



FAQs on SB 300/HB 163 January 20, 2016

Q: Does the Florida Sheriffs Association have a position on SB 300/HB 163 (the legalization of open carry of handguns)?

A: The Florida Sheriffs Association opposes legalizing complete open carry and believes current concealed carry laws are working and provide citizens the tactical advantage to protect themselves and others. In October 2015, 47 of 57 Florida sheriffs voted to oppose the proposed legislation. However, Florida Sheriffs would support legislation that enhances protections for concealed carry permit (CCP) holders to ensure they are not inappropriately arrested or prosecuted – preserving their 2nd Amendment Rights.

Q: What do the proposed bills actually do?

A: The bills actually do a lot more than just legalize open carry. They also change legal standards, create new causes of action and take away protections for law enforcement officers. In addition, as drafted, the bills may create confusion with current law.

The proposed measures would do the following:

- Authorize the open carry of firearms and weapons for persons otherwise licensed to carry concealed pursuant to Florida law.
- Require the legal review by courts to “strict scrutiny” of any statute that relates to the right to bear arms or defend oneself. Strict scrutiny requires “compelling government interest” employing the “least restrictive” and “narrowly tailored” means possible to satisfy the complying interest.
- Define the right to bear arms as a “fundamental and individual” right in any place a person has the right to be and makes this subject to only, exceptionally and narrowly, tailored restrictions and requires a compelling government interest.
- As it relates to conceal carry of a firearm, it removes current law’s authorization for law enforcement to make an arrest without a warrant when “reasonable grounds” exist to believe that a person is carrying concealed without a license and only authorizes such arrests with probable cause. **** This was amended after FSA and others expressed concerns.*
- Require probable cause of a crime for a person or entity to infringe on the rights related to the Second Amendment as well as Florida law related to firearms or self-defense.
- Removes any immunity a person or entity has for infringing on rights outlined in the bill.
- Provide additional declaration of legislative policy, adding that the possession and carrying of weapons and firearms by law-abiding citizens enhances public safety.

Q: What problem is this proposed legislation allegedly fixing?

A: It depends on who you talk to. The NRA has publicly stated it was filed to protect concealed carry holders from being arrested or prosecuted for accidentally displaying their firearm. They state that the only way to fix this problem is to allow full open carry. Open Carry groups believe the Constitution provides them the right to carry any way they want and State's should not limit it to just concealed.

Q: Is there another way to protect our concealed carry permit holders from being arrested or prosecuted for mistakenly/inadvertently displaying their firearm, short of legalizing complete open carry?

A: Yes, there are other ways to protect our concealed carry permit holders and legalizing complete open carry is not the only solution. The 2011 Florida law, which was passed to protect concealed carry permit holders from arrest for accidentally open carrying, can be tightened significantly to ensure protections for conceal carry permit holders.

The FSA is offering several recommendations that would allow the Sheriffs to support the proposed measures while continuing to protect the rights of concealed carry holders without legalizing full open carry:

- **Requiring that someone INTENTIONALLY AND DELIBERATELY violate the law before they can be arrested.** Current law does not require that a person intentionally and deliberately briefly display the weapon to violate the section.
- **Creating a PRESUMPTION that a conceal carry permit holder is LAWFULLY carrying.** Current law does not have a presumption that the conceal carry permit holder is NOT violating the law.
- **Creating IMMUNITY for lawful citizens that inadvertently or accidentally display their firearm.** Current law does not have any immunity from prosecution for lawful citizens who accidentally display their concealed firearm.
- **Creating a requirement that a person be allowed to explain the situation and that they cannot be convicted if they were not given an opportunity to explain.** This procedure is consistent with requirements in s.856.021 FS, loitering and prowling. Current law does not have a requirement that a person be able to explain the situation before an arrest.
- **Authorizing an EXPUNCTION of the criminal history record associated with an arrest under this section if the person is found not guilty or the charge is dismissed- regardless of other eligibility requirements.** This is consistent with the expunction language in s. 776.09 FS, added to Stand Your Ground in 2015. Current law does not offer any expunction authorization.

Q: Does the Florida Constitution prohibit the Legislature from regulating firearms?

A: The Florida's Constitution states:

SECTION 8. Right to bear arms.— (a) The 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.

Since 1987, as authorized by the Florida Constitution, Florida law has regulated the manner of bearing arms by requiring it be concealed and with a permit that delineates who qualifies for the permit.

Additionally, Florida law outlines where you can and cannot carry concealed and open and who is eligible for a concealed carry permit.

Q: Why do Sheriffs support carrying concealed in lieu of openly carrying?

A: First and foremost, carrying concealed gives you a tactical advantage if you are forced to defend yourself or others. If you walk into a bank and there is a bank robbery in progress, the bad guy is most likely going to target you if you have a gun on your hip. If you are carrying concealed, you might be able to act before the bad guy knows you have a gun. Secondly, law enforcement responding to a disturbance have mere seconds to assess the situation and the public safety of those involved. If a law enforcement officer walks into an active crime scene and sees that there are people open carrying, it will be very difficult to discern the good guys from the bad guys -- creating confusion and potential risk to innocent bystanders. If some of those same innocent bystanders were conceal carry permit holders they would have a tactical advantage should law enforcement need assistance. Thirdly, more than 97 million tourists visit Florida each year and the state cannot risk impact its #1 economic driver- tourism by alarming tourists.

Q: Related to carrying your firearm, what does Florida law currently allow and will this law broaden where you can carry your weapon?

A: No, this bill does not broaden where you can currently carry. It is focused on how you carry and will authorize you to carry your firearm in the plain sight of another person versus being required to carry it concealed. Gun owners and conceal carry permit holders have long enjoyed and will continue to enjoy their 2nd Amendment Rights under current law – in fact Florida is home to 1.5 million conceal carry permit holders. There has been no valid concern raised that current law doesn't already allow you to protect yourself. Additionally, under current Florida law which the sheriffs support, you may carry a gun openly or concealed on your own property or where you work without a permit. You may also carry a gun openly and without a permit while going to and from fishing, hunting, and other activities. You may also carry a gun concealed in your car without a permit as long as it is securely encased; and you may carry a gun that is concealed on your person today with a permit and with few exceptions you can carry it wherever you want. In sum, citizens can protect themselves in their homes by carrying open or concealed; where they work by carrying open or concealed; in their cars and just about any other place they want to go with a CCP. This is an effective framework for citizen self-protection.

Q: How many conceal carry weapon permit holders are there in Florida? How does this compare to other States?

A: There are about 1.5 million conceal carry permit holders in Florida. New York is the only state with more concealed carry holders than Florida with over 2 million.

Q: Do 45 other States have laws that are comparable to Florida's open carry legislation?

A: No. There are vast differences between the states that permit open carry. This is not an apples to apples comparison so the use of this argument is neither factual nor valid. While Pennsylvania allows open carry, the city of Philadelphia is more restrictive. Pennsylvania has distinguished that there is a big difference between open carry in the Pocono Mountains from downtown Philadelphia. In Texas and Oklahoma the handgun must be carried in a holster. In New Jersey they do not issue permits

unless the sheriff approves it. So it is not accurate to just make a blanket statement that 45 states allow open carry.

After the FSA raised doubts to the validity of the comparison, the NRA issued a document that clarifies and highlights the differences from state to state. In our opinion, NRA's list demonstrates the exact point the FSA has made - that it is not a fair comparison to use the different open carry laws in 45 states as a basis for a major policy shift in Florida. While we agree that 45 states have some form of open carry; we disagree that those states should be used as the basis to expand Florida's gun laws. Below is a list of some of the laws that have been used to make the case for changing the gun law in Florida. The FSA believes the list below is irrelevant to Florida:

- Oklahoma is listed as one of those open carry states but they require a holster; they also require "actual qualification" with the gun; and they limit the size of the gun and ammunition that may be openly carried— the proposed legislation in Florida does not.
- Colorado is another open carry state but Denver has a city ordinance that prohibits open carry in the City and County of Denver.
- Pennsylvania allows open carry, but the city of Philadelphia is allowed to be more restrictive. Florida's legislation does not allow cities or counties to determine what's best for their citizens locally.
- New Jersey, which is also one of the 45 states that allows open carry, requires that applicants receive a state permit, and based on research those are rarely if ever issued; and they also require local sheriffs' approval.

Q: Is open carry "working" in other States?

A: There is no real definition of "working" but there is no evidence that someone open carrying thwarted an attack more successfully than someone concealed carrying. There are many published reports, electronic media news stories as well as personal videos about open carrying people and groups creating fear and anxiety at public events, [little league ball parks](#) and [businesses](#). [A report in The Denver Post](#) related to a November 2015 shooting highlights the confusion that arose in Colorado Springs with someone who was open carrying tragically ended up killing 3 people even though a 911 call was made. Unfortunately, because of the confusion surrounding open carry laws, officers were not dispatched to the scene until it was too late. This is something we would like to prevent from ever happening in Florida.

Q: Which States are considered "non-open carry" states and how do they compare to Florida?

A: New York, California, Illinois, and South Carolina do not have open carry laws. The top 5 most populous states are: California, Texas, Florida, New York, and Illinois. It is not a coincidence that 4 out of the 5 most populous states do not allow open carry. In January 2016, Texas enacted its open carry law --- according to published reports, the effects of that change have already created confusion for law enforcement and other leaders.

Q: Under the current proposed open carry bill language private businesses have the right to decide whether or not to allow guns, open or concealed on their premises -- doesn't that solve the concern being expressed by some open carry states?

A: After the FSA and others expressed concerns about the rights of private businesses related to guns on private property, the bill sponsors added stronger language protecting those rights but also added language requiring businesses to post signs that notify patrons if open carry is not allowed on premises. However, this does not alleviate the concern that an employee will be required to tell a patron that he or she is violating the private business' policy requiring them to leave the premises. Employers are extremely concerned about putting their employees in harm's way should the issue escalate and many parents have expressed concerns about their teenage children having to deliver that message in several private business settings. These are instances where law enforcement may be called to help enforce that store's policy.

Q: If these bills pass, will cities like Orlando, Tampa, Jacksonville or St. Petersburg be able to pass local gun ordinances on open carry?

A: No. In 2011, Florida passed a law (SB 402) prohibiting local governments from opting out of any state firearm regulations. There are actually fines in the thousands of dollars and removal from office for public officials who do so. If these bills pass a conceal carry permit holder will be able to openly carry their handgun in Pensacola, Miami, Orlando, Jacksonville, the Keys and everywhere in between. Local counties and cities will not be able to put any local restrictions on it.

Q: Would a person who wants to openly carry their handgun have to receive any additional training?

A: No, and currently there is minimal training required to obtain a conceal carry weapon permit.

Q: Does the bill require a holster to open carry?

A: No, the current draft of the House and Senate bills do not require that a handgun be in a holster. You could put it in your back pocket or wedged in the elastic band of your sweatpants. Without this requirement, it is a valid public safety concern that a person could potentially walk up and grab a handgun out of another person's back pocket. In addition, while the handgun would not be required to be holstered, you are prohibited from recklessly displaying it. However, there are differing views on what constitutes reckless display, and ultimately that will be left to a judge. It is common sense that the bills should require all firearms that are openly carried to be securely encased in a retention safety holster. **** FSA anticipates that this will be amended and new language will require a holster or a bag but not a secure holster.*

Q: The bill was amended to state that you can open carry where you can conceal carry; doesn't that resolve that question about where you can open carry?

A: No, as the proposed legislation contains mixed provisions that will create confusion and legal challenges. While the bill now clearly states that you can open carry where you can currently conceal carry, another part of the bill states you can carry wherever you can lawfully be. And that is where the confusion lies – we do not believe this has been addressed by the bills in their current form and we know how important is to provide clear guidance to not only our citizens, but to our law enforcement community as well. Another question could be that if you can currently conceal carry in your vehicle,

would this bill now allow you to open carry in your vehicle? That practice causes grave concerns and challenges for law enforcement officers during routine traffic stops.

Q: What is the effect of changing a legal standard in the proposed legislation?

A: There are all kinds of potential implications with increasing the legal standard of review that get little discussion in the Legislature or the media. For instance, if a local restaurant prohibits open carry, but a person walks in openly carrying their handgun and then owner of the restaurant calls on law enforcement to respond to the situation. If an arrest is made, the person who was openly carrying could sue and ultimately the courts would then have to apply “strict scrutiny” to the event in question. This higher level of scrutiny could result in the restaurant owner and law enforcement officer becoming liable for infringing upon the person’s Second Amendment rights. We also don’t know how this could impact Florida’s other firearm regulations. Does the state have a compelling interest to regulate a person bringing a firearm to a local school or at an establishment that dispenses alcohol? With the mandate, that the judiciary use strict scrutiny on all of these issues, it is unknown what the outcomes may be and likely that all or some of our current restrictions would be struck down. This is an area that does not get much attention but we believe will create much confusion and result in unintended consequences.

Q: How do law enforcement officers know the difference between a good guy with a gun and a bad guy with a gun?

A: To ensure both the public and law enforcement safety, many Florida law enforcement agencies do not allow their non-uniformed officers to open carry. It is nearly impossible for law enforcement officers to assess a CCP or open carry person’s motives – for example, what if a patrol officer on the midnight shift is alerted to a person walking down the road with two .45s in their waistband. The officer would not be able to assume they are a law-abiding citizen with valid permit. Under the bills, in their current form, law enforcement officers will not be allowed to pull over and ask the pedestrian to provide documentation that they are legal permit holders. The current bills require that law enforcement must first have probable cause that a crime is being committed before he or her can request to see a person’s permit. How would one train law enforcement officers to make the right call?

Q: I was told that almost 30 years ago (1987) the Florida Sheriffs Association opposed conceal carry. Is the Association flip-flopping?

A: No, because none of the 67 sheriffs in office today were sheriffs back in 1987. Each year the Florida Sheriffs Association reviews legislation and the sheriffs decide what public policy position to take. Current sheriffs wholeheartedly support the ability of law-abiding citizens to conceal carry in Florida and will continue to be supporters of the 2nd Amendment.