⁶² California specifically prohibits the licensing authority from issuing any license until the fingerprint report is received from the Department of Justice.⁶³ Other states make fingerprint checks optional⁶⁴ or require that fingerprints be taken, but not that they be checked.⁶⁵

Finally, in efforts to keep educational institutions free from a proliferation of handguns among students, eight states specifically ban the carrying of concealed weapons on college or university campuses.⁶⁶

B. Waiting Periods to Purchase Handguns

Many states require a waiting period between the time a handgun is purchased and the time the gun is actually delivered. Waiting period requirements manifest themselves in several different

59. IOWA CODE § 724.9 (1987).

60. N.D. CENT. CODE § 62.1-04-03(1)(c) (Supp. 1987).

61. N.J. STAT. ANN. § 2C:58-4c, d (West 1982).

62. **California:** CAL. PENAL CODE § 12052 (West 1982); **Georgia:** GA. CODE ANN. § 16-11-129(c) (Supp. 1987); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 28.426(4) (West Supp. 1987); **New Jersey:** N.J. STAT. ANN. § 2C:58-4c (West 1982); **New York:** N.Y. PENAL LAW § 400.00(4) (McKinney Supp. 1987); **North Dakota:** N.D. CENT. CODE § 62.1-04-03(4) (Supp. 1987); **Utah:** UTAH CODE ANN. § 76-10-515 (1987).

63. CAL. PENAL CODE § 12052 (West 1982).

64. CONN. GEN. STAT. ANN. § 53-206 (West Supp. 1987); ME. REV. STAT. ANN. tit. 25, § 2002(1)(E)(3) (West Supp. 1985).

65. OR. REV. STAT. § 166.290(2) (1983).

66. **Illinois:** ILL. ANN. STAT. ch. 38, para. 24-1(c) (West Supp. 1987); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 269, § 10(j) (Supp. 1987); **Mississippi:** MISS. CODE ANN. § 97-37-17 (1972); **New York:** N.Y. PENAL LAW § 265.01 (McKinney 1980); **North Carolina:** N.C. GEN. STAT. § 14-269.2 (1981); **South Carolina:** S.C. CODE ANN. § 16-23-420 (Law. Co-op. 1985); **Texas:** TEX. PENAL CODE ANN. § 46.804 (Vernon Supp. 1987); **Vermont:** VT. STAT. ANN. tit. 13, § 4004 (1975).

ways, and range from forty-eight hours⁶⁷ to fifteen days.⁶⁸ Some require the seller to file an application completed by the buyer with a local law enforcement agency as an apparent form of registration of gun purchases.⁶⁹ Other states require local law enforcement agencies to determine whether the person has a criminal history or is otherwise prohibited from carrying a weapon, although in some instances the gun may be delivered at the end of the waiting period even if the report has not yet been received from the police.⁷⁰ Still other states require "cooling off" periods designed to prevent so-called crimes of passion.⁷¹ In some states, a person wishing to buy a gun, especially a handgun, must obtain a permit to purchase, which may involve a background check as rigorous as that required for the issuance of concealed weapons permits.⁷² Unless the buyer already possesses a "transferee permit," Minnesota requires the seller of a handgun to file a transfer application with the local police and wait seven days before delivering the gun, during which time the police will conduct a background check.⁷³ In other states, waiting periods do not apply to persons already licensed to carry a concealed weapon.⁷⁴ In South Carolina, local police may authorize the immediate replacement of weapons that are lost or stolen.⁷⁵

67. ALA. CODE § 13A-11-77 (Supp. 1986).

68. CAL. PENAL CODE § 12072 (West Supp. 1987).

69. **Alabama:** ALA. CODE § 13A-11-77 (1982); **Indiana:** IND. CODE ANN. §§ 35-47-2-8, 9 (1985); **Pennsylvania:** PA. CONS. STAT. ANN. § 6110 (Purdon 1982).

70. **California:** CAL. PENAL CODE §§ 12072, 12076(c) (West Supp. 1987); **Connecticut:** CONN. GEN. STAT. ANN. § 29-33 (West Supp. 1987); **Maryland:** MD. ANN. CODE art. 27, § 442 (1982); **Minnesota:** MINN. STAT. ANN. § 624.7132 (Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 11-47-35 (Supp. 1986); **Tennessee:** TENN. CODE ANN. § 39-6-1704 (1982); **Washington:** WASH. REV. CODE ANN. § 9.41.090 (Supp. 1987).

71. **Illinois:** ILL. ANN. STAT. ch. 38, para 24-3 (Smith-Hund Supp. 1987); **Oregon:** OR. REV. STAT. ANN. §§ 166.430(3)(a), .470 (1981); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-9 (Supp. 1987); **Wisconsin:** WIS. STAT. ANN. § 175.35 (West Supp. 1986).

72. **Hawaii:** HAW. REV. STAT. § 134-3 (1985); **Illinois:** ILL. ANN. STAT. §§ 83-2, 4, 5 (West Supp. 1987-88); **Iowa:** IOWA CODE §§ 724.15-.20 (1987); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 140, § 131A (1974); **Michigan:** MICH. COMP. LAWS ANN. § 28.422 (West Supp. 1987-88); **Minnesota:** MINN. STAT. ANN. § 624.7131 (Supp. 1987); **Missouri:** MO. ANN. STAT. § 571.090 (Vernon Supp. 1987); **New Jersey:** N.J. STAT. ANN. 26:58-3 (West Supp. 1987-88); **North Carolina:** N.C. GEN. STAT. §§ 14-402, -409.3 (1981); **South Carolina:** S.C. CODE ANN. §§ 23-31-140, -150 (1977).

73. MINN. STAT. ANN. §§ 624.7131-.7132 (West 1987).

74. **Connecticut:** CONN. GEN. STAT. ANN. § 29-33 (West Supp. 1987); **Indiana:** IND. CODE ANN. § 35-47-2-8(e) (Burns 1985); **South Dakota:** S.D. CODIFIED LAWS ANN. § 23-7-9 (Supp. 1987); **Washington:** WASH. REV. CODE ANN. § 9.41.090(1)(a) (Supp. 1987).

75. S.C. CODE ANN. § 23-3-140 (1977).

III. FLORIDA'S PRIOR LAW

Article I, section 8 of the Florida Constitution states that "[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law."⁷⁶ The regulation of "the manner of bearing arms" is set forth in chapter 790, Florida Statutes.⁷⁷

The provisions of chapter 790 relating to issuance of licenses to carry concealed weapons are contained in section 790.06.⁷⁸ Prior to the new law, this section gave county commissions the authority to issue licenses and the option to adopt ordinances to regulate the issuance of licenses. The ordinances adopted by a county could allow licenses to be issued "only to persons who are 18 years of age or older and of good moral character."⁷⁹ In addition, licenses could not be issued to applicants who: (1) are addicted to or unlawfully use controlled substances; (2) have been convicted of committing a felony while armed under state or federal law if the applicant's civil rights have not been restored for at least two years; or (3) have "been adjudicated a mental incompetent or . . . committed to a mental institution as being dangerous to himself or others, unless he possesses a certificate of a medical doctor licensed in this state that he no longer suffers from disability."⁸⁰ It was left to the county commissioners to adopt procedures to ensure that a license would not issue to an individual who fell into one of the prohibited categories. However, the intent of the section was not to be restrictive, but to allow applicants who were of age and of good moral character and who did not fall into one of the prohibited categories to obtain a license.⁸¹

Section 790.06 also provided that the license be effective for two years.⁸² The applicant had to give a bond of \$100 payable to the Governor and be "conditioned for the proper and legitimate use of . . . weapons."⁸³ Licenses issued by county commissioners under section 790.06 were only valid in the issuing county.⁸⁴

76. FLA. CONST. art. I, § 8.

77. FLA. STAT. ch. 790 (1985).

78. FLA. STAT. § 790.06 (1985).

79. *Id.*

80. *Id.*

81. *Iley v. Harris*, 345 So. 2d 336 (1977).

82. FLA. STAT. § 790.06 (1985).

83. *Id.*

84. 059-269 Fla. Op. Att'y Gen. 425 (1959).

The provisions of this section were first enacted in 1893.⁸⁵ In 1903, the law was modified to limit county commissions to granting licenses to carry weapons to persons "twenty-one years of age, and of good moral character."⁸⁶ In the 1906 codification, pistols were added to the list of weapons to be licensed under the section and the term of licenses was limited to two years.⁸⁷ Electric weapons or devices were prohibited in 1976.⁸⁸ The minimum age for an applicant to obtain a license was changed to eighteen in 1977.⁸⁹ Also in 1977, the statute was extensively revised. Winchester rifles were deleted from the list of weapons a licensee may carry, and counties were authorized to adopt uniform policies and procedures for licensing. The minimum objective criteria for qualification of applicants relating to the use of controlled substances, conviction of crimes involving the use of weapons, and mental disabilities were added.⁹⁰ Finally, in 1979, section 790.06 was modified to clarify the prohibition against granting a license to someone who has "been committed to a mental institution as being dangerous to himself or others."⁹¹

The carrying of a concealed weapon or electric weapon or device is a first degree misdemeanor, while "carry[ing] a concealed weapon on or about" the person is a third degree felony.⁹² Persons licensed under the provisions of section 790.05⁹³ and 790.06 are exempted from these offenses.⁹⁴ This section has been construed broadly to prohibit an apartment dweller from carrying a concealed firearm in the common driveway of his building,⁹⁵ to consider carrying a firearm in a closed briefcase to be carrying a concealed weapon,⁹⁶ to consider a firearm located under the driver's seat of a car to be concealed on or about the person,⁹⁷ but not to

85. Ch. 4147, § 2-3, Laws of Fla. (1893).

86. Ch. 5139, § 2, Laws of Fla. (1903) (codified at FLA. STAT. § 3268 (1906)).

87. FLA. STAT. § 3268 (1906).

88. Ch. 76-165, § 2, 1976 Fla. Laws 288, 289 (codified at FLA. STAT. § 790.06 (Supp. 1976)).

89. Ch. 77-121, § 67, 1977 Fla. Laws 422, 439 (codified at FLA. STAT. § 790.06 (1977)).

90. Ch. 77-302, § 1, 1977 Fla. Laws 1312 (codified at FLA. STAT. § 790.06 (1977)).

91. Ch. 79-164, § 176, 1979 Fla. Laws 570, 639 (codified at FLA. STAT. § 790.06(3) (1979)).

92. FLA. STAT. § 790.01(1)-(2) (1985).

93. FLA. STAT. § 790.05 (1985).

94. FLA. STAT. § 790.01(3) (1985).

95. *Doerr v. State*, 351 So. 2d 56 (Fla. 4th DCA 1977), *cert. denied*, 359 So. 2d 1213 (Fla. 1978).

96. *State v. Murray*, 382 So. 2d 1372 (Fla. 4th DCA 1980).

97. *State v. Hanigan*, 312 So. 2d 785 (Fla. 2d DCA 1975).

prohibit carrying a concealed weapon in one's home or business.⁹⁸ More significantly, the prohibition against carrying concealed weapons has been determined by the Florida Supreme Court not to impinge upon the right of the people under the Florida Constitution to bear arms in defense of themselves and the lawful authority of the state.⁹⁹

The carrying of concealed weapons was first prohibited in 1901 by the Legislature, which declared it to be "a breach of peace."¹⁰⁰ Concealed weapons prohibited under the statute included dirks, pistols, metallic knuckles, slung shots, and billies.¹⁰¹ The first significant change to the section came in 1969, when the Legislature created a section providing definitions in which concealed firearms were severed from the definition of concealed weapons.¹⁰² Concealed firearms were defined as "any firearm . . . carried on or about the person in such a manner as to conceal said firearm from the ordinary sight of another person,"¹⁰³ and provided different penalties for the carrying of concealed weapons (three to six months in jail and/or a fine of \$500-\$1000) and the carrying of concealed firearms (up to five years in jail and/or a fine of up to \$10,000).¹⁰⁴ The act also provided an exception for persons licensed under sections 790.05¹⁰⁵ and 790.06.¹⁰⁶

In 1971, the offenses for carrying concealed weapons and carrying concealed firearms were classified as a first degree misdemeanor and a third degree felony, respectively.¹⁰⁷ In 1976, carrying electric weapons or devices was also made a first degree misde-

98. *French v. State*, 279 So. 2d 317 (Fla. 4th DCA 1973).

99. *Carlton v. State*, 63 Fla. 1, 58 So. 486 (1912).

100. Ch. 4929, § 1, Laws of Fla. (1901)(codified at FLA. STAT. § 3626 (1906)). In the 1906 codification, the language concerning breach of peace and language authorizing police to make an arrest without a warrant were codified in another section. FLA. STAT. § 3263 (1906).

101. *Id.*

102. Ch. 69-306, § 1, 1969 Fla. Laws 1103 (codified at FLA. STAT. § 790.001(2)-(3)(a) (1969)).

103. *Id.*

104. *Id.* § 2, 1969 Fla. Laws 1103, 1106 (codified at FLA. STAT. § 790.01(1), (2) (1969)).

105. FLA. STAT. § 790.05 (1985).

106. Ch. 69-306, § 2, 1969 Fla. Laws 1103, 1107 (codified at FLA. STAT. § 790.01(3) (1969)); FLA. STAT. § 790.06 (1985).

107. Ch. 71-136, § 739, 1971 Fla. Laws 552, 845 (codified at FLA. STAT. § 790.01(1)-(2) (1971)).

meanor.¹⁰⁸ Finally, in 1980, the exemption for private investigative agencies, patrol agencies, and the like was repealed.¹⁰⁹

Section 790.05 contained the penalties for carrying a pistol, electric weapon or device, or repeating rifle without a license.¹¹⁰ The section made it a second degree misdemeanor to "carry around . . . or have in [one's] manual possession, in any county in [Florida] any pistol, electric weapon or device, or Winchester rifle or other repeating rifle without having a license."¹¹¹ Exempted from this section are "sheriffs, deputy sheriffs, city or town marshals, policemen, or United States marshals or their deputies."¹¹² Carrying a weapon in a car is not considered to be in violation of section 790.05,¹¹³ but the weapon must be securely encased.¹¹⁴ The Third District Court of Appeal held that a gun in an unlocked glove box or console is not securely encased,¹¹⁵ but section 790.001 was amended in 1982 to define "securely encased" as "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."¹¹⁶

This section was first enacted in 1893, when the Legislature made it unlawful to "carry or own a Winchester or other repeating rifle without first taking out a license from the County Commissioners of the respective counties."¹¹⁷ In 1901, the section was modified to include a prohibition against carrying pistols and providing an exception for persons licensed to carry concealed weapons under other Florida laws.¹¹⁸ The above mentioned exception was changed to exempt law enforcement officers in the 1906 General Statutes.¹¹⁹ In 1971, the penalties were classified as second degree

108. Ch. 76-165, § 2, 1976 Fla. Laws 288, 289 (codified at FLA. STAT. § 790.01(1) (Supp. 1976)).

109. Ch. 80-268, § 3, 1980 Fla. Laws 1090, 1108 (codified at FLA. STAT. § 790.01 (Supp. 1980)).

110. FLA. STAT. § 790.05 (1985).

111. *Id.*

112. *Id.*

113. 072-161 Fla. Op. Att'y Gen. (1972).

114. *State v. Hanigan*, 312 So. 2d 785 (Fla. 2d DCA 1975).

115. *State v. Butler*, 325 So. 2d 55 (Fla. 3d DCA 1976).

116. Ch. 82-131, § 1, 1982 Fla. Laws 334 (codified at FLA. STAT. § 790.001(16) (1982)).

117. Ch. 4147, § 1, Laws of Fla. (1893).

118. Ch. 4928, Laws of Fla. (1901)(codified at FLA. STAT. § 3267 (1906)).

119. FLA. STAT. § 3267 (1906). It is interesting to note that in the compilation of the general statutes, this change was evidently made in error. The 1906 codification refers back to chapter 4928 as its derivation. However, chapter 4928 merely made it "unlawful to carry a pistol, Winchester or other repeating rifle without a license." Ch. 4928, Laws of Fla. (1901).

misdeemeanors.¹²⁰ Electric weapons or devices were prohibited in 1976.¹²¹

Sections 790.051¹²² and 790.052¹²³ contain provisions covering the carrying of weapons by law enforcement officers. "Law enforcement officers are exempt from the licensing and penal provisions of [chapter 790] . . . when acting at any time within the scope or course of their official duties or when acting at any time in the line of or performance of duty."¹²⁴ For purposes of this section, judges are considered law enforcement officers and may carry a gun without a license while acting in their official duties.¹²⁵ Section 790.052 gives the superiors of law enforcement officers authority to allow officers in their commands to carry concealed weapons while off duty.¹²⁶

Section 790.25 provides exceptions to the requirements of sections 790.05 and 790.06.¹²⁷ Persons who may lawfully own, possess and use firearms include: military personnel while on duty, state law enforcement officers carrying out official duties, state or United States government agents or officers authorized to carry weapons, persons engaged in the transportation of certain valuables, members of various gun-related clubs and organizations while travelling to and from functions of the organization, fishermen, hunters, and campers, people lawfully doing business relating to firearms, persons travelling in a private conveyance with the weapon securely encased, persons travelling by public conveyance who are not in manual possession of their securely encased weapon, persons carrying wrapped, unloaded pistols to or from a retailer or repairer of firearms, persons in their homes or businesses, and public defenders engaged in their official duties. The section does not authorize

The chapter exempted anyone lawfully carrying concealed weapons under other state laws, but did not make specific exemptions for law enforcement officers, nor did it provide penalties. *Id.* The penalties and exemptions which found their way into section 3267 were actually derived from chapter 4929, Ch. 4929, § 1, Laws of Fla. (1901). This apparent error in the history of this section is perpetuated in all codifications to the present day. *See* FLA. STAT. § 790.05 (1985)(history).

120. Ch. 71-136, § 740, 1971 Fla. Laws 552, 846 (codified at FLA. STAT. § 790.05 (1971)).

121. Ch. 76-165, § 2, 1976 Fla. Laws 288, 289 (codified at FLA. STAT. § 790.05 (Supp. 1976)).

122. FLA. STAT. § 790.051 (1985).

123. FLA. STAT. § 790.052 (1985).

124. FLA. STAT. § 790.051 (1985).

125. *See* 1984 FLA. ATT'Y GEN. ANN. REP. 51, rendered Mar. 21, 1984; 1971 FLA. ATT'Y GEN. ANN. REP. 90, rendered Apr. 28, 1971.

126. FLA. STAT. § 790.052(2) (1985).

127. FLA. STAT. § 790.25(3) (1985).

the carrying of a concealed weapon without a permit as prohibited by section 790.01,¹²⁸ nor does it apply to the mentally incompetent, drug addicts, alcoholics, persons with weapons violations, vagrants and undesireables,¹²⁹ or persons unlawfully in a place of nuisance.¹³⁰ This section remains unchanged by the 1987 legislation.

IV. THE 1987 LEGISLATION: LEGISLATIVE HISTORY

In the 1986 Regular Session, Senator Richard Langley¹³¹ and Representative Ron Johnson¹³² sponsored bills relating to the regulation of firearms. Representative Johnson sponsored House Bill 1, which would have given the Secretary of State authority to issue licenses for the carrying of concealed firearms and set forth procedures for the issuing of licenses.¹³³ Although the bill passed in the House by a wide margin, the bill died in committee in the Senate.¹³⁴ Senator Langley's bill, Senate Bill 47, would have preempted the field of regulation of the sale, purchase, transfer, possession of firearms.¹³⁵ The Senate Judiciary-Criminal Committee repeatedly delayed sending the bill to the Senate, and so like the House bill, the Senate Bill died in committee.¹³⁶ The sponsors went home after the session, and with the help of many law enforcement agencies and lobbyists, drafted legislation for the 1987 session.

The 1987 legislation began with companion measure of the two bills introduced concurrently in the Senate and the House of Representatives. Senate Bill 254¹³⁷ and House Bill 251¹³⁸ preempted the field of firearms and ammunition regulation, reserving such regulation to the legislature. Senate Bill 253¹³⁹ and House Bill 253,¹⁴⁰ as introduced, authorized the Secretary of State to issue li-

128. FLA. STAT. § 790.01 (1985).

129. FLA. STAT. § 790.25(2)(b)(2) (1985).

130. See FLA. STAT. § 823.05 (1985); FLA. STAT. § 790.25(2)(b)(3) (1985).

131. Repub., Clermont.

132. Dem., Panama City.

133. FLA. LEGIS., HISTORY OF LEGISLATION, 1987 REGULAR SESSION, HISTORY OF HOUSE BILLS at 199, HB 1.

134. *Id.*

135. *Id.*, HISTORY OF SENATE BILLS at 35, SB 47.

136. *Id.*

137. Fla. SB 254, § 1 (1987).

138. Fla. HB 251, § 1 (1987).

139. Fla. SB 253, § 1 (1987).

140. Fla. HB 253, § 1 (1987).

censes for the carrying of concealed weapons or firearms, and provided procedures and conditions for the issuance of licenses.¹⁴¹

A. *The Senate Bills*

Senate Bills 253 and 254 were sponsored by Senator Langley and twenty other Senators.¹⁴² The bills were introduced on April 7, 1987 and referred to the Senate Committees on Judiciary-Criminal; Finance, Taxation and Claims; and Appropriations.¹⁴³ The bills were taken up by Judiciary-Criminal on April 14, 1987,¹⁴⁴ which adopted Committee Substitute for Senate Bill 253 and reported favorably on Senate Bill 254.¹⁴⁵ The Committee Substitute for Senate Bill 253 was read for the first time the next day¹⁴⁶ and reported favorably by Finance, Taxation and Claims.¹⁴⁷ That committee simultaneously took up Senate Bill 254, and reported it favorably.¹⁴⁸ Appropriations took up the two bills on May 5, 1987, and recommended committee substitutes for both Senate Bill 254 and the Committee Substitute for Senate Bill 253.¹⁴⁹ The bills were placed on the special order calendar for May 12 and 13.¹⁵⁰ On Senator Langley's motions, the Committee Substitute for House Bill 253 was withdrawn from Committee and substituted for the Appropriation Committee's second Committee Substitute for Senate Bill 253.¹⁵¹ Senator Langley moved the question, and after being read the third time by title, the bill passed without amendment by a 29 to 11 vote. The Bill was immediately certified to the House.¹⁵²

House Bill 251 was substituted for Committee Substitute for Senate Bill 254, again on Senator Langley's motion, and was passed after one amendment failed.¹⁵³ The bill passed by a 29 to 11

141. This section later was amended in committee to give the authority to the Department of State. Fla. CS for SB 253, § 1 (1987); Fla. CS for HB 253, § 2 (1987).

142. Fla. SB 253 (1987); Fla. SB 254 (1987).

143. FLA. S. JOUR. 26 (Reg. Sess. 1987).

144. *Id.* at 80 (Reg. Sess. 1987).

145. *Id.* at 79 (Reg. Sess. 1987).

146. *Id.* at 86 (Reg. Sess. 1987).

147. *Id.* at 125 (Reg. Sess. 1987).

148. *Id.*

149. *Id.* at 273 (Reg. Sess. 1987).

150. *Id.* at 271 (Reg. Sess. 1987).

151. *Id.* at 290 (Reg. Sess. 1987).

152. *Id.* at 291 (Reg. Sess. 1987).

153. *Id.* Senator Weinstock, Dem., Tamarac, attempted to amend the bill to allow counties with high populations and high crime rates the right to regulate the purchase of handguns.

margin and was certified to the House.¹⁵⁴ The Appropriations Committee's second Committee Substitute for Senate Bill 253 and Committee Substitute for Senate Bill 254 were tabled.¹⁵⁵

B. *The House Bills*

House Bills 251¹⁵⁶ and 253¹⁵⁷ were both sponsored by Representative Johnson and approximately seventy other representatives. The bills were introduced on April 7, 1987, and referred to the committees on Criminal Justice and Appropriations.¹⁵⁸ The bills were subreferred to the Subcommittee on Crimes, Penalties and Prosecutions, where they received favorable reports. The full Committee on Criminal Justice reported favorably on both bills on April 9, 1987, recommending passage of each with two amendments per bill.¹⁵⁹ House Bill 251 was placed on the Calendar, while House Bill 253 was referred to the Committee on Appropriations.¹⁶⁰ Appropriations took up House Bill 253 on April 9, 1987, and offered a Committee Substitute, which was read for the first time on April 13, 1987.¹⁶¹ House Bill 253 was tabled.¹⁶² Both House Bill 251 and Committee Substitute for House Bill 253 were placed on the Special Order Calendar on April 21, 1987,¹⁶³ and read for a second time.¹⁶⁴ On third reading, House Bill 251 was amended editorially and passed by an 81 to 35 vote.¹⁶⁵ Committee Substitute for House Bill 253 was also amended on third reading, then passed by a margin of 88 to 30.¹⁶⁶ Both bills were immediately certified to the Senate after engrossment.¹⁶⁷

Passage by the House of the two bills was reported in the Senate in messages on April 30, 1987.¹⁶⁸ On first reading, the two bills were referred to the Committees on Judiciary-Criminal; Finance,

154. *Id.*

155. *Id.*

156. Fla. HB 251 (1987).

157. Fla. HB 253 (1987).

158. FLA. H.R. JOUR. 26, 27 (Reg. Sess. 1987).

159. *Id.* at (Reg. Sess. 1987).

160. *Id.*

161. *Id.* at 122 (Reg. Sess. 1987).

162. *Id.*

163. *Id.* at 203 (Reg. Sess. 1987).

164. *Id.* at 205, 209 (Reg. Sess. 1987).

165. *Id.* at 213-14 (Reg. Sess. 1987).

166. *Id.* at 214 (Reg. Sess. 1987).

167. *Id.*

168. FLA. S. JOUR. 243 (Reg. Sess. 1987).

Taxation and Claims; and Appropriations.¹⁶⁹ The bills were eventually withdrawn from committee, substituted for the Senate companion bills, and passed, as previously discussed.¹⁷⁰ The bills were presented to the Governor for his signature on May 12, 1987.¹⁷¹

V. ANALYSIS OF THE 1987 LEGISLATION

The two firearm bills combined to dramatically alter the fragmented and contradictory collection of firearm regulations previously in force across Florida. The first voided all local ordinances and denied local governments the power to enact any firearm regulations in the future except for a limited cooling-off period. The second liberalized the restrictions that previously hindered the citizens of Florida from obtaining concealed weapons permits.

A. *The Preemption Act*

Chapter 87-23 (House Bill 251) creates the Joe Carlucci Uniform Firearms Act.¹⁷² Section 2 of the Act preempts the field of firearms regulation as follows:

Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void. This section shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this section and are prohibited.¹⁷³

This section of the Act passed as originally introduced without amendment.¹⁷⁴

169. *Id.* at 245 (Reg. Sess. 1987).

170. FLA. H.R. JOUR. 417 (Reg. Sess. 1987).

171. FLA. H.R. JOUR. 421 (Reg. Sess. 1987).

172. Ch. 87-23, § 1, 1987 Fla. Laws 133.

173. *Id.* § 2, 1987 Fla. Laws at 133 (to be codified at FLA. STAT. § 790.33).

174. Compare Fla. HB 251, § 1 (1987) with Fla. HB 251, § 2 (1987) (Second Engrossed).

Attempts were made in the House to amend the section during floor debate, however. One proposed amendment was frivolous,¹⁷⁵ and another was misplaced in a bill of this nature.¹⁷⁶ A third proposed amendment, offered by Representatives Metcalf¹⁷⁷ and Bloom,¹⁷⁸ was also misplaced, but might have proven useful to future analysis of the effects of this legislation. The amendment would have required the reporting to the Department of Law Enforcement of all injuries to persons caused by weapons or firearms.¹⁷⁹ This information would then be reported to the Legislature in order that statistical information on such injuries could be developed for future consideration.¹⁸⁰ This amendment was subsequently withdrawn. Representatives Metcalf and Bloom offered a similar, though less comprehensive, amendment to House Bill 253, a better section for such a provision, but that was also withdrawn.¹⁸¹

Section 2 of the Act declares all existing ordinances null and void. This provision most furthers the legislative intent of the bill, which is to ensure statewide uniformity in the law.¹⁸² Without expunging the books in this manner, Florida would be left with a muddle of county and local ordinances. The only ordinances exempt from nullification are zoning ordinances that encompass businesses involved with firearms in one manner or another, provided that the ordinances do not in effect regulate firearms or ammunition. Clarification of this provision came from the Senate Committee on the Judiciary-Criminal in its consideration of Senate Bill 254. According to the Committee, the intent of the provision is not to preclude local ordinances designed to prevent certain firearms businesses, such as gun shops or firing ranges, from being located in specific areas.¹⁸³ Rather, the Act would prohibit zoning

175. Rep. Susan Guber, Dem., Miami, offered language which would have made it "unlawful for any person to sell or possess bullets in the state of Florida." FLA. H.R. JOUR. 207 (Reg. Sess. 1987). Rep. Guber subsequently voted against the bill. FLA. H.R. JOUR. 213 (Reg. Sess. 1987).

176. Rep. John F. Cosgrove, Dem., Miami, offered language which would make it unlawful for any person to steal a handgun. FLA. H.R. JOUR. 207 (Reg. Sess. 1987). Rep. Cosgrove subsequently voted for the bill. FLA. H.R. JOUR. 213 (Reg. Sess. 1987).

177. Rep. Betty Metcalf, Dem., Coral Gables.

178. Rep. Elaine Bloom, Dem., Miami Beach.

179. FLA. H.R. JOUR. 207 (Reg. Sess. 1987).

180. *Id.*

181. *Id.* at 209 (Reg. Sess. 1987).

182. See ch. 87-23, § 4, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33).

183. Fla. S. Comm. on Judiciary-Crim., tape recording of proceedings (Apr. 14, 1987)(on file with committee).

ordinances which would restrict gun ownership and possession by banning gun shops or firing ranges from an entire city or county. Whether specific zoning ordinances will be interpreted to be "a method of regulating firearms or ammunition" is likely to be a matter of future debate.

Section 3¹⁸⁴ was added to the bill on the floor of the House.¹⁸⁵ This section provides an option for counties to adopt cooling-off periods between the purchase and delivery of a handgun.¹⁸⁶ This provision was added as a compromise in response to pressure from opponents and from Governor Bob Martinez, whose advisors warned that the governor might veto any bill that did not contain

184. Section 3 provides:

(1) Any county may have the option to adopt a cooling off period ordinance requiring a cooling off period of up to, but not to exceed, 48 hours between the purchase and delivery of a handgun. For purposes of this section, "purchase" means, payment of deposit, payment in full, or notification of intent to purchase. Adoption of a cooling off period ordinance, by any county, shall require an extraordinary vote of the county commission on votes on cooling off period ordinances. This exception is limited solely to individual counties and is limited to the provisions and restrictions contained in this section.

(2) Ordinances authorized by this section shall apply to all sales of handguns to individuals by a retail establishment except those sales to individuals exempted in this section. For purposes of this section, "retail establishment" means gun shop, sporting goods store, pawn shop, hardware store, department store, discount store, bait or tackle shop, or any other store or shop that offers handguns for walk-in retail sale but does not include gun collectors shows or exhibits, or gun shows.

(3) Ordinances authorized by this section shall not require any reporting or notification to any source outside the retail establishment but records of handgun sales must be available for inspection, during normal business hours, by any law enforcement agency as defined in s. 934.02.

(4) The following shall be exempt from any cooling off period:

(a) Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06 or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;

(b) Individuals who already lawfully own another firearm and who show a sales receipt for another firearm; who are known to own another firearm through a prior purchase from the retail establishment; or who have another firearm for trade-in;

(c) A law enforcement or correctional officer as defined in s. 943.10;

(d) A law enforcement agency as defined in s. 934.02;

(e) Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or

(f) Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such a threat has been duly reported to local law enforcement.

Ch. 87-23, § 3, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33(1)-(4)(f)).

185. FLA. H.R. JOUR. 206 (Reg. Sess. 1987).

186. Fla. HB 251, § 3(1) (1987) (Second Engrossed).

a cooling-off period.¹⁸⁷ The House Criminal Justice Committee initially added a provision which if adopted would have made mandatory a seventy-two-hour waiting period.¹⁸⁸ Senator Weinstock¹⁸⁹ offered a similar amendment in the Senate Judiciary-Criminal Committee, but Chairman Bob Johnson¹⁹⁰ informed the Committee that the co-sponsors, Representative Johnson and Senator Langley, were working on a compromise measure for introduction on the floor.¹⁹¹ Consequently, Senator Weinstock's proposed amendment failed.¹⁹² When the House Committee on Criminal Justice offered by amendment its seventy-two hour waiting period on the floor of the House, Representatives Johnson, Clements,¹⁹³ Crotty,¹⁹⁴ and Dunbar¹⁹⁵ offered a substitute amendment containing the forty-eight hour option,¹⁹⁶ which after some further amendment was adopted¹⁹⁷ and remained in the bill through passage. As enacted, the Act allows counties to adopt cooling-off periods of forty-eight hours or less.¹⁹⁸ Placed along side other states' statutes requiring waiting periods, Florida's is the least restrictive when compared to a range that varies from forty-eight hours to fifteen days.¹⁹⁹ The cooling-off period is defined as falling "between the purchase and delivery of a handgun."²⁰⁰ "Purchase" is defined as "payment of deposit, payment in full, or notification of intent to purchase."²⁰¹ The interpretation of "notification of intent to purchase" may prove most difficult for counties adopting cooling-off periods. First, it is unclear what will constitute "notification" within the intent of the state law. Second, it is unclear who must be notified of this intent to purchase. Presumably, notification of intent to purchase would have to be given to the seller of the hand-

187. Cotterell, *House Panel passes bills on weapons*, Tallahassee Democrat, Apr. 9, 1987, at 1B, col. 5 & 2B, col. 1.

188. *Id.* at 1B, col. 5.

189. Dem., Tamarac.

190. Repub., Sarasota.

191. Fla. S. Comm. on Judiciary-Crim., tape recording of proceedings (Apr. 14, 1987)(on file with committee).

192. *Id.*

193. S.L. Clements, Jr., Dem., Brandon.

194. Richard T. Crotty, Repub., Orlando.

195. Peter M. Dunbar, Repub., Dunedin.

196. FLA. H.R. JOUR. 206 (Reg. Sess. 1987).

197. *Id.* at 207 (Reg. Sess. 1987).

198. Ch. 87-23, § 3, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33(1)).

199. See ALA. CODE § 13-A-11-77 (1982); CAL. PENAL CODE § 12072 (West Supp. 1987).

200. Ch. 87-23, § 3, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33(1)).

201. *Id.*

gun.²⁰² However, this raises additional problems: How will such notification be recorded by the seller, and how will the county monitor dealers to ensure that records are not back dated on the day of purchase to create the illusion of compliance with the waiting period? The Legislature, by including this third definition of "purchase," placed on counties adopting cooling-off periods the difficult burden of making such periods enforceable without unduly restricting the ability of law-abiding citizens to purchase guns.²⁰³

To adopt a cooling-off period, a county commission must pass an ordinance "by extraordinary vote of the county commission on votes on cooling-off period ordinances."²⁰⁴ As originally proposed by Representative Johnson, this clause would have required an "overwhelming majority vote of the county commission,"²⁰⁵ with overwhelming majority meaning "all members of the commission, but one, regardless of the number of members on the commission."²⁰⁶ "Overwhelming majority" was changed to "extraordinary" on the floor,²⁰⁷ but in making the change, the Legislature did not define extraordinary. Counties will be hard pressed to find a definition of "extraordinary vote."

The Act requires all cooling-off ordinances adopted by counties to "apply to all sales of handguns to individuals by a retail establishment."²⁰⁸ Exempt from the definition of retail establishment are "gun collectors['] shows or exhibits, or gun shows."²⁰⁹ Presumably, the intermittent occurrence of gun shows and exhibits makes them unlikely places for a gun buyer, acting in the heat of passion or on suicidal impulse, to go to buy a gun. Additionally, and closer to the point, a weekend gun show would never be able to sell guns to first-time gun buyers without this exemption.²¹⁰

202. In fact, this was the interpretation of similar language included in Senator Weinstein's failed cooling-off period amendment in the Senate Judiciary-Criminal Committee discussion of the bill. Fla. S. Comm. on Judiciary-Crim., tape recording of proceedings (Apr. 14, 1987)(on file with committee).

203. Ch. 87-23, § 3(1), 1987 Fla. Laws 133, 134.

204. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(1)).

205. FLA. H.R. JOUR. 206 (Reg. Sess. 1987).

206. *Id.*

207. *Id.*

208. Ch. 87-23, § 3, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33(2)).

209. *Id.*

210. As will be seen, it is the first-time gun buyer who is most affected by the cooling-off period.

Counties are prohibited from requiring "reporting or notification to any source outside the retail establishment,"²¹¹ but law enforcement agencies are allowed to inspect records of handgun sales.²¹² This provision clearly establishes the intent of the Legislature to allow only cooling-off periods designed to thwart heat of passion gun purchases and precludes *de facto* registration of guns or background checks as a prerequisite to the purchase of a gun. This provision clearly limits, however, the options available to the counties in their attempts to define the notification of intent to purchase and find a means of establishing and recording the beginning of the waiting period.

In an effort to limit application of a cooling-off period to only those gun buyers who may be acting on impulse with the intent to do violence, the Legislature included many exemptions from county cooling-off ordinances.²¹³ Exemptions apply to holders of concealed firearms licenses issued under section 790.06.²¹⁴ This license must be shown at the time of purchase. Gun owners "who show a sales receipt for another firearm," who the dealer knows own another firearm because it was purchased from the same dealer, or who are trading in another firearm are also exempt from cooling-off periods.²¹⁵ Imposing a cooling-off period on a buyer who already lawfully owns a firearm would add an unreasonable restriction while doing little to prevent impulsive violent acts. However, the requirement of the exemption is that the person already own a *firearm*, which could be a shotgun or a rifle, weapons that are not easily concealed. The law does not take into account the situation where a gun owner impulsively decides to buy a handgun to carry out an act of violence that would only be possible if the weapon were concealable. A sales receipt or record of prior purchase of another firearm at the same dealer is not conclusive evidence that the buyer currently owns a firearm, and a firearm traded in may not even be functional. While these loopholes do exist, their use is likely to be *de minimus* and the Legislature apparently believed such a compromise was the most equitable and workable.

Law enforcement officers and correctional officers are exempt from cooling-off periods,²¹⁶ as are law enforcement agencies.²¹⁷ Also

211. Ch. 87-23, § 3, 1987 Fla. Laws 133, 134 (to be codified at FLA. STAT. § 790.33(3)).

212. *Id.*

213. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)).

214. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(a)).

215. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(b)).

216. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(c)).

exempt are transactions between holders of "current federal firearms licenses."²¹⁸ The final exemption is the safety valve needed for those persons who may never have had a desire to own a gun, but are under a legitimate, immediate threat of danger and want a gun for self-defense.²¹⁹ This provision needs clarification, however, in that it does not explain how an individual will show a dealer that the "threat has been duly reported to local law enforcement."²²⁰ The counties will have to establish a standard to make the provision work, perhaps by requiring the buyer to show the dealer a copy of a police report as evidence that the threat has been reported.

Section 4 sets forth the policy and intent of the Act,²²¹ which is "to provide uniform firearms laws in the state,"²²² nullify all local laws, present and future, which regulate firearms except as provided in the Act, "and to require local jurisdictions to enforce state firearms laws."²²³

The Joe Carlucci Uniform Firearms Act took effect immediately upon becoming law.²²⁴

B. The Concealed Weapons Act

The concealed weapons Act is named the Jack Hagler Self Defense Act,²²⁵ and replaces by amendment section 790.06²²⁶ and repeals section 790.05²²⁷ of the Florida Statutes. Section 790.06 describes how a license to carry a concealed weapon is procured²²⁸

217. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(d)).

218. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(e)).

219. *Id.* § 3, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33(4)(f)).

220. *Id.*

221. Section 4 provides:

It is the intent of this act to provide uniform firearms laws in the state; and to declare all ordinances and regulations null and void which have been enacted by any jurisdiction other than state and federal, which regulate firearms, ammunition or components thereof; and to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this act or general law; and to require local jurisdictions to enforce state firearms laws.

Id. § 4, 1987 Fla. Laws at 134 (to be codified at FLA. STAT. § 790.33).

222. *Id.*

223. *Id.*

224. *Id.* § 5, 1987 Fla. Laws at 135.

225. Ch. 87-24, 1987 Fla. Laws 133, 135.

226. FLA. STAT. § 790.06 (1985).

227. *Id.* § 790.05 (1985).

228. See *supra* note 78.

while section 790.05 provided penalties for carrying weapons either openly or concealed without a license.²²⁹

The Act authorizes the Department of State "to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section."²³⁰ "Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife or billie."²³¹ For the purposes of section 790.06, concealed weapons or firearms do not include dirks, metallic knuckles, slung shots, chemical weapons or concealable firearms other than handguns. This is a more limited definition of concealed weapons than that set forth in section 790.001.²³² Not included in this definition are stun guns, which are designed to temporarily disable a person, often by expulsion of pellets or shot-filled pouches or by electrical shock.²³³

Licenses are good for three years and are effective statewide.²³⁴ The bearer of such a license must have it in his possession at all times when carrying a concealed weapon or firearm, and show it upon demand to a law enforcement officer. Failure to carry and show the license is a noncriminal offense carrying a \$25 fine.²³⁵

The qualifications of an applicant who may receive a concealed weapons or firearms license are set forth in subsection (2) of sec-

229. See *supra* note 105.

230. Section 2, subsection (1) provides:

The Department of State is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife or billie. Such licenses shall be valid throughout the state for a period of 3 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license or an actual copy thereof, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of \$25, payable to the clerk of court.

Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(1)).

231. *Id.*

232. FLA. STAT. §§ 790.001(2), (3)(a) (1985).

233. See N.J. STAT. ANN. § 2C:39-1.1. (West Supp. 1987-88).

234. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(1)).

235. *Id.*

tion 2.²³⁶ The applicant must be a Florida resident for at least six months immediately prior to making the application, be twenty-one years of age, and be free from any physical infirmity which makes him unable to safely handle a weapon or firearm. Convicted felons may not acquire permits if ineligible to possess firearms under section 790.23.²³⁷ Also ineligible are persons committed for controlled substance abuse or convicted in Florida or any other state of a substance abuse-related crime over a three-year period immediately prior to filing the application.²³⁸ Chronic alcohol abusers are also prohibited from obtaining a license to carry, if such abuse impairs the applicant's normal faculties.²³⁹ Evidence of impairment includes commitment as an alcoholic, being an habitual offender, or two convictions for driving under the influence of alcohol in Florida or another state in the three years prior to the application.²⁴⁰ Attempts made to stiffen this prohibition even further were unsuccessful.²⁴¹

An applicant must "desire a legal means to carry a concealed weapon or firearm for lawful self defense."²⁴² Unlike many other states,²⁴³ Florida does not require a subjective need for self-defense as evaluated by the issuing official. For example, such factors as late night travel or residency in a high crime area may place a person at relatively high risk. In such a situation, carrying a weapon may be a wise precaution. However, the intent of this bill is to allow all citizens a lawful means of self-defense, regardless of whether a known risk exists.

236. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)).

237. FLA. STAT. § 790.23 (1985).

238. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(e)).

239. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(f)).

240. *Id.*

241. See FLA. H.R. JOUR. 209 (Reg. Sess. 1987); Fla. H.R. Comm. on Crim. Just., tape recording of proceedings (Apr. 8, 1987)(on file with committee) (Representative Marion Lewis, Repub., North Palm Beach, suggested that one DUI should be sufficient to deny a license, but Representative Johnson argued that one incident does not establish a pattern that should result in removal of one's right to bear arms in self-defense) [hereinafter Comm. on Crim. Just.].

242. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(g)).

243. See *supra* note 47.

To obtain a license to carry a concealed weapon or firearm, a person must "demonstrate competence with a firearm"²⁴⁴ by showing a certificate of completion, or an affidavit from an instructor, of any of several types of training courses. Specified courses are approved hunter education or safety courses;²⁴⁵ NRA firearms safety or training courses;²⁴⁶ courses or classes using instructors certified by the NRA, Criminal Justice Standards and Training Commission, or Department of State;²⁴⁷ courses offered for "security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;"²⁴⁸ or courses or classes given by an instructor certified by the state or the NRA.²⁴⁹ Competence may also be evidenced by "equivalent experience with a firearm through participation in organized shooting competition or military service."²⁵⁰

This equivalent experience provision drew criticism in the House Criminal Justice Committee. Representative Glickman²⁵¹ claimed that military personnel are trained to kill, and noted that target shooters do not receive "shoot-don't shoot" training. He then questioned whether such training qualifies persons to carry concealed weapons for purposes of self-defense.²⁵² The Committee chairman, Representative Gustafson,²⁵³ alleviated Representative Glickman's concerns by stating that the requirement for equivalent experience should be interpreted to mean that the training must have been as good as the training courses set forth in paragraphs 1-4 of the bill.²⁵⁴ This being the case, it is necessary that the Department of State, when reviewing applications from competition marksmen and persons with military service, investigate to insure that prior

244. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)).

245. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(1)).

246. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(2)).

247. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(3)).

248. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(4)).

249. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(7)).

250. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(5)).

251. Rep. Ron Glickman, Dem., Tampa.

252. Comm. on Crim. Just., *supra* note 241.

253. Rep. Tom Gustafson, Dem., Ft. Lauderdale.

254. Comm. on Crim. Just., *supra* note 241.

training meets the standards for certification of courses. As to the "shoot-don't shoot" training²⁵⁵ mentioned by Representative Glickman, it would be advantageous to include such training as part of any certified course under the section to help prevent the inappropriate use of a firearm when deadly force is not actually necessary.

Finally, an applicant is deemed competent if already licensed to carry a firearm in the state, including local permits.²⁵⁶ This exemption does not apply to persons whose "license has been revoked for cause."²⁵⁷ This subsection was also questioned by Representative Glickman, who noted that the exemption would apply whether or not the person had ever completed a training or safety course.²⁵⁸ Representative Johnson explained that the intent here was to grandfather in those already licensed. However, when those persons apply for renewal of that license, they will have to meet all the criteria set forth in the new statute.²⁵⁹ Section 2, subsection (13)²⁶⁰ of the Act sets forth express provisions relating to conversion of county licenses to statewide licenses. Specifically, subsection (13) contains a grandfather clause for county licenseholders giving them an option to convert the county license to a statewide license for the unexpired period. It also requires holders of statewide licenses converted from county licenses to comply at the time of renewal with the requirements of the Act to the same extent as an initial applicant.

Applicants for a concealed weapons or firearms license must not have "been adjudicated an incompetent under section 744.331,"²⁶¹ or must have been declared competent by court order at least three years prior to application.²⁶² If a person has been committed to a mental institution and does not have a certificate from a psychia-

255. In this type of training, trainees are taught to tell the difference between a life threatening (shoot) situation, and a situation where the use of deadly force is not necessary (don't shoot).

256. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(2)(h)(6)).

257. *Id.*

258. Comm. on Crim. Just., *supra* note 241.

259. *Id.*

260. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(13)).

261. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(e)(i)).

262. *Id.*

trist that he has been free from disability for three years, he may not receive a license.²⁶³

Licenses may be denied to applicants who have been convicted of any violent crimes during the three years immediately prior to the application. In addition, a license may be revoked "if the licensee has been found guilty of" a violent crime in the three year period prior to licensing.²⁶⁴ This provision is commendable, but leaves too much discretion to the Department of State as to which applicants convicted of violent crimes should be denied a permit. For consistency and clarity, "may deny" and "may revoke" should be changed to "shall deny" and "shall revoke." Absent this amendment, the Department of State can only assure itself of adherence to the intent of the Legislature, which appears to be to keep concealed weapons and firearms licenses away from violent criminals, by adopting a blanket policy of denial.

Section 2, subsection (4) of the Act sets forth the requirements for applications for concealed weapons or firearms licenses, which must be made under oath.²⁶⁵ Among other things, the applicant must state that he has read chapter 790, is familiar with its provisions, and that he is in compliance with its criteria. The applicant must also state that he desires a license to carry a concealed weapon or firearm "as a means of lawful self defense."²⁶⁶ The applicant does not have to provide information concerning a specific weapon or firearm which he desires to carry, as was previously re-

263. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(e)(g)).

264. *Id.*

265. This subsection provides:

(4) The application shall be completed, under oath, on a form promulgated by the Department of State and shall include:

(a) The name, address, place and date of birth, race, and occupation of the applicant;

(b) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3);

(c) A statement that the applicant has been furnished a copy of this chapter and is knowledgeable of its provisions;

(d) A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under s. 837.06; and

(e) A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self defense.

Id. § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(4)).

266. *Id.*

quired.²⁶⁷ This is significant in that it will allow people who do not own a gun, but are considering acquiring of one, to carry it immediately following purchase if they first obtain a license.

Along with the application, the applicant must submit a nonrefundable fee, which may be as high as \$125 for first time applicants and \$100 for renewals, as well as fingerprints and a copy of the required competency certificate or affidavit.²⁶⁸ Law enforcement or correctional officers²⁶⁹ are authorized to carry concealed firearms without applying for a license, and retired persons in those categories who apply for a license are exempt from fees and background investigations for one year following retirement.

After receiving an application for a license, the Department of State must make a cursory investigation to determine whether the applicant should be licensed.²⁷⁰ The major part of the investigation

267. FLA. STAT. § 790.06 (1985) (requiring county commissioners to keep the make, caliber and number of the firearms an individual is licensed to carry, along with the name of the license holder).

268. Subsection (5) provides:

(5) The applicant shall submit to the Department of State:

(a) A completed application as described in subsection (4);

(b) A nonrefundable license fee not to exceed \$125, if he has not been previously issued a statewide license, or a nonrefundable license fee not to exceed \$100 for renewal of a statewide license. Costs for processing the set of fingerprints shall be borne by the applicant. However, a "law enforcement officer" or "correctional officer" as defined in s. 943.10(1), (2), (6), (7), (8), and (9) shall be permitted to carry concealed firearms notwithstanding the requirements of this section. Further, a law enforcement or correctional officer as defined in s. 943.10(1) or (2) shall be exempt from the required fees and background investigation for a period of 1 year subsequent to the date of retirement of said officer as a law enforcement or correctional officer;

(c) A full set of fingerprints of the applicant administered by a law enforcement agency of this state; and

(d) A photocopy of a certificate or an affidavit or document as described in paragraph (2)(h).

Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(5)).

269. See FLA. STAT. § 943.10(1)-(2) (Supp. 1986).

270. Subsection (6)(a) provides:

(6)(a) The Department of State, upon receipt of the items listed in subsection (5), shall forward the full set of fingerprints of the applicant to the Department of Law Enforcement for the state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in s. 943.045, and forward a copy of the application and \$20 of the original license fee or \$10 of the renewal license fee to the sheriff of the applicant's county of residence. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the Department of State.

Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(6)(a)).

consists of state and federal processing of fingerprints by the Department of Law Enforcement to check for any possible criminal background. A copy of the application must be sent to the sheriff's office in the applicant's county of residence. However, any report made by the sheriff regarding the applicant is strictly voluntary.²⁷¹ In fact, the wording of the statute creates a disincentive for the sheriff to file a report, since the sheriff's share of the license fee will be forwarded regardless of whether the sheriff makes a report.

Once the fingerprints have been sent out for processing, the Department of State may issue a license or deny the application based upon the information provided by the applicant.²⁷² The Department must act on the application within ninety days, and is not required to await a report from the Department of Law Enforcement regarding the applicant's fingerprint check. Since the application can only be denied if the applicant does not meet the criteria set forth in subsection (2) or subsection (3), and since receipt of the report from the fingerprint check is not required to grant the application, a license can issue solely on the information submitted on the application. Critics will contend that this will allow criminals to carry concealed weapons, which is not only undesirable from a social standpoint, but will also make it that much easier for a criminal to operate because police would not be able to arrest him merely for carrying a concealed weapon illegally.

271. Subsection (6)(b) provides:

(b) The sheriff of the applicant's county of residence may, at his discretion, participate in the process by submitting a voluntary report to the Department of State containing any readily discoverable prior information that he feels may be pertinent to the licensing of any applicant. Any such voluntary reporting shall be made within 45 days after the date he receives the copy of the application. If the sheriff chooses, he may notify the department in writing, that he does not wish to receive copies of the application and the fee described in paragraph (a) of subsection (6).

Id. § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(6)(b)).

272. Subsection (6)(d) provides:

(d) The Department of State shall, within 90 days after the date of receipt of the items listed in subsection (5):

1. Issue the license; or
2. Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsection (2) or subsection (3). If the Department of State denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.

Id. § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(6)(d)).

On the other hand, proponents of the statutory provisions will argue that a criminal is not going to apply for a concealed weapons permit in any case, and that even if he does and lies on his application, the fingerprint check will expose him resulting in the revocation of the license under subsection (10).²⁷³ A compromise provision would be to require the Department of Law Enforcement to provide a fingerprint report within ninety days, while still requiring the license be issued within ninety days regardless of whether the report is received. This would make it illegal for the state to unreasonably delay issuance of the license, and provide incentive to rapidly process the fingerprints since a license will issue without it.

In order to keep concealed weapons and firearms license information up-to-date, the Act requires that the Department of State maintain an on-line listing of "licenseholders and pertinent information," which shall be accessible to "all law enforcement agencies through the Florida Crime Information Center."²⁷⁴ Licenseholders must notify the Department of changes in their permanent address and of any loss or destruction of the license.²⁷⁵ Lost or destroyed licenses will be replaced, at which point a lost license automatically will become invalid.²⁷⁶ Licenses may be revoked if events occur which make a licensee no longer eligible under subsection (2), including offenses and circumstances which, had they occurred prior to application, would have made the applicant ineligible for the initial license.²⁷⁷ A license may be renewed provided that the applicant submits the renewal form, a notarized affidavit that he is still qualified under subsections (2) and (3), a fingerprint card, and the applicable fees.²⁷⁸ The license will be renewed upon receipt of the above information. A background investigation is only required if the license is not renewed within six months of its expiration, in which case the licenseholder must apply for a new license.

273. *Id.* § 2, 1987 Fla. Laws at 139 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(10)).

274. *Id.* § 2, 1987 Fla. Laws at 138 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(7)).

275. *Id.* § 2, 1987 Fla. Laws at 139 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(8)).

276. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(9)).

277. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(10)).

278. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(11)).

Included in the Act is a list of places where even a licensed person is prohibited from carrying concealed firearms and weapons.²⁷⁹ This list was substantially revised by the House and Senate committees that took up the bill. The House Criminal Justice Committee added to the list police, sheriff, and highway patrol stations, in order to extend to those places the same level of protection given to courthouses and jails.²⁸⁰ The Committee also added a provision to allow judges to carry concealed weapons in their courtrooms, and to allow them to decide who else may do so.²⁸¹ The intent of this addition was to provide protection to judges as law enforcement officers, and to give judges the discretion to allow lawyers, bailiffs and others in the courtroom who may be at risk to carry a concealed weapon. The Committee also adopted amendments striking a prohibition against carrying weapons on property used for religious purposes on the theory that the clergy and the citizenry are exposed to unique dangers in places of worship, specifically terrorist attacks and attacks spurred by anti-semitism and racism.²⁸² An exemption was deleted that would have allowed licensed university students, faculty and employees to carry concealed weapons on campus, while prohibiting all other license-

279. Subsection (12) provides:

(12) No license issued pursuant to this section shall authorize any person to carry a concealed weapon or firearm into any place of nuisance as defined in s. 823.05; any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; 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 courtroom; or any polling place; any meeting of the governing body of a county, 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 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 elementary or secondary school facility; or 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 non-lethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile; or any place where the carrying of a firearm is prohibited by federal law.

Id. § 2, 1987 Fla. Laws at 140 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(12)).

280. Comm. on Crim. Just., *supra* note 241.

281. *Id.*

282. *Id.*

holders from doing so.²⁸³ This section was further amended by the Senate Judiciary-Criminal Committee²⁸⁴ and by the House on the floor.²⁸⁵ In its final form, the Act allows licensed students, employees, and faculty members of colleges or universities to carry on campus "a stun gun or non-lethal electrical weapon or device designed solely for defensive purposes [that] does not fire a dart or projectile."²⁸⁶ Commuters driving on to campus would not violate this section if they had a gun in the glove compartment.²⁸⁷

Subsections (14)²⁸⁸ and (15)²⁸⁹ contain the fiscal provisions of the Act. The program will be self-supporting, with revenues generated by license fees used to defray nonrecurring and recurring costs. Revenue balances remaining after costs are paid will be deferred over the licensing period. Surplus revenues collected under the act will not revert to the General Revenue Fund.²⁹⁰ Moneys sent to local sheriff's departments under the provisions of the Act will be added to the county's general revenue fund and budgeted to the sheriff.²⁹¹ As noted earlier, this creates a windfall for sheriff's departments that decide not to participate in background checks.

The Department of State's fiscal evaluation predicts first year gross revenues of approximately \$15 million, with costs of over \$7 million.²⁹² The analysis shows similar surpluses in years two and three and continuing on, subject to normal growth.²⁹³ Administration of the new law is expected to require ninety-seven new posi-

283. Ch. 87-24, § 2, 1987 Fla. Laws 135, 140 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(12)).

284. Fla. S. Comm. on Judiciary-Crim., tape recording of proceedings (Apr. 14, 1987)(on file with committee).

285. FLA. H.R. JOUR. 209 (Reg. Sess. 1987).

286. Ch. 87-24, § 2, 1987 Fla. Laws 135, 140 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(12)).

287. Comm. on Crim. Just., *supra* note 241.

288. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(14)).

289. *Id.*, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(15)).

290. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(14)).

291. *Id.* § 2, 1987 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(15)).

292. Staff of Fla. H.R. Comm. on Crim. Just., HB 253 (1987) Staff Analysis 3 (revised Apr. 8, 1987)(on file with committee).

293. *Id.*, attach. 1, para. 4.

tions in the Department of State.²⁹⁴ Revenue payouts to local sheriff's departments are expected to reach \$2.6 million.²⁹⁵

Subsection (16)²⁹⁶ of the Act contains the policy and intent statement of the Legislature. The broad intent of the bill is to make uniform the laws of the state concerning licenses to carry concealed weapons, and to remove barriers which exist to "subjectively or arbitrarily"²⁹⁷ deny the right of law-abiding citizens to bear arms in self-defense. No power is delegated to the Department of State to regulate the issuance of licenses, except to the extent provided in the Act. Apart from the provisions of the Act, no additional rules or barriers are to be placed on applicants which make it more difficult or burdensome to obtain a concealed weapons permit. The provisions of the Act are to be "liberally construed to carry out the Constitutional right to bear arms for self-defense."²⁹⁸

Subsection (17)²⁹⁹ requires that the Department of State submit to state government leaders a statistical report pertaining to the issuance, revocation, suspension, and denial of licenses. Section 3³⁰⁰

294. *Id.*, para. 6.

295. *Id.*, para. 5.

296. Subsection (16) provides:

(16) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his rights. The Department of State shall implement and administer the provisions of this section. The Legislature does not delegate to the Department of State the authority to regulate or restrict the issuing of licenses provided for in this section, beyond those provisions contained in this section. Subjective or arbitrary actions or rules which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this section are in conflict with the intent of this section and are prohibited. This section shall be liberally construed to carry out the Constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms and nothing in this section shall impair or diminish such rights.

Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(16)).

297. *Id.*

298. *Id.*

299. Subsection (17) provides: "By March 1 of each year, The Department of State shall submit a statistical report to the Governor, President of the Senate, the Senate Republican Leader, the Speaker of the House of Representatives, and the House Minority Leader indicating the number of licenses issued, revoked, suspended, and denied." *Id.* § 2, 1985 Fla. Laws at 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(17)).

300. *Id.* § 3, 1987 Fla. Laws at 141 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06).

provides that those portions of the Act which are held invalid be considered severable. Section 4³⁰¹ repeals section 790.05 of the Florida Statutes. As noted previously, this section made it unlawful for a person to "carry [a] pistol, electric weapon, or device, or Winchester rifle or other repeating rifle without having a license."³⁰² Since neither the Act nor section 790.001³⁰³ includes Winchester repeating rifles in its definition of concealed weapons, and since only section 790.05 prohibited carrying these weapons openly without a license, the effect of the Act is to make it legal to carry weapons in this category. More interestingly, by repealing section 790.05 and defining pistols and electronic devices as concealed weapons for the purposes of the Act,³⁰⁴ the Legislature made it at most a noncriminal offense to carry these weapons openly without a license and made it legal to carry them openly with a license. The Governor was asked to consider this problem at a special session of the Legislature.³⁰⁵

The Jack Hagler Self Defense Act became law on October 1, 1987.³⁰⁶

C. Closing the Loophole

On October 7, 1987,³⁰⁷ the Florida House of Representatives, amidst national publicity concerning the loophole which made it legal for licensed and unlicensed firearms owners to carry their weapons openly, passed a measure closing the loophole.³⁰⁸ The bill was passed the following day by the Senate,³⁰⁹ which dropped its own corrective bill in favor of the House Bill.³¹⁰

The new act creates section 790.053, Florida Statutes, which provides:

790.053 Open carrying of weapons. — Except as otherwise provided by law, it shall be unlawful for any person to openly carry on or about his person any firearm or electric weapon or device;

301. *Id.* § 4, 1987 Fla. Laws at 141.

302. FLA. STAT. § 790.05 (1985) (repealed 1987).

303. FLA. STAT. § 790.001 (1985).

304. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(1)).

305. Wall St. J., Sept. 3, 1987, at 21, col. 4.

306. Ch. 87-24, § 5, 1987 Fla. Laws 135, 141.

307. FLA. H.R. JOUR. 64 (Spec. Sess. 1987).

308. FLA. HB 28-B (Enrolled 1987).

309. FLA. H.R. JOUR. 136 (Spec. Sess. 1987).

310. See Fla. SB 29-B (1987).

provided, however, that a person may openly carry a stun gun or non-lethal electric weapon or device designed solely for defensive purposes, which weapon does not fire a dart or projectile. Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s.775.082, s.775.083, or s.775.084.³¹¹

While the Act clearly makes it illegal for a person to openly carry a firearm without a license, it does not appear to close the loophole as it pertains to concealed weapons permit holders. Because section 790.06 defines a handgun as a concealed weapon, whether it is physically concealed or not,³¹² it seems to make it legal for a person with a concealed weapons permit to carry a handgun openly. Since the corrective measure makes open carrying illegal "except as otherwise provided by law,"³¹³ it appears as though the prohibition does not apply to holders of concealed weapons permits. Whether this was the Legislature's intent is unclear.

The Act also makes it legal to carry stun guns and nonlethal electrical devices.³¹⁴ This provision raises the question of whether an unlicensed person may now carry an unconcealed stun gun or nonlethal electric device on a college or university campus or in places where concealed weapons, other than stun guns or electric devices, are prohibited by section 790.06.³¹⁵

The Act was ordered enrolled on October 8, 1987.³¹⁶ The Governor signed the act into law on October 9, 1987, and it immediately became effective.³¹⁷

VI. CONCLUSION

Time alone will show the true effects of Florida's new gun control laws. The state had received 11,000 requests for permits well before the October 1, 1987, effective date, with another 119,000 applications expected.³¹⁸ Counties are faced with decisions as to whether cooling-off periods should be adopted, and with those de-

311. Fla. HB 28-B, § 1 (Enrolled 1987).

312. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(1)).

313. Fla. HB 28-B, § 1 (Enrolled 1987).

314. *Id.*

315. Ch. 87-24, § 2, 1987 Fla. Laws 135 (amending FLA. STAT. § 790.06 (1985), to be codified at FLA. STAT. § 790.06(12)).

316. FLA. H.R. JOUR. 136 (Spec. Sess. 1987).

317. *See* Fla. HB 28-B, § 3 (Enrolled 1987).

318. Wall St. J., Sept. 3, 1987, at 21, col. 5.

cisions will come the necessity of finding ways to implement cooling-off periods within the law. The Legislature should consider requiring the state to complete its fingerprint check within the time frame allowed for issuing a license, to avoid the inevitable task of chasing down licensees who fraudulently represent themselves on their permit applications.

It is unfortunate that some type of provision requiring statistical analysis of the effects of the Act was not adopted. In a recent study sponsored by the United States Department of Justice, one of the key recommendations was that new gun legislation be accompanied by research projects to determine the effects of such legislation.³¹⁹ Also recommended were studies relating licensing data to crime statistics.³²⁰ However, any study involving firearm use by licensed carriers would need to distinguish between accidental injuries and discharges, offensive use and legitimate defensive use. This issue should be addressed by the Legislature in its next session.

The debate over whether strict gun control is desirable from a citizens' rights standpoint or effective in reducing crime will continue as long as statistics continue to be developed and as long as people have the freedom to formulate their own opinions. Florida's Legislature, as well as the legislatures of the several states, can only try to keep the laws in line with the citizen's wishes, balanced, of course, with constitutional protections. Judging from the lop-sided votes that passed Florida's new gun control laws, as well as the number of requests for concealed weapons permits, it looks as if the citizens of Florida are in favor of relatively lax gun controls which enable them to lawfully arm themselves in self-defense.

319. Wright & Rossi, *Weapons, Crime, And Violence in America, Executive Summary* 34 (November 1981).

320. *Id.*

