

GENERAL ORDER

April 2016

Immediately

V.5:26

Distribution: All Employees

Subject: **CONCEALED FIREARMS LAWS**

Index as:	Concealed Firearms Firearms Permits Law Enforcement Officers, Out-of-State	Non-Criminal Firearms Violations Out-of-State Law Enforcement Officers Permits, Out-of-State Firearms
-----------	--	---

Accreditation Standards:

Cross Reference: G.O. III-14, Evidence and Property
§790.06, §823.05, F.S.S.
H.R. 218 Law Enforcement Officers Safety Act of 2004 (LEOSA)
S.1132 (111th) Law Enforcement Officers Safety Act Improvements Act of 2010
LEOSA, as Amended by the H.R. 4310 National Defense Authorization Act of 2013
<http://www.law.cornell.edu/uscode/text/18/926B>
<http://www.law.cornell.edu/uscode/text/18/926C>

Replaces: I.O. V.5:26, Concealed Firearms Laws, (April 29, 2013)

This Order consists of the following sections:

- I. Policy
- II. Failure to Carry a Florida Firearms Permit
- III. Places Where the Carrying of Concealed Firearms is Prohibited
- IV. Out-of-State Concealed Carry Permits
- V. Out-of-State Permit - Enforcement Procedure
- VI. Out-of-State Law Enforcement Officers - Active and Separated from Service

I. POLICY

A. This Order provides guidelines for an Officer who may have contact with a person claiming lawful possession of a firearm under the State of Florida's Concealed Firearms Law or H.R. 218 Law Enforcement Officers Safety Act, S.1132 Law Enforcement Officers Safety Act Improvements Act of 2010 and LEOSA, as Amended by the H.R. 4310 National Defense Authorization Act of 2013.

B. It is the policy of this Department that the Trespassing Statutes §810.08, F.S.S. or §810.09, F.S.S. will be the enforcement tool used when a property owner/merchant wishes to restrict the carrying of firearms on their property.

C. It is the policy of this Department to investigate all calls involving firearms; e.g., "person with a gun" as the safety of Officers and citizens is paramount.

II. FAILURE TO CARRY A FLORIDA FIREARMS PERMIT

A. Failure to carry a Firearms Permit constitutes a non-criminal violation with a \$25.00 penalty.

B. A licensee must carry the Permit, together with valid identification, at all times when the licensee is in actual possession of a concealed weapon or firearm, and must display both Permit and proper identification upon demand by a Law Enforcement Officer.

C. Failure to notify the Licensing Division of the Department of State within 30 days after a permanent address change or of the loss or destruction of the Permit is a non-criminal violation with a \$25.00 penalty.

D. When contact is made with a person carrying a concealed firearm and the person claims to have a Permit, but does not have it in their possession, the Officer shall:

1. Check FCIC via Echo Channel to see if the person has a valid Permit.

2. If it is determined that the person DOES have a valid Permit but does not have it in their possession:

- a. The Officer should issue a *Notice To Appear* for the NON-CRIMINAL VIOLATION, with the fine amount shown as \$25.00.

- b. It is not necessary to take possession of the firearm; however, the person should be warned not to carry it concealed until the Permit is located or replaced.

3. Use discretion when determining if an arrest is necessary when the person is unable to confirm the existence of the Permit. In most cases, it will be sufficient to seize the firearm as evidence, identify the person, and refer the case to the State Attorney's Office. This will provide the individual with an opportunity to provide proof that they had a valid Permit and limit the possibility of a false arrest.

III. PLACES WHERE THE CARRYING OF CONCEALED FIREARMS IS PROHIBITED

A. No license issued pursuant to §790.06(12), F.S.S. shall authorize any person to carry a concealed weapon or firearm into the following places:

1. Any place of nuisance as defined in §823.05, F.S.S.;

2. Any police, sheriff's, or highway patrol station;

3. Any detention facility, prison, or jail;

4. 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 their courtroom;

5. Any polling place;

6. Any meeting of the governing body of a county, public school district, municipality, or special district;

7. Any meeting of the Florida Legislature or a committee thereof;

8. Any school, college, or professional athletic event not related to firearms;

9. Any school administration building;

10. 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;

11. Any elementary or secondary school facility;

12. Any career center;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university, and the weapon is a stun gun or non-lethal electric weapon or device designed solely for defensive purposes, and the weapon does not fire a dart or projectile;

14. Inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

B. Any person who knowingly and willfully violates any provision of §790.06(12), F.S.S commits a misdemeanor of the second degree, punishable as provided in §775.082, F.S.S. or §775.083, F.S.S.

IV. OUT-OF-STATE CONCEALED CARRY PERMITS

A. The State of Florida recognizes Permits to carry concealed weapons/firearms issued by certain other states (§790.06, F.S.S.). This law is applicable only to "...nonresident license holders from states that honor Florida concealed weapon or concealed firearm licenses."

1. This Statute also provides that such a nonresident "...is subject to the same laws and restrictions with respect to carrying a concealed weapon or concealed firearm as a resident of Florida who is so licensed."

2. Those states that currently (February 2016) meet the requirements of this law can be located at <http://www.freshfromflorida.com/Divisions-Offices/Licensing>.

a. The states that currently meet the requirements of this law are subject to change, and sound discretion should be exercised in enforcement.

b. NOTE: Some states provide that concealed carry Permits may be issued by a municipality or a county within that state. Florida has taken the position that it will not recognize such Permits as they were not issued by a "state."

c. The State of VERMONT does not issue weapon/firearms Permits. Citizens with Florida licenses – indeed, licensed or unlicensed citizens from any state – may carry in Vermont. This presents a problem for reciprocity with Florida. Florida law provides that an out-of-state resident must have in their possession a valid Permit to carry a concealed weapon or firearm. Since Vermont residents do not have such a Permit, the right to concealed carry cannot be extended to them under Florida law.

d. NOTE: While Florida's law allows licensees to carry stun guns, knives, and billy-clubs in a concealed fashion, the laws of many of these states allow for concealed carry of handguns or pistols only, not weapons in general.

B. Implementation and enforcement of this law have a number of problems and carry with it the very real concern of civil liability for making a false arrest. The problems include, but are not necessarily limited to:

1. The list of states having reciprocity with Florida is subject to change with little notice.
2. The verification of the validity of the out-of-state Permit; i.e., it may be expired or revoked.
3. The person claims to have a Permit but does not have it in their possession.

C. States having a reciprocity agreement with Florida have statutory requirements that must be met by the applicant, as well as criteria that will prohibit the issuance of a Permit. Thus, a person with an out-of-state Permit can generally be viewed as a law-abiding citizen and not a threat to society.

V. OUT-OF-STATE PERMIT - ENFORCEMENT PROCEDURE

A. When contact is made with a person carrying a concealed firearm and the person is in possession of a concealed carry Permit issued by another state, the Officer shall:

1. Determine whether the issuing state is one recognized by Florida.
2. To the extent possible, determine whether the Permit is current and is not suspended or revoked.

3. Conduct an FCIC/NCIC check on the subject carrying the concealed firearm.

B. Permit issued by a state recognized by Florida

1. If the Permit is in order, no action need be taken.
2. If the Permit is not in actual possession (a non-criminal violation), a *Notice to Appear* may be issued with a fine amount of \$25.00.
3. If carried in a prohibited place, it is a second degree misdemeanor.

C. Permit issued by a state not recognized by Florida, or the status of state reciprocity is unclear and the Permit appears to be valid and current

1. Enforcement decisions shall be made after consultation with a supervisor and consideration of the totality of the circumstances including, but not limited to:
 - a. The holder of a valid and current out-of-state Permit may generally be viewed as a law-abiding citizen.
 - b. The offense would essentially be a "technical" violation of Florida law which would result in a felony charge.
 - c. Was the subject engaged in criminal activity?
 - d. Was the subject carrying the firearm in an area prohibited by Florida law?
 - e. §790.25(5), F.S.S. provides that a firearm may be lawfully transported in a private conveyance if the firearm is securely encased or is otherwise not readily accessible for immediate use.

2. Unless circumstances warrant an arrest, Officers can fulfill their duty by educating the person as to the lawful method of carrying a firearm in a vehicle while in Florida, whereby the person will avoid the risk of a felony arrest for carrying the firearm concealed on their person.

D. Marking of firearms taken for evidence

Firearms taken for evidence in relation to a NON-CRIMINAL VIOLATION (possession without a Permit on person) will be marked as evidence by attaching, evidence tape and a tag. The firearm will NOT be "engraved" if it is evidence for a non-criminal violation.

VI. OUT-OF-STATE LAW ENFORCEMENT OFFICERS - ACTIVE AND SEPARATED FROM SERVICE

A. Under H.R. 218 Law Enforcement Officers Safety Act, S.1132 Law Enforcement Officers Safety Act Improvements Act of 2010, and LEOSA, as Amended by the H.R. 4310 National Defense Authorization Act of 2013, active and qualified, separated from service Law Enforcement Officers are authorized to carry a concealed firearm in any state. This law does not include machine guns, silencers, and destructive devices in the definition of "firearm."

B. General Requirements/Restrictions of 18 USC 926B and 18 USC 926C, commonly known as H.R. 218 Law Enforcement Officers Safety Act as amended by S.1132 The Law Enforcement Safety Act Improvements Act of 2010 and HR 4310 National Defense Authorization Act of 2013.

1. The person must possess photographic identification issued by the employing, or the formerly employing, agency.
2. The person is subject to the same restrictions as any Florida citizen who possesses a Permit to carry a concealed firearm and may not carry or possess a firearm in any private place or premises where the owner or occupant prohibits the possession of a concealed firearm, or any place or premises prohibited by Florida law. (See section III and §790.06 [12], F.S.S.)
3. The person must NOT be under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

4. Law Enforcement Officers separated from service in good standing, who are eligible under the provisions of the law:
 - a. May carry only the type of firearm with which they qualified; i.e., revolver or semi-automatic, and
 - b. They must have qualified with the type of weapon within the last twelve (12) months prior to the date of the inquiry.
 - c. If their official I.D. card does not display information about qualification status and date, they should be asked for additional official documentation.

C. Enforcement

1. The federal law did not specify any particular form to be used for photographic identification. Therefore, the I.D. presented by active or retired Officers from Florida, or out of state, will vary. If the I.D. appears to be valid, no enforcement action need be taken unless the person presenting the identification has become involved in a criminal act or is under the influence of alcohol or another intoxicating or hallucinatory drug or substance. A copy of any report generated under these circumstances shall be forwarded to the agency that issued the I.D. card.

2. Officers and retired Officers may not possess or carry a concealed firearm where a private person or entity restricts such activity or in any location prohibited by §790.06(12), F.S.S.

3. Unless circumstances warrant an arrest, Officers can fulfill their duty by educating the person as to the prohibited locations and the lawful circumstances when one can carry a firearm in the State of Florida.

4. Prior to taking enforcement action for violations related to 18 USC 926B or 18 USC 926C Officers shall read, check for amendments to, and be familiar with, the entirety of these specific federal statutes which provide greater detail of requirements and exceptions than are provided in the general summary of this Order.

D. Firearms taken for evidence or safekeeping under the provisions of Title 18, USC 926B and USC 926C, will be marked by attaching evidence tape and a tag to the firearm. The firearm will not be "engraved."

Anthony Holloway
Chief of Police